Ethics Training

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AGENDA

• ETHICS LAWS & REGULATIONS-OVERVIEW
• MAIN FOCUS:
  • CONFLICTS OF INTEREST
  • ACCEPTANCE OF GIFTS
  • POST-GOVERNMENT EMPLOYMENT
• CHECK-IN QUESTIONS
LEARNING OBJECTIVES

• Understand rules of Contractor and Federal Employee interactions
• Understand ethical standards.
• Understand prohibitions
• REMEMBER:
  – None of the rules are reflective of your *personal ethics*
LET’S GET ETHICAL!

- http://www.youtube.com/watch?v=wkaozXsKrcs&feature=related
What principles should guide your Government?
ETHICS LAWS & REGULATIONS

All federal employees and contractors should be familiar with statutory & regulatory prohibitions.

- **14 ETHICAL PRINCIPLES** establish ethical values/goals for Federal employees; can be basis for discipline.

- **EXECUTIVE BRANCH STANDARDS OF CONDUCT** (5 CFR Part 2635)

- **DoD SUPPLEMENTAL ETHICS REGULATION** imposes additional limits and restrictions on the Standards for DoD personnel. (DOD 5500.7-R, Joint Ethics Regulation)

- **18 UNITED STATES CODE §§ 201, 205, 207, 208, 209**
14 PRINCIPLES OF ETHICAL CONDUCT
EXECUTIVE ORDER 12674

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
14 PRINCIPLES OF ETHICAL CONDUCT
EXECUTIVE ORDER 12674

(5) Employees shall put forth honest effort in the performance of their duties.
(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
(7) Employees shall not use public office for private gain.
(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.
(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in the Standards of Ethical Conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.
PRINCIPLE # 1:
Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

• Loyalty
• Duty
• Respect
• Selfless Service
• Honor
• Integrity
• Personal Courage
PRINCIPLES # 2 AND # 3

Employees shall not hold financial interests that conflict with the conscientious performance of duty.

Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
CRIMINAL RULES:
Bribery & Conflict of Interest Laws
Bribery

18 U.S.C. § 201—Prohibits public officials from:

- Seeking, receiving or agreeing to accept
- Anything of value
- For themselves or others
- In return for being
  - Influenced to aid in committing a fraud on the U.S. or
  - Induced to do/omit to do any act in violation of official duty
CONFLICTING FINANCIAL INTERESTS

Because public funds are involved, strict ethical standards are necessary.

18 U.S.C. § 208—Prohibits federal employees from:

- Participating personally and substantially in an official capacity
- In any particular matter that has:
  - A direct and predictable effect on their financial interests
  - Or upon those financial interests imputed to them.
FINANCIAL CONFLICT OF INTEREST

“Personal and Substantial”

• “Personally” means directly, and includes the participation of a subordinate when actually directed by you.

• “Substantially” means significant involvement in a critical step in the process.
  – Participation in decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while an officer of employee.
  – More than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.
FINANCIAL CONFLICT OF INTEREST

• “Particular Matter”
  – Something that involves deliberation, recommendation, decision, or action; and
  – That is focused on the interests of specific persons, or a discrete and identifiable class of persons.
    • For example – Contract, Claim, Grant, Permit, Application, or Funding.
FINANCIAL INTERESTS

Covered financial interests INCLUDE:

• Yours AND

• Interests imputed to you, including interests held by:
  • Your spouse; minor children; general partners [E.g., Your spouse’s stock in a defense contractor];
  • Entities you serve as officer, director, trustee, general partner or employee [E.g., Service as officer of a non-profit entity]; or
  • Entities from whom you are negotiating or have an arrangement for future non-Federal employment.
RESOLVING CONFLICTS OF INTEREST

• Disqualification
  • Stop working on the actions relating to the matter.
  • Submit a written disqualification statement to your supervisor.

• Rejection of Job Prospect/Resignation from Outside Position
  • Verbal or e-mail is sufficient.
  • If the conflict is related to a procurement, then written rejection of a job prospect may be required.

• Divest Conflicting Financial Interest
  • Sell the stock or other financial interest which is causing the conflict.

• Waiver
  • Before granted, all other remedies should be examined and determined to be inadequate or inappropriate. DAEO recommendation and approval required.
BASIC RULE FOR FINANCIAL COI

You cannot use non-public information for your financial advantage.

