



# TMA Non-Disclosure Agreement (NDA) Policy Briefing

April 2012



# Agenda

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- NDA Background
- Current TMA NDA Policy Overview
- Drivers behind the revised NDA policy
- Key elements of TRICARE Acquisition Directive (TAD) 15-02, Non-Disclosure Agreement
- Key elements of the TMA Source Selection NDA
- Key elements of the TMA Contractor NDA
- Summary
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# NDA Background

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- An NDA is a formal agreement in which one party agrees to give sensitive information to a second party, and the second party agrees not to share that information with anyone else.
- It is used as a tool to inform individuals of the trust that is placed in them by providing them access to proprietary or confidential information.
- The NDA also list responsibilities of the individual signing the NDA, and the consequences for not abiding by the listed responsibilities.

# Drivers behind the revised NDA policy

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Key drivers for this approach to this policy package:

- FAR Subpart 3.104, “Procurement Integrity,” precludes individuals from releasing source selection information without permission.
- 18 U.S.C. 208 prohibits employees from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.
- Government Accountability Office - 10-693 stated the need for stronger safeguards for contractors accessing sensitive information

# Current TMA NDA Policy Overview

TMA issued revised policy that includes:

- TRICARE Acquisition Directive 03-01 - rescinds TRICARE Policy Letter 001 “TMA Form 821,” and establishes TMA policy for the use of NDAs.
- TMA PGI 203.104, Safeguards and Procedures
- Source Selection NDA - required to be signed by anyone accessing source selection information.
- Contractor NDA – required to be signed by contractors who will have access to proprietary or confidential information.



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## TRICARE ACQUISITION DIRECTIVE

TAD 03-01, Rev 000  
March 7, 2012

### SUBJECT: NON-DISCLOSURE AGREEMENT

References: (a) TRICARE Acquisition Policy Letter No. 001, "TMA Form 821, Non-Disclosure Statement," June 23, 2005 (hereby rescinded)  
(b) Federal Acquisition Regulation, Subpart 2.101, "Definitions," current edition  
(c) Federal Acquisition Regulation, Subpart 3.104, "Procurement Integrity," current edition  
(d) Director, Defense Procurement and Acquisition Policy Memorandum, "Department of Defense Source Selection Procedures," March 4, 2011

1. **PURPOSE.** This TRICARE Acquisition Directive (TAD) establishes TRICARE Management Activity (TMA) policy for the use of Non-Disclosure Agreements to protect proprietary and confidential information. Additionally, this Directive rescinds Reference (a), and mandates the use of Enclosure 1, TMA Form 821 ("TMA Source Selection Non-Disclosure Agreement"), and Enclosure 2, TMA Contractor Non-Disclosure Agreement.

2. **APPLICABILITY.** This TAD applies to all members of the TMA acquisition workforce that participate in the procurement of supplies and/or services under the authority of the Head of the Contracting Activity.

3. **POLICY.** It is TMA policy that:

3.1 All TMA contractor personnel who will obtain access to proprietary or confidential information shall be required to complete and sign a TMA Contractor Non-Disclosure Agreement prior to beginning work on the subject contract.

3.2 All TMA Government and contractor personnel shall be required to complete and sign the TMA Source Selection Non-Disclosure Agreement prior to obtaining or disclosing source selection information, as defined in Reference (b).

3.2.1 For Government personnel, the TMA Source Selection Non-Disclosure Agreement will remain valid for one year upon signature and will allow access to source selection information in the performance of their official duties throughout

# Key elements of TAD 03-01, NDA

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- Establishes enterprise-wide NDA policy for TMA
- Mandates the use of TMA Form 821, “TMA Source Selection Non-Disclosure Agreement,” for all TMA Government and contractor personnel to complete and sign the TMA Source Selection Non-Disclosure Agreement prior to obtaining or disclosing source selection information.
- Mandates the use of TMA Contractor Non-Disclosure Agreement, for all TMA contractor personnel who obtain access to proprietary or confidential information to complete and sign a TMA Contractor Non-Disclosure Agreement prior to beginning work on the subject contract.
- Rescinds TRICARE Policy Letter 001, “TMA Form 821.”

# Key elements of the TMA Source Selection NDA

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- The Contracting Officer shall coordinate with the Source Selection Authority to collect all completed and signed TMA Source Selection NDAs.
- Introduces the responsibilities for individuals who have access to source selection information.
- States the laws, acts, and regulations which govern the safeguarding of source selection information.
- Gives instructions on how to proceed if actual or potential conflicts of interest occur as the result of receiving source selection information.
- States the consequences of contractors and government personnel who do not abide by the source selection NDA.

# Key elements of the TMA Contractor NDA

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- Contracting Officers shall ensure all contractors sign the TMA Contractor NDA upon contract award and before beginning any work on the respective contract
- Introduces the responsibilities for contractors who have access to sensitive information.
- Defines requirements of handling proprietary, confidential, or sensitive information.
- Details what constitutes as sensitive information with regards to the NDA.
- States the consequences of contractors who do not abide by the TMA contractor NDA.



# Summary

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- Protecting and securing proprietary, confidential, and source selection information is a priority at TMA.
- TMA implemented new policy governing the use of NDAs on 7 March, 2012.
- TAD 03-01, TMA source selection NDA, and TMA contractor NDA were published to provide enterprise-wide policy, guidance, and templates.

# NDA References

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- Federal Acquisition Regulation (FAR) Subpart 2.101, "Definitions"  
<http://farsite.hill.af.mil/vffara.htm>
- FAR Subpart 3.104, "Procurement Integrity"  
<http://farsite.hill.af.mil/vffara.htm>
- TAD 03-01, "Non-Disclosure Agreement," March 7, 2012  
<http://tricare.mil/tma/ams/downloads/tad/TAD03-01.pdf>
- TMA PGI 203.104, "Procedures", the TMA Source Selection NDA and the TMA Contractor NDA  
<http://tricare.mil/tma/ams/downloads/pgi/TAD03-01-120320-PGI.pdf>

# Questions

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- For questions related to NDAs, please contact the TMA AM&S Contract Policy and Pricing Branch:

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By email: [policyweb@tma.osd.mil](mailto:policyweb@tma.osd.mil)

