

PROCUREMENT INTEGRITY ACT RESTRICTIONS

(RULES WHEN YOU ARE LOOKING FOR A NEW JOB & RULES AFFECTING YOUR NEW JOB AFTER LEAVING DOD)

PURPOSE: This document summarizes the Procurement Integrity rules which may impose certain restrictions on your job search and employment after departure from the Department of Defense (DoD).

LEGAL NOTICE: This information merely identifies statutes and regulations that restrict or otherwise affect activities of DoD personnel after they leave Government service. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, DoD personnel should contact SOCO at (703) 695-3422 or by e-mail at SOCO@OSD.MIL to discuss their particular situation. DoD personnel served by other ethics offices should consult with their ethics officials. You may also consult with your personal attorney.

Advice from ethics officials with respect to these matters is *advisory only*, and is provided in accordance with 5 C.F.R. § 2635.107 and 41 U.S.C. § 2104 (Procurement Integrity Act). Ethics officials are acting on behalf of the United States Government, and not as your personal representative. *No attorney-client* relationship is created.

WARNING: Other restrictions, such as those that apply to all Government employees, may also affect your official activities. Your ethics counselor can explain these rules as well.

Part 1: Restrictions *While Seeking Private Employment* (BEFORE You Leave DoD)

1.1 **SIMPLIFIED RULE:** Once you have started *seeking employment* with a bidder or offeror, you may not take any official action with respect to a procurement for a contract in excess of the simplified acquisition threshold.

1.1.1 **RULE:** An agency official may not *participate personally and substantially* in a contract in excess of the simplified acquisition rule when *seeking employment* with a bidder or offeror in the procurement. (48 C.F.R. 3.104-3(c))

1.1.1.1 "\$150,000" - The simplified acquisition threshold.

1.1.1.2 "Personal and substantial" participation - You must be "personally and substantially" involved with the procurement to be disqualified. This means that you are directly participating or that one or more of your subordinates, whom you are actively and directly supervising, is participating. "Personal and substantial participation" means active and significant involvement in ANY of the following activities directly related to the procurement:

- drafting, reviewing, or approving the specification or statement of work;
- preparing or developing the solicitation;
- evaluating bids or proposals;
- selecting a source;
- negotiating price or terms and conditions; or
- reviewing and approving the award.

Participation solely in the following activities is NOT “personal and substantial” participation:

- Agency-level boards, panels, or advisory committees that review program milestones or evaluate and recommend alternate technologies or approaches for broad agency-level missions or objectives;
- General, technical, engineering, or scientific effort with broad application;
- Clerical functions;
- A-76 management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing data or technical support to be used by others in developing performance standards, statements of work, or specifications; and
- Reviews conducted solely to determine compliance with regulatory, administrative, or budgetary procedures.

“Personal and substantial” participation for Procurement Integrity Act purposes may be more limited in breadth than “personal and substantial” participation as defined for 18 U.S.C. 208 and 207.

1.1.1.3 “Seeking employment” - If the above definitions apply to your situation, then you may not “seek” employment unless you first disqualify yourself. “Seeking employment” is contacting or being contacted by a bidder or offeror regarding possible non-Federal employment. For DoD purposes, there is an “employment contact” when you are “seeking employment,” as discussed in the SOCO synopsis of general employment restrictions. *See* 5 C.F.R. 2635.601-2635.606.

1.1.2 Disqualification: Disqualification is simple — **Don’t do ANY work on the task!** To help you accomplish this, you are required to submit a written notice to the contracting officer, source selection authority, and your immediate supervisor. The written disqualification must identify the procurement, describe the nature and specific dates of your participation in the procurement, and identify the bidder or offeror and describe its interest.

1.1.3 Resumption of Participation: The Head of the Contracting Authority has the discretion to authorize, in writing, your resumed participation at a future date only when one of two conditions has been met: the potential employer is no longer a bidder or offeror; or all employment discussions have terminated without an agreement. The HCA must consider all

factors that might give rise to an appearance that you may act without complete impartiality and must consult with the ethics official. The HCA may decide not to authorize resumed participation.

