



**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



- **FACT:** Federal agencies rely on support contractors to help meet their missions.



- **FACT:** For mission success, Government employees must understand the Government-contractor relationship.



- NOAA employees must understand the rules and recognize the risk.



- NOAA's Federal employees and contractor personnel all contribute as a workforce team to support NOAA's mission.



# Facts, Rules, and Risks

- Inappropriate Government-contractor relationships may cause:
  - Government employee to inadvertently commit the Government;
  - Embarrassment to the agency during a ratification;
  - Legal implications, to avoid lawsuits; and
  - Impact to mission resulting from misused funds and wasted resources on ratifications or disciplinary actions.



# Facts, Rules, and Risks

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- Different standards and procedures apply to the various members of the team.
  - People employed by companies under contracts are not Federal employees and are governed by the terms and conditions of their individual contracts.
  - NOAA employees must keep an “arms length” relationship with contractors.
    - Even the **appearance** of inappropriate behavior must be avoided. Perception can be reality.



# The Do's and Don'ts



# The Do's and Don'ts



## Do's

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- Remember: Contractor staff are not Government employees and different rules apply.
  - Ensure contractor personnel wear distinctive badges and can be easily identified, including in email correspondence and on the telephone.
  - Respect the employer-employee relationship between contractors and their employees.
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# The Do's and Don'ts



## Do's

- Protect intellectual property rights when contractor work products are created or shared in the Federal workplace.
  - As necessary, seek assistance from the OGC in resolving these inappropriate relationships.
  - Safeguard sensitive information, including proprietary, Privacy Act, and source selection information.
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# The Do's and Don'ts



## Do's

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- Identify possible conflicts by contractor personnel to include violations of the law (including but not limited to Procurement Integrity statutes and regulations). Be sensitive to inappropriate appearances created by close relationships between Government employees and contractor personnel.
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# The Do's and Don'ts



## Do's

- Clearly describe all contract taskings and ensure they are in-scope.
  - Be aware of foreign disclosure limitations when working with international partners.
  - Maintain contact with on-site contractor employees to assess performance and ascertain progress or delivery status. Ensure that only the contractor's task leader assigns tasks to individual contractor personnel.
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# The Do's and Don'ts

## Do's

- “Zoom-out” - Look at your situation from the contractor's perspective:
  - Are you putting the employee in a difficult situation by asking for performance above or outside the contract?
  - Does your interaction with contractor employees give the appearance of favoritism?

# The Do's and Don'ts

## Don'ts

- Don't become involved in the operations and policies of the contractor such as:
  - Selecting, recruiting, hiring, or firing contractor personnel.
  - Directing, scheduling, or critiquing individual contractor tasks on a continuous basis.
  - Supervising contractor personnel.

# The Do's and Don'ts

## Don'ts

- Policy of the contractor con't:
  - Pressuring the contractor to use “favorite” personnel or insisting on particular personnel actions.
- Don't use Government and contractor personnel interchangeably.
- Don't solicit or accept gifts from contractor personnel (other than coffee, small food items, etc. See [Ethics Regulations](#)).



# The Do's and Don'ts



## Don'ts

- Don't require “out of scope” work, personal services, or “inherently Governmental functions.” There are no “and other duties as assigned” for contractors.
  - Do not give only one contractor **AUTHORIZED/LEGALLY RELEASABLE** information that may be of commercial value. If you share it with one, you must share it with all.
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# The Do's and Don'ts

## Don'ts

- Don't give the incumbent contractor an unfair competitive advantage by including its employees in meetings to discuss aspects of the recompetete, or by allowing access to planning information.
- Don't encourage contractor employees to attend a morale building activity, volunteer to organize morale building events, or participate in office gift-giving, funds, etc.



# The Basics



# Standards of Conduct

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- *“Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.”* (Federal Acquisition Regulation (FAR) 3.101).
  - A violation of the Standards of Conduct and Standards of Ethical Conduct can result in disciplinary actions or prosecution under criminal statutes.



