DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
9301 CHAPEK ROAD
FORT BELVOIR, VA 22060-5527

AMCCC-G 24 April 2007

MEMORANDUM FOR Personnel Planning to Depart Government Service or Seek Outside Employment

SUBJECT: Post-Employment Restrictions Guide

1. If you are planning on retiring or leaving government service to work for a government contractor, there are employment negotiations and/or employment restrictions that will apply to you. The U.S. Army Materiel Command (AMC) Office of Command Counsel provides post government employment assistance to its employees and serviced activities. AMC Ethics Counselors may be reached as follows:

Email Requests:	brian.howell3@hqamc.army.mil	
Written Requests:	AMCCC-G	
Oral Requests:	(703) 806-8763	DSN 656-8763
Facsimile Requests:	(703) 806-8874	DSN 656-8874

2. As part of the AMC Ethics Program, the attached Guide helps retiring or departing employees and soldiers adhere to the highest standards of ethical conduct. This Guide reflects all statutory and regulatory changes effective as of the date of publication. It will be continually updated to reflect future statutory and regulatory changes.

2. Post-employment restrictions are complex and overlapping, requiring careful guidance for the departing federal employee and soldier. While this Guide contains a summary of applicable laws and regulations, it is not intended as a substitute for legal counseling. Individuals who plan to leave federal service, who have already left service, or who seek outside employment, should request guidance from the Command's Ethics Counselors.

Attachment

ROBERT J. PARISE
Command Counsel
US Army Materiel Command

POST-EMPLOYMENT RESTRICTIONS GUIDE

TABLE OF CONTENTS

PAGE

I. **INTRODUCTION** 1

A. Purpose 1
B. Prohibited Dealings 1

II. **GENERAL RESTRICTIONS** 1

A. Use of Government Information 1
1. "Nonpublic Information" 2
2. Unauthorized Release of Procurement Information 2
3. Unauthorized Statements or Commitments With Respect to Award of Contracts 2
B. Use of Government Facilities 2
C. Use of Government Titles 3
D. Use of Official Positions 3

III. **EMPLOYMENT ACTIVITIES** 3

A. Relationships with Defense Contractors 3
B. Negotiating for Employment 3
1. General 3
2. Employment Contacts—Reporting an Disqualification Requirements 3
C. Travel Expenses for Job Interviews 4
D. Transition Leave, Permissive TDY, and Employment During Periods of Leave 4
E. Reserve Officers 5

PAGE

IV. **POST-EMPLOYMENT RESTRICTIONS** 6

A. Restrictions Applicable to All Officers and Civilian Employees 6
1. Permanent Bar - 18 U.S.C. §207 (a)(1) 7
2. Two-Year Official Responsibility Restriction on Switching Sides - 18 U.S.C. §207(a)(2) 8
3. One-Year Treaty/Trade Negotiation Restriction - 18 U.S.C. §207(b) 8

B. Applicable Only to "Senior Employees" 8
1. Definition of "Senior Employees" 8
2. One-Year Bar on Attempts to Influence Former Agency - 18 U.S.C. §207(c) 8
3. One-Year Bar on Representing a Foreign Government or Political Party - 18 U.S.C. §207(f) 9
4. "Very Senior" Employees Restrictions - 18 U.S.C. §207(d) 9

C. Self Representation 10

D. Applicable to Only Those Who Participated in Procurement - 41 U.S.C. §423 10

E. Applicable Only to Retired Officers 11
1. Employment by Foreign Governments - U.S. Const. 11
2. DOD Employment - 5 U.S.C. §3326 11
3. State and Local Government Employment 11

V. **DOD REPORTING REQUIREMENTS** 11

A. Disqualification Statement 11

B. SF 278 Termination Reporting Procedures 12

C. Executive Branch Confidential Financial Disclosure Report—OGE Form 450 12

D. Foreign Agents Registration Act 12

VI. **APPENDICES** .....

A. Disqualification Statement ..... A

B. Ethics Advisory Opinion Request Form ..... B

I. INTRODUCTION

A. Purpose.

This Guide provides a civilian employee or soldier departing federal service with a summary of current post-employment restrictions stated in federal laws and regulations. However, no guide can answer all questions, nor is this one designed to do so. Assistance is available from the Ethics Counselor of the installation or command where you last served in active federal service.

Several of the statutes discussed in this Guide, in particular, 18 U.S.C. §§203, 205, 207, and 208, are criminal statutes. Therefore, it is extremely important that you provide complete and relevant descriptions of your post government employment circumstances. The Ethics Counselor will base his/her opinion on the facts that you provide. Although you may rely on the oral or written advice of the Ethics Counselor, if the post government employment actions constitute a criminal event, the former official may still be prosecuted for a violation of post government employment statutes. Good faith reliance on such advice is a factor that the Department of Justice may take into account in the selection of cases for prosecution. In situations where the Ethics Counselor seeks an advisory opinion from the Office of Government Ethics (OGE) and OGE issues a ***formal advisory opinion*** in accordance with its regulations, the DOJ will not prosecute an individual who acted in good faith in accordance with that opinion.

Disclosures made by a current or former employee to an Ethics Counselor, to any Government attorney, or to an employee of OGE are not protected by an attorney-client privilege.

Government service is a public trust requiring military personnel and civilian employees to place loyalty to country, ethical principles, and law above self-interest. This public trust extends beyond Government service in the form of restrictions on employment, use of "inside" information, use of former Government titles, etc. In addition to covering the post-employment restrictions, this Guide reviews certain standards of conduct which apply to current federal employees.