1.2 **RULE:** An agency official must promptly report, in writing, to his or her supervisor and ethics official, an employment contact with a bidder or offeror in a \$150,000⁺ DoD procurement.

1.2.1. This requirement applies even when you promptly reject the employment contact.

Part 2: Employment Restrictions *After Leaving DoD*

2.1 **SIMPLIFIED RULE:** For 1 year after a *designated date*, you may not accept compensation from the concerned contractor on a \$10 million⁺ DoD contract on which you performed designated services.

2.1.1 **RULE:** For a period of 1 year after a *designated date*, former Government officials may not accept *compensation* from the concerned contractor on a \$10 million⁺ DoD competitively awarded or non-competitively awarded contract if the former officials served or acted in any of the following capacities: (48 C.F.R. 3.104-3(d))

- A. Procuring contracting officers, source selection authorities, members of source selection evaluation boards, and chiefs of financial or technical evaluation teams

Designated date:

If you served on the date of selection, but not the date of award - Date of selection.

If you served on the date of award - Date of award of the contact.

- B. Program managers, deputy program managers, and administrative contracting officers

Designated date: Last date of service in those positions.

For DoD purposes, *concerned contractors* are prime contractors.

- C. Officials who personally made any of the following decisions:

- 1) to award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000,
- 2) to establish overhead or other rates valued in excess of \$10,000,000,
- 3) to approve issuance of a contract payment in excess of \$10,000,000, or
- 4) to pay or settle a claim in excess of \$10,000,000.

Designated date: The date of decision.

2.1.1.2 “Compensation” - any form of compensation provided directly or indirectly for services rendered as an employee, director or consultant.

2.1.1.3 “\$10 million⁺” - determined by the following:

- Value or estimated value at the time of award of the contract, including all options;
- Indefinite-delivery/indefinite quantity or requirements contract - total estimated value of all orders at the time of award under a contract;
- Any multiple award schedule contract, unless contracting officer documents a lower estimate;
- Basic Ordering Agreement - value of delivery order, task order or order under a contract;
- Claims - amount paid or to be paid in settlement of claim;
- Estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

2.1.2 EXCEPTION: You may accept compensation from any division or affiliate of the contractor that does not produce the *same or similar* products or services as the entity responsible for the contract.

2.1.2.1 “Same or similar” - It is DoD guidance that a product or service must be “dissimilar enough” from that under the contract to warrant use of the exception. It is not sufficient that the product or service is produced by a division on the commercial, as opposed to the government, side of the contractor. Any amount of the “same or similar” product or service is sufficient to trigger the compensation ban.

2.1.3 If you do not know whether you may accept any compensation, you may make a written (signed and dated) request for advice, prior to accepting any compensation, from your agency ethics official. The ethics official must issue a written opinion within 30 days after receiving complete information as to whether the compensation would be proper or a violation. The ethics official may rely on that information, unless there is reason to believe that the information is fraudulent, misleading, or otherwise incorrect. You and the contractor may make good faith reliance on that written opinion, *i.e.*, that neither you nor the contractor have actual knowledge or reason to believe that the opinion is based on fraudulent, misleading, or otherwise incorrect information.

Part 3: Other Restrictions

3.1 Other restrictions, such as those that apply to all Government employees, may also affect your activities. Your ethics counselor should explain these rules as well. **If you believe that these Procurement Integrity restrictions are the only ones that will apply to you, you are mistaken.**

Part 4: Administrative Reminders

4.1 **QUESTIONS? PLEASE CALL US:** If you have questions, even *after* you leave Government service, please call your ethics counselor or the DoD Standards of Conduct Office: (703) 695-3422. Fax: (703) 695-4970. E-mail: SOCO@osd.mil.

4.2 Thank you for your service to your country.

This guidance was produced by the DoD Standards of Conduct Office, SOCO@OSD.MIL, or (703) 695-3422. Rev. 1/2012