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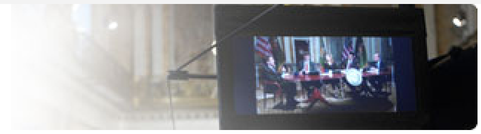
# Interim Guidelines for Conflicts of Interest

United States: Department of the Treasury

U.S. DEPARTMENT OF THE TREASURY

## Press Center



# Interim Guidelines for Conflicts of Interest

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**Washington, DC --** Treasury issued the following interim guidelines for potential conflicts of interest related to the authorities granted under the Emergency Economic Stabilization Act of 2008:

These procedures outline the process for reviewing and addressing actual or potential conflicts of interest (COIs) among contractors performing services in conjunction with the Emergency Economic Stabilization Act of 2008 (EESA). Section 108 of the EESA requires Treasury to develop guidelines for addressing COIs as soon as practicable after enactment of the law. These procedures should be considered interim guidelines and will remain in effect until final guidelines are developed.

EESA contracts raise potential for "impaired objectivity" COIs. Under such COIs, the contractor's judgment or objectivity may be impaired due to the fact that the substance of the contractor's performance has the potential to affect other interests of the contractor. EESA contractors may also face potential COIs if they obtain access to sensitive, non-public information (belonging to Treasury or to third parties) while performing the contract. To address this latter type of COI, it may be necessary to restrict the disclosure of such information or to include restrictions on the dissemination of information within the contractor's organization. Lastly, contractor employees are not always subject to the same ethical restrictions that are imposed by law on Federal Government employees. Therefore, EESA contracts may create a potential for personal COIs involving individual employees of a contractor.

Treasury officials should adhere to the following guidelines for addressing COIs arising with EESA contractors:

- Where appropriate, Treasury may obtain non-disclosure agreements and COI agreements in advance of supplying an offeror a solicitation.
- The solicitation should instruct prospective offerors that they must disclose any actual or potential COIs (including those associated with an affiliate, consultant, or subcontractor) which could arise from performance of the contract. The solicitation will indicate that, if actual or potential COIs are identified, the prospective offeror must submit a mitigation plan as part of its initial proposal. In some situations, Treasury may also desire to include provisions requiring that the prospective offeror identify personal COIs among employees who would be performing the work, and include measures in its mitigation plan for addressing such personal COIs.
- The solicitation should include an evaluation factor or criteria whereby Treasury will assess the likely effectiveness of the proposed COI mitigation plan.
- The solicitation will identify any minimum requirements or standards for the COI mitigation plan. For example, if Treasury requires that the mitigation plan will address certain specific issues, offerors should be so advised in the solicitation.
- If the contractor will owe a fiduciary duty to Treasury in performing the contract, the solicitation should include a statement to that effect. This provision will become part of the resulting contract.
- The solicitation should include non-disclosure provisions which, at a minimum, apply to the prime contractor. In some situations, Treasury may also desire to include provisions requiring that the prime contractor obtain comparable non-disclosure and/or COI agreements from subcontractors or individual employees.
- The solicitation should state that Treasury will oversee and enforce the proposed mitigation plan as part of the contract.
- The Treasury Senior Procurement Executive will review and approve all provisions related to COIs prior to issuance of the solicitation.
- The solicitation should require that mitigation plans be submitted with offerors' initial proposals. Treasury's evaluators, source selection personnel, and legal counsel will examine the proposed mitigation plans to determine the extent to which those plans provide sufficient protection against actual or potential COIs.
- The severity of a COI is necessarily dependent upon the circumstances of the case and the nature of the contractual action. Treasury personnel should not assume that a mitigation plan which is acceptable under one situation would also be acceptable under different circumstances.
- The contracting officer may negotiate the mitigation plan with the offeror, taking into account the type of procurement being conducted.
- Notwithstanding the submission of a mitigation plan, it is possible that contractor COIs may exist which cannot be effectively neutralized or mitigated. An offeror with an unacceptable mitigation plan will not be eligible for award unless conflicts are waived by the agency head or designee.
- It is possible that a COI may be waived by the agency head or a designee. Any request for such a waiver should first be coordinated with the Treasury Senior Procurement Executive.
- Upon award of the contract, the successful offeror's mitigation plan will be formally incorporated into the contract, making the mitigation plan a contractually binding obligation.

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