



IN REPLY  
REFER TO

MMPPP  
PROCLTR 97-16

**DEFENSE LOGISTICS AGENCY**  
**HEADQUARTERS**  
8725 JOHN J. KINGMAN ROAD, SUITE 2533  
FT. BELVOIR, VIRGINIA 22060-6221

MAY 22 1997

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Procurement Integrity

Federal Acquisition Circular 90-45 contains the new final rule amending the FAR to implement the procurement integrity provisions of Section 27 of the OFPP Act as amended by Section 4304 of the FY 97 National Defense Authorization Act. The attachments to the PROCLTR provide revised DFARS and DLAD coverage to conform DoD and DLA implementation to the new FAR rules. The principal changes are to remove the post employment coverage from the DFARS which was repealed from law but replaced with that now in the FAR (Attachment 1), and to remove many of the documentation and certification requirements from the DLAD (Attachment 2). Subpart 3.1 has been renumbered and updated to conform to the FAR, and Subpart 15.6 of the DLAD now includes a new combination conflict of interest and agreement to nondisclosure certificate for use by participants in source selections (Attachment 3).

This PROCLTR is effective immediately and expires upon publication of the revised DFARS coverage in a DAC and the DLAD coverage in a revision to the DLAD or 1 year from its issue date, whichever is sooner. Hal Hermann, MMPPP, DSN 427-1354 is POC for this action.

Attachments

**GWILYM H. JENKINS, JR**  
Captain, SC, USN  
Deputy Executive Director  
(Procurement)



ACQUISITION AND  
TECHNOLOGY

DP (DAR)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

January 17, 1997

In reply refer to  
DFARS Case: 96-D310  
D. L. 97-003

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN(RD&A)/ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SABD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Procurement Integrity - DFARS

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 4304 of the Fiscal Year 1996 National Defense Authorization Act (Pub. L. 104-106). Section 4304 amends the procurement integrity provisions at Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and repeals 10 U.S.C. 2397-2397c which addressed post-Federal employment of certain former Department of Defense employees.

The attached final DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

  
Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



JAN 23 1997

ATTACHMENT 1

DFARS Case 96-D310, Procurement Integrity  
Final Rule

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PART 203--IMPROPER BUSINESS PRACTICES AND  
PERSONAL CONFLICTS OF INTEREST

SUBPART 203.1--SAFEGUARDS

\* \* \*

203.104 Procurement integrity.

~~203.104-4 Definitions.~~

~~(c) (2) Each order under a basic ordering agreement is a separate procurement action.~~

203.104-5 Disclosure of proprietary and source selection information.

([d]e) (4) For purposes of FAR 3.104-5([d]e) (4) only, DoD follows the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

~~203.170 Statutory prohibitions on compensation to former DoD employees.~~

~~203.170-1 Policy.~~

~~(a) 10 U.S.C. 2397b prohibits DoD officials who left DoD service on or after April 16, 1987, and who, while serving with the DoD, performed acquisition related functions in connection with a major defense contractor, from accepting compensation from that contractor for a period of two years after the officials have left service with the DoD.~~

~~Additional DoD implementation of the statute is in DoDD 5500.7, Standards of Conduct. (See the clause at 252.203-7000, Statutory Prohibition on Compensation to Former Department of Defense Employees, for definition of terms.) The prohibitions in 10 U.S.C. 2397b do not apply to contractors that supply only commercial items to DoD.~~

~~(b) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989, to November 30, 1990. Section 815 of the 1991 DoD Authorization Act (Pub. L. 101-510) continued the suspension from December 1, 1990, through May 31, 1991. During the period of the suspension, the clause which appeared at 252.203-7002, Statutory Compensation Prohibitions and~~

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~~Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, was inserted in solicitations and contracts, but the provision of the clause that prohibited the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating that provision, were not applied.~~

~~203.170-2 Reporting requirements.~~

~~Paragraph (e) of the clause at 252.203-7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, requires major defense contractors to report on the employment of certain former DoD employees.~~

~~203.170-3 Penalties.~~

~~(a) Major defense contractors are subject to the following penalties for knowing failure to comply with the statute, the contractual prohibition, or the reporting requirements--~~  
~~(1) Civil fines up to \$500,000 for knowingly offering or providing compensation to another person with knowledge that acceptance of that compensation is or would be in violation of the statute.~~

~~(2) Liquidated damages in the amount of either \$100,000 or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition.~~

~~(3) An administrative penalty not to exceed \$10,000 for failure to report as required by the statute and as implemented in the clause at 252.203-7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees.~~

~~(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the Designated Agency Ethics Official.~~

~~203.170-4 Contract clause.~~

~~Use the clause at 252.203-7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, in all solicitations and contracts expected to exceed \$100,000, except solicitations and contracts for commercial items.~~

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PART 215--CONTRACTING BY NEGOTIATION

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SUBPART 215.6--SOURCE SELECTION

\* \* \* \* \*

215.608 Proposal evaluation.

(a) \* \* \*

(b) Except for determinations based on violations or possible violations of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made [as]at the level specified in FAR 3.104-11(g).

