Procurement Integrity

[Reference: 41 U.S.C. 423, FAR 3.104, DEAR 903.104]

❑ Overview

This section discusses the requirements of the Procurement Integrity Act and its impact on Federal employees.

❑ Background

The Department of Energy (DOE), like most federal agencies, purchases many products and services from the private sector.

To preserve the integrity of the Federal procurement process and assure fair treatment of offerors and contractors, laws govern the procurement process and the manner in which federal and offeror personnel conduct business with each other. One of these statutes is Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), often referred to as the Procurement Integrity Act. This Act prohibits certain activities by personnel involved in the procurement process. The Federal Acquisition Regulation, at Section 3.104, sets forth the regulations that implement the provisions of the Procurement Integrity Act.

Guiding Principles

- The Procurement Integrity Act prohibits certain activities by personnel involved in the procurement process.
- Procurement Integrity statutes and regulations govern the procurement process and the manner in which government and contractor personnel conduct business with each other.

The Procurement Integrity Act addresses various activities by:

- Current Federal employees.
- Certain former Federal employees.

- Bidders and Offerors.
- Other personnel involved in agency procurements and contracts.

Significant revisions to the Procurement Integrity Act were effective on January 1, 1997, as a result of the Clinger-Cohen Act of 1996. The Procurement Integrity Act reflects procurement activities in four major areas:

- Disclosing bid, proposal or source selection information.
- Obtaining bid, proposal or source selection information.
- Accepting compensation from certain contractors after leaving the Government.
- Discussing non-federal employment with certain bidders or offerors.

In addition to the Procurement Integrity Act requirements, all federal employees should also be familiar with other statutes and regulations that set forth the standards of conduct for all Federal employees, including those involved in procurements. The Office of the Assistant General Counsel for General Law at Headquarters, or the local ethics official in the field, can provide further information addressing standards of conduct, including information on:

- Avoiding personal conflicts of interest;
- Avoiding making Government decisions without authority;
- Inappropriate disclosure of information at any point in the acquisition process;
- Taking bribes on accepting certain gratuities;
- Using an official Government position to advance personal interest; and
- Maintaining inappropriate financial interests;

❒ Prohibited Activities

I. Disclosing Procurement Information

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

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

The following information is procurement sensitive and may not be disclosed if it has not previously been made public:

Proposal or bid information, including:

- Cost or pricing data, including indirect costs and direct labor rates
- Proprietary information about manufacturing process, operations, or techniques identified as such by any contractor
- Information 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, including:

- Bid prices.
- Proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical and cost or price evaluations of proposals.
- Competitive range determinations.
- Rankings of bids, proposals, or competitors.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other "source selection information."

II. Obtaining Procurement Information

For competitive procurements, a person shall not, other than as permitted by law, knowingly obtain bid or proposal information, or source selection information, before the award of a contract to which

the information relates. This prohibition applies to the same type of proposal or bid information, or source selection information identified above.

III. Discussing Employment With Contractors

If you are an agency official who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold currently $100,000, 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 your 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 to resume participation.

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* from 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. This applies to contracts over $10,000,000.

- Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000.

- 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 establish overhead or other rates for a contractor on a contract(s) valued in excess of $10,000,000.
  - To approve a contract payment or payments over $10,000,000.
  - To pay or settle a claim in excess of $10,000,000.

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.

❒ Program Managers

For purposes of the prohibition described in Section III above, a Program Manager is the DOE individual who is designated by his or her supervisor or higher authority as Program Manager and exercises authority on a day-to-day basis to manage an acquisition program for a system obtained through the acquisition process that has one or more contracts, at least one of which has a value exceeding $10 million. The Program Manager is generally the person at the lowest organizational level who has the authority to make technical and budgetary decisions on behalf of the Department.

The post-employment restriction also applies to each Deputy Program Manager, who is defined as the individual who normally acts as the Program Manager in the absence of the Program Manager. A system is a combination of elements that function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof. An acquisition program has only one Program Manager and one Deputy Program Manager. An individual who acts in the absence of the Program Manager and Deputy Program Manager is not considered to be within this definition.

❒ What are the Penalties for Violations?

The following **Criminal Penalties** apply to knowingly (1) disclosing or; (2) obtaining proposal; or bid information or source selection information.

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

The following **Civil Penalties** apply to knowingly (1) disclosing or; (2) obtaining proposal or bid information or source selection information; (3) discussing non-Federal employment with contractors; or (4) accepting compensation from contractors.

- Each knowing violation of any of the four key provisions of the Procurement Integrity Act may result in civil penalties up to $50,000 per violation and administration actions.
- 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** apply to knowingly (1) disclosing or; (2) obtaining proposal or bid information or source selection information; (3) discussing non-Federal employment with contractors; or (4) accepting compensation from contractors.

- Cancellation of the procurement.
- Disqualification of an offeror.

- Rescission of the contract.
- Suspension or debarment of the contractor.
- Initiation of an adverse personnel action.
- Any other action in the best interest of the Government.

❒ Related Prohibited Conduct

All federal employees should also be familiar with other statutory and regulatory prohibitions, such as:

- The offer or acceptance of a bribe or gratuity is prohibited. The acceptance of a gift, under certain circumstances, is also prohibited.
- Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment." Government officers and employees are prohibited, and must disqualify themselves, from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment.
- Post-employment restrictions prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee's official responsibility.
- The FAR places restrictions on the release of information related to procurements and other contractor information that must be protected {e.g., FAR Part 14 states that information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices, or long-range acquisition estimates, or synopses. Within the Government, such information shall be restricted to those having a legitimate interest. 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 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements. Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.}
- Other laws may prohibit release of information both before and after award.
- Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited.

❒ Going Beyond the Procurement Integrity Act

FAR Part 14 states that, before 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 states that, before proposals are received, any exchange of information among all interested parties must be consistent with procurement integrity requirements.

It's never too early in the acquisition process to avoid prejudicial release of information and potential conflicts of interest. It is worthy to note that the acquisition process 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 the program offices and other acquisition personnel 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.

❒ Receiving Information on Procurement Integrity Issues

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

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

The Assistant General Counsel for General Law at Headquarters and local ethics Counsel at field offices provide ethics advice on the standards of conduct for employees of the Executive Branch, as well as conduct covered by the Procurement Integrity Act.

The Office of Procurement and Assistance Policy published a brochure entitled "Procurement Integrity" that summarizes the responsibilities and restrictions associated with procurement integrity. The brochure may be viewed on the DOE homepage at:

http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/ProcInte/$File/ProcInte.pdf

or you may order copies of the brochure by calling the office direct at (202) 586-8182.