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Ethical Guidelines in Working With Government Contractors

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Working With Government Contractors

What You Need to Know as a Federal Employee Who
Works With Government Contractors



U.S. Office of Government Ethics
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Introduction

In recent years, the Federal workplace has undergone tremendous change as more work is being contracted out to the private sector. One result has been an increase in the number of Government contractor employees in the Federal workplace. This pamphlet provides an overview of the basic rules that executive branch employees must follow when interacting with contractors and their personnel. Using scenarios based both on hypotheticals and on actual cases, this pamphlet will cover some of the most commonly occurring situations. The actual cases described involved criminal violations and were successfully prosecuted.

This pamphlet does not cover all of the rules that apply to executive branch employees. If you have a specific issue, have questions, or need additional help, contact an ethics official at your agency before taking any action. For information on how to contact your Designated Agency Ethics Official (DAEO), consult the DAEO list on the Office of Government Ethics website at <http://www.usoge.gov>.

1 Conflicting Financial Interests

Your Spouse's Employment

A Federal criminal statute, 18 U.S.C. § 208, prohibits you from working on a Government matter that has an effect

on your financial interests or on the financial interests of certain persons, including your spouse or organizations with whom you have ties. What if your spouse is an employee of a Government contractor? May you participate in a Government matter involving this contractor? The answer depends upon the extent of your involvement in the Government matter and the extent to which your spouse's financial interest would be affected by your actions on behalf of the government. Let's look at some examples.

Example 1: In her job with the Federal Government, Betty determines the training needs of agency employees and procures those training services from private companies. Betty's husband, John, owns a consulting business that provides computer training services. Betty awarded some of the agency's training agreements to her husband's company. Did Betty do anything wrong?

Yes, in fact, Betty violated the Federal criminal statute, 18 U.S.C. § 208. As the owner of the company that received the Government contract, Betty's husband had a financial interest in the contract. By awarding the contract to provide the training to a company owned by her husband, Betty worked on a Government matter that had an effect on the financial interests of her spouse. This scenario is based on an actual case, and the Department of Justice successfully prosecuted Betty.

Example 2: Scott, a Government employee, is the coordinator for the Law Enforcement Coordinating Committee for a U.S. Attorney's office. His job responsibilities include arranging training seminars for local and state law enforcement.

Scott negotiates with Smith & Jones, LLP, to provide the training seminars for his U.S. Attorney's office. Scott's wife is a general partner in Smith & Jones, LLP. Over the next two years, Scott recommends, selects, and hires Smith & Jones, LLP, to conduct periodic seminars that his office sponsors. Did Scott have a conflict of interest when he selected his wife's employer to provide the seminars?

Yes, he did. As part of his official duties, he hired a company in which his wife was a general partner. As a general partner, Scott's wife has a financial interest in the contracts that her company obtains. By awarding a contract to a company in which his wife is a general partner, Scott participated in a matter in which his wife had a financial interest and, by doing so, violated a criminal statute.

Your Off-Duty Employment

Your spouse's employment with a Government contractor is not the only kind of financial interest that may be problematic. You are prohibited from working on a Government matter that

has an effect on the financial interests of any organization in which you serve as an employee, officer, director, trustee, or general partner. This means that your part-time employment with a Government contractor can pose problems.

Example: Bill was the chief of Plans, Requirements, and Acquisitions for a Federal agency. He was in charge of the procurement of data processing equipment for a regional division of his agency. Bill was also engaged in off-duty employment. He was a partner in an information technology company, GeoKenn Technology.

Unfortunately, Bill did not keep his part-time business activities separate from his Government job. Bill steered several Government contracts to his own company, GeoKenn Technology. In return, he received cash payments and other benefits such as the use of GeoKenn Technology's credit card to purchase jewelry, vacations, and furniture.

By awarding Government contracts to a company in which he was a partner, Bill violated 18 U.S.C. § 208. Bill had a financial interest—a partnership interest—in a private company. By awarding Government contracts to this company, he participated personally and substantially in a particular matter (a contract) affecting that financial interest.

Although Bill was a partner in the company, the result would have been the same if he had been an employee of the company.

This scenario is based on an actual case. The Department of Justice successfully prosecuted the case.

REMEMBER:

The prohibition against working on a Government matter that would affect your financial interests also prohibits you from working on a Government matter that would affect the financial interests of the following persons in your life:

- ◆ your spouse;
- ◆ your minor child;
- ◆ your general partner;
- ◆ an organization in which you serve as an employee, officer, director, trustee, or general partner; and
- ◆ a person with whom you are seeking, or have an arrangement for, future employment.