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PART 252--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

\* \* \* \* \*

SUBPART 252.2--TEXTS OF PROVISIONS AND CLAUSES

\* \* \* \* \*

252.203-7000 [Reserved] ~~Statutory Prohibitions on Compensation to Former Department of Defense Employees.~~

~~As prescribed in 203.170-4, use the following clause:~~

~~STATUTORY PROHIBITION ON COMPENSATION TO FORMER DEPARTMENT OF DEFENSE EMPLOYEES (NOV 1995)~~

~~(a) Definitions.~~

~~As used in this clause--~~

~~(1) "Armed Forces" means the uniformed military services, excluding the U.S. Coast Guard.~~

~~(2) "Compensation" means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment, gift, benefit, reward, favor, or gratuity, and which has a fair market value in excess of \$250. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services performed by the individual.~~

~~(3) "Defense contractor" means an entity (including affiliates and subsidiaries which clearly engage in the performance of Department of Defense (DoD) contracts) that contracts directly with the DoD to supply goods or services. "Defense contractor" does not include a State or local government or any person who contracts to supply the Department of Defense only commercial items.~~

~~(4) "Designated agency ethics official" means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act, as amended.~~

~~(5) "Former DoD employee" means a person who served in the DoD in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for grade GS-13 of the General Schedule, or served in the Armed Forces in a pay grade of O4 or higher.~~

~~(6) "Former DoD official" means—~~

~~(i) A former DoD employee who spent the majority of working days during the last two years of DoD service performing a procurement function relating to:~~

~~(A) A DoD contract, at a site or plant that was owned or operated by the Contractor, and which was the principal location of such person's performance of that procurement function; or~~

~~(B) A major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision making responsibilities with respect to a contract for that system through contact with the Contractor;~~

~~(ii) An individual who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and an individual who served in the Armed Forces in the pay grade of O7 or higher, if such individual during the last two years of DoD service—~~

~~(A) Acted as one of the primary Government representatives in the negotiation with a defense contractor of a DoD contractual action in an amount in excess of \$10 million; or~~

~~(B) Acted as one of the primary Government representatives in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of \$10 million. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.~~

~~(7) "Major defense contractor" means any business entity which, during the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded DoD contracts in a total amount of \$10 million or more.~~

~~(8) "Major defense system" means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major defense system if--~~

~~(i) The DoD is responsible for the system and the total expenditures (based on fiscal year 1980 constant dollars) for research, development, test and evaluation for the system, are estimated to exceed \$75 million or the eventual total expenditure for procurement is estimated to exceed \$300 million; or~~

~~(ii) The system is designated a major system by the head of the agency responsible for the system.~~

~~(9) "Negotiation" means exchanges of positions between representatives of the Government and a contractor with the view of reaching agreement regarding respective liabilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.~~

~~(10) "Primary Government representative" means, if more than one Government representative is involved in any particular transaction, the official or officials supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.~~

~~(11) "Procurement-related function" (or "procurement function") means any function relating to--~~

~~(i) The negotiation, award, administration, or approval of a contract;~~

~~(ii) The selection of a contractor;~~

~~(iii) The approval of a change in a contract;~~

~~(iv) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or~~

~~(v) The management of a procurement program.~~

~~(b) Prohibition on compensation.~~

~~(1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of \$250 to a former DoD official who left DoD service on or after April 16, 1987, and who, while employed by DoD, performed procurement-related functions in connection with that defense contractor. This prohibition runs for the two-year period beginning on the date of the official's separation from service in DoD.~~

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~~(2) The Contractor, if a major defense contractor, agrees not to provide, for the two year period, any compensation to the former DoD official.~~

~~(3) DoD employees may request from their Designated Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion of the DAEO is that the law is not applicable, and that the individual may accept compensation from the Contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.~~

~~(c) Report concerning former DoD employees.~~

~~(1) The Contractor shall submit a separate written report, as described in paragraph (c) (2) of this clause, for each calendar year covered by this contract (extending through final payment) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating \$10 million or more. In multidivisional corporations, the corporate headquarters, and each segment which contracts directly with the Government, shall report separately. Each report shall list those persons employed or otherwise compensated, who are former DoD employees who left service on or after April 16, 1987, if--~~

~~(i) They were compensated by the Contractor during the reporting period; and~~

~~(ii) The compensation was provided within two years after the person left service in the DoD.~~

~~(2) The report shall contain:~~

~~(i) Each person's name and the agency in which the person was employed or served on active duty during the last two years of service with DoD;~~

