MEMORANDUM FOR: Deputy Assistant Administrators
                     Staff Office Directors

FROM: Jeffrey S. Thomas
       Acting Director

SUBJECT: Acquisition Alert 17-03 Proper Roles of the Services Contractor

The purpose of this memorandum is to provide the NOAA Acquisition and Grants Office (AGO) policy regarding the proper roles of the service contractor. Service contracts are the vehicles utilized to provide support services in meeting NOAA's mission requirements. Government employees and contractor personnel are frequently co-located and need to communicate with each other on a daily basis. While the Federal Acquisition Regulation (FAR) identifies contractors as being part of the acquisition team, Government employees must maintain appropriate boundaries with contractor personnel and avoid blurring the distinction between a contractual relationship and an employer-employee relationship.

The Acquisition Alert establishes NOAA specific acquisition policy in regards to service contractors receiving awards and recognition, participating in team and morale-building events or social gatherings, participating on NOAA councils, and accessing NOAA facilities. The Acquisition Alert also issues a Standard Operating Procedure, entitled Proper Roles of the Services Contractor. The purpose of the Standard Operating Procedure is to identify Federal, Department of Commerce, and NOAA policies and procedures for Government and services contractor interactions in the workplace.

Questions pertaining to the Acquisition Alert should be directed to Paula Hance, AGO, Policy and Oversight Division (POD) at paula.hance@noaa.gov, or by telephone at (816) 823-3836.

Attachment

Acquisition Alert 17-03, Proper Roles of the Services Contractor
ACQUISITION ALERT 17-03

Proper Roles of the Services Contractor

This Acquisition Alert (AA) is being transmitted to all NOAA Heads of Contracting Offices (HCO) for dissemination within their respective Acquisition Divisions.

1. **Purpose:** The purpose of this Acquisition Alert is to establish the NOAA acquisition policy with regard to services contractors (a) receiving awards, (b) participating in team/morale-building events and social gatherings, (c) participating on NOAA councils, and (d) accessing NOAA facilities.

This Acquisition Alert also issues the NOAA Acquisition and Grants Office (AGO) Standard Operating Procedure, *Proper Roles of the Services Contractor*. The Standard Operating Procedure is intended to provide policy and guidance to NOAA Line and Staff Offices regarding the proper roles of the services contractor when working side-by-side with NOAA employees to support NOAA’s mission.

2. **Background:** Service contracts and orders bring contractor support directly into the NOAA workplace, and this makes it common for Government employees and contractor personnel to work side-by-side on a daily basis. As a result, NOAA is comprised of "multi-sector" or "blended" workforce teams that provide the essential support necessary to meet NOAA’s mission. NOAA employees need to understand the proper roles of the services contractor and comply with the associated policies and procedures. The Department of Commerce (DOC) Procurement Memorandum (PM) 2015-05, *Maintaining Proper Relationships with Support Services Contractors*, was issued to provide a broad overview of issues commonly associated with services contractors and to stress the maintaining of proper relationships. This Acquisition Alert expands on the PM to address NOAA-specific policy and guidance with regard to services contractors.

3. **Applicability:** This acquisition policy is applicable to all NOAA Line and Staff Offices.

4. **Policy on Contractor Personnel receiving Awards:** The DOC Office of Human Resources Management Performance Management Handbook states the only form of recognition available for contractor personnel is a Certificate of Appreciation. NOAA Administrative Order 202-451, *NOAA Incentive Awards Program*, follows suit in the NOAA Incentive Awards Program Handbook under Section 7, Non-Monetary Awards, by including contractor personnel among those eligible to receive Certificates of Appreciation.

While this authorized venue may be used to recognize a contractor employee’s performance on a specific NOAA service contract; no other letter, award, or form of recognition shall be presented or given to a contractor employee or include the name a contractor employee for similar purposes. The following NOAA acquisition policy applies to the processing of certificates of appreciation for NOAA services contractors:

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a. Certificates of Appreciation issued to Services Contractor Personnel. In addition to the policy and procedures identified in the NOAA Incentive Awards Handbook, Section 7 Non-Monetary Awards, NOAA employees shall ensure compliance with the following NOAA acquisition policy:

1. **Certificates of Appreciation** intended for a services contractor employee must be tied to the contract. Prior to issuing a Certificate of Appreciation for a services contractor employee, Line and Staff Offices shall coordinate with both the COR (if no COR assigned, then the CO) and the CO for the contract to determine whether performance of the contract is satisfactory and appropriate to proceed with the award.

2. Per the DOC Office of Human Resources Management Performance Management Handbook, while a contractor may receive a Certificate of Appreciation, organizations are prohibited from spending appropriated funds to purchase a presentation holder (i.e., a frame or a plaque) or to otherwise expend appropriated funds to acknowledge (i.e., celebrate) a contractor’s completion of a specific project.

3. The prepared Certificate of Appreciation shall clearly identify the individual as a contractor employee and name the contractor company. As a best practice, the contractor’s designated official should present the certificate to the contract employee.

4. Contractors shall not be reimbursed for the cost of travel and travel related expenses associated with attendance of an awards ceremony or event held for similar purposes.

5. **Policy on Contractor Personnel attendance at Team/Morale-Building Events or Social Gatherings:** Attendance at team/morale-building events and social gatherings may create conditions that blur the Government-contractor relationship. The appearance of inappropriate relationships or behavior must be avoided. The following NOAA acquisition policy applies to such events:

   a. **Team/Morale-Building Events.** Contractors providing onsite support services to NOAA may be permitted to attend team/morale-building events, such as office picnics, sport outings, holiday parties, or other like functions (such as “All Hands” or “off-site” team meetings), when all of the following conditions have been met:

      1. The Line or Staff Office provides information regarding the planned event(s) to the Contracting Officer’s Representative (COR) (if no COR assigned, then to the CO) who coordinates with the CO in advance to discuss the specific nature of the event(s). The CO will determine:

         i. Whether attendance would be in accordance with the standards of conduct (FAR 3.101) and does not give the perception of an improper employer-employee relationship (FAR 37.104).
ii. Whether attendance would affect the services required under the contract and would not be inconsistent with the contract terms and conditions; and

iii. Whether attendance will be allowed on a billable or unbillable status.

2. Where determined by the CO that the time spent at a team/morale-building event shall not be billed to the Government, contractor personnel choosing to attend must make arrangements with their employer for appropriate leave or other unbillable status under the contract.

3. There may be instances where it is appropriate for contractors to attend staff meetings and/or off-site meetings where mission-related items are discussed. The CO will notify the COR if the contractor is allowed to attend these meetings and will specify whether the meetings are billable. Examples of such meetings might include an internal meeting to discuss ways to improve a system/application for which contractors regularly utilize or an “off-site” team meeting focused on a special project for which a contractor is part of the project team.

b. Social Gatherings.

1. Social gatherings, such as retirement parties, promotion, baby showers, birthday parties, and wedding celebrations may occur periodically in the workplace wherein contractors may wish to attend on their own personal time. This is permissible only where contractor personnel are not on contract time billed to the Government and they have made arrangements with their employer to take leave or to be on other unbillable status.

2. In the instance where Government employees are invited by the contractor to attend holiday party or other social gathering, the gift rules apply. This includes invitations to “widely attended gatherings,” which can only be accepted under certain circumstances where approved by a Government supervisor. The Department of Commerce Office of General Counsel Ethics and Programs Division has provided guidance for Government employees on handling invitations to such events.

c. Contractor Contribution to Attend Events and Gatherings. While contractor personnel may not be asked or be required to pay to attend any team/morale-building event or social gathering, they (or their employer) may voluntarily pay the per-person attendance cost or fee or may bring food to share if others attending are doing the same. These are not considered gifts, but rather the cost of their share of a group office function or meal. They may also voluntarily contribute to a gift, but that would be limited to no more than $20 for the total value of the gift.

