WORKING WITH UNCLE SAM

Compliance Issues That Arise When Working Among Federal Employees

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Goals for Today

• Identify ethics and compliance issues that commonly arise in the multi-sector workforce.
• Focus on HIGH RISK situations.
• Identify applicable guidance.
• Identify best practices to mitigate such risks.
• Share the experiences and knowledge of the audience.
Unique Situation/Challenge of the Multi-Sector Workforce

• Government and contractor personnel work side-by-side on a long-term basis.
  – Blurs distinction between Gov’t and contractor.
    • “One-team” concept
  – Share common overall goal of work center.
  – Consider each other to be friends, colleagues, and co-workers.
  – Obscures “arms-length” legal relationship that separates Government personnel and prohibited sources.

Way Forward for Presentation

• For each issue identify:
  – Challenge
  – Rules
  – Examples
  – Best practices
• Seek your thoughts and recommendations
• Lots of slides: Retain for reference.
Knowing “Who is Who”

• Challenge: Knowing the status of the person with whom you are dealing.
• Rule:
  – Contractor and Government personnel are subject to different rules.
• Best Practices:
  – Identify status by badges, email, phone.
  – Train Federal and contractor employees on legal significance.

Gifts

• Challenge:
  – As contractor and Government personnel develop personal friendships, they exchange personal gifts.
• Rules:
  – Standards of Ethical Conduct for Federal Employees (5 CFR 2635 Subpart B).
  – Ethics Pledge for Obama Appointees (E.O. 13490).
    • OGE DAEOGRAM 09-007 (2/11/09)
    • Prohibits: Gifts of $20 or less
    • Awards and honorary degrees
    • Attendance at widely-attended gatherings
    • Food and refreshments in foreign areas
  – Contractor gift policies.
  – Federal Agency gift acceptance statutes.
Gifts

Most Common Exceptions (for these situations)
- Gifts under $20 (but not cash).
- Gifts of little intrinsic value for presentation purposes only.
- Modest items of food and refreshment (not meals).
- Gifts based on a personal relationship.
- Gifts to the agency (not individual employees).

• Examples:
  - Contractor hosts contract kick-off meeting for entire team. Serves breakfast.
    • Can Government employees accept breakfast?
  - Government employee is getting married and invites entire office, including contractors, to her wedding.
    • Can contractor accept invitation to wedding?
    • Can contractor give a wedding gift?
    • Can contractor contribute cash to single gift from the entire office?
Gifts

• More examples:
  – Contractor employee and Government employee carpool to work, rotating driving duties.
  – Government employee rides with contractor to work daily.
  – Contractor employee brings company coffee mugs to work. One for everyone in the office.
  – For office training, contractor offers use of its meeting room and graphics department.

Gifts

• More examples:
  – Judy, a contractor employee, invites Boris, a Government employee with whom she works closely and has started dating, to her company’s holiday party.
Gifts

• Best practices:
  – Ensure everyone recognizes the differences between contractor and Government personnel.
    • Training:
      – Train your employees on the rules.
      – Include contractor and Federal employees in the same session.
      – Use real examples.
    • Reminders: wallet cards, calendars, posters.
    • Address common situations before they occur.

Protection of Non-Public Information

• Challenge:
  – Preventing improper disclosure of non-public information:
    • Government to contractor (source selection information).
    • Contractor to another contractor (proprietary information).
    • Contractor to Government (proprietary information).
  – Non-public Government Information includes:
    • Contractor bid or proposal Information (41 U.S.C. 423(b))
    • Source selection information (FAR 2.101)
    • Classified information
    • Information protected by the Privacy Act (5 U.S.C. 552a)
    • Proprietary information (18 U.S.C. 1831, 1832)
    • Information not releasable under FOIA (5 U.S.C. 552)
Protection of Non-Public Government Information

• Federal Laws and Regulations:
  – Privacy Act (5 U.S.C. 552a)
  – Freedom of Information Act (5 U.S.C. 552)
  – Economic Espionage Act (18 U.S.C. 1831-1839)
  – Procurement Integrity Act (FAR 3.104-4)
  – Use of non-public information (5 CFR 2635.703)

