

<?xml encoding="UTF-8">

# **Part 503 - Improper Business Practices and Personal Conflicts of Interest**

## Subpart 503.1 - Safeguards

503.101 Standards of conduct.

503.101-3 Agency regulations.

503.104 Procurement integrity.

503.104-2 General.

503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

503.104-7 Violations or possible violations.

## Subpart 503.2 - Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

503.204 Treatment of violations.

## Subpart 503.3 - Reports of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

## Subpart 503.4 - Contingent Fees

503.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

## Subpart 503.5 - Other Improper Business Practices

503.570 Advertising.

503.570-1 Policy.

503.570-2 Contract clause.

## Subpart 503.7 - Voiding and Rescinding Contracts

503.703 Authority.

503.705 Procedures.

## Subpart 503.8 - Limitation on the Payment of Funds to Influence Federal Transactions

503.806 Processing suspected violations.

## **Subpart 503.1 - Safeguards**

### **503.101 Standards of conduct.**

#### **503.101-3 Agency regulations.**

GSA Supplemental Ethical Standards of Conduct appear at 5 CFR 6701.

### **503.104 Procurement integrity.**

#### **503.104-2 General.**

“Acquisition official” as defined in FAR 3.104-3(a)(2), are responsible for knowing the post-employment restrictions in FAR 3.104-2(b)(3) and 3.104-3(d).

#### **503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

(a) *Persons authorized access to information.*

(1) The following persons may access contractor bid or proposal information and source selection information to accomplish their responsibilities in a procurement action:

(i) Requirements generators, including client agency representatives, and program and technical experts who develop statements of work, specifications or similar documents;

(ii) Contracting personnel supporting the contracting officer;

(iii) Personnel serving on technical evaluation boards or source selection evaluation boards;

(iv) Supervisors in the contracting officer’s chain of command;

(v) Secretarial, clerical and administrative personnel of the contracting activity responsible for the procurement;

(vi) Small Business Technical Advisors;

(vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under FAR 19.302, process applications for Certificates of Competency under FAR 19.6, review subcontracting plans, or award contracts

under the 8(a) program;

(viii) Personnel in the Credit and Finance Section of Region 6 and other personnel who support the contracting officer in making contractor responsibility determinations;

(ix) Contract auditors in the Office of Inspector General and Regional Inspector General's offices;

(x) Department of Labor (DOL) personnel who process preaward EEO clearances under FAR 22.805;

(xi) Attorneys in the Office of General Counsel and Regional Counsel's offices; and

(xii) Personnel involved in contract approval.

(2) The Senior Procurement Executive may authorize additional classes of persons access to contractor bid or proposal information or source selection information.

(3) The contracting officer may authorize access to contractor bid or proposal information or source selection information if necessary to conduct the procurement. This includes release of information to outside evaluators under [515.305-70](#) in accordance with [537.204](#) and FAR 9.505-5 and 37.204. Limit access to only that information the person needs to do his or her job.

(4) The contracting officer must use the Conflict of Interest Acknowledgement and Nondisclosure Agreement referenced in [515.305-71](#) to maintain the identity of individuals authorized access to contractor bid or proposal information and source selection information.

(b) *Procedures for marking and protecting information.* Any individual who prepares, makes, or controls contractor bid or proposal information and source selection information must:

(1) Mark documents as prescribed in [FAR 3.104-4\(c\)](#). Each page of the documents must be marked in accordance with [FAR 3.104](#).

(2) Provide physical security for documents in the office environment during, and after, duty hours.

(3) Secure interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope, and sealing envelopes securely.

(4) Maintain strict control over oral communications about the acquisition.

(c) *Requests for information from Congress.* For requests from a member of Congress, see [505.403](#).

### **503.104-7 Violations or possible violations.**

(a) The HCA is the individual designated under FAR 3.104-7 (a)(1) to receive information related to a conclusion that a reported or possible violation has no impact on a procurement.

(b) If the HCA receives information describing an actual or possible violation, the HCA must take all of the following actions:

(1) Refer the matter immediately to the Inspector General;

(2) Determine what action to take on the procurement under FAR 3.104-7 (b)-(g); and

(3) Notify the Administrator if he or she determines that urgent and compelling circumstances, or other Government interests, justify the award or modification.

(c) If a contracting officer has not been appointed, the contracting director performs the contracting officer actions defined in FAR 3.104-7.

## **Subpart 503.2 - Contractor Gratuities to Government Personnel**

### **503.203 Reporting suspected violations of the Gratuities clause.**

(a) Employees must report immediately a suspected violation of the Gratuities clause to each of the following:

(1) The contracting officer;

(2) Assistant Inspector General for Investigations or the Regional Special Agent in Charge; and

(3) Deputy Standards of Conduct Counselor.

(b) The report must describe the circumstances under which the Gratuities clause has been violated and include all pertinent documents.

(c) The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice, the Senior Procurement Executive, or the Office of General Counsel. See also 5 CFR 6701.107.

### **503.204 Treatment of violations.**

(a) The Senior Procurement Executive, or designee, makes determinations under FAR3.204. The Senior Procurement Executive, or designee, takes all the following actions:

(1) Coordinates with legal counsel;

(2) Initiates proceedings under FAR3.204(a) by notifying the contractor that GSA is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner; and

(3) Presumes receipt if no return receipt is received within 10 calendar days after mailing the notice.

(b) The contractor has 30 calendar days to exercise its rights under FAR 3.204(b), unless the Senior Procurement Executive, or designee, grants an extension.

