



# DEPARTMENT OF THE INTERIOR

## DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION (DIAR)

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## **SUBPART 1404.4 -- SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY**

### **1404.402 General**

(a) The DOI has entered into an agreement with the DOD to be covered by the National Industrial Security Program (NISP). The agreement is contained in 443 DM 1, Appendix 1.

(b) Classified acquisitions or contracts (see FAR 4.401) shall be subject to the instructions contained in the DOD publications listed in FAR 4.402(b).

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## **SUBPART 1403.1 -- SAFEGUARDS**

### **1403.101 Standards of conduct**

#### **1403.101-3 Agency regulations**

(a) Policy. The DOI regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR Part 20. Additional guidance is contained in the DOI publication of "Ethics, An Employee Guide". Copies of the Guide can be obtained from the Bureau/Office Ethics Office. With regard to the provisions of 43 CFR Part 20, procurement officials, as defined in FAR 3.104 and Section 1403.104, may not solicit or accept any gift, gratuity, favor, entertainment, loan or anything of monetary value from a competing contractor during the conduct of a procurement except as authorized by FAR 3.104-4 (f).

(b)(1) Procurement officials may not accept or solicit from any competing contractor any services which involve the development of specifications, statements of work, evaluation criteria, or formal cost estimates to be used in a procurement unless such services are formally contracted for in accordance with the FAR, DIAR, and FIRMR; and until the organizational conflict of interest provisions in FAR Subpart 9.5 have been fully addressed. This does not preclude the issuance of formal Requests for Comment (RFC) by contracting officers.

(2) FIP resources shall not be accepted, installed, or utilized by the Department on a no cost, free of charge basis (this includes donated equipment but not public domain software), except as permitted by law. Departmental regulations governing the use of FIP resources on a trial basis are set forth in [.](#)

#### **1403.101-70 Notice**

Bureaus shall include a notice similar to the following in all correspondence notifying employees of appointments to serve on Technical Evaluation Panels/Source Evaluation Boards:

"Except as provided in FAR 3.104-4(f), you shall not solicit or accept any gift, gratuity, favor, entertainment, loan, or anything of monetary value from a competing contractor involved in any action for which you are a procurement official under this delegation of authority. You are also reminded of other conduct prohibitions in FAR 3.104-3, including negotiating with competing contractors for future employment, disclosure of proprietary or source selection information, and post-Government employment restrictions. Before serving on the evaluation panel, you shall (1) have submitted a signed Optional Form 333 (OF 333), Procurement Integrity Certification for Procurement Officials, to your servicing personnel office for inclusion in your Official Personnel Folder; and (2) submit a signed form DI-1960, Conflict of Interest Certificate, to the CO."

Such notice shall include an "acknowledgement of receipt" signed and returned by the employee.

#### **1403.104 Procurement integrity**

##### **1403.104-2 Applicability**

Construction contracts (or subcontracts in such cases where the tribal contractor has subcontracted the activity) awarded under the authority of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, are subject to the provisions promulgated under that Act.

##### **1403.104-4 Definitions**

(h) The term "procurement official" does not include employees making acquisitions using imprest funds, third party drafts, and Standard Form 44, Purchase Order-Invoice-Voucher. It also does not include employees using Government-wide commercial purchase cards when their contracting authority is limited to the micropurchase threshold and their HCA has determined that their expenditures are not expected to exceed \$20,000 in a 12-month period.

##### **1403.104-5 Disclosure, protection, and marking of proprietary and source selection information**

(b) The CO or any other individual who prepares, makes, or controls proprietary and source selection information shall--

1. Ensure documents are marked as prescribed in FAR 3.104-4(j) and (k), FAR 3.104-5(c), and FAR 15.413-2 (if appropriate).
2. Provide security for documents, including the interoffice mailing of documents, in the office environment during and after duty hours.

3. Maintain strict control over oral communications regarding the acquisition.

(d)(1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

- i. Requirements generators, including program and technical experts involved in the development of statements of work, specifications or similar documents.
- ii. Contracting personnel acting in support of the CO.
- iii. Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.
- iv. Supervisors in the CO's chain of command.
- v. Attorneys in the SOL.
- vi. DOI OIG contract auditors, and auditors of other agencies such as the Defense Contract Audit Agency (DCAA) and DHHS when requested to perform contract audits by the DOI OIG.
- vii. Engineers and other technical support personnel who provide support to the CO.
- viii. Small Business Technical Advisors and BUDS.
- ix. SBA personnel responsible for reviewing determinations related to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR Subpart 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.
- x. Personnel in DOL responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for processing preaward EEO clearances under FAR 22.805.
- xi. Personnel who review bid protests in the GAO and the GSBCA.
- xii. Personnel serving on technical evaluation boards or source selection evaluation boards.
- xiii. Contract clearance personnel.
- xiv. Departmental and bureau/office Competition Advocates.
- xv. Personnel in the Office of Congressional and Legislative Affairs and in the Bureau Congressional liaison offices.
- xvi. Agency ethics official and servicing Ethics Counselors.
- xvii. Members of Congress and members of their staff. (See also DIAR 1405.403.)
- xviii. Additional classes of persons as authorized by the HCA.

