

SUBJECT: Ethical Issues Created by Contractors in the FEMA Workplace

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

FACTS:

- Contractor employees are indeed different from Federal employees, even those contractor employees who work on a daily basis in and around the Federal workplace. One major difference is that the conflicts of interest criminal laws do not apply to contractor employees (except for the bribery statute), nor does the *Standards of Ethical Conduct for Employees of the Executive Branch* or the DHS Management Directive 0480.1, *Ethics/Standards of Conduct*, apply to them.
- Contractor employees and their workspace should be clearly identified to ensure that Federal employees and the public know that they are not Federal employees to avoid inadvertent unethical conduct in addition to other issues, such as illegal personal services, claims for services provided beyond that required by the contract, and misunderstandings about fiduciary responsibilities.
- **GIFTS.** Contractors and their employees are “outside sources.” They should not be solicited for contributions to gifts to departing or retiring FEMA employees. The rules governing gifts between FEMA employees and those offered by a contractor or its employees to an FEMA employee are very different. In an appropriate case, an FEMA employee may accept a \$75 framed print from the employees in his or her organization, but could never accept that gift from the contractor employees who support his or her organization. It is permissible for employees to accept meals and entertainment in a subordinate’s home; however, in many cases, this would not be appropriate if the invitation is from a contractor employee.
- **EMPLOYMENT OVERTURES.** Any discussion about future employment between a FEMA employee and a FEMA contractor employee, whoever initiates it, might require special reports depending on the situation. For sure, if the FEMA employee initiates the inquiry or wishes to pursue it, the FEMA employee is automatically disqualified from participating in official matters affecting that FEMA contractor and must issue a written notice of this disqualification to his supervisor and the FEMA ethics counselor. If the FEMA contractor employee initiates the contact with the FEMA employee, this can raise an obligation to report the contact by the FEMA employee to the FEMA ethics counsel.

- **RELATIONSHIPS BETWEEN FEDERAL AND CONTRACTOR EMPLOYEES.** It is common for varying degree of relationships to develop between and among employees in the workplace. The relationships run the gamut from friendly acquaintances to good friends to close personal friendships to marriage. When these relationships begin to develop between Federal and contractor employees, the Federal employees and their supervisors need to be alert to issues and appearances.
 - If the relationship is with a Federal employee who has nothing to do with the contract or the contractor employee, the only concern might be for the protection of “inside information.”
 - If the relationship is with a Federal employee who has responsibilities involving the contract or the work being performed by the contractor employee, there will be appearances of conflicts of interest that must be resolved; these appearances often disqualify the Federal employee from participating in the official matters affecting the contractor.
 - If the relationship between the Federal and contractor employee results in marriage, the financial interests of the spouse are imputed to the Federal employee and any actual or apparent conflicts of interest that are created must be resolved.
- **PROTECTION OF INFORMATION.** Numerous statutes protect the release of procurement information, trade secrets, other confidential information and classified information. In addition, the *Standards of Ethical Conduct* prohibits using, or allowing the use of, nonpublic information for private interests. As FEMA employees, we must be very circumspect as to whom we release nonpublic information (*i.e.*, need to know). But, we must be particularly vigilant when we are discussing sensitive matters with and around contractor employees.
- When any of these or other ethical issues arise, employees and their supervisors should seek the advice of the Ethics Counselor.

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SUBJECT: Contractor Employees in the Federal Workplace -- Practical Advice

PURPOSE: Discuss key points of dealing with contractor employees in the federal workplace.

FACTS:

- Remember that contractor employees are *not* Federal employees.
- Identify contractor employees as such with distinctive security badges, by including their company's name in their e-mail address, and otherwise ensuring that our employees and members of the public understand their status.
- Respect the employer-employee relationship between contractors and their employees and do not interfere with it by inviting their employees to leave their assigned work station, pressuring the contractor to use "favorite" employees, or insisting on some personnel action.
- Be aware of intellectual property rights consequences of contractor employee work products created in the Federal workplace. Generally, the contractor will be able to commercially exploit software or inventions that it creates in the Federal workplace.
- Avoid giving incumbent contractor unfair competitive advantage by including its employees in meetings to discuss aspects of the re-competition, or by accidentally allowing the contractor's employees to overhear or gain access to planning information.
- Identify possible conflicts by contractor employees. If it would be a crime (conflict of interest) or violate the Standards of Ethical Conduct (appearances of partiality) for a Federal employee to participate in an official matter, we should insist that the contractor provides employees free of the same conflicts or appearances.
- Safeguard proprietary, Privacy Act, and other sensitive and nonpublic information. Release of certain types of information to contractor employees to analyze, create charts and graphs, enter into databases, etc., could violate the procurement integrity law, the trade secrets act, the Privacy Act, or other law or regulation that could subject the releaser to civil and/or criminal penalties to include mandatory removal.

- Beware of gifts from contractor employees. Even if they work in the Federal workplace, they are "outside sources" and the rules for their gifts are very different than the rules for gifts between employees. One major difference is that contractors and their employees may not be solicited to provide or contribute to gifts where we might be able to do so from other Federal employees for a retirement gift for another Federal employee.
- Don't require "out of scope" work, personal services, or "inherently governmental functions." The services that the contractor is required to provide through its employees are set out in the contract... there are no "and other duties as assigned." When we contract, we give up control and flexibility.
- Resolve inappropriate appearances created by close relationships between Federal and contractor employees. For example, if a Federal employee develops a close personal relationship with the contractor's site manager, that Federal employee probably should not be assigned or continue as the Contracting Officer Representative (COR).
- Set the example -- as leaders, establish and maintain high ethical standards.
- Address ethical issues promptly and confer with counsel.

PREPARED BY:

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