6. Policy on Contractor Personnel Participation on NOAA Councils: The following NOAA acquisition policy applies to NOAA contractor personnel participation on NOAA Councils.

a. NOAA Councils and Committees. The NOAA Business Operations Manual identifies a NOAA Council as an established group that provides leadership and coordination across
the agency for select functions and a committee as an established group that reports to a NOAA Council. NOAA utilizes councils for select high-interest and high-visibility functions. Councils also provide a forum for reviewing and developing policy and procedures for technical and scientific issues, guide resource utilization, and simplify complex issues into recommendations for senior leadership. The participation of contractor personnel to provide support services to a NOAA Council, committee, or any other group that provides leadership and coordination across the organization for select functions may be appropriate, if clearly within the scope of their respective contract. Contractor personnel shall not be a voting member of a NOAA Council or Committee. A full list of the established NOAA Councils is provided in Chapter 2, Table 2-1 of the NOAA Business Operations Manual.

b. **NOAA Employee Councils and similar entities.** NOAA Employee Councils, committees, working groups, affinity groups, voluntary employee organizations (as defined in DAO 202-251), and groups convened for similar purposes, are intended to facilitate communication both among NOAA Federal employees and with NOAA leadership to help promote a positive, effective, and collegial workplace environment. A contractor shall not participate as a member in the activities of these Federal employee-specific entities.

7. **Policy on Contractor Personnel Access to NOAA Facilities:** The following NOAA acquisition policy applies to NOAA contractors requiring access to NOAA facilities.

a. **Events resulting in denied access to NOAA facilities.** In all instances where contractor employees are denied access or are required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the CO will provide direction to the contractor, which could include continuing onsite performance during the NOAA facility closure period. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities, if appropriate. Occurrence of holidays, closures, or delays during the performance of the contract or order does not necessarily entitle the contractor to an extension of performance or additional compensation. NOAA may close and or deny contractor access to a NOAA facility for a portion of a business day or longer due to any one of the following events:

   i. Federal public holidays in accordance with 5 U.S.C. 6103;
   
   ii. Fires, floods, earthquakes, and severe weather including snow storms, tornadoes, and hurricanes;
   
   iii. Occupational safety or health hazards;
   
   iv. Lapse in Appropriations; or
   
   v. Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.
b. Access to NOAA facilities outside regular business hours or outside the normal workweek. In all instances where an onsite contractor employee requires access to NOAA facilities outside of regular business hours or outside of the normal workweek, the contractor shall submit such request through the COR to the CO (in the event the COR is not available or a COR is not assigned to the contract, then submit to the CO). The written request shall provide a justification supporting the required access for the contractor employee and be submitted, in accordance with the NOAA Solicitation and Contract Language, Contractor Access to NOAA Facilities (Sept 2017) (Attachment 1), before access is allowed. The fill-in section of the NOAA Solicitation and Contract Language shall be completed by the CO before the solicitation is issued. If the fill-in is not completed, the written request shall default to 72 hours prior to the required access. Contractor access to a NOAA facility outside regular hours or outside the normal workweek may be permissible without the presence of a Federal employee if determined that the contractor employee is compliant with the necessary security requirements, and a Federal employee is not required to be present to provide technical direction. Upon receipt of the request, the COR shall verify the following information before submitting the request to the CO:

i. The contractor is in compliance with personnel security requirements;

ii. Contractor access to the facility is available for the time requested and necessary for the performance of the contract;

iii. Any need for a Federal employee to be onsite during the performance; and

iv. Work performed as overtime is compliant with Federal Acquisition Regulation (FAR) 22.103-4 and Commerce Acquisition Regulation (CAR) 1322.103-4.

c. Exceptions. Contracts that require contractor employees to have routine access to NOAA facilities outside of normal business hours on a regular or intermittent basis shall include language to address any specific notification and access requirements based on the unique aspects of the provided service. In those contracts, COs are encouraged to tailor paragraph 3 of the NOAA Solicitation and Contract Language entitled Contractor Access to NOAA Facilities (Sept 2017) (Attachment 1) to address the unique requirements of the service. In contracts where routine, after-hours access to facilities is not anticipated, but may be required, the contractor shall submit such request through the COR to the CO.

8. Solicitation and Contract Language:

a. The solicitation and contract language entitled Contractor Access to NOAA Facilities (Sept 2017) (Attachment 1), shall be included in all solicitations issued beginning October 1, 2017, in which a contractor requires access to NOAA facilities and resources, including equipment and systems, or to make a delivery.

b. The solicitation and contract language entitled NOAA Government-Contractor Relations - Non-Personal Services Contract (Sept 2017) (Attachment 2) shall be included in all solicitations that include services beginning October 1, 2017.
9. **Standard Operating Procedure, *Proper Roles of the Services Contractor*:** In NOAA’s multi-sector or blended workforce, it is important to ensure that the parties maintain an appropriate relationship and one that is absent of undue influence, favoritism, and preferential treatment. The Standard Operating Procedure for the Proper Roles of Services Contractor (Attachment 3) is arranged in twenty-three individual topics and is intended serve as guidance for NOAA Government employees who are co-located and frequently communicate with a support services contractor. The Standard Operating Procedure encompasses applicable policies and procedures directly related to Government-contractor interactions.

10. **Point of Contact:** Questions concerning this Acquisition Alert should be directed to Paula Hance, AGO Policy and Oversight Division (POD) at paula.hance@noaa.gov, or by telephone at (816) 823-3836. Questions on any specific elements addressed within the Standard Operating Procedure should be directed to the contracts listed in Section (x) of the Standard Operating Procedure.

**Attachments:**


NOAA Solicitation and Contract Language

The contracting officer shall insert the following language in all solicitations, contracts, and orders in which a contractor requires access to NOAA facilities and resources, including equipment and systems, or to make a delivery.

CONTRACTOR ACCESS TO NOAA FACILITIES (SEPT 2017)

(a)(1) The performance of this contract requires employees of the prime contractor or its subcontractors, affiliates, consultants, or team members (“contractor employees”) to have access to and to the extent authorized, mobility within, a NOAA facility.

(2) NOAA may close and or otherwise deny contractor employees access to a NOAA facility for a portion of a business day or longer for various reasons including, but not limited, to the following events:

(i) Federal public holidays for federal employees in accordance with 5 U.S.C. 6103;

(ii) Fires, floods, earthquakes, and unusually severe weather, including but not limited to snow storms, tornadoes, and hurricanes;

(iii) Occupational safety or health hazards;

(iv) Lapse in Appropriations; or

(v) Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.

(3) In such events, the contractor employees may be denied access to a NOAA facility that is ordinarily available for the contractor to perform work or make delivery, as required by the contract.

(b) In all instances where contractors are denied access or required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, either directly or through the Contracting Officer’s Representative (COR), which could include continuing on-site performance during the NOAA facility closure period; however, if Government oversight is required and is not available, on-site performance shall not be allowed. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the Office of Personnel Management at www.opm.gov, the local radio, television stations, NOAA web sites, and other communication
channels. Once the facility is accessible, the contractor shall resume contract performance as required by the contract.

(d) For the period that NOAA facilities were not accessible to contractors who required access in order to perform the services, the contracting officer may—

(1) Adjust the contract performance or delivery schedule for a period equivalent to the period the NOAA facility was not accessible;

(2) Forego the work; or

(3) Reschedule the work by mutual agreement of the parties.