~~(ii) Each person's job title(s) during the last two years of service with DoD, and a list of major defense systems on which each person performed any work;~~

~~(iii) A complete description (exclusive of proprietary information) of any work that each person is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report. If the work is classified, the Contractor may use a generalized description which will not compromise its classified nature;~~

~~(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.~~

~~(3) Submit each report not later than April 1 of the year following the end of the calendar year for which the report is being made. Send reports to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, ATTN: OAGC/LC, Pentagon, Washington, DC 20301-1600.~~

~~(4) A properly executed DD Form 1787 (Employment, Report of DoD and Defense Related) may be submitted to satisfy the reporting requirement as to any single person.~~

~~(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract.~~

~~(d) Penalties for failure to comply~~

~~(1) Civil fines. A Contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed \$500,000.~~

~~(2) Liquidated damages.~~

~~(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the Government as liquidated damages the greater of either \$100,000, or three times the total amount of compensation paid by the Contractor to the former DoD official during the period in which such compensation was in violation of the statutory prohibition.~~

~~(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.~~

~~(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.~~

~~(3) Administrative penalty. If the Contractor knowingly fails to file a report in accordance with paragraph (c) of this clause, the Contractor shall be subject to an administrative penalty not to exceed \$10,000. The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under Chapter 7 of Title 5, United States Code.~~

~~(e) The rights and remedies under this clause are in addition to, and do not limit, any rights afforded the Government under this contract or as otherwise provided by law.~~

~~(End of clause)~~

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## SUBPART 3.1 - SAFEGUARDS

3.104 Procurement integrity.

3.104-43 Definition.

(a) The DLA **Designated Agency Ethics Official** is the **General Counsel**. The **chief** counsels of each DLA primary level field activity (PLFA) are designated as **Deputy Designated Agency Ethics Officials**.

3.104-44 Statutory **and related** prohibitions, **and** restrictions, **and requirements**.

(~~ea~~) **Prohibition on disclosing procurement information** (subsection 27(~~ea~~) of the Act). Any person who is given authorized or unauthorized access to **contractor bid or proposal information** or source selection information is authorized to disclose **such** information regarding any DLA contracting offices' procurement of property or services to the following persons:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/Principal Deputy Director, DLA/Deputy Director (Acquisition); **DLA/Deputy Director (Material Management)** ~~Commander, DCMG~~ their Executive Directors and their supporting employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

3.104-5 Disclosure, protection, and marking of ~~proprietary contractor~~ **bid or proposal information** and source selection information.

(~~e~~)(~~1~~) **(a)** The Executive Director (Procurement), ~~Commanders~~ of DLA contracting offices (see 2.101), and chiefs of contracting offices (see 2.101) have the authority to authorize persons, or classes of persons to receive ~~proprietary contractor bid or proposal information~~ or source selection information when necessary to the conduct of the procurement.

The following persons are authorized access to ~~proprietary contractor bid or proposal information~~ or source selection information regarding any DLA contracting offices' procurement of property or services:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review,

pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/Principal Deputy Director, DLA/Deputy Director (Acquisition); **DLA/Deputy Director (Material Management); Commander, DGMG**; their Executive Directors, and their supporting staff employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

(93) Any person or class of persons not listed in (90)-(92) above who is authorized access to automated systems contract files, contract file information, or procurement information.

~~(d)(2) The Executive Director (Procurement), Commanders of DLA contracting offices (see 2.101), and chiefs of contracting offices (see 2.101) have the authority to establish procedures required by FAR 3.104-5(d)(2). This procedure may consist of including a locally developed form or piece of plain bond paper in the contract file as follows:~~

~~Persons or Classes of Persons Authorized Access to Proprietary or Source Selection Information at (enter contracting office name)~~

~~The following persons or classes of persons are authorized access to proprietary or source selection information at (enter contracting office name):~~

~~a. The contracting officer (name) \_\_\_\_\_~~

~~b. The bid opening officer (name, if known) \_\_\_\_\_~~

~~c. The contracting officer's supervisor, and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel. To the maximum extent practicable, provide the names of these individuals below (an organization chart may be appended to satisfy this requirement):~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

~~d. The Director, DLA/Principal Deputy Director, DLA/Deputy Director (Acquisition), Commander, DGMG; their Executive Directors, and their supporting staff employees. To the maximum extent practicable, provide the names of these individuals below~~

~~(an organization chart may be appended to satisfy this requirement).~~

~~—e. The Source Selection Authority, Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members. To the maximum extent practicable, provide the names of these individuals below.~~

~~—f. Any person or class of persons not listed in (90) (92) above who is authorized access to automated systems contract files, contract file information, or procurement information. To the maximum extent practicable, provide the names of these individuals below.~~

~~—g. Government activities, not listed above, outside the (enter contracting office name). (When applicable, attach the list provided to the contracting officer by such activities.)~~

