

52.203-16 Preventing Personal Conflicts of Interest.

As prescribed in 3.1106 , insert the following clause:

Preventing Personal Conflicts of Interest (Jun 2020)

(a) *Definitions*. As used in this clause—

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a *Federal agency*:

(1) Planning *acquisitions*.

(2) Determining what *supplies* or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor *products* or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who performs an *acquisition* function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or

(2) A subcontractor that is a self-employed individual treated as a *covered employee* of the contractor because there is no employer to whom such an individual could submit the required disclosures.

Non-public information means any Government or third-party information that-

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S. C.552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

Personal conflict of interest means a situation in which a *covered employee* has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially

and in the best interest of the Government when performing under the contract. (A de minimis interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are-

(i) Financial interests of the covered employee, of close family members, or of other members of the *covered employee's* household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition *may* arise from-

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

(b) *Requirements.* The Contractor *shall*—

(1) Have procedures in place to screen *covered employees* for potential personal conflicts of interest, by-

(i) Obtaining and maintaining from each *covered employee*, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the *covered employee's* household.

(B) Other employment or financial relationships of the *covered employee* (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel; and

(ii) Requiring each *covered employee* to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the *covered employee* is performing.

(2) For each *covered employee*—

(i) Prevent personal conflicts of interest, including not assigning or allowing a *covered employee* to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the *contracting agency*;

(ii) Prohibit use of *non-public information* accessed through performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform *covered employees* of their obligation-

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use *non-public information* accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of *covered employees* who fail to comply with policies established pursuant to this clause; and

(6) Report to the *Contracting Officer* any personal conflict-of-interest violation by a *covered employee* as soon as it is identified. This report *shall* include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include-

(i) Failure by a *covered employee* to disclose a personal conflict of interest;

(ii) Use by a *covered employee* of *non-public information* accessed through performance of a Government contract for personal gain; and

(iii) Failure of a *covered employee* to comply with the terms of a non-disclosure agreement.

(c) Mitigation or waiver.

(1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor *may* submit a request through the *Contracting Officer* to the *Head of the Contracting Activity* for-

(i) Agreement to a plan to mitigate the personal conflict of interest; or

(ii) A waiver of the requirement.

(2) The Contractor *shall* include in the request any proposed mitigation of the *personal conflict of interest*.

(3) The Contractor *shall*-

(i) Comply, and require compliance by the *covered employee*, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or

(ii) Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) *Subcontracts*. The Contractor *shall* include the substance of this clause, including this paragraph (d), in subcontracts—

(1) That exceed the simplified *acquisition* threshold, as defined in Federal *Acquisition* Regulation 2.101 on the date of subcontract award; and

(2) In which subcontractor employees will perform *acquisition* functions closely associated with inherently governmental functions (*i.e.*, instead of performance only by a self-employed individual).

(End of clause)

Parent topic: 52.203 [Reserved]