(e) Notification procedures of a NOAA facility closure, including contractor denial of access, are as follows:

(1) The contractor shall be responsible for notification of its employees of the NOAA facility closure to include denial of access to the NOAA facility. The dismissal of NOAA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NOAA facility closure in which contractors are denied access. Moreover, the leave status of NOAA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NOAA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.

(2) Access to Government facilities and resources, including equipment and systems, will be limited and personnel necessary to administer contract performance may not be available. Generally, supply and service contracts that are funded beyond the date of the lapse in appropriation and do not require access to Government facilities, active administration by Government personnel or the use of government resources in a manner that would cause the government to incur additional obligations during the lapse in appropriation may continue. If a delivery date for a contract falls during the period of a lapse in appropriations, Government personnel may not be available to receive delivery. Contractors are directed to consult with a contracting officer before attempting to make a delivery. Contracting officers will be available throughout the lapse in appropriation period to provide guidance.

Once OMB guidance is given, CORs, in consultation with the contracting officer, will notify those contractors that are deemed by the Program Office to be performing excepted work and identify the contractor personnel requiring access to NOAA facilities. CORs will also coordinate with directly with facility management or physical security personnel at respective locations to ensure that the names of contractor personnel requiring access to government facilities during the lapse in appropriations are provided to physical security personnel.
Contractors who are not designated as performing excepted work are not allowed access to Government facilities or to utilize government resources in a manner that would incur any additional obligation of funding on behalf of the government during the lapse in appropriation.

(3) Unless otherwise specified within the contract award, contractors requiring access to NOAA facilities outside normal business hours or outside the normal workweek shall submit a written request in writing through the COR to the contracting officer. The written request shall provide justification supporting the required access and be submitted ________ hours/days (contracting officer insert number of days. If blank, 72 hours applies) before access to the NOAA facility is needed.

(End of Solicitation and Contract Language)
NOAA Solicitation and Contract Language

The contracting officer shall insert the following language in all solicitations, contracts, and orders that include services.

NOAA GOVERNMENT-CONTRACTOR RELATIONS – NON-PERSONAL SERVICES CONTRACT (SEPT 2017)

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the Contractor to the Government are non-personal services as defined in FAR Part 37, Service Contracting, and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor’s personnel. It is, therefore, in the best interest of the Government to afford both parties an understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under relatively continuous supervision and control of a Government employee.

(2) Be placed in a position of command, supervision, administration, or control over Government personnel or over personnel of other Contractors performing under other NOAA contracts.

(c) The services to be performed under this contract do not require the Contractor or the Contractor’s personnel to exercise personal judgement and discretion on behalf of the Government. Rather, the Contractor’s personnel will act and exercise personal judgement and discretion on behalf of the Contractor.

(d) Rules, regulations, directives, and requirements that are issued by the Department of Commerce and NOAA under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation and facilities, who are provided access to Government systems, or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

(e) Both parties are responsible for monitoring contract activities for indications of improper employee-employer relationships during performance. In the event a situation or occurrence takes place inconsistent with this contract language, the following applies:
(1) The Contractor shall notify the Contracting Officer in writing within 5 business days from the date of any situation or occurrence where the Contractor considers specific contract activity to be inconsistent with the intent of this contract language. The notice must include the date, nature and circumstance of the situation or occurrence, the name, function and activity of each Government employee or Contractor employee involved or knowledgeable about the situation or occurrence, provide any documents or the substance of any oral communications related to the activity, and an estimated date by which the Government is recommended to respond to the notice in order to minimize cost, delay, or disruption of performance.

(2) The Contracting Officer will review the information provided by the Contractor, obtain additional information (if needed), and respond in writing as soon as practicable after receipt of the notification from the Contractor. The Contracting Officer’s response will provide a decision on whether the Contracting Officer determines the situation or occurrence to be inconsistent with the intent of this contract language and, if deemed necessary, will specify any corrective action(s) to be taken in order to resolve the issue.

(End of Solicitation and Contract Language)
STANDARD OPERATING PROCEDURE
PROPER ROLES OF THE SERVICES CONTRACTOR
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a. **Introduction**

Service contracts are the vehicles utilized to provide support services in meeting NOAA’s mission requirements. Government employees and contractor personnel are frequently co-located and need to communicate with each other on a daily basis. As a result, NOAA is comprised of "multi-sector" or "blended" workforce teams that provide the essential support necessary to meet NOAA’s mission.

While the Federal Acquisition Regulation (FAR) identifies contractors as being part of the acquisition team, Government employees must take care to maintain appropriate boundaries with contractor personnel and avoid blurring the distinction between a contractual relationship and an employer-employee relationship. Interactions between Government employees and contractors must be absent of undue influence, favoritism, or conflicts of interest. Even the appearance of inappropriate relationships or behavior between Government employees and contractors must be avoided.

The purpose of this Standard Operating Procedure is to identify Federal, Department of Commerce, and NOAA policies and procedures for Government and services contractor interactions in the workplace and provide guidance on proper roles for services contractors at NOAA.

b. **Standards of Conduct**

Federal Acquisition Regulation (FAR) 3.101, Standards of Conduct, states that Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. As such, transactions expending public funds require the highest degree of public trust and an impeccable standard of conduct. In regard to acquisition, these standards apply to personal conflicts of interest (or the appearance of a conflict of interest), gifts to and from contractors, federal employee financial disclosure, and restrictions on post-federal employment.

In addition to the FAR, all Federal employees are subject to the Standards of Ethical Conduct for Employees of the Executive Branch. The Department of Commerce (DOC) Office of General Counsel (OGC) Ethics Law and Programs Division advises on these rules as they apply to NOAA.

A violation of the Standards of Conduct and Standards of Ethical Conduct can result in disciplinary action or, for certain offenses, prosecution under criminal statutes. Please seek specific counsel from the DOC OGC Ethics Law and Programs Division about the rules or their application to a specific situation.

FAR 3.10, Contractor Code of Business Ethics and Conduct, outlines requirements for a Contractor Code of Business Ethics and Conduct. In addition, the DOC OGC Office of Ethics Law and Programs Division has provided guidance regarding rules of conduct for contractor personnel. Contractors should possess their own written code of business ethics and conduct, and one is required to be in place at award for certain procurements exceeding $5M.
c. **Procurement Integrity**

The Procurement Integrity Act (41 USC 423), as implemented in Federal Acquisition Regulation (FAR) 3.104, sets forth the requirements for transparency and fairness in Federal agency procurements and the manner in which Government and contractor personnel conduct business with each other. The Act prohibits certain activities by both active and former Federal employees and contractors involved in Federal procurements. These fall into four categories outlined at FAR 3.104-3:

1. **Prohibition on Disclosure of Procurement Information** Present and former Federal employees must not knowingly disclose “contractor bid or proposal information” or “source selection information.”

2. **Prohibition on Obtaining Procurement Information** An individual must not knowingly obtain “contractor bid or proposal information” or “source selection information” before award of a contract to which the information relates, except when authorized by law.

3. **Actions when Communicating with Contractors regarding non-Federal Employment** This applies to Federal employees participating personally and substantially in a competitive procurement valued over $150,000. If the Federal employee either contacts or is contacted by an offeror on that procurement regarding possible non-Federal employment, the Federal employee must promptly report the contact, in writing, to their supervisor and agency ethics official. The Federal employee must either reject the possibility of non-Federal employment or disqualify themselves, in writing, from any further involvement in that procurement until they are authorized to resume participation. For the NOAA Acquisition and Grants Office policy regarding these restrictions, see NOAA Acquisition Manual (NAM) 1330-3.104-370(a).

