

Effective 30 August 1991

Procurement

Procurement Management and Control

This UPDATE printing publishes a revised regulation which is effective 30 August 1991. Because of the extensive changes, no attempt has been made to highlight changes from previous edition.

For the Commander:

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**Summary.** This regulation establishes policy, procedures, and guidance relative to procurement activities throughout the United States Army Recruiting Command.

**Applicability.** This regulation is applicable to all military and civilian members of the United States Army Recruiting Command. Failure to comply with the provisions of this regulation may subject the offender to administrative action or punishment under the Uniform Code of Military Justice.

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**1. Purpose**

This regulation establishes policy, procedures, and guidance relative to procurement activities throughout the United States Army Recruiting Command (USAREC). It identifies appropriate standards of conduct for all USAREC personnel involved with procurement of supplies and/or services.

**Impact on New Manning System.** This regulation does not contain information that affects the New Manning System.

**Supplementation.** Supplementation of this regulation is prohibited.

**Suggested improvements.** The proponent agency of this regulation is the Office of the Director of Resource Management and Logistics. Users are invited to send comments and sug-

gested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQ USAREC (RCRM-LO-SV), Fort Sheridan, IL 60037-6140.

**Distribution.** Distribution of this issue has been made in accordance with USAREC Pam 25-30, distribution B.

**2. References**

For related publications and blank forms see appendix A.

**3. Explanation of abbreviations and terms**

- a. Abbreviations.
  - (1) CG--Commanding General
  - (2) CO--contracting office(r)
  - (3) DA--Department of the Army
  - (4) DOD--Department of Defense
  - (5) GSA--General Services Administration
  - (6) HQ USAREC--Headquarters, United States Army Recruiting Command
  - (7) OFPPA--Office of Federal Procurement Policy Act
  - (8) USAREC--United States Army Recruiting Command
- b. Terms.
  - (1) Competing contractor. Any entity that is, or is reasonably likely to become a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.
  - (2) Conduct of any USAREC procurement. The period beginning with the development, preparation, and issuance of a procurement solicitation and concluding with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, selection of sources, and conduct of negotiations.
  - (3) Procurement official. Any civilian or military official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, in-

cluding all officials and employees who are responsible for reviewing or approving the procurement.

**4. Policy**

- a. Procurement practices are governed by the provisions of the FAR and appropriate supplements by the various military departments. These Department of Defense (DOD) and Department of the Army (DA) regulations are implementations of Federal statutes and reflect the rulings of Federal courts, Federal administrative agencies, and the Comptroller General of the United States. Persons violating the above requirements may be subject to disciplinary action, pecuniary liability, or both.
- b. All procurement support for USAREC units is provided by the terms of interservice or intraservice support agreements, such as, AR 5-9 and AR 37-49. The actual procedural requirements for submitting purchase requests (DA Form 3953 (Purchase Request and Commitment)) to the supporting contracting office (CO) will be established by local implementing regulations. Each USAREC unit will obtain a copy of the supporting CO office implementing regulation to ensure that all procurement actions are submitted correctly. Each USAREC unit will comply with the provisions of these implementing procurement regulations. At appendix B is a discussion of procurement procedures.
- c. No member of this command may lawfully commit the Government to any contractual obliga-

\*This regulation supersedes USAREC Regulation 715-1, 15 March 1990.

tion absent proper written delegation of authority to do so.

d. No member of this command can direct or authorize contractors, subcontractors, or prospective contractors or subcontractors to initiate work prior to the award of a contract or issuance of purchase or delivery order by a CO.

e. All personnel must be alert against the acceptance of any favor or article which might be interpreted as a gratuity offered by an individual or firm which has a contract with a DOD agency or is endeavoring to engage in a business transaction with a DOD agent (see AR 600-50).

f. Information concerning proposals, bids, or other related material which is presented by a civilian vendor to the Government shall not be released to any other vendor. At appendix C is a discussion of individual employee procurement responsibilities.

