

**BONNEVILLE PURCHASING INSTRUCTIONS
APPENDIX 3-A**

**STANDARDS OF CONDUCT REGARDING
PURCHASING AND ASSISTANCE**

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APPENDIX 3-A -- STANDARDS OF CONDUCT

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SECTION 1 GENERAL PRINCIPLES.

It is BPA policy that all BPA purchasing and financial assistance activities shall be conducted in a manner that complies with the ethical standards of conduct for employees of the Executive Branch, including those specific to DOE, as supplemented by BPI 3.1 and this appendix. All BPA employees who are personally and substantially involved in purchasing and assistance activities, not just purchasing and assistance personnel, must clearly understand the scope of ethical standards which must be met. This appendix is not, however, a definitive discussion of all possible ethical dilemmas and the proper course of action to be taken in a given instance. Except for questions regarding standards of conduct regarding purchasing and assistance activities, the Agency Ethics Official in General Counsel is responsible for advising employees regarding standards of conduct and should be contacted immediately whenever questions arise.

The following general "Principles of Ethical Conduct, included in Executive Order 12674 of April 12, 1989 (as modified by E.O. 12731) apply to every employee and form the basis for the standards of conduct. Where a situation is not covered specifically by a rule, employees shall apply these principles in determining whether their conduct is proper and/or the situation should be discussed with the Agency Ethics Official.

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of their duties.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except as permitted, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (e) Employees shall put forth honest effort in the performance of their duties.
- (f) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind BPA.
- (g) Employees shall not use public office for private gain.
- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

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- (i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes, that are imposed by law.
- (m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

SECTION 2 DEFINITIONS.

"BPA assistance" or "BPA financial assistance" means any form of assistance instrument where the principle purpose of the relationship is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute rather than of acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of BPA. Specific types of financial assistance instruments include, but are not limited to grants, cooperative agreements, and loans (see Bonneville Financial Assistance Instructions, BFAI 1.4).

"BPA purchase" means the procedures to solicit and award a contract by BPA of supplies or services (including construction).

"Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

"Contractor proposal information" means any information submitted to BPA as part of or in connection with a proposal to enter into a BPA purchase of property or services (including construction) or assistance, if that information has not been previously made available to the public or disclosed publicly, including:

- (a) Cost or pricing data;
- (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.

"Competing contractor," with respect to any purchase means any entity legally capable of entering into a contract that is, or is reasonably likely to become, a competitor for or recipient of a BPA contract under such purchase, and includes any other person acting on behalf of such an entity.

"Participating personally and substantially during the conduct of a BPA purchase" means active and significant involvement of an individual in any activity directly related to a purchase or

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assistance, beginning upon the earliest date upon which an authorized BPA official orders commencement of such activities, and ending upon award of a contract; and

(a) Activities directly related to a purchase or assistance include:

- (1) Drafting, reviewing, or approving the specification or statement of work for the purchase or assistance;
- (2) Preparing or developing the solicitation;
- (3) Evaluating proposals or selecting a source;
- (4) Negotiating price or terms and conditions of the contract; and
- (5) Reviewing and approving the award of the contract.

(b) Generally, an individual will not be considered to have participated personally and substantially in a purchase or assistance activity solely by participating in the following activities:

- (1) BPA-wide or Business Line boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;
- (2) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular purchase, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular purchase or assistance;
- (3) Clerical functions supporting the conduct of a particular purchase or assistance; and
- (4) For purchases to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

"Participating personally" means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

"Participating substantially" means that the employee's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort or on the degree of the employee's influence on the outcome. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of purchase documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a purchase.

"Proprietary information" means:

- (a) Information contained in a proposal;

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(b) Cost or pricing data;

(c) Any other information submitted to BPA by a contractor and designated as proprietary.

"Source selection information" means information which is prepared or developed for use by BPA to conduct a particular purchase or assistance, and--

(a) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the purchase or assistance concerned, such as:

(1) Proposed costs or prices submitted in response to a BPA solicitation or lists of those proposed costs or prices;

(2) Source selection plans;

(3) Evaluation plans;

(4) Technical evaluation of proposals;

(5) Cost or price evaluations of proposals;

(6) Rankings of proposals or competitors;

(7) The reports and evaluations of source selection teams;

(8) Other information marked as "SOURCE SELECTION INFORMATION."

(b) The originator of information designated as source selection information may mark the cover page and each page that contains such information with the legend, "SOURCE SELECTION INFORMATION." The material listed in (a)(1)-(8) above is considered to be source selection information whether or not marked, and/or;

(c) Which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure.

SECTION 3 CONDUCT OF PURCHASING AND ASSISTANCE ACTIVITIES.

BPA purchasing and assistance activities shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. The general rule is to maintain the integrity of purchasing and assistance practices, strictly avoiding any conflict of interest or even the appearance of a conflict of interest in BPA-contractor relationships. Employees' conduct must be such that they would not hesitate to make full public disclosure of their actions at any time.

