

# Subpart 1403.1 - Safeguards

**Parent topic:** PART 1403 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

## **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.