

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 23-128

Date Received: September 14, 2023

Title: T3.1.6 - Requirement for a Non-Disclosure Agreement and other administrative changes

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Policy and Guidance: (Please check only one box)

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| ☐ Policy | ☐ Procurement Tools and Resources |
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| ☐ Procurement Templates | ☐ Real Property Clauses |
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Summary of Change:

This change revises T3.1.6A.2, Requirement for a Non-Disclosure Agreement (NDA), so that the guidance on the use of the AMS NDA Template corresponds to the content of the AMS NDA Template itself. In particular, new Guidance language instructs that the Template must be signed by members of source selection team prior to accessing sensitive information, and that outside the source selection context, personnel may be required to sign an NDA prior to accessing sensitive information. Existing Guidance did not reference the use of the NDA outside the source selection context. A paragraph is also added to T3.1.6A.2 to reference a separate NDA, the Defensive Counterintelligence Program (DCIP) Non-Disclosure Agreement, and to include related cross-references to T3.14.1A7 and the relevant FAA Order. In addition, T3.1.6A.3 and T3.1.6A.5 are revised to change imprecise references to the FAA's "Procurement Legal Division" to reference the "Acquisition and Fiscal Law Division (AGC-500)." "(AGC)" is added to clarify the more general reference to the "Office of the Chief Counsel" in T3.1.6A.4.

Reason for Change: Changes are for clarity and consistency throughout AMS.

- 1) AMS Guidance is revised for clarity so that it corresponds to the content of the AMS NDA Template, which was revised in September 2021 without corresponding changes to AMS Guidance.
- 2) The Guidance also adds language to mitigate confusion between the AMS NDA Template and another FAA NDA Template, the Defensive Counterintelligence Program NDA, which is referenced in T3.14.1A7.
- 3) The Guidance changes “Procurement Legal Division” to “Acquisition and Fiscal Law Division (AGC-500),” the actual name of the appropriate specific FAA legal division. It also adds “AGC” to “Office of the Chief Counsel” to confirm that the reference in T3.1.6A.4 refers more broadly to the Chief Counsel’s office; approval of FOIA matters may be coordinated through AGC-500, but legal counsel may also come from other AGC divisions.

Development, Review, and Concurrence: AAP-110

Target Audience: Contracting Personnel

Briefing Planned: No.

ASAG Responsibilities: No.

Section / Text Location: Procurement Guidance T3.1.6A

The redline version must be a comparison with the current published FAST version.

- ☒ I confirm I used the latest published version to create this change / redline
or
☐ This is new content

Links:

FAA AMS Procurement Guidance, https://fast.faa.gov/PPG_Procurement_Guidance.cfm

Attachments:

Guidance T3.1.6 final
Guidance T3.1.6 redline

Other Files: N/A.

Redline(s):

Section Revised: T3.1.6 – Non-Disclosure of Information

Procurement Guidance - (~~7/2023~~10/2023)

[T3.1.6 Non-Disclosure of Information](#) Revised 8/2009
[A Disclosure of Information](#)

[1 General](#) Revised 1/2007

[2 Requirement for Non-Disclosure Agreement](#) Revised ~~4/2023~~10/2023

[3 Processing a Violation of the Non-Disclosure Agreement](#) Revised 9/2021~~10/2023~~

[4 Processing a Freedom of Information \(FOIA\) Request](#) Revised ~~1/2017~~10/2023

[5 Single-Source/Non-Competitive Acquisitions](#) Revised 9/2021~~10/2023~~

[B Clauses](#)

[C Procurement Forms](#) Revised 9/2021

[D Procurement Samples](#) Added 9/2021

[E Procurement Templates](#) Added 9/2021

[F Procurement Tools and Resources](#) Added 9/2021

T3.1.6 Non-Disclosure of Information Revised 8/2009

A Disclosure of Information

1 General Revised 1/2007

The Source Selection Official (SSO), each procurement team member (program officials, contracting personnel, legal counsel, and other support staff), including advisors, and any other individuals exposed to commercially sensitive and source selection sensitive information must maintain confidentiality of that information.

