

TWENTY BASIC RULES FOR PERSONNEL LEAVING THE ARMY

The following 20 rules assume you are currently working for the Army and plan to seek employment with a non-Federal entity. The categories of personnel to whom each rule applies and its statutory and/or regulatory authority appear at the end of each rule. To ease your transition into the private sector, the attachments provide sample formats for accomplishing many of the necessary actions discussed in the Rules.

RESTRICTIONS ON SEEKING EMPLOYMENT (BEFORE YOU LEAVE)

Rule 1, General: In your official capacity, you are prohibited from participating in a particular matter that could affect the financial interests of a person or company with whom you are seeking employment. If you accept non-Federal employment, you also are prohibited from participating in any such matter that could affect the financial interests of the company with which you have the employment arrangement. [Officers, Enlisted, and Civilians; Title 18 U.S.C. 208(a); 5 C.F.R. 2635.604; DOD 5500.7-R, Joint Ethics Regulation (JER), paragraphs 1-300.b., 8-200 to 8-201]

COMMENT: If you want to seek a job with a specific company, you must determine if there is a potential that a particular matter in which you might participate would have a direct and predictable effect on the potential employer's financial interests. If there is a potential, prior to seeking employment, you must provide a written memorandum to your supervisor stating that you are disqualified from participating in the matter. (See Attachment 1 for a sample disqualification memorandum.) This ensures that actions pertaining to the entity with which you are seeking employment do not come before you. Written disqualification is required before sending resumes or engaging in "informal" discussions with specific companies. Disqualification is not required before discussing opportunities with a "headhunter," as long as the identity of the potential employer(s) is not disclosed to you. Disqualification is simple – Don't do any work on the matter. If employment is not finalized, you may withdraw the disqualification. If employment is finalized, the disqualification continues.

Prior to starting to negotiate (any discussion with a mutual view of reaching an agreement regarding possible employment), your supervisor may authorize your participation in a covered particular matter if certain conditions are met. Contact your Ethics Counselor for guidance. Once negotiations have started, only your appointing official may waive the disqualification, which generally never happens.

Rule 2, Procurement Integrity: In your official capacity, you are prohibited from participating personally and substantially in a procurement for a contract in excess of the simplified acquisition threshold (currently \$100,000) when seeking employment with a bidder or offeror in the procurement. If you are so participating, you are also required to promptly report in writing any employment contact with a bidder/offeror in that procurement. You must either reject the possible employment or disqualify yourself from participating in the procurement. [Officers, Enlisted and Civilians; 41 U.S.C. 423(c); FAR 3.104-3(c) and 3.104-5; JER 8-300 and 8-301]

COMMENT: If you are participating personally and substantially in such a procurement, you may not seek employment with any company that is competing, or is reasonably likely to compete, for the contract until the contract is awarded, until the procurement is canceled, or until you have disqualified yourself from participating in the procurement. Disqualification is simple – Don't do any work on the matter. You must provide a written memorandum to the contracting officer, source selection authority, and your immediate supervisor. (See Attachment 2 for a sample procurement disqualification memorandum.) (Also see Attachment 3 for a sample employment contact report.) If employment is not finalized, only the Head of the Contracting Authority may authorize your resumed participation. Check with your Ethics Counselor concerning the meaning of personal and substantial participation and any changes in the simplified acquisition thresholds. See Rule 14 for the effect of your past participation in the procurement on your ability to work for the bidder/offeror.

Rule 3, Representation: While still employed by the Army, including on transition leave, you are prohibited from representing anyone else, including your new employer, with or without compensation, and from accepting compensation for representational services provided by anyone, before any Federal agency regarding particular matters in which the Government is a party or has a substantial interest. [Officers and Civilians; 18 U.S.C. 203 and 205; JER 5-403]

COMMENT: Military officers on transition leave are precluded from interacting or appearing in the Federal workplace of any agency as a contractor. Being present in Government offices on behalf of a contractor is a representation, which is prohibited by 18 U.S.C. 205. Of course, military officers on transition leave may begin work with the contractor, but only "behind the scenes" at a contractor office or otherwise away from the Government workplace.

