



FEMA

April 9, 2009

Mr. Jason McNamara
Chief of Staff, FEMA
500 C Street, S.W., Suite 800
Washington, D.C. 20472-3100

SUBJECT: Caution Letter – Appearance of Conflict of Interest

Dear Mr. McNamara:

Thank you for promptly filing your new entrant Public Financial Disclosure (SF 278) Report.

Our review of your SF 278 indicated that you have an appearance of conflict of interest situation resulting from your prior work as a corporate executive for FEMA contractor Dewberry. Pursuant to 5 C.F.R. § 2635.502(a), you are barred from working on any particular matter involving specific parties [PMISP], e.g., contracts, grants, or other actions that have a direct and predictable financial impact on a non-federal party in which your former employer, Dewberry or Dewberry's joint ventures with NISTAC and PaRR¹ is a party or represents a party for a period of one year from your leaving your position at Dewberry.

Furthermore, on April 2, 2009, you signed the Ethics Contract required pursuant to Executive Order 13490. As a result, you are barred for a period of *two years* following your appointment, i.e., until March 2, 2011, from participating in; 1) any particular matter involving specific parties (including certain regulations and contracts) in which Dewberry is or represents a party; and 2) any meeting or communication relating to your official FEMA duties with Dewberry, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. "Particular matters of general applicability" include regulations that are directed to a discrete and identified class of entities.

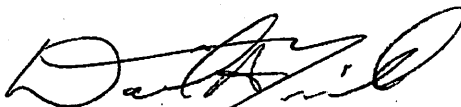
Executive Order 13490 and authoritative interpretive guidance when applying the Ethics Contract bar regarding former employers issued by Director, U.S. Officer of Government, OGE DAEOGram-09-011, are attached for your guidance. I invite your attention to the definition and discussion of the meaning of PMISP in those materials. Specifically, the term incorporates the longstanding interpretation of this phrase found at 5 C.F.R. § 2641.201(h) of the federal ethics rules, and expands it to include any meeting or other communication with a former employee or

¹ Joint ventures PaRR and NISTAC are included because Dewberry is a partner to both joint ventures, which have contracts with FEMA.

former client related to the performance of the appointee's official duties, *unless* the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. This additional restriction was added by the White House to combat the perception that former employers may appear to have privileged access, which they may attempt to exploit to influence an appointee outside of the public view. Meetings/communications meeting the exception do not have to be open to all comers but should include a multiplicity of parties. For example, if an agency is holding a meeting with five or more stakeholders regarding a particular policy or piece of legislation, you could attend such as meeting even if one of the stakeholders present was your former employer, as the number of participants allays any fears that the former employer is getting special access to you. In any event, agency ethics officials will have to exercise judgment in determining whether a specific forum qualifies as a meeting or other event that is "open to all interested parties", and ethics officials may seek Office of Government Ethics assistance in making any such determination.

If you have any other questions about this cautionary letter or any other aspect of your obligations to recuse yourself from any PMISPs involving Dewberry as a party or representative of a party, please do not hesitate to contact me or my ethics staff to assist you.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Trissell". The signature is fluid and cursive, with a large initial "D" and "T".

David A. Trissell
Chief Deputy Ethics Official

Enclosures

cc: Acting FEMA Administrator
Acting Deputy FEMA Administrator