

Recruitment and Employment of Current and Former Federal Employees

October 9, 2025

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Introductions: David Black



David Black

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- Co-Chair, National Government Contracts Team
- Trusted advisor, problem solver, and advocate for federal contractors in every stage of growth
- Government contracts counseling and dispute resolution
- Represent contractors in protests and claims and responding to government investigations, audits, False Claims Act investigations and litigations
- Represent subcontractors in negotiating teaming agreements and subcontracts, and in disputes with prime contractors

Introductions: Charles Borden



Mr. Borden is the co-head of the Holland & Knight Political Law Practice and regularly advises clients on the political and reputational consequences, of political activity relating to campaign finance law, the Lobbying Disclosure Act (LDA), state and local lobbying law, the Foreign Agents Registration Act (FARA) and U.S. Securities and Exchange Commission (SEC) regulation of municipal advisors. He has extensive experience in federal pay-to-play rules for municipal dealers (Municipal Securities Rulemaking Board, or MSRB, Rule G-37), investment advisers (SEC Rule 206(4)-5), and swap dealers (CFTC Rule 23.451).

In addition, Mr. Borden counsels individuals appointed to senior positions in the Executive Branch of the federal government, including senior White House and State Department officials. He also advises such individuals' private sector employers on federal conflict-of-interest, security clearance and financial disclosure requirements, and helps such appointees formulate strategies for resolving legal and political issues connected to their nomination. Mr. Borden also co-teaches a Government Ethics: Scandal and Reform course at Harvard Law School, where he is a visiting lecturer.

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- Harvard Law School, J.D., *magna cum laude*
- University of Edinburgh, M.S., Fulbright Scholar, Scottish History
- Yale University, B.A., History, Political Sciences, *magna cum laude*
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Introductions: Hillary J. Freund

Hillary J. Freund



Hillary J. Freund is a litigation attorney in Holland & Knight's Washington, D.C., office. Ms. Freund focuses her practice on government contracts litigation and counseling. Ms. Freund represents government contractors in bid protests before the U.S. Government Accountability Office (GAO) and the U.S. Court of Federal Claims, and litigates contract disputes on behalf of clients at the U.S. Court of Federal Claims, as well as the Armed Services Board of Contract Appeals (ASBCA) and Civilian Board of Contract Appeals (CBCA). In addition, Ms. Freund also counsels clients on a variety of matters in federal government contracting and federal grants.

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Practice

- Government Contracts
- Litigation and Dispute Resolution

Education

- The George Washington University Law School, J.D.
- Virginia Tech, B.S.

Bar Admissions

- Washington D.C.
- Virginia

Introductions: Amy Fuentes



- Partner, National Government Contracts Team
- Represents contractors in responding to stop work orders, agency terminations, requests for equitable adjustments, certified claims, and appeals to the board of contract appeals and the U.S. Court of Federal Claims.
- Specializes in small business issues including size and status protests and appeals, affiliation analysis, mergers and acquisitions issues, and SBIR/STTR contracts.
- Serves as bid protest counsel before the GAO, U.S. Court of Federal Claims, and FAA ODRA.

- **Amy Fuentes**
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Practice

- Government Contracts & Grants
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Education

- The George Washington University Law School
- University of Massachusetts Amherst, B.A.

Bar Admission

- Virginia

Introductions: Holly Roth



- Government contracts counseling and dispute resolution
- Serves as bid protest counsel before the GAO, U.S. Court of Federal Claims, and FAA ODRA
- Represents clients before the U.S. Small Business Administration Office of Hearings and Appeals and counsel's clients on compliance with the SBA's government contracting programs
- Extensive experience with information technology, commercial, developmental, architect and engineering, and construction contracts with the federal government and prime contractors

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Recruiting and Employment of Current and Former Federal Employees

Agenda

1. The Setting: Recruiting and Hiring Federal Employees
2. Key Laws and Regulations: Recruitment of Current Federal Employees
3. Key Laws and Regulations: Post-Federal Employment Restrictions
4. Agency Ethics Advisory Opinions: Requirements and Best Practices
5. Organizational Conflicts of Interest Created by Former Federal Employees

Recruiting and Hiring Federal Employees

Goals

- Help understand key requirements
- Help ability to spot issues
- Understand when to ask for help
- Become skilled at hiring valuable former Federal employees while minimizing risk to the employee and the company
 - Please Ask Questions!