Rule 4, Inside Information: You are prohibited from communicating inside information to prospective employers. This includes the unauthorized disclosing of any contractor bid or proposal information or source selection information. [Officers, Enlisted and Civilians; 41 U.S.C. 423; FAR 3.104-3 and 3.104-4; 5 C.F.R. 2635.703; JER 8-400b]

Rule 5, Use of Resources: You may not use Government resources (except for authorized transition assistance benefits) in job hunting. [Officers, Enlisted and Civilians; 5 C.F.R. 2635.704 and JER 2-301 (equipment and telephones); 5 C.F.R. 2635.705 (time); 31 U.S.C. 1344 (vehicles); DOD Manual 4525.8, ¶ C1.4.8 (prohibition on use of postage); and 10 U.S.C. 892 (Article 92, UCMJ (misuse of credit cards))]

COMMENT: Some minor relaxation of this rule may occur in the case of a Federal Government downsizing, e.g., JER 2-301a(2) permits use of Government communications systems (telephone and computers) for job-searching if done on personal time, does not burden the communications system, etc. Additionally, military members may use permissive TDY for seeking employment and finding new residences. They may not work for their new employer while on permissive TDY.

Rule 6, Interview Expenses: Even if a prospective employer is a Government contractor or other "prohibited source," you may accept meals, lodging, transportation and other benefits normally provided by the prospective employer in connection with bona fide employment discussions. [Officers, Enlisted and Civilians; 5 C.F.R. 2635.204(e)(3)]

COMMENT: To avoid a violation of the rules prohibiting your acceptance of gratuities from a prohibited source, make certain the prospective employer provides the same job interview travel benefits to all potential candidates for the same or similar positions.

Rule 7, Letter of Recommendation: You may request a letter of recommendation from other Government employees on official letterhead if (1) the letter is based on the employee's **personal** knowledge of your ability or character and (2) either (a) the employee has dealt with you in the course of his/her Government employment or (b) you are applying for Federal employment. [Officers, Enlisted and Civilians; 5 C.F.R. 2635.702(b)]

Rule 8, Transition Leave: While on transition leave, you remain a Government employee and all of the ethics rules still apply, including (1) restrictions on political activities; (2) restrictions on outside employment; (3) prohibition on serving as a registered agent of a foreign principal (governments, persons and corporations) (18 U.S.C. 219; and (4) restrictions on representing others to the Federal Government (18 U.S.C. 205) (See Rule 4). While on transition leave, military officers are prohibited by 10 U.S.C. 973(b) from holding a "civil office" with a state or local government. [Officers and Enlisted]

COMMENT: Military personnel on transition leave are authorized to accept a civilian position in the U.S. Government and receive the pay and allowances of that position as well as their military pay and allowances (5 U.S.C. 5534a). The 6-month waiting period prior to accepting a civilian position has been waived during the current period of national emergency. Another issue concerns the appropriate use of permissive temporary duty (PTDY). The purpose of PTDY is to facilitate transition into civilian life for house and job hunting for soldiers. Thus, it is impermissible to work while on PTDY.

RESTRICTIONS ON POST-GOVERNMENT EMPLOYMENT (AFTER YOU LEAVE)

Rule 9, Ethics Advice Request: If you are a covered DoD official within two years after leaving, you may not be compensated by a DoD contractor until at least 30 days have expired since you requested a written opinion from your Ethics Counselor. [Officers and Civilians; section 847 of P.L. 110-181, the NDAA for FY 2008]

COMMENT: Covered DoD officials are current or former DoD officials who participated personally and substantially in an acquisition with a value in excess of \$10M while serving in: (1) an Executive Schedule position; (2) a Senior Executive Service position; (3) a general or flag officer position; or (4) in a position of 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 team. If you are such an official, you should request the opinion, and provide all requested information, as soon as possible upon learning what activities you may perform for a DoD contractor.

Rule 10, Lifetime Ban: You have a lifetime ban on representing anyone else, with the intent to influence, before Federal officials (except Members of Congress and their legislative staffs) regarding a particular matter on which you participated personally and substantially as a Government employee. [Officers and Civilians; 18 U.S.C. 207(a)(1); JER 9-300 and 9-400]

COMMENT: For most Government employees, a “particular matter” is a Government contract, but it is not limited to contracts. Representing means communicating with or appearing before. Specific parties must be connected to the matter. The lifetime ban normally exists only as long as the specific contract, or matter, is still in existence. So, if the contract, with option years, terminates after five years, then this ban is no longer applicable because the contract, or particular matter, is no longer in existence.

