

a point of contact for the development and implementation of the Federal electronic commerce system within each respective department or agency.

3. NO PRIVATE RIGHTS CREATED.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

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§ 2302. Rights in technical data

(a) **WHERE DEFINED.**—The legitimate proprietary interest of the Federal Government and of a contractor in technical or other data shall be defined in regulations prescribed as part of the Federal Acquisition Regulation.

(b) **GENERAL EXTENT OF REGULATIONS.**—

(1) **OTHER RIGHTS NOT IMPAIRED.**—Regulations prescribed under subsection (a) may not impair a right of the Federal Government or of a contractor with respect to a patent or copyright or another right in technical data otherwise established by law.

(2) **LIMITATION ON REQUIRING DATA BE PROVIDED TO THE GOVERNMENT.**—With respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that the Federal Government may not require a person that has developed a product (or process offered or to be offered for sale to the public) to provide to the Federal Government technical data relating to the design (or development or manufacture of the product or process) as a condition of procurement by the Federal Government of the product or process. This paragraph does not apply to data that may be necessary for the Federal Government to operate and maintain the product or use the process if the Federal Government obtains it as an element of performance under the contract.

(c) **TECHNICAL DATA DEVELOPED WITH FEDERAL FUNDS.**—

(1) **USE BY GOVERNMENT AND AGENCIES.**—Except as otherwise expressly provided by Federal statute, with respect to executive agencies subject to division C, regulations prescribed under subsection (a) shall provide that—

(A) the Federal Government has unlimited rights in technical data developed exclusively with Federal funds if delivery of the data—

(i) was required as an element of performance under a contract; and

(ii) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future; and

(B) the Federal Government and each agency of the Federal Government has an unrestricted, royalty-free right to use, or to have its contractors use, for governmental purposes (excluding publication outside the Federal Government) technical data developed exclusively with Federal funds.

(2) **REQUIREMENTS IN ADDITION TO OTHER RIGHTS OF THE GOVERNMENT.**—The require-

ments of paragraph (1) are in addition to and not in lieu of any other rights the Federal Government may have pursuant to law.

(d) **FACTORS TO BE CONSIDERED IN PRESCRIBING REGULATIONS.**—The following factors shall be considered in prescribing regulations under subsection (a):

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219, 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the Federal Government in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(e) **PROVISIONS REQUIRED IN CONTRACTS.**—Regulations prescribed under subsection (a) shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the Federal Government and the contractor or subcontractor (at any tier) regarding technical data to be delivered under the contract;

(2) specifying technical data to be delivered under the contract and schedules for delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for technical data to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the Federal Government to use the data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver the revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance, when technical data is delivered or is made available, that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the Federal Government when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or ex-

ercise another remedy the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3733.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2302(a)	41:418a(a) (1st sentence).	Pub. L. 93-400, §21, as added Pub. L. 98-577, title III, §301(a), Oct. 30, 1984, 98 Stat. 3074; Pub. L. 99-145, title IX, §961(d)(2), Nov. 8, 1985, 99 Stat. 704.
2302(b)	41:418a(a) (2d, last sentences).	
2302(c)	41:418a(b).	
2302(d)	41:418a(c).	
2302(e)	41:418a(d).	

In subsection (a), the words “Federal Acquisition Regulation” are substituted for “single system of Government-wide procurement regulations as defined in section 403(4) of this title” because section 3(a)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (Public Law 100-679, 102 Stat. 4055) substituted “Federal Acquisition Regulation” for “single system of Government-wide procurement regulations” in section 6 of the Office of Federal Procurement Policy Act (Public Law 93-400, 88 Stat. 797, 41:406) and because section 3(c) of the Office of Federal Procurement Policy Act Amendments of 1988 (102 Stat. 4056) struck section 4(4) of the Office of Federal Procurement Policy Act (88 Stat. 797, 41:403(4)), as amended by section 4 of the Office of Federal Procurement Policy Act Amendments of 1983 (Public Law 98-191, 97 Stat. 1326), which had defined “single system of Government-wide procurement regulations”.

§ 2303. Ethics safeguards related to contractor conflicts of interest

(a) DEFINITION.—In this section, the term “relevant acquisition function” means an acquisition function closely associated with inherently governmental functions.

(b) POLICY ON PERSONAL CONFLICTS OF INTEREST BY CONTRACTOR EMPLOYEES.—

(1) DEVELOPMENT AND ISSUANCE OF POLICY.—The Administrator shall develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing relevant acquisition functions (including the development, award, and administration of Federal Government contracts) for or on behalf of a Federal agency or department.

(2) ELEMENTS OF POLICY.—The policy shall—

(A) define “personal conflict of interest” as it relates to contractor employees performing relevant acquisition functions; and

(B) require each contractor whose employees perform relevant acquisition functions to—

(i) identify and prevent personal conflicts of interest for the employees;

(ii) prohibit contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain;

(iii) report any personal conflict-of-interest violation by an employee to the applicable contracting officer or contracting officer’s representative as soon as it is identified;

(iv) maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(v) have procedures in place to screen for potential conflicts of interest for all employees performing relevant acquisition functions; and

(vi) take appropriate disciplinary action in the case of employees who fail to comply with policies established pursuant to this section.

(3) CONTRACT CLAUSE.—

(A) CONTENTS.—The Administrator shall develop a personal conflicts-of-interest clause or a set of clauses for inclusion in solicitations and contracts (and task or delivery orders) for the performance of relevant acquisition functions that sets forth—

(i) the personal conflicts-of-interest policy developed under this subsection; and

(ii) the contractor’s responsibilities under the policy.

(B) EFFECTIVE DATE.—Subparagraph (A) shall take effect 300 days after October 14, 2008, and shall apply to—

(i) contracts entered into on or after that effective date; and

(ii) task or delivery orders awarded on or after that effective date, regardless of whether the contracts pursuant to which the task or delivery orders are awarded are entered before, on, or after October 14, 2008.

(4) APPLICABILITY.—

(A) CONTRACTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—This subsection shall apply to any contract for an amount in excess of the simplified acquisition threshold (as defined in section 134 of this title) if the contract is for the performance of relevant acquisition functions.

(B) PARTIAL APPLICABILITY.—If only a portion of a contract described in subparagraph (A) is for the performance of relevant acquisition functions, then this subsection applies only to that portion of the contract.

(c) BEST PRACTICES.—The Administrator shall, in consultation with the Director of the Office of Government Ethics, develop and maintain a repository of best practices relating to the prevention and mitigation of organizational and personal conflicts of interest in Federal contracting.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3735.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2303(a)	no source.	
2303(b), (c)	41:405c(a), (c).	Pub. L. 110-417, [div. A], title VIII, §841(a), (c), Oct. 14, 2008, 122 Stat. 4537, 4539.

In this section, the words “relevant acquisition functions” are substituted for “acquisition functions closely associated with inherently governmental functions” because of subsection (a).

In subsection (b), the words “Not later than 270 days after the date of the enactment of this Act” are omitted because of section 6(f) of the bill.