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For more information,  
contact:

Steve Cave

+ 1 703 245 1017

[scave@kslaw.com](mailto:scave@kslaw.com)

Rick Vacura

+1 703 245 1018

[rvacura@kslaw.com](mailto:rvacura@kslaw.com)

Lauren Horneffer

+1 703 245 1020

[lhorneffer@kslaw.com](mailto:lhorneffer@kslaw.com)

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**King & Spalding**

Northern Virginia

1650 Tysons Blvd

Suite 400

McLean, VA 22102

Tel: +1 703 245 1000

## Preventing Organizational Conflicts of Interest in Federal Acquisition Act

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On December 27, 2022, Congress passed the Preventing Organizational Conflicts of Interest in Federal Acquisition Act (“the Act”), aiming to help identify and mitigate potential conflicts of interest between taxpayer-funder projects and government contractors’ other business opportunities. The Act requires the FAR Council to revise the FAR within 18 months to include definitions and a rule reflecting the requirements of the Act. The revised regulations will provide more clarity and will be targeted toward increasing the level of detail in potential conflict of interest disclosures and agency oversight of organizational conflicts of interest. In addition to creating new solicitation and contract provisions and permitting contracting officers to tailor those provisions as necessary, the rule must provide and update:

- a) definitions related to specific types of organizational conflicts of interest, including unequal access to information, impaired objectivity, and biased ground rules;
- b) definitions, guidance, and illustrative examples related to relationships of contractors with public, private, domestic, and foreign entities that may cause contract support to be subject to potential organizational conflicts of interest, including undue influence; and
- c) illustrative examples of situations related to the potential organizational conflicts of interest identified under this paragraph, including an example of the awarding by a Federal regulatory agency of a contract for consulting services to a contractor if employees of the contractor performing work under such contract are permitted by the contractor to simultaneously perform work under a contract for a private sector client under the regulatory purview of such agency;

Agencies will also be required to establish or update internal conflict of interest policies and periodically assess and update those policies and procedures.



Currently, the FAR requirements on Organizational Conflicts of Interest (“OCI”) are laid out in FAR Subpart 9.5, where an OCI is defined as a situation where “because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.” This subpart requires contracting officers to identify and evaluate potential organizational conflicts of interest, categorized into three main types: unequal access to information, biased ground rules, and impaired objectivity. Examples of these conflicts are currently provided in FAR 9.508. These definitions and examples are likely to be broadened and updated in the upcoming proposed rule.

Overall, this Act sets the FAR Council the task of closing any gaps in the organizational conflicts of interest FAR rules that may have been highlighted by recent reports of government contractor behavior. The FAR Council will need to carefully consider a rule that will best protect government interests while allowing government contractors to continue to pursue commercial ventures.

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