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Working with Contractors in the Workplace

A Guide for Government Employees

TRADOC Acquisition Directorate

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Introduction

With the renewed A-76 CA push, more and more traditional government functions will be performed by contractors. Both the installation and HQ activities will need to become aware of precautions in dealing with contr ctors. This handbook will help.

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Chapter I

Contractors are an integral part of the Army's work force. BASOPS services could not be performed without contractor support. To perform their tasks effectively, contractor personnel must interact on a daily basis and exchange knowledge with government employees. Government employees should not view contractor personnel in an "us vs. them" relationship. Both contractors and government employees are working towards the same goal, to support the Army.

There are differences in rules and regulations for contractor and government employees, just as there are distinctions between uniformed service members and government employees. Recognition of these distinctions, coupled with mutual respect and professionalism, will make the difference between success and failure.

Building A Total Army Team

It is certainly appropriate to invite contractor employees to office functions and meetings, but unlike government civilians and military personnel, contractor attendance at these activities cannot be made mandatory. If contractor attendance is required at certain meetings, then it should be specifically identified in the scope of work.

Contractor personnel attendance at government courses can help a company better understand the government organization or some aspects of a specific task within the scope of work. Generally, if a specific knowledge or skill is required, it should be identified in either the scope of work or under the personnel qualifications section of the contract. Companies are responsible for the individual development, including training, of their employees.

However, there may be situations where it is in the best interest of the government to have a contractor employee receive training that is directly related to the scope of work being performed.

Most government schools will permit contractor employees to attend their courses, but will require the contractor to pay for the training. Government organizations need to understand that there are three main costs associated with contractor training:

*Tuition

-Travel/per diem

*Salary

It is up to the requiring activity to determine the validity of the training requirement and convey that to the contracting officer, along with how much of each of these costs that activity is willing to pay for. The contracting officer will then negotiate with the company.

Chapter II

Although contractors and government employees are working toward a common goal, there are some key distinctions that need to be made. This chapter will help both supervisors and government employees understand their distinctive role from those of the contract employee at their workplace.

The contractor performs work based on the statement of work for which they have been contracted. It is very important that the statement of work be as clear and precise, as is reasonably posssible, in terms of what deliverable products are desired. It is important that government employees understand that there is a specific legal chain of authority through which instructions, clarifications and changes to contractor performance are authorized.

The general rule is that the government acquires nonpersonal services and would violate various statutes and Civil Service regulations if it used the contracting process for employment purposes. Only the contractor can manage or supervise their employees. Government supervisors and managers CANNOT:

a. Supervise contractor employees.

b. Stipulate contractor duty hours (but could be set in contract).

c. Require contractor employees to report to government personnel.

d. Maintain contractor personnel records/time cards.

e. Approve leave for contractor personnel.

f. Develop duty rosters including names of contractors.

In the past, there have been incidents of misunderstanding with regard to the authority of government individuals to commit federal dollars to industry projects. An unauthorized commitment is obligating government funds that can result from tasking a contractor to perform work or changing the terms of a contract without authority. The authority to direct these activities is vested only in a contracting officer.

Contracting authority is defined by law and is similar to a chain of command. At each installation, you will find contracting officers who are authorized to enter into contracts. Their authority is spelled out by a written document called a warrant. The supervisor of a contracting office typically holds the title of Director of Contracting (DOC). An installation commander does not normally have authority to enter into contracts. Further up the chain of contracting authority is the Principal Assistant Responsible for Contracting (PARC) and the Head of Contracting Activity (HCA). In TRADOC, the PARC is a Colonel and the HCA is the TRADOC Commander.

Authority Limitations

Contracting officers are the only persons authorized to bind the U.S. Government; therefore, Contracting Officer's Representatives (CORs), directors, or other government staff are ***NOT*** authorized to:

a. Clarify, make, or infer legal interpretations on the scope or intent of the contract for the contractor.

b. Approve the contractor's procedures which change/differ from contract specifications.

c. Authorize any expenditure of funds.

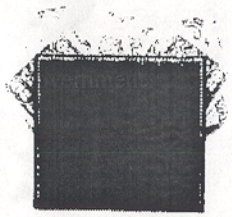
d. Levy or impose any task not specifically provided for in the contract.

e. Enter into contractual agreements with the contractor.

f. Issue directives to the contractor which alter or exceed contract terms or conditions.

g. Offer advice or recommendations to the contractor that could directly or indirectly affect pending contracting officer determination as to fault or negligence.

