

AMS CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 14-47

Date Received: 6/18/14

Title: Conflict of Interest and Non-Disclosure Agreement

Initiator Name: Joshua Fletcher

Initiator Organization Name / Routing Code: Procurement Policy Branch/AAP-110

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Guidance and Policy must be submitted with separate CR coversheets

Policy OR Guidance: Guidance

Summary of Change:

To establish the required dollar threshold requirement for Non-Disclosure Agreements and Conflict of Interests documentation in all procurements.

Reason for Change:

To ensure integrity of the procurement process.

Development, Review, and Concurrence:

AAQ-1,AAQ-2, AAQ-200, AAQ-300, AAQ-400,AAQ-500,AAQ-600,AAQ-700,ACQ-20,AAP-100,AAP-110,AAP-500,AGC-520

Target Audience:

All AMS Users

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

T3.1.5- Conflict of Interest;T3.1.6- Nan-Disclosure Agreement

The redline version must be a comparison with the current published FAST version.

I confirm I used the latest published version to create this change / redline

Links:

None

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Attachments:

Redline and final.

Other Files:

None.

Redlines

T3.1.5 Conflict of Interest Revised 8/2009

A Conflict of Interest

1 Requirement for an Agreement Regarding Conflict-of-Interest Revised 7/2014

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

b. Unless a procurement team member receives prior authorization, a procurement team member who is a Government employee should not participate if the result is likely to affect the financial interests of the procurement team member's household, or the procurement team member knows a person with whom the procurement team member has a covered relationship as defined in 5

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

c. Each person involved in the source selection process, including the source selection official (SSO), contracting officer, and legal counsel, who might have access to confidential or proprietary procurement information such as procurement strategy, offerors' proposals, results of evaluations, and the final selection actions, must sign and submit an Agreement Regarding Conflict-of-Interest (see AMS Procurement Forms) to the SSO or designee before any participation in the source selection process for all procurements with an estimated value of \$150,000 or greater.

This is to ensure that no conflict of interest exists. An Agreement Regarding Conflict-of-Interest should be completed before distribution of offerors' submissions for evaluation and at any time afterwards, if an individual's financial, business, or employment situation changes to create the potential for a conflict of interest. The Agreement Regarding Conflict-of-Interest must be completed by individual procurement team members for each procurement and retained in the pre-award file.

2 Processing a Conflict of Interest Revised 1/2007

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If the SSO or designee becomes aware of a conflict of interest, the SSO should notify the procurement legal counsel immediately. Action should be taken to remove the party from further participation in the source selection activities until the conflict of interest is reviewed and legal advice obtained. A procurement team member must be excused or removed from participation in

the source selection process should a conflict of interest exist, unless a waiver is granted. All conflict of interest cases must be clearly documented. The procurement team members must update and resubmit any and all conflict of interest statements if an individual's financial, business, or employment relationship changes to the extent that a conflict of interest could exist.

3 Single-Source/Non-Competitive Acquisitions Added 7/2012

The requirements of this Section are also applicable to single-source and non-competitive acquisitions. For such acquisitions, the Contracting Officer will take all appropriate actions in coordination with the Program Office. The Contracting Officer may tailor the Agreement Regarding Conflict of Interest Form as appropriate.

B Clauses

[view contract clauses](#)

C Forms Revised 1/2011

[view procurement forms](#)

T3.1.6 Non-Disclosure of Information Revised 8/2009

A Disclosure of Information

1 General Revised 1/2007

The Source Selection Official (SSO), each procurement team member (program officials, contracting personnel, legal counsel, and other support staff), including advisors, and any other individuals exposed to commercially sensitive and source selection sensitive information must maintain confidentiality of that information.

2 Requirement for an Agreement Regarding Non-Disclosure of Information Revised 7/2014

Maintaining the security of sensitive procurement information and source selection proceedings is of paramount importance to the integrity of the evaluation process. To assure that sensitive data acquired in the course of the procurement are handled properly, the individuals (including the Source Selection Official (SSO), Contracting Officer, and Legal Counsel), involved in these proceedings are required to sign an Agreement Regarding Non-Disclosure of Information before

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the Screening Information Request (SIR) is issued [for all procurements with an estimated value of \\$150,000 or greater](#). This agreement provides notice of the type of information that requires protection and the penalties for improperly disclosing such information.

3 Processing a Violation of the Agreement Regarding Non-Disclosure of Information

Revised 1/2011

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

4 Processing a Freedom of Information (FOIA) Request Revised 7/2012

a. The CO processes requests for procurement information under FOIA. Unless the request for information is exempt from disclosure under the Act (such as trade secrets and commercial or financial information that is privileged or confidential), the information must be released. The CO coordinates responses to FOIA requests with the local FOIA Control Officer and the Office of Chief Counsel.

b. The CO must coordinate a request for procurement information with the vendor (submitter) whose contract, or information provided under a contract, is requested. The CO must request that the vendor describe the specific information exempt from disclosure and provide the specific exemption(s) which apply to the information. The vendor's response must be placed in the contract file. The CO determination whether the information is exempt from disclosure and rationale for the determination must also be placed in the contract file.

5 Single-Source/Non-Competitive Acquisitions Added 7/2012

The requirements of this Section are also applicable to single-source and non-competitive acquisitions. For such acquisitions, the Contracting Officer will take all appropriate actions in coordination with the Program Office. The Contracting Officer may tailor the Agreement Regarding Non-Disclosure of Information Form as appropriate.

B Clauses

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C Forms

[view procurement forms](#)