

Statutory Notes and Related Subsidiaries**DEADLINE FOR GUIDANCE ON MANAGEMENT OF
PURCHASE CARDS**

Pub. L. 112-194, §2(c), Oct. 5, 2012, 126 Stat. 1448, required the Director of the Office of Management and Budget to prescribe the guidance required by subsec. (b) of this section not later than 180 days after Oct. 5, 2012.

**CHAPTER 21—RESTRICTIONS ON OBTAINING
AND DISCLOSING CERTAIN INFORMATION**

Sec.	
2101.	Definitions.
2102.	Prohibitions on disclosing and obtaining procurement information.
2103.	Actions required of procurement officers when contacted regarding non-Federal employment.
2104.	Prohibition on former official's acceptance of compensation from contractor.
2105.	Penalties and administrative actions.
2106.	Reporting information believed to constitute evidence of offense.
2107.	Savings provisions.

§ 2101. Definitions

In this chapter:

(1) **CONTRACTING OFFICER.**—The term “contracting officer” means an individual who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to the contract.

(2) **CONTRACTOR BID OR PROPOSAL INFORMATION.**—The term “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 previously has not been made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in section 3701 of title 10 with respect to procurements subject to that section and section 3501(a) of this title with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

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

(D) Information marked by the contractor as “contractor bid or proposal information”, in accordance with applicable law or regulation.

(3) **FEDERAL AGENCY.**—The term “Federal agency” has the meaning given that term in section 102 of title 40.

(4) **FEDERAL AGENCY PROCUREMENT.**—The term “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.

(5) **OFFICIAL.**—The term “official” means—

(A) an officer, as defined in section 2104 of title 5;

(B) an employee, as defined in section 2105 of title 5; and

(C) a member of the uniformed services, as defined in section 2101(3) of title 5.

(6) **PROTEST.**—The term “protest” means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31.

(7) **SOURCE SELECTION INFORMATION.**—The term “source selection information” means any of the following information prepared for use by a Federal agency to evaluate a bid or proposal to enter into a Federal agency procurement contract, if that information previously has not been made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

(I) Reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as “source selection information” based on a case-by-case determination by the head of the agency, the head’s designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3727; Pub. L. 117-81, div. A, title XVII, §1702(h)(10), Dec. 27, 2021, 135 Stat. 2158.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2101(1)	41:423(f)(5).	Pub. L. 93-400, §27(f), as added Pub. L. 100-679, §6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, §814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, §1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, §705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, §8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, §4304(a), Feb. 10, 1996, 110 Stat. 662.
2101(2)	41:423(f)(1).	
2101(3)	41:423(f)(3).	
2101(4)	41:423(f)(4).	
2101(5)	41:423(f)(7).	
2101(6)	41:423(f)(6).	
2101(7)	41:423(f)(2).	

Editorial Notes**AMENDMENTS**

2021—Par. (2)(A). Pub. L. 117-81 substituted “section 3701” for “section 2306a(h)”.

§ 2102. Prohibitions on disclosing and obtaining procurement information

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) IN GENERAL.—Except as provided by law, a person described in paragraph (3) shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction in paragraph (1), an employee of a private sector organization assigned to an agency under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal information or source selection information during the 3-year period after the employee's assignment ends, except as provided by law.

(3) APPLICATION.—Paragraph (1) applies to a person that—

(A)(i) is a present or former official of the Federal Government; or

(ii) is acting or has acted for or on behalf of, or who is advising or has advised the Federal Government with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3728.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2102(a)	41:423(a).	Pub. L. 93-400, § 27(a), (b), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 659; Pub. L. 107-347, title II, § 209(d)(4), Dec. 17, 2002, 116 Stat. 2930.
2102(b)	41:423(b).	

§ 2103. Actions required of procurement officers when contacted regarding non-Federal employment

(a) ACTIONS REQUIRED.—An agency official participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold who contacts or is contacted by a person that is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official shall—

(1) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2)(A) reject the possibility of non-Federal employment; or

(B) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until the agency authorizes the official to resume participation in the procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(i) the person is no longer a bidder or offeror in that Federal agency procurement; or

(ii) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(b) RETENTION OF REPORTS.—The agency shall retain each report required by this section for not less than 2 years following the submission of the report. The reports shall be made available to the public on request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of that section may be withheld from disclosure to the public.

(c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) An official who knowingly fails to comply with the requirements of this section.

(2) A bidder or offeror that engages in employment discussions with an official who is subject to the restrictions of this section, knowing that the official has not complied with paragraph (1) or (2) of subsection (a).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3728.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2103(a)	41:423(c)(1).	Pub. L. 93-400, § 27(c), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 660.
2103(b)	41:423(c)(2).	
2103(c)	41:423(c)(3), (4).	

