

CHANGE REQUEST COVER SHEET

Change Request Number: 10-49

Date Received: 5/10/2010

Title: Deletion of Integrated Product Teams

Name: Eugene Scott

Phone: 202-493-4639

Policy OR Guidance: Guidance

Section/Text Location Affected: Procurement Guidance sections T3.1.8(A)(2); T3.1.8 Appx C; T3.2.2(A)(4); T3.2.2 Appx paragraph 2.2; T3.2.2.3; T3.6.2(A)(7); T3.6.5; T3.10.8; T3.10.9; T3.10.9(A)(3); T3.10.9(A)(4)

Summary of Change: (1) References to Integrated Product Teams (IPT) are deleted and replaced with procurement team and (2) In Procurement Guidance T3.2.2.3, paragraph (A)(1) (d) is deleted to remove the unnecessary provision instructing the CO to use an existing QVL in lieu of other contractual vehicles.

Reason for Change: (1) FAA no longer uses the term Integrated Product Team, accordingly, the term is removed from AMS Policy, Procurement Guidance and contract clauses. (2) The provision instructing the CO to use an existing QVL in lieu of another contract vehicle is removed because the CO is otherwise obligated to make a determination as to the best acquisition method to use; i.e., whether to limit competition to the vendors on the QVL or to expand competition to other potential contractors. It is unnecessary and potentially confusing to leave in this additional instruction.

Development, Review, and/or Concurrence: The document was reviewed and approved by the Office of General Counsel, Procurement Policy Manager, and ARC acquisition teams.

Target Audience: Acquisition 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) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS REMOVED:

Procurement Guidance:

Section 4 : Link to the FAA Administrator's approval memorandum for the Procurement Integrity Act Definitions [\[Old Content\]](#)

Procurement Guidance:

Section 3 : Full Text of the Procurement Integrity Act, 49 U.S.C. Section 423
[\[Old Content\]](#)

SECTIONS ADDED:

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Section D : Appendix [\[New Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Appendix

Section 1 : Administrator's Approval of FAA Procurement Integrity Act Definitions [\[New Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Appendix

Section 2 : [\[New Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 3 : Full Text Procurement Integrity Act 41 U.S.C Section 423 [\[New Content\]](#)

SECTIONS EDITED:

Procurement Guidance:

T3.2.2 - Source Selection

Source Selection

Section 4 : Cancelling a Screening Information Request [\[Old Content\]](#)[\[New Content\]](#)
[\[RedLine Content\]](#)

Procurement Guidance:

T3.2.2 - Source Selection

Appendix

Past Performance Samples

Section 2.2 : Sample 2 - Past Performance Evaluation Factors [\[Old Content\]](#)[\[New Content\]](#)
[\[RedLine Content\]](#)

Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 1 : General [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 3 : Screening and Evaluation [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 4 : Evaluating Prospective Vendors [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 7 : Updating a QVL [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 8 : Cancelling a QVL [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 7 : Walsh-Healey Public Contracts Act [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 1 : Requirements [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 2 : Process [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 2 : Minimizing Risk [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 3 : Testing and Approval [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 4 : Waiving First Article [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 1 : Background [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 2 : Definitions [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 5 : Notifying Vendors Excluded from a QVL [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 10 : QVL for Products [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 1 : [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 1 : Applicability [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 2 : [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 2 : FAA-Specific Definitions [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Section C : Forms [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS REMOVED:

Procurement Guidance:

Section 4 : Link to the FAA Administrator's approval memorandum for the Procurement Integrity Act Definitions.

This is the link to the FAA Administrator's approval memorandum for the Procurement Integrity Act Definitions.

Procurement Guidance:

Section 3 : Full Text of the Procurement Integrity Act, 49 U.S.C. Section 423.

Text of the Procurement Integrity Act 49 U.S.C. Section 423

Below is the full text of the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Toolbox Appendix). Please take special notice of 49 U.S.C. Section 423(h) below, which contains "Savings provisions", or situations where the Procurement Integrity Act does not apply.

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information.

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (1) applies to any person who -

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of , or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.

(1) If an agency official who is participating personally and substantially in a Federal agency in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall -

(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and

(B) (i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further

personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that --

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such §reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

d) Prohibition on former official's acceptance of compensation from contractor.

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a

procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency

to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions.

(1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

(2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions.

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which -

(I) the contractor or someone acting for

the contractor has been convicted for an offense punishable under paragraph (1), or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

(h) Savings provisions. This section does not -

(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that

information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of any requirements, sanctions, contract; or penalties, and remedies established under any other law or regulation.

SECTIONS ADDED:

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Section D : Appendix

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Appendix

Section 1 : Administrator's Approval of FAA Procurement Integrity Act Definitions



Memorandum

Subject: **ACTION:** Procurement Integrity Act Definitions

Date: JUL 12 2000

From: Associate Administrator for Research and
Acquisitions

Reply to
Attn. of:

To: The Administrator

Attached for your approval are definitions applicable to the Procurement Integrity Act (the Act). These definitions are to be read in conjunction with the Act at 41 U.S.C. § 423. These definitions have been tailored to FAA's Acquisition Management System (AMS).

The formulation of AMS specific definitions fulfills a requirement placed upon the Administrator by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181, approved April 5, 2000.

These definitions shall be effective upon your approval, and shall be incorporated into FAA's AMS.


f Steven Zaidman

Attachment

APPROVED: 
Jane F. Garvey
Administrator

JUL 14 2000
Date

DISAPPROVED: _____

LET'S DISCUSS: _____

1. Background.

As provided by 49 United States Code (U.S.C.) Section 40122(g)(3), effective October 1, 1999, the Federal Aviation Administration (FAA) is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, Subsections (f), Definitions, and (g), Limitations on Protests, both in Section 423, do not apply to the FAA. In lieu of the definitions contained in the Subsection (f) of the Act, the FAA Administrator was directed by Congress to adopt its own definitions, consistent with the intent of the FAA's Acquisition Management System (AMS) and the Act. These definitions are provided below. (The full text of the Procurement Integrity Act is shown in the following pages.)

2. Definitions.

As used in 41 U.S.C. Section 423:

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in Appendix C of the AMS).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Technical evaluations of responses to SIRs or unsolicited proposals.

(E) Cost or price evaluation plans.

(F) Cost or price evaluations of responses to SIRs or unsolicited proposals.

(G) Down select determinations identifying SIR responses that are most likely to receive contract award.

(H) Any ranking of offerors developed by the FAA during the source selection process.

(I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.

(J) Other information based on a case- by-case determination made by the FAA Associate Administrator for Research and Acquisition, his or her designee, or the Integrated Product Team, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document.

(3) The term "Federal agency" means the FAA.

(4) The term "Federal agency procurement" means the acquisition (by using competitive or non-competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.

(5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.

(6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.

(7) The term "official" means the following:

(A) An employee of the FAA, as defined in the FAA's Personnel Management System.

(B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3).

(8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System.

(9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition.

(10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA Integrated Product Team (IPT) Lead or Acting Lead, or a Product Team (PT) Lead or Acting Lead.

(11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA IPT Lead, or a Deputy or Acting Deputy to a PT Lead.

(12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS.

3. Full Text of the Procurement Integrity Act, 49 U.S.C. Section 423.

Below is the full text of the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions.

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information.

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (1) applies to any person who -

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of , or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.

(1) If an agency official who is participating personally and substantially in a Federal agency in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall -

(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and

(B) (i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that -

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

d) Prohibition on former official's acceptance of compensation from contractor.

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does

not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions.

(1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

(2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions.

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which -

(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

(h) Savings provisions. This section does not -

(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of any requirements, sanctions, contract; or penalties, and remedies established under any other law or regulation.

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

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Appendix

Section 2 :

Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 3 : Full Text Procurement Integrity Act 41 U.S.C Section 423

*Below is the full text of the Procurement Integrity Act, 41 U.S.C. Section 423 (omitting only its subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Procurement Guidance Section). Please take special notice of 41 U.S.C. Section 423(h) below, which contains "savings provisions," or situations where the Procurement Integrity Act does **not** apply.*

Procurement Integrity Act, 41 U.S.C. Section 423

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information.

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (1) applies to any person who -

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of , or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.

(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified

acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall -

(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and

(B) (i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that --

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

d) Prohibition on former official's acceptance of compensation from contractor.

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity

of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions.

(1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

(2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions.

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which -

(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United

States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

[paragraphs (f) and (g) omitted intentionally]

(h) Savings provisions. This section does not -

- (1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;
- (2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;
- (3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;
- (4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;
- (5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;
- (6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or
- (7) limit the applicability of any requirements, sanctions, contract; or penalties, and remedies established under any other law or regulation.

SECTIONS EDITED:

Section 4 : Cancelling a Screening Information Request

Old Content: Procurement Guidance:

T3.2.2 - Source Selection

Source Selection

Section 4 : Cancelling a Screening Information Request

The CO, with the concurrence of the IPT/PT, may cancel a SIR at any time during the solicitation process. Notification of the cancellation by the CO may be made using the same mechanism as the initial or subsequent SIRs. The CO will document the cancellation for placement into the official contract file.

