

Subpart 5303.1 - SAFEGUARDS

Parent topic: [Part 5303 - Improper Business Practices and Personal Conflicts of Interest](#)

5303.104-2 General

(a) See [MP5301.601\(a\)\(i\)](#) when supplementing specific definitions to identify individuals who occupy positions specified in FAR [3.104-3\(d\)\(1\)\(ii\)](#), and any clauses required by 3.104.

(b)(6) Former federal employees have a continuing obligation to the Government not to disclose or misuse any other information acquired as part of their official duties and which is not generally available to the public.

5303.104-3 Statutory and Related Prohibitions, Restrictions, and Requirements

(a) Similar to knowledge of classified information, employee protective obligations of Government acquisition information extend beyond federal service and further support potential determinations of personal and organizational conflicts of interest, as well as potential determinations to eliminate contractors from competing on certain acquisitions due to conflicts of interest.

(c)(1)(ii) See [MP5301.601\(a\)\(i\)](#) for individuals authorized to approve resumption of participation in a procurement.

5303.104-4 (a) Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information

Any individuals requiring access to Source Selection Information (SSI) as a result of participating on a source selection or in the performance of their duties must sign a [Source Selection Non-Disclosure Agreement](#). The Source Selection Non-Disclosure Agreement may be used on an annual basis for individuals who must have access to SSI in the performance of their official duties throughout the year, whether or not they participate as part of the actual source selection team.

5303.104-5 Disqualification

(a) Contracting officers should consider ways to engage potential offerors early and respond to industry queries, pursuant to the contracting officer's responsibilities under FAR 9.504, to determine whether former federal employees should be excluded from proposal preparation. When Contracting officers become aware that a former federal employee is involved in a contractor's proposal preparation, the CO shall determine whether that employee should be excluded from the proposal preparation effort. The CO shall document the supporting rationale within the

determination as to whether the former federal employee should be excluded from the proposal preparation efforts or not. In addition to the ethics advisory opinions under [FAR 3.104-6](#), should a former federal employee participate in preparing a competitive proposal on behalf of an employer or client, and it relates to the prior employment as a federal employee, the individual should inform his/her employer/client of this fact and have that entity communicate such facts to the Contracting Officer in accordance with [FAR 3.104](#) and [FAR 9.505](#). One of the guiding principles established by the decisions of the courts is the obligation of contracting agencies to avoid even the appearance of impropriety in government procurements. See [FAR 3.101-1](#). In this regard, where a firm may have gained an unfair competitive advantage through its hiring of a former government official, the contracting officer may disqualify a firm from a competition based on the appearance of impropriety tied to an organizational conflict of interest which is created by this situation, that is, even if no actual impropriety can be shown.

(b) In addition to the cognizant parties identified at [FAR 3.104-5\(b\)](#), if the source selection authority is the DAFRCO/MAJCOM/FLDCOM/FOA/DRU/CC or CD, the disqualification notice must be coordinated through the DAFRCO/MAJCOM/FLDCOM/FOA/DRU JA and the SCO. The notice must include the items at [FAR 3.104-5\(b\)](#) and the following:

- (1) Name of requestor
 - (2) Current position/job title
 - (3) Projected retirement date
 - (4) Impact on program/unit mission if disqualification is granted
 - (5) Proposed replacement individual for official acquisition duties
 - (6) Commander/Director recommendation
- (c) Resumption of participation in a procurement

The contracting officer, after consultation with the parties identified in paragraph (b), will notify the individual if he or she is disqualified. The individual will remain disqualified unless resumption of participation in the procurement is granted in accordance with this paragraph.

(2) See [MP5301.601\(a\)\(i\)](#). In cases where the SCO is the individual disqualified from participation in a procurement, the cognizant HCA must authorize the individual to resume participation in the procurement. SAF/AQ and SAF/SQ and their civilian or military deputies have the authority to permit the cognizant HCA to resume participation in a procurement following contact with an offeror regarding non-Federal employment.

5303.104-7 Violations or possible violations

(a) The contracting officer must provide a copy of the information and documentation generated under [FAR 3.104-7](#) to their [cognizant HCA](#), cognizant legal counsel, to [SAF/AQC](#) and to [SAF/GCR](#).

(1) The contracting officer must forward the information and determination required by [FAR 3.104-7\(a\)\(1\)](#) to the clearance approval authority ([DAFFARS 5301.9001\(i\)](#)) of the affected procurement for review.

(f) See [MP5301.601\(a\)\(i\)](#) for individuals who may authorize award.

5303.104-9 Contract Clauses

(b) If information received under [FAR 52.203-10](#), *Price or Fee Adjustment for Illegal or Improper Activity*, indicates that a price or fee adjustment may be appropriate, the contracting officer must submit notification to the SCO, [cognizant HCA](#) and to [SAF/GCR](#).