

## 3.104-1 Definitions.

As used in this section—

*Agency ethics official* means the designated *agency ethics official* described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics *officials* described in 5 CFR 2638.204, to whom authority under 3.104-6 has been delegated by the designated *agency ethics official*; and

(2) *Alternate* designated *agency ethics officials* described in 5 CFR 2638.202(b).

*Compensation* means wages, salaries, honoraria, commissions, professional fees, and any other form of *compensation*, provided directly or indirectly for services rendered. *Compensation* is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

*Contractor bid or proposal information* means any of the following information submitted to a *Federal agency* as part of or in connection with 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:

(1) *Cost or pricing data* (as defined by 10 U.S.C. 3701(1) with respect to *procurements* subject to that section, and 41 U.S.C. 3501(a)(1), with respect to *procurements* subject to that section.

(2) *Indirect costs* and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "*contractor bid or proposal information*" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215-1(e).

*Decision to award a subcontract or modification of subcontract* means a decision to designate award to a particular source.

*Federal agency procurement* means the *acquisition* (by using competitive procedures and awarding a contract) of goods or services (including *construction*) from non-Federal sources by a *Federal agency* using appropriated funds. For *broad agency announcements* and small business innovation research programs, each proposal received by an agency constitutes a separate *procurement* for purposes of 41 U.S.C. chapter 21.

*In excess of \$10,000,000* means—

(1) The value, or estimated value, at the time of award, of the contract, including all *options*;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the *contracting officer* documents a lower

estimate;

(4) The value of a *delivery order*, *task order*, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a *claim*; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

*Official* means-

(1) An officer, as defined in [5 U.S.C.2104](#);

(2) An employee, as defined in [5 U.S.C.2105](#);

(3) A member of the uniformed services, as defined in [5 U.S.C.2101\(3\)](#); or

(4) A special Government employee, as defined in 18 U.S.C.202.

*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 a *procurement*.

(4) Generally, an *official* will not be considered to have participated personally and substantially in a *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.

*Source selection evaluation board* means any board, team, council, or other group that evaluates bids or proposals.

**Parent topic:** [3.104 Procurement integrity](#).