

TWENTY BASIC RULES FOR PERSONNEL LEAVING THE ARMY*

The following 20 rules assume that 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.

RESTRICTIONS ON SEEKING EMPLOYMENT

Rule 1: You are prohibited from taking action in your official capacity concerning a person or company that has a financial interest in a matter in which you are participating while you are negotiating with that person or company. The financial interests of your spouse, your minor child, or your partner may also trigger this prohibition. [Title 18, United States Code (U.S.C.), Section 208(a) - Officers and Civilians] [Joint Ethics Regulation (JER), DOD 5500.7-R, paragraphs 8-200 to 8-201 - Officers, Enlisted and Civilians]

Rule 2: While you are participating in a matter which has a direct and predictable effect on the financial interest of a person or company, you are prohibited from seeking employment (including pre-negotiation activity) with that person or company. [5 Code of Federal Regulations (C.F.R.) 2635.601 thru 2635.604; JER 2-204c & d - Officers, Enlisted and Civilians]

COMMENT: The first rule is statutory; the second is regulatory and expands the prohibition to cover any form of seeking employment. If you want to seek a job with a specific company, you must determine if any official action you could take would have a direct and predictable effect on the person or company's financial interests. If you are participating in a matter affecting the company, you must provide a written memorandum to your supervisor stating that you are disqualified from future participation in the matter. (See Attachment 1 for a sample disqualification memorandum.) 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. If you are not participating in any matters affecting the company, no disqualification is required. But, it is recommended that you prepare a disqualification memorandum so that actions pertaining to the entity with which you are seeking employment do not come before you.

* These "20 Basic Rules" are a revision of the "21 Basic Rules" published last year by Alan E. Sommerfeld, Counsel, Joint National Test Facility, Ballistic Missile Defense Organization. Also, many of the rules were derived from the "200 Rules on Outside Income, Job Hunting and Post-Government Employment" by Mark Stone, U.S. Air Force.

Rule 3: If you are participating personally and substantially in a procurement for a contract in excess of the simplified acquisition threshold (currently \$100,000), you must promptly report in writing any contact with a bidder/offeror in that procurement concerning non-Federal employment and you must either reject the possible employment (Attachment 2) or disqualify yourself from further participation in the procurement (Attachment 3). Procurement Integrity [41 U.S.C. 423(c); FAR 3.104-4(c) and 3.104-6; JER 8-300 and 8-301 - Officers, Enlisted and Civilians]

COMMENT: If you are participating personally and substantially in drafting a solicitation (including the Statement of Work/Specification) or selecting a contractor in a contract that has not yet been awarded, you may not try to get a job 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 the procurement. 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 past participation in the procurement on your ability to work for the bidder/offeror.

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

Rule 5: Once you have a job, you may not participate in any matter that affects the financial interests of the company with whom you have the employment arrangement. [18 U.S.C. 208(a) - Officers and Civilians] [5 C.F.R. 2635.606; JER 5-300 thru 5-303 - Officers, Enlisted and Civilian]

Rule 6: You may not use Government resources (except for authorized transition assistance benefits) in job hunting. [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) - Officers, Enlisted and Civilians]

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 7: Even though 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. [5 C.F.R. 2635.204(e)(3) - Officers, Enlisted and Civilians]

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 8: You may obtain 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. [5 C.F.R. 2635.702(b) - Officers, Enlisted and Civilians]

Rule 9: While still employed by the Army, you are prohibited from acting as a representative for anyone, including your new employer, before any Federal agency. [18 U.S.C. 205; JER 5-403 - Officers and Civilians]

Rule 10: While on transition leave, you remain a Government employee and all of the above rules still apply.

COMMENT: You are required to obtain permission for off-duty employment before working during transitional leave (JER 2-303 /Attachment 2).

RESTRICTIONS ON POST-GOVERNMENT EMPLOYMENT

Rule 11: You face a lifetime ban on attempting to influence Federal officials (except Members of Congress and their legislative staffs) on behalf of someone regarding a matter on which you participated personally and substantially as a Government employee. [18 U.S.C. 207(a)(1); JER 9-300 and 9-400 - Officers and Civilians]

COMMENT: A "matter" for most Government employees means a particular Government contract, but is not limited to contracts. The lifetime ban therefore normally exists only as long as the specific contract, or matter, in which the employee participated is still in existence. Accordingly, 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 12: You face a 2-year ban on attempting to influence Federal officials (except Members of Congress and their legislative staffs) on behalf of someone regarding a matter that was under your official responsibility during your last year of Government service. [18 U.S.C. 207(a)(2); JER 9-300 and 9-400 - Officers and Civilians]

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 13: You face a 1-year ban on representing, aiding, or advising "the other side" (i.e., any other person except the United States) in trade or treaty negotiations in which you participated personally and substantially during your last year of Government service. [18 U.S.C. 207(b) - Officers and Civilians]

Rule 14: You are prohibited from accepting compensation from a contractor for a period of 1 year after you:

- 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 in a procurement for a contract in excess of \$10M;
- b. Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10M awarded to that contractor;
- c. Personally made a decision to award a contract, a subcontract, a modification of a contract or subcontract, a task order, or a delivery order, in excess of \$10M;
- d. Personally made a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10M;
- e. Personally made a decision to approve issuance of a contract payment or payments in excess of \$10M to that contractor; or
- f. Personally made a decision to 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 that division or affiliate does not produce the same or similar products or services. Procurement Integrity [41 U.S.C. 423(d); FAR 3.104-4(d); JER 9-600 - Officers, Enlisted and Civilians]

COMMENT: You can 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 can wait for the 1-year period to expire and go to work for the contractor in any capacity. Rules for calculating the 1-year period of prohibition are at FAR 3.104-8. Check with your Ethic Counselor to determine which prohibitions may apply to you and how to calculate the waiting period for those activities. You may request 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.