• Procurement source selection information
• Classified information
• Privacy Act – personally identifiable information
• Trade Secrets Act information
PRINCIPLE # 8

• Employees shall act impartially and not give preferential treatment to any private organization or individual.
YOU MAKE THE CALL!

The big barracks construction contract finally has been completed, and the contractor, Bob the Builder LLC, did an amazing job. In fact, it was so great on the job site, the Area Office wants to give Bob a Certificate of Achievement that he can use in its promotional brochures. Good idea?
NO! . . . You are not allowed to give awards or recognition certificates to contractors anymore.

• Revised DoDI 1400.25-V451, November 4, 2013, states:

  “Awards, award programs, ceremonies, or receptions to acknowledge contributions by organizations or companies having a commercial or profit-making relationship with DoD must not be established.”

  “To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, persons, organizations, or companies having a commercial or profit-making relationship with DoD or with a DoD Component will not be granted recognition.”

• **CPARS/CCASS is where you reward a contractor.**
YOU MAKE THE CALL!

• May commander’s coins be given to employees of government contractors?
AR 672-20 prohibits awards to contractors.

- Army Policy includes coins purchased with appropriated funds. (DA Memo, para, 5d(2)).
RECOMMENDATIONS

• Prohibited from using his official position, title or authority to endorse any person, product, service or enterprise.
  – includes the use of official stationery and star notes.

• Cannot commend the performance of a contractor or a contractor's products or services.
  – If a Government employee, who has authority over the contract, can make a simple factual statement that the contractor's work satisfied the Government's requirements.

• After consulting with the contracting officer, can provide a statement indicating that the contractor met all benchmarks.
Not An Endorsement

• The general rule is that an Army official may respond to a request for information on a DoD contractor received from another governmental entity.
  – Past Performance
  – But, this means to another Federal agency, not the contractor
PRINCIPLE # 4

• An employee shall not, except as permitted by the Standards of Ethical Conduct, **solicit or accept any gift or other item of monetary value** from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
PERSONAL GIFTS

“FOR ME? JUST BECAUSE I’M A FED? NO WAY!”

“NO, IT’S JUST BECAUSE WE REALLY LIKE YOU. BUT, NOW THAT YOU ASKED . . . “
GIFTS FROM OUTSIDE SOURCES
5 CFR Part 2635, Subpart B

**RULE**: You MAY NOT:

- **Solicit, accept or coerce** the offering
- Directly or indirectly
- A gift either--
  - From any **prohibited source**, or
  - Given based on your **official position**
THE #1 RULE FOR GIFTS

• YOU NEVER ARE REQUIRED TO ACCEPT A GIFT! YOU ALWAYS CAN DECLINE!* 

* Unless the gift came from a foreign dignitary.
"Prohibited source" means any person who or entity which:

• Is seeking official action by the agency;
• Does/seeks to do business with the agency;
• Has interests that may be substantially affected by performance/nonperformance of your official duties; or
• Is an organization a majority of whose members are prohibited sources.
GIFT DEFINED

Anything of monetary value, including:

• Cash
• Tangible items
• Services
• Entertainment, hospitality, gratuity, or favor
• Training, travel, transportation, lodging and meals
• A discount, loan, or forbearance (forgiveness) of a loan, offered as a result of your official position.
EXCLUSIONS

NON-GIFTS:

• Snacks such as coffee or donuts that are not part of a meal
• Greeting cards or items of little intrinsic value such as plaques, certificates, and trophies, intended for presentation only
• Loans/credits from banks/financial institutions at publicly-available rates
• Anything for which you paid fair market price
• Anything paid for or secured by the Government.
EXCLUSIONS

NON-GIFTS:

• A gift accepted by the Government under statutory authority
• Opportunities and benefits, including favorable rates and commercial discounts available to the public or all Government employees [e.g., GEICO reduced car insurance]
• Pensions and other benefits resulting from continued participation in an employee welfare and benefit plan
• Rewards and prizes open to the public
GIFT EXCEPTIONS

The following exceptions permit Federal employees to accept otherwise improper gifts:

• Gifts of $20 or less [“$20/$50 de minimus” Rule];
• Gifts based on a personal relationship [“Friends & Family” Rule];
• Discounts and similar benefits;
• Awards and honorary degrees;
• Gifts based on outside business/employment relationships;
• Widely attended gatherings and other events;
$20/$50 “DE MINIMUS” RULE

You may accept otherwise improper gifts:

• Worth $20 or less per occasion, per source; and
• No more than $50/year from any one prohibited source.
• This exception does not include cash or investment instruments.
FRIENDS & FAMILY RULE

You MAY accept a gift (with no limit in value) where circumstances make clear that the gift is motivated by family relationship/personal friendship rather than your official position.