4. **Prohibitions on Former Federal Officials Acceptance of Compensation from a Contractor** A former Federal official may not accept compensation from a contractor that has been awarded a contract, as an employee, officer, director, or consultant of the contractor within a period of one year after the former official’s participation in a procurement valued at more than $10 million. This depends on the level of the Federal officials’ involvement in the procurement and the total value. For the NOAA Acquisition and Grants Office policy regarding these restrictions, see NAM 1330- 3.104-370(b).

The terms “source selection information” and “contractor bid or proposal information” used above are defined in FAR 2.101 and FAR 3.104-1, respectively. Source selection is an internal acquisition procedure used when acquiring goods and services for the Government. Contractor information obtained during this process must not be disclosed. This includes items such as: bid prices and proposed costs; source selection plans; competitive range determinations; the rankings of bids or proposals received; and source selection decisions and reports. Any other information clearly marked “source selection information” may not be disclosed. Some of the information that must not be disclosed includes: cost or pricing data; proprietary data; indirect costs and direct labor rates; and any information the contractor has marked as bid or proposal information.
When Government employees and contractor personnel are working side by side, every effort must be made to both prevent and identify violations of the Procurement Integrity Act. A violation of this Act carries the possibility of criminal, civil, and administrative action against the offending Federal employees and contractors. A criminal penalty can bring up to 5 years imprisonment. For individuals, civil fines can be up to $50,000 per violation; for organizations, up to $500,000 per violation.

Potential administrative actions include the contractor’s disqualification from receiving a contract award or rescission of a contract already awarded. The contractor may also be [suspended or debarred](#) from receiving Federal contracts for a period of time. For Federal employees, an adverse personnel action may be the result.

d. **Personal vs. Non-Personal Services**

Agencies shall not award personal services contracts unless specifically authorized by statute. NOAA does not have personal services contracting authority, so it must ensure that it does not award a personal services contract or administer a contract so as to create the appearance of an unauthorized personal services contract.

1. **Personal Services.** Federal Acquisition Regulation (FAR) 37.104(d) provides six descriptive elements to be used as a guide in assessing whether a contract includes personal services; however, the distinction is more easily characterized by direct supervision and control.

2. **Non-Personal Services.** A non-personal services contract is a contract under which the contractor personnel providing the services are not subject to the direct supervision and control of Government employees. Under a non-personal services contract, the [contractor](#) dictates its employees’ compensation, benefits, and rewards. A Government contract for a required service; specifies the details in a statement of work or task order; and reviews, approves, and pays for the work products - not for the performance of work by specific individuals. The company, not the individual, is hired to perform the work. Federal employees have no authority to approve timesheets or changes in working hours, leave, travel, etc. for contractor personnel.

The Contracting Officer is responsible for determining whether a proposed contract for services is personal or non-personal in nature. During contract administration, contract performance must be monitored to ensure a non-personal service contract is not inadvertently expanded into personal services or takes on the appearance of a personal services contract. In order to prevent this from occurring, the following applies to all Government employees:

1. Do not get involved in the contractor’s operations and policies by performing or appearing to perform supervisory functions such as recruiting, selecting, hiring, firing, scheduling, rewarding, compensating, or directing personnel.

2. Do not pressure the contractor to use “favorite” personnel for a project or request disciplinary actions and/or firing of particular personnel.

3. Do not use Government and contractor personnel interchangeably.
4. Do not require or allow contractor personnel to perform out-of-scope work, personal services, or inherently governmental functions (see section e. below, Inherently Governmental Functions).

5. Do ensure contractor personnel are identified as “contractor” when included in organizational charts, contact lists, websites, presentations, and similar documentation. In addition, such documentation shall not give the appearance of contractor personnel reporting directly to or under the direct supervision of Government employees.

Solicitation and Contract Language The solicitation and contract language entitled, NOAA Government-Contractor Relations – Non-Personal Services Contract (Sept 2017), shall be included in all solicitations that include services beginning October 1, 2017.

e. Inherently Governmental Functions

Federal Acquisition Regulation (FAR) 7.5 requires that Federal contracts shall not be used for the performance of inherently governmental functions. The Office of Federal Procurement Policy (OFPP) Letter 11-01, Performance of Inherently Governmental and Critical Functions, dated 12 September 2011, sets forth clarifying policy for the following three types of functions related to contracts for services:

1. Inherently Governmental Functions. These are the functions that are so intimately related to the public interest as to mandate performance by a Government employee. These activities require the exercise of discretion in applying Government authority and making of value judgments in decision-making for the Government. FAR 7.503 provides a list of examples of functions considered to be inherently governmental functions. The following are samples:
   a. Direction and control of Federal employees;
   b. Determination of agency policy;
   c. Resource allocation or program management duties;
   d. Approval of contractual documents and contract administration;
   e. Award and termination of contracts;
   f. Obligation of Congressionally authorized funding;
   g. Approval of position descriptions and performance standards for Federal employees;
   h. Voting member on source selection boards.

Services that include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials who are the decision makers are not normally considered inherently governmental. Other services not normally considered inherently governmental include, but are not limited to: (a) building security, (b) housekeeping, (c) routine electrical or mechanical services, and (d) operations for mail, cafeteria, warehouse, motor vehicle fleet management, or facilities.

2. Functions closely associated with Inherently Governmental Functions. There are certain services and actions that generally are not considered to be Inherently Governmental Functions, but they may approach being in that category because of the nature of the function and the risk that performance may impinge on Federal officials’ performance of an inherently governmental function. These are functions that may be performed by a
contractor; however, the performance of these functions must be managed with the appropriate Government oversight and controls. OFPP warns that once identified as “closely associated,” these functions must be monitored closely during contract performance, so they do not cross into inherently governmental functions over time. Particular attention must be paid to services that involve support of Government policy or decision-making to ensure contractor work products do not influence the authority, accountability, and responsibilities of Government personnel, in accordance with FAR 37.114.

3. Critical functions. These are functions necessary to the agency being able to effectively perform and maintain control of its mission and operations. Government employees must perform and/or manage critical functions to the extent necessary to operate effectively and maintain control of agency mission and operations. These functions may be performed by a contractor; however, when performed by a contractor, the performance must be managed with greater scrutiny and the appropriate Government oversight and controls (FAR 37.114). Absent a specific list of critical functions, the OFPP allows each agency to make the case-by-case determinations.

f. Conflicts of Interest

An overarching rule of Federal procurement for all parties is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. Policy with regard to conflicts of interest is broken into the following three categories:

1. Federal Employees. The ethics rules for Federal employees cover conflicts of interest that may require disqualification from certain matters based on the employee’s financial interests or personal relationships. A conflict of interest exists when personal interests may differ or appear to differ from the interests of the Government, potentially raising questions about actions you take as a Government employee. Additional guidance regarding Federal employee conflicts of interest can be found at the Department of Commerce Office of General Counsel Ethics Law and Programs Division webpage.

