

branch chiefs or supervisory equivalents. In PBS, the Director of a Facility Support Center is considered to be the "chief of the contracting office."

Contracting activity competition advocate means the individual designated in writing by the head of the contracting activity. This authority may not be re-delegated. The HCA must ensure that the designated competition advocate is not assigned any duty or responsibility that is inconsistent with the advocacy function. The identity of the designated official shall be communicated to procuring staff and the Senior procurement executive.

Contracting director means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions except for FSS. "Contracting director" means directors of Commodity Centers and Federal Supply Service Bureaus in the FSS.

Head of the contracting activity means the Associate Administrator for Acquisition Policy, Associate Administrator for Federal Telecommunications Service (FTS), Commissioners of the Federal Supply Services (FSS), Information Technology Services (ITS), Public Buildings Service (PBS), or Regional Administrators. The Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FTS, FSS, ITS and PBS.

Senior procurement executive means the Associate Administrator for Acquisition Policy.

[57 FR 9213, Mar. 17, 1992, as amended at 57 FR 61583, Dec. 28, 1992; 60 FR 21467, May 2, 1995; 60 FR 54957, Oct. 27, 1995]

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1—Safeguards

- Sec.
- 503.101 Standards of conduct.
- 503.101-3 Agency regulations.
- 503.104 Procurement integrity.
- 503.104-4 Definitions.
- 503.104-5 Disclosure, protection, and marking of proprietary and source selection information.
- 503.104-7 Postemployment restriction applicable to Government officers and em-

ployees serving as procurement officers and certifications required from procurement officials leaving Government service.

- 503.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.
- 503.104-9 Certification requirement.
- 503.104-10 Solicitation provisions and contract clauses.
- 503.104-11 Processing violations or possible violations.
- 503.104-12 Ethics program training requirements.

Subpart 503.2—Contractor Gratuities to Government Personnel

- 503.203 Reporting suspected violations of the Gratuities clause.
- 503.204 Treatment of violations.

Subpart 503.3—Reports of Suspected Antitrust Violations

- 503.303 Reporting suspected antitrust violations.

Subpart 503.4—Contingent Fees

- 503.404 Solicitation provision and contract clause.
- 503.408 Evaluation of the SF 119.
- 503.408-1 Responsibilities.
- 503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 503.5—Other Improper Business Practices

- 503.570 Advertising.
- 503.570-1 Policy.
- 503.570-2 Contract clause.

Subpart 503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

- 503.602 Exceptions.
- 503.603 Responsibilities of the contracting officer.

Subpart 503.7—Voiding and Rescinding Contracts

- 503.702 Definitions.
- 503.705 Procedures.

Subpart 503.8—Limitation on Payment of Funds To Influence Federal Transactions

- 503.804 Policy.
- 503.806 Processing suspected violations.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 26496, June 23, 1989, unless otherwise noted.

Subpart 503.1—Safeguards

503.101 Standards of conduct.

503.101–3 Agency regulations.

(a) GSA Standards of Conduct are in Part 105–735 of the General Services Administration Property Management Regulations (GSPMR) (ADM 7900.9). Authorized exceptions to FAR 3.101–2 are in GSPMR 105–735.202(e). Enforcement procedures are in GSPMR 105–735.101.

(b) The requirement for employee financial disclosure and restrictions on private employment for former Government employees are in GSPMR 105–735.4 and 105–735.6.

503.104 Procurement integrity.

503.104–4 Definitions.

Property, as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

[55 FR 39972, Oct. 1, 1990]

503.104–5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary and source selection information shall—

(1) Ensure documents are marked as prescribed in FAR 3.104–5(c).

(2) Provide physical security for documents in the office environment during and after duty hours.

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, “double wrapping” with more than one envelope and sealing of envelopes.

(4) Maintain strict control over oral communications regarding the acquisition.

(b) The GSA Form 3611, Cover Page Source Selection Information, may be used as the cover page for documents that contain source selection information. The use of the GSA Form 3611 does not eliminate the requirement to mark each page of the document that contains source selection information.

(c)(1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their

requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including client agency representatives, program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer’s chain of command.

(v) Attorneys in the Office of General Counsel and Regional Counsel’s Offices.

(vi) Contract auditors in the Office of Inspector General and Regional Inspector General’s offices.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration (SBA) personnel responsible for reviewing determining not to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR subpart 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.

(x) Department of Labor (DOL) personnel responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for processing preaward EEO clearances under FAR 22.805.

(xi) Personnel in the Credit and Finance Branch, Region 6, and other personnel who provide support to the contracting officer in making contractor responsibility determinations.

(xii) Personnel serving on technical evaluation boards or source selection evaluation boards.

