UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
ACQUISITION AND GRANTS OFFICE

November 17, 2015

MEMORANDUM FOR: Deputy Assistant Administrators
Staff Office Directors

FROM: Mitchell J. Ross
Director, Acquisition and Grants Office

SUBJECT: Acquisition Alert 16-02 Post-Government Employment Restrictions

The purpose of this memorandum is to increase awareness of and compliance with the post-Government employment restrictions applicable to federal employees engaged in service to NOAA under contractual arrangements.

Federal laws and regulations impose certain restrictions on federal employees seeking Government employment after leaving Government service. This alert prescribes terms to be included in NOAA solicitations and contracts requiring all contractors to acknowledge that they have notified former NOAA employees providing service to NOAA under their contracts of post-Government employment restrictions.

Questions pertaining to the Acquisition Alert should be directed to Justin Cofer, Acquisition and Grants Office (AGO), Policy and Oversight Division (POD) at Justin.L.Cofer@noaa.gov, or by telephone at (816) 823-3820.

Attachment

Acquisition Alert 16-02 Post-Government Employment Restrictions

November 17, 2015

ACQUISITION ALERT 16-02

Post-Government Employment Restrictions

This Acquisition Alert (AA) is being transmitted to all NOAA Heads of Contracting Offices for dissemination within their respective Acquisition Divisions.

1. Purpose: The purpose of AA 16-02 is to increase awareness of and compliance with the post-Government employment restrictions applicable to federal employees.

2. Background: Federal laws and regulations impose certain restrictions on federal employees after leaving Government service. This AA provides an overview of those restrictions most relevant to NOAA employees involved in acquisition and prescribes language to be included in NOAA solicitations and contracts. The language requires contractors to acknowledge that they have notified former NOAA employees providing service to NOAA under their contracts of post-Government employment restrictions.

a. Before Leaving Government

i. An employee may not work on a matter (such as an existing or future contract or grant) that would have a direct and predictable effect on the employee's financial interests or on the financial interests of a person or organization with whom the employee is negotiating or has an arrangement concerning prospective employment. (18 U.S.C. § 208)

ii. An employee may not work on a matter if the employee is "seeking employment" with a person or organization affected by that matter, even if the employee's job search has not progressed to actual negotiations. (5 C.F.R. Part 2635)

iii. An employee working "personally and substantially" on a procurement for a contract worth more than the simplified acquisition threshold (currently $150,000) must provide written notice of a contact with an offeror about prospective employment, even if the employee immediately rejects the possibility of employment. The employee must file a written disqualification memo if the employee commences to seek employment. (41 U.S.C. § 2103; 48 C.F.R. Part 3)

iv. An offeror who engages in employment discussions with a federal employee involved in an acquisition subject to the restrictions of 41 U.S.C. § 2103 and who knows that the federal employee has not done the required notification is subject to criminal, civil, and administrative penalties. (FAR 3.104-8(b))

b. After Leaving Government

i. Permanent ban for specific party matter – A former employee is prohibited from having contact with an employee of any Federal agency or court, on behalf of another person or entity, concerning a specific party matter (such as a contract or grant) with which the former employee was involved as a Government employee. (18 U.S.C. § 207)

ii. Two-year ban for specific party matter (official responsibility) – A former employee is prohibited for two years from having contact with an employee of any Federal agency or court, on behalf of another person or entity, concerning a specific party matter (such as a contract or grant) for which the former Government employee had official responsibility in his last year of Government service. (18 U.S.C. § 207)

iii. One-year ban for senior employees – A former high-level employee is prohibited from having contact with an employee of his or her former Federal agency, on behalf of another person or entity, concerning any official matter for one year. (18 U.S.C. § 207; 5 U.S.C. § 5311)

iv. Two-year ban for senior political appointees – A former senior political appointee shall not communicate with or appear before an officer or employee of his or her former Federal agency, on behalf of another person or entity, concerning any official matter for two years. (18 U.S.C. § 207)

v. One-year compensation ban for employees involved in procurement –

1) A former employee may not accept compensation from a contractor within one year after the former employee served as the contracting officer, source selection authority, a member of the source selection evaluation board, chief of a financial or technical evaluation team, program manager, or deputy program manager, in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000. (41 U.S.C. § 2104; FAR 3.104-3(d))

2) A former employee may not accept compensation from a contractor within one year after the former employee personally made for the federal agency a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor; establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of $10,000,000; approve issuance of one or more contract payments in excess of $10,000,000; or pay or settle a claim in excess of $10,000,000 with that contractor. (41 U.S.C. § 2104; FAR 3.104-3(d))

3) Advisory ethics opinion – An official or former official who does not know whether he or she would be precluded from accepting compensation from a particular contractor may seek an advisory opinion from the Ethics Law and Programs Division of the Office of General Counsel.

3. Applicability: This acquisition policy is applicable to all NOAA Line and Staff Offices.

4. Policy:

a. Solicitation and Contract Language: Contracting Officers shall include the attached language, *Notice of Post-Government Employment Restrictions*, in all solicitations and contracts exceeding the simplified acquisition threshold.

b. Contractor Acknowledgment: To maximize awareness of and improve compliance with post-Government employment restrictions, NOAA shall include in all solicitations and contracts exceeding the simplified acquisition threshold the attached language. By submission of an offer in response to a NOAA solicitation or acceptance of a contract, the contractor acknowledges the restrictions on current and former NOAA employees - and further acknowledges that it has provided notice to their former NOAA employees of post-Government employment restrictions that may be applicable to them.

c. NOAA Employee Awareness: To maximize awareness among NOAA employees, the NOAA Acquisition and Grants Office (AGO) has summarized the post-Government employment restrictions most relevant to NOAA employees involved in acquisition above. AGO encourages NOAA employees to consult the Department's Ethics Law and Programs Division for specific guidance at ethicsdivision@doc.gov or (202) 482-5384.

5. Point of Contact: Questions concerning this Acquisition Alert should be directed to Justin Cofer, AGO, Policy and Oversight Division (POD) at Justin.L.Cofer@noaa.gov or (816) 823-3820.

Attachment:

NOAA Solicitation and Contract Language – *Notice of Post-Government Employment Restrictions (2015)*

NOAA Solicitation and Contract Language

As prescribed in Acquisition Alert 16-02, use the following language in all solicitations and contracts exceeding the simplified acquisition threshold:

NOTICE OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS (OCT 2015)

By submission of an offer in response to a NOAA solicitation or acceptance of a contract, the contractor acknowledges the restriction on current NOAA employees regarding contact with offerors regarding prospective employment and the corresponding obligations for contractors who engage them. The contractor further acknowledges that it has provided notice to former NOAA employees who will provide service to NOAA under the contract of post-Government employment restrictions that apply to them. Such restrictions include, but are not limited to, those set forth in:

(a) 41 U.S.C. § 2103 regarding contacts between a federal employee working on a procurement and an offeror about prospective employment;

(b) 18 U.S.C. § 207 regarding the restrictions on former federal employees having contact with a federal agency on behalf of another person or entity concerning a specific party matter with which the former employee was involved as a federal employee or for which the former federal employee had official responsibility;

(c) 18 U.S.C. § 207 regarding the restrictions on former senior employees and senior political employees from having contact with his former federal agency on behalf of another person or entity concerning any official matter; and

(d) 41 U.S.C. § 2104 regarding the restrictions on a former federal employee involved in an acquisition over $10,000,000 from accepting compensation from a contractor.

(End of solicitation and contract language)