2. Contractor Organizational Conflicts of Interest. As prescribed in Federal Acquisition Regulation (FAR) 9.5, an Organizational Conflict of Interest (OCI) is created when the existence of a set of circumstances is such that a contractor may have conflicting roles that might bias its judgment or have an unfair competitive advantage. The following three situations are examples of an OCI:

a. Biased ground rules refers to situations where a contractor is involved in setting the ground rules for a future competition (for example, by writing the specifications that competitors for a contract must meet). The primary concern is that the contractor could skew the competition, whether intentionally or not, in its favor.

b. Impaired objectivity refers to situations where a contractor is asked to perform tasks under a contract that requires objectivity, but another role the contractor plays casts doubt on the contractor’s ability to be truly objective (e.g., a contractor performs “analysis and assistance” in formulating policies that may affect products manufactured by that contractor or its competitors). The potential for bias arises
when the contractor has financial interest that may influence the contractor’s judgment when performing the tasks.

c. **Unequal access to information** arises when a contractor has access to nonpublic information that is useful in preparing an offer (typically gained through performance of a contract or through interactions with the procuring or program office) that gives it an unfair advantage in the competition for a future contract. Be aware that even an inadvertent disclosure of information that would help a contractor gain a competitive edge may result in the contractor being disqualified from competing.

3. **Personal Conflicts of Interest specific to Contractors performing acquisition functions.** As prescribed in FAR 3.11, Government personnel must be alert to instances where a contractor may have personal conflicts of interest that differ from his/her employer’s interests and/or that of the Government when performing under a contract. This is especially important when contractor personnel support or provide advice or recommendations while performing acquisition functions closely associated with inherently governmental functions (see list at FAR 3.1101), which requires disclosures of interest to be provided by contractor personnel prior to providing such support.

One instance in which a personal conflict of interest may occur is when contractor personnel provide support in evaluating proposals. Contractor personnel must submit a Non-Disclosure Agreement and a Conflict of Interest Certificate to ensure actual or potential conflict of interest issues are resolved by the Contracting Officer (CO) prior to granting access to any source selection information. For more information, see section p. Participation in Evaluation of Proposals.

OCIs are more common in service contracts, particularly those for management support services and consultant or other professional services. As prescribed in FAR 9.505, the following are four circumstances that tend to give rise to OCIs (FAR 9.505):

a. **Providing systems engineering and technical direction.** A contractor that provides systems engineering and technical direction for a system, but does not have an overall contractual responsibility for its development, integration, assembly, or production, is prohibited from competing for a contract to supply that system – as either a prime or subcontractor.

b. **Preparing specifications or work statements.** With certain exceptions, a contractor who prepares or assists in the preparation of a statement of work for a Government requirement shall not be allowed to compete for the award for that requirement.

c. **Providing evaluation services.** Contractors are prohibited from evaluating their own proposals and cannot evaluate proposals from their market competitors without proper safeguards to ensure objectivity and protect the Government’s interest.
d. **Obtaining access to proprietary information.** When access to proprietary information from other contractors is necessary to perform a Government contract, a contractor is prohibited from competing for an award unless restrictions are imposed to prevent the contractor from using the proprietary information to gain a competitive advantage.

**g. Protection of Sensitive Information**

Certain acquisition information may be deemed as *sensitive* in order to control the access of the information outside of the Government. An intentional or inadvertent release of sensitive information to contractors performing support services under a NOAA contract could give the contractor a competitive advantage, harm potential offerors, or compromise NOAA programs and operations. Contractor personnel are also prohibited from using non-public Government information for personal purposes.

Sensitive information must be protected and properly stored at all times and must not be disclosed, unless an individual is authorized to receive it. As such, all personnel must ensure that sensitive information created or obtained during any phase of the acquisition is safeguarded from unauthorized or inadvertent disclosure and misuse. The following are examples of Government and contractor sensitive information.

1. **Government sensitive information includes, but is not limited to:**
   a. classified information;
   b. planning, programming, budgeting, and execution information;
   c. source selection information;
   d. internal agency communications; and
   e. **personally identifiable information (PII) and business identifiable information (BII).**

2. **Contractor sensitive information includes, but is not limited to:**
   a. all proprietary information;
   b. proposal content;
   c. unsolicited proposal information;
   d. source selection information; and
   e. any other information that could create an unfair competitive advantage.
In order to avoid the risk of inadvertent disclosure of sensitive information, Government personnel must first identify the contractor and then ascertain whether the contractor is authorized to receive such information. If a contractor requires access to sensitive information in performance of a service contract, the contract will stipulate the limits of the access and the appropriate protection. For more information on proper identification of personnel, please see section h. Contractor Personnel Identification Requirements.

Government personnel must keep the following in mind when protecting sensitive information:

1. Offices, cubicles, conference rooms, hallways, bathrooms, cafeterias, gyms, elevators, and break rooms are not secure areas for discussing sensitive information or for leaving sensitive information out in plain view.

2. When conducting meetings or conferences in which sensitive information is about to be discussed, Government personnel must first know whether contractor personnel are in attendance in order to determine what information can be disseminated. Prior to proceeding, ensure the sensitive information about to be discussed or provided is protected by the appropriate contract clauses and non-disclosure agreements. When teleconferencing or speaking via telephone, ascertain whether others not part of the meeting may overhear the content and, if necessary, change the venue.

3. The same caution applies when allowing contractor personnel to have access to equipment where this information may be stored or when disseminating information. Government employees must take proper precautions to scrutinize emails and attachments for sensitive information before sending or forwarding to contractors.

If information designated as sensitive gets into the wrong hands and one company gains unfair advantage over another, it could result in legal action. A violation of Federal regulations in the intentional or inadvertent revealing of sensitive information can lead to civil or criminal prosecution.

h. Contractor Personnel Identification Requirements

When working side-by-side, support services contractor personnel must be identified and differentiated from Government personnel. Federal Acquisition Regulation (FAR) 37.114(c) establishes the following policy regarding the requirement for contractors to identify themselves in order to avoid creating an impression that they are Government officials.

1. Contractor status must be identified
   a. Contractor personnel must wear obvious identification. Do not hesitate to ask whether an individual is a Government employee or a contractor.
   b. Contractor status must be identified when attending meetings, in telephone conversations, and in written correspondence, including email. Contractor signature blocks on email messages must clearly identify their status as a contractor.
c. All documents, deliverables, or reports produced by contractors must be suitably marked as contractor products or appropriately disclose contractor participation.

d. Many contractor personnel are retired military or civil service employees. Both Government employees and contractors must realize the professional relationship has changed and take appropriate steps to ensure Government-contractor status is upheld.

e. Government employees must ensure contractor personnel are identified as “contractor” when included in organizational charts, contact lists, websites, presentations, and similar documentation.

2. Risks when contractor personnel are not properly identified

a. Inadvertent “conversion” to an improper personal services contracts where contractor personnel are managed or appear to be managed as if they were Government employees.

b. Risk of a Government employee providing work direction to a contractor mistaken for a Government employee, potentially creating an unauthorized commitment. This could result in an imposed repayment obligation on the Government employee who directed the work.

c. Performance of inherently governmental functions by contractors, such as program management duties and other resource allocation and/or decision-making.

d. Unauthorized advance release of procurement sensitive information, giving unfair advantage to one or more contractors.

Disclosure of source selection information, such as source selection plans, evaluation factors, exact funding amounts, proposals, and proposal evaluations.

i. Time Management

Government employees must understand that contractors are not civil servants nor subject to the same hiring, discipline, and supervision, as Government personnel. They are employees of the company contracted to provide a service to the Government, subject to the terms and conditions of individual work agreements with their employer. Time billed to the Government must be in performance of the contract. The contractor supervisor controls time management such as working hours, changes in working hours, leave, approval of timesheets, and travel of contractor personnel. Government personnel must not attempt to circumvent that relationship. With regard to the time management of contractor personnel, Government employees must abide by the following:
1. Unless otherwise specified in the contract, contractor working hours and work schedule are established between the contractor and its personnel. A Government employee cannot direct or require a contractor to work particular hours or days outside of the terms and conditions of the contract; this includes authorizing early release (unless there is an emergency), compensatory time, or overtime. If a program office wishes to specify working hours or a work schedule for Contractors or to change the schedule specified in the contract, the Contracting Officer (CO) and the Contracting Officer’s Representative must be contacted in order to make a change to the contract.

