

With the continuing use of contractors in government workplaces, one of the Center Directors requested that I put together a “Dos and Don’ts” of dealing with these contractor employees.

**GIFTS:** The Government gift rules fall into two categories: gifts from outside sources and gifts between employees. Contractor employees are not Government personnel. Consequently, gifts from them to a Government employee constitute gifts from outside sources, not gifts between employees.

General Rule: Unless an exception applies, DoD personnel shall not, directly or indirectly, solicit or accept a gift from a DoD prohibited source (All DoD contractors and their employees are prohibited sources) or given because of the employee’s official position.

Some items are excluded from the definition of a gift, so they may be accepted. The most relevant exclusions are modest food and refreshments, greeting cards, and anything for which market value is paid by the Government employee.

If the item is not excluded, then Government personnel may accept a gift only if it fits an exception.

- \$20/\$50 exception - The most common exception is the \$20/\$50 rule. Government personnel may accept unsolicited gifts if they are not cash and are valued at or under \$20 per source, per occasion. The aggregate limit from a single source is \$50 per calendar year. The \$50 maximum applies to the contractor and aggregates all gifts from individual contractor employees who are employed by that contractor. Consequently, a Government employee or member could not accept three \$20 lunches from three different contractor employees during the year if the three worked for the same contractor at the time of the gifts.

- Personal relationship exception – Another exception permits Government personnel to accept gifts clearly motivated by personal friendship. When using this exception, it must be clear that the motivation for giving the gift is a family or personal relationship, and that the contractor employee, not the contractor, is paying for the gift.

Disposition of prohibited gifts: If a Government employee or member receives a gift that may not be accepted, the employee or member must return the gift or pay the donor its market value. Subsequent reciprocation by the Government employee does not constitute payment for the gift. (Consequently, accepting lunch from a contractor employee with the intent to “pay next time” is not an acceptable means to eliminate the prohibited gift.

Contractor employees may not contribute to a group gift for Government personnel. Since there is no authority for contractor employees and Government personnel to commingle donations for a group gift, such a practice is prohibited. Contractor employees from the same company may voluntarily pool their resources to provide a

separate gift (not exceeding \$20) to a Government employee. Contractor employees from different companies may pool their resources to provide a separate gift (not exceeding \$20) to a Government employee.

There is no Government prohibition on Government personnel collecting among themselves for a group gift to a contractor employee. Contractors may have their own rules of ethics or business practices that guide appropriate behavior. Employees should take these rules into consideration before offering contractor employees gifts or opportunities that they may not be able to accept. Check with the contracting officer or the contractor supervisor.

**PARTIES AND OTHER UNOFFICIAL OUTINGS.** These functions represent a subset of gifts, and therefore the gift rules apply. On occasion, Government personnel participate in activities outside the Government workplace. Parties, gift exchanges, and the like are often organized to celebrate the particular event or season. The gift rules apply to these situations as well. Pay particular attention to gift acceptance thresholds and the prohibition on solicitations of prohibited sources. Government personnel may attend social events sponsored by non-prohibited sources if no one is charged. Government personnel may attend events in which the per capita cost is \$20 or less and the individual has not exceeded the \$50 limit on gifts from that source for that calendar year. Contractor personnel may pay their share of the fee to cover the actual cost of refreshments or may bring food to share if others are doing the same. These are not considered gifts, but rather the cost of their share of an unofficial office function or lunch.

**TIME MANAGEMENT:** The contract and contractor supervisor control the time management of the contractor employees. Government personnel may not circumvent the contractor supervisor. Time billed to the Government must be in furtherance of and in performance of the contract. Government personnel may not ask contractor employees to work outside the scope of their contract. The Government may not authorize compensatory time for contractor employees, invite contractor employees away from their assigned workplace or otherwise authorize contractor employees to attend activities unrelated to the performance of their contract. Examples include sports days, team-building exercises, retirement ceremonies, and office social events. Grant an early release to a contractor employee. Unless authorized in the contract, ask for help to set up an office or command event. Ask contractor employees to volunteer time to help set up an office or command event. Therefore, a contractor employee must obtain permission from the contractor supervisor to participate in a Government office outing during official hours. Since the contractor employee's participation is not in furtherance of contract requirements, the contractor must determine whether to pay its employees for that time even though the Government will not reimburse it.

**CONFLICTS OF INTEREST:** Since Federal conflict of interest rules apply to Government personnel, they must take care to avoid actual or apparent conflicts of interest with their official duties.

**AWARDS:** Commonly, Government organizations assign teams to solve a particular problem. These teams often represent a mix of Government personnel and contractor employees. Upon successful completion of the project, the organization may recognize members of the team. The Government may award Government personnel using a variety of methods, ranging from certificates of appreciation to time off and a monetary bonus. The Government does not have the same authority to recognize contractor employees. Contractors may have their own awards and bonus programs. Contracts may include incentives and awards for performance or work performed ahead of schedule. Recognition of a contractor employee may only take the form of honorary awards of little intrinsic value such as certificates. Use of appropriated funds outside the limits of the contract is not appropriate. Before deciding to give a presentation, award, or recognition to a contractor employee, check with the contracting officer, since any recognition may be used against the Government in a dispute involving contract performance.