Rule 11, Two-Year Ban: You have a 2-year ban on representing anyone else, with the intent to influence, before Federal officials (except Members of Congress and their legislative staffs) regarding a particular matter that was under your official responsibility during your last year of Government service. [Officers and Civilians; 18 U.S.C. 207(a)(2); JER 9-300 and 9-400]

COMMENT: A matter is under your “official responsibility” if you have the power, either directly or through a subordinate, to approve, disapprove or otherwise direct a Government action.

Rule 12, Treaty & Trade: You have a 1-year ban on representing, aiding, or advising anyone else on the basis of covered information regarding trade or treaty negotiations in which you participated personally and substantially during your last year of government service. [Officers and Civilians; 18 U.S.C. 207(b)]

COMMENT: Treaties are international agreements that require the advice and consent of the Senate. Covered information is exempt from disclosure under FOIA.

Rule 13, Representation Compensation Ban: You may not accept compensation for representational services, which were provided by anyone while you were a Government employee, before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest. This prohibition may affect personnel who leave the Government and share in the proceeds of the partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: Lobbying, consulting, and law firms). [Officers and Civilians; 18 U.S.C. 203]

Rule 14, Procurement Integrity: For a period of 1 year after you perform the following designated services, you are prohibited from accepting compensation from a concerned contractor on a \$10+ million procurement or contract:

- a. Served as a procuring contracting officer, source selection authority, member of a source selection evaluation board, or chief of a financial or technical team;
- b. Served as the program manager, deputy program manager, or administrative contracting officer;
- c. Personally made a decision to
 - (1) award a contract, a subcontract, a modification of a contract or subcontract, a task order, or a delivery order in excess of \$10M;
 - (2) establish overhead or other rates applicable to a contract or contracts in excess of \$10M;
 - (3) approve issuance of a contract payment or payments in excess of \$10M; or
 - (4) pay or settle a claim in excess of \$10M with that contractor.

NOTE: A Federal official who fits within one of these categories, however, is not prohibited from accepting compensation from any division or affiliate of a contractor so long as it does not produce the same or similar products or services. [Officers, Enlisted and Civilians ;41 U.S.C. 423(d); FAR 3.104-3(d); JER 9-600]

COMMENT: You may still go to work for the contractor if you work for a division or affiliate that does not produce similar products or services. Alternatively, you may wait for the 1-year period to expire. Rules for calculating the 1-year period of prohibition are at FAR 3.104-3(d). Check with your Ethics Counselor to determine whether the ban may apply to you and how to calculate the waiting period. You may request, in writing, a procurement integrity ethics advisory opinion if you do not know whether you would be precluded by 41 U.S.C. 423(d) from accepting compensation from a particular contractor. Remember, however, that the lifetime or two-year official responsibility restrictions are still applicable to your post-Government employment activities.

Rule 15, Nonpublic Information: You are prohibited from using any government records or things of value, including nonpublic information, to further your own private interests or those of another, including your subsequent employer. The specific prohibition against disclosing contractor bid or proposal information or source selection information also continues after you leave Federal employment. [Officers, Enlisted and Civilians; 18 U.S.C. 641; 41 U.S.C. 423; FAR 3.104-3 and 3.104-4]

COMMENT: Inside information is any information not available to the general public that you obtained by reason of your official DOD duties.

Rule 16, Former Military and Foreign Governments: After retirement, you will forfeit your retirement pay if you receive compensation from a foreign government and have not received prior permission from your Service Secretary and the Secretary of State to

do so. Please note that this may include partnership distributions that include such compensation, whether or not you performed any work regarding such compensation, as well as your work as an employee or consultant for a U.S. contractor that results in compensation from a foreign government. Foreign governments may also include educational and commercial entities that are substantially owned or controlled by the government. You must start the request for permission process with your servicing legal office. [Retired Officers and Retired Enlisted; U.S. Constitution; 37 U.S.C. 908; JER 9-701]

