

PROCUREMENT SENSITIVE INFORMATION

As a government employee, you have access to certain procurement and nonpublic information. The general public does not have knowledge/access to that information.

Unwarranted release by even careless or negligent handling, disclosure or storing of that information can cause the following:

- jeopardize the procurement process and compromise the integrity of the Government;
- can upset a contract award up to the stage that we have to start the whole process over;
- a legal action from the entity whose information was wrongfully release/caused harm;
- constitute a violates numerous laws, as well as Government ethics rules;
- could subject one to administrative actions, as well as civil or criminal penalties;
- give bad publicity of the Government which can undermine the faith and trust on us.

- PROCUREMENT SENSITIVE INFORMATION is defined in U.S. Code, TITLE 41 , CHAPTER 7 Sec. 423; and In FAR Subpart 3.1—Safeguards/Standards of conduct.

- WHICH IMPOSE STRICT RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTORS' BID OR PROPOSAL INFORMATION; OR SOURCE SELECTION INFORMATION.

- PROCUREMENT SENSITIVE INFORMATION BASICALLY includes:

1. Contractor bid or proposal information;

2. Agency's source selection sensitive information'.

1. The term "contractor bid or proposal information" means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices *before public bid opening*.
- Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical evaluations of proposals.
- Cost or price evaluations of proposals.

- Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.
- Rankings of bids, proposals, or competitors.
- The reports and evaluations of source selection panels, boards or advisory councils.
- Other information marked as ``source selection information" based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

2. The term **``source selection sensitive information"** means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly.

---- The term **``Federal agency procurement"** means the acquisition of goods or services, including construction, from non-Federal sources by a Federal agency using appropriated funds.

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- Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.
- Source selection plans.
- Technical evaluation plans.
- Technical evaluations of proposals.
- Cost or price evaluations of proposals.
- Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.
- Rankings of bids, proposals, or competitors.
- The reports and evaluations of source selection panels, boards, or advisory councils.
- Other information marked as ``source selection information" based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

Examples:

- Analysis Worksheets.
- Contractor Bid or Proposal Information.
- Number & identity of offerors.
- Past Performance Information (PPI) ----- ***** -----

(a) Prohibition on disclosing procurement information

(1) A person described in paragraph (2) shall 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.

(2) Paragraph (1) applies to any person who--

(A) 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

(B) 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

A person shall 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 of procurement officers when contacted by offerors regarding non-Federal employment

(1) If an agency official who is 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 a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall--

(A) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(B)(i) reject the possibility of non-Federal employment; or
(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that--

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e) of this section.

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e) of this section.

- A. Contractor bid or proposal information means information not made available to the public and includes:
1. cost or pricing data;
 2. indirect costs and direct labor rates;
 3. proprietary information about manufacturing processes, operations or techniques;
 4. information about manufacturing process, product development, certain operational techniques.
 5. Any information related to a specific procurement that the submitting in proposal or bid deems proprietary; and
 6. information marked by the contractor as "contractor bid or proposal information."

The term "**source selection information**" means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- B. Source selection information means information not made available to the public and includes:
1. bid prices;
 2. proposed costs or prices from bidders;
 3. source selection and technical evaluation plans;
 4. technical evaluations, cost or price evaluations, competitive range determinations, rankings of bids, reports of source selection panels;
 5. competitive range determinations;
 6. ranking of bids, proposals or competitors;
 7. reports, evaluations and recommendations of source selection panels, boards or other advisory members; and

8. other information specifically marked as “source selection” based on a determination that its disclosure would jeopardize the procurement.

“Source Selection Information (SSI)”

Information, if disclosed, would jeopardize the integrity or successful completion of the acquisition. Must be handled with utmost carefulness to avoid any compromise.

Definition from FAR

- Bid prices or lists of bid prices prior to opening
- Proposed costs or prices or lists of proposed costs or prices
- Source selection plans
- Technical evaluation plans
- Technical evaluation of proposals
- 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 marked “SOURCE SELECTION INFORMATION - SEE FAR 2.101 AND 3.104”

Sensitive information pertaining to the source selection such as:

- Analysis Worksheets
- Contractor Bid or Proposal Information
- Number & identity of offerors
- Past Performance Information (PPI)

May be obtained from the offerors or generated by the Gov’t

Each member is personally responsible for security of data

Extends into the post-award period

Includes talking about what happened during the Source selection

KO is sole point of contact between the offerors and the government after RFP release

II. Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information

- A. A present or former employee of, or person acting on behalf of or advising, the U.S. on a procurement, who has or had access to such information shall not disclose it before the award of the contract to which the information relates. (48 CFR 3.104-4(a))

- B. No person shall knowingly obtain such information before the award of the contract to which the information relates. (48 CFR 3.104-4(b))

(a) Prohibition on disclosing procurement information

(1) A person described in paragraph (2) shall 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.

(2) Paragraph (1) applies to any person who--

(A) 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

(B) 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

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(A) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(B)(i) reject the possibility of non-Federal employment; or
(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that--

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possible non-Federal employment have terminated without an agreement or arrangement for employment.

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