New Content: Procurement Guidance:

T3.2.2 - Source Selection

Source Selection

Section 4 : Cancelling a Screening Information Request

The CO, with the concurrence of the procurement team, may cancel a SIR at any time during the solicitation process. The notification of cancellation may be made through the same mechanism as the initial or subsequent SIRs. The CO must document cancellation for the contract file.

Red Line Content: Procurement Guidance:

T3.2.2 - Source Selection

Source Selection

Section 4 : Cancelling a Screening Information Request

The CO, with the concurrence of the ~~IPT/PT~~procurement team, may cancel a SIR at any time during the solicitation process. ~~Notification~~The notification of ~~the cancellation by the CO~~ may be made through ~~using~~ the same mechanism as the initial or subsequent SIRs. The CO ~~will~~ must document ~~the~~ cancellation ~~for placement into the official~~ contract file.

Section 2.2 : Sample 2 - Past Performance Evaluation Factors

Old Content: Procurement Guidance:

T3.2.2 - Source Selection

Appendix

Past Performance Samples

Section 2.2 : Sample 2 - Past Performance Evaluation Factors

Past performance will be evaluated as follows:

1. Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non-cost/price ratings with the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.

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A. Quality of Product or Service - compliance with contract requirements - accuracy of reports - technical excellence. Excellent = There were no quality problems.

B. Timeliness of Performance - met interim milestones - reliable - responsive to technical direction - completed on time, including wrap-up and contract administration - no liquidated damages assessed. Excellent = There were no unexcused delays.

C. Cost Control - within budget - current accurate and complete billings - relationship of negotiated costs to actuals - cost efficiencies. Excellent = There were no cost issues.

D. Business Practices - effective management - effective small/small disadvantaged business subcontracting program - reasonable/cooperative behavior - flexible - effective contractor recommended solutions - business-like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and responsive.

E. Customer Satisfaction - satisfaction of end users with the contractors service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.

F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the IPT/PT for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."

G. Receipt of widely recognized quality awards or certifications. Excellent = Malcolm Baldrige Quality award, or equivalent award, covering the entity submitting the offer.

2. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements.

3. Information utilized will be obtained from the references listed in the proposal, other sources known to the FAA, consumer protection organizations, and others who may have useful and relevant information. Information will also be considered regarding any significant major subcontractors, and key personnel.

4. Award may be made from the initial offers without discussions. However, if discussions are held offerors should be given an opportunity to address negative reports of past performance, if the offeror has not had a previous opportunity to review the rating. Recent contracts will be examined to ensure that corrective measures have been implemented. Prompt corrective action in isolated instances may not outweigh overall negative trends.

5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).

New Content: Procurement Guidance:

T3.2.2 - Source Selection

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Appendix

Past Performance Samples

Section 2.2 : Sample 2 - Past Performance Evaluation Factors

Past performance will be evaluated as follows:

1. Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non-cost/price ratings with the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.

A. Quality of Product or Service - compliance with contract requirements - accuracy of reports - technical excellence. Excellent = There were no quality problems.

B. Timeliness of Performance - met interim milestones - reliable - responsive to technical direction - completed on time, including wrap-up and contract administration - no liquidated damages assessed. Excellent = There were no unexcused delays.

C. Cost Control - within budget - current accurate and complete billings - relationship of negotiated costs to actuals - cost efficiencies. Excellent = There were no cost issues.

D. Business Practices - effective management - effective small/small disadvantaged business subcontracting program - reasonable/cooperative behavior - flexible - effective contractor recommended solutions - business-like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and responsive.

E. Customer Satisfaction - satisfaction of end users with the contractors service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.

F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the procurement team for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."

G. Receipt of widely recognized quality awards or certifications. Excellent = Malcolm Baldrige Quality award, or equivalent award, covering the entity submitting the offer.

2. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements.

3. Information utilized will be obtained from the references listed in the proposal, other sources known to the FAA, consumer protection organizations, and others who may have useful and relevant information. Information will also be considered regarding any significant major subcontractors, and key personnel.

4. Award may be made from the initial offers without discussions. However, if discussions are held offerors should be given an opportunity to address negative reports of past performance, if the offeror has not had a previous opportunity to review the rating. Recent contracts will be examined to ensure that corrective measures have been implemented. Prompt corrective action in isolated instances may not outweigh overall negative trends.

5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).

Red Line Content: Procurement Guidance:

T3.2.2 - Source Selection

Appendix

Past Performance Samples

Section 2.2 : Sample 2 - Past Performance Evaluation Factors

Past performance will be evaluated as follows:

1. — Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non-cost/price ratings with the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.

A. Quality of Product or Service - compliance with contract requirements - accuracy of reports - technical excellence. Excellent = There were no quality problems.

B. Timeliness of Performance - met interim milestones - reliable - responsive to technical direction - completed on time, including wrap-up and contract administration - no liquidated damages assessed. Excellent = There were no unexcused delays.

C. Cost Control - within budget - current accurate and complete billings - relationship of negotiated costs to actuals - cost efficiencies. Excellent = There were no cost issues.

D. Business Practices - effective management - effective small/small disadvantaged business subcontracting program - reasonable/cooperative behavior - flexible - effective contractor recommended solutions - business-like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and responsive.

E. Customer Satisfaction - satisfaction of end users with the contractors service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.

F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the ~~IPT/PT~~procurement team for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."

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5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).

Section 1 : General

Old Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 1 : General

a. A Qualified Vendors' List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which the FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period. QVLs are also a way to streamline repetitive procurements for the same or similar products or services.

b. QVLs are most appropriate when the contracting office or integrated product team (IPT) can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services.

c. When planning a QVL, the IPT should consider the scope of the work to be performed, e.g., will it apply to only one region or center, or will requirements from several technical offices be combined. If it is intended that a QVL will apply to more than one region or center, or more than one technical office, close coordination should be utilized to avoid potential conflicts.

d. Once a QVL has been established for a particular product or service, the Contracting Officer, (CO) should utilize that QVL rather than soliciting and awarding separate contracts for the same products or services for the period of time the QVL is in effect. If the CO determines to solicit the open market, the vendors on the QVL should be solicited as well.

e. The IPT should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to who will bear the cost. The IPT must secure the necessary funds to accomplish these activities if the Government is to bear the costs.

New Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 1 : General

a. A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period. QVLs are also a way to streamline repetitive procurements for the same or similar products or services.

b. QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services.

c. When planning a QVL, the procurement team should consider the scope of work to be performed, e.g., will it apply to only one region or center, or will requirements from several technical offices be combined. If it is intended that a QVL will apply to more than one region or center, or more than one technical office, close coordination should be utilized to avoid potential conflicts.

d. The procurement team should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to who will bear the cost. The procurement team must secure the necessary funds to accomplish these activities if FAA is to bear the costs.

Red Line Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 1 : General

a. A Qualified Vendors' List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which ~~the~~ FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period. QVLs are also a way to streamline repetitive procurements for the same or similar products or services.

- b. QVLs are most appropriate when the contracting office ~~or integrated product team (IPT)~~ can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services.
- c. When planning a QVL, the ~~IPT~~ procurement team should consider the scope of ~~the~~ work to be performed, e.g., will it apply to only one region or center, or will requirements from several technical offices be combined. If it is intended that a QVL will apply to more than one region or center, or more than one technical office, close coordination should be utilized to avoid potential conflicts.
- d. ~~Once a QVL has been established for a particular product or service, the Contracting Officer, (CO) should utilize that QVL rather than soliciting and awarding separate contracts for the same products or services for the period of time the QVL is in effect. If the CO determines to solicit the open market, the vendors on the QVL should be solicited as well. e.~~ The IPT procurement team should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to who will bear the cost. The IPT procurement team must secure the necessary funds to accomplish these activities if ~~the Government~~ FAA is to bear the costs.
-

Section 3 : Screening and Evaluation

Old Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 3 : Screening and Evaluation

- a. Screening and evaluation procedures should be in accordance with Section 3 of the Acquisition Management System (AMS).
- b. The CO, in conjunction with the IPT, should formulate appropriate evaluation criteria for screening and qualifying vendors. The IPT should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The IPT should develop an evaluation plan describing how vendors will be evaluated and against what criteria.
- c. The screening information request (SIR) should indicate:
- (1) a QVL is being established;
 - (2) types of products or services anticipated to be solicited and awarded;
 - (3) criteria vendors must meet to qualify for the QVL;

- (4) information prospective vendors must submit (including the submission due date);
- (5) the duration of the QVL;
- (6) a brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;
- (7) method for selecting vendors to compete for a specific requirement once the QVL is established;
- (8) method for updating the QVL, including any method for requiring vendors to re-qualify for the QVL;
- (9) method for canceling the QVL; and
- (10) geographical area limitations, if appropriate.

New Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 3 : Screening and Evaluation

- a. Screening and evaluation procedures should be according to AMS Policy Section 3.
- b. The CO, in conjunction with the procurement team, should formulate appropriate evaluation criteria for screening and qualifying vendors. The procurement team should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The procurement team should develop an evaluation plan describing how vendors will be evaluated and against what criteria.
- c. The screening information request (SIR) should indicate:
 - (1) A QVL is being established;
 - (2) Types of products or services anticipated to be solicited and awarded;
 - (3) Criteria vendors must meet to qualify for the QVL;
 - (4) Information prospective vendors must submit (including the submission due date);
 - (5) Duration of the QVL;
 - (6) A brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;

- (7) Method for selecting vendors to compete for a specific requirement once the QVL is established;
- (8) Method for updating the QVL, including any method for requiring vendors to re-qualify for the QVL;
- (9) Method for canceling the QVL; and
- (10) Geographical area limitations, if appropriate.