~~—h. Other than Government employees as authorized by FAR 15.413-2. To the maximum extent practicable, provide the names of these individuals below.~~

~~—This list shall be included in every contract file when the contract value exceeds \$100,000 or when a contract modification that adds new work to a contract or extends a contract under the authority of a justification and approval (see FAR 6.3) exceeds \$100,000.~~

~~3.104-6 Restrictions on employment or business opportunity discussions between competing contractors and procurement officials-Disqualification~~

~~(d) Recusal proposal. (b) Disqualification notice. The designee of the HCA for those contracting offices for whom the Executive Director (Procurement), serves as HCA (see 2.101) is:~~

- ~~(1) The Commanders of DRMS, DDRE, DDRW, T-ASA, DCMDs, and DCMCI.~~
- ~~(2) The Administrators, DAPSC and DNSC.~~

~~3.104-7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.~~

~~—(a)(1) The certificate for departing procurement officials, in accordance with FAR 3.104-7(a), is as follows: (see also FAR 3.104-9(e)(1)(i)).~~

~~————— PROCUREMENT INTEGRITY CERTIFICATION  
————— DEPARTING PROCUREMENT OFFICIAL~~

~~Obligation not to disclose proprietary and source selection data.~~

~~—Section 27(b)(3) of the Office of Federal Procurement Policy Act, 41 U.S.C. 423, prohibits a procurement official during the conduct of any procurement from knowingly disclosing any proprietary or source selection information regarding the procurement directly or indirectly to any person not authorized by the head of the agency of~~

~~the contracting officer to receive such information. Section 27(e)(4) provides that if a procurement official leaves the Government during the conduct of a procurement involving a contract, extension, or modification in excess of \$100,000, the official shall certify that he or she understands the continuing obligation not to disclose proprietary or source selection information.~~

~~————— CERTIFICATION —————~~

~~Since I am a procurement official and I am leaving the Government during the conduct of a procurement by the Defense Logistics Agency, I hereby certify that I understand my continuing obligation not to disclose proprietary or source selection information.~~

~~————— Employee Signature ————— Date —————~~

~~————— Employee Name (please print or type) —————~~

~~————— Employee Title and Office Symbol —————~~

~~This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, U.S.C., Section 1001.~~

~~(h) (c)(2) Reinstatement to Resumption of participation in a procurement. The designee of the HCA for those contracting offices for whom the Executive Director (Procurement) serves as HCA is the same as listed in (d)(b) above.~~

~~-(e)(4) 3.104-7(a)~~

~~Requests for ethics advisory opinions shall be submitted to the General Counsel, or the appropriate Deputy Designated Agency Ethics Official, as defined in DoD 5500.7-R, Joint Ethics Regulation.~~

~~3.104-8 Knowing violations, duty to inquire, and ethics advisory opinions:~~

~~(b) Duty to inquire—general~~

~~(e)~~

~~—(21) The appropriate party to consult designated official within the respective organization is local counsel.~~

~~-(d) Duty to inquire—proprietary and source selection information.~~

~~—(1)(i) The head of the agency designee for purposes of this paragraph (d) is: —————~~

~~————— The Executive Director (Procurement) —————~~

~~— Commanders, Defense Supply Centers.~~  
~~— Commander, Defense Distribution Region East.~~  
~~— Commander, Defense Distribution Region West.~~  
~~— Commander, Defense Reutilization and Marketing Service.~~  
~~— Administrator, DLA Administrative Support Center~~  
~~— Commanders, Defense Contract Management Districts (DCMDs) and Defense~~  
~~— Contract Management Command International (DCMCI).~~  
~~— Administrator, Defense National Stockpile Center.~~

### ~~3.104-9 Certification requirements.~~

~~—(e)(1)(i) Certifications made under FAR 3.104-9(e)(1)(i) shall not be forwarded to any agency official. If the contracting officer refuses to execute the certificate, the contracting officer's supervisor shall ascertain the reason(s) for such refusal. Such supervisor shall take appropriate administrative or disciplinary actions, which may include revocation of the contracting officer's warrant, against the contracting officer in such cases. In any event, a certificate must be executed, or waiver of the requirement therefor must be obtained prior to award.~~

~~—(ii) Certifications made under FAR 3.104-9(e)(1)(ii) shall be forwarded in accordance with 3.104-11 prior to contract award.~~

~~—(d) Additional certifications.~~

~~—(2) The designee of the HGA for DNSG, for which the Executive Director (Procurement) serves as HGA, is the Administrator, DNSG. The Commanders of all contracting offices and the Administrator, DASC for which the Executive Director (Procurement) serves as HGA, shall forward requests for approval of additional certifications to the Executive Director (Procurement).~~

