



NOAA



November 2020

Government and Contractor Interaction

NOAA Acquisition and Grants Office (AGO)





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Introduction



This training aims to mitigate the risks of violations by providing Government employees an understanding of the laws and rules in the Government-contractor relationship.



(What and Why)





Facts, Rules, and Risks

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- **FACT:** Federal agencies rely on support contractors to help meet their missions.
 - Contractor employees are governed by the terms of the company's individual contract.
 - Inappropriate Government-contractor relationships may expose the Government to unauthorized commitments or other legal implications.
 - Appearance of inappropriate behavior or favoritism must be avoided by Government personnel.



Personal vs. Non-Personal Services

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- Personal services contract employees are supervised and managed by the Government. NOAA does **not** have personal services contracting authority.
 - Non-personal services contract employees are supervised and managed by the company.
 - An arms-length relationship must exist between the Government and its contract employees.
 - The difference between personal and non-personal is “control”.



Personal vs Non-Personal Services Scenario



Situation: Jane is employed by ABC who has a non-personal services contract for administrative support. She has been assisting the contracting officer on a requirement that must be awarded that day to avoid losing funds. The contracting officer determines the award won't be made without overtime and tells Jane to continue working and she will ensure she is paid overtime.



Question: Did the contracting officer have the authority to direct Jane to continue working with a promise of overtime?



Answer: **NO**, only Jane's supervisor at ABC may direct her to continue working and approve the request for overtime.



Could the contracting officer supervise Jane in a personal services contract? YES



Inherently Governmental Functions

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- Inherently Governmental functions are functions that are so intimately related to the public interest as to mandate performance only by Federal Government personnel.
 - Considered inherently Governmental:
 - Awarding/terminating contracts.
 - Voting member on source selection boards.
 - Not considered inherently Governmental:
 - Assistance in development of statements of work.
 - Services in support of acquisition planning.



Inherently Governmental Functions Scenario



Situation: Joe has been a contractor employee working at NESDIS supporting the satellite program for 15 years. He has more knowledge of satellites than anyone in the program. NESDIS is in the middle of a formal source selection for support services for a new type of satellite (Joe's company will not bid on this new effort) and Joe has been assisting with the technical evaluation of two proposals received. Both offerors have "good" past performance in CPARS. One technical proposal is rated good on the only non-priced factor, but the team cannot decide if the other technical proposal merits a good or acceptable rating. The team asks Joe for his opinion. Joe knows that he is not a voting member but since he was asked he told the team that if he were voting he'd rate the 2nd proposal's factor as Acceptable. Both proposals offered benefits to the Government. The team took Joe's advice. Award was made to the offeror with the Good Rating at a higher premium, however, the award was protested two days after award to the Government Accountability Office.

Question: Did Joe perform an inherently Governmental function?



Answer: Maybe. Though Joe did not vote, his opinion may have unduly influenced the board members. The contracting officer must seek Office of General Counsel (OGC) advice.



Procurement Integrity Act

- The Act promotes fairness and transparency in public procurements and it prohibits:
 - Present / former Government personnel and those acting/have acted on Government's behalf from disclosing/obtaining contractor information (e.g., pricing) or source selection information (e.g., technical/price evaluations) (FAR 3.104-3(a), (b)).
 - Federal officials involved in a competitive procurement from discussing employment with contractors (FAR 3.104-3(c)).
 - Acceptance of compensation from contractors (FAR 3.104-3(d)).



Procurement Integrity Act

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- 41 U.S.C. Chapter 21 Penalties for Violations:
 - Criminal penalties: Imprisonment.
 - Civil fines on individuals and/or organizations.
 - Administrative actions.
 - Disqualification, suspension, or debarment of the contractor.
 - Rescission of the contract and adverse personnel action.
 - The Department of Commerce (DOC) OGC discusses pre- and post-award ethics rules and provides ethics training on rules and procedures for Procurement Officials.