## 5. General

a. Procurement support for USAREC is provided by CO of various military installations throughout the nation. CO perform the many procurement responsibilities described in the FAR and other regulations. Their appointment is based on their experience, training, education, business acumen, judgment, character, reputation, and other attributes.

b. Officers and civilians assigned to USAREC organizations may be appointed as ordering officers. However, the decision rests entirely with the CO, who may decline to make such appointments, or if made, may terminate them at any time. These individuals are appointed in writing by a CO. They are generally limited to making purchases, not in excess of a stated dollar limitation using SF 44 (Purchase Order Invoice Voucher) or blanket purchase agreements. SF 44 is utilized for over-the-counter type purchases, where the supplies are available for immediate pickup. The blanket purchase agreement is a charge account type transaction. Regardless of the type of ordering officer, all are limited by the scope of their delegated authority, either by the type of transaction or dollar limitations. All USAREC ordering officers must obtain from their appointing procurement office written instructions on the proper use, preparation, and processing of SF 44. Additionally, ordering officers must obtain a briefing by the CO on use of the ordering officer authority, to include the types of items which cannot be procured utilizing SF 44 procedures. In view of the negotiable character of SF 44, ordering officers will maintain adequate safeguards to assure proper usage and availability of funds (FAR 13.505-3 (d)).

c. The CO may appoint an individual to act as his or her authorized representative in administering a contract. USAREC personnel are also eligible to receive this appointment. The appointment will be in writing and will state the limits of the authorization. In order to lawfully bind the Government in any particular communication, the CO representative must act within the scope of his or her delegation of authority. A CO representative is not empowered to award, agree to, or sign any contract, modification, or in any way,

obligate the payment of money by the Government.

## 6. Procurement integrity

a. Prohibited conduct. During the conduct of any USAREC procurement of property or services, no USAREC procurement official will knowingly:

(1) solicit, accept, or discuss future employment or business opportunity with any officer, employee, representative, agent, or consultant of a competing contractor;

(2) solicit or receive any money, gratuity, or any thing of value from any officer, employee, representative, agent, or consultant of a competing contractor;

(3) disclose any proprietary or source selection information except as authorized by the CO or Commanding General (CG); or

b. During the conduct of any USAREC procurement of property or services, no person having access to proprietary or source selection information shall knowingly disclose such information to any person other than one authorized by the CG or CO to receive such information.

c. Procurement officials may be recused from participation in a procurement in order to discuss future employment with a competing contractor. Written requests must be submitted to the ethics counselor or servicing CO and approved by the CG before any discussion of employment or business opportunity. Procurement officials who have participated personally and substantially in the evaluation of bids or proposals, selection of sources, or conduct of negotiations are not eligible for recusal.

d. No military or civilian USAREC personnel who was a procurement official with respect to a particular procurement shall:

(1) participate in any manner, as an officer, employee, agent, representative, or consultant of a competing contractor, in any contract negotiations for such procurement, or

(2) participate personally and substantially on behalf of a competing contractor in the performance of such contract. The restriction is for a period of 2 years from the date of the individual's last personal and substantial participation in the agency procurement.

e. As a condition precedent of serving as a procurement official, individuals must sign a certification stating that they are familiar with and will not engage in conduct prohibited by the Office of Federal Procurement Policy Act (OFPPA). A summary of the relevant provisions of OFPPA and sample certification are at appendix D.

f. If procurement officials leave the Government during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000, they must certify that they understand the continuing obligation not to disclose proprietary or source selection information.

g. Advisory opinions may be requested from the brigade judge advocate, Command Legal Counsel, or servicing CO. Advisory opinions may not be obtained for the purpose of determining whether certain information is proprietary or source selection information, whether such infor-

mation may be disclosed, or whether, prior to bid opening or receipt of proposals, a particular entity is a competing contractor. Questions concerning these areas should be directed to the CO.

## 7. Procurement fraud

In accordance with the requirements of AR 27-40, the Command Legal Counsel has appointed an Assistant Command Legal Counsel to serve as the USAREC Procurement Fraud Advisor. Inquiries regarding procurement fraud or reports of suspected fraud or corruption should be immediately coordinated with HQ USAREC (RCLC), Procurement Fraud Advisor, Fort Sheridan, IL 60037-6030.

## 8. Solicitation of bids

Unless explicitly authorized by a CO, no one in USAREC has authority to solicit bids from a prospective contractor or advise a potential contractor that the Government intends to make a purchase. Only the CO or his or her duly authorized representative has the authority to solicit bids or release information to prospective vendors about a proposed procurement.