2. Contractor personnel time off and the nature of the time off (e.g., leave, personal day, administrative absence, training) is handled between the contractor and its personnel. Government employees shall not be involved directly or indirectly in the contractor’s handling of requests for time off.

3. Federal holiday time off for contractor personnel is governed by the terms and conditions of the specific contract.

4. For emergency closures and delayed opening of Federal offices (to include a Federal closure or late arrival due to inclement weather), the CO will refer to the contract terms and conditions. For additional information on Federal office closures, see section n. Access to NOAA Facilities.

5. Government personnel may not independently require or grant contractor personnel the time to attend training. The contractor supervisor is responsible for time management, and time away from the workplace may impair the contractor’s ability to meet contractual obligations or delivery dates.

6. Unless addressed within the terms and conditions of the contract, Government employees shall not encourage contractor personnel to leave their workplace to attend activities unrelated to the performance of their contract (examples include sports days, team/morale-building exercises, retirement ceremonies, holiday parties and office social or sporting events). For additional information on these activities, see section k. Team/Morale Building Events and Social Gatherings.

j. Gifts

While Government employees and services contractors may be co-located in the workplace, each has a different set of rules that guide official interaction regarding gifts and gratuities. No Government employee may solicit or accept (directly or indirectly) any gift of an employee of a contractor who conducts business with or seeks business with NOAA. The definition of “gift” per 5 CFR 2635.203, includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or anything of monetary value. Gifts do not include: 1) modest items of food and non-alcoholic refreshments offered, such as soft drinks, coffee and donuts, offered other than as part of a meal or 2) greeting cards and items of little intrinsic value, such as plaques, certificates, and trophies, which are primarily for presentation.
Government employees shall consider the following rules regarding receiving gifts from contractors or giving gifts to contractors:

1. **Gifts from Contractors.** According to the Standards of Ethical Conduct for Employees of the Executive Branch, gifts from contractors to Government employees are covered by rules on gifts from non-Government sources. While there are exceptions that permit a Government employee to accept gifts under certain circumstances, if a Government employee receives a gift that does not fall under an exception, the gift shall not be accepted and the employee must return the gift to the contractor or pay market value of the gift. Government employees should consider declining an otherwise permissible gift if they believe a reasonable person with knowledge of the relevant facts would question the employee’s integrity or impartiality as a result of accepting the gift. Holiday and special occasion gift giving is treated no differently than gifts offered at other times.

**Exceptions** Two of the exceptions permitting the acceptance of gifts from contractors include: gifts valued up to $20 (with a maximum of $50 from the same source in a calendar year) and gifts from a friend or relative based on a previously existing personal relationship. A complete list of exceptions is found on the Department of Commerce Office of General Counsel Ethics Law and Programs Division, Ethics Rules webpage.

2. **Gifts to contractors.** Contractor personnel may not offer or accept gifts or bribes in exchange for taking or failing to take any action as part of their assignment under the contract. The Federal gift rules do not prohibit Government employees from giving gifts to contractor personnel (appropriated funds shall not be used); however, contractors may have adopted corporate ethics rules that determine whether their personnel may accept such gifts. Government employees must consider the appearance of preferential treatment or undue influence the gifts may create.

3. **Group Gifts.**
   a. Federal employees must not solicit contractor contribution of money or anything of monetary value for birthday gifts, retirement gifts, baby showers, or other gifts for Government personnel.
   b. There is no prohibition on Government personnel collecting among themselves for a group gift to a contractor (appropriated funds shall not be used); however, Government employees must consider the appearance of preferential treatment or undue influence the gifts may create.

**k. Team/Morale-Building Events and Social Gatherings**

Attendance at team/morale-building events and social gatherings may create conditions that blur the Government-contractor relationship. The appearance of inappropriate relationships or behavior must be avoided. NOAA acquisition policy applies to such events, as follows:
1. **Team/Morale-Building Events.** Contractors providing onsite support services to NOAA may be permitted to attend team/morale-building events, such as office picnics, sport outings, holiday parties, or other like functions (such as “All Hands” or “off-site” team meetings), when all of the following conditions have been met:

   a. The Line or Staff Office provides information regarding the planned event(s) to the Contracting Officer’s Representative (COR) (if no COR assigned, then to the CO) who coordinates with the CO in advance to discuss the specific nature of the event(s). The CO will determine:

      i. Whether attendance would be in accordance with the standards of conduct (FAR 3.101) and does not give the perception of an improper employer-employee relationship (FAR 37.104).

      ii. Whether attendance would affect the services required under the contract and would not be inconsistent with the contract terms and conditions; and

      iii. Whether attendance will be allowed on a billable or unbillable status.

   b. Where determined by the CO that the time spent at a team/morale-building event shall not be billed to the Government, contractor personnel choosing to attend must make arrangements with their employer for appropriate leave or other unbillable status under the contract.

   c. There may be instances where it is appropriate for contractors to attend staff meetings and/or off-site meetings where mission-related items are discussed. The CO will notify the COR if the contractor is allowed to attend these meetings and will specify whether the meetings are billable. Examples of such meetings might include an internal meeting to discuss ways to improve a system/application for which contractors regularly utilize or an “off-site” team meeting focused on a special project for which a contractor is part of the project team.

2. **Social Gatherings.**

   a. Social gatherings, such as retirement parties, promotion, baby showers, birthday parties, and wedding celebrations may occur periodically in the workplace wherein contractors may wish to attend on their own personal time. This is permissible only where contractor personnel are not on contract time billed to the Government and have made arrangements with their employer to take leave or to be on other unbillable status.

   b. In the instance where Government employees are invited by the contractor to attend a holiday party or other social gathering, the gift rules apply. This includes invitations to “widely attended gatherings,” which can only be accepted under
certain circumstances where approved by a Government supervisor. The Department of Commerce Office of General Counsel Ethics and Programs Division has provided guidance on handling contractor invitations to such events.

3. **Contractor Contribution to Attend Events and Gatherings.** While contractor personnel may not be asked or be required to pay to attend any team/morale-building event or social gathering, they (or their employer) may voluntarily pay the per person attendance cost or fee or may bring food to share if others attending are doing the same. These are not considered gifts, but rather the cost of their share of a group office function or meal. They may also voluntarily contribute to a gift, but that would be limited to no more than $20 for the total value of the gift. See section j. Gifts.

**Charitable Fundraising**

Government personnel may not directly or indirectly solicit or ask contractors, either on or off duty, for charitable contributions for any cause, including the annual Combined Federal Campaign (CFC). Contractor personnel are prohibited from performing as CFC representatives unless expressly authorized in their contract. Further, Government personnel may not solicit or ask contractor personnel to participate in group "runs" for charity, to sponsor a Government employee's participation in a charitable "walk" or "run," or to purchase cookies, gift wrap, candy bars or similar items in support of personal charitable activities.

While the solicitation of a contribution is prohibited, contractors are not prohibited from voluntarily contributing to or purchasing items in support of charitable activities. During the CFC, voluntary contributions of checks from contractors made out to the “Combined Federal Campaign” may be accepted.

**Awards and Recognition**

The Department of Commerce (DOC) Office of Human Resources Management Performance Management Handbook states the only form of recognition available for contractor personnel is a Certificate of Appreciation. NOAA Administrative Order 202-451, NOAA Incentive Awards Program, follows suit in the NOAA Incentive Awards Program Handbook under Section 7, Non-Monetary Awards, by including contractor personnel among those eligible to receive Certificates of Appreciation.

