

ETHICS

1. Introduction. This block of instruction is really about doing the "Right thing". Hardly a week goes by without a news story dealing with fraud or "Questionable ethical behavior" by individuals and organizations in the public and private sectors. Even where it appears that individuals acted alone, entire organizations are often tainted as well. Those individuals who spend taxpayer money are particularly subject to close scrutiny. Some practices that may be acceptable in the private sector may not meet the higher standards of integrity, honesty, and fairness expected of public servants. Consequently, government personnel must go beyond what is simply required and do what is right to avoid even the appearance of impropriety.

2. Ethics vs. Compliance. Ethics is the code of conduct which you should follow as a government employee. Compliance is actually following the rules. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. This will ensure that every citizen can have complete confidence in the integrity of the Federal Government.

3. Sources of Standards. The sources of several of the ethical rules that we must follow come from five categories.

a. Statutory Prohibitions - 18 United States Code 201(f) and (g) makes it a crime to offer or give a gratuity to a Government official, or for a Government official to solicit or receive a gratuity. Section 18 of the United States Code also contains many of the criminal conflict of interest statutes that Government officials must follow.

b. Regulatory Prohibitions - Implementation of the statutory prohibitions are done through regulations. For example, Part 3 of the Federal Acquisition Regulation implements the Procurement Integrity Act, 41 U.S.C. 423.

c. Executive Orders - The President of the United States does have the authority to issue an executive order. Agencies are required by Executive Order 11222 of May 8, 1965 to prescribe "Standards of Conduct."

d. Agency Guidance - The Joint Ethics Regulation (JER) provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training.

e. Local Policies - Many local commands issue their "In house" guidance to deal with unique situations. For example, some commands prohibit the acceptance of any type of gift given to an employee from an outside source, regardless of the value.

4. Office of Government Ethics. The Office of Government Ethics (OGE), a small agency within the executive branch, was established by the Ethics in Government Act of 1978. Originally part of the Office of Personnel Management, OGE became a separate agency on October 1, 1989 as part of the Office of Government Ethics Reauthorization Act of 1988. OGE 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.

5. Office of Government Ethics Regulations. The Office of Government Ethics Regulations may be found at 5 Code of Federal Regulations Part 2635 governing the "Standards of Ethical Conduct for Employees of the Executive Branch." These regulations are also found in the Joint Ethics Regulation put out by the Department of Defense (DoD) as a single source of guidance for all agencies within DoD.

6. Designated Agency Ethics Official. Each agency head selects an individual employee of that agency to serve as the agency's Designated Agency Ethics Official (DAEO). It is these individuals and the additional staff of each agency tasked with supporting an agency's ethics program, with whom OGE primarily deals with.

7. Ethics Counselor. An attorney (military or civilian) appointed by the DAEO or designee to assist in implementing and administering the command's or organization's ethics program and to provide ethics advice to DoD employees of the command or organization.

8. Gifts From Outside Sources. One of the most common problems that arise in the ethical arena is issues regarding gifts. The primary question is whether the gift can be accepted?

a. The Office of Government Ethics Regulations at 5 C.F.R. 2635.202 provides the basic rule or punitive prohibition on gifts from outside sources. The rule provides that an employee shall not solicit or accept a gift:

(1) From a prohibited source (e.g., someone who has an interest in the performance of official Army missions); or

(2) Given because of the employee's official position.

b. Prohibited Source: A prohibited source is a DoD contractor and any person who: Is seeking official action by the employee's agency; Does business or seeks to do business with the employee's agency; Conducts activities regulated by the employee's agency; Has interests that may be substantially affected by performance or nonperformance of the employee's official duties.

c. Gifts Include: The first question that must be addressed is whether the item is actually a gift? Gifts include any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, services, training, transportation, local travel, lodgings and meals. The term "Gift" includes almost anything of monetary value.

d. Gifts Do Not Include: Gifts do not include modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal; Greeting cards; Plaques, certificates, and trophies which are intended solely for presentation; Prizes open to the public; Commercial discounts available to the general public or to all government or military personnel; and commercial loans from banks and other financial institutions available to the public.

9. Gift Exceptions. There are exceptions which will permit an employee to accept a gift if: The gift is an unsolicited gift with a market value of \$20.00 or less per occasion, aggregating no more than \$50.00 in a calendar year from a single source; And gifts given based upon a personal relationship. However, these exceptions do not apply if the gift is given in return for influence concerning the performance of official duties or are so frequent that there is an appearance of using public office for private gain. Also, note that the primary rule is to avoid any appearance of impropriety, this is especially true when dealing with government contractors. If there appears to be favoritism toward one particular contractor, the integrity of the procurement process will have been compromised.

10. Gifts Between Employees. The general rule is that an employee may not give a gift or solicit a contribution for a gift to give to a superior; Likewise, an employee may not accept a gift from an employee receiving less pay. While these are the general rules, there are exceptions to those basic rules. The exceptions for gifts given between employees are as follows: Gifts on an occasional basis; special infrequent occasions; and voluntary contributions.

a. Gifts on an Occasional Basis: This involves situations such as birthdays and other occasions when gifts are traditionally exchanged, given, and accepted. This includes items with a value of \$10.00 or less; Food and refreshments to be shared in the office; personal hospitality provided in a residence; and items customarily given in connection with personal hospitality.

b. Special Infrequent Occasions: This includes marriage, birth of a child, illness, and retirement.

c. Voluntary Contributions: These are nominal amounts solicited and given voluntarily for gifts of food and refreshments to be shared in the office or for group gifts on special infrequent occasions as discussed above.

11. Procurement Integrity Act. The Procurement Integrity Act, originally passed in 1988 and amended several times, most recently by the Clinger-Cohen Act or Public Law 104-106, National Defense Authorization Act for FY 1996, amends 41 U.S.C. 423 by re-writing it. The Procurement Integrity Act focuses on improper contacts between contractor and government personnel. The Act specifically addresses offers of employment, disclosure of information, and compensation of former officials. Violators are subject to a variety of sanctions including criminal prosecution, civil suit, and administrative actions.

12. Conflicting Financial Interests. Under the criminal conflict of interest statute, 18 U.S.C. 208, an employee is prohibited from participating in an official capacity in any particular matter in which, to his or her knowledge, he or she or certain other persons have a financial interest, if the particular matter will have a direct and predictable effect on his or her own financial interests or on the financial interests of another person. This prohibition does apply to the financial interests of the employee's spouse, minor child, or general partner. Violation of this law can result in imprisonment up to one year; if willful imprisonment up to 5 years; and in addition, a possible fine of \$50,000 to \$250, 000.

13. Representational Restrictions. A criminal statute at 18 U.S.C. 207 prohibits or restricts all former employees from switching sides to represent someone back to the Government on particular matters involving specific parties in which they have personally and substantially participated or which were under their official responsibility. There is a lifetime ban, 2 year ban, and 1 year ban for "Senior Employees". The criminal penalties include 1 year imprisonment or 5 years if willful and a possible fine of \$50,000 to \$250, 000.

14. Summary. Government employees are given the public trust and as a result must perform at the highest standards of professional conduct. This is especially true when dealing with contractors in the procurement process. Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Remember, the general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

15. References:

- a. Federal Acquisition Regulation - Part 3
- b. DoD 5500.7-R, Joint Ethics Regulation