



U. S. Department of Energy
Office of Acquisition Management

Procurement Integrity What You Need To Know As A Federal Employee

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1000 Independence Ave., SW

Washington, D. C. 20585

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What is Procurement Integrity?



The Department of Energy, like most federal agencies, purchases many products and services from the private sector. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. To preserve the integrity of the Federal procurement process and assure fair treatment of bidders, offerors, and contractors, laws govern the procurement process, and the manner in which federal and contractor personnel conduct business with each other. Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. §§ 2101-07), commonly referred to as the Procurement Integrity Act, governs certain activities by persons involved in the procurement process. The Federal Acquisition Regulation (FAR), at Section 3.104 (48 C.F.R. § 3.104), sets forth regulations implementing the provisions of the Procurement Integrity Act.

The Procurement Integrity Act addresses various activities by the following persons:

- Current Federal Employees
- Certain former Federal Employees
- Bidders and Offerors
- Other personnel involved in agency procurements and contracts



Key Procurement Integrity Act Provisions

I. Disclosing Procurement Information

For competitive procurements, the personnel identified below must not, other than permitted by law, knowingly disclose source selection information, including proposal or bid information, before or after the award of a contract to which the information relates:

- A current or former officer or employee of the United States
- A person who is acting for, or has acted for or on behalf of, the United States with respect to a Federal agency procurement
- A person who is advising, or has advised, the United States with respect to a Federal agency procurement

Contractor bid or proposal information submitted in connection with a solicitation may not be disclosed (before or after award of a contract to which the information relates) if it has not previously been made available to the public or disclosed publicly, including:

- Cost or pricing data, including indirect costs and direct labor rates
- Proprietary information about manufacturing processes, operations, or techniques identified as such by any contractor
- Information appropriately identified by any contractor as “contractor bid or proposal information”

Source selection information, which is information that is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal that has not been previously made available to the public or disclosed publicly, may not be disclosed, including:

- Bid prices
- Proposed costs or prices
- Source selection plans
- Technical evaluation plans
- Technical and cost or price evaluation of proposals
- Competitive range determinations
- Rankings of bids, proposals, or competitors
- Reports and evaluations of source selection panels, boards, or advisory councils
- Other information appropriately identified by the government as “source selection information”

II. Obtaining Procurement Information

For competitive procurements, a person shall not, other than as permitted by law, knowingly obtain proposal or bid information or source selection information, before the award of a contract to which the information relates. This prohibition applies to the types of information identified above.

III. Discussing Employment with Contractors

If you are a DOE employee who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold (currently \$250,000, but see FAR 2.101, Definitions, as this threshold is increased periodically), and you contact or are contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, you are required to:

- Promptly report the contact in writing to your supervisor and to your designated agency ethics official, and
- Either reject the possibility of non-Federal employment or disqualify yourself in writing from further involvement in that procurement, until authorized by DOE to resume

participation. Copies of the disqualification must be submitted to the Head of the Contracting Activity, or his or her designee, the Contracting Officer, the source selection authority, and your immediate supervisor.

IV. Accepting Compensation from a Contractor

A former DOE employee may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a period of one year after the date that the former DOE employee:

- Served, at the time of selection of the contractor or the award of the contract, as the procuring Contracting Officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;
- Served as the program manager, deputy program manager, or administrative Contracting Officer for a contract in excess of \$10,000,000 awarded to that contractor; or
- Personally made any of the following decisions on behalf of the Federal agency:
 - To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10,000,000 to that contractor;
 - To establish overhead or other rates for a contractor on a contract or contracts valued in excess of \$10,000,000;
 - To approve a contract payment or payments over \$10,000,000 to that contractor; or
 - To pay or settle a claim in excess of \$10,000,000 with that contractor.

This post-employment prohibition does not apply to divisions or affiliates of a contractor that do not produce the same or similar products or services as the entity of the contractor referred to above.



Illustrations

- Two DOE employees who have been friends for many years are talking about their work assignments over lunch. One of the employees is a Contracting Officer's Representative (COR) who is participating in the selection process on a competitive procurement. When asked how the evaluations are proceeding, the COR knows not to discuss the subject since disclosure of source selection

information is prohibited.

- A DOE engineer responsible for drafting a statement of work on a competitive solicitation receives a telephone call from a contractor's business manager who asks when the solicitation will be released. During the conversation, the business manager mentions that a position will be opening in his firm for a Project Engineer and that the DOE employee would be highly qualified for the job. The DOE employee realizes that a Procurement Integrity issue has been raised, rejects the overture, and immediately notifies her supervisor and designated agency ethics official in writing of the contact with the contractor.

