

# MANAGING THE MULTI-SECTOR WORKFORCE 2011 UPDATE

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# Goals for Today

- Identify ethics and compliance issues that commonly arise in the multi-sector workforce.
- Focus on changing regulatory environment
- Identify applicable guidance.
- Identify best practices to mitigate risks.
- Share the experiences and knowledge of the audience.

# Unique Situation/Challenge of the Multi-Sector Workforce

- Government and contractor personnel work side-by-side on a long-term basis.
  - Blurs distinction between them.
  - “One-team” concept obscures legal differences.
  - Share common overall goal of work center.
  - Consider each other to be friends, colleagues, and co-workers.
  - Obscures “arms-length” legal relationship that separates Government personnel and prohibited sources.

# Way Forward for Presentation

- For each issue identify:
  - Challenge
  - Rules
  - Examples
  - Best practices
- Seek your thoughts and recommendations
- Lots of slides: Retain for reference.

# Knowing “Who is Who”

- Challenge: Knowing the status of the person with whom you are dealing.
  - Inadvertent disclosure of sensitive information.
  - Create OCI (Organizational Conflict of Interest).
- Rule:
  - Contractor and Government personnel are subject to different rules.
  - Rules demand “arms-length” relationship.
- Best Practices:
  - Identify status on badges, email, phone.
  - Train employees regarding legal significance.

# ACUS

## Recommendations For Contractor COI

- FAR Council promulgate model language for contracts with high risk of:
  - personal conflicts of Interest or
  - misuse of non-public information
- Agencies have discretion to use or modify.
- Contractors required to:
  - Make certifications,
  - Train employees, and
  - Report conflicts and non-disclosure breaches

# Gifts

- Challenge:
  - As contractor and Government personnel develop friendships, they exchange personal gifts.
- Rules:
  - 5 CFR 2635 Subpart B (gifts from outside sources)
  - EO 13490 (1/21/09) Ethics pledge
    - DAEOGRAM 09-007 (2/11/09)
    - Prohibits: Gifts of \$20 or less
    - Awards and honorary degrees
    - Attendance at widely-attended gatherings
    - Food and refreshments in foreign areas
  - Contractor gift policies
  - Agency gift acceptance statutes

# Gifts

- Examples:
  - Contractor hosts contract kick-off meeting for entire team. Serves breakfast.
  - Government employee gets married, and office personnel contribute to wedding gift.
  - Government employee is getting married and invites entire office, including contractors, to her wedding.
    - Accept invitation?
    - Gifts?



# Gifts

- More examples:
  - Contractor employee and Government employee carpool to work, rotating driving duties.
  - Government employee rides with contractor to work daily.
  - Contractor employee brings company coffee mugs to work. One for everyone in the office.
  - For office training, contractor offers use of its meeting room and graphics department.

# Gifts

- More examples:
  - Judy, a contractor employee, invites Boris, a Government employee with whom she works closely and has started dating, to her company's holiday party.
  - George and Bill, Government employees, are friends: fishing, golfing, playing cards. George resigns to work for a contractor, assisting Bill's branch. They would like to continue their activities together.

# Gifts

- Best practices:
  - Ensure everyone recognizes the differences between contractor and Government personnel.
    - Training: Include contractor and Government personnel in the same training
    - Reminders:
      - Examples briefed at meetings, in office emails
      - Wallet cards, calendars, posters, e-announcements, newsletters.
    - Address common situations before they occur.

# Protection of Non-Public Information

- Challenge:
  - Preventing improper disclosure of non-public information:
    - Government to contractor (source selection information)
    - Contractor to other contractor (proprietary information)
    - Contractor to Government (proprietary information)
  - Non-public Information includes:
    - Contractor Bid or Proposal Information (41 USC 423(b))
    - Source selection information (FAR 2.101)
    - Classified information
    - Information protected by the Privacy Act
    - Proprietary information
    - Information not releasable under FOIA
    - Law enforcement information

# Protection of Non-Public Information

- Rules:
  - Privacy Act
  - Freedom of Information Act
  - Economic Espionage Act 18 USC 1832
  - Procurement Integrity Act FAR 3.104-4
  - Trade Secrets Act 18 USC 1905
  - 5 CFR 2635.703 Use of non-public information

# Protection of Non-Public Information

- Examples:
  - Email
    - Including contractors when they should not be included.
    - Forwarding emails containing attachments that include non-public information.
    - Forwarding emails that include a trail of earlier emails with non-public information.
  - Leaving non-public information on shared printers.

