

GAO shows contractors how to protest conflicts-of-interest inquiries

By Evan C. Williams, Esq., and Luke Levasseur, Esq., Fox Rothschild LLP*

JULY 11, 2025

The Federal Acquisition Regulation (FAR) generally requires contracting officials to identify and evaluate organizational conflicts of interest (OCIs) as early as possible in a procurement. The FAR also requires the procuring agency to avoid, neutralize, or mitigate significant potential conflicts and thus prevent unfair competitive advantages or the existence of conflicting roles that might impair a contractor's objectivity.

GAO sustained DirectViz's claim that the awardee suffered from an impaired objectivity OCI.

When an agency has identified and analyzed an OCI, it is often difficult to prevail with an OCI protest allegation because of the deferential standard under which the Government Accountability Office (GAO) reviews such challenges.

Specifically, GAO has explained that it "reviews OCI investigations for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, [GAO] will not substitute our judgment for the agency's absent clear evidence that the agency's conclusion is unreasonable."

However, contrary to the usual practice described above, on June 20, 2025, GAO sustained a challenge to an agency's analysis of an OCI as insufficient in *DirectViz Solutions, LLC* (B-423366 *et al.*, <https://bit.ly/3TwjuNW>).

Notwithstanding the deferential standard of review, GAO determined that the agency erred when it failed to meaningfully consider the potential overlap between the performance responsibilities of the task order at issue and another contract that the awardee concurrently was performing.

This decision provides a helpful illustration of winning arguments when challenging an agency's flawed OCI analysis.

The GAO decision

The protest stemmed from a procurement of information technology support services for the Army's Global Cyber

Center (GCC). The protester challenged the Army's task order award on several bases, including an OCI-related allegation on which we focus.

As we explained in a prior blog post (<https://bit.ly/3U4fILt>), FAR subpart 9.5 gives rise to three groups of OCIs: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. In this case, GAO sustained DirectViz's claim that the awardee suffered from an impaired objectivity OCI.

An impaired objectivity OCI arises when a firm's ability to render impartial advice to the government is undermined by the firm's competing interests — such as when an award would result in a contractor evaluating its own products or services.

OCI-based protests are an uphill battle when the agency performed an evaluation — even one that a disappointed offeror reasonably believes was flawed.

In *DirectViz*, the protester argued that the awardee's support on an existing Army Cyber Command contract would result in the potential for the awardee to provide biased advice on the GCC task order.

Based on its review of the record, GAO found that the overlapping responsibilities of the two procurements resulted in an inherent conflict of interest and gave the awardee an incentive to favorably assess its own performance.

Citing various performance work statement (PWS) provisions from the respective contracts, GAO described several illustrative examples of how the awardee's objectivity would be impaired by its competing interests in the two contracts and, consequently, the Army could receive improperly biased advice.

Next, GAO turned to the Army's investigation and analysis of the alleged OCI. GAO relied heavily on the fact that the

contracting officer did not analyze numerous specific PWS provisions identified by the protester as potentially giving rise to the impaired objectivity OCI.

In this regard, GAO explained that even though the contracts' respective PWSs included many overlapping responsibilities — with significant potential for impairing the awardee's objectivity — the Army's investigation did not address those PWS provisions and thus failed to meaningfully investigate the OCI.

The DirectViz decision demonstrates that GAO will sustain a protest when the agency “fails to meaningfully consider” an important aspect of the OCI in question.

In reaching this conclusion, GAO followed a long line of cases rejecting an agency contention that an OCI was sufficiently mitigated because the government retained ultimate authority to approve the awardee's recommendations.

GAO explained that the purpose of an impaired objectivity OCI review was to determine whether the firm's advice to the government would be biased. Ultimately, GAO explained that the record provided no basis to conclude the agency's OCI determination was reasonable in light of the missing analysis of the relevant PWS provisions.

Key takeaways

The *DirectViz Solutions, LLC* decision provides several important takeaways for would-be protesters:

About the authors



Evan C. Williams (L), a partner in the federal government contracts department at **Fox Rothschild LLP**, represents clients in the aviation, aerospace, technology and defense industries. He can be reached at evanwilliams@foxrothschild.com.

Luke Levasseur (R), also a partner in the firm's federal government contracts department, helps established contractors and first-time bidders resolve disputes and other matters. He can be reached at llevasseur@foxrothschild.com. The authors are based in Washington, D.C. This article was originally published July 1, 2025, on the firm's website. Republished with permission.

- **Be aware of contracts held by competitors.** Offerors should proactively research and track the contracts held by their competitors. This will enable companies and protest counsel to identify potential OCIs that may disqualify competitors with respect to a particular contract award. Companies should pay special attention to competitor contracts involving the same agency or department that has issued the solicitation at issue.
- **Recognize agency discretion.** GAO case law makes clear that agencies enjoy broad discretion in evaluating and mitigating OCIs. As a result, OCI-based protests are an uphill battle when the agency performed an evaluation — even one that a disappointed offeror reasonably believes was flawed.
- **Focus efforts on identifying gaps in agency's OCI analysis.** Given the deferential standard of review, GAO is usually unwilling to second-guess the agency's substantive determinations with respect to a potential OCI. That said, the *DirectViz* decision demonstrates that GAO will sustain a protest when the agency “fails to meaningfully consider” an important aspect of the OCI in question. Because challenges to an agency's OCI substantive determinations or judgments are unlikely to succeed, protesters should concentrate their arguments on areas in which the agency's OCI investigation/analysis is insufficient or lacking in some material way (*i.e.*, find gaps). In this case, GAO found that the Army's failure to analyze the relevant PWS provisions was fatal to the OCI analysis, rendering the agency's ultimate conclusion unreasonable.

This article was published on Westlaw Today on July 11, 2025.

* © 2025 Evan C. Williams, Esq., and Luke Levasseur, Esq., Fox Rothschild LLP

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.