

Instructions and Format for Preparing a Request for an 18 U.S.C. 207 Opinion

PRIVACY ACT STATEMENT

AUTHORITY: PRIVACY ACT OF 1974 (5 U.S.C. 552(A)(7)), 18 U.S.C. 207, 5 C.F.R. 2637.101 and 5 C.F.R. 2641.101, 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 18 U.S.C. 207.

INSTRUCTIONS

- 1 To obtain an opinion on whether a representation ban under 18 U.S.C. § 207(a) applies to a particular contract or other matter, please prepare a written request using this format.
- 2 The legal opinion will be valid only if you provide complete and accurate facts. If you are not sure what to include, please call your ethics attorney for guidance.
- 3 When drafting your request, you should (1) not use acronyms unless you state what they stand for, and (2) assume that the reviewing attorneys have no technical background, and little or no knowledge of what your office (or former office) does.
- 4 The legal opinion you receive on the "lifetime representation ban" and the "2-year representation ban" will contain a disclaimer. The disclaimer will say that the opinion is that of the Department of the Air Force, and that the opinion is not binding on the Department of Justice. We are required to include this disclaimer because the law is a federal criminal statute. The interpretation of federal criminal statutes falls under the jurisdiction of the Department of Justice. Our opinion, however, is considered by the Department of Justice when making any decision.
- 5 Attach a separate worksheet for each particular matter (normally contract) that you want an opinion on. This should be limited to particular matters your current or prospective private employer intends to assign you to work on that you may have participated in while a Government employee as well. If your work situation changes so that you need an opinion on a different matter at some latter point, even years after retirement, you can request additional opinions at that time from the Air Force.

Format for Requesting an 18 U.S.C. 207 (Representation) Opinion

Date

MEMORANDUM FOR 96 TW/JA

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

SUBJECT: Request for 18 U.S.C. 207 Opinion

1. I request a legal opinion on the application of 18 U.S.C. 207 for each particular matter described on the attached worksheet(s). I [expect / would like] to begin work on [this / these] particular matters [on (date or approximate date)] [as soon as possible].

2. Background. *In this paragraph, provide general information about your last 5 years in the Air Force. Include:*

- a. *The installation(s) where you were assigned.*
- b. *The office(s) you were assigned to, and the office symbol of that office (or those offices).*
- c. *Your job title(s) and the dates you held each position, if you held more than one position.*
- d. *A description of your job duties (in each position, if you held more than one position). You may describe what the responsibilities of your office were, but please also describe what your responsibilities were.*
- e. *What contractors you worked with, if any.*
- f. *Your date of retirement, separation or resignation from the Air Force (or the expected date), and the date you will begin (or the date you began) terminal leave (if you will take, are taking, or took terminal leave).*
- g. *(If military) Attach a copy of your Officer Performance Report for your last two years.*

3. Expected Duties. *Describe what your position with your private employer will be.*

4 [Please mail the opinion to the following address: ...]

[Please fax the opinion to (xxx) xxx-xxxx, and mail it to the following address: ...]

[Please call me when the opinion is ready, as I would like to pick it up.]

If you have any questions, please call me at (xxx) xxx-xxxx (business) or (xxx) xxx-xxxx (home).

Your name

Your rank or grade

Current or former Office Symbol

Attch: Worksheet(s)

Worksheet relating to 18 USC 207

(Please answer each question. Do not delete sections.)

1) Identify the following information:

- Contract (or other particular matter) name;
- Contract number;
- Task or delivery order number;
- Name of contractor;
- Name and phone No. of contracting officer/knowledgeable person);
- Name and phone No. of program manager;
- What your involvement will be for this particular matter.

PERSONAL PARTICIPATION

2) Regarding this contract, modification, task or delivery order, underlying basic ordering agreement, blanket purchase agreement or other particular matter identified above, did you take any action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, relating to contract formation? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

EXAMPLES: (Not an all-inclusive list of examples)

A. Did you identify, describe, draft, review, approve, give advice on, or make recommendations regarding the particular matter? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

B. Did you identify, describe, draft, review, approve, give advice on, or make recommendations regarding any part of the request for proposal for the particular matter, including, but not limited to, drafting, reviewing, recommending the inclusion of any requirement, Contract Data Requirements List (CDRL), Data Item Description (DID), Statement of Work (SOW) provision, contract clause, standards of performance, or by reviewing instructions for submitting Government or Contractor proposed test plans? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date of your action.)

