



Procurement Integrity Restrictions Related to Seeking and Post-Government Employment

Purpose: This document summarizes the Government ethics rules applicable to the U.S. Department of Commerce (DOC) officers and employees while seeking non-federal employment and rules that may impose restrictions on your employment after your departure from the Department of Commerce (DOC).

Application: For all U.S. Department of Commerce officers and employees.

Notice: This information summarizes statutes and regulations that restrict or otherwise affect the activities of DOC employees while seeking and after leaving Federal Government (Government) service. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, please contact your [ethics official](#) to discuss your situation. Ethics officials are available to provide advice both before and after you leave Government service.

You may always consult with a personal representative. Ethics officials are acting on behalf of the United States Government and not as your personal representative. Advice from an ethics official with respect to these matters is provided under 5 C.F.R. § 2635.107(b). For that reason, disclosures made to a DOC ethics official are not protected by attorney-client privilege.

This handout **does not** include full discussion of the seeking and negotiating post-government employment rules. Please refer to the SEEKING NON-FEDERAL EMPLOYMENT handout for specific disqualification requirements applicable to you.

I. RESTRICTIONS WHILE SEEKING PRIVATE EMPLOYMENT (Before Leaving DOC)

OFFERS OF NON-FEDERAL EMPLOYMENT. If you are participating personally and substantially in a federal agency procurement for a contract in excess of the **simplified acquisition threshold** (currently \$250,000)¹ and are contacted by an offeror regarding non-Federal employment or are seeking employment with an offeror, you must:

- Report the contact promptly in writing to your supervisor and an [ethics official](#); and
- Reject the possibility of non-Federal employment; or
- If you plan to pursue the employment opportunity, disqualify yourself 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 an offeror in that federal agency procurement; or

¹ See Federal Acquisition Regulation Part 2.101, *simplified acquisition threshold*; and 48 C.F.R. 2.101, *simplified acquisition threshold*. Simplified acquisition threshold is generally \$250,000 except in other specific circumstances.

- All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement for employment. 48 C.F.R. §§ 3.104-3(c) and 3.104-5; 41 U.S.C. § 2103.
- Disqualification notice must also be provided to the contracting officer, the source selection authority, if other than the contracting officer, and your immediate supervisor. 48 C.F.R. § 3.104-5(b). The written notice must identify the procurement, describe the nature and specific dates of your participation in the procurement, identify the offeror, and describe the offeror's interest in the procurement.

Disqualification is simple – cease all work on the task.

Please note that you remain disqualified until such time as the head of contracting activity, at his or her discretion, authorizes you to resume participation in the procurement, after consultation with an ethics official. 48 C.F.R. § 3.104-5(c)(2).

In addition to the procurement integrity restrictions, the criminal conflict of interest statute (18 U.S.C. § 208) prohibits you from taking part in any particular matter, including a procurement of any amount, if you have an existing employment relationship with the concerned contractor or are seeking employment with that contractor, unless a waiver was granted by DOC. See also 5 C.F.R. § 2635.604.

Definitions:

- Personal and substantial participation in a federal agency procurement 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;
 - Reviewing and approving the contract award; or
 - Directly supervising a subordinate's participation in any of the above.
- Participation solely in the following activities does **not** alone constitute *personal and substantial* participation:
 - Agency-level boards, panels, or advisory committees that review program milestones or evaluate and recommend alternative technologies or approaches for broad agency-level missions or objectives;
 - General, technical, engineering, or scientific efforts 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 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.
- *Participating Personally* means participating directly and includes the direct and active supervision of a subordinate’s participation in the matter.
- *Participating Substantially* means that your 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.
- *Seeking Employment*: You are “seeking employment” when you in/directly: (i) make an unsolicited communication regarding potential future employment; (ii) engage in negotiations for employment; or (iii) provide any response to an unsolicited communication regarding possible employment, other than an outright rejection of the offer for employment. You are no longer seeking employment when you or the prospective employer reject the possibility of employment and discussions terminate, or two months have transpired without the prospective employer indication of interest, after you send a resume. Seeking employment does **not** include requesting a job application but **does** include forwarding a resume.

II. PROCUREMENT INTEGRITY EMPLOYMENT RESTRICTIONS (After Leaving DOC)

ACCEPTING COMPENSATION FROM A DOC CONTRACTOR. Per 41 U.S.C. § 2104 and 48 C.F.R. § 3.104-3(d) for a period of 1 year after the applicable *designated date*, you 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 you 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 you served in this capacity on the date of award of the contract – the award date is the “designated date.”
 - If you served in this capacity on the date the contractor was selected, but not the date of award – the date of contractor selection is the “designated date.”
- Program Manager, Deputy Program Manager, or Administrative Contracting Officer: The “designated date” is your last date of service in the position.
- If you personally made any of the following decisions, the “designated date” is the date of decision:
 - Awarded contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess to \$10 million to that contractor;
 - Established overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10 million;
 - Approved issuance of a contract payment or payments in excess of \$10 million to that contractor; or

- Paid or settled a claim in excess of \$10 million with that contractor.

EXCEPTION. This restriction does not prohibit you 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 you were involved. You are encouraged to request advice from your agency ethics counselor on these rules prior to accepting compensation from a contractor.

Definitions:

- *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.
- *In excess of \$10 Million* means:
 - Value or estimated value at the time of award of the contract, including all options;
 - Total estimated value of all orders at the time of award under an indefinite-delivery, indefinite quantity, or requirements contract;
 - Any multiple award schedule contract, unless the contracting officer documents a lower estimate;
 - Value of delivery order, task order, or order under a basic ordering agreement;
 - Amount paid or to be paid in settlement of a claim; or
 - Estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.
- *Designated Date*: Start date for the 1-year prohibition (*see* 48 CFR § 3.104-3)
 - Date of contract award for positions described in paragraph § 3.104-3(d)(1)(i), or the date of contractor selection if the official was not serving in the position on the date of award;
 - Date the official last served in one of the positions described in paragraph § 3.104-3 (d)(1)(ii); or
 - Date the official made one of the decisions described in paragraph § 3.104-3 (d)(1)(iii).

III. ABILITY TO REQUEST AN OPINION

If you will be receiving compensation from a contractor within two years of leaving DOC, you may request a written opinion regarding the applicability of the post-employment restrictions to the activities you undertake on behalf the contractor.

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

This handout is for information purposes only and is not a substitute for specific advice from an [ethics official](#). Please check our [website](#) for additional ethics guidance and materials.