# Protection of Non-Public Information

- More examples:
  - Dropping off non-public information on the unoccupied desk of the recipient.
  - Using a speaker phone to discuss non-public information.
  - Speaking loudly when in a cubicle.
  - Presenting non-public information at meetings when you don't know everyone who is present.
  - Conference calls.
  - Sharing one contractor's bid information with another contractor.

# Protection of Non-Public Information

- Best Practices:
  - Clearly mark non-public information.
  - Be careful when emailing non-public info. Ensure you know everyone who is receiving it.
    - Does the recipient have a contractor assistant who filters the recipient's email?
  - If contractors are at meetings, do not disclose non-public information unless they have a need to know.
  - Do not leave non-public information exposed in your office.
  - Printers!!!!



# Protection of Non-Public Information

- More best practices:
  - Be careful when using a speakerphone.
  - Be careful if you work in a cubicle.
  - Before forwarding an email, check the entire email chain and attachments.
  - Be careful if you use social media, e.g., Facebook, Twitter, blogs, third links.
  - Establish agreed-upon procedures for handling and reporting of improper disclosures.
    - Who should be notified.

# Office Events

- Challenge and Examples:
  - Conducting office events such as office parties, holiday parties, team-building events with a multi-sector workforce.
    - Exchange of gifts
      - Gift rules for Government employees and contractors
    - Paying for costs
      - Payment by individuals.
      - Can contractor pay costs for contractor employees?
      - Can contractor make a donation to office?
    - Charging time
    - Events outside of the workplace

# Office Events

- Rules:
  - 5 CFR 2635.101(b)(14)
  - 5 CFR 2635 subpart B (Gifts)
  - Contractor gift rules
- Best practices:
  - Include ethics counselor/legal counsel in event planning.
  - Consider gift issues.

# Solicitations and Favors

- Challenge: Government personnel request things from contractor employees:
  - Examples:
    - Work for the agency beyond scope of contract.
    - Participate in fundraisers, Girl Scout cookies.
    - Provide personal assistance (fix my laptop?).
    - Help with the statement of work (OCI).
    - Job for spouse, child, or friend.

# Solicitations and Favors

- Rules:
  - 5 CFR 2635.202: May not solicit gifts from prohibited sources.
  - FAR 3.101-2 May not solicit anything of monetary value from contractor.
  - Contractor rules on acceptance of gifts from customers and suppliers.
    - Improper influence on business decisions.
    - May not participate in customer/supplier raffles.

# Solicitations and Favors

- Best Practices:
  - Recognize the contractor's strong interest in satisfying customer.
  - Promote understanding of limits.

# Workplace Issues

- Challenge:
  - Contractor employment in the workplace can result in misuse of property and position and violation of political and gambling rules.
    - Use of Government property
    - Political activities
    - Gambling
    - Awards
    - Charitable fundraising

# Workplace Issues

- Rules:
  - Contractors cannot use Government property, except as authorized under contract.
  - Political activities:
    - 5 USC 7321-7326 Political activities by Government civilian personnel
    - 5 CFR 733 and 734 Political activities by Federal employees
    - 41 CFR 102-74.415 Prohibits posting of materials in GSA facilities.
  - Gambling:
    - 41 CFR 102-74.395 No gambling in GSA facilities.
    - 5 CFR 735.201 No gambling by Federal employees.



# Workplace Issues

- Rules:
  - Awards:
    - No fiscal authority to use appropriated funds to give awards to contractors.
      - Awards of little intrinsic value (certificates) permitted.
      - Coins (if personally funded).
    - 5 CFR 2635.204(d) permits contractor awards to Government personnel if approved by ethics official. (Should be coordinated with contracting officer.)