(xiii) Contract clearance personnel.

(2) The Associate Administrator for Acquisition Policy may authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or

source selection information when such access is necessary to the conduct of the procurement and to the extent that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities.

(4) The GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information, may be used to comply with the requirement at FAR 3.104-5(d)(2) to maintain the list of individuals authorized access to proprietary or source selection information at the contracting activity.

(5) Release of proprietary or source selection information under FAR 3.104-5(d)(3) must be made by letter citing obligation to maintain a list of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for inclusion in the contract file.

(6) In accordance with FAR 3.104-5(i), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

(7) For requests from an individual Member of Congress see 505.403.

[55 FR 39972, Oct. 1, 1990, as amended at 55 FR 50700, Dec. 12, 1990]

§ 503.104-7 Postemployment restriction applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

(a) The supervisor of each departing GSA employee shall remind the departing employee that:

(1) He/she is presumed to know if he/she is a procurement official (see FAR 3.104-8(b)(2));

(2) If he/she is a procurement official at the time of departure, he/she is sub-

ject to certain postemployment restrictions (see FAR 3.104-7), and

(3) If he/she leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000, he/she must certify to the contracting officer that he/she understands the continuing obligation, during the conduct of the procurement, not to disclose proprietary or source selection information related to the procurement.

A procurement is not considered complete until all actions associated with the award or modification of the procurement have been taken. A departing employee must submit the certification to the contracting officer if he/she participated, in a contract or modification expected to exceed \$100,000 that has not been completed, even though his/her duties may be complete at the time of departure. The GSA Form 3608, Procurement Integrity Certification of Departing GSA Procurement Officials, must be used by departing employees to make the required certification to contracting officers. The departing employee may list all contracts or modifications for which he/she is a procurement official on the GSA Form 3608. The original or a copy of the form must be submitted to the contracting officer for each contract or modification listed. Each copy must be annotated to identify the contracting officer who received the original certification and the contract number of the contract that the contracting officer is responsible for so that the contract file with the original certification can be retrieved, if necessary.

(b) The contracting officer shall obtain the GSA Form 3608 from any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000. (See FAR 3.104-10(d) and 52.203-13).

[55 FR 39972, Oct. 1, 1990, as amended at 55 FR 50700, Dec. 12, 1990]

503.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.

If a contracting officer has not been appointed, the contracting director

shall serve as the Administrator's designee and respond to inquiries under FAR 3.104-8(d) and (e) regarding proprietary and source selection information.

[58 FR 52443, Oct. 8, 1993]

503.104-9 Certification requirement.

Contracting Officer shall submit requests for waiver of certification requirements under FAR 3.104-9(f)(2) to the HCA for transmittal to the Senior Procurement Executive (see 502.101). The Senior Procurement Executive will recommend that the Administrator approve or disapprove the request.

[55 FR 39972, Oct. 1, 1990]

503.104-10 Solicitation provisions and contract clauses.

(a) The contracting officer may insert the provision at 552.203-71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property if there is a need to inform prospective offerors of certain conduct which is prohibited by law.

(b) The contracting officer shall insert the provision at 552.203-72, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed \$100,000, unless:

(1) Pursuant to FAR 3.104-9(f) a certification is not required.

(2) A waiver has been granted, or

(3) Simplified procedures are being used (see 570.2).

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.203-73, Price Adjustments for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed \$100,000 and all modifications to leases exceeding \$100,000 which do not already contain the clause.

[55 FR 39973, Oct. 1, 1990, as amended at 57 FR 37889, Aug. 21, 1992; 60 FR 42794, Aug. 17, 1995]

503.104-11 Processing violations or possible violations.

(a)(1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the pending

award or selection of a source shall be submitted, along with supporting documentation, to the HCA or SES designee for review and concurrence before award of a contract. In addition, the nature and circumstances of the violation or possible violation, together with any supporting documentation, must be referred to the Inspector General in accordance with agency regulations.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the HCA, who will:

(i) Refer the matter immediately to the Inspector General.

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11 (b) and (d).

(b) If the HCA or SES designee determines under FAR 3.104-11(f) that there are urgent and compelling circumstances, or that it is otherwise in the Government's interest to award or modify a contract, the HCA or SES designee shall notify the Administrator.

[55 FR 39974, Oct. 1, 1990]

503.104-12 Ethics program training requirements.

(a) Except as provided in paragraph (b) of this section, the contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with GSA personnel, has executed the Procurement Official's Procurement Integrity Certification pursuant to FAR 3.104-12. Such interaction may occur in the requirements determination process and the development of specifications or statements of work.

