

# Rules on Job Hunting And Post-Government Employment

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\* Special acknowledgment is given to the Air Force Material Command Law Office, Wright Patterson AFB, OH and the DSCC Office of Counsel for portions of this document.

## 1. INTRODUCTION.

a. It has often been said that “public service is a public trust”. This means that each Federal employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. This is most certainly true when one is currently employed by the Government. However, some of these ethical obligations follow an employee “out the door” and still exist even after an employee has ceased Government employment.

b. The purpose of this handbook is to present an overview of the job hunting rules and post-employment restrictions. This handbook should be consulted whenever an employee considers seeking other employment before any resumes are sent or discussions with potential employers take place. Additionally, this handbook merely presents a broad summary of the applicable laws and regulations. Each individual circumstance is different and the facts of each circumstance will determine what and how laws are to be applied. Therefore, it is strongly suggested that, prior to entering into any discussions with potential employers, you should seek individual guidance from an Ethics Counselor.

## 2. DEFINITIONS.

a. Participate. What does it mean to "participate" in a government contract or other particular matter? The term "participate" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action. [18 USC 207(i)(2)]

b. Particular matter. "Particular matter" means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. [18 USC 207(i)(3)]

c. Official responsibility. The term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. [18 USC 202(b)]

d. Communication. A "communication" can be made orally, in writing, or through electronic transmission.

e. Appearance. An "appearance" would include a former employee's mere physical presence at a meeting or proceeding when the circumstances make it clear that his attendance is intended to influence the United States.

f. Intent to influence. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such

information.

**3. RULES ON SEEKING EMPLOYMENT.** Two federal laws limit a DOD employee's ability to discuss post-government employment with DOD contractors or to send resumes or employment proposals to DOD contractors prior to leaving government service. These laws, discussed below, attempt to balance the employee's need to obtain post-government employment prior to leaving government service against the government's need for the continued undivided loyalty of the employee until separation or retirement.

**a. The ban on seeking employment with a company while you're participating in a government contract or other matter in which the company has a financial interest.**

(1) By federal law (18 U.S.C. 208), military officers and Federal civilian employees may not personally and substantially "participate" in their governmental capacity in any matter in which they, their spouse, minor children, or certain other persons, including persons with whom they are negotiating or has any arrangement concerning prospective employment, have a financial interest. A person may not "participate" through decision, approval, disapproval, recommendation, giving advice, investigation, or otherwise.

(2) The Joint Ethics Regulation (JER), DOD 5500.7-R, in section 8-200, makes the above prohibition applicable to enlisted personnel as well. In addition, section 8-500 of the JER states that DOD employees shall:

- (a) Ensure the prospect of employment does not affect the performance of their official duties;
- (b) Ensure they do not communicate inside information to a prospective employer; and
- (c) Avoid any activity that would adversely affect the public's confidence in the integrity of the Federal Government, even if it's not an actual violation of the law.

(3) Before sending a resume/employment proposal to, or discussing employment with, a DOD contractor, personnel must disqualify themselves from all official activities related to that contractor. Disqualification is necessary even if your duties involve one division of the contractor, and you want to seek employment with another division of the contractor. Disqualification must be requested in writing. The disqualification request should be sent for approval to your immediate supervisor. While no particular form is required, a format that can be used is available in the legal office.

(4) The supervisor has the option of granting the request and removing the employee from any official responsibility regarding the DOD contractor or disapproving the request. If the request is approved, copies of the disqualification letter should be filed with the employee's immediate supervisor and with the appropriate ethics official. Disqualification, once granted, may be withdrawn after employment discussions have ended and the employee or military member has notified the contractor of his/her decision not to accept employment.

(5) Employees who send a resume to, or discuss employment with, a contractor after disqualification has been disapproved risk disciplinary and/or criminal action. Note that 18

U.S.C. 208 is a federal criminal statute carrying a maximum penalty of 5 years imprisonment, or a fine of up to \$250,000, or both. In addition, a civil penalty of up to \$50,000 may be imposed for each violation of this statute.

**b. The requirement to report when a company improperly initiates employment discussions with you.**

(1) The rules set forth in section A, above, primarily concern potential future employment discussions in which the federal employee is an active participant. However, even if an employee is contacted by a DoD contractor regarding employment with no action or encouragement on the part of the employee, certain responsibilities exist.

