

3.803 Exceptions.

(a) The prohibition of paragraph [3.802\(a\)](#) does not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.*

(i) Payment of *reasonable compensation* made to an officer or employee of a *person* requesting or receiving a *covered Federal action* if the payment is for agency and legislative liaison activities not directly related to a *covered Federal action*. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific *solicitation* for any *covered Federal action*, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the *person's products* or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the *person's products* or services for an agency's use.

(iii) Providing prior to formal *solicitation* of any *covered Federal action* any information not specifically requested but necessary for an agency to make an informed decision about initiation of a *covered Federal action*.

(iv) Participating in technical discussions regarding the preparation of an *unsolicited proposal* prior to its official submission.

(v) Making capability presentations prior to formal *solicitation* of any *covered Federal action* when seeking an award from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) Professional and technical services.

(i) Payment of *reasonable compensation* made to an officer or employee of a *person* requesting or receiving a *covered Federal action*, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(ii) Any *reasonable payment* to a *person*, other than an officer or employee of a *person* requesting or receiving a *covered Federal action*, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. *Persons* other than officers or employees of a *person* requesting or receiving a *covered Federal action* include consultants and trade associations.

(iii) As used in paragraph (a)(2) of this section "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment

rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional or a technical *person* are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a *covered Federal action*. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another, are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a *covered Federal action*.

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(b) Only those communications and services expressly authorized by paragraph (a) of this section are permitted.

(c) The disclosure requirements of paragraph 3.802(b) do not apply with respect to payments of *reasonable compensation* made to *regularly employed* officers or employees of a *person*.

Parent topic: Subpart 3.8 - Limitations on the Payment of Funds to Influence Federal Transactions