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# Participation in Cost Comparison Study

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1. The purpose of this notice is to inform you of the unique circumstances inherent to your participation in the development of the Performance Work Statement (*PWS*) or the Agency Tender.<sup>1</sup> This notice will give you general information about your participation, your rights as stated in the applicable regulatory guidance, and the possible impact of participating beyond predetermined limits.
2. Your participation in the development of the *PWS* or the Agency Tender is essential to the success and quality of the cost comparison study. To understand how the IRS is protecting your rights under the A-76 cost comparison study process, you need to understand the following current definitions from the Federal Acquisition Regulations:

- a. Right of First Refusal of Employment:

The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

- b. "Participating personally and substantially in a Federal agency procurement" means-

1. Active and significant involvement of an official in any of the following activities directly related to that procurement:
  - i. Drafting, reviewing, or approving the specification or statement of work for the procurement.
  - ii. Preparing or developing the solicitation.
  - iii. Evaluating bids or proposals, or selecting a source.
  - iv. Negotiating price or terms and conditions of the contract.
  - v. Reviewing and approving the award of the contract.
2. "Participating personally" means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.
3. "Participating substantially" means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures does not constitute substantial participation in procurement.

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1. Includes the, Agency Tender, Most Efficient Organization (*MEO*), Agency Cost Estimate, the Quality Control Plan and Phase-In Plan.

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4. Generally, an official will not be considered to have participated personally and substantially in procurement solely by participating in the following activities:
  - i. Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.
  - ii. The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.
  - iii. Clerical functions supporting the conduct of a particular procurement.
  - iv. For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641, that 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.

3. As a member of the PWS or MEO team, you may work on and support the development of various study elements up to a predetermined exit milestone. The team leaders will monitor your participation to ensure you do not become personally or substantially involved in developing the PWS or Agency Tender. When the project reaches a pre-determined exit milestone, you will be notified that your further participation may result in relinquishing your Right of First Refusal or may restrict your post-government employment opportunities.
4. If you elect to continue as a member of the PWS or the Agency Tender development teams after being notified of reaching the pre-determined exit milestone, your status may change and you may be considered a "procurement official," i.e., you will be personally and substantially participating in the project, jeopardizing your right of first refusal.

### Employee Acknowledgement:

I acknowledge that I have received and read this notice and that I fully understand my rights and limitations as a participant on the Performance Work Statement (PWS) or Management Plan development teams.

Employee name	Position
Signature	Date
Project manager's signature	Date