(2) The Procurement Integrity Act requires that if an agency official who is participating personally and substantially in an agency procurement in excess of the simplified acquisition threshold and who contacts or is contacted by a bidder or offeror in that procurement regarding possible non-Federal employment, there are two requirements the agency official must fulfill. First, the agency official must promptly report the contact to his or her immediate supervisor and to the agency DAO. Second, the agency also must promptly reject the employment opportunity or disqualify himself or herself from further participation in the procurement until formally authorized by the agency to resume participating. Individuals who fail to comply with these requirements face a penalty of a fine of up to \$50,000 plus twice the amount of any compensation received or offered.

**4. RULES APPLICABLE TO POST-GOVERNMENT EMPLOYMENT.**

a. The foregoing sections of this handbook discuss the rules which apply to Federal employees who are seeking employment. However, there are additional rules which may be applicable once post-Government employment is obtained.

b. 18 U.S.C. 207 is a federal statute that contains seven different post-government employment restrictions. Three restrictions apply only to senior employees (officers O-7 or above and SES employees), one restriction applies only to Members of Congress, and one restriction applies only to trade or treaty negotiators. However, the other two restrictions apply to all military officers and civilian employees in the Executive Branch. These two restrictions are commonly referred to as the "lifetime representation law" (18 U.S.C. 207(a)(1)), and the "2-year representation law" (18 U.S.C. 207(a)(2)). These two restrictions and two other restrictions applicable to all DoD employees are outlined below.

**(1) The lifetime ban on attempting to influence the government regarding a government contract or other matter that you participated personally and substantially in as a government employee (the "lifetime representation law").**

(a) The "lifetime representation law" can be *summarized* as follows. You will violate this law if all of the following eight conditions occur:

(b) You are a military officer or a civilian employee in the Executive Branch;

(c) While you are working for the federal government, you **participate personally and**

**substantially** in a government contract or other particular matter in which the United States has a direct and substantial interest;

(d) At the time you participate in the contract or other matter there is another party (such as a government contractor) involved in the matter;

(e) You leave the federal government;

(f) You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same contract or other matter that you participated in while you were with the federal government;

(g) Your communication or appearance is on behalf of someone other than the United States (such as the contractor) (and the party on whose behalf you are making the appearance or communication does not have to be the same party who was involved in the matter at the time you were working on the matter for the government);

(h) Your intent in making the communication or appearance is to **influence** the government official (i.e. you're not just providing information; you're trying to persuade the government official about something); and

(i) You **know**, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e. it's not something so minor that you forgot you ever worked on it when you were with the government).

**(2) The 2-year ban on attempting to influence the government regarding a government contract or other matter that you didn't participate personally and substantially in as a government employee, but that was under your official responsibility during your last year in the government (the "2-year representation law").**

(a) The "2-year representation law" can be *summarized* as follows. You will violate this law if all of the following eight conditions occur:

(b) You are a military officer or a civilian employee in the Executive Branch;

(c) While you're working for the government there is a government contract, or other particular matter in which the United States has a direct and substantial interest, that is pending **under your official responsibility during your last year in the government**;

(d) At the time the matter is pending under your official responsibility during your last year in the government, there is another party (such as a government contractor) involved in the matter;

(e) You leave the federal government;

(f) During the first 2 years after you leave the government, you communicate with or appear before a government officer or employee in connection with that same contract or other

matter;

(g) Your communication or appearance is on behalf of someone other than the United States (such as the contractor) (and the party on whose behalf you are making the appearance or communication does not have to be the same party who was involved in the matter at the time the matter was pending under your official responsibility during your last year in the government);

(h) Your intent in making the communication or appearance is to **influence** the government official (i.e. you're not just providing information; you're trying to persuade the government official about something); and

(i) You **know**, when you are communicating with or appearing before the government official, that the matter in question is a matter that was pending under your official responsibility during your last year in the government (i.e. it's not something so minor that you forgot it was ever under your official responsibility during your last year in the government).

**(3) The Procurement Integrity Act - acceptance of compensation from certain government contractors.**

(a) The Procurement Integrity Act restricts the post-government employment activities of certain persons who participated on behalf of the government during the conduct of a federal agency procurement. [41 U.S.C. 423] The rule can be summarized as follows.

(b) For one year you may not accept compensation from a contractor to serve as an employee, officer, director, or consultant if - while working for the government - you had certain responsibilities or took certain actions relating to a procurement over \$10,000,000 involving that contractor. The bar against accepting compensation may apply to you whether you participated in the pre-award or post-award phase of the procurement.