**REMEMBER**: The Reasonable Person Test – If there is the appearance of wrongdoing, then the gift may be prohibited.
FRIENDS & FAMILY RULE

Factors to consider include:

• Why is the gift being given?
  • Official position or personal capacity? The line can be blurred.

• The history of the relationship
  • Is the gift-giving a new occurrence? Recent increase in value?
  • Did friendship predate working relationship?
  • Relationships developed on the job are generally considered professional, not personal

• Who paid for the gift?
YOU MAKE THE CALL!

- Freddy Fed’s sister works for one of the District’s biggest contractors. Every Christmas, he buys thoughtful tokens of love and affection for her. She refuses to buy anything for Freddy or his family, saying that she doesn’t want to cause him any ethical problems.
- Praise her for her ethics or shun her for her cheapness?
Hey Sis! I want my gifts!

- Of course, Freddy and his kids can accept gifts from his sister. They have a close, personal relationship.
- Bribery still is illegal, so she can’t offer a gift to Freddy and he can’t accept the gift if it is tied to an official act to be performed. (“You know my company would do a great job on that huge contract that you are about to advertise. Oh, by the way, here is that Cherry Red Porsche Boxster that you always wanted.”)
YOU MAKE THE CALL!

• To make up for the Christmas snafu, Sis offers Freddy free ticket to the home opener of the Kansas City Royals that she got from her boss, Bob the Builder. The ticket has a face value of $55.
• Can he accept the ticket?
• Should he offer to pay $20?
No!

- While Freddy and Sis have a personal relationship, a prohibited source (Bob) actually bought the ticket. Contractor is a prohibited source, so no gifts are permissible unless another exception applies:
  - **$20/$50 rule**: No – Rule is “face value” not what Contractor paid
YOU MAKE THE CALL!

• Freddy Fed remembers that he cannot accept gifts from prohibited sources, so he tells Sis that her nephew’s Little League team is having a fundraiser to buy uniforms and needs prizes for the raffle. Any issues?
CLOSE BUT NO CIGAR, FREDDY

• Not only if a federal employee not allowed to personally accept a gift from a prohibited source, neither can a spouse, dependent child, or charitable organization if the donation was directed by him.

• 5 C.F.R. § 2635.203(f): A gift which is solicited or accepted indirectly includes a gift given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2).
General Principle 14

• Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.
APPEARANCE OF A CONFLICT

• Employee **should not** participate in **any action** if it involves particular matter with **specific party** that:

  – Is likely to **affect his/spouse financial interests**; OR

  – **If a reasonable person would question his impartiality.**
YOU MAKE THE CALL!

• Site Superintendent for Bob the Builder asks Freddy Fed if he wants to have lunch, and offers to drive Freddy in his personal vehicle to a popular lunch spot several miles away.

• May Freddy accept?
Probably not

- Under $20? Perhaps…

- Does it look bad?
Contractor is required to provide transportation under contract.

- Transportation is acceptable if it is included in a contract between the Government and the Contractor. Contracts for on-site inspections may contain a provision requiring the Contractor to make available to the Federal employee reasonable assistance for carrying out those official duties.
REMEMBER!

Regardless of any exceptions, it is **always impermissible**:

• To accept a gift, in return for being influenced in the performance of an official act;

• Solicit or coerce the offering of a gift; or

• Accept from same or different sources so frequently that a reasonable person would be led to believe the employee is using his public office for private gain.

• Public servants represent the public’s trust.
SEEKING AND POST-GOVERNMENT EMPLOYMENT RULES

“Good bye! I am sooooo outta here!”

“See you next week.”
BASIC RULE

When seeking non-Federal employment, you **MUST**:

- **Disqualify** yourself from official participation
- In any **particular matters**
- That have a direct and predictable affect on financial interests
- Of persons with whom you seek or have arrangements for non-Federal employment.

**VIOLATION CAN CONSTITUTE A CRIMINAL OFFENSE.**
WHEN ARE YOU SEEKING EMPLOYMENT?

• Engaging in negotiations

• Respond to unsolicited proposal

• Make unsolicited employment contact
  – Includes sending resume
  – Excludes requesting job application and/or "shotgun" resumes

• “Seeking” employment ends –
  – When either party rejects proposal and discussions have terminated;
YOU MAKE THE CALL!

