

# ***Headquarters U.S. Air Force***

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## **Contractors in the Federal Workplace**



**AF/JAA  
DSN 224-4077**

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# **CRIMINAL LAWS**

- **BRIBERY**
- **CONFLICT OF INTEREST LAWS**



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# 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



# Conflicts of Interest

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**18 U.S.C. § 208 -Prohibits a Federal employee from working on a Government matter that will affect the employee's financial interests, or the financial interests of the employee's:**

- Spouse or minor child
- A general partner
- An organization he serves as an officer, director, trustee, general partner, or employee, and
- A person with whom he is seeking or has an arrangement for future employment.



# Other Conflict Of Interest Laws

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- **Representational Restrictions**
  - **18 U.S.C. § 203** -Prohibits Federal employees from seeking or accepting compensation for representing another before a Federal department, agency or court (not Congress) in matters where the U.S. is a party or has substantial interest
  - **18 U.S.C. § 205** -Prohibits Federal employees from prosecuting or assisting in the prosecution of a claim against the U.S., representing another (with or without compensation) before a Federal department, agency or court (not Congress) in matters where the U.S. is a party or has a substantial interest
  - **18 U.S.C. § 207** -Post government employment representation restrictions



# Other Conflict Of Interest Laws

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- **Supplementation of Federal Salary**
  - **18 U.S.C. § 209 -Prohibits Federal employees from seeking or receiving any compensation from:**
    - **A non-Federal source, in return for;**
    - **Performance of their official duties**



# Administrative Rules

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- **14 Ethical Principles**
  - A set of ethical values/goals for Federal employees. May be the basis of discipline.
- **Executive Branch Standards of Conduct**
  - Federal rules that implement the Ethics in Government Act & criminal statutes to prevent actual & apparent conflicts.
- **Joint Ethics Regulation (DoD 5500.07-R)**
  - A DoD supplemental regulation that imposes additional limits and restrictions on the Standards of Conduct for DoD



# What About Contractors?

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- Contractors are not subject to the same ethics rules as Federal employees
  - Conflict of interest laws, Federal Standards of Conduct regulations, and Joint Ethics Regulation *do not apply* to contractor employees
- Contractors are subject to:
  - Laws that apply to everyone
    - Examples: Bribery; Gratuities; False Claims Act; Procurement Integrity Act
  - The internal work rules or ethical code of the contractor
  - Requirements imposed by the Federal Acquisition Regulation and the contract



- The "Don'ts"
  - Government Employees
  - Contractor Employees
- Time Management
- Information Security
- Use of Government Resources
- Training
- Awards/Recognition
- Gifts

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## **The *Don'ts* for Government and Contractor Employees**



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# Government Employees Don'ts

- A Government employee may not:
  - Continuously supervise or control the work of contractor employees
  - Approve leave or other absences for contractor employees
  - Train or approve training for contractor employees
  - Conduct performance appraisals or evaluations for individual contract employees
  - Provide or approve employee performance awards for contractor employees
  - Control or influence contractor hiring decisions



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# Government Employee Don'ts

- Unless authorized by statute, the Government may not contract for personal services (FAR 37.104(b))
  - PERSONAL SERVICES CONTRACT- The term 'personal services contract' means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract. (Section 807, National Defense Authorization Act for Fiscal Year 2008.)



# Contractor Employees

## Don'ts

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- Supervise or direct Government employees
- Supervise the employees of other contractors
- Administer or supervise Government procurement activities
- Serve as replacements for Government employees (without following commercial outsourcing procedures)
- Represent the Government
- Perform inherently governmental functions



# *Inherently Governmental Functions*

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A function “so intimately related to the public interest as to require performance by Federal Government employees.”

