

Instructions for Air Force Personnel on Preparing a Request for a
Procurement Integrity Law “30-Day Letter” Post-Employment Legal Opinion

PRIVACY ACT STATEMENT

AUTHORITY: PRIVACY ACT OF 1974 (5 U.S.C. 552(A)(7)), 41 U.S.C. 2101-2107, 2635.107 and 602, AFI 33-332.

PRINCIPAL PURPOSE: To enable ethics counselors to render advice to military and civilian employees leaving government service.

ROUTINE USE: Information provided is not confidential. The ethics counselor is the government's representative. There is no attorney-client relationship established between the ethics counselor and the individual, and the ethics counselor may not act as an attorney on behalf of anyone submitting this information. The information will be used for providing written ethics advice. It will be retained for six years and will be available to ethics counselors, finance personnel, and other appropriate personnel responsible for compliance with post-government employment restrictions.

DISCLOSURE: Voluntary. No criminal, civil or other penalties will follow from refusal to provide requested information. However, failure to fully disclose information requested would likely result in receipt of inaccurate advice or the inability to provide written ethics advice pursuant to 41 U.S.C. 2101-2107.

1. The Procurement Integrity law (41 U.S.C. 2101-2107) is a Federal law that contains a post-government employment restriction called the “1-year compensation ban.”

2. Conduct resulting in the 1-year ban. The 1-year ban will apply to you if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. Specifically, the 1-year ban will apply if any of the following is true:

- You serve as the Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected or the contract is awarded.
- You serve as the Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected or the contract is awarded.
- You serve as a member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected or the contract is awarded.
- You serve as the chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected or the contract is awarded.
- You serve as the Program Manager on a contract over \$10 million.
- You serve as the Deputy Program Manager on a contract over \$10 million.
- You serve as the Administrative Contracting Officer on a contract over \$10 million.

The 1-year compensation ban also applies to you if you made any of the following seven types of decisions:

- Decision to award a contract over \$10 million.

- Decision to award a subcontract over \$10 million.
- Decision to award a modification of over \$10 million to a contract or subcontract.
- Decision to award a task order or delivery order over \$10 million.
- Decision to establish overhead or other rates applicable to a contract or contracts that are valued over \$10 million.
- Decision to approve issuance of a contract payment or payments over \$10 million.
- Decision to pay or settle a contract claim over \$10 million.

3. Definition of “source selection evaluation board” (SSEB). The term “source selection evaluation board” means “any board, team, council, or other group that evaluates bids or proposals.” The term includes a “source selection evaluation team” (SSET), but not an “acquisition strategy panel” (ASP). Thus, serving as a member of the SSET can cause the 1-year compensation ban to apply, but serving on an ASP will not.

4. Definition of “contract over \$10 million”. Whether a contract is over \$10 million is generally determined at the time of contract award. For example, if a 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 to apply, even if the contract is modified after contract award to an amount below \$10 million. Likewise, 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 compensation to apply, even if the contract is modified after contract award to an amount above \$10 million. Also, if a contract has options, then the value of all of the options is included when determining if the contract is over \$10 million.

5. Definition of “contractor” includes “affiliates.” The statute prohibits former official’s acceptance of compensation from certain “contractors” The term “contractor” includes any affiliate of the company for which you are requesting the opinion. FAR 2-101 states, “Affiliate means associated business concerns or individuals if, directly or indirectly – (1) Either one controls or can control the other; or (2) A third party controls or can control both. Thus, when you answer whether you served in one of the seven positions or made one of the seven decisions, you must include whether you did so for the “contractor” or any of its “affiliates.” You are responsible for determining who the affiliates are of the company for which you are requesting the opinion. If you are asking for an opinion for “all companies” this definition will not affect you.

6. When the 1-year ban begins to run. The 1-year compensation ban is different from every other post-government employment restriction in that it does not necessarily begin to run on your date of retirement, separation or resignation. Rather, it begins to run as follows:

a. If you were serving as the PCO, the SSA, an SSEB or SSET member, or the chief of a financial or technical evaluation team, on a contract over \$10 million, the ban begins to run on the date of contract award (unless you were serving in one of these positions on the date of contractor selection but not on the date of contract award, in which case the ban begins to run on the date of contractor selection).

b. If you served as the Program Manager, Deputy Program Manager, or Administrative Contracting Officer on a contract over \$10 million, the ban begins to run on the last date you served in that position.

c. If you made 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.