(b) Where a non-Government person or another agency's employee(s) act on behalf of GSA (e.g., serves on a Source Selection Board) the contracting officer is responsible for obtaining the Procurement Officials's Procurement Integrity Certification from non-GSA or non-Government persons involved in

the selection of a source in a GSA procurement.

[55 FR 39974, Oct. 1, 1990]

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

Employees shall immediately report any suspected violation of the Gratuities clause to the contracting officer, the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations and to the Deputy Standards of Conduct Counselor in accordance with GSPMR 105-735.202(e)(4). The report must outline circumstances which indicate the Gratuities clause has been violated and include all pertinent documents. The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice and/or the Office of Acquisition Policy, and/or the Office of Ethics and Civil Rights.

503.204 Treatment of violations.

(a) The Associate Administrator for Acquisition Policy or a designee shall make determinations under FAR 3.204.

(b) The Associate Administrator or designee, after coordinating the matter with legal counsel, may initiate proceedings under FAR 3.204(a) by notifying the contractor that action against the contractor for a violation of the Gratuities clause is being considered. Notice must be provided by means of a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

(c) The contractor shall have 30 calendar days to exercise its rights under FAR 3.204(b), unless an extension is granted.

(d) The Associate Administrator or designee may refer a matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals, if a determination is

made that there are disputes of fact material to making a determination under FAR 3.204(a). Referrals for fact-finding will not be made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to the determinations under FAR 3.204(a) (1) and (2).

(2) Conduct the proceedings under rules that are consistent with FAR 3.204(b).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the Associate Administrator or designee (together with a transcription of the proceedings, if made), within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(e) The Associate Administrator or designee may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(f) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Associate Administrator or designee shall conduct the hearing required by FAR 3.204(b).

(g) If it is determined that the Gratuities clause has been violated, the contractor may present evidence of mitigating factors to the Associate Administrator or designee, either orally or in writing, in accordance with a schedule established by the Associate Administrator or designee. The Associate Administrator or designee shall exercise the Government's rights under FAR 3.204(c) only after considering mitigating factors.

Subpart 503.3—Reports of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

Contracting officers shall report evidence of suspected antitrust violations

in acquisitions to the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations. The Office of Inspector General will investigate and prepare a report and recommendation to the Attorney General and to the Office of Acquisition Policy for suspension or debarment consideration.

Subpart 503.4—Contingent Fees

503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203–4, Contingent Fee Representation and Agreement, in solicitations for the acquisition of leasehold interests in real property which exceed the simplified lease acquisition threshold.

(b) The contracting officer shall insert the provision at 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property.

[54 FR 26496, June 23, 1989, as amended at 57 FR 37889, Aug. 21, 1992; 60 FR 42794, Aug. 17, 1995]

503.408 Evaluation of the SF 119.

503.408–1 Responsibilities.

The contracting officer's documentation of the evaluation, conclusion and any proposed action must be reviewed by assigned legal counsel and the contracting director.

503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Employees who suspect or have evidence of violations of the Covenant Against Contingent Fees clause shall report the matter to the contracting officer as well as the Office of Inspector General. If appropriate, the Office of Inspector General will forward a report and recommendation to the Department of Justice.

Subpart 503.5—Other Improper Business Practices

503.570 Advertising.

503.570–1 Policy.

Contractors shall not refer to contracts awarded by GSA in commercial advertising in a manner which states or implies that the product or service provided is approved or endorsed by the Government or is considered by the Government to be superior to other products or services. This policy is intended to avoid the appearance of preference by the Government toward any product or service.

503.570–2 Contract clause.

The contracting officer shall insert the clause at 552.203–70, Restriction on Advertising, in solicitations and contracts for supplies or services when the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26496, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995]

Subpart 503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.

(a) The heads of contracting activities may authorize exceptions to the policy in FAR 3.601.

(b) Offers submitted by Government employees on solicitations issued under the Office of Management and Budget (OMB) Circular A-76 may be considered if the contracting officer complies with 503.603. When Government employees submit offers, they do so with the knowledge that if the contract is awarded, their Government employment will be terminated. The implementation of OMB Circular A-76 presents a unique situation which may be considered to be an exception to the policy in FAR 3.601. Contracts between the Government and its employees are not expressly prohibited except, where

the employee acts for both the Government and the contractor in a particular transaction or where the service to be rendered is such as could be required of the contractor in his/her capacity as a Government employee.

503.603 Responsibilities of the contracting officer.

Before awarding a contract to a GSA employee who responded to an A-76 solicitation, the contracting officer shall:

(a) Obtain a written certification from the employee's supervisor that: the individual was not involved in the development of the solicitation or specifications, or in the preparation of the independent Government cost estimate or in-house cost comparison; had no advance knowledge of the details of the contents of the solicitation package; and was not otherwise involved in the contracting process.

