

## 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.

**Parent topic:** [Subpart 5303.1 - SAFEGUARDS](#)