The Setting: Recruiting and Hiring Federal Employees

Fork in the Road

[Frequently Asked Questions](#)

Deferred Resignation Email to Federal Employees

January 28, 2025

During the first week of his administration, President Trump issued a number of directives concerning the federal workforce. Among these directives, the President required that employees return to in-person work, restored accountability for employees who have policy-making authority, restored accountability for senior career executives, and returned the



DOGE



- Many current Federal employees are looking for work
- Many former Federal employees are looking for work
- People are in a hurry. People are untrained.

The Setting: Recruiting and Hiring Federal Employees

- **Complex Laws and Regulations**

- **Ethics in Government Act** (18 U.S.C. § 201, *et seq.*)
- **Procurement Integrity Act** (41 U.S.C. § 2101, *et seq.*)
- **FAR Part 3** – Improper Business Practices and Personal Conflicts of Interest
- **Organizational Conflicts of Interest** (FAR Subpart 9.5)
- **Office of Government Ethics Regulations** (5 CFR Ch. XVI, Subch. B)
- **Department of Defense Joint Ethics Regulation (“JER”)** (DoD 5500.7-R)
- **Senior DoD Officials Seeking Employment with Defense Contractors** DFARS 203.171 and 252.203-7000
- **Military Enlisted Personnel Seeking Employment**

The Setting: Recruiting and Hiring Federal Employees

- **Complex regulations** regarding recruitment of current Federal employees and employment of former Federal employees
- **Huge Consequences** for Too Cavalier
- **Missed Opportunities** if Too Cautious
- **Lots of Watchdogs** (Government & Competitors)



The Setting

- **How to Protect Yourself?**

- **Individuals**

- Be informed about the rules in the key risk areas for you
 - Listen to your gut instinct
 - When in doubt, seek authoritative advice
 - Follow your Employer's (Agency or Government Contractor) Guidance

- **Government Contractor**

- Establish Guidances
 - Training
 - Advice and Counseling
 - Hot Lines for Problems

Key Laws and Regulations: Recruitment of Current Federal Employees



**NOW
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Recruiting Current Federal Employees

- Federal employee **cannot**:
 - Participate personally and substantially in a matter has a **direct and predictable effect on the financial interests of a prospective employer** with whom the employee is **seeking** employment.
 - Participate personally and substantially in a **procurement above the simplified acquisition threshold** after **contacting or being contacted by** company that is **an offeror in that procurement** regarding possible non-Federal employment
 - Take **any official action that affects the financial interests of a prospective employer** with whom he is **negotiating employment** or has an arrangement concerning prospective employment.

18 USC 208
41 USC 2103
5 CFR 2635.604
5 CFR 2635.402

Recruiting Current Federal Employees

- “Seeking” employment includes *directly or indirectly*:
 - Making an **unsolicited communication to the Prospective Employer** regarding possible employment
 - Making a **response, other than a rejection**, to an **unsolicited communication from the Prospective Employer** regarding possible employments
 - **Engaging in negotiations** for employment with the Prospective Employer
- “Seeking” employment continues until:
 - The Federal employee or the Prospective Employer **rejects the possibility of employment** and all discussions of possible employment have terminated.
 - Good practice: document this in writing with the Federal employee
 - **If the employee submitted an unsolicited resume or employment proposal to the Prospective Employer, two months after such submittal** -- provided the Prospective Employer has provided no indication of interest in employment discussions

18 USC 208
41 USC 2103
5 CFR 2635.603

Recruiting Current Federal Employees

- **Hypothetical No 1: Seeking or Not Seeking Employment?**
- An employee of the Defense Contract Audit Agency (DCAA) is auditing the overhead accounts of an Army contractor.
 - While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that the division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA.
 - The DCAA employee asks what kind of work would be involved.
 - **Has the DCAA employee begun seeking employment???**

Recruiting Current Federal Employees

- Hypothetical No 1: Seeking or Not Seeking Employment?
 - The DCAA employee has begun seeking employment because they made a response other than a rejection to the communication regarding possible employment.

