United States
Office of Government Ethics
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DO-06-023

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Ethics and Working with Contractors—Questions and Answers

Government contracting processes long have influenced Federal ethics law and policy. Concerns about conflicts of interest in Federal procurement not only have shaped many of our ethics laws, but have a particular focus in the enforcement of those laws. In our latest annual Conflict of Interest Prosecution Survey, for example, 75% of the prosecutions involved contract-related misconduct. Office of Government Ethics (OGE) DAEOgram DO-06-022, http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/othr_gdnc/pros_srvy_05.html. Moreover, in recent years, the increasing use of contractors, particularly in the Federal work space, has raised questions about whether the ethics rules adequately protect the integrity of Government operations. OGE, Report to the President and the Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment 38-39 (January 2006) at www.usoge.gov. At a minimum, the increased use of contractors has reinforced the need for Government employees to understand the ethical rules for interaction with contractors and their personnel.

This guidance is intended to provide agency ethics officials with basic information about some common issues that arise in the procurement context. We decided to present the information in a Question and Answer format, with illustrative examples. We hope this format will aid in your understanding of the ethical principles being discussed.

As will be apparent below, this guidance pertains not only to employees serving in formal "procurement" or "contracting" positions. Important ethical requirements—particularly the criminal conflict of interest laws and the OGE

standards of conduct regulations—apply also to a wide range of other employees who have input in contracting processes or work with contractors and their personnel. For example, the criminal conflict of interest laws, such as 18 U.S.C. §§ 207 and 208, can cover the conduct of high level officials who give instructions or recommendations to procurement officials. Similarly, these laws apply to program staff who do not have any formal contracting responsibilities but nevertheless provide significant input on programmatic or performance issues concerning a contract. Moreover, some of the issues discussed below, such as the gift questions, can affect employees who simply work alongside contractor personnel in a "mixed workplace."

Finally, some of the Q&As refer to provisions of law beyond the ethics statutes and regulations within OGE's primary area of responsibility. For example, several of the items below pertain to the Procurement Integrity Act, 41 U.S.C. § 423. These provisions are discussed mainly because they overlap with other legal requirements that are within OGE's jurisdiction, such as the criminal conflict of interest statutes in chapter 11 of title 18 of the United States Code, or the OGE standards of ethical conduct in chapter 2635 of title 5 of the Code of Federal Regulations. One purpose of this memorandum is to emphasize that compliance with provisions such as the Procurement Integrity Act does not necessarily equate to compliance with related, but different, provisions in the ethics laws and regulations.

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