(b) Refer the proposed award to assigned legal counsel for review and approval.

(c) Ascertain whether a reduction-in-force notice has been issued to the employee.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definitions.

Notice means a letter sent by certified mail with a return receipt requested to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

Voiding and rescinding official means the Associate Administrator for Acquisition Policy or a designee.

503.705 Procedures.

(a) Where a contract has been tainted by fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation. Alternatively, the matter may be referred to the voiding and rescinding official

under FAR 3.705, if there has been a final conviction for any violation of 18 U.S.C. 201-224.

(b) The contracting officer may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract pending completion of legal proceedings against a contractor.

(c) A referral to the voiding and rescinding official should identify the final conviction and include the information required by FAR 3.705(d) (2) through (5). The contracting officer should coordinate the referral with the Office of Inspector General to ascertain if a debarment referral is contemplated.

(d) The voiding and rescinding official shall review the referral and coordinate the matter with assigned legal counsel and the contracting activity. If a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, the voiding and rescinding official shall issue the notice required by FAR 3.705, and conduct the hearing contemplated by FAR 3.705(c)(3). If the voiding and rescinding official determines that there is a genuine dispute of material fact regarding the agency decision, the voiding and rescinding official shall refer the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Such a referral will be made if there is a dispute of fact that relates to:

(1) The contracts affected by the final conviction giving rise to the proposed action.

(2) The amounts expended and property transferred by the Government under the contracts covered by the proposed action.

(3) The identity and value of any tangible benefits received by the Government under the affected contracts.

(e) If a referral for fact-finding is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to 503.704(d) (1) through (3).

(2) Conduct the proceedings under rules that are consistent with FAR 3.705(c)(3).

(3) Schedule a hearing within 20 calendar days of receipt of the referral.

Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(f) The voiding and rescinding official shall not issue the agency's final decision under FAR 3.705(e) until receipt of the fact-finding official's report, if any. The voiding and rescinding official may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(g) In actions in which it is determined there are no material disputes of fact relating to the determinations required by FAR 3.705(d) (2), (4) and (5), the voiding and rescinding official will conduct the hearing contemplated by FAR 3.705(c)(3).

(h) The final decision must be coordinated with the contracting activity and a copy of the decision provided to the activity.

Subpart 503.8—Limitation on Payment of Funds To Influence Federal Transactions

SOURCE: 55 FR 29580, July 20, 1990, unless otherwise noted.

503.804 Policy.

Contracting officers shall submit a copy of each disclosure form received in accordance with FAR 3.803 or 3.804 to the Office of GSA Acquisition Policy (VP) immediately upon receipt. The Office of GSA for Acquisition Policy will prepare the agency report to Congress in accordance with FAR 3.804(b).

503.806 Processing suspected violations.

Contracting officers shall submit evidence of suspected violations of 31 U.S.C. 1352, Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, to the Assistant Inspector General for Investigation or the Regional Inspector General for Investiga-

tion. The Office of Inspector General will investigate and, if appropriate, prepare a report and recommendation to the Department of Justice.

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.1—Contract Execution

Sec.

- 504.101 Contracting officer's signature.
- 504.103 Contract clause.

Subpart 504.2—Contract Distribution

- 504.201 Procedures.
- 504.203 Taxpayer identification number information.

Subpart 504.4—Safeguarding Classified Information Within Industry

- 504.402 General.
- 504.470 Requests for release of classified information.
- 504.470-1 Authorization for release.
- 504.470-2 Termination of authorization for release.
- 504.471 Processing security requirements checklist (DD Form 254).
- 504.472 Periodic review.
- 504.473 Recurring procurement.
- 504.474 Control of classified information.
- 504.475 Return of classified information.
- 504.476 Breaches of security.

Subpart 504.8—Contract Files

- 504.800 Scope of subpart.
- 504.802 Contract files.
- 504.803 Contents of contract files.
- 504.804-5 Detailed procedures for closing out contract files.
- 504.805 Disposal of contract files.

Subpart 504.9—Information Reporting to the Internal Revenue Service

- 504.903 Procedures.

Subpart 504.70—Uniform Procurement Instrument Identification

- 504.7001 Uniform procurement instrument identification.
- 504.7001-1 Policy.
- 504.7001-2 Basic procurement instrument identification number.
- 504.7001-3 Order and call instrument identification number.
- 504.7001-4 Supplemental procurement instrument identification number.
- 504.7002 Procurement contract register.

AUTHORITY: 40 U.S.C. 486(c).