

## 3.104-2 General.

(a) This section implements 41 U.S.C. chapter 21, Restrictions on Obtaining and Disclosing Certain Information. Agency supplementation of 3.104, including specific definitions to identify individuals who occupy positions specified in 3.104-3(d)(1)(ii), and any clauses required by 3.104 *must* be approved by the *senior procurement executive* of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency *officials* are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example-

(1) The *offer* or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201 and 10 U.S.C. 4651. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353 and 5 CFR Part 2635;

(2) Contacts with an *offeror* during the conduct of an *acquisition* may constitute "seeking employment," (see Subpart F of 5 CFR Part 2636 and 3.104-3(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR Part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an *offeror* or who has an arrangement concerning future employment with an *offeror* *must* comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also *may* require an employee's disqualification from participation in the *acquisition* even if the employee's duties *may* not be considered "participating personally and substantially," as this term is defined in 3.104-1;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641, that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee's *official* responsibility;

(4) parts 14 and 15 place restrictions on the release of information related to *procurements* and other contractor information that *must* be protected under 18 U.S.C. 1905;

(5) Release of information both before and after award (see 3.104-4) *may* be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

**Parent topic:** 3.104 Procurement integrity.