## 9. Unsolicited proposals

a. These proposals are made by organizations or individuals acting in their own behalf, who desire to sell a product or service to the Government. They must be handled in a manner that encourages prospective contractors to disclose their ideas to the Government and must be safeguarded to preclude disclosing any proprietary information (i.e., information or ideas in which the prospective contractor might have ownership or property rights). Guidance should be requested from the supporting CO as to how any unsolicited proposals received should be processed.

b. Within Headquarters, United States Army Recruiting Command (HQ USAREC), the following procedures for processing unsolicited proposals will be followed. Upon receipt of a proposal by any staff element, the proposal shall be annotated as to the date and time of receipt. Then it shall be immediately forwarded to HQ USAREC (RCRM-LO-SV), Fort Sheridan, IL 60037-6140, for coordination and processing. The Director of Resource Management and Logistics shall be responsible for coordinating the response to the offeror with the supporting CO. Also, the Director of Resource Management and Logistics shall assure that a complete technical evaluation is performed by the appropriate staff element.

## 10. Unauthorized actions

The tendency is great for personnel to shortcut procedures or exceed authority in committing the Government to a purchase, especially when under command pressure to accomplish a job which depends upon a commercial product. Personnel, particularly commanders, must guard against this danger. Procurement offices are not authorized to ratify, after-the-fact, an unauthorized action of USAREC personnel. At appendix E are typical examples of actual cases which have occurred.

These serve to show how quickly and easily a procurement violation can develop.

#### **11. Information Mission Area systems**

No action will be taken to acquire Information Mission Area systems either by procurement or leasing until an approved authorization has been received. Requests for authorization will be forwarded to HQ USAREC (RCIM), Fort Sheridan, IL 60037-6120, for review, technical analysis, approval, and continuing action where warranted. Information Mission Area systems technologies include, but are not limited to, general purpose data processing equipment and peripherals, microcomputers, all computer software, telecommunications equipment, telephones, facsimiles, communications circuits and lines, printing, word processing, postal and postage systems and equipment, copiers, and visual information systems. Procedures governing authorization and acquisition are contained in USAREC Reg 105-1 for communication services and USAREC Reg 25-1 for all other services.

#### **12. Command emphasis**

Absent written authority from the appropriate supporting CO, no USAREC personnel may deal with a commercial firm, vendor, salesperson, or retail store to acquire products or services for the Government.

## **Appendix A**

### **References**

#### **Section I**

##### **Related Publications**

###### **AR 5-9**

Intraservice Support Installation Area Coordination.

###### **AR 27-40**

Litigation.

###### **AR 37-49**

Budgeting, Funding, and Reimbursement for Base Operations Support of Army Activities.

###### **AR 37-107**

Accounts Payable.

###### **AR 600-50**

Standards of Conduct for Department of the Army Personnel.

###### **AFARS**

Army Federal Acquisition Regulation Supplement.

###### **FAR**

Federal Acquisition Regulation.

###### **DFARS**

Department of Defense Federal Acquisition Regulation Supplement.

###### **USAREC Reg 25-1**

Information Resources Management Program.

###### **USAREC Reg 105-1**

Telecommunications Management.

###### **41 U.S.C. 423(j)**

Procurement Integrity Provisions; Office of Federal Procurement Policy Act Amendments of 1988 (OFPPAA).

#### **Section II**

##### **Required Form**

###### **HQ USAREC Fm 1830**

Procurement Integrity Certification for Procurement Officials.

#### **Section III**

##### **Related Forms**

###### **DA Form 3953**

Purchase Request and Commitment.

###### **SF 44**

Purchase Order Invoice Voucher.

## Appendix B Procurement Procedures

**B-1.** Procurement of supplies and services by USAREC activities is an area of continuing interest to DA, United States Army Forces Command, United States Army Training and Doctrine Command, and USAREC. The necessity for following proper procurement procedures cannot be over-emphasized and the basics must be understood by all personnel, military and civilian, of this command.

**B-2.** Because USAREC and its subordinate activities do not have independent procurement capability or authority to even initiate procurement, we must rely upon this support being provided by military installations as established by interservice or intraservice support agreements. However, even with an agreement, CO are not required to appoint ordering officers. Ordering officer appointment must be supported by a written determination from the chief of the contracting office. If the CO of a supporting installation elects not to appoint a member of a recruiting battalion as an ordering officer, the local procurement of that activity may be considerably hindered and complicated. In those cases when CO elect not to do so, the decision generally stems from either the privilege having been abused in the past and retracted, or from fear of abuses if issued.

**B-3.** An ordering officer is an extension of the CO's authority and, as such, must operate within the letter of authority and regulations issued to him or her by the CO. Under no circumstances may these instructions be circumvented. If they are, an unauthorized procurement exists. Each ordering officer must be fully aware of his or her appointment limitations and should be familiar with AR 37-107 and AR 600-50. It is important to note that the conceptual approval or order of a commander or staff officer to procure an item does not constitute authority to accomplish an unauthorized procurement. Commanders particularly must use the utmost care to not give their ordering officer instructions or the impression that he or she is to make or correct an unauthorized purchase.

