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**DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221**

MAY 22 2014

This letter responds to your March 30, 2014, Freedom of Information Act request for written ethics opinions produced by the DAEO at DLA Headquarters during calendar year 2013.

The enclosed records are being released to you, in part, as portions are withheld pursuant to exemption U.S.C. §552(b)(6), personal privacy.

Exemption b(6) protects information about individuals when disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Names and personal information of individuals and contact information and signatures of DoD personnel are withheld.

You have the right to appeal this partial denial. An appeal must be made in writing to the General Counsel and reach the General Counsel's Office within 60 calendar days from the date of this letter, and no later than 5:00 pm Eastern Standard Time. The appeal should include your reasons for reconsideration and enclose a copy of this letter. An appeal may be mailed, emailed to hq-foia@dla.mil, or faxed to 703-767-6091. Appeals are to be addressed to the General Counsel, Defense Logistics Agency, ATTN: DGA, Suite 1644, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060-6221.

No fees are charged. Should you have any questions or require further information, please contact Ms. Deborah Teer at 703-767-5247 or Deborah.teer@dla.mil. Please reference our case number DLA-14-HFOI-00065, in any subsequent communication regarding this request.

Sincerely,

A handwritten signature in black ink, reading "James M. Coyne", is positioned above the typed name.

James M. Coyne
Deputy General Counsel

Enclosure:
as stated



DEFENSE LOGISTICS AGENCY
ENERGY
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6222

DLA Counsel-Energy

November 12, 2013

(b)(6)

Via email

SUBJECT: Post-Government Employment Restrictions

Dear (b)(6)

This letter is in response to your November 6, 2013 request for a post-employment opinion regarding your employment with NES.

A. Background

At this time, the scope of work for your NES includes managing engineers for network firewalls for DLA. Based upon the information you provided, you had no interactions with NES relating to contract oversight or other matters under your purview while an employee of DLA.

Your last position with the Federal Government was as the DLA (b)(6) (b)(6) for Defense Travel System from (b)(6) From (b)(6) (b)(6) you were given the role of transferring the Enterprise Technology Network (ETN) in to the DLA NOSC for management. Prior to that, you served as the (b)(6) (b)(6) for DLA in Afghanistan where you were responsible for the management of all DLA personnel in Afghanistan.

During our discussion, you indicated that in 2009, you helped put together the requirements package for the ETN. However, as NES, your former employer, intended to compete for the contract, (b)(6) removed you from the requirements team. You were not involved in the source selection process.

Application of Post-Employment Statutes

While the post-employment laws do not bar you from working for or providing services to NES, certain laws may restrict the type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes, including 41 USC §423(f), 18 USC §207(a) (1), and 18 USC §207(a) (2).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits former employees from accepting compensation from a contractor for a period of one year if they served in any of seven positions,

or made any of seven types of decisions, on a contract award in excess of \$10 million to that contractor. The one-year ban begins after the official completes serving on the contract in one of the seven positions and seven decisions below:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a contract or subcontract modification over \$10 million.
- 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.

A technical application of the law indicates that you were not involved with the acquisition planning process for existing NES procurements within one year of leaving federal service. Therefore, the one-year prohibition at 41 USC § 423(f) does not apply and you may accept compensation from NES.

Lifetime Ban, 18 USC §207(a) (1)

Title 18 US Code Section 207(a) (1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if **all** of the following eight conditions occur:

1. You were a military officer or civilian employee of the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract or a project),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter,
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example),

6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information, you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The "*life*" in question is the "*life of the matter*," not your lifespan. "Particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, project, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To "participate personally and substantially" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action. This would include participation of a subordinate if actually directed by you in the matter. The goal of Section 207(a) (1) is to prevent employees from "switching sides."

If you personally and substantially participated in a particular matter and the lifetime ban applies, you may not communicate with or appear before a government officer or employee concerning any of these contracts or issues on behalf of someone other than the United States, with the intent in making the communication or appearance to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something). A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your attendance is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary Government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken.

While the lifetime representation ban prohibits contact with Federal employees, you are not prohibited from providing "behind-the-scenes" assistance, explained in detail below, in connection with the representation of another person.

Two Year Representation Ban, 18 USC §207(a)(2)

Title 18 U.S. Code Section 207(a) (2) provides that if a particular matter was under your official responsibility during your last year of Government service, even if you did not personally participate in it, you are barred from making representational contacts about that matter for two years. You violate this law if all of the following eight conditions occur:

1. You were a military officer or civilian employee of the Executive Branch,

2. While you were working for the government there was a government contract, or other particular matter in which the United States had a direct and substantial interest, that was pending **under your official responsibility during your last year in the government**,
3. At the time the matter was pending under your official responsibility during your last year in the government, there was another party involved in the matter,
4. You leave the Federal government,
5. During the first two years after you leave the government, you communicate with or appear before a Federal employee regarding the same contract or other matter,
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government, and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that was pending under your official responsibility during your last year in the government.

"Official responsibility" means "the 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." As the former (b)(6) for DTS, all particular matters under consideration in your AOR were under your official responsibility. The same restrictions described above, regarding communicating or appearing before government employees with the intent to influence, apply for two years following your departure from federal service for those matters you supervised for the last year of your federal service. The ban applies from the date of departure from federal service, not the date you recused yourself from participating in matters impacting a particular entity.

Based upon the information provided, NES has not conducted business with the Government that fell under your official responsibility during your last year in the Government and the two-year representational ban does not apply.

"Behind the Scenes" Activity Allowed under 18 USC § 207

The representation bans of 18 USC § 207 prohibit contact with Federal employees (i.e., through communications or appearances). A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. A January 19, 2001 Office of Legal Counsel (OLC) opinion added significant complexity to the "behind-the-scenes" exception. It established the principle that it is not permissible for a former employee to convey information to the Government through an intermediary with the intent that the information be attributed to him. This action would be sufficient to constitute prohibited representation or communication to the Government with intent to influence. While it established that principle, unfortunately, it did not provide former officials with any bright line rules to guide their conduct.

The bottom line is that you may not make representations to the Federal Government concerning any of these contracting actions/issues or projects in which you participated personally and substantially. However, you may provide consulting services to these

contractors, even for contracts/matters in which you participated, provided that it is "behind-the-scenes" advice and assistance and provided that you do not reveal procurement sensitive, FOUO or other information acquired during the course of your employment and not legally available to public, as more fully discussed below. You may work directly with these contractors on these contracts/issues; however, you must not allow your name or documents that identify you to be passed on to the government. You want to make sure that none of the information presented to the government can be identified as attributable to you.

You Must Not Disclose Contractor Proposal Information, Source Selection and Proprietary Information

By virtue of your position, you may have had access to contractor proposal information, source selection information and other confidential or proprietary information. You may not knowingly disclose contractor proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. Release or use of this information after award may be prohibited by the Privacy Act, Trade Secrets Act and other laws. Additionally, pursuant to DoD regulations, certain information remains procurement sensitive even after contract award. Please use caution in using or sharing this type of information in any future work. I am available to discuss this in detail if you have any questions or concerns.

