

**PROCUREMENT INTEGRITY SUMMARY FOR
PROCUREMENT OFFICIALS
November 8, 1990**

PROCUREMENT OFFICIAL'S CERTIFICATION REQUIREMENT:

This summary provides information concerning the procurement integrity provisions, Section 27 of the Office of Federal Procurement Policy Act (OFPPA) (41 U.S. Code 423), that will enable procurement officials to sign the attached procurement integrity certification. It describes the relevant provisions of the law and regulations and highlights changes made when the law was amended in November 1989. The interim rule implementing the law was published in the FEDERAL REGISTER on September 6, 1990 (55 FR 36782). It replaces section 3.104 of the Federal Acquisition Regulation.

Individuals who will serve the Government as procurement officials on or after December 1, 1990 must sign a certification stating that they are familiar with, and will not engage in conduct prohibited by Subsections 27(b), (c) and (e), and that they will report any information concerning a violation or possible violation of Subsections 27(a), (b), (d) or (f). Because of the November 1989 amendments to the law, certifications signed prior to the suspension are insufficient to enable an individual to serve as a procurement official on or after December 1, 1990. A new certification, in the form attached, is required from each procurement official.

"PROCUREMENT OFFICIALS: AND "COMPETING CONTRACTORS".

Except for the prohibitions on unauthorized disclosure on proprietary and source selection information that apply to anyone, prohibitions in Section 27 apply to those who serve as procurement officials and to competing contractors.

The term "procurement official" refers to any officer or employee of an agency who has participated personally and substantially in any of the following with respect to a particular procurement:

- (i) Drafting, or reviewing and approving a specification or statement of work;
- (ii) Preparing or developing a procurement or purchase request;
- (iii) Preparing or issuing a procurement solicitation;
- (iv) Evaluating bids or proposals or selecting sources;
- (v) Contract negotiations;
- (vi) Reviewing and approving the award or modification of a contract

- The definition extends to contractors, subcontractors, consultants, experts and advisers acting on behalf of or providing advice to an agency with respect to a procurement. The regulations make it clear that one does not become a procurement official solely by performing clerical functions, by general technical, engineering or scientific efforts having broad application, or by reviewing procurement documents solely to determine compliance with regulatory, administrative and budgetary requirements and procedures. The regulations also exclude participation on Federal advisory committees, agency level boards and panels and in studies conducted under OMB Circular A-76 procedures.

A "competing contractor" is any entity that is or is reasonably likely to become a competitor for a contract or subcontract under the procurement and includes any other person acting on behalf of such an entity.

PROHIBITIONS DURING THE CONDUCT OF PROCUREMENT.

Section 27(b) (41 U.S. Code 423(b)) prohibits a procurement official, during the conduct of an agency procurement, from knowingly:

- Soliciting, discussing or accepting future employment or business opportunity with or from a competing contractor;
- Soliciting or accepting money, a gratuity or other thing of value from a competing contractor; or
- Disclosing proprietary or source selection information to any person not authorized to receive the information. Section 27(a) (41 U.S. Code 423(a)) imposes corollary restrictions upon a competing contractor forbidding it from giving gratuities to or discussing future employment or business opportunity with a procurement official, and from soliciting or obtaining proprietary or source selection information.

There are civil fines for violating the three prohibitions and criminal penalties for willfully violating the third. Section 27(d) (41 U.S. Code 423(d)) has the effect of extending the third prohibition to anyone who has access to proprietary or source selection information. Federal employees also may be subject to administrative sanctions, including disciplinary action.

These prohibitions apply "during the conduct of a procurement." For purposes of the Procurement Integrity laws and regulations, a procurement begins on the earliest date on which an identifiable specific action is taken for a particular procurement. These actions are:

- (i) Drafting a specification or a statement of work;

- (ii) Reviewing and approving a specification;
- (iii) Computing requirements at an inventory control point;
- (iv) Developing a procurement or purchase request;
- (v) Preparing or issuing a solicitation;
- (vi) Evaluating bids or proposals;
- (vii) Selecting sources;
- (viii) Conducting negotiations; or
- (ix) Reviewing and approving the award of a contract or contract modification.

However, the start date cannot be prior to a decision by an authorized agency official to satisfy an agency need through procurement. A procurement ends with award of a contract or cancellation of the procurement, or upon execution of a modification that adds new work to a contract. The regulations also contain special rules for determining the start and end dates of procurements involving Broad Agency Announcements, Small Business Innovative Research Programs and Unsolicited Proposals. The phrase, "gratuity or other thing of value" is defined to include any gift, favor, entertainment, transportation, lodgings, meals, services, training, or other item having monetary value. It does not include: (1) any unsolicited item having a market value of \$10 or less per event or presentation; (2) loans from banks and financial institutions; (3) discounts available to the general public; (4) plaques and certificates having no intrinsic value; (5) anything paid for by the Government, secured under specific statutory authority; or (6) training to facilitate use of its products provided by a vendor whose products are furnished under Government contract. This definition reflects a change in the law.