Red Line Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 3 : Screening and Evaluation

- a. Screening and evaluation procedures should be ~~in~~according ~~accordance~~to AMS ~~with~~Policy Section 3 ~~of the Acquisition Management System (AMS).~~
- b. The CO, in conjunction with the ~~IPT~~procurement team, should formulate appropriate evaluation criteria for screening and qualifying vendors. The ~~IPT~~procurement team should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The ~~IPT~~procurement team should develop an evaluation plan describing how vendors will be evaluated and against what criteria.
- c. The screening information request (SIR) should indicate:
 - (1) ~~a~~A QVL is being established;
 - (2) ~~types~~Types of products or services anticipated to be solicited and awarded;
 - (3) ~~criteria~~Criteria vendors must meet to qualify for the QVL;
 - (4) ~~information~~Information prospective vendors must submit (including the submission due date);
 - (5) ~~the duration~~Duration of the QVL;
 - (6) ~~a~~A brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;
 - (7) ~~method~~Method for selecting vendors to compete for a specific requirement once the QVL is established;
 - (8) ~~method~~Method for updating the QVL, including any method for requiring vendors to re-qualify for the QVL;

- (9) ~~method~~Method for canceling the QVL; and
- (10) ~~geographical~~Geographical area limitations, if appropriate.
-

Section 4 : Evaluating Prospective Vendors

Old Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 4 : Evaluating Prospective Vendors

- a. The IPT should prepare evaluation criteria and a plan for how the evaluation will be conducted. Evaluators should take care to follow the stated criteria and provide a thorough evaluation of those vendors expressing an interest.
- b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased. QVLs need not be so large as to be unmanageable, e.g., there may be scores of qualified vendors providing routine services; this is why evaluation criteria (including past performance) should focus on factors that will distinguish average vendors from highly qualified vendors.
- c. The QVL should ensure competition, but need only include the best qualified vendors.

New Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 4 : Evaluating Prospective Vendors

- a. The CO should prepare an evaluation plan. Evaluators must follow the plan and criteria, and provide a thorough evaluation of those vendors expressing an interest.
- b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased. QVLs need not be so large as to be unmanageable, e.g., there may be many qualified vendors for routine services. This is why evaluation criteria (including past performance) should focus on factors that will distinguish average vendors from highly qualified vendors.
- c. The QVL should ensure competition, but need only include the best qualified vendors.

Red Line Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 4 : Evaluating Prospective Vendors

- a. The ~~IPT~~CO should prepare ~~evaluation criteria and a plan for how the~~an evaluation ~~will be conducted~~plan. Evaluators ~~should take care to~~must follow the ~~stated~~plan and criteria, and provide a thorough evaluation of those vendors expressing an interest.
- b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased. QVLs need not be so large as to be unmanageable, e.g., there may be ~~scores of~~many qualified vendors ~~providing for~~ routine services; ~~this~~This is why evaluation criteria (including past performance) should focus on factors that will distinguish average vendors from highly qualified vendors.
- c. The QVL should ensure competition, but need only include the best qualified vendors.
-

Section 7 : Updating a QVL

Old Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 7 : Updating a QVL

- a. The IPT should update QVLs on a periodic basis to allow new vendors an opportunity to qualify. There is no prescribed time when a QVL should be updated because every QVL will be different. Factors such as volume of procurements, size of the industry for the products or services, time and effort involved in establishing a new QVL will influence how often a QVL is updated.
- b. At the stated time for updating a QVL, the CO should request a written confirmation of each vendor's desire to remain on the QVL. Any vendor not responding to the request for confirmation may be deleted as an indication of lack of interest. Vendors may request to withdraw at any time by submitting a written request to the CO.
- c. If at any time, a vendor on an established QVL has performance difficulties, changes ownership, or otherwise becomes less than highly qualified, the CO may request that vendor re-qualify by submitting qualification information again. The CO should notify the vendor of the reasons it is being required to re-qualify.

New Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

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Section 7 : Updating a QVL

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Red Line Content: Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 7 : Updating a QVL

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Section 8 : Cancelling a QVL

Old Content: Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 8 : Cancelling a QVL

There may be situations when a QVL becomes underutilized, e.g. changes in requirements, budget constraints, lack of vendor participation, etc.. In these cases, the IPT should consider canceling the QVL. When canceling a QVL, the CO should notify all vendors in writing and provide a brief explanation of the reasons and whether there are any plans to replace or combine the QVL requirements with other requirements.

New Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 8 : Cancelling a QVL

There may be situations when a QVL becomes underutilized, e.g. changes in requirements, budget constraints, lack of vendor participation, etc.. In these cases, the CO should consider canceling the QVL. When canceling a QVL, the CO should notify all vendors in writing and provide a brief explanation of the reasons and whether there are any plans to replace or combine the QVL requirements with other requirements.

Red Line Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 8 : Cancelling a QVL

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Section 7 : Walsh-Healey Public Contracts Act

Old Content: Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 7 : Walsh-Healey Public Contracts Act

a. The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) requires all contracts, which will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed \$10,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

- (1) Items under express statutory authority to purchase "in the open market," such as commercial items;
- (2) Items under emergency, single source circumstances;
- (3) Perishable or agricultural products;

- (4) Public utilities;
- (5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;
- (6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;
- (7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;
- (8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)
- (9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).
- (10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).
- (11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and
- (12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

- (1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.
- (2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 20210. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 20210.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$10,000 or less is subsequently modified to exceed \$10,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.
- (2) If a contract for more than \$10,000 is subsequently modified by mutual agreement to \$10,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh Healey provisions in contracts in excess of \$10,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.

(4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA-owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed \$10,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. Eligibility as a Manufacturer or Regular Dealer.

(1) *Manufacturer.* An offeror qualifies as a manufacturer if it shows before award that it is:

(a) *Established.* An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.

(b) *Newly entering.* An offeror that is newly entering into a manufacturing activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:

(i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) *Regular Dealer.*

(a) *Qualifications.* An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales.* Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications.* For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the

dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. Determination Of Eligibility.

- (1) The responsibility for applying the eligibility requirements begins with the CO.
- (2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:
 - (a) The CO doubts the validity of the attestation;
 - (b) A protest has been lodged;
 - (c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or
 - (d) The IPT is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the IPT should, while on site, confirm the offeror's eligibility under Walsh-Healey.
- (3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:
 - (a) Pre-award surveys;
 - (b) Experience of other acquisition offices;
 - (c) Information available from the cognizant contract administration office;
 - (d) Information provided directly by the offeror; and
 - (e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on site survey conducted specifically for that purpose.
- (4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:
 - (a) The offeror will be notified in writing that:
 - (i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.

(ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct preaward investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. Pre-Award Protests Against Eligibility.

(1) When, before award, an unsuccessful offeror challenges the eligibility of the apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. Award Pending Final Determination.

(1) Award may be made immediately if the CO certifies in writing that:

(a) The products to be acquired are an emergency requirement; or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. *Award.* The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. *Postaward.*

(1) *Protests.*

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror.* If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation.* If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division.* Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are attached.

1. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

New Content: Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 7 : Walsh-Healey Public Contracts Act

a. The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) requires all contracts, that will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed \$10,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

(1) Items under express statutory authority to purchase "in the open market," such as commercial items;

(2) Items under emergency, single source circumstances;

(3) Perishable or agricultural products;

(4) Public utilities;

(5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;

(6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;

- (7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;
- (8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)
- (9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).
- (10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).
- (11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and
- (12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

- (1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.
- (2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 20210. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 20210.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$10,000 or less is subsequently modified to exceed \$10,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.
- (2) If a contract for more than \$10,000 is subsequently modified by mutual agreement to \$10,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.
- (3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh Healey provisions in contracts in excess of \$10,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.

(4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA-owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed \$10,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. Eligibility as a Manufacturer or Regular Dealer.

(1) *Manufacturer.* An offeror qualifies as a manufacturer if it shows before award that it is:

(a) *Established.* An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.

(b) *Newly entering.* An offeror that is newly entering into a manufacturing activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:

(i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed

for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) Regular Dealer.

(a) *Qualifications.* An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales.* Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications.* For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. Determination Of Eligibility.

- (1) The responsibility for applying the eligibility requirements begins with the CO.
- (2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:
 - (a) The CO doubts the validity of the attestation;
 - (b) A protest has been lodged;
 - (c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or
 - (d) The procurement team is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the procurement team should, while on site, confirm the offeror's eligibility under Walsh-Healey.
- (3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:
 - (a) Pre-award surveys;
 - (b) Experience of other acquisition offices;
 - (c) Information available from the cognizant contract administration office;
 - (d) Information provided directly by the offeror; and
 - (e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on site survey conducted specifically for that purpose.
- (4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:
 - (a) The offeror will be notified in writing that:
 - (i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.
 - (ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct preaward investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. Pre-Award Protests Against Eligibility.

(1) When, before award, an unsuccessful offeror challenges the eligibility of the apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. Award Pending Final Determination.

