

# **PART 5303 - Improper Business Practices and Personal Conflicts of Interest**

## **2019 Edition**

*Revised: 2 May 2022*

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## **SUBPART 5303.1 – SAFEGUARDS**

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

(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**

(b) In addition to the parties identified at FAR 3.104-5(b), if the source selection authority is the MAJCOM/FOA/DRU/CC or CD, the disqualification notice must be coordinated through the MAJCOM/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 paragraph (c) of FAR 3.104-5(b).

(2) See MP5301.601(a)(i). In cases where the SCO is the individual disqualified from participation in a procurement, the DAS(C) must authorize the individual to resume participation in the procurement. The ASAF(A) and their civilian or military deputy have the authority to permit the

DAS(C) or ADAS(C) to resume participation in a procurement following contact with an offeror regarding non-Federal employment.

(a) The contracting officer must provide a copy of the information and documentation generated under [FAR 3.104-7](#) to their cognizant legal counsel 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 ([5301.9001\(i\)](#)) of the affected procurement for review.

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

(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 and to [SAF/GCR](#).

## **SUBPART 5303.2 – CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL**

### **5303.202 Contract Clause**

See [MP5301.601-90](#). HCA serves as 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 [MP5301.601-90](#). Submit requests for waivers through the SCO to [SAF/AQC](#) for approval.

(b) See [MP5301.601-90](#). Submit determinations through the SCO to [SAF/AQC](#) for approval.

## **SUBPART 5303.6 – CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM**

## **5303.602 Exceptions**

Submit requests through the SCO to [SAF/AQC](#) for approval (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 [MP5301.601-90](#).

## **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 [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) SCOs must submit determinations to [SAF/AQC](#) for HCA approval (see [MP5301.601\(a\)\(i\)](#)).