

# CHANGE REQUEST COVER SHEET

**Change Request Number:** 09-83

**Date Received:** 7/7/2009

**Title:** Addition of the Agreement Regarding Non-Disclosure of Information and Conflict -of- Interest to AMS

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**Name:** Jeffrey Baker

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**Policy OR Guidance:** Guidance

**Section/Text Location Affected:** AMS Procurement Guidance T3.1.5 and T3.1.6

**Summary of Change:** Addition of the Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest to AMS Procurement Forms, and deletion of the current samples of agreements in T3.1.5 and T3.1.6.

**Reason for Change:** As agreements/certifications for the Non-Disclosure of Information and Conflict of Interest are required for persons having access to sensitive procurement information, the two are being combined into one comprehensive agreement.

**Development, Review, and/or Concurrence:** AGC, AJA-43, AJA-431, AJA-45, ARC

**Target Audience:** FAA Acquisition and Program Workforce

**Potential Links within FAST for the Change:** None

**Briefing Planned:** No

**ASAG Responsibilities:** None

**Potential Links within FAST for the Change:** None

**Links for New/Modified Forms (or) Documents (LINK 1)**

**Links for New/Modified Forms (or) Documents (LINK 2)**

**Links for New/Modified Forms (or) Documents (LINK 3)**

## SECTIONS REMOVED:

Procurement Guidance:

**Section D : Attachment - Sample Conflict of Interest Certification** [\[Old Content\]](#)

Procurement Guidance:

**Section D : Attachment - Sample Non-Disclosure of Information Agreement**  
[\[Old Content\]](#)

## SECTIONS EDITED:

Procurement Guidance:

**T3.1.5 Conflict of Interest** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.1.5 Conflict of Interest*

*Conflict of Interest*

**Section 1 : Requirement for an Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

**T3.1.6 Non-Disclosure of Information** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.1.6 Non-Disclosure of Information*

*Disclosure of Information*

**Section 2 : Requirement for an Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.1.6 Non-Disclosure of Information*

*Disclosure of Information*

**Section 3 : Processing a Violation of the Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

## SECTIONS REMOVED:

**Procurement Guidance:**

**Section D : Attachment - Sample Conflict of Interest Certification .**

The attached is a sample format for a Conflict of Interest Certification. It may be tailored to fit a specific procurement or situation. A list of offerors should be attached to the certification.

## ATTACHMENT - SAMPLE CONFLICT OF INTEREST CERTIFICATION

### CONFLICT OF INTEREST CERTIFICATION

SCREENING INFORMATION REQUEST: \_\_\_\_\_

PROCUREMENT PROJECT: \_\_\_\_\_

I \_\_\_\_\_, am an employee of \_\_\_\_\_ and will be involved in Screening Information Request (SIR) activities pertaining to the subject procurement. In that capacity I will have knowledge of and access to confidential and proprietary procurement information and data concerning the selection process such as, procurement strategy, offerors' proposals, results of evaluations, and the final selection actions.

As a member of the procurement team, I hereby agree to abide by the FAA Acquisition Management System and 5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch, and 18 U.S.C. 201-209,216. Further, as a participant in the procurement selection activities, I hereby certify to the following:

1. I have not been employed by any of the companies listed on the attached SIR offerors' list. In addition, neither I, my spouse, or any of my dependent children, or other blood relatives who are residents of my household now own any bonds, stocks, or stock options, or have any other financial interest, including but not limited to employment or contract rights, in or with respect to any of the companies listed on the attached SIR offerors' list, nor do I, or any of the aforementioned relatives have any financial commitments to any of the companies listed on the attached SIR offerors' list.
2. In the event that any company, not listed on the attached SIR offerors' list, submits a proposal, or any company is identified as a subcontractor to a company submitting a proposal, that I or any relatives specified in paragraph 1 above, have any of the financial interests specified above or previous employment on my part, I will immediately notify the Source Selection Official (SSO) or designee. Pending a decision on my involvement, I shall refrain from any further participation in the source selection process for this procurement.
3. Neither I, nor to the best of my knowledge and belief, my spouse or any of my minor children have any intention or expectation of obtaining employment with, contracting with, or acquiring stocks, stock options, or bonds in or with respect to any of the companies listed on the attached SIR offerors' list.