Other applicable statutes prohibiting the theft or the unauthorized dissemination or possession of government information include, 18 U.S.C. §§ 641 penalizing improper use of records, § 793 penalizing the disclosure of certain national defense information, § 794 penalizing the delivery of defense information to aid a foreign government, or 50 U.S.C. § 783 penalizing improper communication of classified information. As such, you must maintain the confidentiality of protected government information disclosed to you in the course of your employment.

Please be aware that there is no attorney-client relationship established between us. The information you provided to me is not confidential and is necessary to provide written ethics advice. The above constitutes the opinion of an agency ethics official based on the information you provided to me in emails and in-person conversations. Should circumstances change from the information you provided or you have any questions, please seek further ethics advice.

I can be reached at (b)(6) if you have any questions.

Sincerely,

(b)(6)

Sara L. Thompson
Ethics Counsel



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

DG

July 11, 2013

(b)(6)

Sent via email

Re: Ethics Opinion - Post-Government Employment with Booz Allen Hamilton

This letter responds to your request for a post-employment opinion regarding your potential employment with Booz Allen Hamilton, a strategy and technology consulting firm. According to Booz Allen Hamilton's website, it provides management, technology and security services, primarily to civilian government agencies and as a security and defense contractor to defense and intelligence agencies, as well as civil and commercial services. The scope of service includes strategic planning, human capital and learning, communication, operational improvement, information technology work, system engineering, organizational change efforts, modeling and simulation, program management, assurance and resilience, and economic business analysis.

You officially retired from federal service in March 2012. Your last position was that of (b)(6) (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6). In this position, you served as DLA's (b)(6). You assisted the DLA Director in the direction, management, and administration of Agency activities and business operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA's (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency executives, you established priorities and frameworks for the analysis of and presentation of issues for the



Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions.

Prior to serving as the DLA (b)(6), you served as the (b)(6) Logistics Operations, DLA from (b)(6). In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the COCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's busiBOOZ ALLEN HAMILTONs policies, goals, program requirements, strategic approaches, and budgetary requirements.

From (b)(6), you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics- cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

You are considering entering into a consulting agreement with Booz Allen Hamilton. As part of your consulting agreement, you provide the scope of services you would perform as follows:

1. Identify and Prioritize Opportunities: Review DLA's strategic plan and vision, their priorities for FY13-FY15, plans for supply chain transformation from an enterprise level, and their plans to introduce efficiencies both on need and available resources; review Booz Allen pipeline and help identify and prioritize strategic opportunities; identify supply chain opportunities.

2. Support Strategy and Capture: Assist in selecting the top three or four opportunities that result from the above analysis and assist in developing a Booz Allen strategy (people, solutions, investment

needs), developing a tactical call plan to shape/share our capabilities with appropriate DLA clients, and facilitate office calls at the right level and to the right potential clients (those known to be receptive to the use of contractors in general and Booz Allen Hamilton particular).

3. Provide Thought Leadership: Assist as required in the execution of high priority engagements from a thought leadership perspective (to include blue/silver/pink/red team reviews as needed, identification and vetting of potential business partners and/or staff additions).

Application of Post-Employment Bans to Employment with Booz Allen Hamilton

While the post-employment laws do not bar you from working with Booz Allen Hamilton, certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC §207(a)(1), 18 USC §207(a)(2), 18 USC §207(c) and 41 USC §423(f).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While being employed by Booz Allen Hamilton, the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of Booz Allen Hamilton applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided and previous post-employment discussions, you did not serve in any of the seven positions or make any of the seven decisions regarding any Booz Allen Hamilton contracts. Consequently, the PIA does not restrict or ban you from receiving compensation as consultant with Booz Allen Hamilton.

18 USC §207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You were an employee in the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter,
4. You leave the federal government.
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example),
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The "life" in question, is the "*life of the matter*," not your lifespan.

"Particular matter" means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To "participate personally and substantially" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on available information, you advised me that, in the past two years, you have not participated personally and substantially in particular matters involving Booz Allen Hamilton, to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting Booz Allen Hamilton.

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government

employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than Booz Allen Hamilton, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of Booz Allen Hamilton, or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with Booz Allen Hamilton. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved Booz Allen Hamilton as specific parties.

Conclusion

This memorandum, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice memorandum, nor the provision of this memorandum, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at (b)(6)

(b)(6)

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

DG

March 14, 2013

MEMORANDUM FOR (b)(6)

SUBJECT: Post-Government Employment with IronPlanet

This responds to your February 15, 2013 email request for a post-employment opinion regarding your potential employment with IronPlanet, a leading online marketplace for used heavy equipment. According to IronPlanet's website, its sellers achieve more profitable sales through low transactions costs and better price realizations through a global audience of buyers. Their guaranteed inspection reports and exclusive IronClad Assurance enable buyers to bid with a high degree of confidence.

You officially retired from federal service in (b)(6). Your last position was that of (b)(6) (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6). In this position, you served as DLA's (b)(6). You assisted the DLA Director in the direction, management, and administration of Agency activities and business operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency executives, you established priorities and frameworks for the analysis of and presentation of issues for the Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions.



Prior to serving as the DLA (b)(6), you served as the (b)(6) Logistics Operations, DLA from (b)(6). In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the COCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's business policies, goals, program requirements, strategic approaches, and budgetary requirements.

From (b)(6) you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics- cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

You are considering entering into a consulting agreement with IronPlanet. You state that IronPlanet has never done business with DLA wants to compete for the upcoming Reutilization and Marketing solicitation. As part of your consulting agreement, you provide the scope of services you would perform as follows:

1. Advise Iron Planet personnel on how the government conducts business, specifically in the areas of forward and reverse logistics, contracting, procurement and purchasing; information technology; government program and project management; data management; business processes and reengineering.
2. Advise and assist IronPlanet in reviewing solicitations and determine IronPlanet's likelihood of competing; advise on partnership, if need, and other aspects of successfully offering on government contracts.

3. Assist IronPlanet in developing tailored solutions for customers in the Federal and commercial space based on an understanding of customer needs and IronPlanet's capabilities.

4. Work with other IronPlanet partners to create value for clients.

Section A: Restrictions Regarding Former Agency

One Year No-Contact Rule (Cooling Off) (18 USC §207(c))

As a former Senior Executive and (b)(6) DLA, you may not, for one year after retiring, make any communication to, or make any appearance before, any DLA employee with the intent to influence the employee on behalf of IronPlanet or any company. This rule applies to all DLA matters, whether or not you were personally involved. 18 USC §207(c).