(1) Award may be made immediately if the CO certifies in writing that:

(a) The products to be acquired are an emergency requirement; or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. *Award.* The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. *Postaward.*

(1) *Protests.*

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror.* If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation.* If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division.* Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are attached.

l. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Red Line Content: Procurement Guidance:

T3.6.2 - Labor Laws

Labor-Related Laws

Section 7 : Walsh-Healey Public Contracts Act

a. The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) requires all contracts, ~~which~~ that will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed \$10,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

(1) Items under express statutory authority to purchase "in the open market," such as commercial items;

(2) Items under emergency, single source circumstances;

(3) Perishable or agricultural products;

(4) Public utilities;

(5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;

(6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;

(7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;

- (8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)
- (9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).
- (10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).
- (11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and
- (12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

- (1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.
- (2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 20210. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 20210.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$10,000 or less is subsequently modified to exceed \$10,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.
- (2) If a contract for more than \$10,000 is subsequently modified by mutual agreement to \$10,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.
- (3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh Healey provisions in contracts in excess of \$10,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.
- (4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA-owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed \$10,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. *Eligibility as a Manufacturer or Regular Dealer.*

(1) *Manufacturer.* An offeror qualifies as a manufacturer if it shows before award that it is:

(a) *Established.* An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.

(b) *Newly entering.* An offeror that is newly entering into a manufacturing activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:

(i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) Regular Dealer.

(a) *Qualifications.* An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales.* Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications.* For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. Determination Of Eligibility.

(1) The responsibility for applying the eligibility requirements begins with the CO.

(2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:

- (a) The CO doubts the validity of the attestation;
- (b) A protest has been lodged;
- (c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or
- (d) The IPTprocurement team is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the IPTprocurement team should, while on site, confirm the offeror's eligibility under Walsh-Healey.

(3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:

- (a) Pre-award surveys;
- (b) Experience of other acquisition offices;
- (c) Information available from the cognizant contract administration office;
- (d) Information provided directly by the offeror; and
- (e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on site survey conducted specifically for that purpose.

(4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:

- (a) The offeror will be notified in writing that:
 - (i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.
 - (ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct preaward investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. Pre-Award Protests Against Eligibility.

(1) When, before award, an unsuccessful offeror challenges the eligibility of the apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. Award Pending Final Determination.

(1) Award may be made immediately if the CO certifies in writing that:

(a) The products to be acquired are an emergency requirement; or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. *Award.* The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. *Postaward.*

(1) *Protests.*

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror.* If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation.* If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division.* Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are attached.

l. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Section 1 : Requirements

Old Content: Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 1 : Requirements

a. *General.* The FAA is subject to the requirements of paragraph 1544 of 25 U.S.C. that establishes an incentive payment for contractors of Federal agencies that subcontract with or use suppliers who are Indian organizations or Indian-owned economic enterprises in performing the contract. This incentive payment may be equal to 5% of the amount paid, or to be paid, to a qualifying subcontractor or supplier that is an Indian organization or Indian-owned economic enterprise.

b. *Declarations.*

(1) *Self-declarations.* An Indian organization or Indian-owned economic enterprise may self-declare as to its eligibility under the Indian incentive program using the Business Declaration Form referenced in the Appendix to section T3.6.1, Small Business Utilization.

(2) *Reliance on Self-declarations.* Contracting Officers and prime contractors acting in good faith, may rely on the self-declaration of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(3) *Challenges to Self-declarations.* To be considered timely, challenges shall:

(a) Be in writing;

(b) Identify the basis for the challenge;

(c) Provide detailed evidence supporting the claim; and

(d) Be filed with and received by the Contracting Officer prior to award of the subcontract in question. Challenges received after award of the subcontract shall be referred to Bureau of Indian Affairs (BIA), but the BIA determination shall have prospective application only.

c. Responsibilities.

(1) The Integrated Product Team (IPT).

(a) The IPT should determine if a subcontracting plan will be required under clause 3.6.1-4, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" and if subcontracting opportunities exist pursuant to clause 3.6.2-26, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises." If the IPT determines that a subcontracting plan is required and there are opportunities for subcontracting to Indian organizations and Indian-owned economic enterprises, as defined by the clause, the IPT may seek funding in accordance with agency procedures to provide an incentive payment under clause 3.6.2-26.

(b) Insert clause 3.6.2-26, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises," into the screening information request and contract when funds are available for this type of incentive payment.

(2) Contracting Officer Actions. The CO will accomplish the following:

(a) Refer self-declaration challenges to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn.: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. (The BIA will determine the eligibility and notify the CO. The BIA will acknowledge receipt of the request from the CO within 5 working days. Within 45 additional working days, BIA will advise the CO, in writing, of its determination.)

(b) Notify the prime contractor upon receipt of a challenge.

(c) Authorize an incentive payment of 5 percent of the amount paid to the subcontractor subject to the terms and conditions of the contract and the availability of funds,.

(3) Contractor Actions. If a challenge is received before the subcontract is awarded, the contractor will withhold award of the subcontract pending the determination by BIA. However, if the prime contractor determines, and the CO agrees, that award must be made in order to permit timely performance of the prime contract, the contractor may proceed with the award of the subcontract.

(4) Bureau of Indian Affairs (BIA).

(a) The BIA will determine the eligibility of the firm and notify the CO within 50 working days after receipt of the request.

(b) If the BIA determination is not received within the prescribed time period, the CO and the contractor may rely on the self-declaration of the subcontractor.

New Content: Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 1 : Requirements

a. *General.* The FAA is subject to the requirements of paragraph 1544 of 25 U.S.C. that establishes an incentive payment for contractors of Federal agencies that subcontract with or use suppliers who are Indian organizations or Indian-owned economic enterprises in performing the contract. This incentive payment may be equal to 5% of the amount paid, or to be paid, to a qualifying subcontractor or supplier that is an Indian organization or Indian-owned economic enterprise.

b. *Declarations.*

(1) *Self-declarations.* An Indian organization or Indian-owned economic enterprise may self-declare as to its eligibility under the Indian incentive program using FAA's Business Declaration Form (see AMS Procurement Guidance T3.6.1, Small Business Utilization).

(2) *Reliance on Self-declarations.* COs and prime contractors acting in good faith, may rely on the self-declaration of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the CO has independent reason to question that status.

(3) *Challenges to Self-declarations.* To be considered timely, challenges must:

- (a) Be in writing;
- (b) Identify the basis for the challenge;
- (c) Provide detailed evidence supporting the claim; and
- (d) Be filed with and received by the CO before award of the subcontract in question. Challenges received after award of the subcontract must be referred to Bureau of Indian Affairs (BIA), but the BIA determination must have prospective application only.

c. *Responsibilities.*

(1) *CO Actions.* The CO will:

(a) Determine if a subcontracting plan will be required under AMS clause 3.6.1-4, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" and if subcontracting opportunities exist pursuant to AMS clause 3.6.2-26, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises." If the CO determines that a subcontracting plan is required and there are opportunities for subcontracting to Indian organizations and Indian-owned economic enterprises, as defined by the clause, the CO may seek funding according to FAA procedures to provide an incentive payment under clause 3.6.2-26.

(b) Insert AMS clause 3.6.2-26, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises," into the screening information request and contract when funds are available for this type of incentive payment.

(c) Refer self-declaration challenges to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn.: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, D.C., 20245. (The BIA will determine the eligibility and notify the CO. The BIA will acknowledge receipt of the request from the CO within five working days. Within 45 additional working days, BIA will advise the CO, in writing, of its determination.)

(d) Notify the prime contractor upon receipt of a challenge.

(e) Authorize an incentive payment of 5% of the amount paid to the subcontractor subject to the terms and conditions of the contract and the availability of funds.

(2) *Contractor Actions.* If a challenge is received before the subcontract is awarded, the contractor will withhold award of the subcontract pending the determination by BIA. However, if the prime contractor determines, and the CO agrees, that award must be made in order to permit timely performance of the prime contract, the contractor may proceed with the award of the subcontract.

(3) *Bureau of Indian Affairs (BIA).*

(a) The BIA will determine the eligibility of the firm and notify the CO within 50 working days after receipt of the request.

(b) If the BIA determination is not received within the prescribed time period, the CO and the contractor may rely on the self-declaration of the subcontractor.

Red Line Content: Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 1 : Requirements

a. *General.* The FAA is subject to the requirements of paragraph 1544 of 25 U.S.C. that establishes an incentive payment for contractors of Federal agencies that subcontract with or use suppliers who are Indian organizations or Indian-owned economic enterprises in performing the contract. This incentive payment may be equal to 5% of the amount paid, or to be paid, to a qualifying subcontractor or supplier that is an Indian organization or Indian-owned economic enterprise.

b. *Declarations.*

(1) *Self-declarations.* An Indian organization or Indian-owned economic enterprise may self-declare as to its eligibility under the Indian incentive program using ~~the~~ FAA's

Business Declaration Form ~~referenced in the~~ ~~(see Appendix to section~~ AMS Procurement Guidance T3.6.1, Small Business Utilization).

(2) *Reliance on Self-declarations.* ~~Contracting Officers~~ COs and prime contractors acting in good faith, may rely on the self-declaration of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the ~~Contracting Officer~~ CO has independent reason to question that status.

