

all grantees to use the same accounting methods that had been developed in connection with the settlement agreement. The former employee may represent a group of grantees submitting comments critical of the proposed regulation. Although the proposed regulation in some respects evolved from the earlier fraud case, which did involve specific parties, the subsequent rulemaking proceeding does not involve specific parties.

(4) *Preliminary or informal stages in a matter.* When a particular matter involving specific parties begins depends on the facts. A particular matter may involve specific parties prior to any formal action or filings by the agency or other parties. Much of the work with respect to a particular matter is accomplished before the matter reaches its final stage, and preliminary or informal action is covered by the prohibition, provided that specific parties to the matter actually have been identified. With matters such as grants, contracts, and other agreements, ordinarily specific parties are first identified when initial proposals or indications of interest, such as responses to requests for proposals (RFP) or earlier expressions of interest, are received by the Government; in unusual circumstances, however, a prospective grant, contract, or agreement may involve specific parties even prior to the receipt of a proposal or expression of interest, if there are sufficient indicia that the Government has specifically identified a party.

*Example 1 to paragraph (h)(4):* A Government employee participated in internal agency deliberations concerning the merits of taking enforcement action against a company for certain trade practices. He left the Government before any charges were filed against the company. He has participated in a particular matter involving specific parties and may not represent another person in connection with the ensuing administrative or judicial proceedings against the company.

*Example 2 to paragraph (h)(4):* A former special Government employee (SGE) of the Agency for Health Care Policy and Research served, before leaving the agency, on a "peer review" committee that made a recommendation to the agency concerning the technical merits of specific grant proposal submitted by a university. The committee's recommendations are nonbinding and constitute only the first of several levels of review within the agency. Nevertheless, the SGE participated in a particular matter involving specific parties and may not represent the university in subsequent efforts to obtain the same grant.

*Example 3 to paragraph (h)(4):* Prior to filing a product approval application with a regulatory agency, a company sought guidance from the agency. The company provided specific information concerning the product, including its composition and

intended uses, safety and efficacy data, and the results and designs of prior studies on the product. After a series of meetings, the agency advised the company concerning the design of additional studies that it should perform in order to address those issues that the agency still believed were unresolved. Even though no formal application had been filed, this was a particular matter involving specific parties. The agency guidance was sufficiently specific, and it was clearly intended to address the substance of a prospective application and to guide the prospective applicant in preparing an application that would meet approval requirements. An agency employee who was substantially involved in developing this guidance could not leave the Government and represent the company when it submits its formal product approval application.

*Example 4 to paragraph (h)(4):* A Government scientist participated in preliminary, internal deliberations about her agency's need for additional laboratory facilities. After she terminated Government service, the General Services Administration (GSA) issued a request for proposals (RFP) seeking private architectural services to design the new laboratory space for the agency. The former employee may represent an architectural firm in connection with its response to the RFP. During the preliminary stage in which the former employee participated, no specific architectural firms had been identified for the proposed work.

*Example 5 to paragraph (h)(4):* In the previous example, the proposed laboratory was to be an extension of a recently completed laboratory designed by XYZ Architectural Associates. From the very beginning of deliberations, both the agency and GSA were aware that the proposed laboratory extension posed unique architectural issues, intimately related to certain technical features of the original laboratory design, that might best be addressed by XYZ, which had specific experience and certain efficiencies resulting from its prior work. Before leaving the Government, the former employee participated in meetings in which these design issues and the ways in which XYZ might resolve them were discussed internally. Although XYZ was not contacted at this stage, and the ultimate procurement process would be open to all bidders, the agency had already identified XYZ as a likely qualified bidder based on the circumstances surrounding XYZ's recent involvement in a related matter. The former employee may not represent XYZ or any other competing contractor before the Government in connection with this matter.

(5) *Same particular matter.* The prohibition applies only to communications or appearances in connection with the same particular matter involving specific parties in which the former employee participated as a Government employee. The same particular matter may continue in another form or in part. In determining whether two particular matters involving specific parties are the same, all relevant factors should be

considered, including the extent to which the matters involve the same basic facts, the same or related parties, related issues, the same confidential information, and the amount of time elapsed. With matters such as grants, contracts or other agreements, a new matter typically does not arise simply because there are amendments, modifications, or extensions, unless there are fundamental changes in objectives or the nature of the matter.

*Example 1 to paragraph (h)(5):* An employee drafted one provision of an agency contract to procure new software. After she left Government, a dispute arose under the same contract concerning a provision that she did not draft. She may not represent the contractor in this dispute. The contract as a whole is the particular matter involving specific parties and may not be fractionalized into separate clauses for purposes of avoiding the prohibition of 18 U.S.C. 207(a)(1).

*Example 2 to paragraph (h)(5):* A former special Government employee (SGE) recommended that his agency approve a new food additive made by Good Foods, Inc., on the grounds that it was proven safe for human consumption. The Healthy Food Alliance (HFA) sued the agency in Federal court to challenge the decision to approve the product. After leaving Government service, the former SGE may not serve as an expert witness on behalf of HFA in this litigation because it is a continuation of the same product approval matter in which he participated personally and substantially.

*Example 3 to paragraph (h)(5):* An employee of the Department of the Army negotiated and supervised a contract with Munitions, Inc. for four million mortar shells meeting certain specifications. After the employee left the Government, the Army sought a contract modification to add another one million shells. All specifications and contractual terms except price, quantity and delivery dates were identical to those in the original contract. The former Army employee may not represent Munitions in connection with this modification, because it is part of the same particular matter involving specific parties as the original contract.

*Example 4 to the paragraph (h)(5):* In the previous example, certain changes in technology occurred since the date of the original contract, and the proposed contract modifications would require the additional shells to incorporate new design features. Moreover, because of changes in the Army's internal system for storing and distributing shells to various locations, the modifications would require Munitions to deliver its product to several de-centralized destination points, thus requiring Munitions to develop novel delivery and handling systems and incur new transportation costs. The Army considers these modifications to be fundamental changes in the approach and objectives of the contract and may determine that these changes constitute a new particular matter.

*Example 5 to paragraph (h)(5):* A Government employee reviewed and approved certain wiretap applications. The