2 Requirement for a Non-Disclosure Agreement Revised 4/202310/2023

- a. *Non-Disclosure During Source Selection.* Maintaining the security of sensitive procurement information and source selection proceedings is of paramount importance to the integrity of the evaluation process. ~~To assure that sensitive data acquired in the course of the procurement are handled properly by each procurement team member, the~~ For all procurements with an estimated value equal to or exceeding the AMS risk threshold, all individuals involved in ~~thesesource selection~~ proceedings ~~are required to~~ must sign ~~at the~~ Non-Disclosure Agreement (~~see located in~~ AMS Procurement Templates) ~~before the Screening Information Request (SIR) is issued for all procurements with an estimated value equal to or exceeding the AMS risk threshold prior to accessing source selection information or contractor bid or proposal information, as defined in AMS Guidance T3.1.8.~~ This agreement provides notice of the type of information that requires protection and the penalties for improperly disclosing such information.
- b. *Non-Disclosure outside of Source Selection.* Contracting Officers (COs) or program officials may require that an individual sign the Non-Disclosure Agreement located in AMS Procurement Templates before the individual may access sensitive information outside of the source selection context. This information may include proprietary information, procurement-sensitive information, source-selection-sensitive information, sensitive unclassified information, defense critical infrastructure security information, sensitive security information, privacy information, and other information of a confidential nature.
- c. *Defensive Counterintelligence Program (DCIP) Non-Disclosure Agreement.* Per AMS Guidance T3.14.1A7, individuals accessing certain types of sensitive information, including but not limited to Classified National Security Information (CNSI), Sensitive Unclassified Information (SUI), or otherwise protected information, are required to sign the Defensive Counterintelligence Program Non-Disclosure Agreement (See FAA Order 1600.84, Appendix C).
- d. *Exemptions from Requirements for Signing Non-Disclosure Agreements.* The certification of completion of Annual Ethics Training by ~~Contracting Officers~~COs, Contract Specialists, Cost/Price Analysts of AAP-500, and Legal Counsel is considered a blanket Non-Disclosure Agreement for the following fiscal year, so these individuals will not need to fill out individual Non-Disclosure Agreements. The completion of Annual Ethics Training is documented in eLMS.

3 Processing a Violation of the Non-Disclosure Agreement Revised 9/202110/2023

Any suspected or actual improper disclosure of procurement sensitive information must be reported to the ~~Contracting Officer~~ CO. The ~~Contracting Officer~~ CO will consult with the ~~Procurement Legal~~ Acquisition and Fiscal Law Division (AGC-500) for guidance in this matter. The suspected violator should not be permitted to continue in the procurement process until the suspected violation has been reviewed and legal advice obtained.

4 Processing a Freedom of Information (FOIA) Request Revised 1/201710/2023

- a. The CO processes requests for procurement information under FOIA. Unless the request for information is exempt from disclosure under the Act (such as trade secrets and commercial or financial information that is privileged or confidential), the information must be released. The CO coordinates responses to FOIA requests with the local FOIA Control Officer and the Office of Chief Counsel ~~(AGC)~~.
- b. The CO must coordinate a request for procurement information with the vendor (submitter) whose contract, or information provided under a contract, is requested. The CO must request that the vendor describe the specific information exempt from disclosure and provide the specific exemption(s) which apply to the information. The vendor's response must be placed in the contract file. The CO determination whether the information is exempt from disclosure and rationale for the determination must also be placed in the contract file.

5 Single-Source/Non-Competitive Acquisitions Revised 9/202110/2023

The requirements of this Section are also applicable to single-source and non-competitive acquisitions. For such acquisitions, the ~~Contracting Officer~~ CO will take all appropriate actions in coordination with the Program Office. Subject to the ~~Procurement Legal Division~~ approval of the Contracting Officer Acquisition and Fiscal Law Division (AGC-500), the CO may tailor the Non-Disclosure Agreement as appropriate.

B Clauses

[view contract clauses](#)

C Procurement Forms Added 9/2021

Document Name

D Procurement Samples *Added 9/2021*

Document Name

E Procurement Templates *Added 9/2021*

Document Name
Non-Disclosure Agreement

F Procurement Tools and Resources *Added 9/2021*

Document Name