Procurement Integrity Act Scenario



Situation: Ann has worked for NOAA her entire Federal career and is one day away from officially retiring. She and her husband are moving to Alaska to fulfill a life-long dream and she hopes to find a part-time job to keep her mind “engaged” and to defray the increased expenses of living in Alaska. Her last official act on the Friday before retirement is to hold verbal discussions with 3 offerors in the competitive range. One offeror is AK Fisheries Company. Before discussions begin, Ann shares her plans with the firm’s operations director whom she has known for many years through prior contracts, and who lives in Alaska. The director knows Ann will be a great asset to the company and tells her he has an open position that he will keep available until she arrives in Alaska. Ann is thrilled she won’t have to look for a job and tells the director that she will contact him upon arrival. Since she did not “formerly” accept the position she’s not worried about a Procurement Integrity Act violation.



Question: Did Ann violate the Procurement Integrity Act?



Answer: YES. Even though Ann’s last day as a Federal employee was the next day, she was still employed while discussing non-Federal employment. She should have disqualified herself from the discussions and immediately reported the action in writing to her supervisor and to the DOC ethics official.



Standards of Conduct

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- Government business shall be conducted in a manner above reproach and with complete impartiality.
 - Violations can result in disciplinary actions or prosecutions under criminal statutes.
 - Standards of conduct apply to:
 - Personal conflict/appearance of conflict of interest.
 - Gifts to and from contractors.
 - Restrictions on post-Federal employment.
 - Federal employee financial disclosures.

Contractor Identification

- Contractor personnel must:
 - Wear obvious identification and identify themselves where it's not obvious to the parties.
 - Be identified as such on Government organization charts, websites, e-mail, presentations, etc.
- Unidentified contractors increase risk of unauthorized work direction or disclosure of source selection information.
 - Ramifications may result in misuse of funding, Procurement Integrity Act violations, or conflicts of interest.

Protecting Sensitive Information

- Sensitive information must be protected:
 - Hallways, bathrooms, cafeterias, break rooms, and even the “cube farm” are not secure areas for discussing sensitive information.
 - Ensure the contractor is authorized access to sensitive information.
- Unauthorized disclosure can result in:
 - Unfair competitive advantage, protest, or litigation.
 - Violations of the Procurement Integrity Act and Trade Secrets Act (18 USC 1905).



Protecting Sensitive Information

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- Examples of information that is not releasable:
 - Classified information.
 - Planning, programming, budgeting, and execution information.
 - Contractor proprietary information.
 - Source selection information.
 - Internal agency communications.
 - Unsolicited proposal information.
 - Information that would create an unfair competitive advantage.

Guidelines for Protecting Sensitive Information

- Know the participants in meetings.
- Obtain non-disclosure agreements from contractors before releasing proprietary or sensitive information.
- Do not delegate functions that are not in the contract; e.g., end-of-day security checks.
- Consult legal counsel if in doubt about releasing sensitive information.



QUESTIONS?



FOLLOW-UP QUESTIONS?



Additional Resources



DOC Guidance for Proper Government and Contractor Roles

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- In addition to FAR Part 3 policy and procedures, DOC issued [Procurement Memorandum \(PM\) 2015-05](#) on May 4, 2015, to stress the importance of maintaining proper relationships between Government and contractor personnel. Included in the PM are tips and Do's and Don'ts for Government personnel when interacting with contractor employees. A proper relationship between the parties' limits risks and protects the integrity of the acquisition cycle.



NOAA Policies and Procedures

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- NOAA policy and procedures, issued through [Acquisition Alert \(AA\) 17-03](#) on September 17, 2017, expands on PM 2015-05 to provide Government personnel guidance on maintaining proper roles with contractor personnel.
 - The purpose of NOAA's [Standard Operating Procedures \(SOP\)](#) is to ensure Government personnel maintain boundaries with contractor personnel to avoid conflicts of interest and a perception of favoritism.



NOAA Policies and Procedures



- The NOAA SOP is to be used in conjunction with FAR Part 3 and DOC PM 2015-05 and includes discussion for:
 - Time management.
 - Gifts to and from contractors.
 - Team/morale-building events.
 - Social gatherings.
 - Charitable fundraising.
 - Awards and recognition.
 - Participation in councils/committees/groups.



NOAA Policies and Procedures

- Additional areas of discussion con't:
 - Participation in evaluation of proposals.
 - Other situations:
 - Inclement weather dismissal.
 - Prohibited use of Agency seal.
 - Contractor travel in Government vehicles.
 - Conflicts of interest, including organizational.
 - Teleworking.
 - Training.



