Conflict of Interest Policy

Overview:

Draper employees should understand that there are certain actions that could create an actual or perceived conflict of interest between the employee and the Laboratory. When examining conflict of interest, there is no difference between actual or perceived conflict of interest. As a government contractor, Draper is subject to specific contractual requirements dealing with organizational conflicts of interest (OCI) and personal conflicts of interest (PCI).

This policy addresses the three conflict of interest areas on a broad level. More detailed procedures providing more specific implementing guidance will be issued in the coming months. While not every employee may have to deal with OCI and PCI provisions, every employee does need to understand the Laboratory’s conflict of interest policy.

Laboratory Conflict of Interest:

Draper employees are expected to perform their duties on behalf of the Laboratory faithfully, diligently and to the best of their abilities. Employees should not engage in activities that create, or even appear to create, conflict between their personal interests and the interests of Draper Laboratory. These situations arise where a personal interest or family relationship makes it difficult for an individual to represent the company fully and fairly. Some examples include: 1) accepting gifts or anything above a modest value from suppliers, customers, vendors or potential suppliers, vendors or customers; 2) approving or making recommendations to approve purchases from an organization in which either you or your family has a significant financial or management interest; or 3) conducting outside employment in areas similar to Draper’s business areas.

An example under 2) above would be recommending a supplier where your brother-in-law is a senior executive of the supplier. This could be an actual conflict of interest or it may be that the supplier is the only source available. In the latter case, the employee should remove himself/herself from the decision making process to ensure there is no perceived conflict of interest.

Draper’s General Counsel must approve an employee’s financial or management interest in a company that could be either a vendor or customer of Draper. The General Counsel’s office will work with an employee to determine if a financial interest in a vendor or customer is material. The General Counsel’s office will also be the point of contact for questions regarding gifts from suppliers, customers or vendors and also for conducting outside employment in areas similar to Draper’s business areas. See the Ethics and Standard of Conduct Policy (Insert link) for more details.

Organizational Conflict of Interest (OCI):

The purpose of the OCI rules is to protect the integrity of Draper and the government contracting process. There are three main categories of OCI: 1) unequal access to information, 2) biased ground rules, and 3) impaired objectivity due to existing contractual relationships. If, for example, one contractor receives from the Government information about a project that is not available to other firms, there is a potential for that contractor to have an unfair competitive advantage in winning future Government contracts related to the project. Likewise, if a firm has a contract to design specifications
or define requirements for a government agency for a particular part, that firm could design the part in such a way as to favor itself to eventually develop or supply the part. This could create an unfair competitive advantage and damage the integrity of the government procurement process.

The rules around OCI are not always prescriptive and judgment must be applied. The most important aspect is to identify potential OCI issues as soon as possible in the government procurement process. The earlier identified, the more likely a mitigation plan can be presented to our sponsor and avert the possibility of Draper not being able to propose on the work. Common elements of a mitigation plan would include entering into non-disclosure agreements, controlling access to sensitive information, establishing an OCI awareness and compliance program, and establishing firewall plans. There are also ongoing requirements during contract performance that may need to be reported. The OCI review process is a complete lifecycle review beginning with proposal preparation and submission through contract execution and contract closeout.

OCI is viewed on an organization wide basis, not limited to what one person knows. Take the situation where one engineer is working on improving a certain technology for our sponsor that will be used as part of a contract requirement to incorporate that technology into an existing product. Another engineer is working on a proposal as a subcontractor to help the prime adapt the technology provided by the government (which Draper helped define) into their product. The fact that the two Draper engineers are not aware of what the other one is working on does not matter for purposes of OCI. Draper would have to propose to the subcontractor how we would mitigate this OCI. For this reason, it is key for Draper to have open communication across all business areas about the work being performed to determine if there might be a potential OCI.

The other complexity regarding OCI is that not only does the Federal Acquisition Regulation (FAR) address the topic, but the Department of Defense FAR Supplement (DFARS) has slightly different rules and some sponsors create their own requirements, particularly if Draper is acting as a subcontractor. The cognizant Program Manager with assistance from the Contract Administrator have the lead in complying with the OCI requirements relating to their proposal and contract, if awarded, including development of a mitigation plan if necessary.

**Personal Conflict of Interest (PCI):**

Unlike OCI, PCI rules included in the FAR are focused on an individual’s financial interests, personal activities, or relationships that could impair that individual’s ability to act impartially and in the best interest of the Government.

PCI rules apply to any Draper employee who is performing acquisition-related work closely associated with an inherently governmental function. Acquisition-related work associated with inherently governmental functions means supporting or providing advice or recommendations to the Government regarding the following type of activities: planning acquisitions, determining what supplies or services are required, writing a statement of work, or evaluating contractor proposals.

The purpose of the FAR PCI rule is to avoid a situation where an employee, because of a financial, personal or family relationship with a firm, could act to further his or her own interests rather than the Government’s interests. Like OCI, PCI rules protect the integrity of Draper and the government acquisition process. If a situation arises where a Draper employee is working on a contract that is performing acquisition-related work closely associated with an inherently governmental function, that
employee will be required to complete a financial disclosure form to determine if there is a potential PCI. If there is any question about a conflict, the employee shall consult with the General Counsel’s office before entering into the agreement.

In addition to the FAR PCI rule, Draper has had to comply with very similar requirements relating to work done for the National Science Foundation, Public Health Service and the American Heart Association. In these cases there may be contract specific language that Draper must comply with in addition to the general FAR provisions.

**Summary:**

The fundamental requirements contained in conflict of interest rules are consistent with Draper’s values which focus on fair dealing with customers, suppliers and staff. Our integrity as an organization requires we recognize that how Draper is perceived as an organization has an impact on all of us. The organizational conflict of interest provisions are not just about following rules about how we bid and perform on contracts but characterize how we should interact with all our stakeholders.

OCI and PCI are considered critical factors by the government to ensure fair and open competition. There have been numerous situations where an organization had to “no bid” a significant program because they could not overcome or properly mitigate an OCI or PCI conflict. In some cases, management may have to make the choice of whether to not bid on one contract in order to be able to obtain another contract. The key to compliance is to understand what work Draper has done in the past and is planning to do in future so that potential issues can be addressed prior to spending significant time and money on preparing a bid.