Thus, if you were the Program Manager on a contract over \$10 million, and you stopped serving in that position 14 months before you retire, you will be subject to the 1-year compensation ban, but the one-year period will end before you retire. Likewise, if you made one of the seven types of decisions listed above on a contract over \$10 million, and you did so six months before you retire, you will be subject to the 1-year ban, but the ban will end six months after you retire.

If you know the 1-year ban will apply, and if the date when it begins to run is important to you, you should obtain (or retain) some documentation that establishes when the 1-year ban begins to run. For example, if you served as the Program Manager on a contract over \$10 million, you should keep a copy of any documentation that shows when you stopped serving in that position. That will assist the reviewing attorneys in determining when the 1-year ban begins to run.

7. Who the ban applies to. The 1-year ban applies only to Federal employees who leave government service on or after 1 Jan 97. It does not apply to anyone who left Federal service before 1 Jan 97. The ban is based only on services you provided or decisions you made on or after 1 Jan 97 (*i.e.*, it is not based on anything you did before 1 Jan 97). The 1-year ban can apply to officers, enlisted personnel and civilian employees. It can apply regardless of whether one retires, resigns or separates from the government. The ban can apply in connection with both competitively awarded contracts and non-competitively awarded (*i.e.*, sole source) contracts.

8. What is prohibited. The 1-year ban applies to accepting compensation as an employee, officer, director or consultant of the contractor. The ban 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 you were involved in. "Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly, for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

9. Requesting a legal opinion. Current and former employees can request a legal opinion on whether the 1-year compensation ban applies to them with regard to any company, plus affiliates

of that company. The legal opinion is called a “30-day letter.” It has that name because the Designated Agency Ethics Official who issues 30-day letters is required to do so within 30 days (or as soon thereafter as practicable) from the date a request containing complete information is received. If your request does not contain all the necessary information, the 30 days will not begin to run until you have submitted all the necessary information. A request for a 30-day letter must be in writing, dated and signed. The format for your request for 30-day letter is attached. Your request for 30-day letter will become an attachment to your 30-day letter.

a. Information to include. If, during the last year, you served in one of the seven positions listed above, or made one of the seven types of decisions listed above, on a contract over \$10 million that was awarded to a company, or an affiliate of a company, that you want to be specifically addressed in your 30-day letter, your request must include the following information:

- Name of the contractor, and the contract or solicitation number;
- Date of contract award, and the contract amount;
- A brief description of the supplies or services to be procured under the contract; and
- A description of your participation in the contract or procurement, *i.e.*, what position you served in (and the dates such service began and ended), or what decision(s) you made in connection with the contract (and the date of the decision(s)).

b. When to submit your request. You can submit your request for 30-day letter either before or after you leave government service. You are not required to have your 30-day letter in hand before you begin to talk to a company about possible employment. If you need a 30-day letter, you need it before you begin accepting compensation from (*i.e.*, working for) the company. As a general rule, you should submit your request for 30-day letter about 30 to 60 days before you expect to begin working for a company after you leave government service.

c. What contractors to seek an opinion for. In your request you may ask that your 30-day letter apply to one contractor (**including affiliates**), several contractors (**including affiliates**), or all contractors. However, keep in mind that if you would like your 30-day letter to apply to several contractors, or to all contractors, you will be required to provide enough information so that such an opinion can be issued. If you request a 30-day letter that applies to many contractors (**and affiliates**), you and the reviewing attorneys may spend a lot of time determining whether the 1-year ban applies to companies that you will not go to work for, when the only real issue is whether the ban applies to the company that you will go to work for. This could increase significantly the time it takes to prepare your 30-day letter.

If, within the last year, you have not served in any of the seven positions or made any of the seven types of decisions that result in the 1-year ban on a contract over \$10 million, then the 1-year ban will not apply to you. In such a case, a 30-day letter that applies to all contractors can be prepared as quickly as one that applies to only one contractor. However, if you have, within the last year, served in one or more of the seven positions or made one or more of the seven

decisions on a contract over \$10 million, then limiting your request for 30-day letter to one company, or a small number of companies, may result in your receiving your 30-day letter more quickly.

d. Good faith reliance. If you provide complete and accurate information when you request a 30-day letter, the 30-day letter will serve as a protection for both you and your new employer (the contractor) from any later allegations that the 1-year compensation ban does in fact apply to you and the contractor. However, if you or the contractor has “actual knowledge” or “reason to believe” that your 30-day letter is based upon fraudulent, misleading, or otherwise incorrect information, then the 30-day letter will not serve as protection for you or the contractor.

e. Word processors. If you can, please prepare your request on a word processor, as you may be asked to provide additional facts after your request is reviewed. When drafting your request, please state what acronyms stand for. Also, please assume the reviewing attorneys have no technical background and little or no knowledge of what your office (or former office) does.

