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AMCCC (27)

POINT PAPER

1 May 2001

SUBJECT: Meetings Attended by Support Contractors' Employees

PURPOSE: To provide information, perspective and recommendations for when employees of support contractors attend AMC meetings.

FACTS:

- There are laws, including criminal laws, regulations and restricted rights agreements that govern the use and release of nonpublic information. The general principle concerning transmittal of nonpublic information to other Federal employees is "need to know."
- However, there is an additional principle as to whether we release nonpublic information to employees of our support contractors for such tasks as graphics preparation, database management, study and analysis, and briefings. The contractor's employees might well have a "need to know" to perform the contract task, but we must also have the "right to release" the information. For example:
 - If the information is a trade secret, relates to a business process, or involves confidential financial information that was provided to us by an outside source with the expectation that it be kept confidential, we may not release it to a contractor employee without risking violation of a criminal statute.
 - If the information is technical data, source code or other intellectual property belonging to an outside source, we may not release it to a contractor employee unless we have obtained the right to do so from the outside source, or subject ourselves to serious monetary claims.
- Even if there is a "need to know" and we either own the nonpublic information or otherwise have permission to release it to our support contractor, we still may not want to do so if this will create an organizational conflict of interest that will disqualify the contractor from competing for a future requirement.
- Never host a meeting without knowing who is participating, including those taking notes and providing audio-visual support. If contractor personnel will attend, know their employer. Think about whether nonpublic information will likely be, or could be, discussed. What kind of nonpublic information?

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- Ensure that we have the right to release the nonpublic information. If not, get permission. If permission is not forthcoming, then the contractor employees may not attend.
- If we have the right to release the information, consider whether the release of the information will unacceptably compromise a future competition by creating an organizational conflict of interest.
- If we have the right to release the nonpublic information, ensure that the support contract and/or task order have specific requirements on the contractor and its employees to protect and not exploit nonpublic information, and that all terms have been complied with, *e.g.*, the contractor employees have signed nondisclosure agreements (even if not specifically required by the contract or task order, we still might want to have nondisclosure agreements signed by the employees (after consultation with the contracting officer)).
- If we anticipate that outside organizations will bring contractor support and we otherwise have the right to release nonpublic information to them, make sure that the other organizations understand the nature of the information that will be released so that they can ensure the appropriateness of their contract support participation. Request their assurance that their contracts and/or task orders include specific requirements on their contractors and their employees to protect and not exploit nonpublic information. Request a copy of their contractor employees' signed nondisclosure agreements.
- The *Standards of Ethical Conduct* rules that prohibit Federal employees from misusing their position, to include not exploiting nonpublic information, do not apply to contractor employees. In addition, the conflicts of interest laws and regulations that restrict Federal employee conduct, do not apply to contractor employee conduct with one exception (the law against bribery). However, the law that protects source selection and bid and proposal information (procurement integrity law) during the conduct of a procurement, and the privacy act do apply to both Federal employees and contractor employees.

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