While this authorized venue may be used to recognize a contractor employee’s performance on a specific NOAA service contract; no other letter, award, or form of recognition shall be presented or given to a contractor employee or include the name of a contractor employee for similar purposes. The following NOAA acquisition policy applies to the processing of Certificates of Appreciation for NOAA services contractors:

1. **Certificates of Appreciation** intended for a services contractor employee must be tied to the contract. Prior to issuing a Certificate of Appreciation for a services contractor employee, Line and Staff Offices shall coordinate with both the COR (if no COR
assigned, then the CO) and the CO for the contract to determine whether performance of the contract is satisfactory and appropriate to proceed with the award.

2. Per the DOC Office of Human Resources Management Performance Management Handbook, while a contractor may receive a Certificate of Appreciation, organizations are prohibited from spending appropriated funds to purchase a presentation holder (i.e., a frame or a plaque) or to otherwise expend appropriated funds to acknowledge (i.e., celebrate) a contractor’s completion of a specific project.

3. The prepared Certificate of Appreciation shall clearly identify the individual as a contractor employee and name the contractor company. As a best practice, the contractor’s designated official should present the certificate to the contract employee.

4. Contractors shall not be reimbursed for the cost of travel and travel related expenses associated with attendance of an awards ceremony or event held for similar purposes.

n. Access to NOAA Facilities

Contract performance may require contractor access to NOAA facilities. There are events in which access to NOAA facilities and resources, including equipment and systems, or making a delivery will be limited, and personnel necessary to administer contract performance may not be available. The following NOAA acquisition policy regarding contractor access to NOAA facilities applies:

1. Events resulting in denied access to NOAA facilities. In all instances where contractor employees are denied access or required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the Contracting Officer (CO) will provide direction to the contractor, which could include continuing onsite performance during the NOAA facility closure period. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities, if appropriate.

Occurrence of holidays, closures, or delays during the performance of the contract or order does not necessarily entitle the contractor to an extension of performance or additional compensation. NOAA may close and or deny contractor access to a NOAA facility for a portion of a business day or longer due to any one of the following events.

a. Federal public holidays in accordance with 5 U.S.C. 6103;

b. Fires, floods, earthquakes, and severe weather including snow storms, tornadoes, and hurricanes;

c. Occupational safety or health hazards;
d. Lapse in Appropriations; or

e. Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.

2. Access to NOAA facilities outside normal business hours or the normal workweek. In all instances where an onsite contractor employee requires access to NOAA facilities outside of regular business hours or outside of the normal workweek, the contractor shall submit such requests through the Contracting Officer’s Representative (COR) to the CO. (In the event the COR is not available or a COR is not assigned to the contract, the contractor shall submit such requests to the CO). The written request shall provide a justification supporting the required access for the contractor employee and be submitted, in accordance with the NOAA Solicitation and Contract Language entitled, Contractor Access to NOAA Facilities (Sept 2017), before access is allowed.

The fill-in section of the NOAA Solicitation and Contract Language shall be completed by the CO before the solicitation is issued. If the fill-in is not completed, the written request shall default to 72 hours prior to the required access. Contractor access to a NOAA facility outside of regular hours or outside of the normal workweek may be permissible without the presence of a Federal employee if determined that the contractor employee is compliant with the necessary security requirements, and a Federal employee is not required to be present to provide technical direction. Upon receipt of the request, the COR verify the following information before submitting the request to the CO:

a. The contractor is in compliance with personnel security requirements per CAM 1337.70, Personnel Security Requirements;

b. Contractor access to the facility is available for the time requested and necessary for the performance of the contract;

c. Any need for a Federal employee to be onsite during the performance; and

d. Work performed as overtime is compliant with Federal Acquisition Regulation (FAR) 22.103-4 and Commerce Acquisition Regulation (CAR) 1322.103-4.

3. Exceptions. Contracts that require contractor employees routine access to NOAA facilities outside of normal business hours on a regular or intermittent basis shall include language to address any specific notification and access requirements based on the unique aspects of the provided service. In those contracts, COs are encouraged to tailor paragraph 3 of the NOAA Solicitation and Contract Language entitled, Contractor Access to NOAA Facilities (Sept 2017), to address the unique requirements of the service. In contracts where routine, after-hours access to facilities is not anticipated, but may be required, the contractor shall submit such request through the COR to the CO.
4. Solicitation and Contract Language. The solicitation and contract language, entitled Contractor Access to NOAA Facilities (Sept 2017), shall be included in all solicitations issued beginning October 1, 2017, in which a contractor requires access to NOAA facilities and resources, including equipment and systems, or to make a delivery.

a. Participation in NOAA Councils, Committees, and Groups

The following NOAA acquisition policy applies to NOAA contractor personnel participation on NOAA Councils, Committees, and Groups:

1. NOAA Councils and Committees. The NOAA Business Operations Manual identifies a NOAA Council as an established group that provides leadership and coordination across the agency for select functions and a committee as an established group that reports to a NOAA Council. NOAA utilizes councils for select high-interest and high-visibility functions. Councils also provide a forum for reviewing and developing policy and procedures for technical and scientific issues, guide resource utilization, and simplify complex issues into recommendations for senior leadership. The participation of contractor personnel to provide support services to a NOAA Council, committee, or any other group that provides leadership and coordination across the organization for select functions may be appropriate, if clearly within the scope of their respective contract. Contractor personnel shall not be a voting member of a NOAA Council or Committee.

A full list of the established NOAA Councils is provided in Chapter 2, Table 2.1 of the NOAA Business Operations Manual.

2. NOAA Employee Councils and similar entities. NOAA Employee Councils, committees, working groups, affinity groups, voluntary employee organizations (as defined in DAO 202-251) and groups convened for similar purposes are intended to facilitate communication both among NOAA Federal employees and with NOAA leadership to help promote a positive, effective, and collegial workplace environment. A contractor shall not participate as a member in the activities of these Federal employee-specific entities.

p. Participation in Evaluation of Proposals

In accordance with FAR 37.2, Advisory and Assistance Services, only when specifically authorized by the contract, support services contractors with the appropriate expertise may participate in the evaluation of proposals only in limited circumstances. The utilization of a non-Government advisor shall be in compliance with the following policy:

1. Source Selection Board Voting. Non-Government advisors are prohibited from participating as a voting member of a selection team as this is an inherently governmental function (FAR 7.503(c)).
2. **Evaluation Boards.** While non-Government advisors may assist in and provide input regarding the technical evaluation in limited circumstances, they may not participate in voting, ratings, or rankings during the evaluation of offerors’ proposals.

   a. Even as non-voting members of an evaluation team, such participation is considered to be closely associated with an inherently governmental function (FAR 7.503(d)). Contractor performance of these functions must be managed with the appropriate Government oversight and controls (FAR 37.114(b)).

   b. Disclosure of any past performance information to non-Government advisors is strictly prohibited in accordance with FAR 42.1503; therefore, they shall not participate in any review or evaluation of offerors’ past performance information.

