



**FAR FACTS
SEASON 2023, EPISODE TWO
FAR PART 3**

1. The Office of Government Ethics (OGE) is the organization responsible for providing guidance to help Government employees comply with the procurement integrity and ethics regulations set forth in FAR Part 3. Their guidance can be found at www.oge.gov.
2. Simply requesting a gift, gratuity, or anything of monetary value from a contractor who has or is seeking "Government business" with the employee's agency will constitute a violation of the FAR's gift regulations. **FAR 3.101-2.**
3. Unless subject to an exception, Government employees are prohibited from receiving a single gift or gratuity valued in excess of \$20 and no more than \$50 worth of gifts or gratuities in a single calendar year from a Government contractor who has or is seeking "Government business" with the employee's agency.
4. As a general rule, contractors should not disclose proprietary pricing information to other offerors/competitors during a federal acquisition. **FAR 3.103 and FAR 52.203-2.**
5. Prime Contractors are prohibited from executing "exclusive teaming agreements" with subcontractors for the sole purpose of restricting competition or otherwise to preclude subcontractors from providing services or supplies to the Federal Government in the ordinary course of their business. **FAR 3.503-1, FAR 52.203-2(a)(3) and FAR 52.203-6.**
6. The person signing a contractor's Certificate of Independent Pricing must be the person within the contractor's organization who is "responsible for determining the prices being offered." **FAR 52.203-2(b)(1).**
7. Unsolicited communications to an agency procurement official from offerors (or a hired recruiting agency) regarding "possible employment" are considered "employment contacts" that would require the agency procurement official to (i) notify his/her supervisor and agency ethics officer and (ii) could cause the agency procurement official to be "disqualified" from his/her procurement duties involving that offeror. **FAR 3.104-3(c)(1) and (c)(2) and FAR 3.104-5(a).**
8. \$10M is the dollar threshold value for contracts awards, modifications, and certain other contract actions (e.g., establishment of overhead rates, approval of payments, negotiating or settling claims) that trigger the one year post-government hiring restrictions set forth at **FAR 3.104-3(d).**
9. The FAR requires that the Government must protect contractor bid or proposal information from unauthorized release. **FAR 3.104-4.** To ensure such protection, contractors must properly legend or mark their proposal documents in accordance with **FAR 52.215-1(e).** To ensure protection of proprietary information shared outside of the proposal process, Contractors should legend/mark

their documents as follows: “The contents of this document contain [INSERT CONTRACTOR NAME] (“Contractor”) business proprietary information protected by the US Trade Secrets Act and section (b)(4) of the US Freedom of Information Act and shall not be disclosed outside of [INSERT AGENCY NAME] (“Agency”) without Contractor’s prior written consent.”

10. Complying with the terms of a designated agency ethics officer (DAEO) post-Government employee opinion letter protects both the former Government employee and the government contractor from liability under Procurement Integrity Act. **FAR 3.104-6(d)(3).**
11. The Anti-Kickback Act is a special “bribery” statute that involves a subcontractor giving “something of monetary value” to a prime contractor for the purpose of receiving “favorable treatment” in connection with a federal government prime contract.
12. Contractors are prohibited from using “appropriated funds” to pay individuals to influence, among other things, the award, extension or modification of a federal government contract. Contractors can avoid liability by demonstrating that these services were only paid with “profit or fee” earned from a federal government contract or monies earned from commercial contracts. **FAR 3.802(a)(1) and (a)(2).**
13. Government contractor employees are protected from being terminated, demoted or otherwise discriminated against as a result of their disclosing “a substantial violation of law” related to a contract (including the competition or negotiation of a contract) to (i) a member of Congress, (ii) an authorized agency official, or (iii) the DoJ. This is commonly known as “whistleblower protection.” **FAR 3.903 and 52.203-17. [Note: The DFARS contains much more expansive regulations concerning “whistleblower protections” and should be consulted to ensure you are in compliance whenever contracting with DoD customers. See DFARS 203.9 and 252.203-7002.]**
14. The FAR has recently established a “pilot program for enhancement of contractor employee whistleblower protections.” The pilot program includes the policies and procedures for filing complaints, as well as enforcement mechanisms and remedies. The entirety of the program can be found at **FAR 3.908.**
15. As of January 2017, the FAR has been amended to implement a portion of the Consolidated and Further Continuing Appropriations Act of 2015 that deals with confidentiality agreements in relation to whistleblowers. The new rule prohibits any Government funding to companies that require employees to sign internal confidentiality agreements which would restrict employees from lawful whistleblowing. **FAR 3.909.**
16. The thresholds that trigger the FAR requirements for a written code of conduct and establishment of a “Business ethics awareness and compliance program and internal control system” are contracts/subcontracts valued in excess of \$6M and a period of performance of 120 days or more. **FAR 3.1004 and FAR 52.203-13.**
17. Small businesses are explicitly exempt from having to establish a “Business ethics awareness and compliance program and internal control system.” **FAR 52.203-13(c).**
18. Government contractors subject to FAR 52.203-13 are required to “timely disclose” in writing to the agency OIG (with copy to the CO) whenever it possesses “credible evidence” that a principal,

employee, agent or subcontractor has violated a criminal law involving (i) fraud, (ii) conflict of interest, (iii) bribery, or (iv) gratuity violations or a violation of the Civil False Claims Act. **FAR 52.203-13(c)(2)(F)**. This is known as the “Mandatory Disclosure Rule.”

19. A “personal conflict of interest” means a situation in which a “covered employee” has a financial interest, personal activity or relationship that could impair the employee’s ability to be impartial and not act in the best interest in the Government when performing under a Government contract. **FAR 3.11 and FAR 52.203-16**. Personal conflicts of interest issues could arise for both Government employee and contractor employees who perform services that require the use of discretion, such as “acquisition support” services.