Theory Meets Practice (Additional Scenarios)



Scenarios



Scenario #1

Situation:



Bill is a retired GS-12. He is now a contractor working for ACME Engineering Services in support of a National Marine Fisheries Services (NMFS) Habitat Conservation project. The project team includes 30 NOAA personnel and 10 support contractors. Each quarter, the team has an afternoon off-site event or picnic to build team unity and morale.



Question:



As a member of the project team, can Bill just attend as part of his workday?



Scenarios



Scenario #1

Answer:

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- **No, Bill cannot attend an off-site event or picnic as part of work billed to the Government.**
 - Government officials are not authorized to grant “administrative leave or expend Government resources to compensate contractor personnel to attend Government-sanctioned morale-building activities (e.g., picnics, holidays).
 - Attendance *may* be permitted depending on contract terms/conditions; however, it is up to Bill’s employer, ACME Engineering, to decide whether he can have the time off (i.e., be on leave or other unbillable status) in order to attend.
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Scenarios



Scenario #2

Situation:



Dr Smith of Consulting and Engineering Services offers to provide free consulting services to support the requirements development of a project for the NMFS Office of Science and Technology. The company Vice President offers to provide two weeks consulting services from his “top people” to support the Project Manager (PM).



Question:

Can the PM accept the service?



Scenarios



Scenario #2

Answer:

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- **No.** Accepting a free services constitutes a violation of the law against accepting voluntary services (31 USC 1342) (except for emergencies involving the safety of human life or the protection of property).
 - Refer to Department Administrative Order (DAO) 202-311, Voluntary and Uncompensated Services, for more information.
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Scenarios



Scenario #3

Situation:



Mary works for ABC Administrative Support Services, Inc. She has been doing an outstanding job in her position with ABC. As the Government employee she supports, you want to recognize her for her above-and-beyond performance.



Question:

Can you give her a “Certificate of Appreciation”?



Scenarios



Scenario #3

Answer:

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- **Maybe.** Federal policy is to not recognize or endorse private citizens or private entities that have a commercial or profit-making relationship with the agency, unless the contribution is substantially beyond that specified in the contract.
 - Certificates of Appreciation are authorized under [NAO 202-451, NOAA Incentive Awards Program](#). The NOAA Incentive Awards Handbook includes the policy and procedures for nomination and approval for an award.
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Scenarios



Scenario #4

Situation:



Margaret works for ACME Telecommunications and serves as a technical advisor on an Advisory and Assistance (A&AS) contract in support of the Northwest Fisheries Science Center (NFSC). Margaret also was an NCAA Volleyball player at the University of Massachusetts. The NOAA Sports Day is in two weeks and NFSC could really use Margaret on their co-ed volleyball team.



Question:



As a contractor, could Margaret play for the NFSC Volleyball squad at Sports Day?





Scenarios



Scenario #4

Answer:

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- **No. Margaret cannot participate in this event as part of work billed to the Government.**
 - While attendance *may* be permitted depending on contract terms/conditions and whether the NOAA Sports Day officials allow contractors to participate, it is up to Margaret's employer to decide whether she can have the time off (i.e., be on leave or other unbillable status) in order to participate.
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Conclusion



- Being familiar with the information in this briefing will help you to maintain appropriate relationships with contractors.
- If you find yourself in a situation that is not addressed or you have any doubt as to how to handle a contracting situation, contact the OGC or your AGO servicing acquisition division, respectively, and ask for clarification.
- Common Questions and Answers are provided on the comprehensive training version.





Policy and Procedural Resources

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- Federal Acquisition Regulation (FAR) Part 3, Improper Business Practices and Personal Conflicts of Interest.
 - FAR Subpart 7.503, Policy.
 - FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest.
 - FAR Subpart 37.1, Service Contracts-General.
 - [DAO 203-9](#), Gifts and Bequests.
 - [DOC PM 2015-05](#), Maintaining Proper Relationships with Support Services Contractors.

Policy and Procedural Resources

- [DOC Office of Human Resources Management Performance Management Handbook.](#)
- [NOAA Administrative Order 202-451](#), NOAA Incentive Awards Program.
- [Summary of Ethics Rules 2020](#) and [Ethics Training.](#)
- [NOAA Finance Handbook](#), Gifts and Bequests.
- [AA 17-03](#) and [NOAA SOP](#), Proper Roles of the Services Contractor ([NOAA Acquisition Manual 1330-37.102-70](#)).