(c) If there is a dispute of fact material to making a determination, the Senior Procurement Executive, or designee, may refer the matter to an agency fact-finding official, designated by the Suspension and Debarment Official, in accordance with GSAR [509.403](#). Referrals for fact-finding are

not made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official takes all the following actions:

- (1) Gives the contractor an opportunity to dispute material facts relating to the determinations under FAR 3.204(a)(1) and (2);
  - (2) Conducts proceedings under rules consistent with FAR 3.204(b);
  - (3) Schedules a hearing within 20 calendar days of receipt of the referral. The contractor or GSA may request an extension for good cause; and
  - (4) Delivers to the Senior Procurement Executive, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.
- (d) The Senior Procurement Executive, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.
- (e) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Senior Procurement Executive, or designee, conducts the hearing required by FAR 3.204(b).
- (f) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the Senior Procurement Executive, or designee, in accordance with FAR 3.204(b) either orally or in writing, consistent with a schedule the Senior Procurement Executive, or designee, establishes. The Senior Procurement Executive, or designee, exercises the Government's rights under FAR 3.204(c) only after considering mitigating factors.

## **Subpart 503.3 - Reports of Suspected Antitrust Violations**

### **503.303 Reporting suspected antitrust violations.**

The contracting officer shall report evidence of suspected antitrust violations in acquisitions to the Assistant Inspector General for Investigations or the Regional Special Agent in Charge. When appropriate, the Office of Inspector General will investigate and prepare a report and recommendation to the Attorney General and to the Senior Procurement Executive for suspension or debarment consideration.

## **Subpart 503.4 - Contingent Fees**

### **503.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

Employees who suspect or have evidence of violations of the Covenant Against Contingent Fees must report the matter to the contracting officer as well as to the Office of Inspector General. If appropriate, the Office of Inspector General will forward a report and recommendation to the Department of Justice.

## **Subpart 503.5 - Other Improper Business Practices**

### **503.570 Advertising.**

#### **503.570-1 Policy.**

GSA policy precludes contractors from making references to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

#### **503.570-2 Contract clause.**

Insert the clause at [552.203-71](#), Restriction on Advertising, in solicitations and contracts, including acquisitions of leasehold interests in real property, if the contract amount is expected to exceed the simplified acquisition threshold.

## **Subpart 503.7 - Voiding and Rescinding Contracts**

### **503.703 Authority.**

Pursuant to FAR 3.703 and 3.705(b), the authority to void or rescind contracts resides with the Senior Procurement Executive.

### **503.705 Procedures.**

#### *(a) Contracting officer's actions:*

(1) If a contract is tainted by misconduct, the contracting officer shall consult with assigned counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation.

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201-224, the contracting officer shall refer the matter to the Senior Procurement Executive under FAR 3.705 and shall—

(i) Identify in the referral the final conviction;

(ii) Include the information required by FAR 3.705(d)(2) through (5); and

(iii) Coordinate the referral with the Office of Inspector General to determine whether to recommend debarment.

#### *(b) Senior Procurement Executive's actions:*

- (1) Reviews the referral and coordinates with assigned counsel and the contracting activity.
  - (2) Takes both the following actions, if the official decides to declare void and rescind a contract and to recover the amounts expended and the property transferred:
    - (i) Issues the notice required by FAR 3.705; and
    - (ii) Conducts the hearing contemplated by FAR 3.705(c)(3).
  - (3) Refers the matter to the agency fact-finding official, in case of a dispute of material fact about the agency decision. The Senior Procurement Executive makes this referral if the dispute of fact relates to any of the following:
    - (i) Contracts affected by the final conviction.
    - (ii) Amounts expended and property transferred by the Government under the affected contracts.
    - (iii) Identity and value of any tangible benefits received by the Government under the affected contracts.
  - (4) Issues GSA's final decision under FAR 3.705(e) after receiving the fact-finding official's report, if a referral was made. The Senior Procurement Executive may reject the fact-finding official's findings only if they are clearly erroneous or arbitrary and capricious. The Senior Procurement Executive may explain any such rejection in writing.
  - (5) Coordinates the final decision with the contracting activity and provides the activity a copy of the decision.
- (c) *Fact-finding official's actions:* The fact-finding official takes all the following actions:
- (1) Gives the contractor an opportunity to dispute material facts.
  - (2) Conducts the proceedings under rules consistent with FAR 3.705(c)(3).
  - (3) Schedules a hearing within 20 calendar days after receiving the referral. The official may grant extensions for good cause at the request of the contractor or GSA.
  - (4) Delivers written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.
  - (5) Coordinates the final decision with the contracting activity and provides the activity a copy of the decision.

## **Subpart 503.8 - Limitation on the Payment of Funds to Influence Federal Transactions**

### **503.806 Processing suspected violations.**

Evidence of suspected violations of [31 U.S.C. 1352](#), Limitation on the Use of Appropriated Funds to

Influence Certain Federal Contracting and Financial Transactions, should be submitted to the Assistant Inspector General for Investigation or the Regional Special Agent in Charge. When appropriate, the Office of Inspector General will investigate and prepare a report and recommendation to the Department of Justice.

## **Subpart 503.10 - Contractor Code of Business Ethics and Conduct**

### **503.1004 Contract clauses.**

(a) In accordance with FAR [3.1004\(b\)\(1\)\(i\)](#), GSA has established a lower threshold for the inclusion of FAR clause at [52.203-14](#). Insert the clause in solicitations and contracts funded with disaster assistance funds expected to be at or above \$1,000,000.

(b) The information required by FAR [3.1004\(b\)\(2\)](#) is as follows:

(1) *Poster*. GSA Office of Inspector General “FRAUDNET HOTLINE”.

(2) *Contact information*. The Contractor can obtain the poster from the Contracting Officer.