Rule 17, Foreign Agent: You must register as an agent of a foreign principal if you wish to represent certain foreign activities in the U.S. [Officers, Enlisted and Civilians; Foreign Agents Registration Act, 22 U.S.C. 611-621; 28 C.F.R. Part 5; JER 9-701c]

ADDITIONAL RULES FOR SENIOR OFFICIALS**

Rule 18, Cooling-Off Period: For one year after leaving your official position, you are prohibited from representing anyone else, with the intent to influence, before officers or employees of the former agency or DOD component in which you served within one year prior to leaving, regarding any official action. [Officers and Civilians; 18 U.S.C. 207(c)]

COMMENT: For purposes of the above rule, your "agency" for PAS officials is all of DoD; for all other senior officials is the Army; and for General Officers, includes any other DoD component in which they served during their last year of service. (For example, an Army general who retires after spending his or her last year tour of duty at DARPA will have a 1-year "cooling-off" period with regard to the Army and all of DoD except for the Air Force, Navy, DISA, DIA, DLA, NGA, DTRA, NSA, and NRO. If the General's last year was at one of the components separately identified above, the cooling-off period applies only to Army and that component.)

Rule 19, Assist Foreign Governments: For 1 year after leaving your senior position, you are prohibited, from representing, aiding or advising a foreign Government or political party with the intent to influence the U.S. Government, including Congress. [Officers and Civilians; 18 U.S.C. 207(f); JER 9-300]

Rule 20, 278: You must file a termination SF 278 on or before the 30th day after the date of termination of your Federal employment. We recommend that you file it on your last day. [5 U.S.C. App. 101; 5 C.F.R. 2634.201; JER 7-200 to 7-209]

** Senior officials include military officers in pay grades O-7 to O-10 (*i.e.*, General & Flag Officers) and civilian employees with an annual rate of basic pay at or above \$155,440.50 in 2009, which rate is adjusted upward annually as pay rates change.

REMEMBER TO SEEK ADVICE FROM YOUR ETHICS COUNSELOR. THESE RULES HIGHLIGHT THE PRIMARY AREAS OF INTEREST TO MOST DEPARTING PERSONNEL; HOWEVER, ANY AREAS OF CONCERN SHOULD BE DISCUSSED IN DETAIL WITH YOUR ETHICS COUNSELOR.

ATTACHMENT 1 – Sample Disqualification Memorandum

[DATE]

MEMORANDUM FOR [YOUR SUPERVISOR] or [SEE DISTRIBUTION]

SUBJECT: Disqualification

1. In accordance with Title 18, United States Code, section 208 (18 U.S.C. 208) and Title 5, Code of Federal Regulations, subsections 2635.402 and .604 (5 C.F.R. 2635.402 and .604), I am required to disqualify myself from personally and substantially participating as a Government officer in any particular matter that has a direct and predictable effect on my financial interest (possible future employment) or the financial interest of a person or organization with whom I am seeking or negotiating, or have any arrangement concerning, prospective employment, including parent companies, subsidiaries, affiliates, and joint ventures.

2. I hereby give formal notice that I am disqualified, as stated above, from participating in any particular matter that may so affect the following companies (covered matters), with whom I am seeking, intending to seek, or negotiating for employment:

[List company or companies]

Particular matter is a matter involving deliberation, decision, or action that is focused upon the interest of specific persons, or a discrete and identifiable class of persons. Disqualification means that I cannot act directly or through others in deciding, approving, or disapproving such official matters; nor may I recommend, investigate, advise or otherwise contribute to or influence such official matters.

[Supervisors should use the following version of paragraph 3.]

3. I am taking the following steps to ensure that I do not so participate in any particular matter affecting the covered parties:

- (1) I am instructing **[Name]**, who screens all matters directed to my attention, to determine whether there are covered matters. I have directed **[him/her]** to consult an ethics official if there is any uncertainty as to whether I am disqualified from participating.
- (2) **[Name]** will refer any covered matters for action or assignment without my knowledge, involvement, or participation to **[Name, who should be an employee who is either superior or lateral to the disqualified employee]**.

- (4) I will advise my immediate subordinates of this disqualification, and also instruct them to direct all inquiries regarding covered matters to **[Name]** without my knowledge or involvement.

[Non-supervisors should use the following version of paragraph 3.]