18 USC § 207(c) imposes a one-year ban following retirement on communicating with your former agency on behalf of a third party, in connection with any matter on which the third party seeks official action from your former agency. "Senior employees" include Flag Officers and Senior Executive Service Employees (SES) Levels 5 and 6. Under this law, "senior employees" may not, for one year after leaving their agency, make any communication to, or appearance before, any employee of their former agency (or the President or Vice President), with the intent to influence that person, on behalf of any third person, in connection with any matter on which the third person seeks official action by their former agency.

The one-year no-contact rule prohibits contact with Federal employees, i.e., communicating with or appearing before "any officer or employee of the department or agency" in which you served. I note that there are two exceptions. The rule only limits your communications and appearance. It does not prohibit you, even when the ban applies regarding a certain matter, providing "behind-the-scenes" assistance to IronPlanet or a company on any particular matter, e.g. drafting but not signing, a letter to the agency. The rule applies to all matters, whether or not you were involved in the matter while working for the agency. The rule does not prevent you from giving testimony under oath, or from making statements required to be made under penalty of perjury.

Section B: Application of Post-Employment Bans to Employment with IronPlanet

While the post-employment laws do not bar you from working with IronPlanet, certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC §207(a)(1), 18 USC §207(a)(2), 18 USC §207(c) and 41 USC §423(f).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While being employed by IronPlanet, the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of IronPlanet applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided and previous post-employment discussions, you did not serve in any of the seven positions or make any of the seven decisions regarding any IronPlanet contracts. Consequently, the PIA does not restrict or ban you from receiving compensation as consultant with IronPlanet.

18 USC §207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You were an employee in the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter,
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example),
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and

8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The "life" in question, is the "*life of the matter*," not your lifespan.

"Particular matter" means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To "participate personally and substantially" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on available information, you advised me that, in the past two years, you have not participated personally and substantially in particular matters involving IronPlanet, to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting IronPlanet.

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than *NES*, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of IronPlanet, or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the

National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with NES. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved IronPlanet as a specific parties.

Conclusion

This memorandum, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice memorandum, nor the provision of this memorandum, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at (b)(6)

(b)(6)

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

DG

March 14, 2013

MEMORANDUM FOR (b)(6)

SUBJECT: Post-Government Employment with Johnson Technology Systems, Inc.

This responds to your February 18, 2013 email request for a post-employment opinion regarding your potential employment with Johnson Technology Systems, Inc. (JTSI), an Information Technology solution company. According to JTSI's website, it provides a wide array of IT, Program Management, Professional Support, Training, and Engineering Services by carefully studying our client's needs and recommending the most cost effective solution to their enterprise requirements.

(b)(6) You officially retired from federal service in (b)(6) Your last position was that of (b)(6) (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6) In this position, you served as DLA's (b)(6) You assisted the DLA Director in the direction, management, and administration of Agency activities and business operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency executives, you established priorities and frameworks for the analysis of and presentation of issues for the Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions.



Prior to serving as the DLA (b)(6) you served as the (b)(6) Logistics Operations, DLA from (b)(6). In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the COCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's business policies, goals, program requirements, strategic approaches, and budgetary requirements.

From (b)(6) you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIMS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics- cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

You are considering entering into a consulting agreement with JTSI. As part of your consulting agreement, you provide the scope of services you would perform as follows:

1. Advise JTSI personnel on how the government conducts business, specifically in the areas of Information Technology; contracting, procurement and purchasing; government program and project management; data management; business processes and reengineering.
2. Advise and assist JTSI in reviewing solicitations and determine JTSI likelihood of competing; advise on partnering, if needed and other aspects of successfully offering on government contracts;
3. Assist JTSI in developing tailored solutions for customers in the Federal and commercial space based on an understanding of customer needs and JTSI capabilities;

4. Work with other JTSI partners to create value for clients.

Section A: Restrictions Regarding Former Agency

One Year No-Contact Rule (Cooling Off) (18 USC §207(c))

As a former Senior Executive and (b)(6) DLA, you may not, for one year after retiring, make any communication to, or make any appearance before, any DLA employee with the intent to influence the employee on behalf of JTSI or any company. This rule applies to all DLA matters, whether or not you were personally involved. 18 USC §207(c).

18 USC § 207(c) imposes a one-year ban following retirement on communicating with your former agency on behalf of a third party, in connection with any matter on which the third party seeks official action from your former agency. "Senior employees" include Flag Officers and Senior Executive Service Employees (SES) Levels 5 and 6. Under this law, "senior employees" may not, for one year after leaving their agency, make any communication to, or appearance before, any employee of their former agency (or the President or Vice President), with the intent to influence that person, on behalf of any third person, in connection with any matter on which the third person seeks official action by their former agency.

The one-year no-contact rule prohibits contact with Federal employees, i.e., communicating with or appearing before "any officer or employee of the department or agency" in which you served. I note that there are two exceptions. The rule only limits your communications and appearance. It does not prohibit you, even when the ban applies regarding a certain matter, providing "behind-the-scenes" assistance to JTSI or a company on any particular matter, e.g. drafting but not signing, a letter to the agency. The rule applies to all matters, whether or not you were involved in the matter while working for the agency. The rule does not prevent you from giving testimony under oath, or from making statements required to be made under penalty of perjury.

Section B: Application of Post-Employment Bans to Employment with JTSI

While the post-employment laws do not bar you from working with JTSI, certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC §207(a)(1), 18 USC §207(a)(2), 18 USC §207(c) and 41 USC §423(f).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While being employed by JTSI, the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of JTSI applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided and previous post-employment discussions, you did not serve in any of the seven positions or make any of the seven decisions regarding any JTSI contracts. Consequently, the PIA does not restrict or ban you from receiving compensation as consultant with JTSI.

18 USC §207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You were an employee in the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter,
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example).
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The "life" in question, is the "*life of the matter*," not your lifespan.

"Particular matter" means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To "participate personally and substantially" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on available information, you advised me that, in the past two years, you have not participated personally and substantially in particular matters involving JTSI, to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting JTSI.

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than JTSI, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of JTSI, or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with JTSI. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved JTSI as specific parties.

Conclusion

This memorandum, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice memorandum, nor the provision of this memorandum, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at (b)(6)

(b)(6)

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

February 5, 2013

(b)(6)

Sent via email

Re: Ethics Opinion- Post-Government Employment as an Independent Consultant to NES Associates LLC

Dear (b)(6):

This letter responds to your request for a government ethics opinion regarding potential post-government employment as an independent consultant with NES Associates (hereinafter referred to as "NES"), received on January 15, 2013 and discussed subsequently with this office.

According to its website¹ (<http://www.nesassociates.com/>), NES focuses on the areas of network and systems integration, technical consulting, and project management. NES services consist of: Network Design and Implementation; Network Performance Optimization; Network Operations & Continuity Management; Cybersecurity; and Healthcare IT Services. NES's DoD clients include the Military Services and DLA. NES also has access to several contract vehicles either through a prime contract relationship or through business partnerships. NES boasts as a success story the "DLA Defense Distribution Centers (DDC) BRAC Program", particularly the provisioning of new network services for over 3,000 DLA staff at 30 sites across the country during this program.