# Standards of Conduct

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- Transactions expending public funds require a high degree of public trust and impeccable standards of conduct. In acquisitions, the standards of conduct apply to:
    - Personal conflicts of interest and/or the appearance of a conflict.
    - Gifts to and from contractors.
    - Federal employee financial disclosures.
    - Restrictions on post-Federal employment.
  - Standards of conduct also apply to contractors (FAR 3.10).



# Personal vs. Non-Personal Services

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- What are “Personal Services”?
    - Per FAR 37.104, ***personal services contracts are characterized by the employer-employee relationship*** created between the Government and contractor personnel.
    - Obtaining personal services by contract, rather than by direct hire, circumvents the personnel laws and the authority to do so is limited. NOAA does ***not*** have personal services contracting authority.
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# Personal vs. Non-Personal Services

- What are “Non-Personal Services”?
  - A service contract under which the personnel providing the services are not subject to the supervision and control usually prevailing in relationships between the Government and its employees. **The company, not the individual, is hired to perform work.**
  - Services contracts must not be administered in a manner creating the appearance of a personal service contract. For example, Federal employees have no authority to approve timesheets or changes in working hours, leave, travel, etc. for individual contractors.



# Personal vs. Non-Personal Services

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- The difference between Government employees and contractor personnel is control. Under a non-personal services contract, a contractor - not the Government customer - directs its employees and dictates its employees' compensation, benefits, and rewards.
  - “Control” is the means and manner of a worker’s performance, extent of supervision and direction, type of work and skills required, and compensation.



# Personal vs. Non-Personal Services



- Government contracts are for required services from the contractor, not for the performance of work by individual contractor personnel.



# Inherently Governmental Functions

- What are Inherently Governmental Functions?
  - These are functions that are so intimately related to public interest as to mandate performance by Government employees, such as:
    - Direction/control of Federal employees.
    - Determination of budget policy, guidance, and strategy.
    - Resource allocation or program management duties.
    - Approval of contractual documents and administering contracts.
    - Obligating Congressional authorized funding.

***Only Government officials can legally perform “inherently Governmental functions.”***



# Inherently Governmental Functions

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- What are not inherently Governmental functions?
    - Gathering information/providing advice, opinions, recommendations, or ideas to the Government.
    - Building security and housekeeping.
    - Routine electrical or mechanical services.
    - Operations for mail, cafeteria, warehouse, motor vehicle fleet management, or facilities.
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# Inherently Governmental Functions

- “Closely associated” functions, such as acquisition planning, administering contracts, or providing technical evaluation of contract proposals (FAR 3.1101 and 7.503(d)) are not considered inherently Governmental functions and may be performed by a contractor, but performance must be managed with appropriate oversight and controls.

# Inherently Governmental Functions

- “Critical” functions, identified by the agency ([Office of Federal Procurement Policy Letter 11-01](#), Department of Commerce (DOC) Procurement Manual (PM) 2015-05, and NOAA Acquisition Alert (AA) 17-03 Standard Operating Procedures (SOP), section e.3), may be performed by a contractor, but performance must be managed with greater oversight and scrutiny by the Government.

# Contractor Identification

- Contractor personnel must wear obvious identification. Nearly all service contracts specifically require contractor personnel to wear conspicuous badges. **If you don't know, ask!**
- Contractors are required to identify themselves in meetings, phone conversations, and other situations where it's not obvious to the parties. This avoids creating the impression they are Government officials. (FAR 37.114)

# Contractor Identification

- Contractors must be identified as such when included on Government organization charts, websites, e-mail, contact lists, presentations, etc.
- Many contractor personnel are retired military or civil service employees. Both Government employees and contractors must realize their professional relationship has changed - especially when dealing with access to sensitive information.

***Contractor identification is key to avoiding problems!***



# Contractor Identification

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- Unidentified contractors increase risk of:
    - Conversion to improper personal services contracts where contractor personnel are managed as though they are Government employees.
    - Risk of unauthorized work direction (mistaken for Government employees).
    - Performance of inherently Governmental functions by contractors, such as program management duties and other resource allocation and/or decision-making.

