PART 1403 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Source: 75 FR 19829, Apr. 15, 2010, unless otherwise noted.

Subpart 1403.1 - Safeguards

1403.101 Standards of conduct.

1403.101-3 Agency regulations.

1403.101-70 Technical evaluators and advisors.

1403.104 Procurement integrity.

1403.104-2 Applicability.

1403.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

1403.104-7 Violations or possible violations.

Subpart 1403.2 - Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.

1403.204 Treatment of violations.

Subpart 1403.3 - Reports of Suspected Antitrust Violations

1403.303 Reporting suspected antitrust violations.

Subpart 1403.4 - Contingent Fees

1403.405 Misrepresentation or violations of the Covenant Against Contingent Fees.

Subpart 1403.5 - Other Improper Business Practices

1403.570 Restrictions on contractor advertising.

1403.570-1 Policy.

1403.570-2 Procedures.

1403.570-3 Contract clause.

Subpart 1403.6 - Contracts With Government Employees or Organizations Owned or Controlled

by Them

1403.602 Exceptions.

1403.603 Responsibilities of the contracting officer.

Subpart 1403.7 - Voiding and Rescinding Contracts

1403.704 Policy.

1403.705 Procedures.

Subpart 1403.8 - Limitation on the Payment of Funds to Influence Federal Transactions

1403.804 Policy.

1403.806 Processing suspected violations.

Subpart 1403.10 - Contractor Code of Business Ethics and Conduct

1403.1004 Contract clause.

Parent topic: SUBCHAPTER A - GENERAL

Subpart 1403.1 - Safeguards

1403.101 Standards of conduct.

1403.101-3 Agency regulations.

(a) Policy. 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 "Ethics Guide for Department of the Interior Employees." Copies of the Guide can be obtained from the Bureau/Office Ethics Office or on the Internet at *http://www.doi.gov/ethics/*. With regard to the provisions of 43 CFR part 20, officials who participate personally and substantially in DOI procurements (as defined in FAR 3.104-3), 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.

(b)

(1) Officials may not accept or solicit from any competing contractor any services that 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 pursuant to the FAR and DIAR, and until the organizational COI provisions in FAR Subpart 9.5 have been fully addressed. This does not preclude COs from issuing formal Requests for Comment (RFC) or draft RFPs.

(2) IT 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.

1403.101-70 Technical evaluators and advisors.

(a) Technical evaluators and advisors, including members of proposal evaluation committees, must render impartial, technically sound, and objective assistance and advice.

(b) With the exception of contracting personnel, proposal evaluators and advisors are not required to file a Confidential Financial Disclosure Report (SF450) unless they occupy positions identified in 43 CFR 20.735.30(b). Therefore, when an individual is appointed as an evaluator or advisor, he/she must sign and return to the CO a Conflict of Interest Certificate in a format approved by the HCA. If a potential COI exists, the appointee must not be allowed to evaluate or advise on an offeror's proposal until the conflict has been resolved with the servicing Ethics Counselor.

(c) During the evaluation process, each evaluator and advisor is responsible for ensuring that there are no financial or employment interests that conflict or give the appearance of conflicting with his or her duty to evaluate proposals impartially and objectively. Examples of situations that may be prohibited or represent a potential COI include:

(1) Financial interest, including stocks and bonds, in a firm that submits, or is expected to submit, an offer in response to the solicitation;

(2) Outstanding financial commitments to any actual or potential offeror;

(3) Employment in any capacity, even if otherwise permissible, by any actual or potential offeror;

(4) Employment within the last 12 months by an actual or potential offeror;

(5) Any non-vested pension or re-employment rights, or interest in profit sharing or stock bonus plans arising out of past employment by an actual or potential offeror; or

(6) Employment of any member of the immediate family by an actual or potential offeror.

(d) Bureaus shall include a notice similar to the following in all correspondence notifying employees of appointments to serve as technical evaluators or advisors, formally called Technical Evaluation Panels (TEP) and/or Source Evaluation Boards (SEB):

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 participate personally and substantially 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 contractor bid or proposal information or source selection information, and post-Government employment restrictions.