• Freddy Fed sends a resume to Bob the Builder, after his sister says that they may be hiring. How long must Freddy wait before he can return to working on matters involving Bob the Builder?
He is not that into you!

• After two (2) months without hearing anything from a targeted contractor or withdrawing resume himself, employment attempt is considered to be rejected.

• 5 C.F.R. § 2635.603(b)(2)(ii): An employee is no longer seeking employment when two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.
RECEIPT OF JOB OFFER – WHAT TO DO?

• **Promptly report** the contact in writing to supervisor and ethics counselor.

• Either **immediately reject** the offer or obtain **disqualification** from further involvement with official responsibilities before continuing conversation.
POST-GOVERNMENT EMPLOYMENT
REPRESENTATIONAL RESTRICTIONS

18 U.S.C. § 207 – Upon leaving the Federal Government, employees are subject to additional CRIMINAL restrictions under this statute that may limit their interactions with the Federal Government on behalf of another person or entity.
POST-GOVERNMENT EMPLOYMENT
Key Representation Bans

**Lifetime Ban:** Bars all former employees from representing another before any Federal agency or court regarding particular matters involving specific parties in which they participated personally and substantially at anytime during Federal service. [“Lifetime” means lifetime of the particular matter (e.g., contract)].

**2-Year Ban:** Bars all former employees from representing before any Federal agency or court regarding particular matters involving specific parties that were under their official responsibility during their last year of Federal employment.
COMPENSATION BAN

• Federal employees who serve in one of seven positions, or who make one of seven types of decisions, on a contract over $10 million, may not accept compensation from the contractor for 1 year as an employee, consultant, officer or director

• Ban can apply to officers, enlisted & civilians
THE SEVEN POSTIONS

- Procuring contracting officer
- Source selection authority
- Member of source selection evaluation board
- Chief of financial or technical evaluation team
- Program manager
- Deputy program manager
- Administrative contracting officer
THE SEVEN DECISIONS

- Decision to award a contract over $10 million (including options, and estimated value of all task orders under IDIQ/requirements contracts)
- Decision to award a subcontract over $10 million
- Decision to award a modification that is over $10 million of a contract or subcontract
- Decision to award a task order or delivery order over $10 million
- Decision to establish overhead or other rates applicable to a contract or contracts valued over $10 million
- Decision to approve issuance of a contract payment or payments over $10 million
- Decision to pay or settle claim over $10 million
YOU MAKE THE CALL!

• While working for the Corps, Freddy Fed substantially worked on a fish barrier project. After Freddy resigns from the Corps, he decides to work for one of the contractors on the project.

• How long must he wait before Freddy is allowed to attend meetings on behalf of his new employer with Corps employees?
HOW LONG DO YOU HAVE?

- **FOREVER** regarding the fish barrier.

18 U.S.C. § 207(a): Permanent restrictions on representations on particular matters. -Any employee who, after the termination of his or her service or employment with the United States, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter--

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

- No prohibition to talking with Corps on other projects.
These rules are complicated—SO—if you:

- Plan to start “looking” and/or
- Plan to interact with the Federal Government after you leave—

Contact your Designated Agency Ethics Official for advice.

PLEASE!
TAKEAWAYS

– When in doubt about the rules, **consult with your friendly, neighborhood ethics official**, BEFORE taking any action.

– Avoid raising even the **appearance of a conflict of interest or ethical failure**.

– **Follow the advice of ethics officials** – don’t assume that the other person already has received proper guidance.
REFERENCES

DoD Standards of Conduct Office (SOCO) website: http://www.dod.mil/dodgc/defense_ethics

Executive Branch Standards of Conduct (5 CFR Part 2635)

- SUBPART B — Gifts From Outside Sources (§§ 2635.201 - 2635.205)
- SUBPART C — Gifts Between Employees (§§ 2635.301 - 2635.304)
- SUBPART D — Conflicting Financial Interests (§§ 2635.401 - 2635.403)
- SUBPART E — Impartiality in Performing Official Duties (§§ 2635.501 - 2635.503)
- SUBPART F — Seeking Other Employment (§§ 2635.601 - 2635.606)
- SUBPART G — Misuse of Position (§§ 2635.701 - 2635.705)
QUESTIONS