**B-4.** The procurement documents used by USAREC activities are SF 44, used by the ordering officer, and DA Form 3953.

a. SF 44 is primarily intended for over-the-counter one-time purchases by activities distant from a CO when all the supplies or services needed are immediately available at a local cost of less than the limits established by the CO. This further means that separate purchases at one vendor or at more than one vendor, for one class of supplies on 1 day, cannot exceed the limit established by the CO. Since the ordering officer must personally make the procurement, SF 44 eligible purchases cannot be made properly without his or her prior approval. When procurement is made without his or her prior approval, payment becomes the responsibility of the violating individual.

b. DA Form 3953 is a purchase request submitted to the CO to initiate a procurement for purchase of any dollar value including those where the supplies or services exceed the limitations of SF 44, and for those where SF 44 capability has not been issued. An example of an action to be guarded against involving DA Form 3953, is where a unit representative requests or directs a vendor to manufacture or to furnish supplies or services either before or after a purchase document is issued by the CO. Units must deal through the CO and not directly with a vendor, unless otherwise authorized by the CO. To do otherwise can make payment the responsibility of the violating individual.

**B-5.** Only CO or their designated representatives are authorized to issue a purchase document to solicit bids and proposals, or to commit the Government with respect to the award of contracts.

NOTE: Addressees are permitted to obtain cost estimates from vendors for the purpose of preparing DA Form 3953. However, it must be explained to the vendor that use of his or her cost estimate in no way commits the Government and does not constitute a purchase request.

**B-6.** An unauthorized purchase or commitment to a vendor by a self-designated Army representative creates an additional work load on the contracting office in attempting to legitimize the action. In addition, it creates ill will toward the Army within the civilian commercial community. All members of the command must be aware, indoctrinated, and follow proper procurement procedures. They must understand the consequences of unauthorized procurement actions. Though not all inclusive, commanders may take the following actions to assist in this endeavor:

a. All personnel in a position to be involved in procurement actions must be cognizant of, and have a clear understanding of AR 600-50, chapters 1 and 2.

b. Establish and maintain a working relationship with the supporting CO. Also, maintain on file the procurement instructions and regulations issued by that office.

c. Periodically, invite the supporting CO to attend a briefing and orientation on USAREC mission and problems associated with procurement. Invite him or her to periodically address conferences of recruiters, recruiting company, and staff personnel.

d. Ensure that unauthorized procurement is included as an inprocessing subject for new military and civilian personnel.

**B-7.** Procurement problems that cannot be resolved locally or which impact adversely upon mission performance will be referred to HQ USAREC (RCRM-LO-SV).

## **Appendix C**

### **Individual Employee Procurement Responsibilities**

**C-1.** Standards of conduct related to possible conflict between private interests and official duties of DA personnel are prescribed by AR 600-50. The basic principle is that a military member or a civilian employee should avoid the appearance of a conflict between his or her private interests and the public interests of the Government from a public confidence point of view. The individual should avoid any action which might result in or create the appearance of:

- a. using public office for private gain;
- b. giving preferential treatment to any person or firm;
- c. impeding Government efficiency or economy;
- d. losing complete independence or impartiality;
- e. making a Government decision outside official channels;
- f. adversely affecting the confidence of the public in the integrity of the Government.

**C-2.** As a matter of policy, DA personnel and their families will not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, directly or indirectly from, or on behalf of, any defense contractor or source that is engaged in or seeks business or financial relations with any DOD component. This prohibition also extends to gratuities solicited from or offered by entities having interests that may be substantially affected by the performance or nonperformance of DOD personnel. Those individuals having questions regarding specific prohibitions and limited exceptions should refer to AR 600-50, paragraph 2-2(a)(1), and consult their ethics counselor.

**C-3.** It is the responsibility of each individual serving or assigned as a procurement official within USAREC to ensure that they are familiar with the conduct prohibited by 41 U.S.C. 423 as set forth in paragraph 6 as well as appendix D of this regulation. Similarly, it is the responsibility of all procurement officials within USAREC to complete and submit only applicable OFPPA certification form upon assignment as a procurement official and when leaving USAREC during the course of a procurement in which the individual served as a procurement official. These forms will be returned to HQ USAREC (RCLC), for forwarding to the head of the contracting activity.