B. Prohibited Dealings.

DA personnel are required to avoid dealings with former military or civilian personnel who violate Government post-employment restrictions. Additionally, DA personnel must report violations of post-employment restrictions and other ethical standards. It is your obligation as a former soldier and civilian employee to be aware of the standards of conduct which apply after you leave Government service. If the propriety of a future action remains doubtful, you should consult with legal counsel or the Ethics Counselor of your former command.

II. GENERAL RESTRICTIONS

A. Use of Government Information.

The use of "nonpublic information" to further your own private interest or that of another is prohibited.

1. **"Nonpublic information"** is information that is gained by reason of federal employment and that personnel know or reasonably should know has not been made available to the general public. It includes (a) information routinely exempt from disclosure under the Freedom of Information Act or otherwise protected from disclosure by statute, executive order, or regulation; (b) information designated as confidential by an agency; or (c) information not actually disseminated to the general public and not authorized to be made available to the public upon request.

2. **Unauthorized Release of Procurement Information**. Present and former DA personnel are prohibited from releasing to an individual, a business concern, or representatives thereof, any information concerning future DA requirements or proposed acquisitions by any contracting activity of DA. These releases can only be made by the appropriate agencies or by duly authorized individuals in connection with the proper discharge of official duties. The "Procurement Integrity Act," as amended (41 U.S.C. §423), restricts release of information related to a particular procurement. These restrictions are reflected in FAR §3.104-4(a) and (b). Government personnel not having a need to know shall not request release of "Source Selection Information" or "Proprietary Information."

a. "Source Selection Information" may not be disclosed during the conduct of a particular procurement. The Act and the FAR define this as information, the disclosure of which would jeopardize the integrity or successful completion of the particular procurement. For a more detailed definition *see* FAR §3.104-3.

b. "Proprietary Information" must be protected from disclosure at all times. In general, it is information submitted by a contractor and marked as proprietary. It includes information submitted in a negotiated procurement, contained in a bid prior to bid opening, or contained in cost or pricing data.

c. Penalties for improper release of source selection and proprietary information, during the conduct of the procurement, include fines of up to $100,000 and imprisonment of up to five years. Additional statutes and regulations covering classified information, "For Official Use Only" (FOUO) information, trade secrets and Privacy Act data carry separate penalties.

3. **Unauthorized Statements or Commitments with Respect to Award of Contracts.** Unauthorized discussions with contractors are prohibited. Only contracting officers and their duly authorized representatives, acting within their authority, are authorized to commit the Government with respect to the award of contracts or contract modifications and changes. Unauthorized personnel are prohibited from making any commitment or promise of a contract, and must make no representation that would be construed as such a commitment. Present and former DA personnel must never advise a business representative that they will attempt to influence another person or agency to give preferential treatment to the business representative's concern in the award of future contracts.

B. **Use of Government Facilities**.

While Government employees are generally prohibited from using Government typewriters, word processing equipment, copiers and clerical personnel for other than official Government business, these restrictions on the use of Government facilities do not apply to certain job seeking activities, if the employee meets the criteria for the Army Career and Alumni Program (ACAP) and uses Government facilities on their own to do what ACAP would have done for them. This relaxation of the historical restriction on use of Government facilities only extends to the employee performing a task for himself or herself. An employee may not use office personnel, other than ACAP office personnel, to perform those otherwise prohibited tasks.

C. **Use of Government Titles**.

DA personnel may not use their titles or positions for private gain, or in a way that might imply the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the individual is affiliated in a non-governmental capacity. This restriction includes non-profit organizations of which the employee is an officer or member. Retired soldiers and civilians are not prohibited from referring to their former positions with the Government in advertisements and resumes used to solicit commercial business. All such marketing and other materials should be in good taste, clearly indicate that it was a former position (not a current position), and not bring discredit upon the Government or the Department of the Army. Retired and reserve soldiers may use their military titles (e.g., Colonel) provided that they indicate their retired or reserve status.

D. **Use of Official Positions**.

DA personnel are prohibited from using their official position or title or authority associated with their public office to induce, coerce, or in any way influence any person, including subordinates, to provide any unauthorized benefits, financial or otherwise, to themselves or to friends, relatives, or persons with whom the employee is affiliated in a non-government capacity.

III. EMPLOYMENT ACTIVITIES

A. **Relationship with Defense Contractors**.

In general, Government employees may not use the Government's relationship with defense contractors for private benefit.

B. **Negotiating for Employment**.

1. **General**. DA officers and civilian employees must not participate in any matter if an entity, such as government contractor or other commercial or private organization with whom they are negotiating for employment has a financial interest in the matter. This restriction comes from a federal criminal statute, 18 U.S.C. §208. As a result, employees must disqualify themselves from participation prior to negotiating for employment. A sample disqualification statement is contained in Appendix A. For purposes of this restriction, "negotiating" includes any action that reasonably could be construed as an indication of interest in future employment. It includes sending letters or resumes, making telephone inquiries, or failing clearly to reject a personally directed proposal from the entity's representative regarding future employment. It is not necessary that there be any firm offer of employment or that the entity has even proposed an offer of employment. With regard to employment agencies, there is no need for a disqualification *as long as the identity of the prospective employer remains unknown to the individual seeking employment.* Once the individual learns the prospective employer's identity, the rules on disqualification apply.