3. **Non-Disclosure Agreement or Conflict of Interest Certificate.** All non-Government advisors participating in an evaluation of proposals are required to complete a Non-Disclosure Agreement and a Conflict of Interest Certificate, per NAM 1330-3.104-4, prior to participation, as well as any other documentation specified in the contract. The Contracting Officer will review these documents and ensure actual or potential conflict of interest issues are resolved prior to granting access to any source selection information.

q. **Travel and Transport in Government Owned or Leased Transportation**

   Government contracts shall specify when contractor personnel are authorized to use Government-owned or leased transportation. The following policy applies with regard to travel and transport of contractors in Government owned or leased transportation:

   1. Unless specified in the contract, contractor personnel are not authorized to use Government vehicles (whether owned or leased) under the condition established by 41 CFR 102-34.215. If authorized, the following conditions apply:

      a. Government vehicles are to be used solely for official purposes in performance of the contract.

      b. Government vehicles shall not be used for transportation between the contractor’s residence and place of employment, unless otherwise authorized

      c. The contractor must:

         i. Establish and enforce penalties for improper use of vehicles by its personnel; and

         ii. Pay any expenses/costs associated with the improper use of vehicles by its personnel.

   2. A contractor may use shuttle buses on or between installations.
3. A contractor may be a passenger in Government vehicles with a Government employee as long as there is no appearance of favoritism.

4. The Government may issue a letter that the contractor is performing Government business in accordance with Federal Travel Regulations.

r. **Misuse of Agency Name, Seal, or Trademark as an Endorsement or Approval**

Contractors are prohibited from using a Federal agency’s name, seal, trademark, or any “colorable imitation of such words or initials in seals or trademarks” on or in connection with its merchandise or retail products, when soliciting business, on business cards, or for any other commercial activity that is reasonably calculated to convey the impression that its use is approved, endorsed, or authorized by the agency. Further, contractors are prohibited from using the agency’s seals or trademarks in any other manner without the express written consent of the agency.

s. **Use of Government Resources**

Contractors are customarily required to furnish all property necessary to perform Government contracts in accordance with FAR 45.102(a). However, in the event the Government furnishes property or resources to the contractor for the performance, the contract must describe the property that will be furnished during performance and establish accountability and return procedures. When the Government provides property and resources, contractors may only use them for purposes authorized to fulfill the requirements of the contract.

While Government supervisors have the authority to determine appropriate personal use of Government resources by Government personnel, they do not exercise the same authority and control over contractors. Government employees shall not place contractors in a position of liability for property over which they have no contractual authority or accountability when performing services.

When the contract requires contractor personnel to be located on a Government site, items such as office space, desks, chairs, telephones, computers, and fax machines are considered incidental to the place of performance. Contractor personnel performing services on a Government site shall conduct themselves professionally and refrain from using Government resources for personal use and activities that are inappropriate. In addition, Commerce-Information Technology Requirement (CITR-022), Access and Use Policy, establishes requirements for access to and use of all Department of Commerce Information Technology resources by Department of Commerce employees, contractors and associates. The policy provides details on what are considered unacceptable and prohibited uses of Department of Commerce Information Technology resources and states that violations must be promptly reported.
t. Teleworking

41 U.S.C. 3306(f) states that an agency generally shall not discourage a contractor from allowing its personnel to telecommute in the performance of Government contracts. The following actions shall be taken prior to contract award:

1. If the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted, the Contracting Officer shall document the basis for the determination and specify the prohibition in the solicitation, in accordance with FAR 7.108(a).

2. The contract shall state whether teleworking by the contractor performing services onsite is prohibited.

3. Government employees do not have authority at any time to authorize individual contractor personnel to telework as this decision is made by the contractor’s supervisor in coordination with the Contracting Officer or Contracting Officer’s Representative. NOAA’s Telework Policy specifies the policy does not apply to contractors.

u. Training

When the Government contracts for a service to be provided, the contractor is responsible for providing fully trained and prepared personnel to perform the service. A contract shall require the contractor to provide “ready to work” contractors, meaning the contractor must ensure that the personnel performing the services meet all skill, security, and other indoctrination requirements. Government-provided training to contractors and contractor-provided training to Government personnel is permitted when the following requirements are met:

1. **Government provided training.** The Government may provide training to contractor personnel when (a) required by the contract, (b) the training is a necessary and reasonable expense under their appropriations, and (c) the training does not create a conflict or give the appearance that the Government is favoring the contractor. Government personnel may not independently require or grant contractors the time to attend training. When Government officials desire to provide training to contractors not addressed in the contract, a modification to the contract is required. A Government employee shall not authorize training for contractor personnel without the coordination of such request through the Contracting Officer and Contracting Officer’s Representative for approval. The contractor supervisor is responsible for time management of contractors.

2. **Contractor-provided training.** Training provided by a contractor, when performed in accordance with the terms of the contract, is not considered a gift; however, if a contractor offers training to Government personnel not required by the contract, Government employees shall consult with the ethics official in the Department of
Commerce Office of General Counsel Ethics Law and Programs Division for a determination. An exception to the gift acceptance rule is the widely attended gathering exception, which allows Government personnel to accept free attendance at a training event that meets the criteria set forth in 5 CFR 2635.204(g). The CFR states that “widely attended gatherings” must be open to a wide audience or represent a range of persons interested in the subject matter.

v. Former Contractor Personnel hired into Government Positions

Government employees working side-by-side or co-located with support services contractors must remain impartial and particularly vigilant when contractors apply for Government positions within the same office. Compliance with Government hiring procedures is required to ensure preferential treatment does not occur.

When a former contractor is hired as a Government employee, reasonable people who are aware of the circumstances may question the ability of the individual to be impartial in particular matters concerning their previous employer. Such personnel should consult with their supervisor and the Department of Commerce (DOC) Office of General Counsel (OGC) Ethics Law and Programs Division to resolve any perceived loss of impartiality with regard to their former contractor employer. For additional information on impartiality, please see 5 CFR 2653.502.

In addition, former contractors hired as Government employees sometimes continue to hold financial interests in their former employer, such as retirement benefits or stock. These financial interests may require them to disqualify themselves from official matters affecting the financial interests of their former employer. Such employees should seek guidance from the DOC OGC Ethics Law and Programs Division. For additional information on questions regarding personal financial interests, please see 5 CFR 2640.

w. Contractor Personnel Departure

In the event contractor personnel depart or conclude performance under a NOAA contract where DOC system access was granted under the contract, DOC system access must be deactivated within specified timeframes. Per DOC IT Security Program Policy (ITSP), the COR must notify the servicing IT support office of a contractor’s departure within 5 business days of their departure. The servicing IT support office must ensure deactivation within 5 business days of receiving the notification.

A reminder of this joint DOC policy was issued on May 20, 2013 and is located at: https://connection.commerce.gov/sites/connection.commerce.gov/files/media/files/2014/account_deactivation_timeframe_policy_reminder_2013_05_20.pdf
x. Contacts for Questions, Clarifications, or Reporting

If you have any questions on the proper roles of the services contractor in supporting NOAA’s mission or any specific elements addressed within this Standard Operating Procedure (SOP), please contact the following:

1. The Contracting Officer or the servicing Acquisition Division for:
   a. Clarifications or questions regarding the any of the roles of services contractors addressed in sections (a) through (w) of the SOP;
   b. Reporting violations of the rules and policies contained within the SOP;

2. The Department of Commerce Office of General Counsel Contract Law Division for:
   a. Reporting violations of law, regulation, policy, procurement integrity, conflicts of interest, disclosure of sensitive information, solicitation of gifts, or the misuse of any agency name or seal;
   b. Counsel on inherently governmental functions, awards or recognition of contractors, or financial interests and impartiality when a contractor transitions to a Government employee.

3. The Department of Commerce Office of General Counsel Ethics Law and Programs Division for:
   a. Clarifications or questions regarding standards of conduct and charitable fundraising;
   b. Counsel on acceptance of gifts or gratuities;
   c. Use or misuse of Government Resources or information;
   d. Personal and financial conflicts.