INFORMATION PAPER

DAJA-SC
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1. **Purpose.** To summarize ethical conduct requirements and post-government employment restrictions under the Procurement Integrity Act, 41 USC § 423

2. **Facts**.

a. Restrictions on disclosing contractor bid or proposal information or source selection information: 41 USC § 423(a)

(1) A person shall not knowingly disclose contract bid or proposal information or source selection information before the award of a federal agency procurement contract to which the information relates.

(2) If you are an employee of a private sector organization or contractor assigned to an agency under chapter 37 of title 5, United States Code [5 USCS §§ 3701 et seq.] in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment of such employee.

(3) In addition to Procurement Integrity Act restrictions, the Federal employee would also be subject to 5 CFR 2635.703, misuse of non-public information.

b. Procurement sensitive information means:

(1) Cost or pricing data;
(2) Indirect costs and direct labor rates;
(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation;
(4) Information marked by the contractor as "contractor bid or proposal information," in accordance with applicable law or regulation.

c. Source selection information means

(1) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening;
(2) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices;
(3) Source selection plans;

(4) Technical evaluation plans;

(5) Technical evaluation of proposals;

(6) Cost or price evaluations of proposals;

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract;

(8) Rankings of bids, proposals, or competitors;

(9) The reports and evaluations of source selection panels, boards, or advisory councils;

(10) Other information marked as "source selection information" based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

d. The employment contact reporting rule: 41 USC § 423(c)

(1) If a federal employee who is participating personally and substantially in a procurement either initiates contact or is contacted by a bidder or offeror for the procurement regarding possible employment for that employee, the employee has the affirmative duty to promptly report the contact in writing to the employee's supervisor and to the agency ethics official (or designee), and either reject the possibility of employment, or disqualify himself or herself from further personal and substantial participation in the procurement.

(2) "Personal and substantial participation" means that the employee is directly participating or that one or more of the employee's subordinates, whom they actively and directly supervise, is participating in the procurement.

(3) Personal and substantial participation includes any of the following activities directly related to the procurement:

a) Drafting, reviewing, or approving the specification or statement of work; or
b) Preparing or developing the solicitation; or
c) Evaluating bids or proposals; or
d) Selecting a source; or
e) Negotiating price or terms and conditions; or
f) Reviewing and approving the award.

(4) The disqualification must continue until the agency has authorized the employee to resume participation in the procurement on grounds that either the bidder/offeror involved in the employment contact is no longer a bidder/offeror in the procurement, or all discussions between the employee and the company regarding possible employment have terminated without an agreement or arrangement for employment. Employment negotiations cannot be deferred until after the procurement.

(5) This rule applies only to contracts in excess of the simplified acquisition threshold, which is currently $100,000.

e. The 1-year ban on accepting compensation from a contractor: 41 USC § 423(d)

(1) The ban applies to officers, enlisted personnel, civilian employees, and special government employees, whether the person retires, resigns, or separates from the government.

(2) The ban applies to both competitively awarded contracts and non-competitively awarded contracts, also known as sole-source contracts.

(3) The ban applies to accepting compensation as an employee, officer, director or consultant of the contractor.

(4) Does NOT apply to accepting compensation from any division or affiliate of a contractor that does not produce "the same or similar products or services" as the entity of the contractor that is responsible for the contract in which the employee is involved.

f. Definition of Compensation: Compensation includes all wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly, for services rendered by the former employee. Compensation indirectly paid to an entity other than the former employee specifically in exchange for services provided by the employee will be attributed to the former employee.

g. Seven Positions: The ban will apply if the employee serves in any one of seven positions on a contract over $10 million:

(1) Procuring Contracting Officer (PCO)
(2) Source Selection Authority (SSA)
(3) Source Selection Evaluation Board (SSEB) or Source Selection Evaluation Team (SSET), including any board, team, council, or other group that evaluates bids or proposals
(4) Chief of financial or technical evaluation team
(5) Program Manager
(6) Deputy Program Manager
(7) Administrative Contracting Officer

h. Seven Decisions: The ban will apply to anyone who makes any of the following decisions:

(1) Award a contract over $10 million;
(2) Award a subcontract over $10 million;
(3) Contract modification over $10 million;
(4) Award a task order or delivery order over $10 million;

(5) Establish overhead or other rates applicable to a contract or contracts that are valued over $10 million;
(6) Approve issuance of a contract payment or payments over $10 million;
(7) Pay or settle a contract claim over $10 million.

i. When is a contract over $10 million?

(1) Contract value is generally determined at the time of the contract award.

(a) If contract is awarded for more than $10 million, serving in one of the seven positions or making one of the seven decisions for that contract will cause the 1-year compensation ban to apply, *even if the contract is later modified to an amount below $10 million.*

(b) If a contract is awarded for less than $10 million, serving in one of the seven positions or making one of the seven decisions for the contract will not cause the 1-year ban to apply, *even if the contract is modified after the contract award to an amount above $10 million.*

(2) If the contract has options, then the aggregate values of all the options are included when determining if the contract is over $10 million.

j. When does the 1-year ban begin to run?

(1) If the employee serves as the PCO, the SSA, a member of the SSEB/SSET, or the chief of a financial or technical evaluation team, the ban begins to run on the date of the contract award. There is an exception if the employee was serving in one of these positions on the date of contractor selection, but not on the date of contract award. In such a case the ban begins to run on the date of the contract selection.

(2) If the employee serves as the Program Manager, Deputy Program Manager, or Administrative Contracting Officer, the ban begins to run on the last date the employee serves in that position.

EXAMPLE: If an employee was the Program Manager on a contract over $10 million and (s)he stopped serving in that position 14 months before retirement, the employee would be subject to the 1-year compensation ban, but the 1-year period would end 2 months before the employee retires.

(3) If the employee makes one of the seven types of decisions listed above on a contract over $10 million, the ban begins to run on the date the decision was made.

EXAMPLE: If an employee makes one of the seven types of decisions listed on a contract over $10 million, and does so six months before the employee retires, the employee will be subject to the 1-year ban, and the ban will continue six months after the employee retires.

k. 30 day letter: Requesting a legal opinion

(1) Current and former employees may request a legal opinion, called a 30-day letter, on whether the 1-year compensation ban applies to them with regard to any company.

(2) The ethics officials who issue the opinions are required to do so within 30 days (or as soon thereafter as practicable) from the date a request containing complete information is received.

(3) If the request does not contain all the necessary information, the 30 days will not begin to run until all the necessary information has been submitted.

(4) A request for a 30-day letter must be in writing, dated, and signed

(5) Individuals may submit a request for a 30-day letter either before or after they leave government service

(6) Employees are not required to have their 30-day letter in hand before they begin to talk to a company about a possible job. They only need to have it before they begin accepting compensation from the company. Remember, however, that employment contacts must be reported and the employee must recuse him/herself from official action in the matter!

(7) If the individual provides complete and accurate information when he or she requests a 30-day letter, the letter will serve as a protection for both the individual or the new employer (contractor) from any later allegations that the 1-year compensation ban does in fact apply to the individual and the contractor. However, if the individual or the contractor has "actual knowledge" or "reason to believe" that the 30-day letter is based upon fraudulent, misleading, or otherwise incorrect information, then the 30-day letter will not serve as protection for the individual.

3. **References.**

a. 41 USC § 423 (2004)
b. 5 CFR Part 2635