~~—(e)(3) General Counsel shall retain the ethics advisory opinions.~~

~~—(f)(2) Requests for waiver of the certification requirement in exceptional cases shall be submitted to the Executive Director (Procurement) by letter signed by the Commander (the Administrator, DNSG or the Administrator, DASC) of the requesting component. The Executive Director (Procurement) shall submit the request to the Director, DLA, for approval/disapproval. When waivers are approved,~~

~~the Executive Director (Procurement), shall prepare the notification for transmission by the Director, DLA (or the Principal Deputy Director, DLA or Deputy Director (Acquisition)), to the Speaker of the House and the President of the Senate.~~

### ~~3.104-10 Solicitation provisions and contract clauses.~~

~~—(e) For purposes of paragraphs (a) and (b) of the clause at FAR 52-203-10, Price or Fee Adjustment for Illegal or Improper Activity, the Head of the agency designee is the Special Assistant for Contracting Integrity, General Counsel.~~

**3.104-4410 Processing Violations or possible violations.**

(a)(1) When the contracting officer concludes there is no impact, with the concurrence of the chief of the contracting office and local counsel, the contracting officer may proceed with award.

(b) Local counsel shall recommend the action to be taken.

(d)(2) If the contracting officer concludes that profit on the contract or modification involved should be recaptured in accordance with the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or that the contract should be voided or rescinded in accordance with FAR 3.104-10(d) (2)(ii) and 3.705, he or she shall prepare a report documenting the facts giving rise to the conclusion that a violation of the Act has occurred. That report shall be prepared in consultation with local counsel and include the contracting officer's recommendation for the action to be taken. When profit recapture is recommended, the contracting officer will recommend an amount to be recaptured. When rescission or voiding of the contract(s) is recommended, the contracting officer will estimate the value of the tangible benefits received and retained under the contract(s) in question. The report shall be forwarded to the General Counsel, for action.

(f) Notification shall be submitted directly to the Director, DLA by letter signed by the Commander (Administrator, DNSC or the Administrator, DAPSC) of the contracting office.

(g) The designees of the HCA for DNSC and DAPSC, for which the Executive Director (Procurement) serves as HCA are the Administrator, DNSC and the Administrator, DAPSC.

~~3.104-12 Ethics program training requirements.~~

~~(a) General Counsel is responsible for compliance with the requirements of FAR 3.104-12(a).~~

**15.612 Formal source selection.**

(a) **General.** The formal source selection procedures of this section shall be followed whenever the source selection authority is ~~(i) an official outside the primary level field activity responsible for the acquisition, or (ii) an official outside the Administrator, DASC for acquisitions by DASC-G.~~ Formal source selection procedures should also be used in other acquisitions where the complexity or sensitivity of the acquisition justifies the additional resources involved.

(b) Responsibilities.

(1)(i) The following personnel shall designate the source selection authority in writing for their respective activity acquisitions.

(A) Chief of the contracting office at the DSCs (for DPSC, Chiefs of Contracting Divisions for their respective commodities and the Director, Directorate of Contracting, for installation acquisitions.)

(B) Commanders, or their Deputies, DRMS, Defense Distribution Regions, DAPSC, T-ASA, DCMCI, and DCMDs.

(C) Administrators, DAPSC and DNSC.

(ii) Designation of the source selection authority shall be commensurate with the complexity and dollar value of the acquisition. The above cited personnel may designate themselves as the source selection authority or may recommend that the source selection authority be an individual at a higher management level within the activity or DLA than themselves. The Executive Director, Procurement reserves the right to designate the source selection authority following such actions as a meeting of the Acquisition Planning Executive Council (DLA-HSI 4105.3, Acquisition Planning Executive Council (APEC)), upon notification of changes in contracting processes, techniques, or methods (see 1.590) or upon review of solicitations forwarded in accordance with 1.690-6(b).

(1)(90) The source selection authority--

(i) Is responsible for the conduct of the entire source selection process including proposal solicitation, evaluation, selection, and contract award;

(ii) Shall tailor the selection process to suit individual acquisitions to minimize the cost of the process for Government and industry;

(iii) Has, subject to law and applicable regulations, full responsibility and authority to select the source(s) for award and approve the execution of the contract(s);

(iv) Shall review, to assure consistency with the requirements of the solicitation, and approve in writing the source selection plan (see FAR 15.612(c) and 15.612(c) below) and the evaluation factors before the solicitation is issued and before any presolicitation conferences are conducted;

(v) Shall appoint the chairperson and members of the source selection advisory council (if one is established) and the source selection evaluation board, assuring that these personnel have the skills and experience needed to execute the source selection plan (see 15.612(90)(N)). A source selection advisory council should only be established for the most complex, highest dollar value acquisitions;

(vi) Shall provide the source selection advisory council, if one is established, and the source selection evaluation board with guidance and special instructions to conduct the evaluation and selection process;

