

Standards of Conduct Office

August 10, 1999

MEMORANDUM FOR MEMBERS OF THE DoD ETHICS COMMUNITY

SUBJECT: Guidance on Application of Procurement Integrity Compensation Ban to Program Managers

This memorandum provides guidance on applying the Procurement Integrity compensation ban, as set forth at 3-104.4(d) of the FAR, to DoD employees serving as program managers. This is the second DoD ethics guidance concerning 41 U.S.C. § 423, as revised by Section 4304 of the National Defense Authorization Act for Fiscal Year 1996. The first, "Guidance on Application of the Procurement Integrity Law and Regulation," was issued on August 26, 1998. These guidances are the result of the work of the Procurement Integrity Tiger Team (PITT). The Team, chaired by the DoD Standards of Conduct Office (SOCO), has representatives from the Department of Army SOCO (Office of the Judge Advocate General of the Army), the Department of Navy Office of General Counsel, the Department of Air Force Office of General Counsel and Office of the Judge Advocate General, the Defense Logistics Agency Office of General Counsel, and the National Security Agency Office of General Counsel. The Team also had the assistance of various procurement experts from OSD and the Military Departments.

Who is a program manager for the purpose of the procurement integrity compensation ban?

Under FAR 3.104-4(d), a former DoD program manager or deputy program manager may not accept compensation, for a period of one year after such service, from the contractor for a contract in excess of \$10 million for which they served in such capacity.

To be covered by the ban, a Government employee must perform the functions of a program manager with respect to a contract in excess of \$10 million. Each DoD Component should determine, based on the particular circumstances, whether an employee is performing those functions. When issuing an ethics advisory opinion under the authority of 41 U.S.C. § 423(d)(5) and FAR 3.104-7, the DoD Component ethics counselor should consider the functions performed by the individual, for example whether he or she actively manages the program cost, performance and schedule of the assigned program, regardless of the title given the individual. (See *e.g.*, 10 U.S.C. § 1737(a)(1)). Ethics Counselors should also examine the duties of employees when there is uncertainty. A Program Executive Officer (PEO) will not normally be considered to be covered by the ban, provided the PEO does not perform the functions of a program manager for any particular contract. For joint service programs, which are under the auspices of OSD, OSD will determine whether an individual is performing the functions of a program manager.

The existence of a contract in excess of \$10 million is not sufficient to trigger application of the compensation ban, as there must also be a Government employee performing the functions of a program manager with respect to it. Each DoD Component should determine, based on the particular circumstances, whether a particular contract in excess of \$10 million has a person performing those functions. For example, some contracts have only a Contracting Officer Representative (COR) or Contracting Officer Technical Representative (COTR), and this individual might not perform the type of functions discussed above. In this case, the individual will not be a program manager for the purpose of the ban. In contrast, however, a maintenance and repair contract for the renovation of a dorm may have an individual who performs the type of functions discussed above, regardless of his or her title. That individual will be covered by the ban.

For any particular DoD program in excess of \$10 million, there may be more than one employee who perform the type of functions discussed above. These personnel are all considered program managers for the purpose of the compensation ban. Each DoD Component should determine, based on the particular circumstances, whether more than one individual perform the functions of a program manager with respect to a specific contract. For example, on a major program that is supported by several \$10 million contracts, there may be separate individuals who perform the functions of a program manager with respect to each particular contract. Those individuals would have a compensation ban regarding that contractor. There could also be an individual

who functions as the program manager for the entire program. That individual may have compensation bans regarding all the prime contractors involved in the program. There could also be a major program for which there is only one program manager, for whom the compensation ban may apply for all the prime contractors involved in the program.

To be covered by the ban as a deputy program manager, a Government employee must have the authority to act on behalf of the PM in his or her absence, regardless of the title given the individual. See 10 U.S.C. § 1737(a)(2). However, just because an employee holds the title of Deputy Program Manager does not necessarily mean that he or she is covered by the ban. Each DoD Component should determine, based on the particular circumstances, whether an employee is serving as a deputy program manager. For example, if an individual holds the title of deputy program manager, but manages only personnel or administrative matters, this deputy should probably not be subject to the compensation ban for purposes of the Act.

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