**C-4.** No one in USAREC has contracting authority for the procurement of supplies or services from commercial firms unless granted by the chief of the supporting CO. All procurement from commercial sources of USAREC units is accomplished by supporting CO. Procurement for HQ USAREC is accomplished by the Directorate of Contracting, Headquarters, Fort Sheridan. If determined appropriate and sufficiently justified by the chief of the CO, a responsible member of a USAREC unit may be appointed as an ordering officer in accordance with the provisions of AFARS, paragraph

1.698. Such designation must be in writing, is very limited as to the kinds of supplies and services which may be procured, and is limited as to the amount of money expendable in connection with the transaction.

**C-5.** No member of USAREC has authority to make a commitment to a commercial firm or representative thereof for a product or service that will be procured from it. Accordingly, when a USAREC member is approached by a representative of a prospective contractor, he or she should refrain from making any promises regarding award of contracts. Additionally, he or she should not, under any circumstances, advise a business representative of a commercial firm that an attempt will be made to give preferential treatment to his or her firm or product in the award of future contracts. A USAREC member should advise a prospective vendor that he or she does not have contracting authority, and that Federal laws and regulations generally require that procurements be made through maximum competition. If a member of USAREC has a question regarding the propriety of dealings with a specific firm, he or she should contact the command procurement analyst. Additionally, advice may be obtained from the Office of the Command Legal Counsel.

**C-6.** USAREC personnel are prohibited from releasing to an individual or business concern or its representatives any information concerning future DA requirements or a proposed acquisition by any contracting activity of DA. Such information will be released to all potential contractors as nearly simultaneously as possible, and only through the proper supporting CO by a CO. See AR 600-50, paragraph 2-1g, concerning unauthorized release of procurement information.

**C-7.** USAREC personnel may not participate on behalf of the Government in any matter in which an organization with which they are negotiating for employment has a financial interest. They remain disqualified from participating until the possibility of future employment with that organization has been rejected. USAREC personnel in grades GS-11 or O-4 and above who contact or are contacted by an organization with which the Government has a contract in excess of \$25,000 are prohibited from any procurement function with that contractor until the job offer or prospect has been rejected. In addition, they must submit a written report to the ethics counselor (either the Command Legal Counsel or the appropriate brigade judge advocate) within 7 days of the initial contact describing the substance of the contact. This report is not required if the first contact was initiated by the contractor and the prospect is rejected immediately. See AR 600-50, paragraph 2-1 for further details.

**C-8.** Violation of the standards of conduct prescribed by AR 600-50 as well as the provisions of this regulation can subject the violator to disciplinary action under Article 92(1), Uniform Code of Military Justice (military personnel) or civilian personnel regulations (DA civilian employees). Addi-

tionally, engaging in conduct prohibited by OFPPA (41 U.S.C. 423) may result in disciplinary action under civilian personnel regulations or criminal prosecution.

## **Appendix D**

### **Explanation of 41 U.S.C. 423(b) Prohibited Conduct by Procurement Officials**

#### **D-1. General**

a. The OFPPA, 41 U.S.C. 423, requires USAREC personnel acting as procurement officials to sign an ethics certificate before participating in federal procurements. Pertinent provisions of the Act are set forth in figure D-1. HQ USAREC Fm 1830 (Procurement Integrity Certification for Procurement Officials) is at figure D-2. Essentially, the Act prohibits procurement officials, during the conduct of a procurement, from soliciting or accepting employment or anything of value, or from disclosing source selection or proprietary information.

b. The following questions and answers are provided to explain terms which may not be self-explanatory.

#### **D-2. Who is a procurement official?**

"Procurement official" means any civilian or military official or employee who has participated personally and substantially in the conduct of the Army procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement. This includes any civilian or military official or employee of the Army who has participated personally and substantially in the following activities:

- a. Development of acquisition plans;
- b. Development of specifications, statements of work, or purchase descriptions and/or requests;
- c. Development of solicitation or contractual provisions;
- d. Evaluation or selection of a contractor; or
- e. Negotiation or award of a contract or modification to a contract. A contractor, subcontractor, consultant, expert, or adviser (other than a competing contractor) acting on behalf of, or providing advice to, the Army with respect to any phase of the procurement is considered an employee of the Army for the purposes of this law. A Government official or employee who has become a procurement official cannot have his or her status as a procurement official changed for purposes of seeking employment with a competing contractor.

