



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 3, 2007

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM:

Paul A. Denett
Administrator

A handwritten signature in black ink that reads "Paul A. Denett".

SUBJECT:

Office of Government Ethics Guidance
Ethics and Procurement Integrity

On October 27, 2006, I asked you to emphasize the importance of compliance with laws, regulations, and standards that prescribe ethical conduct in acquisitions and working with contractors and contractor employees. We must remain vigilant in efforts to protect the integrity of the procurement process. It is imperative that we guard against conflicts of interest and other improper conduct which can deprive the taxpayer of the best value goods, services, and overall solutions to agency missions that we work so hard to provide.

Attached is a brochure, entitled "Ethics and Procurement Integrity," which was prepared by the Office of Government Ethics. The brochure is helpful in identifying ethics issues that can arise in the procurement process. I ask that you publicize this brochure within your agencies. The brochure may be particularly helpful to agency personnel whom may not have extensive acquisition training yet perform acquisition functions such as: source selection authority; member of a source selection evaluation board; contracting officer's representative; or program manager or deputy program manager with oversight authority over specific contracts.

The brochure is also available on OGE's website at:

http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/booklets/bkprocurementintegrity_07.pdf

Thank you for your continuing efforts to protect the integrity of the procurement process.

Attachment

Ethics & Procurement Integrity

What You Need to Know as a Federal Employee Involved in the Procurement and Acquisition Process



U.S. Office of Government Ethics
www.usoge.gov



Ethics & Procurement Integrity

What You Need to Know as a Federal Employee Involved in the Procurement and Acquisition Process

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Introduction

As a Federal employee involved in the procurement and acquisition process, you play an important role in preserving the integrity of Government contracting and assuring fair treatment of bidders, offerors, and contractors. A violation of ethics rules can cause a bid protest or undermine the public's confidence in Government. Improper conduct can also result in an administrative, civil or even criminal penalty.

This brochure provides general information only. It will help you recognize some of the most common ethics and procurement integrity issues that can come up during the contracting process. Where there are examples, please note that they just illustrate a few common scenarios. You might encounter other issues or different situations.

If you have a specific issue, have questions, or need additional help, contact an ethics official at your agency *before* taking any action. For information on how to contact your Designated Agency Ethics Official (DAEO), consult the DAEO list on the Office of Government Ethics website at <http://www.usoge.gov>.

1 Conflicts of Interest

Ethics laws prohibit Government employees from having financial conflicts of interest. By keeping in mind a few basic concepts, you can help ensure that contracts are awarded and administered free from improper influence or even the appearance of impropriety.

Financial Conflicts

A criminal law prohibits you from working on a Government matter (such as a contract) that would affect your financial interests. This prohibition also covers the financial interests of certain other persons such as:

- ◆ your spouse;
- ◆ minor child;
- ◆ general partner;
- ◆ an organization in which you serve as an employee, officer, director, trustee, or general partner; and
- ◆ a person with whom you are seeking or have an arrangement for future employment.

A Few Examples of Financial Conflicts of Interest

You would have a financial interest in a contract or other matter that affects the contractor in situations such as these:

- ◆ You own stock in a company that is bidding on a contract (or that is likely to be a subcontractor).
- ◆ You have a pension with, or deferred compensation from, your former employer, a contractor that is participating in a procurement with your agency.
- ◆ You moonlight for a company that gets a contract with your agency.
- ◆ Your spouse works for a contractor and her salary would be affected if her company is awarded (or loses) a contract with your agency.

If you think you have a financial conflict, contact your agency ethics official right away. He will help you determine whether you will have to stop working on the Government matter, or whether another remedy would resolve the conflict.

Impartiality Issues

Even though you may not have a financial interest that can be affected by a procurement activity or contract, circumstances might arise that could call your impartiality into question. Some examples of when your impartiality could be questioned include the following:

- ◆ Your duties require you to work on a procurement involving your former employer or clients, your spouse's employer or clients, close relatives, or others with whom you have some kind of business relationship.
- ◆ You are assigned to a contract involving a person you are dating.
- ◆ You are required to evaluate bids, one of which was submitted by a friend.

If you encounter any situation where you think your impartiality would reasonably be questioned, you should stop working on that matter, and contact your supervisor and agency ethics official for further advice.

2 Gifts

Gifts From Contractors

As a Government employee, you must not solicit or accept gifts from contractors and their employees.

A gift is anything that has monetary value, such as food, travel, entertainment, discounts, and loans.

Even though you might work closely with contractor employees on a daily basis, remember that both agency contractors and their employees are considered "prohibited sources" of gifts to you.

You also must not accept a gift given by an organization or individual who is seeking business with your agency. Thus, the safest course of action is to remember this rule: Do not solicit anything, or accept a gift, from a contractor, prospective contractor, or contractor employee, unless clearly permitted by an exception in the ethics rules or you have received advice from your agency ethics official.