# Contractor Identification

- Increased risk con't:
  - Unauthorized advance release of procurement information, giving unfair advantage to one or more contractors.
  - Disclosure of source selection information, such as source selection plans, evaluation factors, exact funding amounts, proposals, and proposal evaluations.
- Ramifications that may be triggered include:
  - Misuse of Appropriations (Anti-Deficiency Act violations).



# Contractor Identification

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- Ramifications con't:
    - Trade Secrets Act violations.
    - Procurement Integrity Act violations.
    - Standards of Ethical Conduct violations.
    - Conflicts of interest.
      - Gift rules.
      - Preferential treatment.
      - Unauthorized commitments.
      - Endorsements.
      - Preservation of Government property and resources.
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# Procurement Integrity Act

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- Purpose of the Act is to promote transparency and fairness in public procurements.
  - Guiding Principles:
    - The Procurement Integrity Act prohibits certain activities by active and former Federal employees and contractors involved in Federal procurements.
    - Procurement integrity statutes and regulations govern the procurement process and the manner in which Government and contractor personnel conduct business with each other (41 U.S.C. Chapter 21, as implemented in FAR 3.104).
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# Procurement Integrity Act

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- 41 U.S.C. 2102(a) and (b) - Prohibition on Disclosing and Obtaining Procurement Information (FAR 3.104-3(a) and (b)).
    - Applies to present and former Government officials and those who are acting/have acted on the Government's behalf.
    - Must not knowingly disclose contractor information or source selection information for a period of 3 years from end of assignment.
    - No person may knowingly obtain contractor information or source selection information prior to award of the contract except as authorized by law.



# Procurement Integrity Act

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- Source Selection Information
    - Source selection information that may not be disclosed includes:
      - Bid prices and proposed costs.
      - Source selection plans.
      - Technical and cost or price evaluation reports.
      - Competitive range determinations.
      - Rankings of bids, proposals or competitors.
      - Source Selection Authority, Source Selection Board, and other evaluation reports.
      - Other information marked “source selection information.”
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# Procurement Integrity Act

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- Contractor Information
    - Contractor information that may not be disclosed includes:
      - Cost or pricing data.
      - Proprietary data.
      - Indirect costs and direct labor rates.
      - Other information marked by the contractor as bid or proposal information.
  - By regulation, the CO must give the contractor the opportunity to object before removing any restrictive markings.
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# Procurement Integrity Act

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- Discussing Employment with Contractors (41 U.S.C. 2103 implemented in FAR 3.104-3(c)).
    - An individual participating personally and substantially in a competitive procurement in excess of the simplified acquisition threshold, who either contacts or is contacted by a bidder or offeror in that procurement regarding possible non-Federal employment must:
      - Promptly report the contact in writing to the supervisor and agency ethics officer, and
      - Either reject the possibility of non-Federal employment or disqualify themselves in writing from further involvement in the procurement until authorized to resume participation.
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# Procurement Integrity Act

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- The DOC Office of General Counsel (OGC) discusses pre- and post-award ethics rules regarding employment outside the Government.
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**Ethics Training provides rules and procedures for Procurement Officials**





# Procurement Integrity Act

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- Acceptance of Compensation from Contractor (41 U.S.C. 2104 as implemented in FAR 3.104-3(d)).
    - Former Federal employees may not accept compensation from a contractor who was awarded a competitive or sole source contract:
      - Within a 1-year period after the former Federal employee participated in a procurement valued more than \$10M.
      - The prohibition applies to former Federal employees who work for the contractor in a position as an employee, officer, director, or consultant.



# Procurement Integrity Act

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- Penalties for Violations of 41 U.S.C. Chapter 21.
    - Criminal penalties: Imprisonment of not more than 5 years.
    - Civil fines:
      - Individuals - Up to \$50,000 per violation plus twice the amount of the compensation that the individual received or offered for the prohibited conduct.
      - Organizations - Up to \$500,000 per violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.
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# Procurement Integrity Act

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- Administrative actions:
    - Disqualification of the contractor.
    - Rescission of the contract.
    - Suspension or debarment of the contractor.
    - Initiation of adverse personnel action.
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***Consult with a contracting officer (CO) or OGC if there is any doubt.***





# Theory Meets Practice (Specific Situations)

# Protecting Sensitive Information

- Because contractor personnel have access to our offices, we must protect sensitive information.
  - Hallways, bathrooms, cafeterias, break rooms, and even the “cube farm” are not secure areas for discussing sensitive information.
  - Know who is in the room when discussing sensitive information (including meetings).
- Ensure contractor personnel are authorized in their contract access to sensitive information; e.g., develop visual aids, create a database.