At this time, you are considering entering into a consulting contract with NES. Since your scope of potential consulting work with NES has been broadly defined and specific projects have not been identified, this opinion will provide a basic analysis of your potential role as an independent consultant with NES based on the information provided to me. I understand, however, that you are considering assisting NES with a DLA requirement entitled, "DLA J6 Enterprise Solutions" which is currently out as a draft RFP. Specifically, you would provide "behind-the-scenes" advice to NES in analyzing the requirement and assisting NES through the process. I also understand that you may provide consulting services to NES in the following areas:

- Advise NES personnel on how the government conducts business, specifically in the areas of Information Technology; contracting, procurement and purchasing; government program and project management; data management; business processes and reengineering;
- Advise and assist NES in reviewing solicitations and determine NES likelihood of competing; advise on partnering, if needed and other aspects of successfully offering on government contracts;

¹ Information from the companies listed above comes directly from the companies' websites (some exact wording included); this information was not provided by the letter's recipient.



- Assist *NES* in developing tailored solutions for customers in the Federal and commercial space based on an understanding of customer needs and *NES* capabilities;
- Work with other *NES* partners to create value for clients;
- Additional work at the discretion of the parties.

Background

DLA (b)(6) Your last position with the Federal Government was as the (b)(6) (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6) In this position, you served as DLA's (b)(6) You assisted the DLA Director in the direction, management, and administration of Agency activities and business operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency executives, you established priorities and frameworks for the analysis of and presentation of issues for the Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions (See attached Position Description for further information).

(b)(6) Logistics Operations. Prior to serving as the DLA (b)(6) you served as the (b)(6) Logistics Operations, DLA from (b)(6) In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the CCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-

to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's business policies, goals, program requirements, strategic approaches, and budgetary requirements.

(b)(6) Information Operations. From (b)(6) you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics - cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

One Year No-Contact Rule (Cooling Off) (18 USC §207(c))

Please note that as a former Senior Official, you may not, for one year after retiring, make any communication to, or make any appearance before any DLA employee with the intent to influence the employee on behalf of NES or any company. This rule applies to all DLA matters, whether or not you were personally involved. 18 USC §207(c).

18 USC § 207(c) imposes a one-year ban following retirement on communicating with your former agency on behalf of a third party, in connection with any matter on which the third party seeks official action from your former agency. For your post-government employment ethics purposes, the term "former agency" covers DLA, not the entire Department of Defense. "Senior employees" include Flag Officers and Senior Executive Service Employees (SES) Level II. Under this law, "senior employees" may not, for one year after leaving their agency, make any communication to, or appearance before, any employee of their former agency (or the President or Vice President), with the intent to influence that person, on behalf of any third

person, in connection with any matter on which the third person seeks official action by their former agency.

The one-year no-contact rule prohibits contact with Federal employees, i.e., communicating with or appearing before "any officer or employee of the department or agency" in which you served. I note that there are two exceptions. The rule only limits your communications and appearance. It does not prohibit you, even when the ban applies regarding a certain matter, providing "behind-the-scenes" assistance to any of the firms addressed above or another company on any particular matter, e.g. drafting but not signing, a letter to the agency. The rule applies to all matters, whether or not you were involved in the matter while working for the agency. The rule does not prevent you from giving testimony under oath, or from making statements required to be made under penalty of perjury.

18 USC §207(a)(1)

Section 207(a)(1) imposes a lifetime bar that prohibits you from knowingly making, with the intent to influence, any communication to or even an appearance before an employee of the United States on behalf of someone else in connection with a particular matter involving a specific party in which you participated personally and substantially as a Government officer and in which the United States has a direct and substantial interest. This does not prohibit "behind-the-scenes" assistance.

"Particular matter" includes any proceeding, application, contract, controversy, investigation, accusation, arrest, or other particular matter that involves a specific party.

"Participate personally and substantially" means to participate directly and significantly by decision, approval, disapproval, recommendation, advice, or investigation. Personal participation includes the participation of a subordinate when actually directed by you.

You advised me that, in the past two years, you have not participated personally and substantially in particular matters involving *NES*, to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting, *NES*.

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than *NES*, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of

NES, or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While working for *NES* as an independent consultant, the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of these firms applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided, you did not serve in any of the seven positions or make any of the seven decisions regarding any *NES* contracts. Consequently, the PIA does not restrict or ban you from receiving compensation from these firms.

The PIA does apply to you to the extent that you have had access to any source selection or contractor bid or proposal information, and it continues to protect that information. In addition, 18 U.S.C. §§ 793, 794 and 1905 protect and prohibit the use or disclosure of trade secrets, confidential business information, and classified information. Finally, you have a continuing obligation to the Government not to disclose or misuse any other information that you acquired as part of your official duties and which is not generally available to the public.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with *NES*. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved *NES* as specific parties.

This letter, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice letter, nor the provision of this letter, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at (b)(6)

Sincerely,

(b)(6)

RUTH M.S. VEITER
Associate General Counsel
Ethics Counselor



IN REPLY
REFER TO

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

January 16, 2013

(b)(6)

Re: Ethics Opinion- Post-Government Employment

Dear (b)(6)

Thank you for requesting a government ethics opinion regarding potential post-government employment with KPMG LLC. This letter responds to your request dated January 8, 2013.

A. Background

KPMG is one of the largest professional services company and is one of the "Big Four" auditors. According to the KPMG website, KPMG provides "audit, tax and advisory services and industry insight to help organizations negotiate risks and perform in the dynamic and challenging environments in which they do business". KPMG's work includes providing governments, higher education, and other non-profit organizations sector-specific Audit and Advisory services. KPMG has current contracts with DLA.

At this time, your prospective scope of work with KPMG has been broadly defined, particularly to "Manage a team of professionals delivering financial management advisory services to U.S. Federal government clients; provide subject matter technical knowledge in financial management areas of financial reporting, internal controls, and/or financial business systems; manage across the project lifecycle including assisting with scope definition, business case development, vendor assessment, requirements gathering, functional and technical design, testing, training, and implementation phases; review draft deliverables prepared by engagement teams and present final results to management; develop and sustain solid relationships with client personnel and identify opportunities to provide additional services". As a specific position and/or contract have not been identified, this opinion will provide a basic analysis of your potential employment with KPMG, based on the information provided to me. However, as I understand that you are considering working on a KPMG contract with DLA, this opinion will also address this possibility.

Your last position on in the Federal Government was as a (b)(6) for DLA which you held from (b)(6) when you retired. In this position, you were the financial compliance lead on the Procure to Pay (P2P) business cycle team. You assisted this team by providing recommendations and advice on audit readiness efforts by reviewing process documentation for completeness and identifying proper internal controls and compliance with laws, regulations, and policies.