10. Personal advice and attorney-client privilege. You should be aware that, when you are seeking advice on the job hunting and post-employment rules from an Ethics Counselor, your communications to and from the Ethics Counselor are not protected by the attorney-client privilege. Also, be advised the counseling and advice you receive on job hunting and post-employment questions is considered to be personal to you, and may not be considered as legal advice to your prospective employer, or any other company or non-Federal organization.

11. Government resources. Preparing a request for a 30-day letter is considered to be “official business.” Therefore, if you are still a Federal employee, you may use government resources (*e.g.*, computer, paper, fax, secretary, etc.) in preparing your request for a 30-day letter.

12. Job hunting rules. Keep in mind that the 30-day letter addresses only one question, which is whether the 1-year compensation ban would apply to you with regard to one or more companies. The 30-day letter does not address the question of whether it is “legal” for you to discuss employment with a company now (while you are a Federal employee). That question is covered by the “job hunting rules” contained in the Joint Ethics Regulation. In fact, it is possible for an employee to be prohibited at the present time from discussing employment with a particular company, but not be prohibited from working for the company after he or she leaves the government. In such a situation, the employee must simply delay discussing employment with the company until the employee leaves government service (or stops working on government matters involving that company). For advice on the job hunting rules, contact your Legal Office.

13. Other post-employment rules. Finally, remember that the 30-day letter addresses only the 1-year compensation ban of the Procurement Integrity law. This is only one of the several post-government employment restrictions can apply to retired and former Federal employees. For information on the other post-employment rules, contact your Legal Office.

Format for a Request for a 30-Day Letter

[DATE]

MEMORANDUM FOR 96 TW/JA

FROM: Name, Current rank or grade
Home Street address
City, State, Zip

SUBJECT: Request for 30-Day Letter under 41 USC 2101-2107

1. I request a 30-day letter under 41 USC 2101-2107. I request that the 30-day letter be applicable to [insert name(s) of company(ies) **and all of its affiliates**]. My rank or grade is [insert your rank or grade]. I [retired / separated / resigned] [will / expect to / plan to / hope to] [retire / separate / resign] from the Air Force on [insert date or approximate date]. I [will / expect to / plan to / hope to] begin my post-government employment [on (date or approximate date)] [as soon as possible]. [For military personnel only: I (will / expect to / plan to / hope to) begin terminal leave on (date or approximate date). --OR-- (I do not plan to take any terminal leave.)]

2. Positions and decisions.

a. [During the one-year period preceding the date of this request, I did not serve, at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board (SSEB), the source selection evaluation team (SSET), the source selection advisory council (SSAC), or the chief of a financial or technical evaluation team, in connection with a contract over \$10,000,000 awarded to any company.]

OR

[During the one-year period preceding the date of this request, I **(DID) (DID NOT) (AM NOT SURE WHETHER I)** serve(d), at the time of selection of the contractor or the award of the contract, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board (SSEB), a member of the source selection evaluation team (SSET), a member of the source selection advisory counsel (SSAC), or the chief of a financial or technical evaluation team, in connection with one or more contracts over \$10,000,000 awarded to _____ or any of its affiliates **(list company(ies) for which you are seeking opinion)**, and provide in paragraph 3 the information listed in paragraph **9a** of the instructions that accompany this format letter).

b. [During the one-year period preceding the date of this request, I did not serve as the program manager, deputy program manager, or administrative contracting officer for a contract over \$10,000,000 awarded to any company.]

OR

[During the one-year period preceding the date of this request, I **(DID) (DID NOT) (AM NOT SURE WHETHER I)** serve(d) as the program manager, deputy program manager, or administrative contracting officer for one or more contracts over \$10,000,000 awarded to _____ or any of its affiliates **(list company(ies) for which you are seeking this opinion)**, and provide in paragraph 3 the information listed in paragraph 9a of the instructions that accompany this format letter).

c. [During the one-year period preceding the date of this request, I did not make a decision to award a contract over \$10,000,000, a subcontract over \$10,000,000, a modification over \$10,000,000 of a contract or subcontract, or a task order or delivery order over \$10,000,000, to any company.]