• Potential Inadvertent Disclosures:
  – Emails from Federal employees
    • Including contractors when they should not be included.
    • Forwarding emails containing attachments that include non-public information.
    • Forwarding emails that include a trail of earlier emails that contain non-public information.
  – Leaving non-public information on shared printers.
Protection of Non-Public Government Information

• More examples:
  – Dropping off non-public information on the unoccupied desk of the recipient.
  – Using a speaker phone to discuss non-public information.
  – Speaking loudly when in a cubicle.
  – Presenting non-public information at meetings when you don’t know everyone who is present.
  – Conference calls.
  – Sharing one contractor’s bid information with another contractor.

Protection of Non-Public Government Information

• Best Practices for Federal and Contractor Employees:
  – Clearly mark non-public information.
  – Be careful when emailing non-public information. Ensure you know everyone who is receiving it.
    • Does the recipient have a contractor assistant who filters the recipient’s email?
  – Do not leave non-public information exposed in your office.
  – Printers!!!!!
Protection of Non-Public Government Information

• More best practices:
  – Be careful when using a speakerphone.
  – Be careful if you work in a cubicle.
  – Before forwarding an email, check the entire email chain and attachments.
  – Establish agreed-upon procedures between agency and contractor for handling and reporting of improper disclosures.
    • Identify officials to be notified.

Office Events

• Challenge and Examples:
  – Events in Government offices, such as office parties, holiday parties, project completion celebrations, team-building events.
    • Can Government and contractor employees exchange gifts?
      – Gift rules for Government employees and contractors.
    • Who pays for the event?
      – Individual contractor employees?
      – Can the contractor pay costs for contractor employees?
      – Can contractor make a donation to the Government office?
    • Can contractor employees charge their time to the Government?
Office Events

• Federal Regulations:
  – Standards of Conduct for Federal Employees:
    • 5 CFR 2635.101(b)(14) (Principles)
    • 5 CFR 2635 subpart B (Gifts)
  – Gifts from contractors (FAR 3.101-2.)
  – Contractor gift rules
• Best practices:
  – Consult agency ethics counselor/legal counsel when planning the event.
  – Consider gift issues.

Solicitations and Favors

• Challenge: Government personnel requests to contractor employees:
  – Examples:
    • Perform work for the agency that is beyond the scope of the contract.
    • Participate in fundraisers, Girl Scout cookies, etc.
    • Provide personal assistance (fix my laptop?).
    • Help with the statement of work.
    • Job for spouse, child or friend.
Solicitations and Favors

• Rules:
  – Federal Acquisition Regulations (3.101-2): Federal employees may not solicit anything of monetary value from contractor.
  – Contractor rules on acceptance of gifts from customers and suppliers.
    • Improper influence on business decisions.
    • May not participate in customer/supplier raffles.

• Best Practices:
  – Recognize the restrictions on Federal employees on gifts or favors from contractors.
  – Promote understanding of these limitations by contractor employees.
Outside Employment

• Federal employees prohibited from non-government employment that conflicts with their official duties (5 CFR 2635.801)
• Individual agencies have rules on outside employment
• Best practices
  – Find out specific agency rules on employee non-Federal employment.
  – Inform your employees of these restrictions.

Other Outside Activities

• Challenge:
  – Contractor and Government personnel joint activities create conflicting interests.
• Federal Rules:
  – Criminal law: conflict of interest (18 U.S.C. 208)
  – Standards of Ethical Conduct for Federal Employees:
    • 5 CFR 2635.502 Impartiality
    • 5 CFR 2635.802 Outside Activities
    • 5 CFR 2635.807 Speaking, Teaching, and Writing
• Contractor codes of conduct
• Examples:
  – Co-authoring professional articles
    • Use of office and position.
    • Official capacity v. personal capacity.
    • Copyright.
Workplace Issues