2. **Employment Contacts -- Reporting and Disqualification Requirements.** This Procurement Integrity Act restriction applies to Government officers and employees participating personally and substantially in a competitive federal agency procurement in excess of the current simplified purchase threshold. During the procurement, if such persons contact or are contacted by a person who is a bidder or offeror in the procurement, the officer or employee must promptly report the contact in writing to their supervisor and their Ethics Counselor (AMCCC-G). Unless the officer or employee rejects the possibility of non-federal employment, he or she must disqualify himself or herself from further personal and substantial participation in the procurement. The disqualification will last until the Ethics Counselor determines that the person

may resume participation in the procurement. (See Part V.A.3 for a detailed discussion of this disqualification requirement.)

C. **Travel Expenses for Job Interviews**.

Soldiers and civilian employees may accept reimbursement for travel and other expenses from potential employers, including a DOD contractor, in connection with job interviews. The recipient must first comply with disqualification requirements to avoid a possible conflict of interest as discussed in paragraph B immediately above, and below in Part V, A of this Guide. (5 C.F.R. §2635.604, 18 U.S.C. §208, and 41 U.S.C. §423) The recipient must also notify his or her immediate supervisor of these travel arrangements prior to the travel date. Notification to the immediate supervisor should include some evidence that the potential employer offers the same travel benefits to all similarly situated applicants, not just those employed within DA. Individuals who file an SF 278, discussed in Part V of this Guide, must report travel-related payments and reimbursements from one source totaling more than $305.

D. **Transition Leave, Permissive TDY, and Employment During Periods of Leave**.

1. Personnel on leave from Government duties are still considered employed in Government service. This includes annual leave, leave without pay (LWOP), and transition (terminal) leave for both military and civilian employees. Federal criminal statutes (18 U.S.C. §§203 and 205) prohibit Government employees from performing or receiving compensation for representational services or by acting as an attorney or agent for a third party in relation to any claim or matter in which the Government has a substantial interest. These prohibitions apply to both personally rendered services and to compensation based on services performed personally or by others. They apply regardless of the intent of the parties and regardless of whether the Government employee has any ability to provide preferential treatment to the non-Government employer.

i. Your compensation from an employer must be based on an hourly rate or a salary basis, neither of which is dependent on the results of "representational" services that were 1) performed at the time you were a Government employee and 2) related to Government contracts, grants, claims or other matter where the Government is a party or has a direct and substantial interest before any department, agency, court, court-martial, officer, or any civil, military, or naval commission.

ii. You must not act as an agent or attorney on behalf of your employer before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest. Acting as an agent or attorney constitutes representational contact, which include telephone, voice mail, electronic mail, correspondence, and personal presence. We recommend that you do not call Government employees or offices about matters relating to your performance of any employer work effort, perform employer work effort at a Government site, or attend any meeting at which Government personnel are in attendance, whether the meeting takes place at Government or contractor locations. We further recommend that you do not submit any documentation or information to the Government that bears your name or other identification or permit other employees to use your name in connection with their own performance of the before-mentioned actions.

iii. Your employer may notify the Government that you are working on a particular effort, if the contract or other directive requires that the identity of persons working on the effort be provided by the employer. You may contact the Government about purely personal matters, such as your LWOP status, severance pay eligibility, priority placement, health benefits,

resignation, or retirement. You may also contact the AMC Office of Command Counsel with questions relating to ethics and standards of conduct.

iv. Before approving any outside employment with any prohibited source, your supervisor (the "Agency Designee") must coordinate in writing with the supporting Legal Office and Ethics Counselor. Employees shall not engage in outside employment or any other outside activity that conflicts with official duties. The DOD Joint Ethics Regulation (JER) requires that an employee who is required to file a financial disclosure report (OGE Form 450 or SF 278) shall obtain written approval from the Agency Designee before engaging in a business activity or compensated outside employment with a prohibited source. In general, an employer is a prohibited source, if they do business or seek to do business with the Department of Army. According to the JER, approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.

2. It is improper to request and grant permissive TDY to commence post-government employment. AR 600-8-10, paragraph 5-35, provides that permissive TDY is an authorization – not an entitlement -- and is to facilitate transition into civilian life ***for house-hunting and job-hunting***. Permissive TDY may be requested and granted to assist an individual who is retiring, involuntarily separating from military service, or separating under the VSI or SSB programs. The regulation's language precludes requesting and authorizing permissive TDY if the soldier intends to use the permissive TDY to begin working.

3. Individuals on transition military leave may be hired as civilian employees of the United States Government. 5 U.S.C. §5534a. There are some restrictions on military retirees taking DoD employment immediately after retirement from the armed services. These restrictions are explained more fully at paragraph IV.E.2.

4. Section 973(b) of the United States Code, as implemented by DOD Directive 1344.10, prohibit military members from holding a "civil office," i.e., a public office, in the government of any state or any political subdivision of a state, such as cities, counties, and school districts. For a position to be considered a "civil office" there are three requirements: (a) the position is created by law, (b) the position has specific duties imposed by law, and (c) the position involves the exercise of sovereign power. This statute applies to military members in a transition leave status. The penalty for violating the statute is that the individual ceases to be an officer in the Army. Mere employment by a state or local government during transition leave does not constitute serving in a "civil office." One must examine the particular position in order to make that determination. For this reason, if you are considering employment with a state or local government with the intention of working for it during transition leave, you should first consult with your Ethics Counselor to determine whether such employment would violate 10 U.S.C. §973 or DOD Directive 1344.10.

