

# **PART 403 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

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**Parent topic:** SUBCHAPTER A - GENERAL

## **Subpart 403.1 - Safeguards**

### **403.101 Standards of conduct.**

#### **403.101-3 Agency regulations.**

(a) The standards of conduct for USDA procurement officials are the uniform standards established by the Office of Government Ethics in 5 CFR Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*, and FAR 3.104, *Procurement integrity*.

(b) Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue shall obtain ethics advisory opinions from ethics advisory officials in their agency personnel offices.

#### **403.104 Procurement integrity.**

##### **403.104-5 [Reserved]**

##### **403.104-7 Violations or possible violations.**

The contracting officer shall forward information concerning any violation or possible violation of the Procurement Integrity Act (41 U.S.C. 423) to the chief of the contracting office.

## **Subpart 403.2 - Contractor Gratuities to Government Personnel**

### **403.203 Reporting suspected violations of the gratuities clause.**

A suspected violation of the contract clause, FAR 52.203-3, Gratuities, shall be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), the date(s), and names of all parties involved. The contracting officer shall review the report for completeness, add any additional information deemed necessary and a recommendation for action, and submit the report to the HCA.

### **403.204 Treatment of violations.**

The HCA shall review the report and consult with the Offices of General Counsel and Inspector General to determine whether further action should be pursued. If it is found that the facts and circumstances warrant further action, the HCA shall give the contractor a formal written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice shall be sent by certified mail with return receipt requested. Oral presentations shall follow the

procedures outlined in FAR 3.204(b). The HCA shall furnish copies of any adverse determination to the contracting officer and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c)(1) and (2), respectively.

## **Subpart 403.3 - Reports of Suspected Antitrust Violations**

### **403.303 Reporting suspected antitrust violations.**

Contracting officers shall report the circumstances of suspected violations of antitrust laws to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

## **Subpart 403.4 - Contingent Fees**

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

(a) A suspected misrepresentation or violation of the Covenant Against Contingent Fees shall be documented in writing by the contracting officer and reported immediately to the chief of the contracting office. The chief of the contracting office shall determine if a violation has occurred and report any violation to the Office of Inspector General. The chief of the contracting office shall take action in accordance with FAR 3.405(b).

(b) If the chief of the contracting office decides to refer the case to the Department of Justice, it should be referred through the Office of Inspector General with a copy of the report and referral submitted through the HCA to the Senior Procurement Executive.

## **Subpart 403.5 - Other Improper Business Practices**

### **403.502 Subcontractor kickbacks.**

Contracting officers shall report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51-58) to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

## **Subpart 403.6 - Contracts With Government Employees or Organizations Owned or Controlled by Them**

### **403.602 Exceptions.**

The HCA is authorized to accept a contract from the policy in FAR 3.601.

### **403.603 Responsibilities of the contracting officer.**

The contracting officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603, specifying the compelling reason(s) for award, and shall be placed in the contract file.

## **Subpart 403.8 - Limitation on the Payment of Funds To Influence Federal Transactions**

### **403.806 Processing suspected violations.**

Suspected violations of the requirements of 31 U.S.C. 1352 shall be referred to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).