Recruiting Current Federal Employees

- **Hypothetical No 2: Seeking or Not Seeking Employment?**
- An employee at the Department of Energy (DOE) **lists their job duties and employment experience in a profile on an online, business-oriented social networking service.**
 - The employee's profile is **not targeted at a specific prospective employer.**
 - **Has the DOE employee begun seeking employment???**

Recruiting Current Federal Employees

- Hypothetical No 2: Seeking or Not Seeking Employment?
 - The DOE employee **has not begun seeking employment** because the posting of a profile or resume is not an unsolicited communication with any prospective employer.

Recruiting Current Federal Employees

- **Hypothetical No 3: Seeking or Not Seeking Employment?**
- **Subsequently**, a representative of the university **contacts the DOE employee to inquire whether the employee would be interested** in working for the university, to which the employee **makes a response other than rejection**.
 - **Now has the DOE employee begun seeking employment with the University?**

Recruiting Current Federal Employees

- Hypothetical No 3: Seeking or Not Seeking Employment?
 - At this point, the DOE employee has begun seeking employment with the university until they reject the possibility of employment and all discussions of possible employment have terminated.

Recruiting Current Federal Employees

- **“Negotiating” Employment:**
 - **Discussion or communication with the Prospective Employer** mutually conducted with a view toward reaching an agreement regarding possible employment with the Prospective Employer
 - **Interpreted broadly.** Not limited to discussing specific terms and conditions for a specific position.

5 CFR 2635.603

Recruiting Current Federal Employees

- **Recusal from the Prospective Employer Matters While Seeking Employment**
 - If a Federal employee seeks employment with the Prospective Employer, he must:
 - Take steps to **avoid participating** in any matters involving the Prospective Employer
 - **Appropriate notification of recusal** may be made to an agency ethics official, coworkers, or a supervisor
 - For certain senior executive branch employees, disclosure within 3 days of commencing negotiations under the **STOCK Act of 2012**
 - A **written recusal** documenting the employees non-participating in the the Prospective Employer matter is sometimes required but always a best practice
- (Very Limited Waiver or Authorization under 2 CFR 2635.605 or 2635.402(d))

18 USC 208
41 USC 2103
5 CFR 2635.604
5 CFR 2635.402(c)

Recruiting Current Federal Employees

- **Recusal from the Prospective Employer Matters While Seeking Employment - DoD**
 - DoD personnel (officer, enlisted and civilian) negotiating for future employment must:
 1. Ensure prospect of employment does not affect performance of official duties;
 2. Ensure that they do not communicate “inside” or privileged information to a prospective employer; and
 3. Avoid any activity that affects the public’s confidence in the government’s integrity.

5 CFR 2635.604
5 CFR 2635.402(c)
DoD 5500.7-R

Recruiting Current Federal Employees

- **Recusal from the Prospective Employer Matters While Seeking Employment - DoD**
 - DoD officers, and enlisted and civilian employees (in any career field or occupation) must:
 - Notify his/her supervisor in writing of employment contacts that may impact his/her duties; and
 - Disqualify him/herself from any further involvement in matters involving those activities

Recruiting Current Federal Employees

One-Year Ban on Employment with a Government Contractor

Is this a good candidate if the Prospective Employer has to wait a year?

- A Federal employee cannot accept compensation from a contractor as an employee, officer, director or consultant **with 1 year after such official:**
 - Served as the **contracting officer, SSA, member of SSEB** in a procurement in which the contractor was selected for award in excess of \$10M
 - Served as the **program manager, deputy program manager, contracting officer** for a contract in excess of \$10M awarded to that contractor; or

Recruiting Current Federal Employees

One-Year Ban on Employment with a Government Contractor

- A Federal employee cannot accept compensation from a contractor as an employee, officer, director or consultant **with 1 year after such official:**
 - Personally made the Federal agency decision to:
 - (A) **Award a contract**, subcontract, **modification of a contract** or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;
 - (B) **Establish overhead or other rates** applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;
 - (C) **Approve issuance of a contract payment or payments** in excess of \$10,000,000 to that contractor; or
 - (D) **Pay or settle a claim** in excess of \$10,000,000 with that contractor.

Is this a good candidate if the Prospective Employer has to wait a year?

