

PROCUREMENT INTEGRITY ACT (PIA) RESTRICTIONS

(RULES WHEN YOU ARE LOOKING FOR A NEW JOB and RULES AFFECTING YOUR NEW JOB AFTER LEAVING FEMA)

IMPORTANT NOTICE: This information was prepared to assist FEMA contracting personnel who receive their ethics support from FEMA Ethics Office and who are planning to leave Government service. It summarizes the restrictions of the Procurement Integrity Act, and the regulations that implement it, on the activities of Government personnel while they are seeking employment and after they leave Government service. Because restrictions are dependent on specific facts, and because this information is a summary of the rules, these FEMA personnel should contact the FEMA Ethics Office at (202) 646-4025 or x3076 or by e-mail at Paul.Conrad1@dhs.gov or Vicki.O'Keefe@dhs.gov to discuss their particular situations. Of course, if you want, you may also consult with private counsel.

Advice from ethics counselors 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. 423 (Procurement Integrity Act). Ethics counselors are acting on behalf of the United States, and not as your personal representative. There is no attorney-client relationship created by the consultation. You may, however, rely, in good faith, on written opinions given under the Procurement Integrity Act.

WARNING: Other restrictions, such as those that apply to all Government employees, may also affect your official activities. Your ethics counselor should explain these rules as well.

Part 1: Restrictions *While Seeking Private Employment* (BEFORE You Leave FEMA)

1.1 **SIMPLIFIED RULE:** Once you have started *seeking employment* with a bidder or offeror, you may not take any official action in a \$100,000⁺ FEMA/DHS procurement.

1.1.1 **RULE:** An agency official may not *participate personally and substantially* in a \$100,000⁺ FEMA procurement when *seeking employment* with a bidder or offeror in the procurement. (28 C.F.R. 3.104-4(c))

1.1.1.1 “\$100,000+ FEMA/DHS procurement” – FEMA/DHS acquisition, using competitive procedures and appropriated funds, for a contract in excess of the simplified acquisition threshold, currently \$100,000.

1.1.1.2 “Personal and substantial” participation - You must be “personally and substantially” involved with the procurement to be disqualified. This means that you are directly participating or that one or more of your subordinates, whom you are actively and directly supervising, is participating. "Personal and substantial participation" for PIA purposes means 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; or
- reviewing and approving the award.

Participation solely in the following activities is NOT “personal and substantial” participation for PIA purposes:

- 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;
- Clerical functions;
- A-76 management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing data or technical support in developing performance standards, statements of work, or specifications; and
- Reviews conducted solely to determine compliance with regulatory, administrative, or budgetary procedures.

“Personal and substantial” participation for Procurement Integrity Act purposes may be more limited in breadth than “personal and substantial” participation as defined for 18 U.S.C. 208 and 207.

1.1.1.3 “Seeking employment” - If the above definitions apply to your situation, then you may not “seek” employment unless you first disqualify yourself. “Seeking employment” is contacting or being contacted by a bidder or offeror regarding possible non-Federal employment. For FEMA purposes, there is an “employment contact” when you are “seeking employment,” as discussed in the FEMA synopsis of general employment restrictions. See 5 C.F.R. 2635.601 - 2635.606.

1.1.2 Disqualification: Disqualification is simple — **Don’t do ANY work on the task!** To help you accomplish this, you are required to submit a written notice to the head of the contracting activity (HCA), with copies to the contracting officer, source selection authority, your immediate supervisor, and ethics counselor. The written disqualification must identify the procurement, describe the nature and specific dates of your participation in the procurement, and identify the bidder or offeror and describe its interest.

1.1.3 Resumption of Participation: The HCA has the discretion to authorize, in writing, your resumed participation at a future date only when one of two conditions has been met: the potential employer is no longer a bidder or offeror; or all employment discussions have terminated without an agreement. The HCA must consider all factors that might give rise to an appearance that you may act without complete impartiality and must consult with the ethics official. The HCA may decide not to authorize resumed participation.

1.2 **RULE:** An agency official must promptly report, in writing, to his or her supervisor and ethics official, an employment contact with a bidder or offeror in a \$100,000⁺ FEMA procurement.

1.2.1. This requirement applies even when you promptly reject the employment contact.

Part 2. Employment Restrictions *After Leaving FEMA*

2.1 **SIMPLIFIED RULE:** For 1 year after a *designated date*, you may not accept compensation from the concerned contractor on a \$10 million⁺ FEMA contract on which you performed designated services.