#### **D-3. What does "participated personally and substantially" mean?**

"Participated personally and substantially" requires active and significant involvement of the individual in activities directly related to the procurement. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate "substantially" means that the employee's involvement must be of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a

critical step may be substantial. An employee whose responsibility is the review of a procurement solely for compliance with administrative procedures or budgetary considerations, and who reviews a document involved in the procurement for such a purpose, should not be regarded as having participated substantially in the procurement.

#### **D-4. What does the phrase "during the conduct of any Federal agency procurement of property or services" mean?**

a. "During the conduct of any Federal agency procurement of property or services" means the period beginning with the development, preparation, and issuance of a procurement solicitation, and concluding with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, selection of sources, and conduct of negotiations. Each contract award and each contract modification constitutes a separate procurement (i.e., a separate period during which the prohibitions and the requirements of the Act apply). Modification means the addition of new work to a contract or the extension of a contract, which requires justification and approval.

b. Due to the narrow definition of this phrase, OFPPA does not apply to delivery and purchase orders issued under the Local Media Payment System and Omnibus Research and Studies contracts. Personnel required to complete the OFPPA certificates as procurement officials are those who are involved in the solicitation and review and/or approval of a prime contract (i.e., Advertising or Omnibus) or any separate contract. USAREC personnel may also be required to complete OFPPA certificates by the servicing CO if they are involved in any solicitation which exceeds \$100,000.

#### **D-5. What is a competing contractor?**

"Competing contractor," with respect to any procurement (including any noncompetitive procurement) of property or services, means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or sub-contract under such procurement, and includes any other person acting on behalf of such an entity. "Competing contractor" includes the incumbent contractor in the case of a modification.

#### **D-6. In the context of section 423(b), what does "money, gratuity, or other thing of value" mean?**

"Money, gratuity, or other thing of value," except where expressly permitted by AR 600-50, means any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits, including discounts, passes, and promotional vendor training, given or extended to or on behalf of Government personnel, their immediate families, or households, for which fair market value is not paid by the recipient or the Government.

#### **D-7. For purposes of this law, what is considered "proprietary information"?**

a. "Proprietary information" means:

(1) Information contained in a bid or proposal, or cost or pricing data, that is submitted to the Government by a competing contractor and is marked as proprietary in accordance with applicable law or regulation; or

(2) Any other information submitted to the Government by a contractor and designated as proprietary, in accordance with law or regulation, by the contractor, the head of the agency, or the CO.

b. Information described above is proprietary only if the cover page and each page, or portion thereof, that contains proprietary information is marked as proprietary. Proprietary information does not include information:

(1) That is otherwise available without restrictions to the Government, a competing contractor, or the public;

(2) Contained in bid documents following bid opening; or

(3) Marked as proprietary but which the CO determines, after consultation with the contractor, would not reasonably be expected to cause the contractor competitive harm if disclosed to other competing contractors.

#### **D-8. For purposes of this law, what is considered "source selection information"?**

"Source selection information" means information determined by the head of the agency or the CO, to be information:

a. The disclosure of which to a competing contractor would jeopardize the integrity of successful completion of procurement concerned; and

b. Which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure. "Source selection information" is information, including information stored in electronic, magnetic, audio, or video formats, which is prepared or developed for use by the Government to conduct a particular procurement. It is limited to:

(1) Material marked with the legend "SOURCE SELECTION INFORMATION -- SEE FAR 3.104," including copies or extracts so marked, and any copies or extracts that the recipient knows or should know were made from material that was so marked; and

(2) The following material including copies or extracts thereof, whether or not marked with the legend "SOURCE SELECTION INFORMATION--SEE FAR 3.104":

- (a) Listings of offerors and prices;
- (b) Listing of bidders prior to bid opening;
- (c) Source selection plans;
- (d) Technical evaluation plans;
- (e) Technical evaluations of competing proposals;
- (f) Competitive range determinations;
- (g) Rankings (not applicable to sealed bidding);
- (h) Source selection board reports and evaluations; or
- (i) Source selection advisory board recommendations.

## **Certification Requirement.**

This summary describes the relevant provisions of the Office of Federal Procurement Policy Act (OFPPA), 41 U.S.C. 423, and highlights changes made when the law was amended in November 1989.

The law was suspended for the one year period beginning December 1, 1989 and ending November 30, 1990. Those who will serve the Government as procurement officials after the law again becomes effective must sign a certification stating that they are familiar with and will not engage in conduct prohibited by 423(b), (c), and (e) and will report any information concerning a violation or possible violation of 423(a), (b), or (d). Similar certifications signed prior to the suspension are legally insufficient to enable an individual to serve as a procurement official on or after December 1, 1990.

