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## NOTES

### CLOSING THE REVERSE REVOLVING DOOR: PROPOSED RESTRICTIONS ON EMPLOYEES OF CONTRACTORS SEEKING GOVERNMENT EMPLOYMENT

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# NOTES

## CLOSING THE REVERSE REVOLVING DOOR: PROPOSED RESTRICTIONS ON EMPLOYEES OF CONTRACTORS SEEKING GOVERNMENT EMPLOYMENT

*Jeremiah D. Davis*\*

### I. INTRODUCTION

In 1986, John Marlowe, a retired Marine, offered to sell a competitor's bid proposal information for a then pending Marine Corps contract to an unidentified defense contractor in Virginia.<sup>1</sup> The defense contractor reported the interaction to the Naval Investigative Service ("NIS"), who approached Marlowe and convinced him to allow them to secretly record his phone calls with other Department of Defense ("DoD") contractors.<sup>2</sup> The evidence gathered from the wiretaps gave the NIS and Federal Bureau of Investigation ("FBI") the ability to obtain dozens of search warrants.<sup>3</sup> The FBI searched

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<sup>1</sup> Elizabeth Tucker & Ruth Marcus, *Defense Probe Informer Named*, WASH. POST (July 9, 1988, 8:00 PM), <https://www.washingtonpost.com/archive/politics/1988/07/09/defense-probe-informer-named/ca6ef9c4-a978-4e7d-866f-e8afe34345fa/>. *Id.* At the time of the interaction, Marlowe was working as a contractor for his own small defense consulting company, Tri-Tech Inc.

<sup>2</sup> FBI, *Operation Ill Wind*, FBI (Dec. 13, 2016), <https://www.fbi.gov/history/famous-cases/operation-illwind>. The Naval Investigative Service (NIS) is now called the Naval Criminal Investigative Services (NCIS). *Id.* Prior to the tip, Marlowe was caught molesting two underage girls in a housing complex. Anthony Critelli, *This Day in Gov History, June 14, 1988: "Operation Ill Wind" Raids*, GOVWIN NETWORK (June 14, 2011), [https://web.archive.org/web/20131109194354/http://govwin.com/anthonycritelli\\_blog/this-day-in-govcon-history/131183](https://web.archive.org/web/20131109194354/http://govwin.com/anthonycritelli_blog/this-day-in-govcon-history/131183). Marlowe was charged with indecent exposure and aggravated sexual battery. Tucker & Marcus, *supra* note 1. He agreed to let the NIS and FBI record his phone calls to keep his bond from being revoked. Critelli, *supra*.

<sup>3</sup> Critelli, *supra* note 2. The FBI searched the offices of multiple defense contractors, including Pratt & Whitney and McDonnell Douglas. George J. Church, *Beltway Bandits at Work In the Pentagon*,

the offices of defense contractors, consultants, and government officials and discovered an industry wide conspiracy of corruption in the government contracting environment.<sup>4</sup> This investigation, known as Operation Ill Wind, resulted in the conviction of nine government officials, forty-two consultants and corporate executives, and seven companies for procurement fraud.<sup>5</sup> In the aftermath of Operation Ill Wind, Congress enacted the Procurement Integrity Act (the “Act”),<sup>6</sup> a comprehensive piece of legislation that includes bans on the release of source selection information, bid and proposal information, and restrictions for government employees accepting offers for future employment and compensation from contractors while working on procurements.<sup>7</sup> In addition, the Act places restrictions on government officials leaving U.S. Government service to seek employment with the same contractors they negotiated with while employed by the government.<sup>8</sup> These restrictions are colloquially known as “revolving door” laws.<sup>9</sup> Although the Act has been largely successful in minimizing the occurrence of fraud and bribery in government contracting, corruption, nonetheless, remains an issue in the federal government contracting environment. Two cases subsequent to the passage of the Act that highlight this ongoing issue are those of Darleen Druyun and Kerry Khan. In 2004, Darleen Druyun, the former civilian acquisition official for the U.S. Air Force, was convicted for favoring The Boeing Company (“Boeing”) on multiple contracts, including a \$4 billion dollar tanker contract, as a way to position herself for future employment

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TIME (July 4, 1988), <https://content.time.com/time/subscriber/article/0,33009,967806-2,00.html>. The FBI also searched the offices of multiple Pentagon officials. John M. Broder, *Probe of Contracts: New Faces, Old Stars in Arms Drama*, L.A. TIMES (June 30, 1988, 12:00 PM), <https://www.latimes.com/archives/la-xpm-1988-06-30-mn-7817-story.html>.

<sup>4</sup> Critelli, *supra* note 2.

<sup>5</sup> Irwin Ross, *INSIDE THE BIGGEST PENTAGON SCAM An extraordinary federal investigation called Operation Ill Wind reveals how secrets are sold, bids are rigged, and officials are bribed. Can Clinton stop the fraud?*, CNN MONEY (Jan. 11, 1993), [https://web.archive.org/web/20110616102838/https://money.cnn.com/magazines/fortune/fortune\\_archive/1993/01/11/77357/index.htm](https://web.archive.org/web/20110616102838/https://money.cnn.com/magazines/fortune/fortune_archive/1993/01/11/77357/index.htm).

<sup>6</sup> Critelli, *supra* note 2.

<sup>7</sup> Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. No. 100-679, § 27, 102 Stat. 4055, 4063-4068 (codified as amended at 41 U.S.C. §§ 2101-2107).

<sup>8</sup> 41 U.S.C. § 2103-2104.

<sup>9</sup> See, e.g., Shaun Kennedy, *Refresher on Post-Government Employment Restrictions*, HOLLAND & HART (Aug. 7, 2023), <https://www.hollandhart.com/refresher-on-post-government-employment-restrictions>.

with the company.<sup>10</sup> Kerry Khan was a former program manager for the Army Corps of Engineers who was convicted for leading a ring of public officials and Government contractors in a bribery and kickback scheme that generated over thirty million dollars through inflated and false invoices.<sup>11</sup>

While corruption continues to be an issue in the context of the “revolving door,” there is nonetheless a greater threat of adverse or illicit conduct regarding employees of contractors who seek Government employment—the “reverse revolving door.” The reverse revolving door presents similar concerns of corruption as those addressed by the Act. Executives of major defense companies, for example, often leave private industry and become senior Government officials in the U.S. Department of Defense (DoD) and other agencies.<sup>12</sup> In these roles, former private industry executives have oversight over programs, source selections, and the award of significant contracts to contractors, many of whom were their former employers. As a result, there is a gap in the body of regulations that governs post-employment restrictions for former contractor employees. This Note explores the existing regulatory gap and examines why there should be policies in place that prevent employees of private companies from accepting offers to work for the Government in significant senior or contracting roles during or immediately after their tenures with contractors which provide goods and services to the Government.

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<sup>10</sup> Jeffrey Branstetter, *The Darleen Druyun Debacle: Procurement, Power, and Corruption 4–7* (Aug. 1, 2005) (LL.M thesis, George Mason University).

<sup>11</sup> U.S. Attorney’s Office, District of Columbia, *Former U.S. Corps of Engineers Manager Sentenced To More Than 19 Years In Prison For \$30 Million Bribery And Kickback Scheme Scam Involved Steering Of Government Contracts; Defendant Is Among 15 People To Plead Guilty*, U.S. DEP’T OF JUST. (July 11, 2013), <https://www.justice.gov/usao-dc/pr/former-us-army-corps-engineers-manager-sentenced-more-19-years-prison-30-million-bribery>. The scheme included high level employees from Nova Datacom, LLC, Alpha Technology Group, Inc. and the owners of Core Technology LLC, Enterprise Technical Solutions, Inc., Unisource Enterprise Inc., and Big Surf Construction Management LLC. *Id.*

<sup>12</sup> *See infra* Section V. Prior to becoming the Assistant Secretary of the Air Force for Acquisition, Sue C. Payton worked as a senior executive for companies like Image Links, now L3 Harris Technologies, Martin Marietta, and Lockheed Martin.

## II. THE HISTORY OF THE PROCUREMENT INTEGRITY ACT

As a response to the 1988 Operation Ill Wind procurement scandal, the Procurement Integrity Act was enacted.<sup>13</sup> The central figure of the investigation, and the highest ranked member of the Government to be implicated in the scandal was Melvyn R. Paisley (“Paisley”).<sup>14</sup> After twenty-eight years working for Boeing, Paisley was named Assistant Secretary of the Navy (Research, Engineering, and Systems) in 1981 by then president Ronald Reagan.<sup>15</sup> In this role, Paisley was responsible for procurements of significant weapons systems with access to detailed solicitation and bid information. In December of 1981, Paisley met William M. Galvin (“Galvin”), a defense consultant with connections to businesses such as Martin Marietta, Unisys, Loral, and United Technologies, and the pair decided to work together.<sup>16</sup> Paisley and Galvin colluded to get the Navy to select Martin Marietta as the prime contractor for a research program and formed a company that became a subcontractor on the program.<sup>17</sup> Paisley

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<sup>13</sup> Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. No. 100-679, § 27, 102 Stat. 4055, 4063-4068 (codified as amended at 41 U.S.C. §§ 2101-2107).

<sup>14</sup> The highest executive to be charged as a result of the investigation was John O’Brien, who was the former chairman of Grumman, now Northrop Grumman. Jonathan Rabinovitz, *Ex-Chairman of Gruman Is Fined \$10,000 for Bank Fraud*, N.Y. TIMES (Apr. 15, 1993), [https://web.archive.org/web/20131109194354/http://govwin.com/anthonycritelli\\_blog/this-day-in-govcon-history/13118320150526091650/https://www.nytimes.com/1993/04/15/nyregion/ex-chairman-of-grumman-is-fined-10000-for-bank-fraud.html](https://web.archive.org/web/https://web.archive.org/web/20131109194354/http://govwin.com/anthonycritelli_blog/this-day-in-govcon-history/13118320150526091650/https://www.nytimes.com/1993/04/15/nyregion/ex-chairman-of-grumman-is-fined-10000-for-bank-fraud.html). O’Brien received loan payments from Grumman subcontractor James Kane, which violated anti-kickback laws. *Id.* O’Brien received \$300,000 to build a home for himself, \$125,000 to buy a home for his son, and \$125,000 to buy a home for his daughter. *Id.* After his resignation from Grumman, O’Brien pled guilty to two counts of fraud and was required to pay \$10,000 in fines. *Id.*

<sup>15</sup> Gerhard Peters & John T. Woolley, *Nomination of Melvyn R. Paisley To Be an Assistant Secretary of the Navy*, THE AMERICAN PRESIDENCY PROJECT (Oct. 23, 1981), [https://www.presidencyhttps://web.archive.org/web/20131109194354/http://govwin.com/anthonycritelli\\_blog/this-day-in-govcon-history/131183.ucsb.edu/documents/nomination-melvyn-r-paisley-be-assistant-secretary-the-navy](https://www.presidencyhttps://web.archive.org/web/20131109194354/http://govwin.com/anthonycritelli_blog/this-day-in-govcon-history/131183.ucsb.edu/documents/nomination-melvyn-r-paisley-be-assistant-secretary-the-navy).

<sup>16</sup> Ross, *supra* note 5. Paisley and Galvin met at the former’s swearing in celebration and Galvin invited Paisley to his home. *Id.* They vacationed together in St. Thomas in the U.S. Virgin Islands, where they agreed to create a company and use Paisley’s influence in the Navy to steer contracts to that company. *Id.* The company the two men formed was called Sapphire Systems. However, Paisley’s financial interest in the company remained concealed until the FBI’s investigation. *Id.*

<sup>17</sup> Paisley awarded the contract to Martin Marietta, who retained Sapphire Systems as the subcontractor. *Id.* \$900,000 in initial funding was approved to go to Marietta and \$300,000 was to go to Sapphire. *Id.* However, Marietta was replaced with another prime contractor after Paisley resigned from

also blocked the award of a contract for a surveillance radar system and persuaded his Pentagon colleagues to alter the contract's competition terms to favor Sperry Corp., whose final bid was too high, over a competing company.<sup>18</sup> Paisley further passed information to Unisys, assisted the company with its bidding strategy, and shortened the bidding timeline to favor their bid over other competitors.<sup>19</sup> For his efforts, Paisley was rewarded with hundreds of thousands of dollars in bribes and a job as a consultant for Unisys after he left the Pentagon.<sup>20</sup> In addition to working as a consultant, Paisley also continued to sell proprietary information with Galvin. In 1988, as part of the Operation Ill Wind investigation, the FBI discovered Paisley's corrupt conduct. The investigation also revealed a web of corruption and bribery in the government procurement environment that implicated individuals of all levels of government and private industry.<sup>21</sup> As a result of Operation Ill Wind, dozens were indicted and convicted for fraud and conspiracy. Paisley and other former government officials in the Navy each received twenty-year prison sentences for their involvement.<sup>22</sup> Consultants and executives from companies such as Norden Systems, Litton Industries, Boeing, General Electric, and United Technologies were convicted as well.<sup>23</sup>

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the Pentagon in 1987. *Id.* Paisley still received \$200,000 from Martin Marietta for awarding them the contract. *Id.*

<sup>18</sup> *Id.* Sperry Corp. eventually merged with The Burroughs Corporation to form Unisys. *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* Paisley was employed by Unisys from May 1, 1987, to May 14, 1988, during which time he received \$98,000. *Id.* Paisley was also hired by United Technologies in June of 1987, where he was paid \$218,000 over the course of a year. *Id.*

<sup>21</sup> Other Government officials charged included Victor Cohen, a former deputy assistant Air Force secretary, George Stone, a Navy procurement official, and James Gaines, a former Deputy Assistant Secretary of the Navy. See Robert L. Jackson, *Ex-Official Enters 'Ill Wind' Guilty Plea Defense: It marks the 50th conviction obtained under the probe of Pentagon procurement fraud. He faces 20 years in jail at sentencing Dec. 6.*, L.A. TIMES (Aug. 23, 1991), <https://web.archive.org/web/20200918113854/https://www.latimes.com/archives/la-xpm-1991-08-23-mn-1071-story.html>. Employees of contractors implicated in the scandal included Colvin Clay Wellborn, the former president and chief executive of Cubic Defense Systems and Thomas Gunn, the former vice president for marketing at McDonnell Aircraft Corp. See Michael Lev, *Guilty Pleas In Pentagon Fraud Cases*, N.Y. TIMES (Jan. 16, 1991), <https://web.archive.org/web/20090624183203/https://www.nytimes.com/1991/01/16/business/guilty-pleas-in-pentagon-fraud-case.html>.

<sup>22</sup> See Jackson, *supra* note 21. See also FBI, *supra* note 2.

<sup>23</sup> Robert F. Howe, *3 Indicted in 'Ill Wind' Defense Probe*, WASH. POST (Mar. 21, 1990), <https://www.washingtonpost.com/archive/politics/1990/03/22/3-indicted-in-ill-wind-defense-probe/e3a1acd3-46d8-4f5e-ae99-a208a24c48f4/>; Charles W. Hall, *Litton Industries Pleads Guilty, Closing Book on 'Ill Wind' Scandal*, WASH. POST (Jan. 14, 1994), <https://www.washingtonpost.com/>

Hundreds of millions in fines were paid, with the highest coming from Unisys, who paid \$190 million.<sup>24</sup> Operation Ill Wind revealed how corrupt the government procurement environment had become, and five months after the case became public, Congress passed the Procurement Integrity Act to ensure against the recurrence of corrupt activity in future federal government procurements.<sup>25</sup>

### III. THE PROCUREMENT INTEGRITY ACT

The Procurement Integrity Act comprehensively addresses issues that were significant in contributing to the procurement scandal of the late 1980s. It addresses the handling of procurement information, restrictions on post-government employment, and reporting requirements for job offers.<sup>26</sup> Specifically, the Act prohibits present and former employees from disclosing or obtaining procurement information before the award of the contract.<sup>27</sup> The Act defines procurement information as including “contractor bid or proposal information” and “source selection information.”<sup>28</sup> “Contractor bid or proposal information” includes cost data, labor rates, and manufacturing data.<sup>29</sup> “Source selection information” includes bid prices, proposed costs, and reports and evaluations.<sup>30</sup> To remove the incentive for government employees to favor certain contractors over others, the Act requires any

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archive/politics/1994/01/15/litton-industries-pleads-guilty-closing-book-on-ill-wind-scandal/b79a9b19-35fd-439d-84dc-99ef82704ec4/; Molly Moore & Robert F. Howe, *Boeing Co. is Guilty in Defense Case*, WASH. POST (Nov. 14, 1989), <https://www.washingtonpost.com/archive/politics/1989/11/14/boeing-co-is-guilty-in-defense-case/cea0d5bd-1150-4926-b7b9-d4abab147cc3/>; Michael Weisskopf & George C. Wilson, *GE Accused of Cheating*, WASH. POST (Nov. 30, 1988), <https://www.washingtonpost.com/archive/national/1988/11/30/ge-accused-of-cheating/023abeef-d58a-483e-bfff-8e69676abda/>; Robert A. Rosenblatt, *UTC Pleads Guilty to Fraud in Defense Scam*, L.A. TIMES (Aug. 29, 1992, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1992-08-29-fi-5598-story.html>.

<sup>24</sup> See John M. Broder, *Unisys Agrees to Pay \$190-Million Defense Scandal Fine: Pentagon: Sources say the firm will plead guilty in the Ill Wind procurement probe and suffer the largest such fraud penalty ever*, L.A. TIMES (Sept. 6, 1991, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1991-09-06-mn-1851-story.html>.

<sup>25</sup> Office of Federal Procurement Policy Act Amendments of 1988, Pub. L. No. 100-679, § 27, 102 Stat. 4055, 4063-4068 (codified as amended at 41 U.S.C. §§ 2101-2107).

<sup>26</sup> *Id.*

<sup>27</sup> See 41 U.S.C. § 2102(a)-(b).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* § 2101(2).

<sup>30</sup> *Id.* § 2101(7).

official personally or substantially involved in the procurement of a contract over \$100,000 to report any contact during the procurement process by a bidder regarding non-federal employment.<sup>31</sup> The official must also either reject the offer or disqualify themselves from the procurement until authorized to return.<sup>32</sup> Even after an official has left the government, they are subject to at least a one year post-government employment ban which precludes them from working for a contractor who was awarded a contract if they served on the procurement as the procuring contracting officer, the source selection authority, or as a member of the source selection evaluation board or head of the financial or technical evaluation team (the “Post-Government Employment Ban” or the “Ban”).<sup>33</sup> The Ban also covers former officials who awarded or modified a contract, established overhead for a contract, or approved payments or settlements under a contract.<sup>34</sup>

Though the Post-Government Employment Ban appears harsh, it only applies to contracts in excess of \$10 million.<sup>35</sup> Although the Ban applies to a broad range of government employees, the time period for the Post-Government Employment Ban differs based on the government official’s involvement in the procurement process.<sup>36</sup> If the former official was the contracting officer, a member of the source selection board, or the chief of a financial or technical evaluation team, the Ban period begins on the date of

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<sup>31</sup> *Id.* § 2103(a)(1). An “official” is defined as an individual appointed by the President; the head of an executive agency; or the Secretary of a military department. *See* 5 U.S.C. §§ 2104(a)(1)(A), (C), & (D). The Act also covers “employees,” who are defined as an individual appointed by the President; Congress; a member of a uniformed service; the head of a Government controlled corporation; or an adjutant general designated by the Secretary. *Id.* § 2105. Finally, the Act covers members of the uniformed services, who are defined in 5 U.S.C. § 2101 as such:

- (1) The “civil service consists of all appointive positions in the executive, judicial, and legislative branches of the Government of the U.S., except positions in the uniformed services;
- (2) “Armed forces” means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard; and
- (3) “Uniformed services” means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

<sup>32</sup> 41 U.S.C. § 2103(a)(2)(A)–(B).

<sup>33</sup> *Id.* § 2104(a)(1)–(2).

<sup>34</sup> *Id.* § 2104(a)(3).

<sup>35</sup> *Id.* § 2104(a)(1).

<sup>36</sup> Ian Patterson et al., *Understanding the Basics: The Procurement Integrity Act*, SCHOONOVER MORIARTY LLC (Sept. 22, 2021), <https://www.schoonoverlawfirm.com/understanding-the-basics-the-procurement-integrity-act/>.



the contract award or the date of contractor selection, if the official was not serving on the award date.<sup>37</sup> If the former official was the program manager, deputy program manager, or administrative contracting officer, the Ban period begins on the date the official last served.<sup>38</sup> If the former official directly awarded the contract, established overhead or other rates, or paid or settled a claim, the Ban period begins on the date the official made one of the aforementioned decisions.<sup>39</sup> Violators of the Act can be subject to both criminal and civil penalties.<sup>40</sup> Criminal penalties can include fines and imprisonment, and civil penalties can include financial sanctions.<sup>41</sup> Violators may also face reputational damage, loss of employment, and in the case of organizations that violate the Act, debarment and contract termination.<sup>42</sup> In short, the Procurement Integrity Act comprehensively eliminates the possibility of improper relations occurring between government employees and contractors and addresses many of the issues revealed by Operation Ill Wind.

#### IV. CONTROVERSIES IN GOVERNMENT CONTRACTING SINCE THE PROMULGATION OF THE ACT

While well intended, the passage of the Procurement Integrity Act has fallen short in eliminating collusion and corruption in government contracting in its entirety. In short, corruption remains an issue in government procurements notwithstanding the promulgation of the Act. This is evident in the cases of Darleen Druyun and Kerry Khan.

##### A. *Darleen Druyun and Boeing*

Darleen Druyun (“Druyun”) was the former principal deputy assistant secretary for Air Force acquisition and management.<sup>43</sup> Starting in 1970, she

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *See* 41 U.S.C. § 2105.

<sup>41</sup> *Id.* § 2105(a)–(b).

<sup>42</sup> *Id.* § 2105(c).

<sup>43</sup> Jeffrey Branstetter, *The Darleen Druyun Debacle: Procurement, Power, and Corruption* 4 (Aug. 1, 2005) (LL.M thesis, George Mason University). In 1970, Druyun started off as a contract

spent thirty years in the Government, and specifically during her time with the Air Force, she saved the C-17 program, facilitated the streamlined development of the Air Force's Joint Direct Attack Munition (JDAM), and supervised the \$200 million contract to produce the Joint Strike Fighter Aircraft.<sup>44</sup> However, in 2003, an investigation revealed that Druyun favored Boeing in procurements to secure employment for herself, her daughter, and her son-in-law at the company.<sup>45</sup> In early 2002, the Air Force was in negotiations with Boeing regarding the Air Force's KC 767A tanker deal, and Druyun was the primary official facilitating the negotiations.<sup>46</sup> The negotiations resulted in a proposed lease deal for one hundred tankers. Critical of the proposal, former Senator John McCain requested an analysis of the proposal by the Congressional Budget Office.<sup>47</sup> The analysis found that leasing the tankers would cost \$37 billion while buying them outright would only cost \$25 billion.<sup>48</sup> Others voiced criticism of the proposal, but it was not reconsidered.<sup>49</sup> In November 2002, Druyun retired from the Air Force and accepted a job at Boeing.<sup>50</sup> In September 2003, The Project On Government Oversight released a series of emails between Druyun and Boeing officials that were sent on dates during the negotiations of the tanker lease deal.<sup>51</sup> The emails revealed that during the negotiations period, Druyun was engaged in discussions related to working for Boeing after retiring from

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negotiator at Warner Robins Air Logistics Center, where her father had worked for forty years. *Id.* at 10. In 1980, Druyun left the Air Force and worked as the deputy associate administrator for major systems and policy for the Office of Management and Budget. *Id.* In 1991, after another two-year stint working for the Air Force, Druyun went to NASA. *Id.* In 1993, Druyun returned to the Air Force to become the principal deputy assistant secretary of the Air Force for acquisition and management. *Id.* at 11.

<sup>44</sup> *Id.* at 15–16.

<sup>45</sup> *Id.* at 5. This was not the first time that Druyun's conduct was called into question. Druyun was investigated for attempting to frontload payments to McDonnell Douglas for the C-17 airlifter program. *Id.* at 11. McDonnell Douglas was in financial straits and could not afford to build a prototype of the aircraft. *Id.* at 12. To keep the program from falling further behind schedule, Druyun and four other Air Force officials secretly shifted \$349 million to McDonnell Douglas. *Id.* Their conduct was discovered due to an investigation by Pentagon's Inspector General and recommended that Druyun and the other Air Force officials be disciplined. *Id.* While others were reprimanded or transferred for their involvement, Druyun was not, due to the intervention of then Defense Secretary Les Aspin. *Id.* at 12–13.

<sup>46</sup> *Id.* at 6–7.

<sup>47</sup> *Id.* at 17.

<sup>48</sup> *Id.* at 18.

<sup>49</sup> *Id.* at 17–21.

<sup>50</sup> *Id.* at 21.

<sup>51</sup> *Id.* at 21.

the Air Force with Michael M. Sears, then Boeing's Chief Financial Officer. After these emails were released, Boeing conducted an internal investigation into Druyun's hiring that resulted in her and Sears' firing.<sup>52</sup> Both were subsequently prosecuted for creating a conflict of interest by negotiating while discussing a Post-Government offer of employment.<sup>53</sup> As part of her plea agreement, Druyun acknowledged, and the emails further show, that she was aware of the illegality of her conduct.<sup>54</sup> Druyun also admitted that she favored Boeing in procurement negotiations to get a job at Boeing for her son-in-law and daughter, and even used her influence to ensure her daughter was not fired from the company for poor performance.<sup>55</sup> For her role, Druyun was sentenced to nine months in prison and seven months in a halfway house.<sup>56</sup> Michael Sears was sentenced to four months in prison and two years of probation for illegally offering a job while negotiating with the government.<sup>57</sup> He was also fined \$250,000.<sup>58</sup> However, despite her involvement being documented, Druyun's daughter was never reprimanded by the government or Boeing, and her son-in-law was similarly untouched by the scandal. Soon thereafter, several competitors filed successful protests with the Government Accountability Office (GAO).<sup>59</sup>

### *B. Kerry Khan and the Army Corps of Engineers*

Kerry Khan ("Khan") was a former program manager for the Army Corps of Engineers who was convicted for leading a ring of public officials

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<sup>52</sup> *Id.* at 22 n.120.

<sup>53</sup> *Id.* at 29.

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.* at 6. Druyun asked Sears to ensure that her daughter's job was not taken. *Id.* At this time, Druyun and Sears were negotiating the tanker lease deal. *Id.* Druyun was also notified when her daughter was transferred to a new position within Boeing and received pay raises. *Id.*

<sup>56</sup> Peter Pae, *Ex-Boeing CFO gets jail for tanker scandal*, CHI. TRIBUNE (Feb. 18, 2005), <https://www.chicagotribune.com/sns-boeing-scandal-story.html>.

<sup>57</sup> Leslie Wayne, *Former Executive at Boeing Given 4-Month Prison Term*, N.Y. TIMES (Feb. 19, 2005), <https://www.nytimes.com/2005/02/19/business/former-executive-at-boeing-given-4month-prison-term.html>.

<sup>58</sup> *Id.*

<sup>59</sup> Branstetter, *supra* note 43, at 41. The GAO recommended that the Air Force recompute the installation portion of the contract to modernize the C-130, one of the contracts Druyun influenced toward Boeing. *Id.* at 43. The GAO also recommended awarding the protesters with filing costs, attorneys' fees, and costs pursuing the protest. *Id.*

and government contractors in a bribery and kickback scheme that generated over thirty million dollars through inflated and false invoices.<sup>60</sup> Khan worked at the Army Corps of Engineers from 1994 until his arrest in October 2011, during which time he was a program manager and contracting officer's technical representative for the Directorate of Contingency Operations.<sup>61</sup> In this role, Khan had the authority to contract for products and services and certify the completion of these contracts.<sup>62</sup> Around 2006, Khan and Michael Alexander ("Alexander"), another program manager for the Army Corps of Engineers, began working together to steer government contracts to a group of contractors in exchange for bribes.<sup>63</sup> They worked with Harold Babb, the former director of contracts at Eyak Technologies ("EyakTek") to funnel contracts with the Army Corps of Engineers to the company. EyakTek then hired subcontractors that submitted inflated or false quotes for equipment and services.<sup>64</sup> Khan and Alexander were awarded by the contractors with a portion of the fraudulently gained money.<sup>65</sup> The scheme was discovered due to an unidentified contractor cooperating with the FBI.<sup>66</sup> Khan, Alexander, and half a dozen others were arrested for their participation in the scheme.<sup>67</sup>

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<sup>60</sup> Press Release, U.S. Attorney's Office, District of Columbia, *Second Former U.S. Army Corps of Engineers Manager Pleads Guilty in Alleged \$30 Million Bribery and Kickback Scheme*, FBI (May 17, 2012), <https://archives.fbi.gov/archives/washingtondc/press-releases/2012/second-former-u.s.-army-corps-of-engineers-manager-pleads-guilty-in-alleged-30-million-bribery-and-kickback-scheme>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* The contracts involved in the scheme were the "Technology for Infrastructure, Geospatial, and Environmental Requirements" (TIGER) contract and the "Contingency Operations Readiness Engineering & Support" (CORES) contract. *Id.* The TIGER contract allowed authorized agencies and departments to purchase products and services without having to obtain three separate bids or compare TIGER contracts to other contracts before submitting invoices for products and services. *Id.* The CORES contract was a planned five-year contract with an award potential of up to \$1 billion for the contracts placed under it, and was envisioned as a possible replacement for the TIGER contract. *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* Khan received over \$12 million for helping the contractors defraud the Government. Khan used these funds to pay off his mortgage, refurbish his home, purchase real estate and other luxury items. The funds and properties were forfeited by order of the U.S. District Court for the District of Columbia. Though the total amount Alexander received was not revealed, the FBI recovered \$7.5 million in bank account funds, nineteen properties, six luxury cars, and multiple pieces of jewelry. *Id.*

<sup>66</sup> Tom Shoenberg, *Contract fraud entangling Eyak Corp. subsidiary was on target to reach \$1 billion*, ANCHORAGE DAILY NEWS (July 12, 2013), <https://www.adn.com/alaska-news/article/contract-fraud-entangling-eyak-corp-subsidiary-was-target-reach-1-billion/2013/07/13/>.

<sup>67</sup> *Supra* note 60. Additional individuals involved in the scheme included Alex Cho, the former chief technology officer of Nova Datacom, LLC; Larry Corbett, owner of Core Technology LLC and Enterprise Technical Solutions; Robert McKinney, the former president of Alpha Technology Group, Inc.;

Among those who were prosecuted were Khan's son and brother, who both helped Khan launder money through the brother's company.<sup>68</sup> Kerry Khan was sentenced to nineteen years and seven months in prison for bribery and conspiracy to commit money laundering.<sup>69</sup> Michael Alexander was sentenced to six years in prison for similar charges and ordered to pay \$2.5 million.<sup>70</sup> Khan's relatives received prison sentences as well and were ordered to pay hundreds of thousands of dollars in restitution.<sup>71</sup> Prison sentences were also handed to the employees of the contractors who paid bribes to Khan.<sup>72</sup>

#### V. THE REVERSE REVOLVING DOOR PROBLEM

Though Darleen Druyun and Kerry Khan were eventually held accountable for their illegal conduct, their cases show that corruption remains an issue in the government contracting environment despite the existence of the Procurement Integrity Act. Druyun's case in particular demonstrates that knowledge of the illegality of the conduct is not enough to deter one from engaging in it. However, not having any policy at all creates a much greater risk of corruption occurring and makes it more difficult for the relevant authorities to punish it. The lack of restrictions on individuals who transfer

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James Miller, the owner of Big Surf Construction Management LLC; and Nick Park, the owner of Unisource Enterprises Inc. *Id.*

<sup>68</sup> Press Release, U.S. Attorney's Office, District of Columbia, *Virginia Man Sentenced To 37 Months In Prison For Role In Bribery And KickBack Scheme Involving Contracts-Defendant And His Father Laundered \$401,000 In Payments To Relative*, U.S. DOJ (Jan. 31, 2013), <https://www.justice.gov/usao-dc/pr/virginia-man-sentenced-37-months-prison-role-bribery-and-kickback-scheme-involving>.

Nazim Khan, Kerry Khan's brother, was sentenced to two years in prison and ordered to pay a total of \$611,904 in conjunction with two other defendants. *Id.*

<sup>69</sup> Press Release, U.S. Attorney's Office, District of Columbia, *Former U.S. Army Corps Of Engineers Manager Sentenced To More Than 19 Years In Prison For \$30 Million Bribery And Kickback Scheme Scam Involved Steering Of Government Contracts; Defendant Is Among 15 People To Plead Guilty*, U.S. DOJ (July 11, 2013), <https://www.justice.gov/usao-dc/pr/former-us-army-corps-engineers-manager-sentenced-more-19-years-prison-30-million-bribery>. Khan was ordered to pay \$32.5 million in restitution to the U.S. Army Corps of Engineers. *Id.*

<sup>70</sup> *Supra* note 68.

<sup>71</sup> *Id.* Lee Khan, Kerry Khan's son, was sentenced to 37 months in prison and ordered to pay \$401,000 in restitution along with other conspirators. *Id.* Nazim Khan, Kerry Khan's brother, was sentenced to two years in prison and ordered to pay a total of \$611,904 in conjunction with two other defendants. *Id.*

<sup>72</sup> *Id.*

from private companies to the Government encourages them to engage in the same egregious conduct as Druyun and Khan. It is also all too common for people to transfer to the Government from private employers and vice versa. For example, the current leaders of the Department of Defense, Kathleen Hicks and Lloyd Austin, both worked in the private sector before their appointments. Hicks held multiple high-ranking positions at the Center for Strategic and International Studies, a think tank that focuses on international policy.<sup>73</sup> Austin served on the Boards of Directors for Raytheon, Nucor, and Tenet Healthcare before going to the Department of Defense.<sup>74</sup> Sue Payton, the Assistant Secretary of the Air Force (Acquisition) from 2006–2009, worked at Martin Marietta and Lockheed Martin prior to her appointment.<sup>75</sup> While their past employment does not automatically implicate these officials in corruption or favoritism toward their past employers, it still raises concerns that deserve to be addressed. As the law currently stands, individuals with the power to negotiate contracts on behalf of private companies can become procurement officials in the Government while maintaining their private sector relationships. Consequently, these individuals will likely work on procurements that involve their former employer and people whom they previously worked alongside. This can lead to improper negotiations, favoritism, and collusion. Hypothetically, an individual could receive a bonus from a contractor after informing them of their intent to work for the Government. Since there is no policy to prevent this, the individual would enter the Government with this blatant conflict of interest and possibly shift the course of multiple contracts before anything is done. Allowing these powerful individuals to represent the Government without ensuring that their decision making is impartial is an unnecessary risk that benefits neither the Government nor the public.

A more recent example of the reverse revolving door issue and the negative impact it can have on the Government’s effectiveness, albeit not in the government contract environment, was Betsy Devos (“Devos”). Devos

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<sup>73</sup> *Kathleen H. Hicks*, U.S. DOD, <https://www.defense.gov/About/Biographies/Biography/Article/2523096/kathleen-h-hicks/> (last visited Mar. 15, 2024).

<sup>74</sup> *Lloyd J. Austin III*, U.S. DOD, <https://www.defense.gov/About/Biographies/Biography/Article/2522687/lloyd-j-austin-iii/> (last visited Mar. 15, 2024).

<sup>75</sup> *Biography, United States Air Force, Sue C. Payton*, AIR & SPACE FORCES MAG. (Apr. 14, 2009, 10:45 AM), [https://www.airandspaceforces.com/PDF/SiteCollectionDocuments/Reports/2009/April%202009/Day15/Sue\\_Payton\\_bio.pdf](https://www.airandspaceforces.com/PDF/SiteCollectionDocuments/Reports/2009/April%202009/Day15/Sue_Payton_bio.pdf).

was selected as Secretary of Education in 2016 despite many conflicts of interest.<sup>76</sup> She invested in for-profit-colleges through private equity firms.<sup>77</sup> Additionally, DeVos was an investor in Kinder Care Learning Centers, a national chain of private for-profit daycare facilities.<sup>78</sup> Despite these ties, DeVos served the Trump administration from her appointment in 2017<sup>79</sup> to her resignation on January 7, 2021.<sup>80</sup> During her time as Secretary of Education, DeVos supported budget cuts for Pell Grants and public education, illegally repealed federal protections for students affected by for-profit college fraud, and advanced a bill to expand federal vouchers and further cut education spending.<sup>81</sup> Though she did not dismantle public education, the effects of her tenure in the Government are noticeable to this day. These setbacks to public education could have been avoided if the Senate committee confirming her appointment was made aware of her conflicts of interest prior to their hearings. Conversely, DeVos could have been disqualified altogether if there was legislation that restricted the appointment of individuals to positions where conflicts of interest will likely influence their work. Contracting officers and program managers have significant authority when it comes to procuring products and services. As such, any risk of corruption should be addressed. Individuals who seek Government employment after working for contractors should at least face the same restrictions as those that Government employees face under the Procurement Integrity Act.

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<sup>76</sup> Chad Livengood, Jonathan Oosting & Michael Gerstein, *Trump Picks Betsy DeVos or Education Secretary Post*, DET. NEWS (Nov. 28, 2016), <https://www.detroitnews.com/story/news/politics/2016/11/23/trump-devos-education/94344918/>.

<sup>77</sup> Ben Miller & Laura Jimenez, *Inside the Financial Holdings of Billionaire Betsy DeVos*, CAP 20 (Jan. 27, 2017), <https://www.americanprogress.org/article/inside-the-financial-holdings-of-billionaire-betsy-devos/>.

<sup>78</sup> *Id.*

<sup>79</sup> Emmarie Huettelman & Yamiche Alcindor, *Betsy DeVos Confirmed as Education Secretary; Pence Breaks Tie*, N.Y. TIMES (Feb. 7, 2017), <https://www.nytimes.com/2017/02/07/us/politics/betsy-devos-education-secretary-confirmed.html>.

<sup>80</sup> Nicole Gaudiano & Michael Stratford, *Education Secretary Betsy DeVos resigns, citing violence at the Capitol*, POLITICO (Feb. 8, 2021), <https://www.politico.com/news/2021/01/07/education-secretary-betsy-devos-resigns-456294>.

<sup>81</sup> *What has Betsy DeVos Done?*, PENNSYLVANIA STATE EDUCATION ASSOCIATION, <https://www.psea.org/issues-action/key-issues/betsy-devos-timeline/> (last visited Nov. 20, 2023).

## VI. PROPOSED RESTRICTIONS ON PRIVATE EMPLOYEES SEEKING GOVERNMENT EMPLOYMENT

The Procurement Integrity Act provides a good framework for the possible restrictions that could be put in place for individuals who seek Government employment after working for a contractor. Like the Act, the proposed policy should be broad in its scope. It should apply to individuals who were contracting officers, program managers, or any other official who had access to bid information while working for a contractor. These individuals should not be able to rely on or disclose any proposal information obtained while working for a contractor until the contract is awarded. While the Government is usually in a greater bargaining position during negotiations, if a procurement official has inside knowledge of a contractor's proposal, bias may prevail in influencing their decision whether or not to award the contract. Access to proposal or bid information could also allow a procurement official to persuade their colleagues to consider one contractor over another. Eliminating the use of this proprietary information reduces the likelihood of collusion and makes the negotiation and award process more neutral. In addition to restricting the disclosure of contractor information, an individual should not be negotiating on behalf of a contractor while seeking employment with the Government. This not only raises conflict of interest concerns, but also opens the door to future collusion. A contractor could entice the employee with a pay raise or bonus in hopes of gaining future contracts. Removing an existing employee from the normal workflow reduces the likelihood that a contractor will attempt to influence them as they transition out of the company. Furthermore, if the employee is not aware of or has not worked on current bids, it is less likely that the employee will favor the company on those bids when they represent the Government.

Related to the aforementioned proposed restriction, a procurement official for the Government should not be able to negotiate with a contractor or otherwise be substantially involved with the bidding process while a family member works for the contractor.<sup>82</sup> This restriction should apply whether the procurement official is coming from a contractor or another part of the Government. Though the Department of Defense requires employees

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<sup>82</sup> *Conflicts of Interest*, DEP'T OF DEF. STANDARDS OF CONDUCT OFF., <https://dodsoco.ogc.osd.mil/DoD-Personnel/Ethics-Topics-for-DoD-Personnel/Conflict-of-Interest/> (last visited Jan. 13, 2025).



to consider possible conflicts of interest and report them, it does not require automatic recusal by the employee. Allowing an individual to negotiate across from a company where a relative is employed raises corruption concerns because a government procurement official will be more likely to favor the company where a family member works than one where no family members work. Automatic recusal removes this risk entirely because an employee with no familial ties to a company has less of a reason to favor it. Finally, similar to the employment bans in the Procurement Integrity Act, an employee should be banned from working for an agency if they were the contracting officer, program manager, or any other official who substantially participated in a bid for a contractor that involved the agency.<sup>83</sup> However, this proposed restriction would not bar employees from employment unless the contract they assisted with has yet to be awarded or performance under the contract is ongoing at the time they are seeking Government employment. This proposed restriction would prevent individuals with significant influence over procurements from favoring their past employers during the bidding process. There are likely additional regulations that could be implemented alongside the ones mentioned above that would further reduce the risk of corruption in government procurements. However, these are a few basic policies that would make a significant impact immediately. As a parallel to the existing requirements in the Procurement Integrity Act, the proposed restrictions outlined in this Note could prevent future Government embarrassment from a scandal similar to Operation Ill Wind.

## VII. CONCLUSION

Operation Ill Wind revealed the propensity for corruption in the government contracting, particularly amongst procurement and acquisition officials in our highest levels of Government. In response to the scandal, Congress enacted the Procurement Integrity Act, which restricted the use of procurement information and the employment options of procurement officials. However, while the Procurement Integrity Act has significantly

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<sup>83</sup> An exception to this restriction could be made for individuals who are transitioning into a position where they are not involved in procurements. The duration of the ban could vary as well with considerations given to whether the contract has already been awarded at the time the individual is seeking Government employment and the regularity of business the company does with the agency the individual is seeking to transition to.

reduced the amount of corruption in government contracting, it has not eliminated it entirely. Furthermore, neither the Act nor any other policy addresses the potential conflicts of interest posed by people who go to the Government after working for a contractor. Not only do these individuals likely have continuing relationships at these companies that can influence their decision making, but they will also be likely negotiating on behalf of the Government with former colleagues and friends still working for the contractor. To ensure that such conflicts and others do not create favoritism or the possibility of collusion, there must be legislation that restricts the work these individuals can do for a contractor while seeking government employment and restricts the agency they can go to directly after leaving a contractor. Finally, any person with familial ties to a contractor should be automatically recused from negotiations involving that contractor to ensure impartial consideration of each bidder. Implementing these basic policies will increase the impartiality of the negotiation and bidding process and help the government avoid another procurement scandal. Closing the “reverse revolving door” not only benefits the Government, but also the public as well. A corruption-free procurement environment protects taxpayers and the public trust, while ensuring the government receives the best value for the goods and services it procures.