E. **Reserve Officers**.

Reserve officers returning to active duty for annual training or other federal service must be careful to avoid the appearance of any conflict of interest. For example, reserve officers who hold positions with defense contractors should avoid reserve duty or training positions with Government contracting offices and similar positions. JER 5-408 requires that the reserve officer and supported command screen reserve personnel for conflicts of interest:

> Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose

material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

IV. POST-EMPLOYMENT RESTRICTIONS.

When preparing to leave government service, you must be aware of several statutes and regulations which may impact on your post-employment interests. Generally, retiring or departing DA personnel are not prohibited from seeking or obtaining employment after their federal service, with the limited exception of 41 U.S.C. §423(d) which is discussed in paragraph IV.D, below. However, these laws do prohibit departing federal employees and soldiers from engaging in certain post-employment activities. Current DA personnel should not deal with present or former military or civilian employees whose conduct is in violation of these post-employment restrictions. Therefore, it is important to know the rules to avoid possible violations and to continue your professional relationships with military and civilian personnel.

A. **Restrictions Applicable to All Officers and Civilian Employees**.

The primary post-employment restrictions are contained in 18 U.S.C. §207. These restrictions apply to all officers and employees except enlisted personnel and certain "special government employees." Many of the terms used in this statute have a particular meaning. To facilitate your understanding of the statute, here are the definitions of some of the key terms:

(1) "Communication" – A former employee makes a communication when he imparts or transmits information of any kind, including facts, opinions, ideas, questions, or direction, to an employee of the United States, whether orally, in written correspondence, by electronic media, or by any other means. This includes only those communications with respect to which the former employee intends that the information conveyed will be attributed to himself.

(2) "Appearance" – A former employee makes an appearance when he is physically present before an employee of the United States, in either a formal or informal setting. Although an appearance also may be accompanied by certain communications, an appearance need not involve any communication by the former employee.

(3) "Behind the scenes assistance" – Unless specifically stated, providing assistance to another person, provided the assistance does not involve a communication or appearance by the employee before an employee of the United States does not violate the provisions of 18 U.S.C. §207.

(4) "With intent to influence" – A communication or appearance is made with intent to influence when made for the purpose of seeking a Government ruling, benefit, approval, or other discretionary action, or affecting Government action in connection with an issue or aspect of a matter which involved an appreciable element of actual or potential dispute or controversy. Certain communications to and appearances before employees of the United States are not made with intent to influence within the meaning of the statutory prohibition. Examples include, ***but are not limited to***, communications or appearances made solely for the purpose of: (a) making a routine request not involving a potential controversy, such as a request for publicly available documents or an inquiry as the status of a matter; (b) making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract; (c) making a communication at the invitation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by someone other than the United States where the work is

performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or (d) purely social contacts. Remember, however, that circumstances can change. If, at any time during the course of a communication or appearance otherwise permissible, it becomes apparent that circumstances have changed which would indicate that any further communication or appearance would be made with intent to influence, the former employee must refrain from such further communication or appearance.

There are situations where a former employee's mere physical presence, without any communication by the former employee concerning any material issue or otherwise may constitute an appearance with intent to influence an employee of the United States. One example is where a former employee accompanies individuals representing his new employer at a meeting in which the other individuals representing the new employer make statements with the intention of influence the former employee's former agency.

1. **Permanent Bar--18 U.S.C. §207(a)(1)**. This statute places a lifetime restriction on all former government officers or employees. The lifetime is the life of the particular matter, not the life of the former employee. This provision applies to representing any entity other than the United States, in an attempt to influence any officer or employee of the United States through an appearance or communication on a particular matter. This permanent bar applies where:

a. (i) the United States is a party or has a direct and substantial interest in the matter,

(ii) the matter involves a specific party, and

(iii) the former officer or employee participated personally and substantially in the matter as a Government officer or employee.

b A "particular matter" is broadly defined to include investigations, applications, requests for rulings or determinations, rulemaking, contracts, controversies, claims, charges, or judicial or other proceedings. The matter need not be procurement related. The matter must involve "specific parties" – usually government contractors, but may be any non-Federal party -- both at the time the former official participated as a Federal official and at the time the former official makes a communication or appearance. The "specific party" need not be the same party that participated at the time of the Federal official's performance. For example, if the program is supported by contractor A at the time of the Federal official's performance, and the official subsequently retires in works for contractor B, both contractors A and B would be "specific parties".

c. The restriction prohibits a federal worker from "switching sides" on the same matter worked on while with the Government. The prohibition covers matters in which the former officer or employee participated and now attempts to represent another before the Government. It covers either oral or written communications with the intent to influence the United States. It does not prohibit behind the scenes assistance. "Behind the scenes assistance" includes work performed away from a government site, communications (emails, telephone calls, memoranda, etc) and deliverables that do not identify the former Federal official, or communications not intended to be attributable to the former Federal official.

d. It is noted that former employees may represent themselves or immediate family members before the Government. This permanent restriction prohibits only representing others.

e. The restriction does not apply to communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the concerned governmental agency or department.

f. **Penalties**. Five years imprisonment and/or $50,000 civil fine per violation. Violations of section 207 can be charged as a felony or a misdemeanor or instituted as a civil action. Injunctive relief will also be available.