**USE OF GOVERNMENT RESOURCES:** Availability and use of Government property and resources impacts the competitiveness of the procurement process. If the Government were to provide, during the performance of a contract, property and resources that were not a consideration in the competitive process, it could affect the integrity of the procurement process and leave the Government susceptible to claims of unfair advantage.

Government furnished services: Normally, Government organizations include departments that provide services for some or all of its personnel – these can include Employee Relations, Equal Employment Opportunity, Mediation, Chaplain, and Legal. Although they are readily available at the work site, contractor employees may not use these resources unless otherwise provided for in the contract or otherwise qualified. For example, a contractor employee who is a retired military member does have some limited ability to use military-provided legal services. .

Personal use policy: While Agency Designees (supervisors) have the authority to determine appropriate personal use of Government resources by Government personnel, they do not exercise the same authority and control over contractor employees. Because the contractor employee is fulfilling the obligation of the contract, it is up to the contracting officer and contractor supervisor to determine whether personal use of Government resources by the contractor employee while on contract time is appropriate.

Use of Morale, Welfare, and Recreation (MWR)/NonAppropriated Funds Instrumentality (NAFI) programs and facilities: The installation commander has the discretion to allow contractor employees that work full-time on the installation limited use of military MWR activities, such as restaurants, gymnasiums, and golf courses.

**TRANSPORTATION.** The Government provides vehicles and shuttle service to promote efficiency in conducting Government business. Local area commanders have the discretion to determine if use is for official purposes. Under the travel regulations, contractor employees may be passengers in Government vehicles if the head of the Component command or organization has given prior approval. Contractor employees may use Government shuttle bus services when conducting official defense business.

**TRAINING:** Government personnel may not independently require or grant contractor employees the time to attend training. Remember that the contractor supervisor is responsible for time management, and that time away from the workplace puts the contractor at a disadvantage, and may impair the contractor's ability to meet contract obligations or delivery dates. The Government may provide training to contractor employees if the contract requires it. If the Government and contractor supervisor agree that contractor employee attendance at training is appropriate, and it does not otherwise create a conflict or give the appearance of favoring a contractor, then the Government must determine whether the training is a necessary and reasonable expense under its appropriation.

**MISUSE OF POSITION/ENDORSEMENT:** Government personnel may not use their public office for their private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends or other persons. Furthermore, Government personnel may not use their position or authority in a manner that is intended to coerce or induce another to provide any benefit to family, friends, or associates with whom the Government employee is affiliated in a nongovernmental capacity.

Example: A Government employee's best friend is looking for a job. She has heard from contractor employees with whom she is working that the contractor has several openings in her friend's area of expertise. She can pass on public information about this job opening to her friend, but she cannot ask the contractor to interview or hire her friend.

Example: A contractor employee with whom a military member has worked on a Government matter in the past requests a letter of recommendation in support of her job application with a different private sector company. The military member may write the letter on agency letterhead and sign it using his title and position because this recommendation is based on his personal knowledge of the individual that he gained in the course of his Government employment. He should check with the contracting officer before sending the reference letter to ensure the letter will not affect the Government's business relationship with the contractor.

If a contractor employee offers to discuss employment opportunities (unsolicited) with a Government employee, unless the Government employee makes a clear and immediate rejection, he must disqualify himself from participating in matters that affect the financial interests of the contractor.

**NON-DISCLOSURE:** Government personnel with access to nonpublic information may not disclose it without authorization. Nonpublic information is any information gained by reason of Government employment that Government personnel know or reasonably should know has not been made available to the general public. Government personnel must be alert to avoid inadvertently, or carelessly, releasing nonpublic information to contractor personnel. Government employees should take particular care when discussing nonpublic information in areas where contractor personnel are co-located: in elevators, break and rest rooms, cafeterias, and other public areas.

**CHARITABLE FUNDRAISING:** The Combined Federal Campaign (CFC) is a Government attempt to control the solicitation for contributions by private organizations of Government personnel while in the Government workplace. Government personnel, in their official or their personal capacities, may not solicit contractor employees either on or off duty. Just like any charitable organization, contractor employees can't solicit Government personnel in the Federal workplace.

**OUTSIDE EMPLOYMENT:** Government personnel are prohibited by [18 USC 205](#) and [18 USC 203](#) from representing an outside employer to the Government. This makes problematic the increasingly common practice of Government personnel, who are moonlighting as contractor personnel, physically working in Government offices. The criminal statutes preclude Government personnel from representing their contractor employers to Federal personnel. Since an employee is an agent for the contractor, it is extremely difficult for a moonlighting employee to interact with Federal personnel in a Government workplace without making a prohibited representation. For that reason, it is more prudent for moonlighting Government personnel to work for the contractor "behind the scenes" at a contractor office, non-governmental office, or otherwise away from the Government workplace. It is almost impossible for Government personnel to work as contractor employees in the Federal workplace. Government personnel who wish to work for a contractor may be able to arrange to work in the contractor workplace.

**CONFUSION OF IDENTITY:** Due to the different roles, responsibilities, authority, and restrictions, it is necessary that the identities of Federal personnel and contractor personnel be apparent. FAR 37.114(c) provides:

"All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed."

**ASSISTANCE:** Finally, remember that there are two organizations who can assist you in working with contractor employees. Prior to taking an action with a contractor employee, it is in your best interest to check with the contracting officer and the ethics official. Both are here to help you navigate through these difficult waters.