

Time to Review Internal Confidentiality Agreements

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Effective January 19, 2017, pursuant to ***Federal Acquisition Regulation (FAR)*** clause 52.203-19, *Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements*, federal government contractors are prohibited from requiring employees or subcontractors to sign an internal confidentiality agreement that restricts them from lawfully reporting waste, fraud, or abuse to designated investigative or law enforcement representatives of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General). Pursuant to FAR clause 52.203-18, *Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements – Representation*, by submitting an offer to the federal government, contractors represent that they are compliant with the requirements of FAR clause 52.203-19.

To comply with these new requirements, all federal government contractors should:

- Review existing employee and subcontractor confidentiality agreements;
- If existing confidentiality agreements are found to contain language that is inconsistent with the new rule, prepare an appropriate notification to employees and subcontractors that the prohibitions and restrictions in the confidentiality agreement that are inconsistent with the clause, are no longer in effect; and
- Revise confidentiality agreement templates and draft future confidentiality agreements to ensure compliance with the new rule.

This new rule applies to all solicitations and contracts (including contracts for commercially available off-the-shelf (COTS) items) that use fiscal year 2015 funds or subsequent fiscal year funds, that do not already contain a comparable provision/clause. Additionally, higher-tiered contractors must include FAR clause 52.203-19 in all lower-tier subcontracts.

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