I understand that KPMG supported these audit readiness efforts by helping your office manage the process documentation and developing a plan of actions and milestones needed to achieve audit readiness. Although I understand that you participated in planning meetings with KPMG, you indicated to me that you were not involved in contract award decisions.

You advised that the DLA contract with KPMG is to provide audit readiness support. You were the financial lead on the P2P Team but not the overall team leader. You provided advice and recommendations on audit readiness, documentation and actions that needed to be taken to move toward audit readiness but you were not the decision maker on these matters. KPMG initially provided assistance to the P2P Team with developing a POAM for audit readiness. Eventually, KPMG provided assistance by reviewing process cycle memoranda, developing corrective action plans for identified deficiencies, and tracking progress of the POAM. Although you reviewed and provided input for the POAM that KPMG developed, you were not the approval authority and you did not report to the Contracting Officer's Technical Representative on the KPMG deliverables. You participated in joint working sessions with KPMG to review process cycle memoranda and corrective action plans, and other actions. KPMG would document and/or make changes to the documents being worked, followed up on needed additional information, and tracked progress. Based on the facts you provided and my analysis, it appears that your participation with this specific contract with KPMG was more than superficial or peripheral involvement.

B. 18 U.S.C. § 207

The restrictions on post-government employment activity set forth in 18 U.S.C. § 207 remain applicable. Particularly, there is a personal lifetime ban on representing someone else to the Government regarding particular matters that you worked on while in Government service. In addition, there is a 2 year ban on representing someone else to the Government regarding particular matters that you did not work on yourself, but were pending under your responsibility during your last year of Government service.

A criminal statute, 18 U.S.C. § 207, will restrict your representational activities. It prevents an individual who participated in, or was responsible for, a particular matter while employed by the Government from later "switching sides" and representing someone else in the same matter.

a. Section 207(a)(1) imposes a lifetime bar that prohibits you from knowingly making, with the intent to influence, any communication to or even an appearance before an employee of the United States on behalf of someone else in connection with a particular matter involving a specific party in which you participated personally and substantially as a Government officer and in which the United States has a direct and substantial interest. This does not prohibit "behind-the-scenes" assistance.

"Particular matter" includes any proceeding, application, contract, controversy, investigation, accusation, arrest, or other particular matter that involves a specific party.

"Participate personally and substantially" means to participate directly and

significantly by decision, approval, disapproval, recommendation, advice, or investigation. Personal participation includes the participation of a subordinate when actually directed by you.

b. Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

Based on the facts provided, it appears that you may have participated personally and substantially in a particular matter involving KPMG, specifically the subject KPMG contract for audit readiness support which you dealt with while in your position with DLA. Thus, there appears to be a potential conflict of interest if you were to communicate and/or appear before the Federal Government with the intent to influence, while acting as an employee for KPMG on the specific contract which you dealt while in your position with DLA. However, there does not appear, at this time, to be a potential conflict of interest with you communicating and/or appearing before the Federal Government with the intent to influence regarding a separate contract, with which you had no involvement while with DLA. In addition, you also would not be precluded from behind-the-scenes assistance in connection with your potential employment with KPMG on the specific contract which you dealt while in your position with DLA; however, you must ensure that any representation by KPMG with the intent to influence the Government on this specific contract is not attributed back to you.

Although not indicated in the information you provided, in the event you have personally and substantially participated in a particular matter involving a specific party other than KPMG, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of KPMG or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

C. Procurement Integrity Act

FAR section 3.104 implements the Procurement Integrity Act at 41 U.S.C. § 423. In my opinion, based on the information that you provided, the procurement integrity law does not

require any additional notices with respect to your employment contacts with KPMG. In addition, the procurement integrity law does not restrict you from receiving compensation from KPMG.

However, the procurement integrity law does apply to you to the extent that you have had access to any source selection or contractor bid or proposal information, and it continues to protect that information. In addition, 18 U.S.C. §§ 793, 794 and 1905 protect and prohibit the use or disclosure of trade secrets, confidential business information, and classified information. Finally, you have a continuing obligation to the Government not to disclose or misuse any other information that you acquired as part of your official duties and which is not generally available to the public.

D. Conclusion

I hope that this information is helpful to you. If you have concerns or questions about the conclusions reached in this opinion or if you have additional information for me to consider, please do not hesitate to contact me. This letter, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of an agency ethics official based on the information that you provided. If you have questions, I may be reached at

(b)(6)

Sincerely,

(b)(6)

RUTH M.S. VETTER
Associate General Counsel



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO DG

June 25, 2013

MEMORANDUM FOR (b)(6)

SUBJECT: Post-Government Employment

This responds to your request for a post-government employment opinion regarding potential employment with Boeing as an Ethics Advisor. According to its website,

Boeing is the world's leading aerospace company and the largest manufacturer of commercial jetliners and military aircraft combined. Additionally, Boeing designs and manufactures rotorcraft, electronic and defense systems, missiles, satellites, launch vehicles and advanced information and communication systems. As a major service provider to NASA, Boeing is the prime contractor for the International Space Station. The company also provides numerous military and commercial airline support services. Boeing has customers in more than 90 countries around the world and is one of the largest U.S. exporters in terms of sales.

You have applied for an ethics advisor position with Boeing's Corporate Office of Internal Governance in Washington state. Among other duties, an ethics advisor provides Boeing employees and executives with counsel, advice, and training regarding ethical decision making models, processes, tools, and company policies; initiates and coordinate investigations and their follow-up, including documentation; applies best practices to complex ethics issues; represents the company as a subject matter expert; analyzes ethics and compliance failures and recommends solutions and remediation; and develops training solutions.

You currently serve as an (b)(6) for the Office of General Counsel, Defense Logistics Agency. In that role, you are counsel to the agency Suspension and Debarment Official, and provide legal advice and counsel on a full range of business integrity, ethics, government information practices, and investigative matters. You are not directly involved in any procurement decisions, although you provide legal advice on procurement policy matters, as they relate to business integrity and supply chain risk management.

Application of Post-Government Employment Statutes to Employment with Boeing

While the post-government employment laws do not bar you from working for Boeing, certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC § 207(a)(1), 18 USC § 207(a)(2), 18 USC § 207(c) and 41 USC § 423(f).



Procurement Integrity Act (41 USC § 423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year, if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. The PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of a contractor applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided, you did not serve in any of the covered positions or make covered decisions regarding any contracts. Consequently, the PIA does not restrict or ban your accepting compensation and/or employment from any contractor, including Boeing.

18 USC § 207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You are or were a civilian employee of the federal government,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter.
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example),
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The “*life*” in question, is the “*life of the matter*,” not your lifespan.