2. **Two-Year Official Responsibility Restriction On Switching Sides--18 U.S.C. §207(a)(2)**. This is essentially the same as the permanent bar, except that it is a two-year restriction after the termination of government employment. Under the same circumstances as described in A.1 above [18 U.S.C. §207(a)(1)], this restriction applies if instead of participating personally and substantially in the matter, the officer or employee knew or should have known that the matter was actually pending under his official responsibility during the last year of his federal employment.

a. Like the permanent bar, the matter need not be procurement related.

b. This prohibition covers essentially the same activities as in A.1 above, except that it applies to a person who acted as the supervisor, manager, or superior of the employee who participated personally and substantially in the action. "Official responsibility" means direct or administrative 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. All "particular matters" under consideration in an agency are under the official responsibility of the agency head and each is under that of any intermediate supervisor who supervises a person, including a subordinate, who actually participates in the matter.

c. The two-year period begins upon termination of service.

d. **Penalties**. Same as in 1 above.

3. **One-Year Treaty/Trade Negotiation Restriction--18 U.S.C. §207(b)**.

This statute applies to former officers and employees who personally and substantially participated in an ongoing trade or treaty negotiation on behalf of the United States during their last year of Government employment. They may not represent, aid, or advise anyone other than the United States concerning that ongoing trade or treaty negotiation for one year after leaving the Government. Penalties are the same as in 1, above. **This prohibition applies to behind-the-scenes assistance.**

B. **Applicable Only to "Senior Employees"**.

1. **Definition**. Employees paid at an Executive Level position, who serve military grade O-7 or above are "senior employees" including any individual whose rate of pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule. As of the date of this publication that amount is $145,320.

2. **One-Year Bar on Attempts to Influence Former Agency--18 U.S.C. §207(c) (Cooling-Off Period)**.

a. This statute prohibits a former senior employee or officer from representing anyone on a particular matter pending before, or of substantial interest to, his former agency for a period of one year. This revolving door provision is different from the previous restrictions in a number of ways. First, it does not require that the former employee have any prior involvement in the matter. Second, the matters covered are broader; they do not have to involve specific parties. Third, it is limited to contact with his or her former agency or agency employees. The senior

official may appear before, or act to influence any other part of the Government. The Department of Defense is divided into parent and subcomponent activities as listed below. A senior official who retired from the Department of the Army may represent a non Federal entity before the Department of the Navy, for example. However, if an Army senior official is detailed to another Department of Defense agency and retires from that assignment, then the one year ban will apply both to the Army and to the agency to which the official is detailed.

Parent: Department of Defense

Components:
Department of the Air Force
Department of the Army
Department of the Navy
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Threat Reduction Agency (effective February 5, 1999)
National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997)
National Reconnaissance Office (effective January 30, 2003)
National Security Agency

b. **Exceptions.** This restriction does not apply to individuals carrying out official representational duties as an employee on behalf of: (1) an agency of a State or local government; or (2) an accredited degree-granting institution as defined in the Higher Education Act of 1965, or a hospital or medical research organization exempted and defined under §501(c)(3) of the Internal Revenue Code.

c. This prohibition does not apply to behind-the-scenes assistance.

d. **Penalties**. Same as in A.1 above.

3. **One-Year Bar on Representing a Foreign Government or Political Party--18 U.S.C. §207(f)**.

a. Senior employees may not represent or aid or advise any foreign government or foreign entity before any department or agency of the United States within one year after the senior employee has left his or her position with the Government. The term "foreign entity" means the government of a foreign country or a foreign political party. **This prohibition applies to behind-the scenes assistance.**

b. **Penalties**. Same as in A.1 above.

4. **"Very Senior Employees" Restriction--18 U.S.C. §207(d)**.

a. 18 U.S.C. §207(d) applies to individuals who were paid at an Executive Level I salary, or certain other former employees who served in the Executive Office of the President or Vice President. For one year, they may not make appearances before or communications with an intent to influence any officer or employee of their department or agency or any person appointed to an Executive Level position.

b. **Exceptions.** Same as in B.2.b above.

c. **Penalties**. Same as in A.1 above.

C. **Self Representation**.

Self-representation is no longer prohibited under 18 U.S.C. §207 as amended.

D. **Applicable to Only Those Who Participated in Procurement--41 U.S.C. §423**.

1. This portion of the Procurement Integrity Act, as amended (41 U.S.C. §423), applies to former officers, enlisted members, and civilians who participated in a contracting action in excess of $10 million. Such former officials are prohibited from accepting compensation as an employee, officer, director, or consultant from the contractor for one year, if one or more of the following applies to the individual.

a. The former official served, at the time of selection of that contractor or the time of contract award to that contractor, as the Procuring Contracting Officer, the Source Selection Authority, a member of the Source Selection Evaluation Board, or the chief of a financial or technical evaluation team for that contract in excess of $10 million;

b. the former official served as the Program Manager, Deputy Program Manager, or Administrative Contracting Officer for that contract in excess of $10 million; or

c. the former official personally made a decision for the Federal agency to:

(i) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10 million to that contractor;

(ii) establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10 million;

(iii) approve issuance of a contract payment or payments in excess of $10 million to that contractor; or

(iv) pay or settle a claim in excess of $10 million to that contractor.

2. This law effectively prohibits employment with the contractor in question for a period of 1 year. This 1 year period begins when the former official took his or her last action or ceased responsibility for the contract, whichever is later. A very narrow exception exists for divisions and affiliates of the contractor that do not produce the same or similar products or services. Anyone considering this exception should contact their Ethics Counselor for an advisory opinion.