(3) *Challenges to Self-declarations.* To be considered timely, challenges ~~shall~~ must:

- (a) Be in writing;
- (b) Identify the basis for the challenge;
- (c) Provide detailed evidence supporting the claim; and
- (d) Be filed with and received by the ~~Contracting Officer prior~~ CO to before award of the subcontract in question. Challenges received after award of the subcontract ~~shall~~ must be referred to Bureau of Indian Affairs (BIA), but the BIA determination ~~shall~~ must have prospective application only.

c. Responsibilities.

(1) ~~The~~ CO Integrated Actions. ~~Product Team~~ The CO (IPT); will:

(a) ~~The IPT should~~ Determine ~~determine~~ if a subcontracting plan will be required under AMS clause 3.6.1-4, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" and if subcontracting opportunities exist pursuant to AMS clause 3.6.2-26, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises." If the ~~IPT~~ CO determines that a subcontracting plan is required and there are opportunities for subcontracting to Indian organizations and Indian-owned economic enterprises, as defined by the clause, the ~~IPT~~ CO may seek funding ~~in accordance~~ according ~~with agency~~ to FAA procedures to provide an incentive payment under clause 3.6.2-26.

(b) Insert AMS clause 3.6.2-26, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises," into the screening information request and contract when funds are available for this type of incentive payment. ~~(2)~~
~~Contracting Officer Actions. The CO will accomplish the following:~~

~~(a)~~ Refer self-declaration challenges to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn.: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, DC 20245. (The BIA will determine the eligibility and notify the CO. The BIA will acknowledge receipt of the request from the CO within 5 ~~five~~ working days. Within 45 additional working days, BIA will advise the CO, in writing, of its determination.)

~~(b)~~ d Notify the prime contractor upon receipt of a challenge.

(e) Authorize an incentive payment of 5-percent% of the amount paid to the subcontractor subject to the terms and conditions of the contract and the availability of funds.

(32) *Contractor Actions.* If a challenge is received before the subcontract is awarded, the contractor will withhold award of the subcontract pending the determination by BIA. However, if the prime contractor determines, and the CO agrees, that award must be made in order to permit timely performance of the prime contract, the contractor may proceed with the award of the subcontract.

(43) *Bureau of Indian Affairs (BIA).*

(a) The BIA will determine the eligibility of the firm and notify the CO within 50 working days after receipt of the request.

(b) If the BIA determination is not received within the prescribed time period, the CO and the contractor may rely on the self-declaration of the subcontractor.

Section 2 : Process

Old Content: Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 2 : Process

a. *Office of Communications, Navigation and Surveillance Systems.* The Office of Communications, Navigation and Surveillance Systems, AND-1, is the FAA focal point for the SPI and will coordinate and assist in providing a member/representative to the Management Council at the Contractor's facility as appropriate. An FAA member may participate in the SPI/Block Change process at a specific Contractor's facility.

b. *FAA Management Council Member.*

(1) The FAA member may request assistance from FAA organizations such as ASU-200 quality and reliability or AIR-300 aircraft certification as subject matter experts or as inplant representatives.

(2) The FAA member will provide Management Council concept papers to the Office of Communications, Navigation, and Surveillance Systems, AND-4, and IPT members of initiatives related to their program.

c. *Integrated Product Team (IPT).* The IPT may either adopt or reject the concept paper.

d. *Consequence for the FAA.* The acceptance or rejection of an SPI concept paper by the Department of Defense has absolutely no effect or consequence for FAA contracts, regulations

or processes.

New Content: Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 2 : Process

a. ATO Navigation Services (AJW-4) is FAA's focal point for the SPI, and will coordinate and assist in providing a member/representative to the Management Council at a contractor's facility as appropriate. An FAA member may participate in the SPI/Block Change process at a specific contractor's facility.

b. The FAA member may request assistance from FAA organizations, such as NAS Quality Assurance and Performance (AJW-162) or Aircraft Certification (AIR-300), as subject matter experts or as in-plant representatives. The FAA member will provide Management Council concept papers of initiatives related to their program to ATO Navigation Services (AJW-4) and the procurement team. The procurement team may either adopt or reject the concept paper. DoD's acceptance or rejection of an SPI concept paper has no effect or consequence for FAA contracts, regulations or processes.

Red Line Content: Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 2 : Process

a. ~~Office of Communications, Navigation and Surveillance Systems. The Office of Communications, AND~~ ATO Navigation ~~and Surveillance Systems, AND~~ Services (AJW-1,4) is the FAA's focal point for the SPI, and will coordinate and assist in providing a member/representative to the Management Council at ~~the a Contractor~~ contractor ~~�s~~ facility as appropriate. An FAA member may participate in the SPI/Block Change process at a specific ~~Contractor~~ contractor's facility.

b. ~~FAA Management Council Member~~

~~b. (1)~~ The FAA member may request assistance from FAA organizations, such as ~~ASU-200~~ NAS ~~quality~~ Quality Assurance and ~~reliability~~ Performance (AJW-162) or Aircraft Certification (AIR-300-aircraft certification), as subject matter experts or as ~~inplant~~ in-plant representatives. ~~(2)~~ The FAA member will provide Management Council concept papers ~~to the Office of Communications, Navigation, and Surveillance Systems, AND 4, and IPT members~~ of initiatives related to their program. ~~c. Integrated~~ to ATO Product Team Navigation Services (IPTAJW-4) and the procurement team. The ~~IPT~~ procurement team may either adopt or reject the concept paper. ~~d. Consequence for the FAA. The~~ DoD's acceptance or rejection of an SPI concept paper ~~by the Department of Defense~~ has ~~absolutely~~ no effect or consequence for FAA contracts, regulations or processes. —

Section 2 : Minimizing Risk

Old Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 2 : Minimizing Risk

- a. The first article test is preferably conducted prior to the contractor's acquiring materials or components for use in production, to minimize risk to both the FAA and the contractor. Departing from this sequence of testing and then purchasing materials increases risk to both parties and should be avoided when possible. Also, relevant appropriation statutes may include restrictions on ordering long lead items or production units prior to completion of the first article testing (appropriation statutes should be reviewed for these potential restrictions).
- b. In establishing delivery schedules, the integrated product team (IPT) should consider the time needed to conduct the first article test, order and receive materials or components, and produce items. Risk can be minimized by establishing realistic schedules that include sufficient time to complete all the requirements that precede production, including first article testing and ordering and delivery of materials and components. However, circumstances may arise that do not allow this customary sequence leading to production. In unique circumstances where this cannot be done, the IPT may consider possible alternatives that would facilitate an expedient delivery schedule of acceptable items. For example, under Alternate II to the "First Article Approval" clauses, the CO may authorize the contractor in writing to either "...acquire *specific* material and components or commence production *to the extent essential* to meet the delivery schedule" prior to first article approval. The authorization is limited to *specific* materials and components and production *to the extent essential*. The IPT should examine the specific facts at hand and minimize the FAA's risk by authorizing only specific items and extent of production truly necessary to meet schedule. Long lead items are possible candidates for this type of early authorization.
- c. The IPT should examine the FAST Procurement Toolbox clauses related to first article testing and include a clause that is most appropriate in the situation.

New Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 2 : Minimizing Risk

- a. To minimize risk to both FAA and the contractor, the first article test is preferably conducted before the contractor acquires materials or components for use in production. Departing from this sequence of testing and then purchasing materials increases risk to both parties and should be avoided when possible. Also, appropriation statutes may include restrictions on ordering long lead items or production units prior to completion of the first article testing (the CO should review appropriation statutes for these potential restrictions).

b. When establishing delivery schedules, the procurement team should consider the time needed to conduct the first article test, order and receive materials or components, and produce items. Risk can be minimized by establishing realistic schedules that include sufficient time to complete all the requirements that precede production, including first article testing and ordering and delivery of materials and components. However, circumstances may arise that do not allow this customary sequence leading to production. In unique circumstances where this cannot be done, the procurement team may consider possible alternatives that would facilitate an expedient delivery schedule of acceptable items. For example, under Alternate II to the "First Article Approval" clauses, the CO may authorize the contractor in writing to either "...acquire *specific* material and components or commence production *to the extent essential* to meet the delivery schedule" prior to first article approval. The authorization is limited to *specific* materials and components and production *to the extent essential*. The procurement team should examine the specific facts and minimize FAA's risk by authorizing only specific items and extent of production truly necessary to meet schedule. Long lead items are possible candidates for this type of early authorization.

c. The CO should include first article testing clause/alternate clause most appropriate in the situation.

