

Procurement Integrity

*What **YOU** Need to Know
as a
Federal Employee*

June 19, 2007

Procurement Integrity

What is Procurement Integrity?

- DOE's procurement process is governed by numerous statutes and regulations
- One is the Procurement Integrity Act (Section 27 of the OFPP Act)
- Implemented in Federal Acquisition Regulation (FAR) 3.104
- Prohibits certain activities by present and former Federal employees and others involved in procurements

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Who is covered?

- Present Federal employees
- Certain former Federal employees
- Bidders and Offerors
- Other personnel involved in procurements and contracts

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What is Prohibited?

Disclosing bid, proposal, or source selection information before award of a contract

- Competitive Procurements
- Present or former Official of the U.S
- Persons acting for/on behalf of the U.S.
- Persons advising the U.S. on procurement matters
- Access to the bid, proposal, or source selection information
- Various categories of information covered

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What is Prohibited?

Obtaining bid, proposal, or source selection information before contract award

- Competitive procurements
- Same categories of information covered

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What is Required?

Discussing Employment with Contractors

If you, as an agency official participating personally and substantially in a competition, contact, or are contacted by, a bidder or offeror, about employment, you must:

- Promptly report the contact to your supervisor and ethics official
- Either reject the possibility of the employment, or disqualify yourself from the procurement

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What is Prohibited?

A former agency official may not accept compensation from certain contractors for one year, after that official:

- Was involved in certain aspects of source selection for contracts over \$10 Million
- Was a Program Manager, Deputy Program Manager, or ACO on contracts over \$10 Million
- Personally made certain decisions regarding award, subcontracts, task or delivery order, overhead rates, payments, or claims over \$10 Million

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What about Possible Violations?

- Contracting Officers who receive or obtain violation information must determine if it impacts a pending award
- Consult your Counsel's Office
- If no impact - document and forward to agency official for concurrence
- If it does impact award - promptly forward information to the HCA for action
- HCA's responsibilities – advise CO, begin investigation, refer to criminal investigators, and/or make conclusions about the violation and take appropriate action on the procurement



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What are the penalties for violations?

Criminal Penalties

- Fines and imprisonment for up to 5 years for improper disclosure or obtaining information

Civil Penalties

- Up to \$50,000 per violation, and administrative actions for the four key provisions of the Act
- Up to \$50,000 per violation, plus twice amount of compensation an individual received or offered
- Up to \$500,000 per violation, plus twice the amount of compensation an organization received or offered

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What are the penalties for violations?

Administrative Actions

- 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 best interest of the Government

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Who can you contact for further information?

- Office of Assistant General Counsel for General Law
 - Contact: Susan Beard (202-586-1522)
- Office of Assistant General Counsel for Procurement and Financial Assistance
 - Contact: Beth Kelly (202-586-6906)
- Office of Procurement and Assistance Policy
 - Contact: Kevin Smith (202-287-1614)
- Your Contracting Officer and local Counsel

Contractor Ethics

What about Contractors?

- Some of the prohibitions of the Procurement Integrity Act also apply to Contractors & their employees
- Proposed changes to FAR address Contractor Ethics (Case 2006-007)

Contractor Ethics

FAR Case 2006-007

“Contractor Code of Ethics and Business Conduct”

- Proposed rule published February 16, 2007 requesting comments
- For awards >\$5M with periods \geq 120 days, requires Contractors to have a written code of ethics and business conduct in place
- Must post fraud hotline posters
- Requires employee ethics and compliance training program
- Requires an internal control system
- Comments received on proposed rule – currently being addressed by FAR Law Team

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The End