3. **Penalties**. Violation of this provision may result in a civil penalty against the former official of $50,000 for each violation, plus an amount equal to twice the amount of compensation received from the contractor. A contractor violation can result in a civil penalty against the contractor of $500,000 for each violation, plus an amount equal to twice the compensation offered or paid to the former official.

E. **Applicable Only to Retired Officers**.

1. **Employment by Foreign Governments--U.S. Const., Art. I, Sec. 9, Cl. 8**. The United States Constitution prohibits all retired military officers and retired, regular enlisted personnel from accepting any office, title, or employment from any foreign government. The prohibition does not apply to employment by international agencies such as the United Nations. There are no restrictions against working for a private enterprise or organization, which is substantially independent of a foreign government or its instrumentality. However, it is sometimes difficult to determine whether a foreign corporation or organization is a private concern or a part of the foreign government. AR 600-291 provides information on how to obtain permission to work for a foreign government.

2. **DOD Employment--5 U.S.C. §3326**. Section 3326 of title 5 of the United States Code prohibits the employment of any retired member of the Armed Forces to a civilian position in DOD (including NAF instrumentalities) within 180 days following retirement unless: (a) the appointment is authorized by the Secretary of a military department or his designee and, if appropriate, by OPM; or (b) the minimum rate of basic pay for the position has been increased under 5 U.S.C. §5303; or (c) a state of national emergency exists. After 180 days, retired military are not precluded from holding civilian positions with the United States Government or its instrumentalities. At the time of publication, it has been determined that a national emergency exists; therefore, the 180-day waiting period is currently waived. When considering a civilian position in DOD, retired members of the Armed Forces should check with the servicing personnel office to determine whether the 180-day prohibition is in effect.

3. **State and Local Government Employment**. There are no specific restrictions on employment of retired military personnel by domestic non-federal governments or agencies.

V. DOD REPORTING REQUIREMENTS

A. **Disqualification Statement**.

1. This written statement is required any time an employee or soldier has affiliations or financial interests that create conflicts or appearance of conflicts with official duties. An individual must notify his or her supervisor and Ethics Counselor, and should notify his or her subordinates, that he or she has an actual or apparent conflict. The statement disqualifies the employee or soldier from any official activities that are related to those affiliations or interests. The effectiveness of any disqualification will be evaluated periodically by an individual's supervisor.

2. Typically, this statement is used prior to initiating negotiations for outside employment involving a defense contractor, subcontractor, or other organization doing business with DOD. It is not always obvious which organizations do business with DOD as in the case of many universities or non-profit organizations. Therefore, it is a good idea to err on the side of caution. Disqualification statements are also used with the financial disclosure report (OGE Form 450 or SF 278) to indicate holdings with a defense contractor. The disqualification statement should be given to the individual's supervisor, with copies going to subordinates or others, to inform them to direct work involving the reported interests away from the reporting employee. A copy should also be provided the Ethics Counselor for filing and, if applicable, for submission with either the OGE Form 450 or SF 278. A sample disqualification statement is in the Appendix A.

3. **Individuals who Participate Personally and Substantially in a Procurement:** In addition to submitting a contact report (Part III.B.2), participants who must submit a disqualification are required to submit additional information and to provide the disqualification to additional officials. The provisions of FAR 3.104-6 require that such disqualifications be provided to the Head of the Contracting Activity or designee. (The AMC Ethics Counselor, AMCCC-G, is the designee for this purpose.) Copies of the disqualification must also be provided to the Procuring Contracting Officer, the Source Selection Authority (if any), and the participant's immediate supervisor. At a minimum, the disqualification shall --

a. Identify the procurement, including solicitation or contract number;

b. Describe the nature of the individual's participation in the procurement, specifying the approximate dates or time period of participation; and

c. Identify the bidder or offeror, describing its interest in the procurement.

The individual shall remain disqualified from the procurement until authorized to resume participation by the Head of Contracting Activity or designee. Again, the AMC Ethics Counselor, AMCCC-G, is the designee for this purpose. (See Appendix A for a sample disqualification.)

B. **SF 278 Termination Reporting Procedures**.

1. General officers, members of the Senior Executive Service (SES) and certain other civilian personnel (including those paid at a rate greater than GS-15 such as Scientific/Technical personnel) are required to file a termination SF 278, Financial Disclosure Report, prior to leaving Government service. These personnel should consult their servicing Ethics Counselor for assistance in completing this report. The report will cover the portion of the present calendar year up to the date of termination, and if the annual report has not yet been filed, the preceding calendar year. The report must be signed by the former senior official not later than 30 days after the last day of federal employment. The termination SF 278 is filed with the Ethics Counselor at the last duty station. Please note that a $200 fine is imposed for any SF 278 not filed within 30 days after leaving Federal service. Those who anticipate terminating employment before June 30, may request an extension of up to 45 days in order to file one consolidated annual and termination report. This combined report must be filed within 30 days after termination.

2. **Penalties**. Full range of civil or criminal penalties is possible. Civil: $5,000 civil penalty. Criminal: $10,000 fine, or imprisonment for not more than five years, or both for knowing or willful falsification of information required to be filed.