Rule 15: You are prohibited from converting to your use or the use of another any government records or thing of value. This includes "inside information" obtained while

in government service. [18 U.S.C. § 641 - Officers, Enlisted and Civilians] The specific prohibition against disclosing contractor bid or proposal information or source selection information also continues after you leave Federal employment. [41 U.S.C. § 423; FAR 3.104-4(a) and 3.104-5 - Officers, Enlisted and Civilians]

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

RULES RELATING TO WORK FOR FOREIGN EMPLOYERS

Rule 16: You may not work for a foreign government or for a corporation or institution owned or controlled by a foreign government without prior approval. [37 U.S.C. § 908; JER 9-701 - Retired Officers and Retired Enlisted]

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

ADDITIONAL RULES FOR SENIOR OFFICIALS**

Rule 18: You must file a final Standard Form 278 within 30 days after, but not earlier than 15 days before, the date of termination of your Federal employment (i.e. the end of your transitional leave). [5 U.S.C. App. 6, §§ 101-111; JER 7-200 to 7-209]

Rule 19: You are prohibited from attempting to influence your former DOD component (i.e. the Army) regarding any official action for a period of 1 year (frequently called the "1-year no contact" rule). If your last job is at the DOD level, the restriction applies to attempts to influence DOD level organizations (e.g. defense agencies) rather than your component. [18 U.S.C. 207(c); 5 C.F.R. Part 2641; JER 9-300 - a senior official includes military officers in pay grades O-7 to O-10 (i.e., General Officers & Flag Officers) and civilian employees with an Annual Rate of Basic Pay at or above \$142,898.00. (This is for calendar year 2006. The rate is adjusted upward annually.)

Rule 20: You are prohibited, within 1 year of leaving your Government position, from representing, aiding or advising a foreign entity with the intent to influence a US Government decision. [18 U.S.C. 207(f); JER 9-300]

** Senior officials include military officers in pay grades O-7 to O-10 (i.e., General Officers & Flag Officers) and Civilian employees with an annual rate of basic pay at or above \$142,898.00. (This is for calendar year 2006. The rate is adjusted upward annually.)

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 Format

DATE

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Disqualification – Employment Discussions

I contemplate entering into employment discussions with certain organizations prior to my **(retirement) (separation) (termination)**. Since Title 18, United States Code, Section 208(a) (18 U.S.C. § 208(a)) requires me to disqualify myself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person or organization with whom I am negotiating or have any arrangement concerning prospective employment, I hereby give formal notice that I plan to conduct employment discussions with the organization(s) listed below.

List organizations

Pursuant to law (18 U.S.C. Section 208) and the "Standards of Ethical Conduct" (5 C.F.R. Sections 2635.402(c), .502(a) and .604), I am disqualified from participating in any official matter that will have a direct and predictable effect on the financial interests of the above-listed organization(s). This 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.

Accordingly, any official matter that will conflict with the above-listed financial interest(s) must be handled without my knowledge or participation. If such official matter would otherwise have required my personal decision, approval or disapproval, the matter should be referred to ***[identify another employee who will handle such matters; generally this employee should be superior or lateral to the employee who is disqualified]***.

Signature Block

Copy Furnished:
Supervisor
Ethics Counselor
Individual Named in the Memorandum

ATTACHMENT 2 – Sample Procurement Integrity Contact Notice and Rejection of Employment

DATE

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Notice of Non-Federal Employment Contact and Rejection of Employment

1. I (was contacted by/contacted) _____ concerning possible future employment. In accordance with Title 41, United States Code, Section 423(c) and Federal Acquisition Regulation (FAR) 3.104-4(c), I hereby provide written notice of this contact.
2. The firm has an interest in our agency's procurement of _____ and I am an agency official participating as _____ in that procurement.
3. I reject the possibility of non-Federal employment with this firm. I wish to continue in my role as an agency official participating in the procurement.

Signature Block

**Copy Furnished:
Supervisor
Ethics Counselor**

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.

ATTACHMENT 3 – Sample Procurement Integrity Contact Notice and Disqualification

DATE

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Notice of Non-Federal Employment Contact and Disqualification for Purposes of Employment Discussions

1. I (was contacted by/contacted) _____ concerning possible future employment. In accordance with Title 41, United States Code, Section 423(c) and Federal Acquisition Regulation (FAR) 3.104-4(c), I hereby provide written notice of this contact.

2. I wish to engage in employment discussions with this firm. In accordance with FAR 3.104-4(c)(2)(ii), I am disqualifying myself from further participation in the following acquisition.

a. Name of procurement and solicitation number: _____

b. To date, I have had the following involvement in this procurement:

_____. This involvement occurred from _____ to _____.

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

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 matters and responsibilities regarding the _____ procurement.

4. I will conduct all employment discussions while on leave or during off-duty time.

Signature Block

Copy Furnished:
Supervisor
Ethics Counselor

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.