

**Procurement Integrity and
Standard of Conduct/Ethics**



How Can Federal Officials Get Into Trouble?

Procurement-Related Issues

Procurement Integrity

Standards of Conduct/Ethics

Improper Use of Contractor Employees

Unauthorized Commitments



Procurement Integrity

What is the Procurement Integrity Act?

The Act prohibits certain activities by present and former Federal employees, and other persons involved in Federal agency procurements.



What activities are prohibited?

- Disclosing bid, proposal or source selection information before contract award.
- Obtaining bid, proposal or source selection information before contract award, unless provided by law.
- Accepting compensation from contractors by certain former Federal officials who were involved in a procurement > \$10 million involving such contractors.



Procurement Integrity

What are the restrictions for “former Federal officials”?

Under the Act, a former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant within a period of 1 year after such former official:

- Served as the procuring contracting officer, the source selection authority, a member of a source evaluation board or the chief of a financial or technical evaluation team for a contract >\$10M awarded to that contractor
- Served as the program manager, deputy program manager or administrative contracting officer for a contract >\$10M awarded to that contractor
- Personally made the following decisions on behalf of the Federal agency -
 - Certain award decisions (>\$10M);
 - Establishing contractor overhead/other rates valued >\$10M;
 - Decisions approving the issuance of a contract payment >\$10M; or
 - Decision to pay or settle a claim >\$10M with that contractor



Procurement Integrity

What are the penalties for violations of the Procurement Integrity Act?

Civil Penalties

- Up to \$50K per violation plus twice the amount of compensation an individual received or offered for the prohibited conduct.
- Up to \$500K per violation plus twice the amount of compensation an organization received or offered for prohibited conduct.

Administrative Actions

- Cancellation of the procurement
- Rescission of contract
- Suspension or debarment of contractor
- Initiation of adverse personnel action

Criminal Penalties

Imprisonment of not more than 5 years or fine under title 18 U.S.C. or both.





Procurement Integrity

What Else Do I Need To Know?

If discussing non-Federal employment while participating personally and substantially in procurements valued over \$100K individuals must:

- Promptly report, in writing, any contact to their supervisor and the agency ethics official; and
- Reject the possibility of non-Federal employment; or disqualify themselves from further participation in the procurement.



Who Can I Contact For More Information?

- The cognizant Contracting Officer for specific procurement actions.
- The Assistant General Counsel for General Law - GC-80 (DOE Agency Ethics Official) (202/586-1522)





Standards of Conduct/Ethics

General

Procurement is a fiduciary responsibility, and must be conducted with complete impartiality, except as may be provided by statute or regulation.

This responsibility includes:

- Avoiding any conflict of interest, or appearance of a conflict or lack of impartiality
- Avoiding making Government decisions outside official procedures or without authority
- Conducting actions as though full public disclosure were expected





Standards of Conduct/Ethics

Prohibited Conduct

Prohibited conduct for all personnel involved with a procurement includes:

- Violating statutory/regulatory Procurement Integrity restrictions
- Taking bribes or soliciting or accepting certain gratuities
- Using an official position or non-public information to advance private or personal interests including employment of a relative
- Participating in specific matters in which the employee; spouse; minor children; general partner; or organization in which the employee serves as an officer, director, trustee, general partner, or employee has a financial interest
- Conspiring to defraud the Government
- Making false statements
- Contracting with Government employees or members of Congress



Improper Use of Contractors

- Officials must avoid the creation or appearance of a personal services relationship with contractor personnel (i.e., the instruction, supervision, or control of a contractor employee's work.
- Contractor personnel should not be used to perform inherently Governmental functions; activities which require the exercise of discretion in applying Government authority, or the use of value judgment in making decisions for the Government.
- Officials may not use contractors to perform work that is outside of the contract scope of work.



Improper Use of Contractors

- M&O employees should not be used for administrative staff augmentation.
- Employees of DOE facility management contractors may not be used to perform general support service functions unrelated to their facility management responsibilities.
- Contractor employees may not be employed directly supervised by Federal managers.
- DOE O 350.2A issued to:
 - ✓ provide management and control requirements for Headquarters use of employees from M&O contractors and National Labs; and
 - ✓ establish limitations on payments to those employees whose assignments at Headquarters exceed 365 days



Improper Use of Contractors

- Requirements apply to all M&O contractor and National Lab employees on assignment to Headquarters program office in Washington, DC, except for personnel under Intergovernmental Personnel Assignments.
- Assistant Secretaries or organizational heads must give authorization to specific DOE managers to request/approve the assignment of such employees at Headquarters.



Unauthorized Commitments

- **Unauthorized commitments** are agreements that are not binding solely because the Government representative who made it lacks the authority to enter into such agreements on behalf of the Government.
- Within DOE, unauthorized commitments may be ratified by the designated Head of the Contracting Activity, without power of further delegation, if:
 - supplies or services have been provided/accepted by the Government
 - the ratifying official is authorized to enter into such commitment
 - the resultant contract would have otherwise been proper
 - the price is determined to be fair and reasonable



Unauthorized Commitments

- the contracting officer recommends payment, with concurrence of legal council
 - funds are available and were available at the time the unauthorized commitment was made
 - other agency requirements for ratification are completed
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- It is the Government's policy that agencies take positive action to preclude, to the maximum extent practicable, the need for ratification actions.