

# Part 5303 - Improper Business Practices and Personal Conflicts of Interest

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## **Subpart 5303.1 - SAFEGUARDS**

### **5303.104-2 General**

(a) See [MP5301.601\(a\)\(i\)](#) when supplementing specific definitions to identify individuals who occupy positions specified in FAR [3.104-3\(d\)\(1\)\(ii\)](#), and any clauses required by 3.104.

(b)(6) Former federal employees have a continuing obligation to the Government not to disclose or misuse any other information acquired as part of their official duties and which is not generally available to the public.

### **5303.104-3 Statutory and Related Prohibitions, Restrictions, and Requirements**

(a) Similar to knowledge of classified information, employee protective obligations of Government acquisition information extend beyond federal service and further support potential determinations of personal and organizational conflicts of interest, as well as potential determinations to eliminate contractors from competing on certain acquisitions due to conflicts of interest.

(c)(1)(ii) See [MP5301.601\(a\)\(i\)](#) for individuals authorized to approve resumption of participation in a procurement.

### **5303.104-4 (a) Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information**

Any individuals requiring access to Source Selection Information (SSI) as a result of participating on a source selection or in the performance of their duties must sign a [Source Selection Non-Disclosure Agreement](#). The Source Selection Non-Disclosure Agreement may be used on an annual basis for individuals who must have access to SSI in the performance of their official duties throughout the year, whether or not they participate as part of the actual source selection team.

### **5303.104-5 Disqualification**

(a) Contracting officers should consider ways to engage potential offerors early and respond to industry queries, pursuant to the contracting officer's responsibilities under FAR 9.504, to determine whether former federal employees should be excluded from proposal preparation. When Contracting officers become aware that a former federal employee is involved in a contractor's proposal preparation, the CO shall determine whether that employee should be excluded from the proposal preparation effort. The CO shall document the supporting rationale within the determination as to whether the former federal employee should be excluded from the proposal

preparation efforts or not. In addition to the ethics advisory opinions under [FAR 3.104-6](#), should a former federal employee participate in preparing a competitive proposal on behalf of an employer or client, and it relates to the prior employment as a federal employee, the individual should inform his/her employer/client of this fact and have that entity communicate such facts to the Contracting Officer in accordance with [FAR 3.104](#) and [FAR 9.505](#). One of the guiding principles established by the decisions of the courts is the obligation of contracting agencies to avoid even the appearance of impropriety in government procurements. See [FAR 3.101-1](#). In this regard, where a firm may have gained an unfair competitive advantage through its hiring of a former government official, the contracting officer may disqualify a firm from a competition based on the appearance of impropriety tied to an organizational conflict of interest which is created by this situation, that is, even if no actual impropriety can be shown.

(b) In addition to the cognizant parties identified at [FAR 3.104-5\(b\)](#), if the source selection authority is the DAFRCO/MAJCOM/FLDCOM/FOA/DRU/CC or CD, the disqualification notice must be coordinated through the DAFRCO/MAJCOM/FLDCOM/FOA/DRU JA and the SCO. The notice must include the items at [FAR 3.104-5\(b\)](#) and the following:

- (1) Name of requestor
  - (2) Current position/job title
  - (3) Projected retirement date
  - (4) Impact on program/unit mission if disqualification is granted
  - (5) Proposed replacement individual for official acquisition duties
  - (6) Commander/Director recommendation
- (c) Resumption of participation in a procurement

The contracting officer, after consultation with the parties identified in paragraph (b), will notify the individual if he or she is disqualified. The individual will remain disqualified unless resumption of participation in the procurement is granted in accordance with this paragraph.

(2) See [MP5301.601\(a\)\(i\)](#). In cases where the SCO is the individual disqualified from participation in a procurement, the cognizant HCA must authorize the individual to resume participation in the procurement. SAF/AQ and SAF/SQ and their civilian or military deputies have the authority to permit the cognizant HCA to resume participation in a procurement following contact with an offeror regarding non-Federal employment.

### **5303.104-7 Violations or possible violations**

(a) The contracting officer must provide a copy of the information and documentation generated under [FAR 3.104-7](#) to their cognizant HCA, cognizant legal counsel, to [SAF/AQC](#) and to [SAF/GCR](#).