- An environmental engineer served on a source selection board that evaluated competitive proposals for a recently awarded contract totaling \$11M. The engineer is considering retiring from the Government to do consulting work for environmental contractors. Under the Procurement Integrity Act, he is barred from accepting any compensation from the contractor who was awarded that particular contract for a period of 1 year after his work ended on the evaluation board.



What are the Penalties for Violations?

The following criminal penalty applies to knowingly (1) disclosing or (2) obtaining contractor proposal or bid information or source selection information, except as provided by law:

- Imprisonment of not more than 5 years and/or a fine.

The following civil penalties apply to (1) disclosing or (2) obtaining contractor proposal or bid information or source selection information, (3) discussing non-Federal employment with a bidder or offeror, or (4) accepting compensation from a contractor:

- Up to \$50,000 per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct
- Up to \$500,000 per violation plus twice the amount of compensation an organization received or offered for the prohibited conduct

The following administrative actions may result where DOE receives information regarding prohibited (1) disclosing or (2) obtaining contractor proposal or bid information or source selection information, (3) discussing non-Federal employment

with a bidder or offeror, or (4) accepting compensation from a contractor:

- Cancellation of the procurement
- Disqualification of an offeror
- Rescission of the contract and recovery of the amount expended
- Suspension or debarment of the contractor
- Initiation of an adverse personnel action
- Other action in the best interest of the Government



Going Beyond the Procurement Integrity Act

The FAR includes specific rules associated with various procurement methods that provide additional safeguards supporting procurement integrity, for example:

- FAR Part 14 (sealed bidding) states that, before the procurement solicitation, information concerning proposed acquisitions shall be restricted to those having a legitimate interest within the Government. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another.
- FAR Part 15 (contracting by negotiation) states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements.

Employees engaged in the procurement process should consult their procurement counsel to gather more detailed information regarding procurement integrity requirements, procedures, and best practices in the following areas:

- Avoiding making inappropriate disclosure of information at any point in the acquisition process, beginning when agency needs are established
- Avoiding making Government decisions without authority

All DOE employees should be familiar with all statutes and regulations that set forth the standards of conduct for all Federal employees, including those involved in procurements. The Assistant General Counsel for Ethics and Personnel Law at Headquarters, NNSA counsel, or the local ethics officials in the field can provide further information addressing standards of conduct, including information on:

- Financial conflicts of interest and how to resolve them
- Prohibitions on taking bribes or accepting certain gratuities
- Prohibitions on using an official Government position to advance personal interests
- Potential conflicts of interest such as discussing non-federal employment with bidders or offerors

- Prohibitions on accepting compensation from non-governmental entities

It's never too early in the acquisition process to avoid prejudicial release of information and potential conflicts of interest. Acquisition begins at the point when agency needs are established. All Government employees should understand the adverse impact of inappropriate disclosure of sensitive information regarding future procurements.

Early in the acquisition planning process and throughout the development of the Government's requirements, Contracting Officers will advise program offices and other personnel engaged in the procurement process of the negative consequences and prejudicial impact of improperly releasing information to potential future offerors. Program offices should make an effort to coordinate with the Contracting Officer early in the acquisition planning stage in order to avoid any procurement integrity violations.



Who Can You Contact for More Information on Procurement Integrity?

The Office of the Chief Human Capital Officer provides new employees written information on ethical conduct when they first come on board.

Procurement offices provide guidance for any acquisitions in which DOE personnel are involved.

The Assistant General Counsel for Procurement and Financial Assistance (or local procurement Counsel at field offices) provides advice on questions addressing disclosure of contractor bid or proposal information or source selection information.

The Assistant General Counsel for Ethics and Personnel Law (or local ethics Counsel at field offices) provides ethics advice on the Standards of Conduct for Employees of the Executive Branch, as well as conduct covered by the Procurement Integrity Act.

Where Can You Read More About Procurement Integrity?

- Title 41 of the United States Code, Chapter 21.
- Title 18 of the United State Code, Chapter 11.
- The Federal Acquisition Regulation (FAR), Section 3.104.
- The Department of Energy Acquisition Regulation (DEAR), Section 903.104.

Contact: Contract and Financial Assistance Policy Division, 202-287-6010. January 2021