(2) The HCA shall establish procedures to maintain in the contract file the list of individuals authorized access to proprietary or source selection information.

- i. The following caution notice must be prominently displayed on the cover page of any document that releases proprietary or source selection information: "This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the OFPP Act, as amended (41 U.S.C. 423). The unauthorized disclosure of such information may subject both

the discloser and recipient to contractual, civil, and/or criminal penalties as provided by law. See FAR 3.104-11".

**1403.104-7 Postemployment restrictions applicable to government officers and employees serving as procurement officials and certifications required from procurement officials leaving government service**

(a) The HCA shall issue a statement reminding employees that:

(1) They are presumed to know if they are procurement officials;

(2) Upon departure, they are subject to certain post-employment laws and restrictions on disclosure of proprietary and source selection information; and

(3)(a) If they leave the Government during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000, they understand the continuing obligation, during the conduct of a procurement, not to disclose proprietary or source selection information related to the procurement.

(b) Procurement officials who are departing employees shall submit the certification form at 1453.203-71, DI-1957B, Procurement Integrity Certification of Departing DOI Procurement Officials, to the CO. Employees shall list the following for all contracts/modifications for which the employee was a procurement official:

- i. actions expected to exceed \$100,000;
- ii. actions not completed, even though the employee's duties may be complete at the time of departure; and
- iii. the contract number and name of the CO who received the original certification. If a CO has not been appointed, the form shall be sent to the cognizant CCO.

**1403.104-8 Knowing violations, duty to inquire, and ethics advisory opinions**

(e) For purposes of this subpart, the term agency ethics official includes the Bureau/Office Ethics Counselor.

**1403.104-9 Certification requirements**

(d)(2) The HCA, without power of redelegation, is the official authorized to request, in writing, additional certifications in accordance with FAR 3.104-9(d) using form DI-1957A, Additional Certification by a Procurement Official or Competing Contractor prescribed in 1453.203-70.

(f)(2) The AS/PMB is authorized to waive the certification requirement as prescribed in FAR 3.104-9(f)(2). The request for the waiver with supporting rationale shall be prepared by the CO and submitted through the HCA to the Director, PAM for further action.

### **1403.104-11 Processing violations or possible violations**

(a)(1) The CO's determination to proceed with contract award shall receive concurrence from an individual one level above the CO.

(b)(3) The HCA shall provide a copy of the reported violation and recommended action to the OIG in accordance with Part 111 DM 3.

(f) The CO, in consultation with the SOL and the OIG, will justify the compelling circumstances for immediate award and obtain approval to proceed from the BPC without the power of redelegation. Copies of the determination to proceed with the award will be sent to the Director, PAM for submission to the AS/PMB.

### **1403.104-12 Ethics program training requirements**

(a) The agency ethics official and bureau deputy ethics counselors shall provide an annual procurement ethics training program for all procurement officials, employee assistance on conduct prohibitions in FAR 3.104-3, and ethics advisory opinions in accordance with FAR 3.104-8(e).

(3) The CO is responsible for obtaining the OF 333 from another agency's employee for placement in the contract file, if the employee does not have one, or an agency equivalent, on file with their respective agency. The CO will also obtain the OF 333 for the contract file from non- Government personnel involved in a Departmental procurement, but not otherwise covered by a contract which requires the certification.

### **1403.104-70 Ethics program - Personnel requirements**

(a) The certification required by FAR 3.104-12 prior to serving as a procurement official shall be obtained by the servicing personnel office (SPO) during the appointment process from appointees to positions with identified procurement official duties and placed on the right side of the employee's Official Personnel Folder (OPF) using OF 333, Procurement Integrity Certification For Procurement officials, prescribed in FAR 53.203.

(b) The SPO shall develop and maintain a master list of employees who have signed certificates and provide a copy of the list and its updates to the cognizant CCO. The SPO will provide verification on request to interested parties that current certifications of particular employees are on file.

(c) Supervisors who subsequently assign procurement official duties to an employee after the appointment process shall ensure that a signed OF 333 is forwarded to the SPO for addition to the master list of certified employees and placement of the certification in the OPF.

(d)(1) If a procurement official refuses to sign a procurement integrity certification form as required by 1403.104-7, 1403.104-9(b), and 1403-104-70(a), the supervisor shall

ensure that the employee no longer serves as a procurement official or, in the case of an employee leaving the Government, final clearance during the exit clearance process shall be delayed until the matter is resolved.

(2) Failure to certify, upon request, may be cause for appropriate corrective, remedial, or disciplinary action. Employee appeals of their designation as procurement officials for purposes of the law may be considered under existing mechanisms for dispute resolution if such matters are otherwise eligible for processing.

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## **SUBPART 1403.2 -- CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL**

### **1403.203 Reporting suspected violations of the Gratuities clause**

#### **1403.203 Reporting suspected violations of the Gratuities Clause**

When suspected violations of the clause at FAR 52.203-3, Gratuities, become known to a Federal Government employee, the matter shall be reported, in writing, to the cognizant CO or the CO's supervisor, as appropriate. The report shall clearly state the alleged circumstances surrounding the incident or incidents that the contractor offered or gave a gratuity to a Federal Government employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s) and name(s) of all parties involved in the incident shall be included in the report.

#### **1403.204 Treatment of violations**

(b) The CO will provide the contractor with a formal notice which summarizes the events involving the suspected violation and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a time limit for reply and shall be sent by certified mail return receipt requested. The CO will submit the report, additional documentary evidence, and other pertinent information, to the HCA for disposition with a recommended course of action. In consultation with the SOL and the OIG, and based on the results of any further discussion with the contractor, its counsel or witnesses, the HCA may recommend action to the Director, PAM pursuant to FAR 3.204(c) and shall provide formal notice to the contractor of such recommendation.

(c) If the decision involves termination of a contract (see FAR 3.204(c)(1)) the CO will be responsible for implementing the decision.

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## **SUBPART 1403.3 -- REPORTS OF SUSPECTED ANTITRUST VIOLATIONS**

### **1403.303 Reporting suspected antitrust violations**

(f)(1) Reports on suspected violations of antitrust laws as required by FAR 3.303 shall be prepared by the CO, reviewed by the SOL, and submitted by the HCA directly to the Attorney General, U.S. Department of Justice.

(2) Depending on the nature of the suspected violation or the disposition of the matter, the HCA may recommend debarment or suspension action in accordance with FAR 9.406-2(a)(2) or 9.407-2(a)(2) and Subpart 1409.4.

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## **SUBPART 1403.4 -- CONTINGENT FEES**

### **1403.408 Evaluation of SF-119**

#### **1403.408-1 Responsibilities**

(b) The required documentation shall be reviewed by the CCO, or higher level official if prescribed by bureau procedures.

#### **1403.409 Misrepresentation or violations of the Covenant Against Contingent Fees**

(b)(3) The HCA may recommend debarment and suspension action in accordance with Subpart 1409.4.

(4) The CCO shall consult with the SOL prior to forwarding a report of suspected fraudulent or criminal violations to the OIG for action.

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## **SUBPART 1403.5 -- OTHER IMPROPER BUSINESS PRACTICES**

### **1403.570 Restrictions on Contractor Advertising**

#### **1403.570-1 Policy**

Award of a contract does not signify endorsement of the supplies or services purchased, nor does it signify agreement with any views espoused by officials of the awardee. It is vital to the integrity of the procurement system to avoid even the appearance of an improper preference toward a particular vendor. Therefore, contractors shall not be permitted to publicize, or otherwise circulate, promotional materials which state or imply Governmental endorsement of a product, service or position which the contractor represents.

#### **1403.570-2 Procedures**

If a contractor requests a determination as to the propriety of such promotional material, the response shall be coordinated with the cognizant Public Affairs Office and Ethics Officer.

### **1403-570-3 Contract clause**

CO's shall include the clause at 1452.203-70, Restriction on Endorsements, in all solicitations, contracts and agreements which are not executed in accordance with SAT procedures.

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## **SUBPART 1403.6 -- CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM**

### **1403.602 Exceptions**

The HCA, without the power of redelegation, is authorized to except a contract from the policy in FAR 3.601. However, no exceptions shall be granted where the proposed contractor is owned or controlled by a Government employee or one or more members of the employee's immediate family and the employee or any subordinate is serving as a procurement official on the proposed contract.

### **1403.603 Responsibilities of the CO**

(a) The CO, when requesting authorization allowing an award of a contract to a Government employee or business concern or other organization owned or substantially owned or controlled by one or more Government employees, shall prepare a written determination and findings for the signature of the HCA.

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## **SUBPART 1403.7 -- VOIDING AND RESCINDING CONTRACTS**

### **1403.704 Policy**

(a) The HCA is authorized to declare void and rescind contracts in accordance with the procedures in FAR 3.705.

### **1403.705 Procedures**

(a) Reporting. The facts concerning any final conviction for any violation of 18 U.S.C. 201-224 involving or relating to any contract awarded by a bureau or office shall be set forth in a report and submitted by the HCA to the Civil Division of the Department of Justice. The report shall also contain a recommendation to initiate debarment action. If

debarment is recommended, the procedures in 1409.406-3(a) shall be followed. Copies of the report shall be provided to Director, PAM for information purposes.

(d) Notice of Proposed Action. Based upon review of the report in (a) above and after consultation with the SOL and the OIG, as appropriate, the HCA shall give notice of the proposed action to the contractor in accordance with the requirements of FAR 3.704(a).

(e) Final Agency Decision. The HCA shall make the final decision on voiding and rescinding contracts in accordance with the requirements of FAR 3.705(e).

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## **SUBPART 1403.8 - LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS**

### **1403.804 Policy**

(b) The BPC shall receive copies of contractor disclosures and forward them to the Director, PAM for the submission to Congress.

### **1403.806 Processing suspected violations**

Suspected violations shall be referred to the HCA. The HCA in consultation with the SOL shall act in accordance with FAR 3.807.

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