(vii) Shall take necessary precautions to ensure against premature or unauthorized disclosure of source selection information (see FAR 3.104, FAR 15.612(e) and 15.612(e) below);

(viii) Shall review and approve the contracting officer's determination to exclude offerors from the competitive range at any point in the selection process;

(ix) Shall make the final selection decision(s) and document the supporting rationale in a source selection decision document;

(x) Shall review and approve the contracting officer's decision to issue a second call for best and final offers;

(xi) Shall advise higher level management, as appropriate, of the outcome of the source selection before any award announcements/notifications are made;

(xii) Shall decide whether the source selection advisory council and the source selection evaluation board are to be combined. If a decision is made to combine these two bodies, the source selection authority shall assure that the combined body accomplishes the functions and meets the objectives of both the source selection advisory council and the source selection evaluation board. When these two bodies are combined, the source selection authority shall assign the specific duties and responsibilities from (91) and (92) below to be performed by the combined body. Any of those functions not assigned to the combined body shall be assumed by the source selection authority;

(xiii) Shall require all persons receiving source selection information to comply with DLAR 5500.1, Standards of Conduct and FAR 3.104. Any individual whose participation in the source selection process might result in a real, apparent, or possible conflict of interest shall be disqualified from participation in the process; and ***all participants in source selection councils, boards or otherwise having access to source selection information will be asked to sign a certificate substantially the same as the following concerning both conflict of interest and nondisclosure of sensitive information pertaining to the source selection:***

**Source Selection Non-disclosure and Conflict of Interest**

**Name:** \_\_\_\_\_ **Grade:** \_\_\_\_\_ **Job Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_ **Source Selection:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Briefing Acknowledgment**

**1. I acknowledge I have been assigned to the source selection indicated above. I am aware that unauthorized disclosure of source selection or bid or proposal information could damage the integrity of this procurement and that the transmission or revelation of such information to unauthorized persons could subject me to prosecution under the Procurement Integrity Laws or under other applicable laws.**

**2. I do solemnly swear or affirm that I will not divulge, publish, or reveal by word, conduct, or any other means, such information or knowledge, except as necessary to do so in the performance of my official duties related to this source selection and in accordance with the laws of the United States, unless specifically authorized in writing in each and every case by a duly authorized representative of the United States Government. I take this obligation freely, without any mental reservation or purpose of evasion and in the absence of duress.**

**3. I acknowledge that the information I receive will be given only to persons specifically granted**

*access to the source selection information and may not be further divulged without specific prior written approval from an authorized individual.*

*4. If, at any time during the source selection process, my participation might result in a real, apparent, possible, or potential conflict of interest, I will immediately report the circumstances to the Source Selection Authority.*

*5. All personnel are requested to check the applicable block:*

*I have submitted a current SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, or SF 278, Executive Personnel Financial Disclosure Report, as required by DODD 5500.7.*

*I will submit a SF 450 or SF 278 to the SSEB chairperson within ten work days from the date of the certificate.*

*I am not required to submit a SF 450 or SF 278.*

*Signature: \_\_\_\_\_ Date: \_\_\_\_\_*

and

(xiv) Shall comply with the following procedures when a source selection evaluation board is being established to evaluate offers for a commercial activity solicitation (see FAR subpart 7.3):

(A) The source selection authority shall submit the names of proposed board members to the Civilian Personnel Office (CPO) that supports the function under study. The CPO shall identify any board nominees who would be adversely affected if the function were contracted out. Anyone so identified will be disqualified.

(B) The source selection authority shall provide proposed board members a brief explanation of the purpose of a CA study. This explanation shall specifically include discussion of the impact on employees currently performing a function if it is contracted out. Proposed board members will then be asked to sign the nondisclosure and conflict of interest statement appearing above with additional paragraphs applicable to CA studies affirming that they know of no adverse impact on themselves, or on members of their household or immediate family, that will result from the cost comparison outcome. Anyone unable or unwilling to make that affirmation shall be disqualified. **The additional paragraphs for CA studies are as follows:**

*I understand that my participation on this board will support a decision either that this function will continue to be performed by Government employees or be awarded to a contractor for performance.*

*I affirm that, to the best of my knowledge, neither I nor any member of my household or immediate family is employed in a position that would be adversely affected if this function is contracted out. For the purposes of this statement, I understand that every position currently devoted, full or part time, to directly performing the function under study is assumed to be adversely affected by a decision to contract out.*

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## SUBPART 3.1 - SAFEGUARDS

### 3.104 Procurement integrity.

#### 3.104-3 Definition.

(a) The DLA **Designated Agency Ethics Official** is the General Counsel. The **chief** counsels of each DLA primary level field activity (PLFA) are designated as Deputy **Designated Agency Ethics Officials**.

#### 3.104-4 Statutory **and related** prohibitions, restrictions, and requirements.

(a) **Prohibition on disclosing procurement information** (subsection 27(a) of the Act).

