

## **3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

(a) Except as specifically provided for in this subsection, no person or other entity *may* disclose *contractor bid or proposal information* or *source selection information* to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the *agency head* or the *contracting officer* to receive such information.

(b) *Contractor bid or proposal information* and *source selection information* *must* be protected from unauthorized disclosure in accordance with [14.401](#), [15.207](#), applicable law, and agency regulations.

(c) Individuals unsure if particular information is *source selection information*, as defined in [2.101](#), *should* consult with *agency officials* as necessary. Individuals responsible for preparing material that *may* be *source selection information* as described at paragraph (10) of the "*source selection information*" definition in [2.101](#) *must* mark the cover page and each page that the individual believes contains *source selection information* with the legend "*Source Selection Information-See FAR 2.101 and 3.104.*" Although the information in paragraphs (1) through (9) of the definition in [2.101](#) is considered to be *source selection information* whether or not marked, all reasonable efforts *must* be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the *contracting officer* *must* notify the contractor *in writing* if the *contracting officer* believes that proprietary information, *contractor bid or proposal information*, or information marked in accordance with [52.215-1\(e\)](#) has been inappropriately marked. The contractor that has affixed the marking *must* be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the *contracting officer* *may* remove the marking and release the information.

(2) If, after reviewing the contractor's justification, the *contracting officer* determines that the marking is not justified, the *contracting officer* *must* notify the contractor *in writing* before releasing the information.

(3) For *technical data* marked as proprietary by a contractor, the *contracting officer* *must* follow the procedures in [27.404-5](#).

(e) This section does not restrict or prohibit-

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, 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*;

(3) 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; or

(4) The Government's use of *technical data* in a manner consistent with the Government's rights in the data.

(f) This section does not authorize-

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a *Federal agency*, the Comptroller General, or an Inspector General of a *Federal agency*, except as otherwise authorized by law or regulation. Any release containing *contractor bid or proposal information* or *source selection information* must clearly identify the information as *contractor bid or proposal information* or *source selection information* related to the conduct of a *Federal agency procurement* and notify the recipient that the disclosure of the information is restricted by 41 U.S.C. chapter 21;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a *Federal agency procurement* contract;

(3) The release of information after award of a contract or cancellation of a *procurement* if such information is *contractor bid or proposal information* or *source selection information* that pertains to another *procurement*; or

(4) The disclosure, *solicitation*, or receipt of bid or proposal information or *source selection information* after award if disclosure, *solicitation*, or receipt is prohibited by law. (See 3.104-2(b)(5) and subpart 24.2.)

**Parent topic:** 3.104 Procurement integrity.