# Protecting Sensitive Information

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- The results of unauthorized disclosure include:
    - Causing an unfair competitive advantage, risking protest and/or possible litigation.
    - Violations of the Procurement Integrity Act (FAR 3.104-8, 41 U.S.C. chapter 21), and the Trade Secrets Act (18 U.S.C. 1905) leading to criminal prosecution.
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# Protecting Sensitive Information



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



# Guidelines for Protecting Sensitive Information

- Proprietary information is releasable to a contractor only if protected by appropriate contract clauses and non-disclosure agreements.
- Do not delegate responsibility for end-of-day security checks to contractor personnel (unless their contract specifically allows it).
- Consult legal counsel with questions about releasing sensitive information. An attorney's advice is confidential and privileged.



# Time Management



- Time billed to the Government must be in performance of the contract.



- The contractor employee's non-Federal supervisor controls time management for employees such as working hours and schedule, time off requests, approval of timesheets, teleworking, and travel.



- Government employees cannot direct or require a contractor to work particular hours or days outside of the terms and conditions of the contract.





# Time Management



- Government employees must not independently require or grant contractor employees time to attend training, early departure, or to leave their workplace to attend activities unrelated to contract performance.
- For holidays, closures, and delayed openings of Federal offices, refer to the terms and conditions of the contract.





# Gifts from Contractors

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- Government employees shall not solicit or accept (directly or indirectly) any gift from an employee of a contractor who conducts business with or seeks business with the Government.
  - Per 5 CFR 2635.203, a “gift” is defined as any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or anything of monetary value.



# Gifts from Contractors

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- Gifts do not include:
    - Modest items of food and non-alcoholic refreshments offered.
    - Greeting cards and items of little intrinsic value (certificates, plaques).
  - Holiday and special occasion gifts (e.g., birthday clubs and gift exchanges) are treated no differently than gifts offered at other times. The Government cannot solicit contractor contribution of money. [Gift rules](#) apply.



# Gifts to Contractors



- Contractor personnel may not offer or accept gifts or bribes in exchange for taking or failing to take any action as part of their assignment under the contracts.
- Government personnel may give gifts to contractor personnel, but appropriated funds cannot be used.
- Government employees must consider the appearance of preferential treatment or undue influence any gift to a contractor may create, regardless of the occasion.





# Team/Morale-Building Events

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- Contractors *may* be permitted to attend team/morale-building events, such as office picnics, sport outings, holiday parties, or other like functions (e.g., “All Hands” or “off-site” team meetings).
  - The event must be coordinated in advance with the Contracting Officer’s Representative (COR) and CO.

# Team/Morale-Building Events

- The CO will make the determination whether attendance is consistent with the contract terms/conditions and whether such attendance will be allowed on a billable or unbillable status.
  - Where unbillable, contractor employees must arrange to take leave (or other unbillable status) with their employer prior to attendance.



# Social Gatherings

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- Social gatherings, such as retirement parties, promotions, birthday parties, etc. may occur in the NOAA workplace where contractor personnel may be invited and wish to attend on their own personal time.
    - Permissible only where contractor personnel are not in a billable status and the individual(s) have arranged with their employer to take leave (or other unbillable status) prior to attendance.



# Social Gatherings

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- Where Government employees are invited by the contractor to attend a holiday party or other social gathering. [Gift rules](#) apply. Invitations to “widely attended gatherings” can only be accepted by Government employees under certain circumstances.