2.1.1 **RULE:** For a period of 1 year after a *designated date*, former Government officials may not accept *compensation* from the concerned contractor on a \$10 million⁺ FEMA/DHS competitively awarded or non-competitively awarded contract if the former officials served or acted in any of the following capacities: (48 C.F.R. 3.104-4(d))

A. Procuring contracting officers, source selection authorities, members of source selection evaluation boards, and chiefs of financial or technical evaluation teams

Designated date:

If you served on the date of selection, but not the date of award - Date of selection.

If you served on the date of award - Date of award of the contract.

B. Program managers, deputy program managers, and administrative contracting officers

Designated date: Last date of service in those positions.

For FEMA/DHS PIA purposes, *concerned contractors* are prime contractors.

C. Officials who personally made any of the following decisions:

1) to award contracts, subcontracts, or modifications of contracts or subcontracts, or task or delivery orders in excess of \$10,000,000,

2) to establish overhead or other rates valued in excess of \$10,000,000,

3) to approve issuance of a contract payment in excess of \$10,000,000, or

4) to pay or settle a claim in excess of \$10,000,000.

Designated date - the date of decision.

2.1.1.2 “Compensation” - any form of compensation provided directly or indirectly for services rendered as an employee, director or consultant.

2.1.1.3 “\$10 million⁺” - determined by the following:

-Contract, including all options - value or estimated value at the time of award

-Indefinite-delivery/indefinite quantity or requirements contract - total estimated value of all orders at the time of award

-Any multiple award schedule contract, unless contracting officer documents a lower estimate

-Basic Ordering Agreement - value of delivery order, task order or order

-Claims - amount paid or to be paid in settlement

-Negotiated overhead or other rates - estimated monetary value, when applied to the Government portion of the applicable allocation base.

2.1.2 EXCEPTION: You may accept compensation from any division or affiliate of the contractor that does not produce the *same or similar* products or services as the entity responsible for the contract.

2.1.2.1 “same or similar” - It is FEMA/DHS guidance that a product or service must be “dissimilar enough” from that under the contract to warrant use of the exception. It is not sufficient that the product or service is produced by a division on the commercial, as opposed to the government, side of the contractor. Any amount of the “same or similar” product or service is sufficient to trigger the compensation ban.

2.1.3 If you do not know whether you may accept any compensation, you may make a written (signed and dated) request for advice, prior to accepting any compensation, from your agency ethics official. The ethics official must issue a written opinion within 30 days after receiving complete information as to whether the compensation would be proper or a violation. The ethics official may rely on that information, unless there is reason to believe that the information is fraudulent, misleading, or otherwise incorrect. You and the contractor may make good faith reliance on that written opinion, *i.e.*, that neither you nor the contractor have actual knowledge or reason to believe that the opinion is based on fraudulent, misleading, or otherwise incorrect information.

2.1.4. Inside Information. You may not release inside information that would not be available to the public, which includes:

*Information not releasable under the Freedom of Information Act (FOIA), the Privacy Act, trade secrets, and classified information

*Selected release of advance procurement Information, FEMA/DHS contract requirements, or premature release of contract award decisions.

*Acquisition information, such as unopened Bids, proposed costs, FEMA/DHS's ranking of bids, proprietary information such as labor rates, reports of Source Selection Evaluation Boards, and other information marked:
SOURCE SELECTION INFORMATION.

Part 3: Other Restrictions

3.1 Other restrictions, such as those that apply to all Government employees, may also affect your activities. Your ethics counselor should explain these rules as well. **If you believe that these Procurement Integrity restrictions are the only ones that will apply to you, you are mistaken.**

Part 4: Administrative Reminders

4.1 **QUESTIONS? PLEASE CALL US:** If you have questions, even *after* you leave Government service, please call your ethics counselor or the FEMA Ethics Office: (202) 646-4025/3076. Fax: (202) 646-3958. E-mail: Paul.Conrad1@dhs.gov or Vicki.O'Keefe@dhs.gov. We would much rather talk to you before you take action, than read adverse reports about you (from the IG or in the media) after you have taken the action.

4.2 Thank you for your service to your country.

(This guidance was produced by the FEMA Chief Counsel's Office [Ethics Office], Paul.Conrad1@dhs.gov or Vicki.O'Keefe@dhs.gov or (202)646-4025/3076).

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