I understand that failure to comply with the above will result in termination of my participation in the source selection activities for this procurement and may result in disciplinary action and/or referral for civil or criminal action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Procurement Guidance:**

**Section D : Attachment - Sample Non-Disclosure of Information Agreement .**

The attached is a sample Non-Disclosure of Information Agreement. It may be tailored to fit  
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a specific situation as long as the prohibition on disclosing source selection information and the language from 18 U.S.C. 1905 is included.

## **ATTACHMENT - SAMPLE NON-DISCLOSURE OF INFORMATION AGREEMENT**

### **NON-DISCLOSURE OF INFORMATION AGREEMENT**

**SCREENING INFORMATION REQUEST:** \_\_\_\_\_

**PROCUREMENT PROJECT:** \_\_\_\_\_

The purpose of this Non-Disclosure Agreement is to ensure that no information of a commercially sensitive or source selection sensitive nature, which is obtained by virtue of participation on the procurement team, is disclosed by members of the team to other persons, companies or organizations; and that such information is not used by other persons, companies or organizations to obtain an unfair advantage.

### **AGREEMENT**

As a member of the procurement team for the subject procurement, I, the undersigned agree that I will not disclose to any person, company or organization not participating on the procurement team any information learned by me as a result of my participation on that procurement team, the disclosure of which might, directly or indirectly, afford some person, company or organization an unfair competitive advantage. Such information shall include, but not be limited to, information regarding discussions, and plans or decisions by procurement team members relating to the acquisition. In addition, I will not disclose any information that pertains to internal agency communications regarding the acquisition, such as, but not limited to, acquisition plans, budgeting information, source selection plans, source selection evaluation memoranda or reports, technical analyses and recommendations, unless such release of information is authorized by appropriate agency officials.

I am aware of and will abide by the requirements of 18 U.S.C. 1905, which states: "Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment."

All procurement team members agree to immediately report to the Contracting Officer any

potential or possible violation of this Non-Disclosure Agreement.

NAME/ROUTING SYMBOL: \_\_\_\_\_

(printed or typed)

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

COMPANY OR AGENCY NAME \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

#### SECTIONS EDITED:

##### **T3.1.5 Conflict of Interest (Revision 2, January 2007)**

**Old Content:** Procurement Guidance:

**T3.1.5 Conflict of Interest (Revision 2, January 2007) New Content:** Procurement Guidance:

**T3.1.5 Conflict of Interest Red Line Content:** Procurement Guidance:

**T3.1.5 Conflict of Interest** ~~(Revision 2, January 2007)~~

##### **Section 1 : Requirement for Conflict of Interest Certification**

**Old Content:** Procurement Guidance:

*T3.1.5 Conflict of Interest*

*Conflict of Interest*

##### **Section 1 : Requirement for Conflict of Interest Certification**

Persons who have a real or apparent conflict of interest may be unable to render impartial, technically sound, and objective assistance, advice, or decisions. A procurement team member (program officials, contracting personnel, legal counsel, and others supporting a program), Office of Dispute Resolution for Acquisition (ODRA) member, or other Federal member who has a real or apparent conflict of interest, and who is a Federal employee, must withdraw from participation in the source selection process if law (18 U.S.C. 208) or regulation (5 CFR Part 2635) requires it. Considerations of equity and integrity of the procurement process require that non-Government members of a procurement team be held to the same standards.

Unless a procurement team member receives prior authorization, a procurement team member who is a Government employee should not participate if the result is likely to affect the financial

interests of the procurement team member's household, or the procurement team member knows a person with whom the procurement team member has a covered relationship as defined in 5 CFR 2635.502, or the procurement team member represents a party, if a reasonable person with knowledge of the relevant facts would question the procurement team member's impartiality in the matter. The law does not require non-Government procurement team members be removed when they have an apparent conflict, but the FAA's public image, workforce morale, and considerations of equity dictate that they be treated exactly as our own employees are treated.

Each person involved in the source selection process, including the Source Selection Official (SSO), who might have access to confidential or proprietary procurement information such as procurement strategy, offerors' proposals, results of evaluations, and the final selection actions, must sign and submit a Conflict of Interest Certification to the SSO or designee prior to any participation in the source selection process. This is to ensure that no conflict of interest exists. A Conflict of Interest Certification should be completed prior to distribution of offerors' submissions for evaluation and at any time afterwards, if an individual's financial, business, or employment situation changes to create the potential for a conflict of interest. The Conflict of Interest Certification must be completed by each procurement team member for each individual procurement and retained in the pre-award file.