• Challenge:
  – Contractor employment in the workplace can result in misuse of property and position and violation of political and gambling rules.
    • Use of Government property
    • Political activities
    • Gambling
    • Awards
    • Charitable fundraising

• Federal Rules:
  – Contractors cannot use Government property, except as authorized under contract.
  – Political activities:
    • Political activities by Government civilian personnel:
      – Hatch Act (5 U.S.C. 7321-7326)
      – Regulations (5 CFR 733 and 734)
    • GSA site regulations (Prohibit posting of political materials.)
      – (41 CFR 102-74.415)
  – Gambling:
    • No gambling in GSA facilities (41 CFR 102-74.395)
    • No gambling by Federal employees (5 CFR 735.201)
Workplace Issues

• Federal Rules:
  – Awards:
    • Most Federal agencies have no fiscal authority to use appropriated funds to give awards to contractors.
      – Awards of little intrinsic value (certificates) permitted.
      – Coins (if personally funded).
    • Government personnel can receive bona fide awards from prohibited sources, such as contractors, if approved by ethics official (5 CFR 2635.204(d)).

Workplace Issues

– Charitable Fundraising.
  • Combined Federal Campaign (CFC) only authorized fundraising on Government property. (5 CFR 950)
  • CFC permits solicitations of Government personnel only.
    – Contractor personnel may contribute voluntarily.
  • Government personnel may not solicit prohibited sources, e.g. contractors (5 CFR 2635.808(c)(1)(i)).
  • No soliciting on GSA property by anyone, including contractors (41 CFR 102-74.410).
Workplace Issues

• Best Practices:
  – Conduct joint training so both Government personnel and contractors understand restrictions.
  – Publish ground rules that state restrictions applicable to contractors and Government personnel.
  – Emphasize ban on use of Government equipment to conduct private business.

Revolving Door

• Challenge:
  – It is soooo easy for Federal employees to discuss potential employment with contractor employees they work with.
  – Since many contractor jobs mirror Government jobs, it is easy for Federal employees to retire, and return as a contractor.
Revolving Door

- Laws and Regulations for Federal Employees:
  - Seeking employment
    - Standards of Conduct (5 CFR 2635 Subpart F): defines seeking employment and provides examples.

- Procurement Integrity Act (41 U.S.C. 423)
  - 1-year ban on employment for procurement officials involved in awards of $10M or more.
  - Required disqualification and reports of employment discussions of procurement officials.

- Ethics Pledge (EO 13490)
  - Applicable to Obama political appointees.

- Contractor rules on conflicts of interest
  - Contractor employees seeking employment with Government may create conflict of interest.
Revolving Door

• Examples:
  – Government office supervisor, over coffee, notes she wants to retire, and asks contractor co-worker if she could get a job with the contractor.
  – Government employee, after hearing that a contractor co-worker is leaving, asks if he can apply for the contractor’s position.

• Best Practices:
  – Train contractor and Government personnel regarding disqualification requirements triggered by “innocent” employment discussions.
    • Give examples of discussions that trigger disqualification.
    • Ensure Government personnel know how to seek advice.
    • Ensure contractor employees know how to handle such discussions.
    • Remind personnel involved in procurements of PIA restrictions and reports.
  – Issue reminders to both sides.
  – Remind political appointees of ethics pledge.
Remedies

• Training tailored for workplace issues.
  – Include everyone in work center (especially those who do not attend annual training.)

• Contractors must recognize that Federal rules consider them prohibited sources
  – Alliance v partnership.
  – Contractor under great pressure to say “yes.”

Remedies

• Create workplace culture of open communications.
• Communicate with agency and contractor ethics officials.
  – We’re all in the same boat.
  – Involve ethics officials in planning events.
  – What can management do to reduce these risks?
  – What can contractors do to reduce these risks?
Resources

- Office of Government Ethics
  - www.usoge.gov
- DoD Standards of Conduct Office
  - www.dod.mil/dodgc/defense_ethics
- DoD Ethics Counselor’s Deskbook Chapter N

Feedback

- What do you know now that you didn’t know an hour ago?
- How did this presentation help you do your job?
Questions?

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