Red Line Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 2 : Minimizing Risk

a. ~~The~~To minimize risk to both FAA and the contractor, the first article test is preferably conducted ~~prior to~~ before the contractor's ~~acquiring~~ acquires materials or components for use in production, ~~to minimize risk to both the FAA and the contractor.~~ Departing from this sequence of testing and then purchasing materials increases risk to both parties and should be avoided when possible. Also, ~~relevant~~ appropriation statutes may include restrictions on ordering long lead items or production units prior to completion of the first article testing (~~appropriation statutes~~ the CO should review appropriation reviewed statutes for these potential restrictions).

b. ~~In~~When establishing delivery schedules, the ~~integrated product~~ procurement team (~~IPT~~) should consider the time needed to conduct the first article test, order and receive materials or components, and produce items. Risk can be minimized by establishing realistic schedules that include sufficient time to complete all the requirements that precede production, including first article testing and ordering and delivery of materials and components. However, circumstances may arise that do not allow this customary sequence leading to production. In unique circumstances where this cannot be done, the ~~IPT~~ procurement team may consider possible alternatives that would facilitate an expedient delivery schedule of acceptable items. For example, under Alternate II to the "First Article Approval" clauses, the CO may authorize the contractor in writing to either "...acquire *specific* material and components or commence production *to the extent essential* to meet the delivery schedule" prior to first article approval. The authorization is limited to *specific* materials and components and production *to the extent essential*. The ~~IPT~~ procurement team should examine the specific facts ~~at hand~~ and minimize ~~the~~

FAA's risk by authorizing only specific items and extent of production truly necessary to meet schedule. Long lead items are possible candidates for this type of early authorization.

c. The ~~IPTCO~~ should ~~examine the FAST Procurement Toolbox clauses related to~~ include first article testing ~~and include a~~ clause ~~that is~~ alternate clause most appropriate in the situation.

Section 3 : Testing and Approval

Old Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 3 : Testing and Approval

The IPT should consider the appropriate first article testing method and clearly delineate the requirements in the contract. The following illustrate the factors that should be considered in establishing the first article requirements and stated in the contract:

- a. Will the FAA or the contractor conduct the first article test;
- b. Performance or other characteristics that must be met;
- c. Detailed technical requirements for first article testing;
- d. First article test report data required in contractor-performed testing;
- e. Tests the FAA will use when it performs the tests;
- f. If the approved first article will serve as the manufacturing model; and
- g. Disposition of the approved first article.

New Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 3 : Testing and Approval

The procurement team should determine the appropriate first article testing method and clearly delineate the requirements in the contract. The following illustrates factors that should be considered when establishing first article requirements, and stated in the contract:

- a. Will FAA or the contractor conduct the first article test;
- b. Performance or other characteristics that must be met;
- c. Detailed technical requirements for first article testing;

- d. First article test report data required in contractor-performed testing;
- e. Tests FAA will use when it performs the tests;
- f. If the approved first article will serve as the manufacturing model; and
- g. Disposition of the approved first article.

Red Line Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 3 : Testing and Approval

The ~~IPT~~procurement team should ~~consider~~determine the appropriate first article testing method and clearly delineate the requirements in the contract. The following ~~illustrate the~~illustrates factors that should be considered ~~in~~when establishing ~~the~~first article requirements, and ~~stated~~in the contract:

- a. Will ~~the~~FAA or the contractor conduct the first article test;
- b. Performance or other characteristics that must be met;
- c. Detailed technical requirements for first article testing;
- d. First article test report data required in contractor-performed testing;
- e. Tests ~~the~~FAA will use when it performs the tests;
- f. If the approved first article will serve as the manufacturing model; and
- g. Disposition of the approved first article.

Section 4 : Waiving First Article

Old Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 4 : Waiving First Article

Alternate II of the "First Article Approval" clauses authorizes the CO to waive the first article in instances where supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government. The IPT should utilize this approach when appropriate to the situation. If the potential to waive first article testing exists, the IPT may consider alternative offers based upon including or omitting the testing in the price and delivery schedule. Evaluation criteria should indicate how this will be treated in the evaluation.

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New Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 4 : Waiving First Article

Alternate II of the "First Article Approval" clauses authorizes the CO to waive the first article in instances where supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government. The procurement team should use this approach when appropriate for the circumstances. If the potential to waive first article testing exists, the procurement team may consider alternative offers based on including or omitting the testing in the price and delivery schedule. Evaluation criteria should indicate how this will be treated in the evaluation.

Red Line Content: Procurement Guidance:

T3.10.9 First Article Approval and Testing

First Article

Section 4 : Waiving First Article

Alternate II of the "First Article Approval" clauses authorizes the CO to waive the first article in instances where supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government. The ~~IPT~~procurement team should ~~utilize~~use this approach when appropriate ~~to~~for the ~~situation~~circumstances. If the potential to waive first article testing exists, the ~~IPT~~procurement team may consider alternative offers based ~~upon~~on including or omitting the testing in the price and delivery schedule. Evaluation criteria should indicate how this will be treated in the evaluation.

Section 1 : Background

Old Content: Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 1 : Background

a. *Participation.* The Federal Aviation Administration allows participation in the single process initiative (SPI), initiated by the Department of Defense (DoD), when participation is in the best interest of the FAA.

b. *Reference Documentation.* The following documents provide additional information on the SPI and may be obtained by calling the Quality Standards and GIDEP Branch, ASU-150, x78836 or DoD information desk at (703) 697-3189:

(1) DoD/OSD letter dated 12/6/95, Common Systems/ISO-9000/Expedited Block Changes;

(2) DoD/OSD letter dated 12/8/95, Single Process Initiative;

(3) DLA letter dated 12/11/95, Adoption of Common Processes at Defense Contract Facilities;

(4) FAA Acquisition Executive letter dated January 22, 1997 "FAA Participation in Single Process Initiative/Block Change Process."

c. *Links to the Worldwide Web/Internet.* To access the Defense Contract Management Command (DCMC) web site for DoD executive agent information on SPI use the following Internet address: <http://www.dcmc.dcrb.dla.mil/spi>. Each military service and other DoD agencies have web sites with their own information on their SPI activities. One of those is the Air Force at http://www.safhq.hq.af.mil/acq_ref/spi/spiguide.html. **New Content:** Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 1 : Background

a. When in FAA's best interest, it may participate in the single process initiative (SPI) initiated by Department of Defense (DoD).

b. The following documents contain additional information on the SPI, and may be obtained by contacting the Procurement Information Services Team (AJA-A12) or DoD information desk at (703) 697-3189:

(1) DoD/OSD letter dated 12/6/95, Common Systems/ISO-9000/Expedited Block Changes;

(2) DoD/OSD letter dated 12/8/95, Single Process Initiative;

(3) DLA letter dated 12/11/95, Adoption of Common Processes at Defense Contract Facilities;

(4) FAA Acquisition Executive letter dated January 22, 1997 "FAA Participation in Single Process Initiative/Block Change Process."

c. The Defense Contract Management Command (DCMC) web site for DoD executive agent information on SPI is at: <http://www.dcmc.dcrb.dla.mil/spi>. DoD military services and agencies have other web sites with information on their SPI activities. **Red Line Content:** Procurement Guidance:

T3.10.8 Single Process Initiative

Single Process Initiative

Section 1 : Background

a. ~~Participation.~~ When Thein FederalFAA's Aviationbest Administrationinterest, allowsit participationmay participate in the single process initiative (SPI); initiated by ~~the~~ Department of Defense (DoD), ~~when participation is in the best interest of the FAA.~~

b. ~~Reference Documentation.~~ The following documents ~~provide~~contain additional information on the SPI, and may be obtained by ~~calling~~contacting the ~~Quality Standards~~Procurement and

~~GIDEP~~**Information Services** Branch, ~~Team~~ ASU(AJA-150, x78836A12) or DoD information desk at (703) 697-3189:

- (1) DoD/OSD letter dated 12/6/95, Common Systems/ISO-9000/Expedited Block Changes;
- (2) DoD/OSD letter dated 12/8/95, Single Process Initiative;
- (3) DLA letter dated 12/11/95, Adoption of Common Processes at Defense Contract Facilities;
- (4) FAA Acquisition Executive letter dated January 22, 1997 "FAA Participation in Single Process Initiative/Block Change Process."

~~e. Links to the Worldwide Web/Internet c. To access the~~ **The** Defense Contract Management Command (DCMC) web site for DoD executive agent information on SPI ~~use the following Internet's address at:-~~ <http://www.dcmc.dcrb.dla.mil/spi>. ~~Each~~ **DoD** military ~~services~~ **services** and ~~other DoD agencies~~ have **other** web sites with ~~their own~~ information on their SPI activities. ~~One of those is the Air Force at~~ http://www.safhq.hq.af.mil/acq_ref/spi/spiguide.html.

Section 2 : Definitions

Old Content: Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 2 : Definitions Definitions are found in clause 3.6.2-26 Utilization of Indian Organizations and Indian-Owned Economic Enterprises. **New Content:** Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 2 : Definitions Definitions are found in AMS clause 3.6.2-26, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. **Red Line Content:** Procurement Guidance:

T3.6.5 Indian Incentive Program

Indian Incentive Program

Section 2 : Definitions ~~Definitions~~ **Definitions** are found in **AMS** clause 3.6.2-26, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

Section 5 : Notifying Vendors Excluded from a QVL

Old Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 5 : Notifying Vendors Excluded from a QVL

a. The CO should notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with Section 3 of the AMS.

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b. A public announcement is recommended upon the establishment of a QVL.

New Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 5 : Notifying Vendors Excluded from a QVL

a. The CO should notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with AMS Policy Section 3.

b. A public announcement is recommended upon establishing a QVL.

Red Line Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 5 : Notifying Vendors Excluded from a QVL

a. The CO should notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with ~~Section 3~~ AMS of the AMS Policy Section 3.

b. A public announcement is recommended upon ~~the establishment of~~ establishing a QVL.

