

OFFICE OF GOVERNMENT ETHICS

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Letter to a Private Attorney  
dated April 8, 1998

This is in response to your letter of March 16, 1998, requesting confirmation that there is no *per se* prohibition against the use by a Government contractor of resumes of current Government employees in response to Federal agency solicitations. Additionally, you request confirmation that a contractor would not be prohibited from using the resume of a Government employee in certain circumstances. As we understand it, employees' resumes may be used by bidders responding to agency solicitations to indicate who will be performing the work under the contract if the bidder is successful.

As you state, there are no blanket prohibitions against the use by a contractor or potential Government contractor of a resume of a current Government employee in a proposal to the Government.

When a Government employee is seeking employment with an entity that is a Government contractor, a panoply of ethics laws and regulations and other restrictions could come into play depending on the facts of the individual case. In general, Government employees are prohibited from working on official matters affecting their outside employer or an entity with whom they are negotiating for employment (18 U.S.C. § 208); an executive branch employee may not, for compensation, represent other parties (such as an outside contractor) before Federal agencies (18 U.S.C. § 203) and may not do so even when the representative activity is uncompensated (18 U.S.C. § 205); after leaving Government, a former Government employee is prohibited from representing a person, like the outside contractor, back to the Government with respect to a particular matter involving specific parties that the employee had worked on while a Government employee (18 U.S.C. § 207).

There are laws and regulations particular to the procurement area that could be relevant to your inquiry. Federal agencies are restricted from entering into contracts with Federal employees or companies substantially owned by Federal employees (see 48 C.F.R. subpart 3.6); furthermore, there are particular restrictions that apply to employees who are involved in agency procurements. (See 41 U.S.C. § 423 and the regulatory implementation of those provisions in 48 C.F.R. § 3.104.) Again, the facts of a particular case could raise issues pursuant to these authorities.

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) have specific rules which could be relevant to your inquiry, depending on the facts. But

none of the restrictions contained in those regulations would be violated automatically were an employee to allow a contractor to use the employee's resume in connection with the submission of a proposal in response to a Federal solicitation. For example, an employee would not have *per se* violated the provisions on use of public office for private gain by allowing a potential Federal contractor to use the employee's resume with biographical information including the employee's Federal employment.

You inquire whether the use of a current Government employee's resume would be prohibited under certain circumstances. In the circumstances you pose, the hypothetical Government employee never had responsibility for the subject procurement; never had responsibility for the contractor; did not have any role in preparing the contractor's proposal; does not work for the procuring agency; and has brought to the attention of his superior and the agency ethics official his intentions regarding the use of his resume, which contains only biographical information typically found on a resume. Under these circumstances, a submission of the employee's resume along with a proposal to the procuring agency would not, by itself, create a violation of an ethics restriction. The inclusion of additional facts could result in the implication of ethics rules. For example, if the employee's agency concluded that the employee's seeking of outside employment substantially conflicted with the performance of his official duties, the agency could take steps to address the conflict pursuant to section 2635.603(d) of the Standards of Conduct.

I trust this guidance is useful to you.

Sincerely,

Jane S. Ley  
Deputy Director for  
Government Relations and  
Special Projects