

Subpart 3.11 - Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

Parent topic: [Part 3 - Improper Business Practices and Personal Conflicts of Interest](#)

3.1100 Scope of subpart.

This subpart implements policy on personal conflicts of interest by employees of Government contractors as required by [41 U.S.C. 2303](#).

3.1101 Definitions.

As used in this subpart-

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.

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.

3.1102 Policy.

The Government's policy is to require contractors to-

(a) Identify and prevent personal conflicts of interest of their *covered employees*; and

(b) Prohibit *covered employees* who have access to nonpublic information by reason of performance on a Government contract from using such information for personal gain.

3.1103 Procedures.

(a) By use of the *contract clause* at 52.203-16, as prescribed at 3.1106, the *contracting officer shall*

require each contractor whose employees perform *acquisition* functions closely associated with inherently Government functions to-

(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 section; and

(6) Report to the *contracting officer* any personal conflict-of-interest violation by a *covered employee* as soon as 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, with follow-up reports of corrective actions taken, as necessary.

(b) If a contractor reports a personal conflict-of-interest violation by a *covered employee* to the *contracting officer* in accordance with paragraph (b)(6) of the clause at 52.203-16, Preventing Personal Conflicts of Interest, the *contracting officer shall*-

(1) Review the actions taken by the contractor;

(2) Determine whether any action taken by the contractor has resolved the violation satisfactorily; and

(3) If the *contracting officer* determines that the contractor has not resolved the violation satisfactorily, take any appropriate action in consultation with agency legal counsel.

3.1104 Mitigation or waiver.

(a) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of the clause at 52.203-16, Preventing Personal Conflicts of Interest, the contractor *may* submit a request, through the *contracting officer*, for the *head of the contracting activity* to-

(1) Agree to a plan to mitigate the personal conflict of interest; or

(2) Waive the requirement to prevent personal conflicts of interest.

(b) If the *head of the contracting activity* determines *in writing* that such action is in the best interest of the Government, the *head of the contracting activity may* impose conditions that provide mitigation of a personal conflict of interest or grant a waiver.

(c) This authority *shall* not be redelegated.

3.1105 Violations.

If the *contracting officer* suspects violation by the contractor of a requirement of paragraph (b), (c)(3), or (d) of the clause at 52.203-16, Preventing Personal Conflicts of Interest, the *contracting officer shall* contact the agency legal counsel for advice and/or recommendations on a course of action.

3.1106 Contract clause.

(a) Insert the clause at 52.203-16, Preventing Personal Conflicts of Interest, in *solicitations* and contracts that-

(1) Exceed the *simplified acquisition threshold*; and

(2) Include a requirement for services by contractor employee(s) that involve performance of *acquisition* functions closely associated with *inherently governmental functions* for, or on behalf of, a *Federal agency* or department.

(b) If only a portion of a contract is for the performance of *acquisition* functions closely associated with *inherently governmental functions*, then the *contracting officer shall* still insert the clause, but *shall* limit applicability of the clause to that portion of the contract that is for the performance of such services.

(c) Do not insert the clause in *solicitations* or contracts with a self-employed individual if the *acquisition* functions closely associated with *inherently governmental functions* are to be performed entirely by the self-employed individual, rather than an employee of the contractor.