

and necessary supporting information from the DoD employee and forward it to the DoD component DAEO or designee who has been specifically delegated the authority in writing to issue the written advice.

§ 84.32 Restrictions resulting from procurement activities.

(a) *10 U.S.C. 2397b—(1) Restrictions.* This statute prohibits the following three categories of former DoD employees from accepting compensation from the concerned defense contractor during the two-year period after separation from DoD:

(i) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of a GS/GM-13, who:

(A) On a majority of their working days during a two-year period prior to separation;

(B) Performed a procurement function relating to a defense contract;

(C) At a site or plant owned or operated by the defense contractor and which was the DoD employee's principal work location.

(ii) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a GS/GM-13, who:

(A) On a majority of their working days during the two-year period prior to separation;

(B) Performed a procurement function related to a major defense system and;

(C) In the performance of the procurement function, participated personally and substantially on any occasion and in a manner involving decision-making responsibilities with respect to a contract for the system;

(D) Through contact with the defense contractor; and

(iii) 0-7s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a Senior Executive Service position, who during the two-year period prior to separation, acted as a "primary representative of the United States" in negotiation of a defense contract in an amount in excess of \$10 million or settlement of an unresolved claim exceeding \$10 mil-

lion. An unresolved claim is valued by the greater of the amount of the claim or the amount of the settlement.

(2) *Penalties and effective dates.* Former DoD employees who knowingly violate this statute are subject to a civil fine up to \$250,000. Defense contractors who knowingly offer or provide any compensation to individuals in violation of this statute are subject to a civil fine up to \$500,000.

(i) The effective date of this law was April 16, 1987. The law does not prohibit the continuation of defense contractor employment begun or compensation accepted before then. If an employee separated from DoD prior to April 16, 1987, the statute does not apply. However, former DoD employees who were still employed or on active duty on or after April 16, 1987 must comply fully with its provisions, if within its scope.

(ii) For the period of December 1, 1989 until May 31, 1991, the statute was suspended and employment or acceptance of compensation during that period could not violate the statute. Questions about the effect of the suspension should be referred to the local Ethics Counselor.

(3) *Written opinion.* (i) Before accepting compensation from a defense contractor, a DoD employee or former DoD employee is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such written opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request.

(ii) Ethics Counselors who have not been delegated authority in writing to issue 10 U.S.C. 2397b written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request together with all necessary information.

(iv) A written opinion that this statute is not applicable to a specific situation, if based on a complete disclosure of all relevant information, creates a

conclusive presumption that the receipt of compensation from a particular defense contractor is not a violation of the law.

(v) A copy of each 10 U.S.C. 2397b written opinion shall be retained by the DoD component DAEO or designee for three years.

(4) *DoD interpretation of 10 U.S.C. 2397b.* (i) If a DoD employee had been conducting all negotiations with a \$10 million defense contractor on a major defense contract action of \$10 million or more, but a superior DoD employee intervened directly in the negotiating process, both DoD employees would be considered “primary” representatives for that defense contract action.

(ii) 10 U.S.C. 2397b does not prohibit any former DoD employee from accepting compensation from any defense contractor that, during the fiscal year preceding the fiscal year in which compensation is accepted, was not a defense contractor or was a defense contractor whose contracts totalled less than \$10 million.

(iii) 10 U.S.C. 2397b prohibits employment with particular defense contractors, not subcontractors, but former DoD employees cannot avoid its consequences merely by forming their own company and then “subcontracting” themselves to otherwise prohibited defense contractors.

(b) *41 U.S.C. 423—(1) Restrictions.* This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(i) Participating in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a defense contract for such procurement; or

(ii) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

(2) *Period of restrictions.* Both restrictions apply for a period of two years from the date of the former DoD employee’s last personal and substantial participation in the procurement on behalf of the Federal Government. Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

(3) *Written opinion.* (i) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See 48 CFR 3.104–8(e).

(ii) Ethics Counselors who have not been delegated specific authority in writing to issue 41 U.S.C. 423 written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request, together with all necessary information.

(iv) Where the DoD employee or former DoD employee relies in good faith on a written opinion that this statute is not applicable to a specific situation, the DoD employee or former DoD employee shall not be found to have knowingly violated the restrictions of the statute.

(v) A copy of each 41 U.S.C. 423 opinion shall be retained by the DoD component DAEO or designee for three years.

§ 84.33 Restrictions on retired military members.

(a) *18 U.S.C. 281(a).* This statute restricts the selling activities of retired military officers. The provisions of this statute were suspended by the Federal Acquisition Streamlining Act of 1994 through December 31, 1996.

(1) *Restrictions.* A criminal statute, 18 U.S.C. 281(a), provides that for a period of two years after retiring, no retired military officer may receive compensation for representing any other individual in the sale of anything to the Federal Government through the department in which he holds a retired status.

(i) The term “department” refers to individual DoD components, not DoD as a whole, insofar as it concerns retired military officers. For example, this statute does not prohibit retired