Any person who is given authorized or unauthorized access to **contractor bid or proposal information** or source selection information is authorized to disclose **such** information regarding any DLA contracting offices' procurement of property or services to the following persons:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/Principal Deputy Director, DLA/Deputy Director (Acquisition); **DLA/Deputy Director (Material Management)** their Executive Directors and their supporting employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

#### 3.104-5 Disclosure, protection, and marking of **contractor bid or proposal information** and source selection information.

(a) The Executive Director (Procurement), Commanders of DLA contracting offices (see 2.101), and chiefs of contracting offices (see 2.101) have the authority to authorize persons, or classes of persons to receive **contractor bid or proposal information** or source selection information when necessary to the conduct of the procurement.

The following persons are authorized access to **contractor bid or proposal information** or source selection information regarding any DLA contracting offices' procurement of property or services:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review,

pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/Principal Deputy Director, DLA/Deputy Director (Acquisition); **DLA/Deputy Director (Materiel Management)**; their Executive Directors, and their supporting staff employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

(93) Any person or class of persons not listed in (90)-(92) above who is authorized access to automated systems contract files, contract file information, or procurement information.

### 3.104-6 Disqualification

**(b) Disqualification notice.** The designee of the HCA for those contracting offices for whom the Executive Director (Procurement), serves as HCA (see 2.101) is:

- (1) The Commanders of DRMS, DDRE, DDRW, T-ASA, DCMDs, and DCMCI.
- (2) The Administrators, DAPSC and DNSC.

### 3.104-7 Ethics advisory opinions regarding prohibitions on former official's acceptance of compensation from a contractor.

**(a)** Requests for ethics advisory opinions shall be submitted to the General Counsel, or the appropriate Deputy Designated Agency Ethics Official, as defined in **DoD 5500.7-R, Joint Ethics Regulation.**

### 3.104-10 Violations or possible violations.

(a)(1) When the contracting officer concludes there is no impact, with the concurrence of the chief of the contracting office and local counsel, the contracting officer may proceed with award.

(b) Local counsel shall recommend the action to be taken.

(d)(2) If the contracting officer concludes that profit on the contract or modification involved should be recaptured in accordance with the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or that the contract should be voided or rescinded in accordance with FAR 3.104-10(d) (2)(ii) and 3.705, he or she shall prepare a report documenting the facts giving rise to the conclusion that a violation of the Act has occurred. That report shall be prepared in consultation with local counsel and include the contracting officer's recommendation for the action to be taken. When profit recapture is recommended, the contracting officer will recommend an amount to be recaptured. When rescission or voiding of the

contract(s) is recommended, the contracting officer will estimate the value of the tangible benefits received and retained under the contract(s) in question. The report shall be forwarded to the General Counsel, for action.

(f) Notification shall be submitted directly to the Director, DLA by letter signed by the Commander (Administrator, DNSC or the Administrator, DAPSC) of the contracting office.

(g) The designees of the HCA for DNSC and DAPSC, for which the Executive Director (Procurement) serves as HCA are the Administrator, DNSC and the Administrator, DAPSC.

**15.612 Formal source selection.**

(a) General. The formal source selection procedures of this section shall be followed whenever the source selection authority is an official outside the primary level field activity responsible for the acquisition. Formal source selection procedures should also be used in other acquisitions where the complexity or sensitivity of the acquisition justifies the additional resources involved.

(b) Responsibilities.

(1)(i) The following personnel shall designate the source selection authority in writing for their respective activity acquisitions.

(A) Chief of the contracting office at the DSCs (for DPSC, Chiefs of Contracting Divisions for their respective commodities and the Director, Directorate of Contracting, for installation acquisitions.)

(B) Commanders, or their Deputies, DRMS, Defense Distribution Regions, DAPSC, T-ASA, DCMCI, and DCMDs.

(C) Administrators, DAPSC and DNSC.

(ii) Designation of the source selection authority shall be commensurate with the complexity and dollar value of the acquisition. The above cited personnel may designate themselves as the source selection authority or may recommend that the source selection authority be an individual at a higher management level within the activity or DLA than themselves. The Executive Director, Procurement reserves the right to designate the source selection authority following such actions as a meeting of the Acquisition Planning Executive Council (DLA-HSI 4105.3, Acquisition Planning Executive Council (APEC)), upon notification of changes in contracting processes, techniques, or methods (see 1.590) or upon review of solicitations forwarded in accordance with 1.690-6(b).