Section 10 : QVL for Products

Old Content: Procurement Guidance:

T3.2.2.3 - Complex and Noncommercial Source Selection

Establishment of a Qualified Vendors List (QVL)

Section 10 : QVL for Products

Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by the FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that the FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: the manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

New Content: Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 10 : QVL for Products

Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: the manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

Red Line Content: Procurement Guidance:

*T3.2.2.3 - Complex and Noncommercial Source Selection
Establishment of a Qualified Vendors List (QVL)*

Section 10 : QVL for Products

Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by ~~the~~ FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that ~~the~~ FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: ~~the~~ manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

Section 1 : Background

Old Content: Procurement Guidance:

*T.3.1.8 Procurement Integrity Act
Forms*

Section 1 : Background

Procurement Integrity Act, FAA Definitions

1. Background:

As provided by 49 United States Code (U.S.C.) Section 40122(g)(3), effective October 1, 1999, the Federal Aviation Administration (FAA) is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, Subsections (f), Definitions, and (g), Limitations on Protests, both in Section 423, do not apply to the FAA. In lieu of the definitions contained in the Subsection (f) of the Act, the FAA Administrator was directed by Congress to adopt its own definitions, consistent with the intent of the FAA's Acquisition Management System (AMS) and the Act. These definitions are provided below. *(The full text of the Procurement Integrity Act is shown in the following pages.)*

New Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 1 :

Red Line Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 1 : Background

Procurement Integrity Act, FAA Definitions 1. Background:

~~As provided by 49 United States Code (U.S.C.) Section 40122(g)(3), effective October 1, 1999, the Federal Aviation Administration (FAA) is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, Subsections (f), Definitions, and (g), Limitations on Protests, both in Section 423, do not apply to the FAA. In lieu of the definitions contained in the Subsection (f) of the Act, the FAA Administrator was directed by Congress to adopt its own definitions, consistent with the intent of the FAA's Acquisition Management System (AMS) and the Act. These definitions are provided below. (The full text of the Procurement Integrity Act is shown in the following pages.)~~

Section 1 : Background

Old Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 1 : Background

The Procurement Integrity Act became Federal law effective October 1, 1999, and prohibits disclosing certain procurement information.

New Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 1 : Applicability

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As provided by 49 U.S.C. Section 40122(g)(3), effective October 1, 1999, FAA is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, in 41 U.S.C. Section 423, subsections (f) Definitions and (g) Limitations on Protests, do not apply to FAA. Congress directed the FAA to adopt its own definitions in lieu of the definitions in subsection (f) of the Act, consistent with the intent of AMS and the Act. By memorandum dated July 14, 2000, the Administrator approved FAA's definitions. The FAA-specific definitions in this Procurement Guidance are to be substituted for subsections (f) Definitions and (g) Limitation on Protests.

Red Line Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 1 : ~~Background~~ Applicability

~~The~~As provided by 49 U.S.C. Section 40122(g)(3), effective October 1, 1999, FAA is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). ~~became Federal~~However, law effective in 41 October U.S.C. Section 423, 1999 subsections (f) Definitions and (g) Limitations on Protests, do not apply to FAA. Congress directed the FAA to adopt its own definitions in lieu of the definitions in subsection (f) of the Act, consistent with the intent of AMS and prohibits the Act. By memorandum dated July 14, 2000, the Administrator approved FAA's definitions. The FAA-specific definitions in this Procurement Guidance are disclosing certain procurement to be substituted information for subsections (f) Definitions and (g) Limitation on Protests.

Section 2 : Definitions: As used in 41 U.S.C. Section 423:

Old Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 2 : Definitions: As used in 41 U.S.C. Section 423:

Appendix 2 to T3.1.8 - Procurement Integrity Act

Text of the Procurement Integrity Act 49 U.S.C. Section 423

Below is the text of the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Toolbox Appendix). Please take special notice of 49 U.S.C. Section 423(h) below, which contains "Savings provisions", or situations where the Procurement Integrity Act does not apply.

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information.

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(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (1) applies to any person who -

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of , or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.

(1) If an agency official who is participating personally and substantially in a Federal agency in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall -

(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and

(B) (i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in

such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that --

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

d) Prohibition on former official's acceptance of compensation from contractor.

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which

that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions.

(1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

(2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions.

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which -

(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the

present responsibility of a Government contractor or subcontractor.

(h) Savings provisions. This section does not -

- (1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;
- (2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;
- (3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;
- (4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;
- (5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;
- (6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or
- (7) limit the applicability of any requirements, sanctions, contract; or penalties, and remedies established under any other law or regulation.

New Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 2 : Red Line Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Forms

Section 2 : Definitions: ~~As used in 41 U.S.C. Section 423: Appendix 2 to T3.1.8 Procurement Integrity Act Text of the Procurement Integrity Act 49 U.S.C. Section 423 Below is the text of~~

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~~the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Toolbox Appendix). Please take special notice of 49 U.S.C. Section 423(h) below, which contains "Savings provisions", or situations where the Procurement Integrity Act does not apply. § 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information (a) Prohibition on disclosing procurement information. (1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (2) Paragraph (1) applies to any person who—(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and (B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information. (b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment. (1) If an agency official who is participating personally and substantially in a Federal agency in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and (B) (i) reject the possibility of non-Federal employment; or—(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that—(I) the person is no longer a bidder or offeror in that Federal agency procurement; or (II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment. (2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public. (3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e). (4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e). d) Prohibition on former official's acceptance of compensation from contractor. (1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection~~

evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000; (B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or (C) personally made for the Federal agency—(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor; (ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000; (iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or (iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor. (2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph. (3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e). (4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e). (5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor. (e) Penalties and administrative actions. (1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—(A) exchanging the information covered by such subsection for anything of value, or (B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both. (2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct. (3) Administrative actions. (A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate: (i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded. (ii) Rescission of a contract with respect to which—(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or (II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense. (iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation. (iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other

~~applicable law or regulation. (B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract. (C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor. (h) Savings provisions. This section does not—(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information; (2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information; (3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement; (4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; (5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency; (6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or (7) limit the applicability of any requirements, sanctions, contract, or penalties, and remedies established under any other law or regulation.~~

Section 2 : Definitions

Old Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 2 : Definitions

Under AMS, FAA-specific definitions are to be substituted for Procurement Integrity Act subsection (f), "Definitions", and (g), "Limitation on Protests". See FAA-specific definitions for subsection (f) below. The following Appendix includes the full text of the Procurement Integrity Act (excluding subsections (f) and (g)). You may select this link to review the FAA [Administrator's July 14, 2000 letter of approval of the PIA definitions](#).

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in Appendix C of the AMS).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Technical evaluations of responses to SIRs or unsolicited proposals.

(E) Cost or price evaluation plans.

(F) Cost or price evaluations of responses to SIRs or unsolicited proposals.

(G) Down select determinations identifying SIR responses that are most likely to receive contract award.

(H) Any ranking of offerors developed by the FAA during the source selection process.

(I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.

(J) Other information based on a case- by-case determination made by the FAA Associate Administrator for Research and Acquisition, his or her designee, or the Integrated Product Team, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document.

(3) The term "Federal agency" means the FAA.

(4) The term "Federal agency procurement" means the acquisition (by using competitive or non-competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.

(5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.

(6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.

(7) The term "official" means the following:

(A) An employee of the FAA, as defined in the FAA's Personnel Management System.

(B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3).

(8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System.

(9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition.

(10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA Integrated Product Team (IPT) Lead or Acting Lead, or a Product Team (PT) Lead or Acting Lead.

(11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA IPT Lead, or a Deputy or Acting Deputy to a PT Lead.

(12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS.

New Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 2 : FAA-Specific Definitions

Under AMS, FAA-specific definitions are to be substituted for Procurement Integrity Act subsection (f) "Definitions" and (g) "Limitation on Protests."

FAA Definitions as Used in 41 U.S.C. Section 423

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in Appendix C of the AMS).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Technical evaluations of responses to SIRs or unsolicited proposals.

(E) Cost or price evaluation plans.

(F) Cost or price evaluations of responses to SIRs or unsolicited proposals.

(G) Down select determinations identifying SIR responses that are most likely to receive contract award.

(H) Any ranking of offerors developed by the FAA during the source selection process.

(I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.

(J) Other information based on a case- by-case determination made by the FAA Acquisition Executive*, his or her designee, or the Product or Service Team**, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document.

- (3) The term "Federal agency" means the FAA.
- (4) The term "Federal agency procurement" means the acquisition (by using competitive or non-competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.
- (5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.
- (6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.
- (7) The term "official" means the following:
 - (A) An employee of the FAA, as defined in the FAA's Personnel Management System.
 - (B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).
 - (C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).
 - (D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3).
- (8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System.
- (9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition.
- (10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA Product or Service Team** Lead or Acting Lead.
- (11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA Product or Service Team** Lead.
- (12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS.

*The July 14, 2000 memo approving FAA definitions used "Associate Administrator for Research and Acquisitions." Due to organizational changes in 2006, this position was abolished. The FAA Acquisition Executive is an equivalent position.

**The July 14, 2000 memo approving FAA definitions used the term "Integrated Product Team." Due to organizational changes, this term was not used after 2006. Product or Service Team is a similar structure.

