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Subpart 2903.1—Safeguards

2903.101 Standards of conduct.

2903.101-1 General.

The statutory prohibitions and their application to DOL personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635 and the supplemental DOL standards of conduct, 5 CFR part 5201. All DOL personnel involved in acquisitions must become familiar with these statutory prohibitions. Any questions concerning them must be referred to an Agency Ethics Official in the Office of the Solicitor. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). Any suspected violations must be reported promptly to the Office of the Inspector General.

2903.104 Procurement integrity.

2903.104-3 Definitions.

Agency ethics official means the Solicitor or the Associate Solicitor for Legislation and Legal Counsel.

48 CFR Ch. 29 (10-1-07 Edition)

2903.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(1) Personnel participating in technical evaluation panels (*i.e.*, source selection board) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to the Office of the Solicitor.

(6) Personnel assigned to the Department of Labor's Division of Cost Determination and the Defense Contract Audit Agency.

(7) Personnel assigned to the Division of Acquisition Management Services.

(8) Members of the Procurement Review Board.

(9) The Office of the Inspector General.

(10) Other Government employees authorized by the contracting officer.

(11) Supervisors, at any level, of the personnel listed in this paragraph (a).

(b) The originator of information that may be source selection information must consult with the contracting officer or the procurement officer, who must determine whether the information is source selection information. DOL personnel responsible for preparing source selection information as defined in FAR 2.101 must assure that the material is marked with the legend in FAR 3.104-4 at the time the material is prepared.

(c) Unless marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104-4," draft specifications, purchase descriptions, and statements of work could erroneously be released during a market survey in order to determine the capabilities of

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potential competitive sources (see FAR 7.1 and FAR 10).

2903.104-7 Violations or possible violations of standards of conduct.

(a) The Senior Procurement Executive is the individual designated to receive the contracting officer's report of violations.

(b) The HCA or designee must refer all information describing an actual or possible violation to the Associate Solicitor for Legislation and Legal Counsel, the Senior Procurement Executive, and Inspector General staff.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.

Contractor gratuities offered to Government personnel are subject to the restriction under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

2903.204 Treatment of violations.

Any suspected violations of FAR subpart 3.2 and the clause at FAR 52.203-3, Gratuities, must be reported to the Office of the Inspector General. The authority to determine whether a violation of the Gratuities clause by the contractor, its agent, or another representative, has occurred and the appropriate remedies are delegated to the HCA.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.601 Policy.

In addition to restrictions placed on current Federal government employees, 18 U.S.C. 207 places some restrictions on contracting with former officers, employees, and elected officials of the executive and legislative branches. Under these prohibitions, contracts with former employees are prohibited for a period of one year from the date of severance of duties, unless an exception is granted as set forth in 2903.602.

2903.602 Exceptions.

(a) In accordance with FAR 3.602, only when there is a most compelling reason to do so, is the Assistant Secretary for Administration and Management authorized to except a contract from the policy in FAR 3.601, after the Procurement Review Board and the agency ethics official have reviewed and recommended approval of the exception. However, when time does not permit, the Assistant Secretary for Administration and Management may unilaterally approve an exception. The exception and information supporting the exception must be provided to the contracting officer for their official records.

(b) When an exception under this subpart is requested, it is submitted through the director of the cognizant program office to the HCA. In the procurement request, the director must describe the basis for the exception from the restrictions of FAR 3.601.

(c) Except as allowed in paragraph (a) of this section, the Department of Labor may enter into a negotiated contract or an amendment to an existing contract with former employees of DOL within one year of separation (or with firms in which former employees are known to have a substantial interest) only after review and recommendation for approval by the agency ethics official, the Procurement Review Board, and written approval by the Assistant Secretary for Administration and Management.

(d) Approval of a decision to grant an exception as provided in this section must be documented by a written findings and determination prepared by the requesting official for signature by the Assistant Secretary for Administration and Management. The determination and findings must document compliance with FAR 3.603, FAR 9.5 and DOLAR 2909.5; specify the compelling reason(s) for award; and be placed in the contract files and the files of the Policy Review Board.