Items You Can Accept

Examples of items that you generally may accept – even from a contractor – include:

- ◆ Modest food and refreshments, such as coffee and donuts that are not offered as part of a meal;

- ◆ Gifts valued at \$20 or less per “source” per occasion, although the total value of such gifts must not exceed \$50 in a calendar year from a single source (Note: a contractor and its employees are considered the same “source.” For example, you could not accept five \$15 lunches from five employees who work for the same contractor.);
- ◆ Gifts based on a personal relationship (This means gifts from family members or friends with whom it is clear you have a true friendship – not a friendly relationship with a contractor that was formed on the job.);
- ◆ Meals, lodging, transportation, or other benefits that are from your spouse’s employer, provided that the gift was not given or enhanced because of your Government job;
- ◆ Gifts or discounts available to the general public, to all Government employees, or to all military personnel;
- ◆ Free attendance at a conference or similar “widely attended gathering” (as long as your agency determines that your attendance is in the agency’s best interest and certain other conditions are met); and
- ◆ Anything paid for by the Government or secured by the Government under a contract.

Your agency ethics official can help you determine whether you can accept a particular gift.

Some Words of Caution

Of course, you should not accept anything of value from a bidder or contractor if you think that the integrity of the procurement process could be questioned. Also, be careful not to accept gifts so frequently that a reasonable person would think you are using your public office for private gain. Finally, remember that you may never accept cash or solicit a gift from a contractor or contractor employee.

Gifts to Contractors

You should be mindful that contractors usually have their own rules and policies about gift-giving, especially when dealing with the Government. You do not want to embarrass a contractor employee, or cause him to violate his company’s rules.

3 Procurement and Other Nonpublic Information

As a Government employee, you might have access to procurement and other nonpublic information that could affect a contract bid or the award process. Improper disclosure of such protected information could violate numerous laws, as well as ethics rules. It also could subject you to administrative actions, as well as civil or criminal penalties.

Procurement Information

You may not knowingly obtain or disclose **contractor bid or proposal information** or **source selection information** before the award of the contract, other than as permitted by law.

Contractor bid or proposal information

This proprietary information must be secured to prevent disclosure. It includes certain nonpublic information submitted in connection with a bid or proposal, such as:

- ◆ Cost or pricing data, including indirect costs and direct labor rates;
- ◆ Information about manufacturing processes, operations and techniques when marked “proprietary” in accordance with law or regulation;

- ◆ Information marked as “contractor bid or proposal information”; and
- ◆ Any other information related to a specific procurement that a company making a bid deems proprietary.

Source selection information

This is information not previously available to the public that is prepared for use by an agency in evaluating a bid or proposal. Such information includes:

- ◆ Bid prices for sealed bids or lists or prices;
- ◆ Proposed costs or prices;
- ◆ Source selection plans;
- ◆ Technical evaluation plans;
- ◆ Technical, cost or price evaluations of competing proposals;
- ◆ Competitive range determinations;
- ◆ Rankings of bids, proposals or competitors;
- ◆ Reports, evaluations and recommendations of source selection panels, boards or advisory councils; and
- ◆ Any other information marked as “source selection information.”

Other Nonpublic Information

In addition to the rules on disclosure of specific procurement information, ethics rules prohibit you from disclosing any nonpublic information to further your private interests, or those of another person, such as a contractor or contractor employee. **Nonpublic information** includes information about a contract or procurement that you gain through your job and that you reasonably should know has not been made available to the public. An example of nonpublic information would be an agency's internal decision to terminate a particular contract.

If you have any doubt about whether information is protected information, or whether you are permitted to disclose such information, you should get advice from your agency ethics official before disclosing or otherwise using the information.

4 Restrictions on Employment Discussions

During the course of your Government service, you might decide to seek employment in the private sector or even with a contractor who does business with your agency. There are several restrictions that apply to your Government work when you seek future employment or have employment discussions with contractors.

Seeking Employment: General Rules

All Government employees are subject to the rules on seeking employment. These rules are quite broad and apply well before you and a potential employer actually negotiate specific terms and conditions of employment.

You may not work on Government matters that would affect the financial interests of a contractor with which you are seeking employment. This rule generally applies even if you make an unsolicited contact about possible employment. It also applies if you do not reject a contractor's unsolicited overture about possible employment.

Once you have reached an agreement for future employment with a contractor, you still may not work on any Government matters that would affect the financial interests of the contractor. And remember, in any case where you have an obligation to recuse yourself from working on an assignment, you should notify your supervisor as soon as possible about your need to recuse.

Seeking Employment with a Bidder or Offeror

As a Federal employee involved in the procurement process, you might be subject to additional rules under the *Procurement Integrity Act* when you have employment discussions with

bidders or offerors. These rules apply only if you are performing certain functions involving:

- ◆ the specification or statement of work;
- ◆ the solicitation;
- ◆ the evaluation of bids or proposals, or selecting a source;
- ◆ the negotiation of price or terms and conditions of the contract; or
- ◆ the review or approval of the award of a contract.