OR

[During the one-year period preceding the date of this request, I **(DID) (DID NOT) (AM NOT SURE WHETHER I)** make/made a decision to award a contract over \$10,000,000, a subcontract over \$10,000,000, a modification over \$10,000,000 of a contract or subcontract, or a task order or delivery order over \$10,000,000, to _____ or any of its affiliates **(list company(ies) for which you are seeking this opinion)**, and provide in paragraph 3 the information listed in paragraph 9a of the instructions that accompany this format letter).

d. [During the one-year period preceding the date of this request, I did not make a decision to establish overhead or other rates applicable to a contract or contracts that are valued over \$10,000,000 for any company.]

OR

[During the one-year period preceding the date of this request, I **(DID) (DID NOT) (AM NOT SURE WHETHER I)** make/made a decision to establish overhead or other rates applicable to a contract or contracts that are valued over \$10,000,000 for _____ or any of its affiliates **(list company(ies) for which you are seeking this opinion)**, and provide in paragraph 3 the information listed in paragraph 9a of the instructions that accompany this format letter).

e. [During the one-year period preceding the date of this request, I did not make a decision to approve issuance of a contract payment or payments over \$10,000,000 to any company.]

OR

[During the one-year period preceding the date of this request, I **(DID) (DID NOT) (AM NOT SURE WHETHER I)** make/made a decision to approve issuance of a contract payment or payments over \$10,000,000 to _____ or any of its affiliates **(list company(ies) for which you are requesting this letter)**, and provide in paragraph 3 the information listed in paragraph 9a of the instructions that accompany this format letter).

f. [During the one-year period preceding the date of this request, I did not make a decision to pay or settle a claim over \$10,000,000 with any company.]

OR

[During the one-year period preceding the date of this request, I **(DID) (DID NOT)** **(AM NOT SURE WHETHER I)** make/made a decision to pay or settle a claim over \$10,000,000 with _____ or any of its affiliates **(list company(ies) for which you are requesting this letter**, and provide in paragraph 3 the information listed in paragraph **9a** of the instructions that accompany this format letter).

[for current military personnel or civil servants:

g. I **(WILL) (WILL NOT)** before I leave the Air Force, serve in any of the positions mentioned in this paragraph on a contract over \$10,000,000, or make any of the decisions mentioned in this paragraph on a contract over \$10,000,000 regarding any contractor for which I am requesting this opinion, **or any of its affiliates.**] **(Please note: If, after you prepare this request for an opinion, you do serve in any of the seven positions or make any of the seven decisions listed above, with regard to the company for which you are requesting this opinion, or any of its affiliates, this opinion will automatically become void and you must request a new opinion.)**

3. Duties during the last year. [If you served in one of the seven positions or made one of the seven decisions that result in the 1-year compensation ban, in connection with a contract over \$10 million that was awarded **to any company, including the company for which you are requesting this opinion,** please provide information regarding your service in that position or the decision you made. Provide the information listed in paragraph **9a** of the instructions that accompany this format letter, and provide the information concerning your duty title, actual duties, organization, and office symbol as requested by the next paragraph.]

AND

[If you did not serve in one of the seven positions or make one of the seven decisions that result in the 1-year compensation ban, regarding the company (or any of its affiliates) for which you are requesting this opinion, include your duty title, and a description of your actual duties, the name of your organization, and your office symbol. If you have worked in more than one position during the last year, please provide information about all positions (including the dates of service in each position). Also, if your government duties during the last year involved, in any manner, any of the companies that you want to be specifically addressed in your 30-day letter, please describe how your job duties involved that company or companies.]

4. [Please mail the opinion to the following address: _____]
[Please fax the opinion to (xxx) xxx-xxxx, and mail it to the following address: _____]
[My home address is _____. However please call me at (xxx) xxx-xxxx when the opinion is ready, as I would like to pick it up.]
If you have any questions, please [call] [contact] me at [(xxx) xxx-xxxx (work)]
[or (xxx) xxx-xxxx (home)] [or by e-mail at the following address: _____]

[Your Signature Block]