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# #9 IMPROPER PRACTICES AND ETHICS

	OTHER IMPROPER BUSINESS PRACTICES (3.5)		
	APPLICABILITY TO PRIME CONTRACTS		
	Subcontract Kickbacks	Unreasonable Restrictions on Subcontractor Sales	Display of Hotline Poster(s)
Below Simplified Threshold	No	No	Yes
Above Simplified Threshold	Yes	Yes	Yes
Commercial Item	No	Alternate I of clause	No
Flow Down Requirements	Include substance in subcontracts over \$150,000	Include substance in subcontracts exceeding Simplified Threshold	Include substance in subcontracts exceeding \$5M except when the subcontract is for a commercial item or is performed entirely outside the U.S.
FAR Clause	52.203-7	52.203-6	52.203-14

“Buying-in,” as used in this section, means submitting an offer below anticipated costs, expecting to (1) increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or (2) receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract. Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of (1) change orders or (2) follow-on contracts subject to cost analysis.

	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (3.10)				
	Disclosure Regarding Certain Violations	Less than \$5M and 120 days	Greater than \$5M and 120 days	Business Ethics Awareness and Compliance Program (BEACP)	Internal Control System (ICS)
Applicability	“Must”	“Should”	Yes	Applies to contracts greater than \$5M and 120 days. Does not apply to small business and commercial items.	
Flow Down	“Must”	“Should”	Include the substance of 52.203-13 in subcontracts over \$5M and 120 days		
FAR Clause	None (see 3.1003)	None (see 3.1002)	52.203-13		

**NOTES**

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### SIMPLIFIED ACQUISITION PROCEDURES

Acquisition methods prescribed in FAR Part 13 are used for the acquisition of supplies and services including construction, research and development and commercial items, the aggregate amount of which does not exceed the SAT (Simplified Acquisition Threshold; i.e. \$150K). Except that Subpart 13.5 provides authority for commercial acquisitions greater than the SAT, but not exceeding \$7M or \$13M for contingency or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. See Subpart 13.2 for actions at or below the micro-purchase threshold (ie. \$3,500).

Agencies shall use Simplified Acquisition Procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the SAT.

SAT acquisitions are setup for well-defined requirements

No other procurement instrument is in place

No other procurement instrument is mandated to fill requirement

Promote Small Businesses

SAT acquisitions are faster and more administratively economical

#### Exceptions (13.003):

- Required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);
- Existing indefinite delivery/indefinite quantity contracts; or
- Other established contracts.

#### SAT Acquisition Methods (13.3):

- Purchase Orders (FAR 13.302)
- Government-Wide Purchase Card (FAR 13.301)
- SF 44, Purchase Order-Invoice-Voucher (FAR 13.306)
- Blanket Purchase Agreements (FAR 13.303)
- Imprest Funds and Third Party Drafts (FAR 13.305)
- For non-commercial items, use any combination of procedures in Parts 13, 14, 15, 35, 35, or 36.

#### Posting Requirements (13.105):

- The contracting officer must comply with the public display and synopsis requirements of 5.101 and 5.203 unless an exception in 5.202 applies.
- When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1), the contracting officer may use a combined synopsis and solicitation. In these cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.
- See 5.102(a)(6) for the requirement to post a brand name justification or documentation required by 13.106-1(b) or 13.501.
- When publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (*Pub. L. 111-5*):
  - Notices of proposed contract actions shall follow the procedures in 5.704 for posting orders.
  - Award notices shall follow the procedures in 5.705.

#### Evaluation of Quotes and Offers (13.106-2):

- Evaluation shall be done in an impartial manner
- Quotes shall be evaluated on the basis established in solicitation
- All quotes or offers shall be considered
- At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used
- If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally burdensome fashion.
- Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may conduct comparative evaluations of offers.

#### Award and Documentation (13.106-3):

- Before making award, the contracting officer must determine that the proposed price is fair and reasonable
- Whenever possible, price reasonableness should be based on competitive quotations or offers
- Data supporting purchases (paper or electronic) shall be kept to the minimum extent and duration necessary for management review purposes