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 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized access to contractor bid or proposal information and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(1) Individuals who generate contract requirements, including program and technical experts involved in the development of statements of work, specifications or similar documents;

(2) Contracting personnel acting in support of the CO;

(3) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement;

(4) Supervisors in the CO's chain of command;

(5) Attorneys in the SOL;

(6) 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 OIG;

(7) Engineers and other technical support personnel who provide support to the CO;

(8) Small Business Technical Advisors and BUDS;

(9) SBA personnel responsible for reviewing determinations related to set-aside acquisitions, determining the small business status of offerors, processing applications for Certificates of Competency, reviewing subcontracting plans, or awarding contracts under the 8(a) program;

(10) Personnel in DOL responsible for making eligibility determinations or for processing preaward EEO clearances;

(11) Personnel who review bid protests in the GAO and the CBCA;

(12) Personnel serving on technical evaluation boards or source selection evaluation boards;

(13) Contract clearance personnel;

(14) Departmental and bureau/office Competition Advocates;

(15) Personnel in the Congressional liaison offices;

(16) Agency ethics official and servicing Ethics Counselors;

(17) Members of Congress and members of their staff. (See also DIAR 1405.403.); and

(18) Anyone specifically authorized by the CO.

1403.104-7 Violations or possible violations.

(a)

(1) The CO's determination that there is no impact on the procurement due to a possible violation of the Procurement Integrity Act and decision to proceed with contract award shall receive concurrence from an individual one level above the CO.

(2) In case of nonconcurrence with the CO's determination, the HCA shall provide a copy of the reported violation and recommended action to the OIG in accordance with Part 111 DM 3. The CO, in consultation with the SOL and the OIG, must 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.

Subpart 1403.2 - Contractor Gratuities to Government Personnel

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 in which the contractor offered or gave a gratuity to a Federal Government employee and intended to obtain a contract or favorable treatment under a contract because of the gratuity. 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.

(a) The CO will provide the contractor with a formal notice that 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. A copy of this submission must also be sent to the Deputy Assistant Inspector General for Investigations. 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 make a recommendation to the Director, PAM, pursuant to FAR 3.204(c) and shall provide formal notice to the contractor of such recommendation.

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

Subpart 1403.3 - Reports of Suspected Antitrust Violations

1403.303 Reporting suspected antitrust violations.

(a) 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, Department of Justice. A copy of this submission must also be sent to the Deputy Assistant Inspector General for Investigations.

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

Subpart 1403.4 - Contingent Fees

1403.405 Misrepresentation or violations of the Covenant Against Contingent Fees.

(a) In addition to notifying the CO, the matter must also be reported to the Deputy Assistant Inspector General for Investigations and the HCA.

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

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

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 that 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 FAR Parts 12 or 13.

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 may 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 contracting officer.

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

Subpart 1403.7 - Voiding and Rescinding Contracts

1403.704 Policy.

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 the Justice. The report shall also contain a recommendation to initiate a 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, and the Deputy Assistant Inspector General for Investigations for informational purposes.

(b) *Notice of Proposed Action.* Based upon review of the report in paragraph (a) of this section 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(c).

(c) *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).

Subpart 1403.8 - Limitation on the Payment of Funds to Influence Federal Transactions

1403.804 Policy.

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

1403.806 Processing suspected violations.

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

Subpart 1403.10 - Contractor Code of Business Ethics and Conduct

1403.1004 Contract clause.

(a) In all awards expected to exceed $3,000,000, including options, for which performance is expected to exceed 120 days, except purchases conducted in accordance with FAR Part 12 and contracts to be performed entirely outside the United States, replace “$5,000,000” with “$3,000,000” in paragraph (d) of FAR 52.203-14.

(b) Insert the following into paragraph (b)(3) of the same clause: “Downloadable hotline posters as well as instructions for obtaining a hard copy poster are available at *http://www.doioig.gov/hotline*.”