

SUBJECT: Ethical Issues Created by Contractors in the Workplace

PURPOSE: Provide information about ethical issues created by contractor employees working in the Federal workplace.

FACTS:

(Contractor employees are indeed different from Federal employees, even those contractor employees who work on a daily basis in and around the Federal workplace. One major difference is that the conflicts of interest criminal laws do not apply to contractor employees (except for the bribery statute), nor do the Standards of Ethical Conduct for Employees of the Executive Branch or the DoD Joint Ethics Regulation apply to them.

(Contractor employees and their workspace should be clearly identified to ensure that Federal employees and the public know that they are not Federal employees to avoid inadvertent unethical conduct in addition to other issues, such as illegal personal services, claims for services provided beyond that required by the contract, and misunderstandings about fiduciary responsibilities.

(**GIFTS.** Contractors and their employees are "outside resources." They should not be solicited for contributions to gifts to departing or retiring Army employees. The rules governing gifts between Army employees and those offered by a contractor or its employees to an Army employee are very different. In an appropriate case, an Army employee may accept a \$300 framed print from the employees in his or her organization, but could never accept that gift from the contractor employees who support his or her organization. It is permissible for employees to accept meals and entertainment in a subordinate's home; however, in many cases, this would not be appropriate if the invitation is from a contractor employee.

(**EMPLOYMENT OVERTURES.** Any discussion about future employment between an Army employee and a contractor employee, whoever initiates it, might require special reports depending on the situation. For sure, if the Army employee initiates the inquiry or wishes to pursue it, the Army employee is automatically disqualified from participating in official matters affecting the contractor and must issue a written notice of this disqualification.

(**RELATIONSHIPS BETWEEN FEDERAL AND CONTRACTOR EMPLOYEES.** It is common for varying degree of relationships to develop between and among employees in the workplace. The relationships run the gamut from friendly acquaintances to good friends to close personal friendships to marriage. When these relationships begin to develop between Federal and contractor employees, the Federal employees and their supervisors need to be alert to issues and appearances.

((If the relationship is with a Federal employee who has nothing to do with the contract or the contractor employee, the only concern might be for the protection of "inside information."

((If the relationship is with a Federal employee who has responsibilities involving the contract or the work being performed by the contractor employee, there will be appearances of conflicts of interest that must be resolved; these appearances often

disqualify the Federal employee from participating in the official matters affecting the contractor.

((If the relationship between the Federal and contractor employee results in marriage, the financial interests of the spouse are imputed to the Federal employee and any actual or apparent conflicts of interest that are created must be resolved.

(PROTECTION OF INFORMATION. Numerous statutes protect the release of procurement information, trade secrets, other confidential information and classified information. In addition, the Standards of Ethical Conduct prohibit using, or allowing the use of, nonpublic information for private interests. As Army employees, we must be very circumspect as to whom we release nonpublic information (i.e., need to know). But, we must be particularly vigilant when we are discussing sensitive matters with and around contractor employees.

(RELATED ISSUES.

((Contractors often provide us with "limited rights" information, which cannot be release outside the Government without their consent. Support contractor employees are "outside the Government." Unauthorized release of such data could violate 18 U.S.C. § 1905, which makes it a crime to improperly release trade secrets, processes, and other confidential information.

((Use of support contractors with respect to a future requirement can result in limiting competition for that requirement. The support contractor might be precluded from competing for the requirement because of an organizational conflict of interest.

(When any of these or other ethical issues, or the related issues arise, employees and their supervisors should seek advice and counsel from their supporting legal office.

RELEASED BY:
EDWARD J. KORTE
COMMAND COUNSEL
AMCCC
DSN 767-8031

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PREPARED BY:
MICHAEL J. WENTINK
ASSOCIATE COUNSEL
AMCCC-G
DSN 767-8003