

from a contractor as an employee, officer, director, or consultant of the contractor within a period of one 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) A decision 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 that contractor;

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

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

(D) A decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) 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.

[62 FR 228, Jan. 2, 1997]

3.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance

with applicable agency regulations or procedures, by the head of the agency or designee, or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.207 applicable law, and agency regulations.

(c) In determining whether particular information is source selection information, see the definition in 3.104-3 and consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information under paragraph (10) of the definition shall mark the cover page and each page that the individual believes contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." Although the information in paragraphs (1) through (9) of the definition in 3.104-3 is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with the same legend.

(d) Except as provided in subparagraph (d)(4) of this subsection, if the contracting officer believes that information marked as proprietary is not proprietary, information otherwise marked as contractor bid or proposal information is not contractor bid or proposal information, or information marked in accordance with 52.215-1(e) is inappropriately marked, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and the information may be released.

(2) If, after reviewing any justification submitted by the contractor, the contracting officer determines that the marking is not justified, the contracting officer shall notify the contractor in writing.

(3) Information marked by the contractor as proprietary, otherwise marked as contractor bid or proposal information, or marked in accordance

with 52.215-1(e), shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier. Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(e) Nothing in this section restricts or prohibits—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) Nothing in this section shall be construed to authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information which pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award where such disclosure, solicitation, or receipt is prohibited by law. See 3.104-1(b)(5) and subpart 24.2.

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3.104-6 Disqualification.

(a) *Contacts through agents.* Disqualification pursuant to 3.104-4(c)(2) may be required even where contacts are through an agent or other intermediary of the agency official or an agent or other intermediary of a bidder or offeror. See 18 U.S.C. 208 and 5 CFR 2635.603(c).

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104-4(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104-4(c)(2)(ii) shall promptly submit to the head of the contracting activity (HCA), or designee, a written notice of disqualification from further participation in the procurement. Concurrent copies of the notice shall be submitted to the contracting officer, the source selection authority if the contracting officer is not the source selection authority, and the agency official's immediate supervisor. As a minimum, the notice shall—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the bidder or offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The individual shall remain disqualified until such time as