**New Content: Procurement Guidance:**

*T3.1.5 Conflict of Interest*

*Conflict of Interest*

**Section 1 : Requirement for an Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest**

a. Persons who have a real or apparent conflict of interest may be unable to render impartial, technically sound, and objective assistance, advice, or decisions. A procurement team member (program officials, contracting personnel, legal counsel, and others supporting a program), Office of Dispute Resolution for Acquisition (ODRA) member, or other Federal member who has a real or apparent conflict of interest, and who is a Federal employee, must withdraw from participation in the source selection process if law (18 U.S.C. 208) or regulation (5 CFR Part 2635) requires it. Considerations of equity and integrity of the procurement process require that non-Government members of a procurement team be held to the same standards.

b. Unless a procurement team member receives prior authorization, a procurement team member who is a Government employee should not participate if the result is likely to affect the financial interests of the procurement team member's household, or the procurement team member knows a person with whom the procurement team member has a covered relationship as defined in 5 CFR 2635.502, or the procurement team member represents a party, if a reasonable person with knowledge of the relevant facts would question the procurement team member's impartiality in the matter. The law does not require non-Government procurement team members be removed when they have an apparent conflict, but the FAA's public image, workforce morale, and considerations of equity dictate that they be treated exactly as our own employees are treated.

c. Each person involved in the source selection process, including the Source Selection Official (SSO), who might have access to confidential or proprietary procurement information such as

procurement strategy, offerors' proposals, results of evaluations, and the final selection actions, must sign and submit a signed Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest (see Procurement Forms) to the SSO or designee prior to any participation in the source selection process. This is to ensure that no conflict of interest exists. An Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest should be completed prior to distribution of offerors' submissions for evaluation and at any time afterwards, if an individual's financial, business, or employment situation changes to create the potential for a conflict of interest. The Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest must be completed by each procurement team member for each individual procurement and retained in the pre-award file.

**Red Line Content: Procurement Guidance:**

*T3.1.5 Conflict of Interest*

*Conflict of Interest*

**Section 1 : Requirement for ~~Conflict of~~an Agreement ~~Interest~~Regarding Non-Disclosure  
Certification of Information and Conflict-of-Interest**

Persons who have a real or apparent conflict of interest may be unable to render impartial, technically sound, and objective assistance, advice, or decisions. A procurement team member (program officials, contracting personnel, legal counsel, and others supporting a program), Office of Dispute Resolution for Acquisition (ODRA) member, or other Federal member who has a real or apparent conflict of interest, and who is a Federal employee, must withdraw from participation in the source selection process if law (18 U.S.C. 208) or regulation (5 CFR Part 2635) requires it. Considerations of equity and integrity of the procurement process require that non-Government members of a procurement team be held to the same standards.

Unless a procurement team member receives prior authorization, a procurement team member who is a Government employee should not participate if the result is likely to affect the financial interests of the procurement team member's household, or the procurement team member knows a person with whom the procurement team member has a covered relationship as defined in 5 CFR 2635.502, or the procurement team member represents a party, if a reasonable person with knowledge of the relevant facts would question the procurement team member's impartiality in the matter. The law does not require non-Government procurement team members be removed when they have an apparent conflict, but the FAA's public image, workforce morale, and considerations of equity dictate that they be treated exactly as our own employees are treated.

Each person involved in the source selection process, including the Source Selection Official (SSO), who might have access to confidential or proprietary procurement information such as procurement strategy, offerors' proposals, results of evaluations, and the final selection actions, must sign and submit a ~~Conflict~~signed Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest ~~Certification~~(see Procurement Forms) to the SSO or designee prior to any participation in the source selection process. This is to ensure that no conflict of interest exists. ~~A~~An ~~Conflict~~Agreement Regarding Non-Disclosure of InterestInformation and ~~Certification~~Conflict-of-Interest should be completed prior to distribution of offerors' submissions for evaluation and at any time afterwards, if an individual's financial, business, or employment situation changes to create the potential for a conflict of

interest. The ~~Conflict~~Agreement Regarding Non-Disclosure of ~~Interest~~Information and Certification~~Conflict-of-Interest~~ must be completed by each procurement team member for each individual procurement and retained in the pre-award file.