If you are performing one of these functions in a competitive procurement for a contract in excess of \$100,000, and you contact or are contacted by a bidder or offeror in that procurement about possible non-Federal employment, you must:

- ◆ promptly report the contact in writing to your supervisor and your agency ethics official; and
- ◆ either
 - reject the possibility of non-Federal employment; or
 - consult with your supervisor and do not work on that procurement until the agency has authorized you to do so.

Note: you must also submit a written disqualification notice to the contracting officer, the source selection authority, and your supervisor.

5 Working for a Contractor After Government

Depending on your Government position and what your role was in a procurement, you might be subject to certain restrictions when you leave Government service.

Accepting Compensation from a Contractor

You might be banned from accepting compensation from a contractor for one year after you served in a covered procurement-related position or made a procurement-related decision for your agency. The ban, which is part of the Procurement Integrity Act, prohibits you from accepting compensation as an employee, officer, director, or consultant of the contractor.

Who is Covered by the One-Year Ban?

The one-year ban applies if you:

Served in any of the following positions on a contract over \$10 million:

- ◆ Procuring contracting officer;
- ◆ Source selection authority;
- ◆ Member of a source selection evaluation board;
- ◆ Chief of a financial or technical evaluation team;
- ◆ Program manager;

- ◆ Deputy program manager; or
 - ◆ Administrative contracting officer;
- or**

Personally made any of the following decisions on behalf of your agency to:

- ◆ Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order over \$10 million;
- ◆ Establish overhead or other rates for a contractor on a contract or contracts valued over \$10 million;
- ◆ Approve a contract payment or payments over \$10 million; or
- ◆ Pay or settle a claim over \$10 million.

Exception

This restriction does not prohibit you from working for another division or affiliate of the contractor, as long as it does not produce the same or similar products or services as the division or affiliate responsible for the contract in which you were involved.

General Post-Employment Restrictions

You should also keep in mind that there are criminal post-employment restrictions that apply to all Federal employees regardless of whether they work for a contractor after Government service. You may be covered by one or more of these restrictions even if you did not

perform any of the functions or serve in any of the roles designated by the Procurement Integrity Act (see above). The most common restrictions are explained below.

Common Restrictions

You are permanently barred from representing another person before the Government on the same matter (such as a contract) on which you worked as a Government employee. **Representing** means making a communication or appearance with intent to influence the Government, and includes signing a letter, attending a meeting, making a presentation, and making a telephone call.

If you had official responsibility for a matter (such as the award of a contract) during your last year of Government service, you are barred for two years from representing another person before the Government concerning that same matter. To be covered by this restriction, you need not have worked on the contract, so long as it was under your supervision.

If you are a “senior employee,” you are subject to a third restriction. This ban prohibits you from representing other persons before the Government on **any** matters before your agency for one year after leaving Government service. You need not have worked on the matter, nor had official responsibility for the matter. Your agency ethics official can tell you whether you are considered a “senior employee.”

These restrictions are quite broad. They can include communications, appearances or other representations that you might make on behalf of a company while performing work under a Government contract — not just major communications about the award or modification of a contract. However, they generally do not include behind-the-scenes work that does not involve communication back to the Government.

When in Doubt, Get Help

There are other restrictions, as well as exceptions, that govern this complex area of the law. Moreover, the consequences of violating these restrictions can be severe. You should consult with your agency ethics official before seeking employment with a contractor to determine whether a post-employment restriction might apply to your situation.

6 Miscellaneous

Fundraising

You may not solicit a contractor or its employees for a charitable donation because they are “prohibited sources” of gifts under the Federal ethics rules. This is true even if, for example, you are fundraising on your own time and outside of the workplace, and you are quite friendly with the contractor employee.

Letters of Recommendation

You generally may provide a letter of recommendation for a contractor employee, on official agency letterhead, in response to a request for an employment recommendation or character reference. The letter of recommendation must be based on your personal knowledge of the ability or character of the contractor employee with whom you have dealt during the course of your Federal employment or whom you are recommending for Federal employment.

Outside Employment with a Contractor

If you would like to “moonlight” for an agency contractor, you should consult with your agency ethics official before taking *any* action pursuing such outside employment. Depending on the facts, you could trigger restrictions related to the following issues: seeking or negotiating for employment, procurement integrity, conflicting financial interests, impartiality concerns, and agency-specific rules and procedures.

Conclusion

We hope this brochure has helped you identify some of the ethics and procurement issues that can come up in the procurement and acquisition process. For more information on these issues, contact your agency ethics official.

About OGE

The Office of Government Ethics (OGE) is the agency that exercises leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve those conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

www.usoge.gov

July 2007