(1)(90) *The source selection authority--*

(i) Is responsible for the conduct of the entire source selection process including proposal solicitation, evaluation, selection, and contract award;

(ii) Shall tailor the selection process to suit individual acquisitions to minimize the cost of the process for Government and industry;

(iii) Has, subject to law and applicable regulations, full responsibility and authority to select the source(s) for award and approve the execution of the contract(s);

(iv) Shall review, to assure consistency with the requirements of the solicitation, and approve in writing the source selection plan (see FAR 15.612(c) and 15.612(c) below) and the evaluation factors before the solicitation is issued and before any presolicitation conferences are conducted;

(v) Shall appoint the chairperson and members of the source selection advisory council (if one is established) and the source selection evaluation board, assuring that these personnel have the skills and experience needed to execute the source selection plan (see 15.612(90)(N)). A source selection advisory council should only be established for the most complex, highest dollar value acquisitions;

(vi) Shall provide the source selection advisory council, if one is established, and the source selection evaluation board with guidance and special instructions to conduct the evaluation and selection process;

(vii) Shall take necessary precautions to ensure against premature or unauthorized disclosure of

source selection information (see FAR 3.104, FAR 15.612(e) and 15.612(e) below);

(viii) Shall review and approve the contracting officer's determination to exclude offerors from the competitive range at any point in the selection process;

(ix) Shall make the final selection decision(s) and document the supporting rationale in a source selection decision document;

(x) Shall review and approve the contracting officer's decision to issue a second call for best and final offers;

(xi) Shall advise higher level management, as appropriate, of the outcome of the source selection before any award announcements/notifications are made;

(xii) Shall decide whether the source selection advisory council and the source selection evaluation board are to be combined. If a decision is made to combine these two bodies, the source selection authority shall assure that the combined body accomplishes the functions and meets the objectives of both the source selection advisory council and the source selection evaluation board. When these two bodies are combined, the source selection authority shall assign the specific duties and responsibilities from (91) and (92) below to be performed by the combined body. Any of those functions not assigned to the combined body shall be assumed by the source selection authority;

(xiii) Shall require all persons receiving source selection information to comply with DLAR 5500.1, Standards of Conduct and FAR 3.104. Any individual whose participation in the source selection process might result in a real, apparent, or possible conflict of interest shall be disqualified from participation in the process; and **all participants in source selection councils, boards or otherwise having access to source selection information will be asked to sign a certificate substantially the same as the following concerning both conflict of interest and nondisclosure of sensitive information pertaining to the source selection:**

**Source Selection Non-disclosure and Conflict of Interest**

**Name:** \_\_\_\_\_ **Grade:** \_\_\_\_\_ **Job Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_ **Source Selection:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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**2. I do solemnly swear or affirm that I will not divulge, publish, or reveal by word, conduct, or any other means, such information or knowledge, except as necessary to do so in the performance of my official duties related to this source selection and in accordance with the laws of the United States, unless specifically authorized in writing in each and every case by a duly authorized representative of the United States Government. I take this obligation freely, without any mental reservation or purpose of evasion and in the absence of duress.**

**3. I acknowledge that the information I receive will be given only to persons specifically granted access to the source selection information and may not be further divulged without specific prior**

*written approval from an authorized individual.*

**4. If, at any time during the source selection process, my participation might result in a real, apparent, possible, or potential conflict of interest, I will immediately report the circumstances to the Source Selection Authority.**

**5. All personnel are requested to check the applicable block:**

**I have submitted a current SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, or SF 278, Executive Personnel Financial Disclosure Report, as required by DODD 5500.7.**

**I will submit a SF 450 or SF 278 to the SSEB chairperson within ten work days from the date of the certificate.**

**I am not required to submit a SF 450 or SF 278.**

**Signature: \_\_\_\_\_ Date: \_\_\_\_\_**

and

(xiv) Shall comply with the following procedures when a source selection evaluation board is being established to evaluate offers for a commercial activity solicitation (see FAR subpart 7.3):

(A) The source selection authority shall submit the names of proposed board members to the Civilian Personnel Office (CPO) that supports the function under study. The CPO shall identify any board nominees who would be adversely affected if the function were contracted out. Anyone so identified will be disqualified.

(B) The source selection authority shall provide proposed board members a brief explanation of the purpose of a CA study. This explanation shall specifically include discussion of the impact on employees currently performing a function if it is contracted out. Proposed board members will then be asked to sign the nondisclosure and conflict of interest statement appearing above with additional paragraphs applicable to CA studies affirming that they know of no adverse impact on themselves, or on members of their household or immediate family, that will result from the cost comparison outcome. Anyone unable or unwilling to make that affirmation shall be disqualified. **The additional paragraphs for CA studies are as follows:**

***I understand that my participation on this board will support a decision either that this function will continue to be performed by Government employees or be awarded to a contractor for performance.***

***I affirm that, to the best of my knowledge, neither I nor any member of my household or immediate family is employed in a position that would be adversely affected if this function is contracted out. For the purposes of this statement, I understand that every position currently devoted, full or part time, to directly performing the function under study is assumed to be adversely affected by a decision to contract out.***