C. **Executive Branch Confidential Financial Disclosure Report--OGE Form 450**.

Former OGE 450 filers are not required to file a termination report. However, an annual report due at the time the officer or employee plans to leave federal service must be filed. In addition to filing annual statements, DA personnel will at all times avoid acquiring any financial interest or affiliation, or taking any official action, that could result in a violation or apparent violation of the conflicts of interest provisions.

D. **Foreign Agents Registration Act--22 U.S.C. §611**.

This law requires anyone who serves as an agent for a foreign government or foreign corporation within the United States to file a registration statement with the Attorney General. Failure to do so is a federal crime. Inquiries may be made to the Registration Unit, Criminal Division, Department of Justice, Washington, DC 20530.

VI. APPENDICES

A. Disqualification Statement

B. Ethics Advisory Opinion Request Form

Blank Page

APPENDIX A

MEMORANDUM FOR Immediate Supervisor: _____
Ethics Counselor: AMCCC-G
[ ] Immediate Subordinates: _____
[ ] Procuring Contracting Officer: _____
[ ] Source Selection Authority: _____

SUBJECT: Disqualification Statement

1. This is to notify you that I am seeking employment with the organization(s) listed below; therefore I am considered to have a financial interest in those organizations. Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. 2635.601 et seq.), the Department of Defense Joint Ethics Regulation (DOD 5500.7-R), and/or the Procurement Integrity Act , as amended (41 U.S. Code Section 423), I am required to disqualify myself from official actions related to the organization(s) listed at the close of this memorandum. If this disqualification relates to my participation in one or more procurements, the details of the procurement(s) and my participation are attached.

2. Accordingly, I may not participate personally and substantially in any official actions affecting an organization if my financial interests would create a conflict, or even the appearance of a conflict, with my official duties. My participation would be "personal" whether I act directly or through others. My participation would be "substantial" in any case in which my decision, approval, disapproval, recommendation, investigation, advice, or any other activity may contribute to or influence the official action. My participation in any official action would create a conflict, or at least the appearance of one, whenever it appears reasonably possible that such official action, whether on a particular matter affecting an organization or involving policies, standards, objectives, or other matters of general application, will have a direct and predictable effect on my financial interest in one or more organizations.

3. If such official action would otherwise have required my personal decision, approval, or disapproval, the matter should be referred to [IDENTIY ANOTHER PERSON—PREFERABLY SOMEONE LATERAL OR SUPERIOR TO YOURSELF].

(Signature Block)

[ ] Attachment (Procurement Details)

Covered Organization(s) -- Name, City, State:

APPENDIX A

Additional Information Regarding Disqualification Statement Dated _____

Name of Employee: _____ Phone: _____

Office Symbol: _____

This information relates to the Procurement Integrity restriction on Government officers and employees participating personally and substantially in a competitive federal agency procurement in excess of the current simplified purchase threshold. During the procurement, I contacted or was contacted by a person who is a bidder or offeror in the procurement. I am required to promptly report the contact in writing to my supervisor and Ethics Counselor.

[] Report already provided on (Date) _____

[] Report: Date of Contact: _____

Person Making Contact: _____

Employer: _____

_____

_____

Description of Contact: _____

_____

[] I immediately rejected the possibility of non-federal employment.

[] I did not immediately reject the possibility of non-federal employment.

- [] My disqualification Statement is attached.
- [] I understand that my disqualification will last until the Ethics Counselor determines that the person may resume participation in the procurement.

Identity the procurement, including solicitation or contract number:

_____

_____

_____

Description of my participation in the procurement, including the approximate dates or time period of participation:

_____

_____

_____

Identity the bidder or offeror to whom my disqualification applies, including a description of describing its interest in the procurement:

_____

_____

_____

_____

_____

Signature of Employee: _____ Date: _____

Appendix A, Page 2 of 2

APPENDIX B

POST-GOVERNMENT ETHICS QUESTIONNAIRE

INTRODUCTION

The purpose of this questionnaire is to give your ethics counselor information needed for an opinion on applicability 41 USC § 423 and other post-Government employment restrictions, such as 18 U.S.C. § 207.

Title 41 USC § 423, 48 C.F.R. § 3.104-6, and 5 C.F.R. § 2635.107 allow you to request a written agency ethics opinion on post-Government employment restrictions. However, if the information provided is incomplete or false, or if you fail to follow your ethics counselor's advice, you will not be immune from criminal prosecution or may be subject to penalties imposed by the Procurement Integrity Act. Ethics advice is substantially dependent upon your information. Therefore, as circumstances change, you have the duty to inform the Ethics Counselor so (s)he can determine if the advice originally given remains applicable to your situation. If you have changes to your employment information, you will need to inform the Ethics Counselor and you may want to submit a new questionnaire for a revised ethics opinion.

Information must be legible. Explain all acronyms and/or technical information, including but not limited to program names, projects or definitions.

NOTE: SUBMIT QUESTIONNAIRE TO THE ETHICS COUNSELOR AT YOUR LAST DUTY ASSIGNMENT

PRIVACY ACT STATEMENT

AUTHORITY: PRIVACY ACT OF 1974 (5 USC 552(A)(7)), 41 USC 423, 5 C.F.R. 2635.602, AR 340-21

PRINCIPAL USES: TO ENABLE ETHICS COUNSELORS TO RENDER ADVICE TO MILITARY AND CIVILIAN EMPLOYEES LEAVING GOVERNMENT SERVICE.

ROUTINE USES: 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 COULD RESULT IN RECEIPT OF

INCOMPLETE ADVICE OR THE INABILITY TO PROVIDE WRITTEN ETHICS ADVICE PURSUANT TO 41 USC 423.