(c) The following are some examples of actions which, if performed in the course of government employment, will subject a former government employee to the Procurement Integrity Act restrictions:

- *Having served, at the time of selection of the contractor or award to that contractor, as the procuring contracting officer, the source selection authority or on a source selection evaluation panel;*
- *Having served as the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award;*
- *Having served as the program manager, deputy program manager, or administrative contracting officer for a contract awarded to that contractor;*
- *Having personally made a decision to award a contract, subcontract, modification of a contract, or a task order or delivery*

*order in excess of \$10,000,000 to that contractor;*

- *Having personally made a decision to approve issuance of payments in excess of \$10,000,000 to that contractor or to pay or settle a claim in excess of \$10,000,000 with that contractor.*

(d) Former government employees are, however, free to accept compensation from a division or affiliate of the contractor that does not produce the same kinds of products or services covered by the contract.

**(4) Restrictions on the use of non-public information.**

(a) DOD personnel are prohibited from engaging in a financial transaction or furthering their own private interest or that of another through the improper use of non-public information obtained while in the government. Non-public information is information not available to the general public and obtained by reason of one's official DOD duties. It includes bid or proposal information, proprietary information, and source selection information. Use of this information provides a competing contractor an "unfair competitive advantage" which allows its competitors to protest successfully the award of the contract. Therefore, disclosure and use of this information is strictly forbidden.

(b) The Procurement Integrity Act (41 U.S.C 423) provides harsh civil and criminal penalties for anyone who knowingly, and without authorization, discloses non-public information prior to contract award ( a fine of up to \$50,000 plus twice the amount of compensation received and 5 years imprisonment).

(c) Persons who, prior to leaving government service, had access to source selection plans, bid or proposal information, or the proprietary data of contractors competing for a yet-to-be-awarded government contract may, upon leaving service, service obtain employment with a company completing for the contract. When this occurs, the former government employee must scrupulously avoid giving any advice or assistance to the contractor on its bid or proposal for such contract and, to the extent possible, should avoid any contact with the contractor personnel responsible for, or preparing, the contractor's bid or proposal.

**(5) Acquisition Improvement and Accountability Act of 2007.**

(a) For two years after leaving Government service, officials who participated personally and substantially in an acquisition valued over \$10,000,000 who were:

- *An SES/0-7; or*

- *Served as a;*

- o *Program manager;*

- o *Deputy program manager;*

- o *Procurement contracting officer;*

- o Administrative contracting officer;*
- o Source selection authority;*
- o Member of the source selection evaluation board; or*
- o Chief of a financial or technical evaluation team*

(b) Are required to request a written opinion from the applicable ethics official regarding the applicability of post Government-employment restrictions to activities that the former official may undertake on behalf of a contractor **before** accepting compensation from the DoD contractor.

## **5. LEGAL OPINIONS.**

a. To obtain an opinion on whether any of the seeking employment or post-employment restrictions apply to you with respect to a particular contractor, you must prepare a written request for such an opinion. Include a completed copy of the questionnaire which is attached to this handout. The legal opinion will be valid only if you provide complete and accurate facts. Therefore, take care when setting forth the facts in your request. How much detail to put into a request for a legal opinion is always a judgment call. If you're not sure, please call the Ethics Counsel for guidance.

b. When drafting your request and completing the questionnaire, you should (1) state what acronyms stand for, and (2) assume that the reviewing attorneys have no technical background, and little or no knowledge of what your office (or former office) does.

## **6. MANDATORY POST GOVERNMENT EMPLOYMENT RESTRICTIONS**

**PRE-EXIT BRIEFING.** The DoD Joint Ethics Regulation (DoD 5500.7-R) requires all employees leaving Government service (military and civilian), whether retiring or resigning, to receive guidance on relevant Post-Government employment restrictions before they leave Government service.

## **7. POST - GOVERNMENT SERVICE ETHICS QUESTIONNAIRE.**

a. The purpose of this questionnaire is to provide your ethics counselor with the information necessary for providing you written ethics advice concerning the applicability of 41 U.S.C. § 423. Your ethics counselor will also use this information to advise you on other post-government employment restrictions applicable to your situation.

b. 41 U.S.C. § 423 allows you to request a written agency ethics opinion on post-government employment restrictions. However, if the information provided is incomplete or false, or if you fail to follow your ethics counselor's advice, you cannot rely on the opinion as a defense to any possible civil or criminal action.

c. Ethics advice is based upon information given at a specific time for a particular situation. As circumstances change, the advice originally provided to you may no longer be accurate. In such a case, you may want to submit a new questionnaire for another ethics opinion.