Recruiting Current Federal Employees

Meals, lodging, transportation relating to recruiting a Federal employee:

- **Only After Recusal from the Prospective Employer Matters**, a current federal employee may accept meals, lodgings, transportation, and other benefits customarily provided by a prospective employer in connection with Bonafide employment discussions.

Recruiting Current Federal Employees

Recruiting Current Military Members During **Terminal Leave**:

- All Federal ethics rules still apply
 - ***But** notice and recusal may not be required if the employee on terminal leave has no involvement in the Prospective Employer matters or procurements*
- Senior personnel must still file **STOCK Act notice** within 3-days of start of negotiations
- During terminal leave, a military member **may accept and start employment** with a contractor, subject to compliance with post-Federal employment restrictions
 - Limitation on certain representational work or “appearances”
 - Can work at the Prospective Employer’s office “behind-the-scenes”

Recruiting Current Federal Employees

- **Key Trip Wires When Recruiting Current Federal Employees**
 - Is the Federal employee **personally and substantially involved** in any matter that has a direct and predictable effect on the financial interests of the Prospective Employer?
 - Is the Federal employee **taking any official action** that affects the financial interests of the Prospective Employer?
 - Is the Federal employee **participating in any procurement** above the SAT in which the Prospective Employer is an offeror?
 - Is the Federal employee **“seeking” employment** with the Prospective Employer as defined in 5 CFR 2635.603(b)?
 - Has the Federal employee **given notice and recused** himself from the matter?

Recruiting Current Federal Employees

- **Key Trip Wires When Recruiting Current Federal Employees**

Within the past year (2 years for DoD employees), has the Federal employee:

- Served as the contracting officer, SSA, member of SSEB in a procurement in which the contractor was selected for award in excess of \$10M
- Served as the program manager, deputy program manager, contracting officer for a contract in excess of \$10M awarded to that contractor; or
- Personally made the Federal agency decision to:
 - (A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;
 - (B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;
 - (C) Approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

Key Laws and Regulations: Post-Federal Employment Restrictions



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Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- Former Federal employee **cannot**:
 - a. **Communicate/appear** before *any* Federal employee
 - b. On behalf of a contractor
 - c. With the “**intent to influence**”
 - d. Regarding a “particular matter” in which the U.S. has an interest
 - e. Involving the contractor
 - f. Where the former Federal employee **participated “personally and substantially”** during Federal employment.

Note: 18 USC 207 (as implemented by 5 C.F.R. § 2641.104) does not apply to Title 32 National Guard members or to enlisted members of the Military Services

Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- **“Communication”** is when the former Federal employee “imparts or transmits information of any kind, including facts, options, ideas, questions or direction, to an employee of the United States, whether orally, in written correspondence, **by electronic media, or by any other means.**
- **“Appearance”** is when the former Federal employee is “physically present” before a USG employee, in either a formal or informal setting. *An appearance need not involve any communication by the former employee.*

Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- **Behind-the-scenes assistance is permitted.**
 - The Lifetime Ban does **not prohibit** a former Federal employee from **providing assistance to a contractor** in regard to a matter in which he participated during his Federal employment
 - Provided that the assistance **does not involve a communication to or an appearance** before an employee of the United States.

Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- **Hypothetical No. 1:**

- A former DoD employee of the Federal Bureau of Investigation makes a brief telephone call to a colleague in her former office concerning an ongoing contract dispute involving her new employer. **Has she has made a communication?**
- She later personally attends an informal Zoom/Teams meeting with agency personnel concerning the contract dispute. **Has she made an appearance?**

Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- Hypothetical No. 1:

- Yes, the phone call was a communication.
- Yes, the virtual meeting was an appearance.

Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- **Hypothetical No. 2:** A Navy employee administered a particular contract for electronic system upgrades on Navy ships with Q Company.
 - Upon termination of her Navy employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Navy.
 - At the request of a company vice president, she prepares a paper describing the persons at the Navy who should be contacted and what should be said to them in an effort to increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause.
 - **Is this prohibited by the Lifetime Ban?**

Post-Federal Employment Restrictions

Lifetime Ban on Representation in Certain Matters

- Hypothetical No. 2:

- **No, this is not prohibited as this is proper behind-the-scenes work.**
- **She may describe the persons who should be contacted at the Navy.**
- **She may provide talking points of what should be said to them in an effort to increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause.**

Post-Federal Employment Restrictions

Two-Year Ban on Representation in Certain Matters

- For two years after Government service, a former Federal employee **cannot**:
 - a. **Communicate/appear** before *any* Federal employee
 - b. On behalf of a contractor
 - c. With the **“intent to influence”**
 - d. Regarding a “particular matter” in which the U.S. has an interest
 - e. Involving the contractor
 - f. That was as **actually pending under the employee’s official responsibility** within the one-year period prior to the termination of his Government service.

Post-Federal Employment Restrictions

Two-Year Ban on Representation in Certain Matters

- **Same parameters** regarding “appearance,” “communication,” “intent to influence.”
- **“Official Responsibility”**
 - All matters under direct administrative or operating authority exercised personally or by subordinates to approve, disapprove, or direct Government action.
- **“Actually pending”**
 - Referred to the employee for assignment
 - Under consideration by any person he supervises, including a subordinate.

Post-Federal Employment Restrictions

One-Year Cooling Off Period

- Applies to Former **“Senior” Federal**
 - Personnel with basic pay greater than 86.5% of Executive Schedule Level II (\$195,231 in 2025)
- Cannot
 - a. **Communicate/appear** before his **former agency**
 - b. On behalf of another
 - c. With the **“intent to influence”**
 - d. On **any matter** where official action is sought.

Post-Federal Employment Restrictions

One-Year Cooling Off Period

- **Former Agency at DoD**

- **DoD components are separate** from each other for purposes of 18 USC 207(c)

- Army, Navy Air Force, DISA, DIA, DLA, DTRA, NGIA, NRO, NSA, DARPA

Post-Federal Employment Restrictions

One-Year Cooling Off Period – Foreign Entities

- Applies to Former “**Senior**” Federal
 - Personnel with basic pay greater than 86.5% of Executive Schedule Level II (\$195,231 in 2025)
- Cannot
 - a. **Communicate/appear** on behalf of a **foreign entity** before any U.S. department or agency with the intent to influence
 - b. **Advise or aid** a **foreign entity** with intent to influence a decision of a U.S. official
 - a. NO behind-the-scenes assistance to a foreign entity

Post-Federal Employment Restrictions

Compensation Ban on Representation by Others

- Former Federal employees may not
 - Accept compensation for representational services
 - Provided by anyone while former federal employee was a Government employee
 - Before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest.
- This prohibition may affect personnel who leave the Government and share in proceeds of the partnership or business for representational services that occurred prior to the federal employee terminated federal service (Examples: lobbying, consulting and law firms)

Note: The prohibitions in 18 U.S.C. 203 & 205 do not apply to Title 32 National Guard members or to enlisted members of the Military Services

Ethics Advisory Opinions Requirements and Best Practices



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Ethics Advisory Opinions

- **Departing Federal employees** may request an ethics advisory opinion (“**ethics letter**”) from their agency ethics official
- Ethics letters provide **guidance and a “safe harbor”** for compliance regarding post-federal employment activities
 - *Ethics letters can also protect the new employer*
- **Quality of the advice depends** on how detailed the former Federal employee described his Federal responsibilities and his Post-Federal responsibilities.
- Obtaining an ethics letter is **always a best practice**. Sometimes it is **required**....

Ethics Advisory Opinions

- **Optional Ethics Advisory Opinions regarding One-Year Compensation Ban under Procurement Integrity Act**
 - Former Federal employee **may ask for ethics letter** advising if he is prohibited from receiving compensation from a particular contractor by 41 U.S.C. 2104 (FAR 3.104-3(d))
 - Former Federal employee makes **detailed disclosure**:
 - Procurements or decisions on matters involving the particular contract;
 - Former Federal employee's participation
 - Letter issued **within 30 days** of receipt of request.

Ethics Advisory Opinions

- **Optional Ethics Advisory Opinions regarding One-Year Compensation Ban under Procurement Integrity Act**
 - **Legal Safe Harbor:** If ethics letter advises the former Federal employee may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, **then *neither the requester nor the contractor* will be found to have knowingly violated 41 U.S.C. 2104.**
 - **BUT:** “If the requester or the contractor has **actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information**, their reliance upon the opinion will not be deemed to be in good faith.”

