3.104-3 Statutory and related prohibitions, restrictions, and requirements.

(a) Prohibition on disclosing *procurement* information(41 U.S.C. 2102).

(1) A person described in paragraph (a)(2) of this subsection *must* not, other than as provided by law, knowingly disclose *contractor bid or proposal information* or *source selection information* before the award of a *Federal agency procurement* contract to which the information relates. (See 3.104-4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who-

(i) Is a present or former *official* of the *United States*, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the *United States* with respect to, a *Federal agency procurement*; and

(ii) By virtue of that office, employment, or relationship, has or had access to *contractor bid or proposal information* or *source selection information*.

(b) *Prohibition on obtaining procurement information (* 41 U.S.C. 2102). A person *must* not, other than as provided by law, knowingly obtain *contractor bid or proposal information* or *source selection information* before the award of a *Federal agency procurement* contract to which the information relates.

(c) Actions required when an agency *official* contacts or is contacted by an *offeror* regarding non-Federal employment (41 U.S.C. 2103).

(1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must-

(i) Promptly report the contact *in writing* to the *official*'s supervisor and to the *agency ethics official*; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that *Federal agency procurement* (see 3.104-5) until such time as the agency authorizes the *official* to resume participation in that *procurement*, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because-

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the *offeror* regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as "seeking employment" in 5 CFR 2635.603(b). In addition, unsolicited communications from *offerors* regarding possible employment are considered contacts.

(3) Agencies *must* retain reports of employment contacts for 2 years from the date the report was submitted.

(4) Conduct that complies with 41 U.S.C. 2104 may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. See 3.104-2(b)(2).

(d) Prohibition on former *official*'s acceptance of *compensation* from a contractor (<u>41 U.S.C. 2104</u>).

(1) A former *official* of a *Federal agency may* not accept *compensation* from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former *official*-

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, 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*;

(ii) 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

(iii) Personally made for the Federal agency a decision to-

(A) Award a contract, *subcontract*, modification of a contract or *subcontract*, or a *task order* or *delivery order in excess of \$10,000,000* to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued *in excess of \$10,000,000*;

(C) Approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) Pay or settle a *claim in excess of \$10,000,000* with that contractor.

(2) The 1-year prohibition begins on the date-

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the *official* was not serving in the position on the date of award;

(ii) The *official* last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The *official* made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a *Federal agency* from accepting *compensation* from any division or affiliate of a contractor that does not produce the same or similar *products* or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

Parent topic: <u>3.104 Procurement integrity</u>.