NOTE: There is neither an attorney-client relationship nor an attorney-client privilege between you and the ethics counselor. Information provided on this form or to the ethics counselor is neither confidential nor privileged.

I

PRIOR ETHICS ADVICE

1. Have you received any oral or written ethics advice from a Government Ethics Counselor, inside or outside of DoD, concerning your job search or prospective employment?

Yes____ No____

2. If "Yes" Provide details. If written advice was previous was given, attach a copy of that advice. This includes any emails or communications whatsoever that you may have received.

_____

_____

_____

II

BASIC INFORMATION

1. Name _____

2. Office Phone (____)_____

   Home Phone (____)_____

3. Home Address_____

_____

_____

4. Office Address_____

_____

5 Address to which you want your written ethics advice sent. Home _____ Ofc _____

6. Grade or Rank: _____

7. Retirement Date: _____

Transition (formerly Terminal) Leave Date: _____

8. During the last year have you filed an SF 450, "CONFIDENTIAL FINANCIAL DISCLOSURE REPORT"? Yes ____ No ____

If "YES", for which job?

_____

_____

_____

9. Seeking employment by you or someone working on your behalf constitutes a financial interest in the companies in which you are seeking employment. Have you issued a disqualification statement naming the companies in which you are seeking employment, changed jobs or duties, or taken any other action to resolve a potential conflict of interest?

Yes ____ No ____

If you have issued a disqualification memo, attach a copy of the disqualification memo. If you have not issued a disqualification memo, explain how you have avoided conflicts of interest, specifically including persons with whom you have communicated, dates of communications and methods of communication.

_____

_____

_____

10. What is your current (or last) DoD assignment? Spell Out Acronyms

_____

_____

_____

_____

11. Attach your OER support form or job description and describe your duties, focusing on duties relating to defense contracts, acquisitions, or functions related to contract management (include names of programs and contractors involved). For those who are not in the acquisition or contract field, list major projects that you have worked on if not included in your OER support

form or job description. **Please include and clearly describe any duties that you or personnel under your direction have relating to or in any way involving any company with whom you are seeking employment.**

_____

_____

_____

_____

_____

12. List any projects that you were personally involved in or that were under your official responsibility:

_____

_____

_____

_____

_____

13. Were you involved in any trade or treaty negotiations? Yes_____ No_____
Briefly explain:

_____

_____

_____

14. With whom are you seeking employment?

_____

_____

_____

15. Are any of these entities affiliated with a foreign government? Yes_____ No_____

16. What actions have you or someone acting on your behalf taken concerning your future employment?

_____

_____

_____

17. What is your proposed job title and description of duties? (You may attach a job description or job announcement.)

_____

_____

_____

_____

18. Expected date of future employment? _____

19. Will you begin to work for a non-Government entity while on transition (formerly terminal) leave? Yes_____ No_____

20. Do anticipate that your future employer will place you in a Federal work site? Yes_____ No_____

NOTE: Military officers working on transition leave (like all Federal employees) are prohibited from representing their new employer to the Government. This makes problematic the increasingly common practice of contractor personnel physically working in Government offices. Accordingly, military officers are precluded from interacting or appearing in the Federal workplace of any agency as a contractor. Being present in Government offices on behalf of a contractor is a representation, which is prohibited by 18 U.S.C. § 205. Of course, military officers on transition leave may begin work with the contractor, but only "behind the scenes" at a contractor office or otherwise away from the Government workplace.

21. Will you take permissive temporary duty (PTDY)? Yes_____ No_____

NOTE: You should be familiar with the appropriate use of PTDY. The purpose of transition PTDY is to facilitate transition into civilian life for house and job hunting for soldiers. It is impermissible to work while on PTDY.

22. Will you be working for a state or local governmental entity? Yes_____ No_____

NOTE: While on active duty (including transition leave) military officers are prohibited by 10 U.S.C. § 973(b) from holding a "civil office" with a state or local government.

III

QUESTIONS RELATING TO PROCUREMENT INTEGRITY - 41 U.S.C. § 423

1. Since 1 January 1997, have you been assigned to the following duties, or personally taken one of the following actions, involving a contract award, payment or claim in excess of $10,000,000?

A. Procuring Contracting Officer or Source Selection Authority. Yes ____ No ____

B. Serve as a Member of a Source Selection Evaluation Board, or as a Chief of a Financial of a Financial or Technical Evaluation Team. Yes ____ No ____

If "Yes," designate the position: _____

C. Program Manager, Deputy Program Manager, or Administrative Contracting Officer. Yes ____ No ____

If "Yes," designate the position: _____

D. Award of a Contract, Subcontract, Modification, Task Order or Delivery Order, or Payment of a contract Claim. Yes ____ No ____

E. Establishing overhead or other rates. Yes ____ No ____

F. Approval of a contract payment. Yes ____ No ____

2. If you answered "Yes" to any of these actions, identify the contract in which you performed that function.

_____

_____

_____

_____

3. On each of those actions to which you answered "Yes," identify the date when you took the action or were last involved in that process.

_____

_____

_____

IV

REQUEST

I request a written ethics opinion based on the information I provided in this Questionnaire, and I Certify the information to be true and correct to the best of my knowledge and belief.

Signature _____ Date _____

SUBMIT REQUEST TO THE ETHICS COUNSELOR FOR HQ AMC OR MSC.