RECUSAL IN ORDER TO DISCUSS EMPLOYMENT

Section 27(c) (41 U.S. Code 423(c)) allows some procurement officials to obtain permission to withdraw from further participation in a procurement in order to discuss future employment with a competing contractor. This is a change in the law. All eligible procurement official may, in accordance with specific procedures in the regulations, request authorization to be recused from participation in the procurement. A procurement official is not eligible for recusal if, during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract, he or she has participated personally and substantially in the evaluation of bids or proposals, the selection of sources, or the conduct of negotiations. An individual may not commence discussions with a competing contractor until he or she has received written approval of

the recusal request. Rejection of any employee's recusal request is not an adverse personnel action.

POST-EMPLOYMENT RESTRICTIONS

Sections 27(f) (41 U.S. Code 423(f)) imposes the following restrictions on employees who leave Federal Service: To promise to report information concerning violations or possible violations of that subsection.

Under Subsection 27(f), an individual who was a procurement official with respect to a particular procurement may not:

- Participate in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a contract for such procurement; or
- Participate personally and substantially on behalf of the competing contractor in the performance of such contract.

Both restrictions apply for a period of two years from the date of the individual's last personal and substantial participation in the procurement on behalf of the Government. Neither applies unless the individual was an officer or employee of the Government at the time he or she served as a procurement official.

These restrictions extend to post-employment activities on behalf of some subcontractors. They generally do not apply if the subcontract amount is less than \$100,000 or if participation is on behalf of a subcontractor below the second tier. However, the restrictions apply regardless of dollar value and at any tier if the particular subcontractor significantly assisted the prime contractor in negotiation of the prime contract or if the employee recommended the particular subcontractor to the prime contractor as a source. The exclusion for participation on behalf of some subcontractors is a change in the law.

ADDITIONAL CERTIFICATION REQUIREMENTS

Subsection 27(e) (41 U.S. Code 423(3)) also implies a number of additional certification requirements applicable to contracts and modifications in excess of \$100,000. These include the following requirements:

- Any procurement official who leaves the Government during the conduct of a specific procurement must certify that he or she understands his continuing obligation not to disclose proprietary or source selection information;
- The contracting officer responsible for the procurement must certify prior to award that he or she has no information concerning a violation or possible violation of

Subsections 27(a), (b), (d) or (f) or has disclosed all such information to the head of the agency;

- Anyone participating personally and substantially in the preparation or submission of the competing contractor's offer must certify that he or she is familiar and will comply with the 27(a) and will report any information concerning a violation or possible violation of 27(a), (b), or (f) to the individual responsible for preparing the offer;
- The officer or employee of a competing contractor responsible for the offer must certify that the certifications described directly above have been obtained and that he or she has no information concerning a violation or possible violation of Subsection 27(a), (b) or (f) or has disclosed all such information to the contracting officer.

ETHICS ADVICE

An employee or former employee who is uncertain whether specific conduct would violate the law may request a formal advisory opinion from his or her agency ethics official under procedures prescribed in the regulations. This is a change in law. Formal opinions may not be obtained for the purpose of determining whether certain information may be disclosed, or whether, prior to bid opening or receipt of proposals, a particular entity is a competing contractor. Questions regarding the character an disclosure of information should be directed to the contracting office. The regulations provide that a procurement official may, after making appropriate inquiry, rely upon representations made by an entity as to whether it is a competing contractor.

APPLICABILITY

Participation in a procurement during the period from December 1, 1989 through November 30, 1990 does not make one a procurement official for any purpose. Most individuals will not become subject to any of the prohibitions or restrictions contained in Section 27 unless they participate personally and substantially in a procurement on or after December 1, 1990 and thereby become procurement officials. Participations in a procurement on or after December 1, 1990 will subject individuals to the prohibitions of Subsection 27(b) as of that date.

Name of Procurement Official

Social Security Number

Privacy Act Notice to Employees and Officials

In accordance with Privacy Act of 1974, as amended (5 U.S.C. 522a), the following notice is Provided:

AUTHORITY FOR COLLECTION OF INFORMATION: 41 U.S.C. 423 and Executive Order 9397.

Your signature on the Optional Form 333, Procurement Integrity Certification for Procurement Officials, and disclosure of your Social Security Number on this page are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

PRINCIPAL PURPOSE FOR COLLECTION OF THIS INFORMATION

To obtain and maintain a complete certification from any person designated at a "Procurement Official" as defined by 41 U.S.C. 423 and applicable procurement regulations.

ROUTINE USES WHICH MAY BE MADE OF THE COLLECTED INFORMATION

Transfer to federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connections with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel management (OPM) in the system of records entitled "OPM/Govt-1, General Personnel Recourse," as published in the Federal Register periodically by OPM.

Procurement Integrity Certification For Procurement Officials

As a condition of serving as a Procurement Official,

I, _____, hereby certify
(Type or print name)

that I am familiar with the provisions of subsection 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify.

SIGNATURE OF PROCUREMENT OFFICIAL

DATE

DEPARTMENT OR AGENCY

OFFICE TELEPHONE NUMBER

This form is authorized for use
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Optional Form 333
Prescribed by GSA - FAR 48 CFR 53.203(b)

Exhibit 14-6
19 Dec 97