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During the conduct of any BPA purchase or financial assistance activity, no BPA employee who participates personally and substantially during its conduct shall knowingly:

- (a) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with a competing contractor, except as provided in BPI 3.1.4 (also see Section 6 of this appendix);
- (b) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any compensation, gratuity, or other thing of value from any competing contractor for such purchase; or
- (c) Disclose any contractor proposal information or source selection information regarding such purchase directly or indirectly to any person other than a person authorized by the CO to receive such information.

SECTION 4 UNAUTHORIZED RECEIPT OF INFORMATION.

During the conduct of any BPA purchase or assistance activity, any person other than those authorized by the CO to receive such information shall not, other than as provided by law, knowingly obtain contractor proposal information or source selection information before the award of a BPA contract to which the purchase information relates.

SECTION 5 ANNUAL CERTIFICATION BY BPA EMPLOYEES.

The Head of the Contracting Activity (HCA) is responsible for standards of conduct regarding BPA purchasing and assistance activities. Employees who are personally and substantially involved in BPA purchasing and assistance activities must, each year, familiarize themselves with these purchasing and assistance standards of conduct and BPI 3.1.

In coordination with BPA General Counsel, the HCA relies upon the annual certification by all BPA employees regarding ethical standards of conduct for employees of the Executive Branch (5 C.F.R. Part 2635, as well as those specific to DOE included in 5 C.F.R. Part 3301 and 10 C.F.R. Part 1010 and 48 C.F.R. Subpart 903.1, as supplemented by this BPI Appendix 3-A and BPI Subpart 3.1) as the basis for BPA employee certification of standards of conduct for purchasing and financial assistance activities of BPA. Therefore, the HCA will not maintain separate annual certifications for standards of conduct regarding purchasing and assistance, relying instead upon the annual ethics briefing and certifications maintained by BPA General Counsel.

The standards of conduct regarding purchasing and assistance specifically applies to BPA employees, as follows:

- (a) All GS-1101, 1102, 1105, and GS-1106 series employees;
- (b) All employees delegated contracting officer authority that are not included in category (1) above;
- (c) All COTRs and Field Inspectors; and
- (d) All employees who "participate personally and substantially in the conduct of a BPA purchase," as defined in Section 2 of this appendix.

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SECTION 6 DISQUALIFICATION.

A BPA employee who wishes to discuss future employment or business opportunities with a competing contractor must undertake measures to recuse (withdraw) himself/herself from the conduct of the purchase or assistance activity. Such employee must submit to the HCA, prior to initiating or engaging in such discussions, a written proposal of disqualification from further participation in the purchase which relates to that competing contractor (see BPI 3.1.4). The proposal shall--

- (a) Identify the purchase involved;
- (b) Describe the nature of the employee's participation in the purchase and specify the approximate dates or time period of participation; and
- (c) Identify the competing contractor and describe its interest in the purchase.

If the HCA determines that the employee's further participation is not essential to the activity's conduct of the purchase and that disqualification will not jeopardize the integrity of the purchasing process, the HCA may grant written approval of the disqualification proposal.

SECTION 7 PROCESSING VIOLATIONS OR POSSIBLE VIOLATIONS.

Any person who receives or obtains information of a violation of the purchasing and assistance standards of conduct must promptly report such information to the CO. The CO is responsible for determining whether the reported violation has any impact on the pending award or selection of the source.

If the CO concludes that there is no impact on the purchase, the CO shall discuss that conclusion with his/her First Level performance manager. With the concurrence of that individual, the CO may, without further approval, proceed with the purchase. However, whenever the First Level performance manager does not agree with that conclusion, he or she shall advise the CO to withhold award and shall promptly forward the information and documentation to the HCA.

The HCA upon receiving any information describing a violation (per BPI 3.1) shall review all information available and take appropriate action. If the HCA determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of BPA, the contracting officer may be authorized to award the contract.

SECTION 8 QUESTIONS REGARDING STANDARDS OF CONDUCT.

Other than the HCA procedures in Section 6 and 7 of this appendix (BPI subparts 3.1.4 and 3.1.5, respectively), should any BPA employee, in his or her judgement, be confronted with any situation where a violation of ethical standards of conduct and business practices is an issue, such person needs to review the standards of conduct and seek the advice of the Agency Ethics Official in General Counsel, as necessary.

In addition to the standards of ethical conduct set forth in this appendix, there are various statutes that must be taken into consideration in determining whether conduct is proper. Employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally, or as employees of DOE. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction such as this one. Instead the employee should refer to the statute itself and obtain the advice of the Agency Ethics Official as needed. In many cases, disciplinary action for violating an ethics regulation will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in

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seeking such advice, has made full disclosure of all relevant circumstances. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege.