

Protection of Non-Public Information

At the CG's last townhall meeting, I gave a short presentation about contractor employees in the Federal workplace, and my primary focus was about the protection of nonpublic information, because this is where I see a significant vulnerability. In continuing to raise our awareness of these issues, I decided to reissue this Ethics Advisory from 1998. This time I have also attached the Chief of Staff's 12 February 1998 memorandum for general distribution concerning the protection of advanced procurement and other sensitive information.

There are a number of laws and regulations that protect nonpublic information, such as:

- The procurement integrity law restricts the release of source selection and contractor bid and proposal information, and provides civil fines and criminal penalties for improper release.
- The trade secrets act makes it a crime to improperly release contractor trade secrets and other confidential business information outside the Government.
- The *Standards of Ethical Conduct for Employees of the Executive Branch* prohibits us from releasing, exploiting, or allowing others to exploit nonpublic information.

In addition, restrictions on our use of information can arise in other ways:

- We often buy technical data and computer software with restrictions on our release outside the Government.
- A release of advanced procurement information to a potential competitor could result in a contracting officer determining that this source is barred from competing for the requirement.
- An improper release of information outside the Government could result in having to re-do or fix a procurement as a result of a successful protest.

The important thing to keep in mind with respect to our use of information, is that, when we discuss it with, or give it to, a contractor employee, we have released it *outside* the Government. If we invite a contractor employee to a meeting, whatever we discuss during the meeting has been released *outside* the Government. When we give a contractor employee information to enter into a database or to prepare slides and charts, we have released the information *outside* the Government. None of the laws and

regulations that restrict *our* use of sensitive and nonpublic apply to our contractors' employees, except for the procurement integrity law and privacy act.

This does not mean that we can never release information to contractor employees. But, it does mean that we must be sensitive to the issues and make conscious decisions. First: can we? For example, if it is technical data to which we have only restricted rights, we probably cannot release the information without first obtaining permission from the source of the data. We might have to pay for this permission. Second, even if it is legal, do we really need to/should we release the information? Always practice "need to know." In addition, think of the consequences. For example, will release of this information create an organizational conflict of interest, barring the contractor from competing on an upcoming acquisition?

Once we decide that it is permissible to release the nonpublic information and that we need or want to provide it to a contractor employee, we should not do so without some sort of promise by the contractor and its employee that they will not use or exploit the information in any way other than in furtherance of the contract. The contract might already provide for such a promise. If not, you should consider having the contractor employee sign a non-disclosure certification. Even if the contract has a specific promise by the contractor not to disclose nonpublic information that it has access to during the performance of the contract, you still might want to use a non-disclosure certification with the contractor employees who are supporting your organization or effort.

A sample non-disclosure agreement is attached for your information. It should not be used without fine-tuning it to your situation, and consulting with the contracting officer.

Questions in this area should be directed to the contracting officer, the contract lawyer, or the ethics official, as appropriate.

This and all the Ethics Advisories are maintained in the Ethics Lotus Notes database.