

Restrictions on Government Source Selection Information & Contractor Bid or Proposal Information

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Purpose

To emphasize ES policy that no employee, agent, representative, consultant, or lobbyist shall improperly obtain or disclose any Government source selection or contractor bid and proposal information.

Definitions

FAR

Federal Acquisition Regulation

Contractor Bid and Proposal Information

Contractor bid or proposal information is defined in 41 U.S.C. § 423, *Procurement Integrity Act*, and FAR 3.104, *Procurement Integrity*, as any of the following information submitted to an agency as part of or in connection with a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- Cost or pricing data with respect to procurements;
- Indirect costs and direct labor rates;
- Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation;
- Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation and
- Information marked in accordance with FAR 52.215-1(e), *Instructions to Offerors – Competitive Acquisitions*. FAR 52.215-1(e) requires the cover page or other transmittal document, and each page or portion thereof that contains contractor bid or proposal information be marked in a specific manner.

Note: The issue whether specific information is contractor bid or proposal information is not always clear, and any questionable circumstances, should be resolved by bringing the matter to the attention of the Law Department.

Source Selection Information

Source selection information is defined in 41 U.S.C. § 423 and FAR 2.101, *Definitions*, as 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.

- Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.
- Proposed costs or prices submitted in response to an 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.
- Reports and evaluations of source selection panels, boards, or advisory councils.
- Other information marked "Source Selection Information – See FAR 2.101 and 3.104" based on a case-by-case determination by the head of the agency or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal Agency procurement to which the information relates.

Principles

ES complies with the *Procurement Integrity Act*, referred to as “the Act”, and other regulations associated with Government procurements, FAR 3.104, and related conflict of interest laws and regulations. In addition, ES complies with Corporate ***Procedure CO A306, Procurement Integrity Act***, and Command Media ***Procedure A180, Compliance With Procurement Integrity Act (41 U.S.C. 423)***.

The Act places restrictions, limitations, and prohibitions on a broad range of activity associated with Federal agency procurement such as obtaining or disclosing procurement information, source selection, or contractor bid or proposal information associated with a federal agency procurement. The provisions of the Act apply in some instances only to competitive procurements while in other instances they apply to all procurements. Violations of the Act by ES or its employees, agents, representatives, consultants, and lobbyists can result in civil and/or criminal fines and/or penalties, imprisonment, and administrative actions such as the cancellation of a solicitation, rescission of a contract, or initiation of suspension or debarment proceedings. Employees may also be subject to discipline by ES including dismissal for violations of the Act.

Process

The Federal procurement system is based on an extensive exchange of information between Contractors and Government agencies both before and after the award of contracts. Examples include submission of unsolicited or solicited proposals by Companies and Government circulation of a draft solicitation to industry. It is ES policy to participate fully and properly in the exchange of information relating to Government contracts and acquisition planning. In furtherance of this policy, ES employees, agents, representatives, consultants, and lobbyists shall

be free to accept information from the Government and third parties except where the information would provide ES with an **unfair competitive advantage** as a result of the improper receipt of source selection information or contractor bid and proposal information. However, ES employees, agents, representatives, consultants, and lobbyists shall not accept any source selection information or data. It is also improper to receive contractor bid or proposal information unless an authorized agent of the contractor approves its release. Thus, ES may receive another Contractor's bid or proposal information from a Government official if, after a good faith inquiry, a reasonable basis exists for believing that the Contractor has authorized the release of the information. Such a basis would exist where the official voluntarily disseminates such data on Government letterhead or through some other official channels or where the official explicitly indicates that the Contractor has approved release. ES may also receive another Contractor's information from an employee of the Contractor, such as an engineer, who is apparently authorized to use and disclose the information as part of his or her employment responsibilities or duties. Conversely, ES could not properly accept Contractor bid or proposal information where circumstances indicate that the Contractor has not or would not consent to such release. Thus, the Company may not receive information that has been obtained by offering a gratuity to a Contractor employee or that has been obtained from a Contractor employee with a warning not to disclose the source of the information. Because of the inherent difficulty of determining the nature of particular information, ES employees, agents, representatives, consultants, and lobbyists will comply with the following guidelines.

- Receive information from the Government only on Government letterhead wherever feasible.
- If the information is not transmitted on official letterhead and there is any doubt as to the ES right to receive the information, make a direct inquiry with the party offering the information to confirm the propriety of the exchange, and document the response for ES file.
- Strictly adhere to procedures for handling classified data.
- Avoid situations in which information is provided "under the table" or by some other covert means.
- Do not use an agent (i.e., a consultant or subcontractor) to obtain information that could not properly be obtained directly.
- If there is any doubt about the propriety of the exchange or the nature of the information, contact the Law Department beforehand.

Responsibilities

All Electronic Systems employees, agents, representatives, consultants, and lobbyists, and its wholly owned subsidiary organizations who participate in preparing, submitting, negotiating company offers, bids or proposals for Federal Government contracts

Responsible for complying with this procedure. They also must immediately report all violations or possible violations of the Act to the sector Vice President and Assistant General Counsel and Sector Counsel and/or the Director Ethics and Business Conduct, either directly or through the site Business Conduct Officer.

Vice President, Procurement and Material Management, ES

Must ensure consultant agreements include appropriate language to comply with the Act. (See Corporate **Policy CP A5, Consultants, Representatives, and Lobbyists**, Corporate **Procedure CO A301, Consultants, Representatives, and Lobbyists**, and Command Media **Policy G03, Consultants, Representatives, Lobbyists**, and **Procedure P486, Domestic Consultants**.)

Sector Vice President and Assistant General Counsel and sector Counsel and/or the Director Ethics and Business Conduct

Must immediately report all violations or possible violations of the Act to the President of ES.

President of ES

Ensures the compliance of the relevant regulations, company policies, and procedures associated with Government procurements, including the Act. In addition, the President is responsible for the immediate reporting of all violations or possible violations of the Procurement Integrity Act to the Corporate Vice President and General Counsel, Corporate Vice President Contracts and Pricing, and the Corporate Vice President and Chief Human Resources, Communication and Administrative Office or their designees.

References

Command Media

CP A5, *Consultants, Representatives, and Lobbyists*

CO A301, *Consultants, Representatives, and Lobbyists*

CO A306, *Procurement Integrity Act*

G03, *Consultants, Representatives, Lobbyists*

A180, *Compliance With Procurement Integrity Act (41 U.S.C. 423)*

P486, *Domestic Consultants*

Other

41 U.S.C. § 423, *Procurement Integrity Act*

FAR 2.101, *Definitions*

FAR 3.104, *Procurement Integrity*

FAR 52.215-1(e), *Instructions to Offerors – Competitive Acquisitions*