Red Line Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Procurement Integrity Act

Section 2 : FAA-Specific Definitions

Under AMS, FAA-specific definitions are to be substituted for Procurement Integrity Act subsection (f), "Definitions", and (g), "Limitation on Protests". See ~~FAA-specific definitions for subsection (f) below. The following Appendix "~~ includes the full text of the Procurement Integrity Act (excluding subsections (f) and (g)). You may select this link to review the

FAA ~~Administrator's July 14, 2000 letter of approval of~~ Definitions as Used in 41 the U.S.C. PIA Section definitions.423

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (A) Cost or pricing data (as defined in Appendix C of the AMS).
- (B) Indirect costs and direct labor rates.
- (C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.
- (D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.
- (B) Source selection plans.
- (C) Technical evaluation plans.

- (D) Technical evaluations of responses to SIRs or unsolicited proposals.
- (E) Cost or price evaluation plans.
- (F) Cost or price evaluations of responses to SIRs or unsolicited proposals.
- (G) Down select determinations identifying SIR responses that are most likely to receive contract award.
- (H) Any ranking of offerors developed by the FAA during the source selection process.
- (I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.
- (J) Other information based on a case- by-case determination made by the FAA ~~Associate Administrator for Research and Acquisition~~ Executive*, his or her designee, or the ~~Integrated Product~~ or Service Team**, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document.

- (3) The term "Federal agency" means the FAA.
- (4) The term "Federal agency procurement" means the acquisition (by using competitive or non-competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.
- (5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.
- (6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.
- (7) The term "official" means the following:
 - (A) An employee of the FAA, as defined in the FAA's Personnel Management System.
 - (B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).
 - (C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3).

(8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System.

(9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition.

(10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA ~~Integrated Product Team (IPT) Lead or Acting Lead~~, or a ~~Product~~ Service Team ~~(PT)**~~ Lead or Acting Lead.

(11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA ~~IPT Lead, or a Deputy~~ Product or ~~Acting Deputy to a Service PT Team**~~ Lead.

(12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS.

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**The July 14, 2000 memo approving FAA definitions used "Associate Administrator for Research and Acquisitions." Due to organizational changes in 2006, this position was abolished. The FAA Acquisition Executive is an equivalent position.*

***The July 14, 2000 memo approving FAA definitions used the term "Integrated Product Team." Due to organizational changes, this term was not used after 2006. Product or Service Team is a similar structure.*

Section C : Appendix

Old Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Section C : Appendix

1. Definitions.
2. Text of the Procurement Integrity Act.
3. Memorandum, subject: "ACTION: Procurement Integrity Act Definitions", dated July 12, 2000, showing the Administrator's approval.

Appendix 1 to T3.1.8 - Procurement Integrity Act (Revised 07/2003)

Procurement Integrity Act, FAA Definitions

1. Background:

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As provided by 49 United States Code (U.S.C.) Section 40122(g)(3), effective October 1, 1999, the Federal Aviation Administration (FAA) is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, Subsections (f), Definitions, and (g), Limitations on Protests, both in Section 423, do not apply to the FAA. In lieu of the definitions contained in the Subsection (f) of the Act, the FAA Administrator was directed by Congress to adopt its own definitions, consistent with the intent of the FAA's Acquisition Management System (AMS) and the Act. These definitions are provided below. *(The full text of the Procurement Integrity Act is shown in the following pages.)*

2. Definitions: As used in 41 U.S.C. Section 423:

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (A) Cost or pricing data (as defined in Appendix C of the AMS).
- (B) Indirect costs and direct labor rates.
- (C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.
- (D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.
- (B) Source selection plans.
- (C) Technical evaluation plans.
- (D) Technical evaluations of responses to SIRs or unsolicited proposals.
- (E) Cost or price evaluation plans.
- (F) Cost or price evaluations of responses to SIRs or unsolicited proposals.

(G) Downselect determinations identifying SIR responses that are most likely to receive contract award.

(H) Any ranking of offerors developed by the FAA during the source selection process.

(I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.

(J) Other information based on a case- by-case determination made by the FAA Associate Administrator for Research and Acquisition, his or her designee, or the Integrated Product Team, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

(Revised 07/2003)

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document. (Added 07/2003)

(3) The term "Federal agency" means the FAA.

(4) The term "Federal agency procurement" means the acquisition (by using competitive or non-competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.

(5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.

(6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.

(7) The term "official" means the following:

(A) An employee of the FAA, as defined in the FAA's Personnel Management System.

(B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3).

(8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System.

(9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition.

(10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA Integrated Product Team (IPT) Lead or Acting Lead, or a Product Team (PT) Lead or Acting Lead.

(11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA IPT Lead, or a Deputy or Acting Deputy to a PT Lead.

(12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS.

Appendix 2 to T3.1.8 - Procurement Integrity Act

Text of the Procurement Integrity Act 49 U.S.C. Section 423

Below is the text of the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Toolbox Appendix). Please take special notice of 49 U.S.C. Section 423(h) below, which contains "Savings provisions", or situations where the Procurement Integrity Act does not apply.

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information.

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (1) applies to any person who -

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of , or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or

proposal information or source selection information.

(b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.

(1) If an agency official who is participating personally and substantially in a Federal agency in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall -

(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and

(B) (i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that --

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

d) Prohibition on former official's acceptance of compensation from contractor.

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions.

(1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

(2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions.

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which -

(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1),
or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance

of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

(h) Savings provisions. This section does not -

(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the

Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of any requirements, sanctions, contract; or penalties, and remedies established under any other law or regulation.

New Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Section C : Forms

[view procurement forms](#)

Red Line Content: Procurement Guidance:

T.3.1.8 Procurement Integrity Act

Section C : ~~Appendix~~ Forms

~~1. Definitions. 2. Text of the Procurement Integrity Act. 3. Memorandum, subject: "ACTION: Procurement Integrity Act Definitions", dated July 12, 2000, showing the Administrator's approval. Appendix 1 to T3.1.8—Procurement Integrity Act (Revised 07/2003) Procurement Integrity Act, FAA Definitions 1. Background: As provided by 49 United States Code (U.S.C.) Section 40122(g)(3), effective October 1, 1999, the Federal Aviation Administration (FAA) is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, Subsections (f), Definitions, and (g), Limitations on Protests, both in Section 423, do not apply to the FAA. In lieu of the definitions contained in the Subsection (f) of the Act, the FAA Administrator was directed by Congress to adopt its own definitions, consistent with the intent of the FAA's Acquisition Management System (AMS) and the Act. These definitions are provided below. (The full text of the Procurement Integrity Act is shown in the following pages.) 2.~~

Definitions: As used in 41 U.S.C. Section 423: (1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly: (A) Cost or pricing data (as defined in Appendix C of the AMS). (B) Indirect costs and direct labor rates. (C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation. (D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation. (2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly: (A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices. (B) Source selection plans. (C) Technical evaluation plans. (D) Technical evaluations of responses to SIRs or unsolicited proposals. (E) Cost or price evaluation plans. (F) Cost or price evaluations of responses to SIRs or unsolicited proposals. (G) Downselect determinations identifying SIR responses that are most likely to receive contract award. (H) Any ranking of offerors developed by the FAA during the source selection process. (I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils. (J) Other information based on a case-by-case determination made by the FAA Associate Administrator for Research and Acquisition, his or her designee, or the Integrated Product Team, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates. (Revised 07/2003) In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document. (Added 07/2003) (3) The term "Federal agency" means the FAA. (4) The term "Federal agency procurement" means the acquisition (by using competitive or non-competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds. (5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract. (6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract. (7) The term "official" means the following: (A) An employee of the FAA, as defined in the FAA's Personnel Management System. (B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472). (C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472). (D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3). (8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System. (9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition. (10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA Integrated Product Team (IPT) Lead or Acting Lead, or a Product Team (PT) Lead or Acting Lead. (11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA IPT Lead, or a

~~Deputy or Acting Deputy to a PT Lead. (12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS. Appendix 2 to T3.1.8—~~
~~Procurement Integrity Act Text of the Procurement Integrity Act 49 U.S.C. Section 423 Below is the text of the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Toolbox Appendix). Please take special notice of 49 U.S.C. Section 423(h) below, which contains "Savings provisions", or situations where the Procurement Integrity Act does not apply.~~
~~§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information (a) Prohibition on disclosing procurement information. (1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (2) Paragraph (1) applies to any person who—(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and (B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information. (b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment. (1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—(A) promptly report the contract in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and (B) (i) reject the possibility of non-Federal employment; or—(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that—(I) the person is no longer a bidder or offeror in that Federal agency procurement; or (II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment. (2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public. (3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e). (4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e). d) Prohibition on former official's acceptance of compensation from contractor. (1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or~~

consultant of the contractor within a period of one year after such former official—(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000; (B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or (C) personally made for the Federal agency—(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor; (ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000; (iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or (iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor. (2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph. (3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e). (4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e). (5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor. (e) Penalties and administrative actions. (1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—(A) exchanging the information covered by such subsection for anything of value, or (B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both. (2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct. (3) Administrative actions. (A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate: (i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded. (ii) Rescission of a contract with respect to which—(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or (II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense. (iii) Initiation of suspension or

~~debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation. (iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation. (B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract. (C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor. (h) Savings provisions. This section does not—(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information; (2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information; (3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement; (4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; (5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency; (6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or (7) limit the applicability of any requirements, sanctions, contract, or penalties, and remedies established under any other law or regulation.~~