(1) The contracting officer must forward the information and determination required by [FAR 3.104-7\(a\)\(1\)](#) to the clearance approval authority ( [DAFFARS 5301.9001\(i\)](#) ) of the affected procurement for review.

(f) See [MP5301.601\(a\)\(i\)](#) for individuals who may authorize award.

## **5303.104-9 Contract Clauses**

(b) If information received under [FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity](#), indicates that a price or fee adjustment may be appropriate, the contracting officer must submit notification to the SCO, [cognizant HCA](#) and to [SAF/GCR](#).

## **Subpart 5303.2 - CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL**

### **5303.202 Contract Clause**

See [MP5301.601\(a\)\(i\)](#) for the designee identified in [FAR Clause 52.203-3](#).

### **5303.204 Treatment of Violations**

(a) SAF/GCR is authorized to conduct hearings and make findings of fact in accordance with [FAR 3.204\(a\)](#). If a hearing is held, SAF/GCR will provide recommendations to ASAF(A) or the Principal Civilian or Military Deputy.

## **Subpart 5303.5 - OTHER IMPROPER BUSINESS PRACTICES**

### **5303.570-2 Prohibition Period**

(a) See [MP5301.601\(a\)\(i\)](#).

(b) See [MP5301.601\(a\)\(i\)](#).

## **Subpart 5303.6 - CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM**

### **5303.602 Exceptions**

See [MP5301.601\(a\)\(i\)](#) The SCO should review each contract action to ensure no viable alternatives exist and that every effort is made to avoid any conflict of interest between the employees' interests and their government duties. Requests must address the following:

- (1) Description of requirement;
- (2) Amount of the proposed contract and period of performance or delivery date;

- (3) Contracting officer's basis for determining the price fair and reasonable;
- (4) Apparent contract awardee -- Government employee's name, grade/rank, duty/position title, and organization;
- (5) Determination that there is no conflict of interest;
- (6) Explanation of the compelling reason why the Government's needs cannot otherwise reasonably be met (include description of efforts to obtain services from non-government personnel); and
- (7) For recurring requirements, describe the steps that will be taken to avoid future awards to a Government employee.

## **Subpart 5303.7 - VOIDING AND RESCINDING CONTRACTS**

### **5303.704 Policy**

- (c) See [MP5301.601\(a\)\(i\)](#).

### **5303.705 Procedures**

- (a) The contracting officer must forward the facts concerning a final conviction, to include a copy of the conviction, to [SAF/GCR](#) within 30 days after learning of the conviction. The contracting officer must forward the report to the SCO within 10 calendar days after the contracting activity learns of the conviction. See the tailorable [Notice of Proposed Contract Rescission Action\(s\)](#) template.

## **Subpart 5303.9 - WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES**

### **5303.906 Remedies**

- (c)(1) See [MP5301.601\(a\)\(i\)](#).

## **Subpart 5303.10 - CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT**

### **5303.1003 Requirements**

- (b)(2)(i) Upon receipt of the required disclosure or any notification, contracting officers, working with legal counsel, must ensure that appropriate steps are taken to preserve remedies available to the government. Contracting officers also must consider how the disclosed information may impact pending contract actions in terms of the contractor's present responsibility and/or the contractor's

past performance. The contracting officer must promptly provide a copy of any disclosure or notification received to the SCO and to [SAF/GCR](#) using the procedures at [DAFFARS 5309.406-3](#).

(b)(2)(ii) The Government must safeguard and treat the information obtained pursuant to a contractor's disclosure or notification as confidential where the information has been marked as "confidential" or "proprietary" by the company. Even if the information is not marked, the contracting officer should not publicly disclose the information without prior notification to the contractor.

## **Subpart 5303.11 - PREVENTING PERSONAL CONFLICTS OF INTEREST FOR CONTRACTOR EMPLOYEES PERFORMING ACQUISITION FUNCTIONS**

### **5303.1104 Mitigation or Waiver**

(b) See [MP5301.601\(a\)\(i\)](#).