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**T3.1.6 Non-Disclosure of Information (Revision 2, April 2009)**

**Old Content:** Procurement Guidance:

**T3.1.6 Non-Disclosure of Information (Revision 2, April 2009) New Content:** Procurement Guidance:

**T3.1.6 Non-Disclosure of Information Red Line Content:** Procurement Guidance:

**T3.1.6 Non-Disclosure of Information** ~~(Revision 2, April 2009)~~

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**Section 2 : Requirement for Non-Disclosure of Information Agreement**

**Old Content:** Procurement Guidance:

*T3.1.6 Non-Disclosure of Information  
Disclosure of Information*

**Section 2 : Requirement for Non-Disclosure of Information Agreement**

Maintaining the security of sensitive procurement information and source selection proceedings is of paramount importance to the integrity of the evaluation process. To assure that sensitive data acquired in the course of the procurement are handled properly, the individuals involved in these proceedings are required to sign a Non-Disclosure Agreement before the Screening Information Request (SIR) is issued. This agreement provides notice of the type of information that requires protection and the penalties for improperly disclosing such information.

**New Content:** Procurement Guidance:

*T3.1.6 Non-Disclosure of Information  
Disclosure of Information*

**Section 2 : Requirement for an Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest**

Maintaining the security of sensitive procurement information and source selection proceedings is of paramount importance to the integrity of the evaluation process. To assure that sensitive data acquired in the course of the procurement are handled properly, the individuals involved in these proceedings are required to sign an Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest (see Procurement Forms) before the Screening Information Request (SIR) is issued. This agreement provides notice of the type of information that requires protection and the penalties for improperly disclosing such information.

**Red Line Content:** Procurement Guidance:

*T3.1.6 Non-Disclosure of Information*



## *Disclosure of Information*

### **Section 2 : Requirement for an Agreement Regarding Non-Disclosure of Information Agreement and Conflict-of-Interest**

Maintaining the security of sensitive procurement information and source selection proceedings is of paramount importance to the integrity of the evaluation process. To assure that sensitive data acquired in the course of the procurement are handled properly, the individuals involved in these proceedings are required to sign an Agreement Regarding Non-Disclosure Agreement of Information and Conflict-of-Interest (see Procurement Forms) before the Screening Information Request (SIR) is issued. This agreement provides notice of the type of information that requires protection and the penalties for improperly disclosing such information.

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### **Section 3 : Processing a Violation of the Non-Disclosure Agreement**

**Old Content:** Procurement Guidance:

*T3.1.6 Non-Disclosure of Information*

*Disclosure of Information*

### **Section 3 : Processing a Violation of the Non-Disclosure Agreement**

Any suspected or actual improper disclosure of procurement sensitive information must be reported to the Contracting Officer. The Contracting Officer will consult with the Procurement Legal Division for guidance in this matter. The suspected violator should not be permitted to continue in the procurement process until the suspected violation has been reviewed and legal advice obtained.

**New Content:** Procurement Guidance:

*T3.1.6 Non-Disclosure of Information*

*Disclosure of Information*

### **Section 3 : Processing a Violation of the Agreement Regarding Non-Disclosure of Information and Conflict-of-Interest**

Any suspected or actual improper disclosure of procurement sensitive information must be reported to the Contracting Officer. The Contracting Officer will consult with the Procurement Legal Division for guidance in this matter. The suspected violator should not be permitted to continue in the procurement process until the suspected violation has been reviewed and legal advice obtained.

**Red Line Content:** Procurement Guidance:

*T3.1.6 Non-Disclosure of Information*

*Disclosure of Information*

### **Section 3 : Processing a Violation of the Agreement Regarding Non-Disclosure Agreement of Information and Conflict-of-Interest**

Any suspected or actual improper disclosure of procurement sensitive information must be reported to the Contracting Officer. The Contracting Officer will consult with the Procurement

Legal Division for guidance in this matter. The suspected violator should not be permitted to continue in the procurement process until the suspected violation has been reviewed and legal advice obtained.

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