### **“Procurement Officials” and “Competing Contractors.”**

The term “procurement official” refers to any officer or employee of an agency who has participated personally and substantially in any of the following with respect to a particular procurement:

- (i) Drafting, or reviewing and approving, a specification or statement of work;
- (ii) Preparation or development of a procurement or purchase request;
- (iii) Preparation or issuance of a procurement solicitation;
- (iv) Evaluation of bids or proposals or selection of sources;
- (v) Negotiations to establish the price or terms and conditions of a contract or contract modification;
- (vi) Review and approval of the award or modification of a contract.

The definition extends to contractors, subcontractors, consultants, experts, and advisers acting on behalf of or providing advice to an agency with respect to a procurement. The interim regulations make it clear that one does not become a procurement official solely by performing clerical functions, by general technical, engineering or scientific efforts having broad application, or by reviewing procurement documents solely to determine compliance with regulatory, administrative and budgetary requirements and procedures. The regulations also exclude participation on Federal advisory committees, agency level boards and panels and in studies conducted under OMB Circular A-76 procedures.

A “competing contractor” is an entity that is or is reasonably likely to become a competitor for a contract or subcontract under the procurement and includes any other person acting on behalf of such an entity.

### **Prohibitions During the Conduct of a Procurement.**

Section 423(b) prohibits a procurement official, during the conduct of an agency procurement, from knowingly:

- Soliciting, discussing, or accepting future employment or business opportunity with a competing contractor;
- Soliciting or accepting money or any other thing of value from a competing contractor; or
- Disclosing proprietary or source selection information to any person not authorized to receive the information.

Section 423(d) has the effect of extending this particular prohibition to anyone who has access to proprietary or source selection information.

Section 423(a) restricts competing contractors from giving gratuities to or discussing future employment with a procurement official and soliciting or obtaining proprietary or source selection information. There are civil fines for violations of the first two prohibitions and criminal and civil penalties for violation of the third. Federal employees also may be subject to administrative sanctions, including disciplinary action.

These prohibitions apply “during the conduct of a procurement.” The conduct of a procurement begins on the earliest date an authorized official directs that a specific action be taken to initiate a procurement. Specific actions include:

- (i) Drafting a specification or a statement of work;
- (ii) Review and approval of a specification;
- (iii) Requirements computation at an inventory control point;

### **Figure D-1. Procurement integrity summary for procurement officials**

- (iv) Development of procurement or purchase requests;
- (v) Preparation or issuance of a solicitation;
- (vi) Evaluation of bids or proposals;
- (vii) Selection of sources;
- (viii) Conduct of negotiations; or
- (ix) Review and approval of the award of a contract or contract modification.

The conduct of a procurement ends with award of a contract or cancellation of the procurement, or upon execution of a modification that adds new work to a contract.

The phrase, "gratuity or other thing of value" is defined to include any gift, favor, entertainment, transportation, lodgings, meals, services, training, or other item having monetary value. It does not include: (1) any unsolicited item having a market value of \$10 or less per event or presentation; (2) loans from banks and financial institutions; (3) discounts available to the general public; (4) plaques and certificates having no intrinsic value; (5) anything paid for by the Government, secured under Government contract, or accepted by the Government under specific statutory authority; or (6) training to facilitate use of its products provided by a vendor whose products are furnished under Government contract. This definition reflects a change in the law.

**Recusal in Order to Discuss Employment.**

Section 423(c) allows some procurement officials to obtain permission to withdraw from further participation in a procurement in order to discuss future employment with a competing contractor. This is a change in the law. An eligible procurement official may, in accordance with specific procedures in the interim regulations, request authorization to be recused from participation in the procurement. A procurement official is not eligible for recusal if, during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract, he or she has participated personally and substantially in the evaluation of bids or proposals, the selection of sources, or the conduct of negotiations. An individual may not commence discussions with a competing contractor until he or she has received written approval of the recusal request. Rejection of an officer's or employee's recusal request is not an adverse personnel action.