3. Covered matters will be handled by **[Name, who should be an employee who is either superior or lateral to the disqualified employee]** for action or assignment without my knowledge, involvement, or participation, or by whomever else you assign to handle the matter.

4. This disqualification remains in effect until further notice. In the event of changed circumstances, I will consult an ethics counselor, update this memorandum and notify everyone concerned.

[Signature]

[Printed name]

Copy Furnished:

[Name of Screener]

[Name of person handling matters]

[Name of ethics counselor]

ATTACHMENT 2 – Sample Procurement Disqualification Memorandum

[DATE]

MEMORANDUM FOR [CONTRACTING OFFICER
SOURCE SELECTION AUTHORITY
IMMEDIATE SUPERVISOR
[or SEE DISTRIBUTION]

SUBJECT: Procurement Disqualification

1. In accordance with Title 41, United States Code, Section 423(c) and Federal Acquisition Regulation (FAR) 3.104-3(c) and 3-104-5, I am required to disqualify myself from personally and substantially participating as a Government officer in a procurement for a contract in excess of the simplified acquisition threshold (currently \$100,000) when seeking employment with a bidder or offeror in the procurement.

2. I hereby give formal notice that I am disqualified, as stated above, from participating in such a procurement as I will be seeking employment with a bidder or offeror, as described below:

a. Name of procurement and solicitation number: **[Provide specified information]**.

b. To date, I have had the following involvement in this procurement: **[Describe nature of your participation.]** This involvement occurred from **[Date]** to **[Date]**.

c. The firm is a bidder/offeror with the following interest in the procurement: **[Describe interest.]**

3. I acknowledge the agency's right to take appropriate administrative action under Title 5, Code of Federal Regulations, section 2635.604(d) if my disqualification substantially interferes with my ability to perform my assigned duties. Nevertheless, to avoid any possibility of a conflict of interest and to permit an orderly transition of responsibilities, I request that I be excluded from, and relieved of, all responsibilities and participation regarding the above-described procurement.

[Signature]

[Printed Name]

Copy Furnished:
[Ethics Counselor, if allowed]

NOTE: YOUR SUPERVISOR, IN CONSULTATION WITH OTHER GOVERNMENT OFFICIALS, MAY DETERMINE THAT YOUR DISQUALIFICATION PRECLUDES YOU FROM PERFORMING DUTIES THAT ARE ESSENTIAL TO YOUR CONTINUED FEDERAL EMPLOYMENT. YOU SHOULD CAREFULLY DISCUSS YOUR SITUATION WITH YOUR SUPERVISOR AND YOUR ETHICS COUNSELOR BEFORE SUBMITTING A DISQUALIFICATION MEMORANDUM.

ATTACHMENT 3 – Sample Procurement Integrity Contact Report

[DATE]

MEMORANDUM FOR [Immediate Supervisor]
[Ethics Counselor]

SUBJECT: Report of Non-Federal Employment Contact

1. In accordance with Title 41, United States Code, Section 423(c) and Federal Acquisition Regulation (FAR) 3.104-3(c), I am required to promptly report any employment contact for non-Federal employment with a bidder or offeror in a procurement for a contract in excess of the simplified acquisition threshold (currently \$100,000) (covered procurement) in which I am participating personally and substantially.

2. I hereby provide written notice that I **[was contacted by] or [contacted]** **[Name of company]** concerning possible future non-Federal employment.

3. I am an agency official participating personally and substantially as **[Describe participation]** in **[Name]** procurement, which is a covered procurement and in which the company is a bidder or offeror.

[If you reject the possibility of non-Federal employment, use the following version of paragraph 4.]

4. I reject the possibility of non-Federal employment with this company and wish to continue in my role as an agency official participating in the procurement.

[If you wish to pursue the possibility of non-Federal employment, use the following version of paragraph 4.]

4. I wish to seek employment with the company and am submitting my disqualification memorandum.

[Signature]

[Printed Name]

Copy Furnished:

NOTE: SUBJECT NOTICE IS REQUIRED PROMPTLY AFTER ANY CONTACT CONCERNING POSSIBLE NON-FEDERAL EMPLOYMENT WITH A PERSON OR FIRM BIDDING ON A PROCUREMENT IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.