# Charitable Fundraising

- Government personnel may not solicit directly or indirectly, ask contractors, either on or off duty, for charitable contributions for any cause.
- Government personnel may not solicit or ask contractors to participate in group “runs” for a charitable cause, to sponsor a Government employee’s participation in a charitable “walk” or “run”, or to purchase cookies, gift wrap, candy bars, or similar items in support of personal charitable activities.

# Charitable Fundraising

- Contractors are not prohibited from *voluntarily* contributing to or purchasing items in support of charitable activities.
- Combined Federal Campaign (CFC).
  - Cannot solicit contractors directly or indirectly.
  - May accept voluntary contributions of checks from contractor employees made to CFC.
  - Contractors may perform as CFC representatives only if it's in their contract.



# Awards and Recognition

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- DOC and NOAA policy limit recognition for contractor employees to a Certificate of Appreciation. See [NOAA Administrative Order \(NAO\) 202-451, NOAA Incentive Awards Program](#), for procedures.
  - No other letter, award, or form of recognition shall be presented or given to a contractor employee or include the name of a contractor employee for similar purposes.



# Awards and Recognition

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- Certificates of Appreciation must be:
    - Tied to a specific contract.
    - Coordinated in advance with the COR and CO to determine whether overall contract performance is satisfactory.
  - Where possible, the contractor's designated official should present the certificate to the contractor employee.

# Participation in Councils, Committees, and Groups

- Contractor personnel may provide support services to a NOAA group or any group that provides leadership and coordination if within the scope of their contract.
- Contractor personnel shall not serve as a voting member of any NOAA council or committee.
- Contractor personnel shall not participate as a member in NOAA employee councils or similar groups.

# Participation in Evaluation of Proposals

- Support services contractor personnel, with the appropriate expertise, may participate in the evaluation of proposals as non-Government advisors if specifically authorized in their respective contract. Participation will only be in limited circumstances.
- Non-Government advisors are strictly prohibited from:
  - Being a voting member of a selection team (inherently Governmental).

# Participation in Evaluation of Proposals

- Prohibitions con't:
  - Participating in any voting, ratings, or rankings of proposals.
  - Receiving and reviewing offeror's past performance information.
- Non-Government advisors must sign a non-disclosure statement, conflict of interest certificate, and statement of financial interest.
- Non-Government advisors must be managed with appropriate Government oversight and controls.



# Other Situations



- Inclement Weather Dismissals:
  - Government does not determine contractor leave policy.
  - Government generally does not compensate contractor for non-performance.
  - CO will refer to the contract terms and conditions that address Government down time.





# Other Situations

- Use of Agency Seal: Contractors **may not** use Agency Name, Seal, Trademark, or any “colorable imitation of such words or initials in seals or trademarks” in connection with merchandise, retail products, impersonation, solicitation, or commercial activity if reasonably calculated to convey impression that such use is approved, endorsed, or authorized by the agency (DAO 201-1 and 201-17).
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# Contractor Travel In Government Vehicles

- Unless specified in the contract, contractor employees are not authorized to use Government vehicles. If authorized:
  - Vehicles are used solely for official purposes in performance of the contract.
  - Vehicles are not used for travel between residence and place of employment, unless authorized.
  - The contractor establishes and enforces penalties for improper use of vehicles by its employees.
  - The contractor pays any cost associated with improper use of vehicles.

# Contractor Travel in Government Vehicles

- Contractor employee may use shuttle buses on/between installations.
- Contractor employee may be a passenger in vehicles *if no appearance of favoritism*.
- Government may issue letter that contractor is performing Government business in accordance with Federal Travel Regulations.

# Conflicts of Interest (COI)

- The overarching rule of Federal procurement for *all* parties is to strictly avoid any COI or even the appearance of a COI in Government-contractor relationships.
- Federal procurement COIs are broken into three categories:
  - Organizational conflicts of interest specific to contractor organizations.
  - COI specific to Federal employees.
  - COI specific to contractor employees performing acquisition functions.

# Contractor Organizational Conflict of Interest

- Commonly referred to as an OCI, this is a set of circumstances where a contractor (FAR subpart 9.5):
  - May be unable to render impartial advice to the Government.
  - May have impaired objectivity in performing contracted work.
  - May obtain an unfair competitive advantage when competing for Government contracts.

