

WHO ARE GOVERNMENT WORKERS AND HOW CAN MANAGEMENT IMPROVE WORKER ETHICAL SENSITIVITY

The issue of who is a government worker is not entirely new, but it arises today in a new context and presents questions that no one thought much about just a few decades ago. The federal government, especially the defense agencies, has relied on government contractors since long before the Constitution was written.

- Even before we had a Navy, coastal states sent out armed vessels under letters of marque, creating, essentially, a small fleet of contract sea fighters.
- A few blocks from where I live in Alexandria, General Washington organized the wagon train which would move south to supply the continental army at the battle of Yorktown.
- The industrial strength of government contractors made a critical difference for the Union forces in the Civil War.

Were all of those people government workers? Certainly in some sense they were. Today, we don't know how many government workers we have. The problem is largely definitional. I have seen suggested numbers ranging from 3.6 million to over 26 million, the variance depending on your chosen definition of government worker.

Today, in the far more complex, bureaucratic, and publicly visible environment, we would have to give thought to government ethics even if we were not already doing so. The judgments citizens make about the government upon which they rely are strong but imprecise. If there is a problem with a taint of corruption, it is the government, writ large, that is the target of their criticism and

decline in confidence. This government certainly includes contractors. In other contexts it may include special government employees, members of federal advisory boards, people working on government funded grants. The government will be impacted by such criticism, but will survive with some political consequences. The impact on government contractors caught in the same tangle can be even more economically damaging and permanent.

But it is undeniable that we need contractors in government. They enable government to adapt quickly to changing circumstances.

- They develop technologies the government is not well equipped to do.
- They are not hidebound by government personnel regulations.
- They allow continued access to highly skilled government retirees and provide more flexible use of wide-ranging government experience and military technical skills. We need them.

So, we all have to think about ethics, government ethics, value based ethics, and normative ethics such as exists in your companies' codes of ethics and in federal statutes and regulations.

Since the mid-1990s reduction in the government employee work force, the concept of the blended work force has taken hold. The problem is that the record suggests that the people who blended the work force gave little thought to blending the ethics. At some point this will be a problem. It probably is now, except, I hope, for DII members.

I believe that the ethics programs in the executive branch work rather well. We have clearly stated, if sometimes complex, rules and laws, which directly address individual conduct. We have training mechanisms, enforcement mechanisms and program review procedures. We have easy access to investigators and prosecutors. We have none of this with respect to the employees of government contractors who can commit equally offensive and economically damaging acts. Employees of most government contractors are out of our reach unless they commit title 18 crimes and we can cause the Justice Department to act against them.

For example:

- Most government contractors' employees have no financial disclosure requirement. They can purchase from businesses in which they or family members have a financial interest without either their employer or the government knowing. This inevitably leads to higher, non-competitive pricing, competitive damage to the contractor, and higher prices to the government.
- Most government contractors have no detection mechanisms in place to detect employee conduct damaging to them or the government.
- Most contractors have no prohibition on gifts to and from federal employees or potential subcontractors.
- There are no clear standards on abuse of position or government equipment by contractors' employees.
- We hear increasingly of contractors being hired to assess the work of other contractors. This presents several layers of conflicts of interest as well as the risk of inappropriate transfer of proprietary information.

(I hope that these examples do not apply to DII member companies.) Apart from the examples above, it is important that we distinguish more clearly between

what is an inherently governmental decision and what is not. It is upon this point that considerations of management and delegation must turn.

While the OMB has greatly emphasized the idea of competitive sourcing, it must be appreciated that sourcing is not truly competitive if it is subject to the influences mentioned in the preceding subparagraphs.

It is likely that any contractors' employees ethical system should distinguish between contractors for products and contractors for services as different ethical risks are presented

What is the basis for the line of demarcation in ethics between federal employees and contractors? Is it purely structural or is it outcome based? Clearly the DII members are an important exception to this criticism, but even you recognize that the problem is building and we all have a role in fixing it.

Ethics grows and flourishes in a context of strong and ethical senior leadership. It is heavily dependent on identity and culture. Who you think you are has a profound impact on what you believe your duties to be. At the risk of sounding like a lawyer, the duties of federal employees run directly to the government, while the duties of contractors' employees run first to their employer, which is responsible to both shareholders and by contract to the government. This is an important difference and we should not gloss over it. This is so even though most people don't understand me when I try to explain that we have virtually no control over the ethical conduct of contractors' employees and no legislative authority to create codes of conduct for them or to review contractors' ethics

programs. Yet few areas of federal government are unaffected by it. Try to think in what functional areas there is no strong contractor involvement -- maybe State Department, Justice, Securities Regulation, Labor, and the legislative and judicial branches. Otherwise, except for efforts like DII, we have only a partial ethics system.

If government ethics is, as I like to say, that system of laws and procedures which ensure that government decisions are informed by the public interest and not corrupted by private interests, then what will we do about disparate cultures, disparate leadership, and disparate (if any) ethical rules among contractors?

Modern research strongly supports the prime importance of ethical leadership. Culture reinforces and tends to strengthen ethical attitudes among groups of employees. But strong culture can be a problem as well, not just in ethical terms. Consider the well-known problems of blending the cultures of the different military services, of merging the strong cultures of the Coast Guard and the Secret Service into the Department of Homeland Security. Are not the cultures of employees of private companies different from the culture of government employees in some like degree?

Moreover, the context of contracting presents more readily the risk of venality producing ethical violations. For government employees, the risk is presented more by banality, not caring about violations and doing something as it has always been done. This, too, is a cultural dividing line.

Ethics codes are not the only answer, though many companies are proud of theirs. Enron had a code published in a handsome book. An enormous variety of organizations have ethical codes: doctors, nurses, lawyers, pharmacists, but also the Pot Bellied Pig Fanciers Association, the Maine Coon Breeders and Fanciers and the Association of Elvis Impersonators. Codes are just the start. They can become ciphers in the presence of weak ethical leadership, weak ethical culture, and inadequate training.

Our agency is actively engaged in conversations with OMB, GAO and other government offices regarding contractor ethics. It has been suggested that we conduct training of contractors' employees, but we asked then, "Train them in what? Rules that don't apply to them?" Some, including some legislative staffers, have suggested patchwork fixes that apply to one particular agency's contractors. We generally oppose patchwork efforts that will only make the federal ethics system more complex and less intelligible. Ethics clauses might become mandatory in certain contracts, but what does that do without review and enforcement mechanisms? The FAR regulations might be amended to strengthen ethical compliance by contractors' employees, but this risks a one size fits all approach. Oversight by OGE, if legislatively authorized, would be unrealistic and impractical at present budget and staffing levels. Today, I do not have an answer.

With the help of government contractors we in government need a better sense of:

- How do ethical values communicate across the federal employee/contractor employee divide.
- Is it even possible to have coherent ethical leadership among the senior executives of thousands of government contractors?
- How does the fault line which clearly exists in the “blended” work force affect ethical behavior?

When Mr. Abramhoff is well settled into his new cell, the next big thing in government ethics could well be a contractor employee scandal, perhaps arising from the investigative work of the State IG and Special IG for Iraq now turning over rocks in the Middle East. If that is so, it will damage us all, government and contractor alike. It will damage public confidence. The tar brush will hit us all. We need coherent study to make the blended work force comprehensible and controllable in ethical terms.

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