C. Did you have any role formulating, reviewing, approving, making recommendations or giving advice on acquisition strategy, source selection plan, SAMP, acquisition plan, or formation of contract, to include identifying interested contractors, competition requirements, making sole source recommendations or justifications, performing a market survey, recommending or performing a pre-award audit, advertising the proposal,

participating in the Acquisition Strategy Panel, Multi-functional Independent Review Team (MIRT), investigating or identifying sources, or discussing the particular matter with potential offerors? If so, describe your actions with regard to your role. (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

D. Did you have any role in certifying funds, deciding on funds, approving funds, reviewing funds, determining priority of funds, giving advice or making recommendations regarding funds on or for this particular matter? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

E. Did you have any role in the cost or technical evaluation of offers or selection of contractor? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

F. Did you have any other role in contract formation? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

3) Regarding this particular matter identified above, did you take any action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, relating to contract performance or administration? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

EXAMPLES: (Not an all-inclusive list of examples)

A. Did you have any role in making decisions, approvals, disapprovals, giving advice, or making recommendations to the contracting officer, program manager, quality assurance evaluator, or anyone else, regarding evaluating any aspect of performance, including, but not limited to, award fee determination, acceptability of performance, evaluation of work, review of contract deliverables or reports, approval of invoices for payment, evaluation of contractor work, or CPAR inputs? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

B. Did you have any role in evaluating contractor performance, including approving, disapproving, recommending or rendering advice on whether the contractor met contract requirements or satisfied test plans? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

C. Did you have any role in approving or disapproving, advising, recommending action, evaluating or resolving any Requests for Equitable Adjustments, cost proposals, disputes, or claims? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

D. Did you have any role in recommending, assigning, or generating taskings or work requirements for contractor personnel to perform? (If “yes” or “not sure,” describe fully your role regarding each such task, and the date you performed such a role.)

E. Were you involved in closing out this contract? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

SUPERVISOR BAN

4) Regarding this Contract or other particular matter, during your last year of Government service, did you have direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action? _____ (yes/no/not sure) (If “yes,” or “not sure,” describe fully your role, and the date you performed such role.)

5) During your last year of Government service, did anyone who worked for you in your direct chain of supervision have the authority to approve, disapprove, or otherwise direct Government action, relating to contract formation, of this Contract or other particular matter? _____ (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

EXAMPLES: (Not an all-inclusive list of examples)

A. During your last year of Government service, did anyone in your direct chain of supervision at any level, draft any part of the proposal, contract, modification, or task order, including, but not limited to, recommending the inclusion of any Contract Data Requirements List (CDRL), Data Item Description (DID), Statement of Work (SOW) provision, contract clauses, standards of performance, or review Government or Contractor proposed test plans? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

B. During your last year of Government service, did anyone in your direct chain of supervision have any role formulating Acquisition Strategy, to include identifying interested contractors, recommending a sole source contract, performing a market survey, performing a pre-award audit, advertising the proposal, participating in the Acquisition Strategy Panel, investigating or identifying sources, or discussing the proposal/contract with potential offerors? If so, describe your actions with regard to your role. (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

C. During your last year of Government service, did anyone in your direct chain of supervision have any role in the cost or technical evaluation of offers or selection of contractor? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

D. During your last year of Government service, was anyone in your direct chain of supervision assigned any task regarding the contract identified above? (yes/no/not sure) (If “yes” or “not sure,” describe fully the assignment, and the date of the assignment.)

6) During your last year of Government service, did any subordinate (anyone who worked for you in your chain of supervision) have the authority to approve, disapprove, or otherwise direct Government action, relating to contract performance or administration, of the Contract or other particular matter? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

EXAMPLES: (Not an all-inclusive list of examples)

A. During your last year of Government service, did anyone under your supervision, have any role in making decisions, giving advice, or making recommendations to the contracting officer, program manager, quality assurance evaluator, or anyone else, regarding evaluating any aspect of contractor performance, including, but not limited to, award fee determination, acceptability of performance, comments following a review of contract deliverables or reports, evaluation of work, approval of invoices for payment, CPAR ratings, or other evaluation of contractor work? (yes/no/not sure) (If “yes” or “not sure,” describe fully the subordinate’s role and the date the subordinate performed such a role.)

B. During the last year of Government service, did anyone in under your supervision have any role in recommending, advising, or determining what taskings should be

assigned to the contractor? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

C. During your last year of Government service, did anyone in your direct chain of supervision have any role in evaluating contractor performance, including whether the contractor met contract requirements or satisfied test plans? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

D. During your last year of Government service, did anyone in your direct chain of supervision have any role in approving or disapproving, advising, recommending action, evaluating or resolving any Requests for Equitable Adjustments, cost proposals, disputes, or claims? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)

E. During your last year of Government service, did anyone in your direct chain of supervision have any role in closing out the contract? (yes/no/not sure) (If “yes” or “not sure,” describe fully your role, and the date you performed such a role.)
