



U.S Department of Defense Standards of Conduct Office

PROCUREMENT INTEGRITY RESTRICTIONS RELATED TO SEEKING EMPLOYMENT AND POST-GOVERNMENT EMPLOYMENT

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. 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 OSD.SOCO@MAIL.MIL to discuss their particular situation. DoD personnel served by other ethics offices should consult with their ethics officials.

Advice from Federal 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. §§ 2101 - 2107 (commonly referred to as the 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.

I. RESTRICTIONS WHILE SEEKING PRIVATE EMPLOYMENT (*BEFORE LEAVING DoD*)

A. Offers of Non-Federal Employment

A DoD official who is participating personally and substantially in a procurement for a contract in excess of the **simplified acquisition threshold** (currently \$250,000) and is contacted by a bidder regarding non-Federal employment or is seeking employment with a bidder shall:

- Report the contact, in writing, to his supervisor and SOCO; and
 - Reject the offer of non-Federal employment; or
 - Disqualify himself from further personal and substantial participation in the procurement until authorization to resume participation is granted in accordance with the conflict of interest rules (18 U.S.C. § 208) on the grounds that:
 - the offeror is no longer a bidder; or
 - all discussions with the offeror regarding possible non-Federal employment have terminated without an agreement for employment.
- (41 U.S.C. § 2103)

Disqualification is simple – Don't do **ANY work on the task!** Further, the Federal Acquisition Regulations require an official who must disqualify, to submit a written notice of such disqualification to the contracting officer, source selection authority if other than the contracting officer, and immediate supervisor. The written notice must identify the procurement, describe the nature and specific dates of the official's participation in the procurement, identify the offeror, and describe the offeror's interest in the procurement.

An official must remain disqualified until such time as the agency, at its discretion, authorizes the official to resume participation in the procurement.

In addition to the procurement integrity restrictions, the conflict of interest statute, 18 U.S.C. § 208, prohibits an official from taking part in any particular matter, including a procurement of any amount, if the official has an existing employment relationship with the concerned contractor or is seeking employment with that contractor, unless a waiver or an authorization has been granted.

B. Definitions

1. *Personal and substantial* participation is 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 of the contract; or
- Reviewing and approving the contract award.

2. 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 not directly associated with a particular procurement, although such effort may be subsequently incorporated into a particular procurement;
- Clerical functions supporting the conduct of a particular procurement;
- A-76 management studies, preparation of in-house cost estimates, preparation of most efficient organization" analyses, and furnishing data or technical support 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.

3. *Participating personally* means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

4. *Participating substantially* means that official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome.

5. *Seeking employment* includes making an unsolicited communication regarding potential future employment, engaging in negotiations for employment, or responding to an unsolicited communication regarding possible employment other than an immediate and clear rejection. Seeking employment does *not* include requesting a job application, but does include forwarding a resume. For a period of two months after sending a resume, an official is considered to be seeking employment unless the official or the company rejects the possibility of employment prior to that time.

II. EMPLOYMENT RESTRICTIONS (*AFTER LEAVING DoD*)

A. Accepting compensation from a DoD contractor

Per 48 C.F.R. 3.104-3(d) for a period of 1 year after the applicable *designated date*, a former official may not accept *compensation* from a contractor (prime contractor) that has been awarded a competitive or sole source contract in excess of \$10 million, if the former official served or acted in any of the following capacities:

- Procuring contracting officer, source selection authority, member of source selection evaluation board, or chief of financial or technical evaluation team:
 - If the official served in one of the positions listed above on the date the contractor was selected, but not on the date of award of the contract – the date the contractor was selected is the designated date.
 - If the official served in one of the positions listed above on the date of award of the contract – the date of award is the designated date.
- Program Managers, Deputy Program Managers, and Administrative Contracting Officers:
 - The designated date is the last date of service in the position.
- Officials who personally made any of the following decisions, the designated date is the date of decision:
 - Award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000.
 - Establish overhead or other rates valued in excess of \$10,000,000.
 - Approve issuance of a contract payment in excess of \$10,000,000.
 - Pay or settle a claim in excess of \$10,000,000.

EXCEPTION: This restriction does not prohibit an official from working for another division or affiliate of the contractor, provided such division or affiliate does not produce the same or similar products or services as the division or affiliate responsible for the contract in which the official was involved.

DoD personnel are encouraged to request advice on these rules prior to accepting compensation from a contractor from their agency ethics counselor.

B. Definitions

1. *Compensation* includes wages, salaries, honoraria, commissions, professional fees, and any form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than an individual, specifically in exchange for services provided by the individual.

2. A *\$10 million contract* is 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 basic ordering agreement;
- 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.

III. Requirement to Request an Opinion

- If you will be receiving compensation from a defense contractor within two years of leaving DoD, you are required to request a written opinion regarding the applicability of the post-employment restrictions to the activities you undertake on behalf the defense contractor. This requirement applies to any employee who participated personally and substantially in an acquisition with a value in excess of \$10M **and** who serves or served in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in the position of program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation. You must obtain this written opinion prior to accepting compensation from the contractor. See the website, <https://www.fdm.army.mil/AGEARWeb/requestor/landingReq.xhtml> for further information or to request an opinion online.

Additionally, all departing personal may request from the appropriate ethics official formal written advice regarding the applicability of these procurement integrity provisions to their anticipated future employment.

QUESTIONS? 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. E-mail: OSD.SOCO@MAIL.MIL. Fax: (703) 695-4970.

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