“Particular matter” means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To “participate personally and substantially” means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on the information you provided, you have not participated personally and substantially in any matter related to Boeing. Accordingly, the lifetime ban would not apply to any employment you might obtain with Boeing.

18 USC § 207(a)(2)

Title 18 U.S. Code Section 207(a)(2) is a two-year representation ban. You violate this law if all of the following eight conditions occur:

1. You are or were a civilian employee in the Executive Branch;
2. While you were working for the government there was a government contract, or other particular matter in which the United States had a direct and substantial interest, that was pending **under your official responsibility during your last year in the government;**
3. At the time the matter was pending under your official responsibility during your last year in the government, there was another party (such as a government contractor) involved in the matter;
4. You leave the Federal government;
5. During the first two years after you leave the government, you communicate with or appear before a Federal employee regarding the same contract or other matter;
6. Your communication or appearance is on behalf of someone other than the United States;
7. Your intent in making the communication or appearance is to influence the government; and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that was pending under your official responsibility during your last year in the government.

“Official responsibility” means “the 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.” It does not appear, based on the information you provided, that any Boeing contract or services provided to DLA or a particular matter in which the U.S. had a direct and substantial interest, was pending under your official responsibility during your last year in the government. As such, 18 USC § 207(a)(2) is not applicable to potential employment with Boeing.

“Behind the Scenes” Activity Allowed under 18 USC § 207

The representation bans of 18 USC § 207 prohibit contact with Federal employees (i.e., through communications or appearances). A former employee is not prohibited by this restriction from providing “behind-the-scenes” assistance in connection with the representation of another person. A January 19, 2001 Office of Legal Counsel (OLC) opinion added significant complexity to the “behind-the-scenes” exception. It established the principle that a former employee does not confine himself to permissible behind-the-scenes activity when he conveys information to the Government through an intermediary and does so with the intent that the information be attributed to him. While it established that principle, unfortunately, it did not provide former officials with any bright line rules to guide their conduct.

Should, in any way, your employment with Boeing or any other company result in your working on matters for which you may have been personally and substantially involved as a federal employee or under your direct responsibility as discussed, you may be permitted to work "behind-the-scenes" but must ensure that any representation with the intent to influence the government by Boeing or any other company must not be attributed back to you.

Conclusion

It is my opinion that the Procurement Integrity Act, 18 USC § 207(a)(1), and 18 USC § 207(a)(2) do not apply to your potential employment with Boeing.

This constitutes the opinion of an agency ethics official based on the information you provided to me on the DD Form 2945 you submitted dated June 19, 2013. Should any circumstances change, please contact us for any additional post-employment restrictions.

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

DG

March 14, 2013

MEMORANDUM FOR (b)(6)

SUBJECT: Post-Government Employment with Advantaged Solutions, Inc.

This responds to your February 13, 2013 email request for a post-employment opinion regarding your potential employment with Advantaged Solutions, Inc., a management and technology consulting firm. According to Advantaged Solutions, Inc.'s website, it provides strategic consulting, application software, and Information Technology solutions to Public Sector customers.

You officially retired from federal service in (b)(6). Your last position was that of (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6) (b)(6). In this position, you served as DLA's (b)(6). You assisted the DLA Director in the direction, management, and administration of Agency activities and busiAdvantaged Solutions, Inc.s operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected select executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency



executives, you established priorities and frameworks for the analysis of and presentation of issues for the Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions.

Prior to serving as the DLA (b)(6) you served as the (b)(6) Logistics Operations, DLA from (b)(6). In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the COCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's business policies, goals, program requirements, strategic approaches, and budgetary requirements.

From (b)(6) you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics- cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

You are considering entering into a consulting agreement with Advantaged Solutions, Inc. As part of your consulting agreement, you provide the scope of services you would perform as follows:

1. Provide ASI support in the form of direction in internal meeting on ASI initiatives (DLA and Non-DLA) and as well as SAP strategic assistance.
2. Advise Advantaged Solutions, Inc. personnel on how the government conducts business Advantaged Solutions, Inc., specifically in the area of Information Technology; contracting, procurement and purchasing; government program and project management; data management; business processes and reengineering.
3. Assist Advantaged Solutions, Inc. in reviewing solicitations and determine Advantaged Solutions, Inc. likelihood of competing; advise on partnership, if needed and other aspects of successfully offering on government contracts.
4. Assist Advantaged Solutions, Inc. in developing tailored solutions for customers in the Federal and commercial space based on an understanding of customer needs and Advantaged Solutions, Inc. capabilities;
5. Work with other Advantaged Solutions, Inc. partners to create value for clients.

Section A: Restrictions Regarding Former Agency

One Year No-Contact Rule (Cooling Off) (18 USC §207(c))

As a former Senior Executive and Vice Director, DLA, you may not, for one year after retiring, make any communication to, or make any appearance before, any DLA employee with the intent to influence the employee on behalf of Advantaged Solutions, Inc. or any company. This rule applies to all DLA matters, whether or not you were personally involved. 18 USC §207(c).

18 USC § 207(c) imposes a one-year ban following retirement on communicating with your former agency on behalf of a third party, in connection with any matter on which the third party seeks official action from your former agency. "Senior employees" include Flag Officers and Senior Executive Service Employees (SES) Levels 5 and 6. Under this law, "senior employees" may not, for one year after leaving their agency, make any communication to, or appearance before, any employee of their former agency (or the President or Vice President), with the intent to influence that person, on behalf of any third person, in connection with any matter on which the third person seeks official action by their former agency.

The one-year no-contact rule prohibits contact with Federal employees, i.e., communicating with or appearing before "any officer or employee of the department or agency" in which you served. I note that there are two exceptions. The rule only limits your communications and appearance. It does not prohibit you, even when the ban applies regarding a certain matter, providing "behind-the-scenes" assistance to Advantaged Solutions, Inc. or a

company on any particular matter, e.g. drafting but not signing, a letter to the agency. The rule applies to all matters, whether or not you were involved in the matter while working for the agency. The rule does not prevent you from giving testimony under oath, or from making statements required to be made under penalty of perjury.

Section B: Application of Post-Employment Bans to Employment with Advantaged Solutions, Inc.

While the post-employment laws do not bar you from working with Advantaged Solutions, Inc., certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC §207(a)(1), 18 USC §207(a)(2), 18 USC §207(c) and 41 USC §423(f).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While being employed by Advantaged Solutions, Inc., the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of Advantaged Solutions, Inc. applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
- Decision to award a subcontract over \$10 million.
- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided and previous post-employment discussions, you did not serve in any of the seven positions or make any of the seven decisions regarding any Advantaged Solutions, Inc. contracts. Consequently, the PIA does not restrict or ban you from receiving compensation as consultant with Advantaged Solutions, Inc..

18 USC §207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You were an employee in the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter,
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example),
6. Your communication or appearance is on behalf of someone other than the United States.
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The “life” in question, is the “*life of the matter*,” not your lifespan.