**Additional Certification Requirements.**

Section 423(e) imposes a number of certification requirements in connection with contracts and modifications in excess of \$100,000. It requires:

- Any procurement official who leaves the Government during the conduct of a specific procurement to certify that he or she understands the continuing obligation not to disclose proprietary or source selection information;
- Anyone participating personally and substantially in the preparation or submission of the competing contractor's offer to certify that he or she is familiar and will comply with 423(a) and will report any information concerning a violation or possible violation of 423(a), (b), or (d) to the individual responsible for preparing the offer;
- The officer or employee of the competing contractor responsible for its offer to certify that the above certifications have been obtained and that he or she has no information concerning a violation or possible violation of 423(a), (b), or (d) or has disclosed such information to the contracting officer.
- The contracting officer to certify that he or she has no information concerning a violation or possible violation of 423(a), (b), or (d) or has disclosed all information to the head of the agency; and
- Any procurement official or competing contractor to make such additional certifications as to violations or possible violations of 423(a), (b), or (d) as may be required by the head of the agency.

**Ethics Advice.**

An employee or former employee who is uncertain whether specific conduct would violate the law may request an advisory opinion from his or her brigade judge advocate. This is a change in the law. Advisory opinions may not be obtained for the purpose of determining whether certain information is proprietary or source selection information, whether such information may be disclosed, or whether, prior to bid opening or receipt of proposals, a particular entity is a competing contractor. Questions regarding the character and disclosure of such information should be directed to the contracting officer.

**Figure D-1. Procurement integrity summary for procurement officials (Continued)**

**PROCUREMENT INTEGRITY CERTIFICATION FOR PROCUREMENT OFFICIALS**

(For use of this form see AR 715-1)

**PRIVACY ACT NOTICE TO EMPLOYEES AND OFFICIALS**

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a) , the following notice is provided:

**AUTHORITY FOR COLLECTION OF INFORMATION:** 41 U.S.C. 423 and Executive Order 9397.

Your signature below on the Procurement Integrity Certification for Procurement Officials, and disclosure of your Social Security Number on this page, are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

**PRINCIPAL PURPOSE FOR COLLECTION OF THIS INFORMATION:**

To obtain and maintain a completed certification from any person designated as a "Procurement official," as defined by 41 U.S.C. 423 and applicable procurement regulations.

**ROUTINE USES WHICH MAY BE MADE OF THE COLLECTED INFORMATION:**

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievances of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of the Personnel Management (OPM) in the system of records entitled "OPM/GOVT-1, General Personnel Records," as published in the Federal Register periodically by OPM.

As a condition of serving as a procurement official, I John Doe \_\_\_\_\_, hereby certify that I am  
(typed or printed name)

familiar with the provision of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and requirement to so certify.

/signed/  
SIGNATURE OF PROCUREMENT OFFICIAL

1 Aug 91  
DATE

John Doe, 111-22-3333  
PRINTED OR TYPED NAME, SOCIAL SECURITY NUMBER

(708) 926-1111  
OFFICE TELEPHONE NUMBER

Procurement Officer, HQ USAREC  
POSITION/TITLE, OFFICE ADDRESS

**HQ USAREC Fm 1830, 1 Aug 91**

**Figure D-2. Sample of a completed HQ USAREC Fm 1830**

**Appendix E**  
**Actual Violations**

**E-1. Case No. 1**

a. The CO of a supporting military installation has terminated a contract for office machine repair and negotiated with another repair agency for service.

b. An Army noncommissioned officer, being unaware of the change, called the old contractor and asked him or her to come and pickup a typewriter for repair. The service was performed by the terminated contractor who placed a claim against the Government. The CO had no legal way to pay the bill. Embarrassment resulted for all concerned.

**E-2. Case No. 2**

a. A well-intending Army noncommissioned officer contacted at least three vendors to get prices and terms to provide and install an 8-track tape and radio combination in a number of vehicles. This was a case of soliciting bids without authority.

b. An equally significant aspect was that the resulting letter for request of approval was processed through channels of approval without the violation being recognized as such by any intermediate headquarters.

**E-3. Case No. 3**

a. In a number of instances, personnel have extended subscriptions to periodicals without referring the matter to the CO.

b. Payment by the finance office without proper procurement action is illegal. Claims result which may eventually be forwarded to the Comptroller General for resolution. These actions reflect adversely upon individuals and the command involved and the image of the Army in the civilian community.

**E-4. Case No. 4**

a. General Services Administration (GSA) authorizes operators of GSA motor vehicles to arrange for necessary repairs up to a cost of \$50 without referring the decision to the interagency motor pool.

b. An operator incurred a repair bill of \$158 without asking for GSA motor pool approval. As a result, the operator's headquarters was billed for \$108.

NOTE: Had a repair bill been received from the GSA motor pool first, the total bill of \$158 would have been paid by GSA.