§ 2104. Prohibition on former official's acceptance of compensation from contractor

(a) PROHIBITION.—A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after the official—

(1) served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of the source selection evalua-

tion board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(3) personally made for the Federal agency a decision to—

(A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of \$10,000,000;

(C) approve issuance of one or more contract payments in excess of \$10,000,000 to that contractor; or

(D) pay or settle a claim in excess of \$10,000,000 with that contractor.

(b) **WHEN COMPENSATION MAY BE ACCEPTED.**—Subsection (a) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (1), (2), or (3) of subsection (a).

(c) **IMPLEMENTING REGULATIONS.**—Regulations implementing this section shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this section from accepting compensation from a particular contractor.

(d) **PERSONS SUBJECT TO PENALTIES.**—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) A former official who knowingly accepts compensation in violation of this section.

(2) A contractor that provides compensation to a former official knowing that the official accepts the compensation in violation of this section.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3729.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2104(a)	41:423(d)(1).	Pub. L. 93-400, §27(d), as added Pub. L. 100-679, §6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, §814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, §1484(d)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, §705(d), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, §8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, §4304(a), Feb. 10, 1996, 110 Stat. 660.
2104(b)	41:423(d)(2).	
2104(c)	41:423(d)(5).	
2104(d)	41:423(d)(3), (4).	

§ 2105. Penalties and administrative actions

(a) **CRIMINAL PENALTIES.**—A person that violates section 2102 of this title to exchange infor-

mation covered by section 2102 of this title for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement contract shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) **CIVIL PENALTIES.**—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—

(1) an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and

(2) an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.

(c) **ADMINISTRATIVE ACTIONS.**—

(1) **TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.**—A Federal agency that receives information that a contractor or a person has violated section 2102, 2103, or 2104 of this title shall consider taking one or more of the following actions, as appropriate:

(A) Canceling the Federal agency procurement, if a contract has not yet been awarded.

(B) Rescinding a contract with respect to which—

(i) the contractor or someone acting for the contractor has been convicted for an offense punishable under subsection (a); or

(ii) the head of the agency that awarded the contract has determined, based on a preponderance of the evidence, that the contractor or a person acting for the contractor has engaged in conduct constituting the offense.

(C) Initiating a suspension or debarment proceeding for the protection of the Federal Government in accordance with procedures in the Federal Acquisition Regulation.

(D) Initiating an adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(2) **AMOUNT GOVERNMENT ENTITLED TO RECOVER.**—When a Federal agency rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(3) **PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.**—For purposes of a suspension or debarment proceeding initiated pursuant to paragraph (1)(C), engaging in conduct constituting an offense under section 2102, 2103, or 2104 of this title affects the present responsibility of a Federal Government contractor or subcontractor.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3730.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2105(a)	41:423(e)(1).	Pub. L. 93-400, § 27(e), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 661.
2105(b)	41:423(e)(2).	
2105(c)	41:423(e)(3).	

In subsection (a), the word “violates” is substituted for “engages in conduct constituting a violation of” to eliminate unnecessary words.

In subsection (b), the words “liable to the Federal Government for” are substituted for “subject to” for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(1), the words “has violated” are substituted for “has engaged in conduct constituting a violation of” to eliminate unnecessary words.

§ 2106. Reporting information believed to constitute evidence of offense

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3731.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2106	41:423(g).	Pub. L. 93-400, § 27(g), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 663.

§ 2107. Savings provisions

This chapter does not—

(1) restrict the disclosure of information to, or its receipt by, a person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal

agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3731.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
2107	41:423(h).	Pub. L. 93-400, § 27(h), as added Pub. L. 100-679, § 6(a), Nov. 17, 1988, 102 Stat. 4063; Pub. L. 101-189, title VIII, § 814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495; Pub. L. 101-510, title XIV, § 1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, § 705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, § 8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, title XLIII, § 4304(a), Feb. 10, 1996, 110 Stat. 663.

CHAPTER 23—MISCELLANEOUS

Sec. 2301.	Use of electronic commerce in Federal procurement.
2302.	Rights in technical data.
2303.	Ethics safeguards related to contractor conflicts of interest.
2304.	Conflict of interest standards for consultants.
2305.	Authority of Director of Office of Management and Budget not affected.
2306.	Openness of meetings.
2307.	Comptroller General's access to information.
2308.	Modular contracting for information technology.
2309.	Protection of constitutional rights of contractors.
2310.	Performance-based contracts or task orders for services to be treated as contracts for the procurement of commercial items.
2311.	Enhanced transparency on interagency contracting and other transactions.
2312.	Contingency Contracting Corps.
2313.	Database for Federal agency contract and grant officers and suspension and debarment officials.

§ 2301. Use of electronic commerce in Federal procurement

(a) DEFINITION.—For the purposes of this section, the term “electronic commerce” means electronic techniques for accomplishing business transactions, including electronic mail or