# Workplace Issues

## – Charitable Fundraising.

- CFC only authorized fundraising on Government property. (5 CFR 950)
- CFC permits solicitations of Government personnel only.
  - Contractor personnel may contribute voluntarily.
- 5 CFR 2635.808(c)(1)(i) Government personnel may not solicit prohibited sources (contractors).
- 41 CFR 102-74.410 No soliciting on GSA property. (Includes contractors)

# Workplace Issues

- Best Practices:
  - Conduct joint training.
  - As part of charitable campaign, include restrictions applicable to contractors and Government personnel.
  - Emphasize ban on use of Government equipment to conduct private business.

# Outside Activities

- Challenge:
  - Contractor and Government personnel joint activities create conflicting interests.
- Rules:
  - 5 CFR 2635.502 Impartiality
  - 18 USC 208 Conflicting financial interests
  - 5 CFR 2635.802 Outside Activities
  - 5 CFR 2635.807 Speaking, Teaching and Writing
  - Contractor codes of conduct
- Examples:
  - Co-authoring professional articles
    - Use of office and position
    - Official capacity v personal capacity
    - Copyright
  - Part-time work with contractor

# Outside Activities

- Best Practices:
  - Recognize legal and compliance limits.
  - Establish workplace culture of open communication with supervisor and ethics advisor.

# Revolving Door

- Challenge:
  - It is sooooo easy to discuss potential employment with contractor employees with whom you work.
  - Since many contractor jobs mirror Government jobs, it is easy to retire, and return as a contractor.
  - Changing Government workplace.

# Revolving Door

- Rules:
  - 18 USC 208 (Employment negotiations)
    - No negotiations without disqualification.
  - 5 CFR 2635. Subpart F (Seeking employment)
    - No “seeking employment” without disqualification.
    - 5 CFR 2635.603 defines “seeking employment” and gives examples.
  - 18 USC 207 (Post-employment restrictions)

# Revolving Door

- Procurement Integrity Act (41 USC 2101-2107)
  - One-year ban on employment for procurement officials involved in awards of \$10M or more.
  - Required disqualification and reports for employment discussions of procurement officials.
- EO 13490 (1/21/09) Ethics pledge
  - Applicable to political appointees
  - Two-year cooling-off
  - No lobbying during Obama Administration
- Contractor rules on conflicts of interest
  - Contractor employees seeking employment with Government may create conflict of interest.



# Revolving Door

- Examples:
  - Government office supervisor, over coffee, notes she plans to retire, and asks contractor co-worker if she could get a job with the contractor.
  - Government employee, after hearing that a contractor co-worker is leaving, asks if he can apply for the contractor's position.

# Revolving Door

- Best Practices:
  - Train contractor and Government personnel regarding disqualification requirements triggered by “innocent” employment discussions.
    - Give examples of discussions that trigger disqualification.
    - Ensure Government personnel know how to seek advice.
    - Ensure contractor employees know how to handle such discussions.
    - Remind personnel involved in procurements of PIA restrictions and reports.
  - Issue reminders to both sides.
  - Remind political appointees of Ethics Pledge.

# Revolving Door

- Proposed Regulation for DoD
  - DFARS Case 2010-D020 (June 6, 2010)
  - Requires Defense contractors to certify at time of award of contract that all employees who are former DoD and military “covered officials” are in compliance with post-employment restrictions.

# Remedies

- Tailor training for your workplace issues.
  - Include everyone in work center (especially those who do not attend annual training.)
- Recognition that contractors are prohibited sources.
  - Alliance v partnership
  - Contractor under great pressure to say “yes”

# Remedies

- Create workplace culture of open communications.
- Communicate with contractor ethics advisors.
  - We're all in the same boat.
  - Involve ethics officials in planning events.
  - What can management do to reduce these risks?
  - What can contractors do to reduce these risks?
- OGE: “Working with Government Contractors” Booklet
- DoD Ethics Counselor’s Deskbook Chapter N  
[http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/2009Deskbook/7ECC\\_ContractorsInFederalWorkplace.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/2009Deskbook/7ECC_ContractorsInFederalWorkplace.pdf)

# Feedback

- What do you know now that you didn't know an hour ago?
- How did this presentation help you do your job?

# Questions?

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