

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.
- Competitive range determinations.
- Rankings of bids, proposals, or competitors.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other information marked as “source selection information.”

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. Release 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.

WHOM CAN YOU CONTACT FOR MORE INFORMATION ON PROCUREMENT INTEGRITY?

- The Human Resources Office provides new employees written information on ethical conduct when they first come on board.
- The Procurement Operations Offices can provide guidance for specific acquisitions in which EPA personnel are involved.
- The Office of General Counsel (OGC) and the Procurement Operations Offices can provide advice on questions addressing disclosure of contractor bid or proposal information or source selection information. OGC Ethics can assist employees and former employees with questions regarding post employment.



OFFICE OF ACQUISITION MANAGEMENT

PROCUREMENT INTEGRITY:

*What you need to Know
As a Federal Employee*

OVERVIEW

This brochure provides information regarding the requirements of the Procurement Integrity Act (41 U.S.C. §423), implemented through the Federal Acquisition Regulation (FAR) (48C.F.R. §3.104) and its impact on Federal employees. It is designed to help you recognize some of the most common procurement integrity issues that may arise during the procurement process. Not all statutory or regulatory details are included. Should you have any specific questions, you are advised to consult with your Contracting Officer or with the Office of General Counsel.

WHAT IS THE PROCUREMENT INTEGRITY ACT?

The Procurement Integrity Act regulates the conduct of Federal employees, and other persons involved in the Federal procurement process. It also contains provisions regarding post employment restrictions for certain procurement officials.

BACKGROUND

Like most Federal agencies, the U.S. Environmental Protection Agency (EPA), purchases many products and services from the private sector. To preserve the integrity of the Federal procurement process and ensure fair treatment of bidders, offerors, government personnel, and perspective contractors, there are laws that govern the procurement process and the manner in which Federal and prospective contractor 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.

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.

KEY PROVISIONS

The Procurement Integrity Act reflects procurement activities in four key areas:

I. DISCLOSING PROCUREMENT INFORMATION

As a Federal employee, you might have access to procurement and other nonpublic information that could affect a contract bid or the award process. Improper disclosure of such protected information could violate numerous laws, as well as ethics rules. It also could subject you to administrative actions, in addition to civil or criminal penalties. 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 award of a contract to which the information relates:

- A current or former official 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; 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 must be secured and may not be disclosed if it has not previously been made public:

Proposal or bid information, is information that is submitted to a Federal agency in connection with a bid or proposal to enter into a Federal contract, 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 identified by any contractor as “contractor bid or proposed information.”

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

- Bid prices.
- Proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical and cost or price evaluations of proposal.
- Competitive range determinations.
- Rankings of bids, proposals, or competitors.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other information marked as “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 EPA employee who is participating personally and substantially in a competitive procurement valued in excess of the simplified acquisition threshold of \$150,000 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 deputy 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

During the course of your Government service, you might decide to seek employment in the private sector or even with a contractor who does business with EPA. There are several restrictions that apply to your Government work when you seek future employment or have employment discussions with contractors. While you are still a federal employee, you are obliged to adhere to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically the provisions on “seeking other employment” at Subpart F, and the financial conflict of interest statute at 18 U.S.C. 208 and those implementing regulations at 5 C.F.R. Part 2635, Subpart D. You cannot participate in particular matters involving potential employees, and must disqualify yourself appropriately in advance.

A former EPA 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 EPA 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 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.
- 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 in excess of \$10,000,000.
 - 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 in excess of \$10,000,000.
 - To pay or settle a claim in excess of \$10,000,000.

The Procurement Integrity Act sets forth penalties for former employees and their new employers.

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. Employees and former employees may contact their Deputy Ethics Official or the Office of General Counsel for assistance in post employment issues.