Ethics Advisory Opinions

- **Required Ethics Letters for Certain DoD Officials**
 - **For two years after leaving DoD,**
 - Any DoD Senior Executive or Flag Officer above O-7 who participated personally and substantially in an acquisition >\$10M within two years prior to departure
 - Who expects to receive compensation from any defense contractor
 - Must obtain a written ethics letter from DoD ethics official

Ethics Advisory Opinions

- Required Ethics Letters for Certain DoD Officials
 - A DoD contractor:
 - May not provide compensation to a covered DoD official within **two** years after the official leaves DoD service
 - Unless the contractor first determines the official has received, or has requested at least 30 days prior to receiving compensation from the contractor, the post-federal ethics opinion.
- **Noncompliance** may result in cancellation of procurement, rescission of contract, initiation of suspension & debarment

Ethics Advisory Opinions

- **Required Ethics Letters for Certain DoD Officials**
 - Issued within **30 days**
 - Request submitted in the “After Government Employment Advice Repository” **(AGEAR) System**
 - Current and former DoD personnel must have **at least a tentative job offer** and provide a detailed **job description**

Ethics Advisory Opinions

Post DHA employment

- **Hypothetical:** A DHA physician left DoD 6 months ago. While at DHA, she served on a source selection board for a \$20 million contract. She has decided to apply for a position with X-Med, a DoD contractor.
 - **Is this matter subject to the requirement to obtain an Ethics Opinion through AGEAR?**

Ethics Advisory Opinions

Defense Health Agency (DHA) Ethic Opinion Requirement

- **Depends on the DHS physician's rank:**
 - **O-6 or below: No**, the DHA physician is not required to obtain an ethics letter prior to accepting employment with X-Med (but a letter may still be a good idea).
 - **O-7 or above: Yes**, the DHA physician is required to obtain an ethics letter prior to accepting employment with X-Med.

Organizational Conflicts of Interest Created by Former Federal Employees



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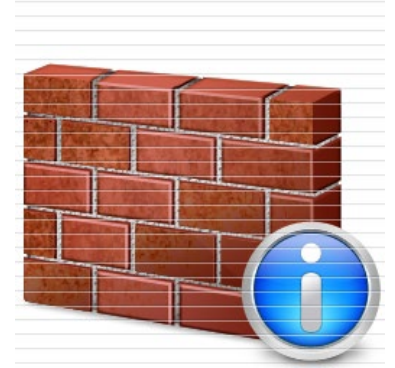
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OCI-Related Post-Federal Employment Restrictions

- “Unequal Access” OCI
 - The primary concern with an unequal access to information type OCI is that the contractor had inside information that provides it with an unfair competitive advantage.
 - Extends to information to which **former Federal employees hired by the contractor** had access
 - Proprietary cost, pricing, and technical information of other contractors
 - Non-public, competitively useful information about the Agency’s preferences or the procurement plan
 - NOTE: This can limit the “behind the scenes” work a former Federal employee can perform in business development activities

OCI-Related Post-Federal Employment Restrictions

- **Mitigation of “Unequal Access” OCIs**
 - Need to identify this before *preparation* of proposal (submission may be too late!)
 - Your employees, team members, and consultants
 - Former Federal Employees = Big Risk
- **Possible Mitigation Strategies**
 - Disclosure to all competitors
 - **Nondisclosure but with strict internal firewall: *physical, organizational, and electronic***
 - Sometimes exclusion is the only acceptable option to the Government



OCI-Related Post-Federal Employment Restrictions

- “Unequal Access” OCIs Involving Former Federal Employees are a **frequent source of bid protest litigation**.
- A contractor cannot “self-mitigate”
- To reduce protest risk, FAR 9.5 requires **disclosure to the Contracting Officer** for evaluation of the potential OCI and approval of any mitigation.
- **Protests are granted** where the CO has not evaluated the situation. (GAO enforces FAR 9.5 procedure)
- **Protests are often denied** regularly where the CO has evaluated the situation. (GAO deference)

Questions?