Liability



CORs, directors, or other government staff should be aware that liabilities which may result from an unauthorized act shall be assumed by the parties involved, not the U.S. Government. You or your employees may have to pay out of pocket the cost of an unauthorized commitment, even if the government benefits.

Ratification

Ratifications are approvals or disapprovals, after the fact, of unauthorized commitments. Installation commanders or commandants must endorse actions in excess of $100,000 to the TRADOC CG for approval. Ratification actions $100,000 or less may be endorsed at a lower level, but not lower than the Garrison Commander.

In some cases, approval will ***NOT*** be given and disciplinary action may result, such as individuals being held liable for reimbursing the government for the costs of the unauthorized commitment. Senior leaders can largely avoid the issue of ratification by ensuring that staff members understand and respect the difference between procurement authority and chain of command.

Chapter III

Government employees have access to information that may be extremely valuable to contractors. Army employees are familiar with protecting information of military value. Because of the Privacy Act, most government employees are aware of the restrictions of releasing information about individuals. However, the need to protect some of the day-to-day information from contractors in the workplace is not always readily apparent.

Why Information

A government employee has a responsibility to ensure that government contracts are awarded fairly and impartially. Part of this responsibility is to ensure that one contractor does not have an unfair advantage over another. Budget projections, cost estimates, and program planning documents can be used by a contractor to improve their bids and proposals for government contracts. When this type of information is used by one contractor, some of the following problems could develop:

- The government's negotiating position is undermined. (Imagine going to a car dealer if they knew in advance how much you planned to pay for the car, and that you had to have this car today to keep your job.)
- A "losing" contractor could protest an award because the winning contractor had an unfair advantage. This type of protest is very serious and could cause the following problems:

-A delay in the award, until the protest is resolved.

-When a protest is filed there are legal costs. If the company successfully protests, then the government usually has to pay the company's legal cost and the cost of developing their proposal.

–In the case of a commercial activity under A-76 review, the in-house work force could be unfairly displaced

Security

Avoid letting contractors have information that could have a negative impact on any future contracts. Some suggestions to consider:

1. Use common sense; treat budget data as For Official Use Only (FOUO).
2. Ensure sensitive material is received on fax machines that are accessible to government employees only.
3. Try to have government employees physically together so that contractors do not see work on desk tops.
4. Ensure that the office LAN distinguishes access of government and contractor employees.
5. Have contractors clearly identify themselves as such, i.e., ID badge bearmg contract firms name.
6. Have an SOP for government employees to report inappropriate actions of contractors with respect to data access violations; i.e., going through a government employees desk, trash can, or files (hard copy and electronic).

Who is Who?
DA Civilian
Contractor
Military Officer

Chapter IV

Government employees have a responsibility to uphold the public's trust in the United States Government. Unlike private industry, a government employee must ensure that their actions are "fair." Understanding the public perceptions of "fairness" is the guiding principal to how a government employee deals with contractors.

Procurement officials are a special category of government employees, like the contracting officer, who has a substantial decision making role in the procurement process. There are specific statutes and regulations that, among other things, place restrictions on the future employment of procurement officials, and require them to provide annual financial disclosure statements. Most government employees are not procurement officials, but if you think you or one of your employees could fall into this category, check with your SJA Legal Advisor.

Procurement offtcials are required to attend an annual ethics briefing from their organization's designated ethics advisor. This is one of the responsibilities of the SJA.

One common situation frequently occurs that can undermine the appearance of "fairness." You know of a person who would be "perfect" for performing a particular scope of work and suggest that person's name to the contractor; for example, someone you know who has recently retired from the military. As a government official, you can provide the contractor with the names of individuals you know to be competent and qualified. But you ***cannot tell*** a contractor they ***must hire*** a particular individual. Be aware that the contractor may misinterpret your "suggestion" as a mandate.

Do **not threaten contractors!**

DO NOT threaten the contractor with option nonrenewal. The decision to not renew an option should be a business decision that a "reasonable person" would reach given the facts.

Do not accept gifts!

DO NOT accept gifts from a contractor or their employees. There are a few limited exceptions to this rule. Accepting gifts are prohibited except when:

- Modest items of food and refreshment.
- Cannot exceed $20 value per occasion.
- Cannot exceed $50 per source, per year.

As a government official you and your employee's actions should be able to stand this simple test: **"How would this look on the evening news?"** If you are debating a contractor related issue that could pose an ethical question, call your SJA Ethics Advisor. Your installation DOC is also your acquisition advisor. These staffs are available to provide assistance on matters involving a variety of contracting issues.