“Particular matter” means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To “participate personally and substantially” means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on available information, you advised me that, in the past two years, you have not participated personally and substantially in particular matters involving Advantaged Solutions, Inc., to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting Advantaged Solutions, Inc..

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than Advantaged Solutions, Inc., e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of Advantaged Solutions, Inc., or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with *ADVANTAGED SOLUTIONS, INC.*. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved Advantaged Solutions, Inc. as specific parties.

Conclusion

This memorandum, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice memorandum, nor the provision of this memorandum, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at

(b)(6)

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

DG

July 11, 2013

(b)(6)

Sent via email

Re: Ethics Opinion - Post-Government Employment with SICPA

This letter responds to your request for a post-employment opinion regarding your potential employment with SICPA, a global provider of secured identification solutions and services. According to SICPA's website, it is the leading technology and service provider of unique secure product authentication, identification and traceability software and solutions, such as SICPATRACER, to governments in Asia, supporting the fight against illicit trade and tax evasion, enabling protection of government revenue and public health and safety. With secure track and trace product authentication technology that have a proven record of facilitating identity protection, secure transaction and product integrity.

You officially retired from federal service in (b)(6). Your last position was that of (b)(6) (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6). In this position, you served as DLA's (b)(6). You assisted the DLA Director in the direction, management, and administration of Agency activities and business operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA's (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency executives, you established priorities and frameworks for the analysis of and presentation of issues for the



Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions.

Prior to serving as the DLA (b)(6) you served as the (b)(6) Logistics Operations, DLA from January to (b)(6). In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the COCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's busiSICPAs policies, goals, program requirements, strategic approaches, and budgetary requirements.

From (b)(6) you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics- cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

You are considering entering into a consulting agreement with SICPA. As part of your consulting agreement, you will assist SICPA in gaining unique insight on government programs and understanding problems governing agencies are attempting to solve. You will work with SICPA representatives to identify strategic and win-themes for solutions to government business problems. Support may include attendance at meetings, identifying and/or introducing SICPA to key government decision makers, email and telephone exchanges, assist on RFP and proposal review and presentations to SICPA staff members. You will assist with programs at Federal agencies concerned with supply chain integrity and security and security, the mitigation of counterfeit parts in supply chains that support Federal government operations, and related matters.

Application of Post-Employment Bans to Employment with SICPA

While the post-employment laws do not bar you from working with SICPA, certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC §207(a)(1), 18 USC §207(a)(2), 18 USC §207(c) and 41 USC §423(f).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While being employed by SICPA, the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of SICPA applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
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- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided and previous post-employment discussions, you did not serve in any of the seven positions or make any of the seven decisions regarding any SICPA contracts. Consequently, the PIA does not restrict or ban you from receiving compensation as consultant with SICPA.

18 USC §207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You were an employee in the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter.
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example).
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The "*life*" in question, is the "*life of the matter*," not your lifespan.

"Particular matter" means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To "participate personally and substantially" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on available information, you advised me that, in the past two years, you have not participated personally and substantially in particular matters involving SICPA, to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting SICPA.

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than SICPA, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating with or appearing before a government officer or employee concerning this particular matter on behalf of SICPA, or someone other than the United States, with the intent to communicate with or influence

the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with SICPA. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved SICPA as specific parties.

Conclusion

This memorandum, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice memorandum, nor the provision of this memorandum, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at (b)(6)

(b)(6)

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

IN REPLY
REFER TO

DG

July 11, 2013

(b)(6)

Sent via email

Re: Ethics Opinion - Post-Government Employment with DIGICON

This letter responds to your request for a post-employment opinion regarding your potential employment with DIGICON, a full-service IT solution provider. According to DIGICON's website, it provides a full range of service management solutions including systems management, infrastructure management, business system development and integration, and security management.

You officially retired from federal service in (b)(6). Your last position was that of (b)(6) (b)(6) Defense Logistics Agency (DLA) which you held from (b)(6). In this position, you served as DLA's (b)(6). You assisted the DLA Director in the direction, management, and administration of Agency activities and business operations. Your principal responsibilities were coordinating and directing plans, initiatives, and activities to attain mission, strategic and performance goals. You provided leadership and direction within the Director's Executive Board, developed and approved management plans and initiatives, and assured the attainment of required goals, emerging challenges, and new requirements. You also provided technical oversight and direction to all elements of DLA in the planning, development, and implementation of specific initiatives, programs, and management emphases.

In this position, you also assessed and approved Agency plans for contingencies, exceptional mission requirements, and performance demands; and shaped the Agency's responses to challenges. You maintained liaisons with the Under Secretary of Defense (Acquisition Technology & Logistics), the Joint Staff, Office of Secretary of Defense staff principals and senior leadership in crafting departmental acquisition and logistics strategies and plans. You also assisted the Director in defining DLA's roles and responsibilities within the Department, in achieving required outcomes and results, and in addressing Service concerns on specific operational issues.

As DLA's (b)(6) you represented the DLA Director in a broad range of external activities and exercised selected executive authorities conferred by law. This required you to remain fully apprised and conversant on central issues affecting the Agency and to commit the Agency to specific courses of action.

Finally, in this position, you maintained visibility and drove resolution on selected issues of critical importance to the Agency. Working with the Director and other Agency executives, you established priorities and frameworks for the analysis of and presentation of issues for the Director's decisions. You developed consensus with the Executive Team on matters with significant controversy and competitive interest and provided direction for implementing actions.



Prior to serving as the DLA (b)(6) you served as the (b)(6) Logistics Operations, DLA from (b)(6). In this position, you were responsible for developing major policies and programs, worldwide in scope, related to materiel and depot management in support of the COCOMs, Military Services, DOD activities, and Federal/Civil agencies. You directed programs relating to logistics requirements, provisioning, inventory management, distribution, storage, quality control, maintenance engineering, transportation, demilitarization, and every facet of logistics support in DOD's end-to-end supply chain management and recovery, reset and redistribution operations. You ensured DOD's logistics policy was integrated with national priorities through personal contact with OSD, COCOMs, the Military Services, logistics and professional military associations.

You worked directly with the Director and Vice Director DLA, the DLA Executive Board members, senior officials of the Deputy Under Secretary of Defense Logistics and Materiel, the Military Services' Headquarters and their Logistics Commands, and Federal agencies to formulate and negotiate acceptance and implementation of DLA's busiDIGICONS policies, goals, program requirements, strategic approaches, and budgetary requirements.

