Part 5303 - Improper Business Practices and Personal Conflicts of Interest

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DAF Contracting Compass Part 3

Revised: June 2024

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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. Failure to comply with protective obligations during and after federal service would 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 Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information

(a) When it comes to safeguarding public data, trust is paramount. Contract management security and data privacy are critical. Contracting data produced or maintained by the Contracting workforce must also be handled in accordance with applicable laws and regulations to safeguard this data. Any individuals requiring access to contract data as a result of participating on a source selection or in the performance of their duties must sign a Non-Disclosure Agreement.

i. Contracting Officers must ensure appropriate clauses and data protections are included in any contract, order or agreement providing the assistance of support personnel. Since contract data may include sensitive or proprietary information, it is important to protect restricted data sets from improper use. Contractors whose employees have been determined to have a “Need to know” by the data requesting organization shall have Non-disclosure Agreements (NDAs), Organizational Conflicts of Interest (OCI) mitigation plans, necessary information owner permissions and any applicable contract clauses or articles prior to gaining access to any contracting system restricted data sets. Confirmation of these items is the responsibility of the organizations requesting access to the data and organizations are required to provide the items upon request.

ii. Before giving contractors access to contracting data, Contracting Officers shall ensure that the government team has verified that safeguarding actions have been taken and processes have been put into place to protect the contracting data. This verification shall be documented using the Compliance Certification Contracting Access and Security (CCCAS) Memo template. Once completed, the CCCAS template shall be uploaded into the Contracting Modernization SharePoint Site to establish an auditable record that due diligence has been taken to safeguard contracting data.

Note for DAFFARS 5303.104-4(a)(ii): Atch 4 of SAF/AQC memo 24-C-04 will be made into a DAFFARS template and archived within the Air Force Contracting Central (AFCC) templates when the 2024 DAFAC is finalized – once this action is complete, this note will be removed from the DAFFARS language

iii. A singular Non-Disclosure Agreement (NDA) for both DAFFARS 5303.104-4(a) and FAR clause 52.203-16 “PREVENTING PERSONAL CONFLICTS OF INTEREST” may be completed and remain on file by the requesting government or contractor organization for the term of employment rather than accomplished annually, as long as both provisions are referenced in the NDA.

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) When a potential Procurement Integrity Act (PIA) violation is alleged, the contracting officer must notify their cognizant Clearance Approval Authority (CAA), legal counsel, cognizant HCA (as defined in DAFFARS 5302), and the DAS(C) (SAF/AQC or, for classified programs, SAF/AQCS). This notification to all parties should identify the cognizant CAA and shall be accomplished within 7 business days of initial discovery. The contracting officer will subsequently provide a copy of the information and documentation generated under FAR 3.104-7 to those same stakeholders 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.

(g) See MP5301.601(a)(i).

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) for non-space systems and programs or ASAF(SA&I) for space systems and programs.

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 the SCO within 10 calendar days after the contracting activity learns of the conviction. Also, within 30 calendar days, the contracting officer must send notification containing the same elements to the servicing Staff Judge Advocate, who will forward to the Department of Justice Civil Division through AF/JACQ and SAF/GCR, to inform them that action is being considered under this subpart. (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).