# Contractor Organizational Conflict of Interest

- An OCI may occur when, during contract performance, a contractor:
  - Drafts Government statements of work.
  - Is assigned work that provides access to a competitor's source selection information or other proprietary information.
  - Gains access to other information that creates an unfair competitive advantage.

***Bottom Line: We must prevent the existence of conflicting roles that may bias a contractor's judgment.***

# COI Federal and Contractor Employees

- Federal employees:
  - Ethics rules may require disqualification from participation in certain matters based on financial interests or personal relationships that differ from goals and interests of the Government.
- Contractor employees performing acquisition functions:
  - May have personal COIs that differ from his/her employer's interests or that of the Government.
  - Mitigate by obtaining proper disclosures and COI certification from the contractor.



# Teleworking



- An agency generally should not discourage a contractor from allowing its personnel to telecommute in the performance of the contract.
- In the event teleworking *is* prohibited due to requirements of the agency, the solicitation/resultant contract shall reflect the prohibition in accordance with the CO's determination.





# Teleworking



- Government employees do not have authority to authorize individual contractor employees to telework at any time - this decision is made by the contractor employee's supervisor in coordination with the CO or COR.





# Training



- Government provided training is only permitted when:
  - It is required by the contract.
  - It is deemed a necessary and reasonable expense under the appropriations.
  - The training does not create a conflict or give the appearance of favoritism.





# Training



- If outside the contract, Government personnel may not provide training without coordination with the COR and CO for approval and a bilateral modification must be executed.
- Contractor provided training: Training offered to Government personnel outside of the contract should be referred to legal counsel for guidance.





# Theory Meets Practice (Sample 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 work day?



# 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:**



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 #2

### Answer:

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- **No. Like Bill, 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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# Scenarios



## Scenario #3

### **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.



### **Question:**

Can the Project Manager accept the service?



# Scenarios



## Scenario #3

### 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 #4

### **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 #4

### 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

### Answer con't:



- Certificates of appreciation must be tied to contract performance, approved by the Government program manager and CO, and provided to the contractor, not the contractor employee.
- Providing rewards or recognition of performance without approval may be counter to the overall performance of the contract - other areas may be less than stellar.



# 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

(Throughout the questions and answers, “contractor employee/personnel” are herein identified as “contractor”)



# Common Questions and Answers

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- **Question 1:** Can a contractor participate as a member on any NOAA committees, specifically on the diversity committee?
    - **Answer:** There are limitations and some instances in which it is not allowable at all. NOAA AA 17-03 states the participation of contractors to provide **support services** to a NOAA council, committee, or any other group may be appropriate if clearly **within the scope of their contract**.
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# Common Questions and Answers

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- **Question 2:** When a contractor decides to leave their company and discontinue supporting NOAA, is it appropriate to conduct an exit interview with that person?
    - **Answer:** Because an exit interview is something that is between the employee and the employer, it would be inappropriate for anyone in the Federal Government to conduct this type of interview with a contractor. It would, however, be considered appropriate to ask the CO or COR if the prime contractor conducts exit interviews.



# Common Questions and Answers

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- **Question 3:** Is the Government responsible for paying for contractor's skill currency training or initial training on new technologies and tools required under the contract?
    - **Answer:** **Generally no**, but there are some instances in which the Government will pay for required contractor training. Contact the COR and CO for clarification to ensure all parties agree on the correct solution to a situation that requires training on new technologies or other.



# Common Questions and Answers

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- **Question 4:** Can contractors assist the Government with reviewing the deliverables submitted to the Government by other contractors?
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**Answer:** Contractors can assist with reviewing deliverables and providing feedback to Government personnel who will review the contractor's feedback of the deliverable(s) and make a final decision to accept or reject the item(s).





# Common Questions and Answers

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- **Question 5:** What is the proper line of communication to use when assigning contractors to a special assignment for another agency?
    - **Answer:** Reassignment opportunities are for NOAA Government personnel only. Contractors are only allowed to perform work under their contract. Work outside the scope of the contract is not allowed.