From (b)(6) you served as the (b)(6) Information Operations, DLA. In this position, you were responsible for providing corporate acquisition process management services to include management and oversight of major Automated Information Management Systems (AIS) and other designated systems. You served as the single agency official providing overall direction and guidance for the development, acquisition, testing, systems integration, product improvement, and fielding of assigned DLA programs, and provided authoritative conceptual guidance on behalf of the Director, DLA for development of technical policies, procedures and guidance for DLA systems, and ensured that the Agency was responsible, accountable, and in compliance with overarching directives and guidance. You were responsible for providing program management oversight for emerging programs, legacy systems, and contemporary systems development and enhancements to include portfolio management control and evaluation activities to meet desired mission outcomes, and you ensured compliance with acquisition processes and defined and executed Agency systems modernization strategy. You provided critical information systems and technical infrastructure support to all DLA personnel. These systems support the primary mission functions of logistics- cataloging, supply, distribution and reutilization, as well as decision support and administrative operations. You were also responsible for the overall systems modernization strategy that enables achievement of the strategic goals described in DLA's Strategic Plan.

You are considering entering into a consulting agreement with DIGICON. As part of your consulting agreement, you provide the scope of services you would perform as follows:

1. Advise Digicon Corporation management on strategic direction; assist in growing the business, specifically in the Federal space; advise Digicon Corporation personnel on how the government conducts business, specifically in the areas of Information Technology; contracting, procurement and purchasing; government program and project management; data management; business process and reengineering.
2. Advise and assist Digicon Corporation in reviewing solicitations and determine Digicon Corporation's likelihood of competing; advise on partnering, if needed and other aspects of successfully offering on government contracts;

3. Assist Digicon Corporation in developing tailored solutions for customers in the Federal and commercial space based on an understanding of customer needs and Digicon Corporation capabilities.

Application of Post-Employment Bans to Employment with DIGICON

While the post-employment laws do not bar you from working with DIGICON, certain laws may restrict what type of work you can perform. These laws and regulations include the Office of Government Ethics Standards of Conduct for Executive Branch Employees, the Department of Defense Joint Ethics Regulation and various statutes including 18 USC §207(a)(1), 18 USC §207(a)(2), 18 USC §207(c) and 41 USC §423(f).

Procurement Integrity Act (41 USC §423(f))

The Procurement Integrity Act (PIA) prohibits certain former employees from accepting compensation from a contractor for a period of one year if they served in certain positions or made certain decisions in connection with a contract awarded to that contractor. While being employed by DIGICON, the PIA's one-year ban on accepting compensation as an employee, officer, director or consultant of DIGICON applies whether the compensation is directly or indirectly provided. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

The one-year ban applies only if you serve in any of seven positions, or make any of seven types of decisions, on a contract over \$10 million. These seven positions and seven decisions are:

- Procuring Contracting Officer (PCO) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Source Selection Authority (SSA) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Member of the Source Selection Evaluation Board (SSEB) on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Chief of a financial or technical evaluation team on a contract over \$10 million, at the time the contractor is selected for award or the contract is awarded.
- Program Manager on a contract over \$10 million.
- Deputy Program Manager on a contract over \$10 million.
- Administrative Contracting Officer on a contract over \$10 million.
- Decision to award a contract over \$10 million.
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- Decision to award a modification over \$10 million of a contract, or a modification over \$10 million of a 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.

Based on the information you provided and previous post-employment discussions, you did not serve in any of the seven positions or make any of the seven decisions regarding any DIGICON contracts. Consequently, the PIA does not restrict or ban you from receiving compensation as consultant with DIGICON.

18 USC §207(a)(1)

Title 18 U.S. Code Section 207(a)(1) is a lifetime ban on attempting to influence the government on behalf of someone regarding a matter you worked on in the government. You violate the lifetime ban if all of the following eight conditions occur:

1. You were an employee in the Executive Branch,
2. While you were working for the federal government, you participated personally and substantially in a particular matter in which the United States had a direct and substantial interest (such as a contract),
3. At the time you participated in the matter there is another party (such as a contractor) involved in the matter,
4. You leave the federal government,
5. You then, at any time in your life, communicate with or appear before a government officer or employee in connection with the same particular matter that you participated in while you were with the federal government (that same contract, for example),
6. Your communication or appearance is on behalf of someone other than the United States,
7. Your intent in making the communication or appearance is to influence the government official (i.e., you are not just providing information; you are trying to persuade the government official about something), and
8. You know, when you are communicating with or appearing before the government official, that the matter in question is a matter that you participated in when you were with the government (i.e., it is not something so minor that you forgot you ever worked on it when you were with the government).

The "life" in question, is the "life of the matter," not your lifespan.

"Particular matter" means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The ban applies only if you participated in the matter after a specific party other than the Federal Government (i.e., a private person or company) became involved in the matter. To "participate personally and substantially" means to take an action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.

Based on available information, you advised me that, in the past two years, you have not participated personally and substantially in particular matters involving DIGICON, to include contracts, claims, investigations, or narrowly-focused policy-making affecting, or potentially affecting DIGICON.

18 USC §207(a)(2)

Section 207(a)(2) is nearly identical to the above lifetime restriction except that it (1) lasts for only two years after leaving Government service (rather than life) and (2) applies only to those matters in which you did not participate personally and substantially, but which were pending under your official responsibility during the one-year period before terminating Government employment. "Official responsibility" is defined as direct administrative or operating authority to approve, disapprove, or otherwise direct government action.

In the event you have personally and substantially participated in a particular matter involving a specific party other than DIGICON, e.g. another defense contractor, or if particular matters were pending under your official responsibility, you are prohibited from communicating

with or appearing before a government officer or employee concerning this particular matter on behalf of DIGICON, or someone other than the United States, with the intent to communicate with or influence the government official. A "communication" can be made orally, in writing, or through an electronic submission. An "appearance" would include your mere physical presence at a meeting or proceeding when the circumstances make it clear that your presence is intended to influence the United States. An "intent to influence" may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing Government action in connection with a matter which you know involves an appreciable element of dispute concerning the particular Government action to be taken. Accordingly, the prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents, or a request for purely factual information or the supplying of such information.

Section 847 of the NDAA for FY 2008

As a Senior Official who participated personally and substantially in an acquisition with a value in excess of \$10 million, within two years of leaving DoD, you must receive a written opinion regarding the applicability of post-employment restrictions to activities that you may undertake on behalf of a defense contractor before receiving pay. This requirement is in Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). This letter serves to meet this requirement with regard to employment with DIGICON. Although you participated personally and substantially in numerous particular matters while serving as the as a Senior Official within DLA, none of these particular matters involved DIGICON as specific parties.

Conclusion

This memorandum, issued under the authority of 41 U.S.C. § 423(d)(5) and 5 C.F.R. §§ 2635.107 and 602(a)(2), is an advisory opinion of the DLA Designated Agency Ethics Official based on the information that you provided and is not representative in nature. Neither the information you provided to receive this advice memorandum, nor the provision of this memorandum, creates an attorney-client relationship between you and an attorney rendering such advice. If you have questions, I may be reached at (b)(6)

(b)(6)

(b)(6)

WALTER THOMAS
Associate General Counsel
Agency Ethics Official