ORGANIZATIONAL CONFLICT OF INTEREST STATEMENT (OCI)

An OCI occurs when a contractor’s performance on one government contract may compromise its ability to perform on another government contract or may compromise its ability to compete for a government contract in a fair way. The Federal Acquisition Regulation (FAR) defines an OCI 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.” FAR 2.101. Contracting agencies are responsible for determining whether an actual or apparent conflict of interest exists. If a conflict of interest does exist, it can lead to the contractor being excluded from a contract competition, having an existing contract terminated, and, in some cases, it can even lead to the contractor being suspended or debarred from performing on future federal government contracts. As such it is imperative that contractors avoid actual or apparent conflicts of interest at all costs.

I hereby certify that ___________________________ (company) does not presently recognize or qualify any Organizational Conflicts of Interest in the performance of Ozark Regional Transit’s RFQ 2019.1.

Signature:_________________________ Date:____________________

Name (print) __________________________
Authorized Representative of Company

Organizational Conflicts of Interest fall into three categories:

1. **Unequal Access to Information**: This type of OCI occurs when, as part of its performance on a government contract, a contractor has access to non-public information that may provide the contractor with a competitive advantage in a competition for a different government contract. Non-public information includes proprietary information and non-public source selection information. To constitute an OCI, it is sufficient that the offeror has access to the information; actual use of that information does not need to be shown. For there to be an unequal access to information OCI, the information must be real, substantial, completely useful, and non-public. The mere fact that a contractor is the incumbent will not, by itself, create an OCI. Contractors should be aware that the actions or knowledge of a subcontractor or other team member can create an OCI. This is especially true when the subcontractor or team member is a former government employee. In cases where non-public information is obtained from a former government employee, the issue will be treated as if the information had been obtained under a government contract.

2. **Impaired Objectivity**: This type of OCI occurs when the nature of a contractor’s work under one government contract could give it the opportunity to benefit on other government contracts. If the contractor is using subjective judgment or giving advice, and its other business interests could be affected by the judgment or advice, its objectivity may be impaired. For example, if a contractor were to have an opportunity to evaluate itself, an affiliate, or a competitor, either through assessment of its performance under another contract or the evaluation of proposals, this could constitute an impaired objectivity OCI. The issue is not whether the biased advice was actually given but whether a reasonable person would find that the contractor’s objectivity could have been impaired. Some relationships, however, are too remote to create an impaired objectivity OCI. Additionally, some tasks are too ministerial to give the contractor an opportunity to act in other than the government’s interest.

3. **Biased Ground Rules**: This type of OCI occurs when as part of its performance on a government contract, a firm has helped set the ground rules for the procurement of another government contract. For example, if a contractor were to write the statement of work or specifications for a government contract, or help establish the evaluation criteria, this could constitute a biased ground rules OCI if the contractor were to
subsequently submit a proposal for that contract. The primary concern is that the contractor could tilt the competition in its favor, either intentionally or not.

As noted above, contracting agencies are responsible for determining whether an actual or apparent conflict of interest exists. FAR 9.5 requires contracting officers to identify and evaluate potential OCIs as early in the contracting process as possible. Contracting officers are required to avoid, neutralize, or mitigate potential significant conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor’s objectivity. Although FAR 9.5 is directed principally at the government, contractors also share some of the same responsibilities. Taking these responsibilities into account contractors should seek to identify actual and potential OCIs, both proactively and in response to inquiries from the contracting officer. Contractors should also actively communicate with the contracting officer to agree upon ways to avoid or mitigate potential OCIs.

Contracting officers are required to reasonably consider any mitigation plan that is submitted by a contractor who could potentially be excluded from a competition because of an OCI. In most cases, it is not possible to mitigate an OCI after the fact, so any mitigation plan must address prospective OCIs. In general, the Government Accountability Office (GAO) and Court of Federal Claims (COFC) will give substantial deference to an OCI mitigation plan, as long as the contracting agency has thoroughly investigated and resolved the conflict of interest, and the plan is appropriately tailored to the specific situation.

Some factors to consider when developing an OCI mitigation plan include:

1. **Unequal Access to Information**: This type of OCI can be mitigated by establishing a firewall, or a combination of procedures and security measures that block the flow of information between contractor personnel who have access to non-public competitive information and other contractor employees who are preparing the proposal. The potential competitive advantage resulting from the unequal access will be nullified if the information cannot cross the firewall to be used in a competitive procurement. Another way to mitigate this type of OCI is to share the information with all competing offerors so that all offerors are on a level playing field.

2. **Impaired Objectivity**: This type of OCI can be mitigated by de-scoping an existing contract to exclude the performance of certain work by a contractor, or even removing a conflicted subcontractor from the contract. In some cases, impaired objectivity OCIs can be mitigated by having certain work performed by a firewall subcontractor or the government itself. This type of OCI can also be mitigated through increased government oversight that limits the amount of independent judgment and analysis required by the contractor for performance.

3. **Biased Ground Rules**: This type of OCI is difficult to mitigate because once a contractor has influenced the statement of work, specifications, or evaluation criteria the harm has already been done. Looking forward, if a contractor is interested in a potential future opportunity, it should avoid any current opportunities that could create an OCI. A contractor can do this by refraining from submitting a proposal for certain contracts, or by entering into a contract that allows it to recuse itself from any work that might create a potential future conflict.

If a contractor is not able to successfully mitigate an OCI, it should consider asking Ozark Regional Transit/Federal Transit Administration (ORT/FTA) for a waiver. In most cases, ORT/FTA has the unilateral right to waive an OCI requirement if it determines that a waiver is in the ORT’s best interests. This usually occurs after ORT/FTA has thoroughly investigated the conflict of interest and determined that the benefit to ORT outweighs the risk of harm.