# Common Questions and Answers

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- **Question 6:** Can other Government personnel meet directly with the contractor Program/Project manager without the presence of the COR?
    - **Answer:** It depends on the context of the meeting. If recurring meetings are necessary between Government management and the project manager, the COR should be present to ensure decisions that might change the contract and lead to an unauthorized commitment are not made; e.g., project plans, performance, schedule, and labor hours/category changes require COR presence.
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# Common Questions and Answers

- **Question 7:** When can the contractor's logo be placed on a submitted deliverable?
  - **Answer:** Pursuant to AA 17-03, Proper Roles of the Services Contractor, all documents, deliverables, or reports produced by contractors must be suitably marked (not with company logo) as contractor products or appropriately disclose contractor participation.



# Common Questions and Answers

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- **Question 8:** What are the rules for Government staff reaching out to contractors on weekends or after business hours?
    - **Answer:** The contract establishes the days and work hours for contractor performance. A Government employee cannot direct or require a contractor to work specific hours or days outside the terms and conditions of the contract. This includes authorizing early release (unless there is an emergency), compensatory time, or overtime. Immediately contact the COR if a specific need arises in which hours are required outside the contract terms.

# Common Questions and Answers

- **Question 9:** What awards are allowable to present to contractors? Many make significant contributions to the overall mission.
  - **Answer:** Pursuant to AA 17-03 and the DOC Performance Management Handbook, contractors are only authorized to receive Certificates of Appreciation. See [NOAA Administrative Order 202-451](#) and [NOAA Incentive Awards Program](#) for procedures. As a best practice, the contractor's designated official should present the certificate to the employee.

# Common Questions and Answers

- **Question 10:** Can the Government provide contractors with guidance on how to perform the tasks outlined in the work statement or project plans and/or provide them the priority of the tasks?
  - **Answer:** The COR cannot instruct the contractor on how to perform on performance-based requirements but may establish the priority of the tasks to be performed unless the change would delay the contractor. Only the CO may authorize changes to the terms and conditions of the contract.



# Common Questions and Answers

- **Question 11:** Can the contractor attend non-work related morale events held in the office for baby/wedding showers, games, picnic, etc.?
  - **Answer:** Yes, if the following conditions are met:
    - COR notifies project manager of the event in advance.
    - The hours of contractors attending the event are **not** billable to the Government.
    - Attendance cannot affect the services required or be inconsistent with contract terms.
    - Attendance would not give a perception of an improper relationship between the Government and contractor.



# Common Questions and Answers

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- **Question 12:** Can contractors and Government personnel share the same rental car when on Government-funded travel?
    - **Answer:** Yes, as long as there is no preferential treatment among the various contractors and the same ride sharing is offered every time to the maximum extent practicable between all Federal employees and contractors. In addition, a request for contractors to staff to share the same rental car with Government personnel must be cleared by the PM through the COR to ensure all parties are aware and agree in doing so.
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# BACKUP SLIDES



# Policy and Procedural Resources

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- FAR 3.101, Standards of Conduct.
  - FAR 3.104, Procurement Integrity.
  - FAR subpart 3.10, Contractor Code of Business Ethics and Conduct.
  - FAR subpart 3.11, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.
  - FAR subpart 9.5, Organizational and Consultant Conflicts of Interest.



# Policy and Procedural Resources

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- FAR 37.104, Personal services contracts.
  - FAR 37.114, Special acquisition requirements.
  - [DOC PM 2015-05](#), Maintaining Proper Relationships with Support Services Contractors.
  - [DOC Office of Human Resources Management Performance Management Handbook](#).
  - [DAO 203-9](#), Gifts and Bequests.

# Policy and Procedural Resources

- [NAO 202-451](#), NOAA Incentive Awards Program.
- [Summary of Ethics Rules 2020](#) and [Ethics Training](#).
- [NOAA Acquisition Manual 1330-37.102-70](#), Policy.
- [NOAA Finance Handbook](#), Gifts and Bequests to NOAA.
- [NOAA AA 17-03](#) and [NOAA SOP](#), Proper Roles of the Services Contractor.