

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

As prescribed in 3.808(b), insert the following clause:

Limitation on Payments to Influence Certain Federal Transactions (Jun 2020)

(a) *Definitions*. As used in this clause-

Agency means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any *covered Federal action*.

Local government means a unit of government in a *State* and, if chartered, established, or otherwise recognized by a *State* for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a *local government*.

Officer or employee of an agency includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, *United States Code*, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, *United States Code*.
- (3) A special Government employee, as defined in section 202, Title 18, *United States Code*.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, *United States Code*, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society,

State, and *local government*, regardless of whether such entity is operated for profit, or not for profit. This term excludes an *Indian tribe*, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a *regularly employed* officer or employee of any *person*, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an *Indian tribe*, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a *person* requesting or receiving a Federal contract, an officer or employee who is employed by such *person* for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such *person* for receipt of such contract. An officer or employee who is employed by such *person* for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such *person* shall be considered to be *regularly employed* as soon as he or she is employed by such *person* for 130 working days.

State means a *State* of the *United States*, the District of Columbia, or an outlying area of the *United States*, an agency or instrumentality of a *State*, and multi-*State*, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition*. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any *person* for *influencing or attempting to influence* an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any *covered Federal actions*. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any *person* for *influencing or attempting to influence* an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a *covered Federal action*.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions*. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees*.

(i) Payment of *reasonable compensation* made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific *solicitation* for any *covered Federal action*, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the *person's products* or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the *person's products* or services for an agency's use.

(iii) Providing prior to formal *solicitation* of any *covered Federal action* any information not specifically requested but necessary for an agency to make an informed decision about initiation of a *covered Federal action*;

(iv) Participating in technical discussions regarding the preparation of an *unsolicited proposal* prior to its official submission; and

(v) Making capability presentations prior to formal *solicitation* of any *covered Federal action* by *persons* seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of *reasonable compensation* made to an officer or employee of a *person* requesting or receiving a *covered Federal action* or an extension, continuation, renewal, amendment, or modification of a *covered Federal action*, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any *reasonable payment* to a *person*, other than an officer or employee of a *person* requesting or receiving a *covered Federal action* or an extension, continuation, renewal, amendment, or modification of a *covered Federal action* if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. *Persons* other than officers or employees of a *person* requesting or receiving a *covered Federal action* include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.*

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its *offer*, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor *shall* complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor *shall*, at the end of the calendar quarter in which the change occurs, submit to the *Contracting Officer* within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.*

(1) Any *person* who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause *shall* be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that *may* be applicable.

(2) Contractors *may* rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.*

(1) The Contractor *shall* obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each *person* requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. The Contractor or subcontractor that awards the subcontract *shall* retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) *shall* be forwarded from tier to tier until received by the prime Contractor. The prime Contractor *shall*, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the *Contracting Officer* within 30 days a copy of all disclosures. Each subcontractor certification *shall* be retained in the subcontract file of the awarding Contractor.

(3) The Contractor *shall* include the substance of this clause, including this paragraph (g), in any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

(End of clause)

Parent topic: 52.203 [Reserved]