*Federal Activities Inventory Reform Act,*

*PL 105-270, Sec 5*



# *Inherently Governmental Functions*

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Examples of inherently governmental functions from Office of Federal Procurement Policy, Policy Letter 11-01 (12 Sep 11):

- Command of military forces and combat
- Determination of budget policy, guidance and strategy
- Selection or non-selection for Federal employment
- The direction and control of Federal employees
- Procurement Activities such as: determining requirements and pricing, approving contract docs, contract award and termination, voting on source selection and performance evaluation boards, administering contracts

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## **Time Management**



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# *Time Management*

- Time billed to the Government must be in furtherance of the contract
- Government personnel may not ask contractor employee to work outside the scope of the contract
- The contract and contractor supervisor control the time management of contractor employees, not Government supervisor
  - Holidays and other time off are governed by the contract, not government supervisor
  - “59 Minute Rule” and training holidays are unavailable to contractors



# *Time Management*

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- **Government Supervisors may not:**
  - **Authorize compensatory time for contractor employees**
  - **Authorize contractor employees to leave their assigned workplace or to attend activities unrelated to contract performance (Town Hall meetings, Hail and Farewells, etc.)**
  - **Ask contractors to help with office social functions or Command events**
- **Contractor employees may participate in Command and office functions when invited, authorized by their supervisor, and in a non-billable status**

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## **Information Security**



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# *Information Security*

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- **Government personnel must not release nonpublic information to contractors unless they are cleared and authorized to receive the information**
- **When access is required under the contract, the contract should stipulate the limits of the access and appropriate protective measures (e.g., non-disclosure agreement)**



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# Information Security

- Contractor status must be identified
  - Distinctive badges
  - E-mail designation as CTR
  - No use of agency logo, seal, or name on business cards or letterhead
  - Contractor personnel attending meetings, answering Government telephones, and working with third parties are required to identify themselves.
  - Reports produced by contractors should be marked or contractor participation otherwise disclosed.



# Information Security

- Precautions for Federal employees
  - Avoid discussing nonpublic information or leaving sensitive documents when contractors are present in the workplace
  - Identify all members of audience before disclosing sensitive information
    - Pay attention to badges
  - Question contractor presence at meetings where sensitive issues or information may be discussed
  - Limit and be aware of e-mail distribution

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## **Use of Government Resources**



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# Use of Government Resources

- Contractors are ordinarily required to furnish all property necessary to perform Government contracts. (FAR 45.102)
- Government-furnished resources
  - Contract controls the use of government resources
  - Government supervisors do not have authority to authorize personal use of Government resource
    - Refer to Contracting Officer or Representative

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## **Training**



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- Contractors are ordinarily required to provide employees who are trained and ready to perform the contract
- Government personnel may not independently require or provide training to contractor employees unless called for in the contract
- Offers by contractors to provide training to Government employees free of charge should be considered under the CFR gift rules if not required by the contract

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## **Awards & Recognition**



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# *Awards & Recognition I*

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- **DoDI 1400.25-V451, November 4, 2013,  
DoD Civilian Personnel Management System:**  
  
**Awards -**
  - **Paragraph 3.h.: Awards, awards programs, ceremonies, or receptions to acknowledge contributions by organizations or companies having a commercial or profit-making relationship with DoD must not be established. The specific condition by which the contribution of an entity that is also a DoD contractor may be acknowledged is outlined in the procedures in this volume.**



# Awards & Recognition II

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- **DoDI 1400.25-V451, November 4, 2013, DoD Civilian Personnel Management System: Awards -**
  - **Enclosure 3, paragraph 11.b.2.: 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 the DoD or with a DoD Component *will not* be granted recognition. *The single exception is if the contribution is deemed to be unrelated to and completely outside any contractual relationship with DoD and the recognition is clearly in the public interest. Recognition is limited to a letter or a certificate of appreciation to the individual or to the organization signed at the lowest applicable level of the organization.***

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## **Gifts**



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- Unless an exception applies, DoD personnel shall not accept a gift from a Government contractor
  - Common Exceptions (5 CFR 2635.204):
    - \$20/\$50 Rule
    - Widely Attended Gathering
    - Personal Relationship
    - Contractors may not contribute to group gifts (e.g. retirements, PCS) with Govt employees
- No prohibition against personal gifts to contractors (may be against their internal company rules)



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# *Final Thoughts and Questions*

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Questions?