2 Maintaining Impartiality

Covered Relationships

You probably noted that the list of persons whose financial interests are imputed to you under the criminal conflict of interest laws is limited. Does this mean that it is permissible for you to participate on behalf of the Government in a matter that affects the financial interests of other persons in your life? Not necessarily. You have to be aware of the appearance of your actions. You should not work on Government matters in which your impartiality would be questioned.

Here is how the rule works. You know that a matter at your agency is likely to have an effect on the financial interest of your household. Or you may know that a person with whom you have a “**covered relationship**” is involved in a Government matter, either as a party or a representative of a party to the matter.

You may determine that, if you participate in the matter, a reasonable person with knowledge of the relevant facts will question your impartiality. You then cannot participate in the matter unless you have informed your agency ethics official of the appearance problem and received authorization from the agency ethics official to participate.

You have a covered relationship with:

- ◆ a person, other than a prospective employer, with whom you have or seek a business, contractual, or other financial relationship;
- ◆ a person who is a member of your household or who is a relative with whom you have a close personal relationship;
- ◆ a person for whom your spouse, parent, or dependent child is, to your knowledge, serving or seeking to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- ◆ a person for whom you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; or
- ◆ an organization, other than a political party, in which you are an active participant.

Let's look at an example.

Example: Cynthia is an employee of the Department of Health and Human Services. One of her many duties is to supervise the financial statement

audits performed at the Department's operating divisions by auditors provided by DK Haven Corporation under a Government contract. DK Haven is a large corporation with many different business operations and with multiple divisions. Cynthia has daily contact with the company's auditors and is required to provide updates on their work to the Department's project officer assigned to the DK Haven contract.

Cynthia's husband Michael tells her that he is applying for a job with DK Haven. The position he is considering is not in the same division of the corporation that provides the contract auditors to Cynthia's agency. Are there any impartiality concerns in this situation?

Yes. Cynthia has a "covered relationship" with any person with whom her spouse is seeking employment. Under the impartiality rule, Cynthia should recuse herself from any contract involving DK Haven while her husband is seeking a job with the company, if either she or an agency ethics official determines that a reasonable person with knowledge of the circumstances would question Cynthia's impartiality. Because DK Haven is a large company with many business activities and divisions and because Michael is applying for a job that is not in the audit division of the company, the agency ethics official

might determine that a reasonable person would not question Cynthia's impartiality in performing her duties with regard to the DK Haven contract. On the other hand, if the ethics official was concerned that Cynthia's impartiality would be questioned, he still could determine that any impartiality concerns are outweighed by the agency's need for Cynthia's services on the matter. In this case she could participate in the contract pursuant to an authorization issued by the agency ethics official under the ethics regulations.

Other Relationships

What if your relationship with a contractor employee does not qualify as a "covered relationship?" Does that mean you do not need to be concerned about the impartiality rule? Not necessarily. Let's look at an example of a relationship that is not a "covered relationship" under the ethics regulations but that is a relationship that could call your impartiality into question.

Example: David, an agency employee, begins dating Susan, a contractor employee with whom he works. One of his duties involves reviewing the work of the contractor, including the work that Susan does. What should David do in this situation?

A Government employee does not have a "covered relationship" with a person he is dating or with the employer of a person he is dating. But the impartiality rule is not limited to "covered relationships." A Government employee must always be impartial in the performance of his or her duties and must take appropriate steps to avoid the loss of impartiality in the performance of those official duties. Because David is dating an employee of the contractor and his Government job includes evaluating the work of the contractor and its employees, his impartiality in doing his Government job could be questioned. In this situation, David would likely determine that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter. He should not participate in the matter unless he has informed the agency ethics official of the appearance problem and received authorization from that official to participate.

3 Gifts

There are numerous rules governing gifts among executive branch employees and between executive branch employees and nongovernment sources, such as Government contractors and their employees. This pamphlet will cover only a few of those rules. You should always consult your agency ethics official for assistance with questions involving gifts and other ethics issues. Let's examine a situation that frequently occurs and look at how the ethics rules might apply.

Example 1: Your boss, Margaret, is retiring after 30 years of Government service. You and your fellow employees want to present her with a farewell gift. It is a tradition in your office to buy such gifts for a retiring employee. In the past, your workplace has been composed solely of Government employees, and voluntary contributions from employees were collected to purchase such a gift. But now several employees of a Government contractor, Capital A Corporation, are working alongside you to complete a project. Jason, a Government employee, has volunteered to collect donations among the people in the office to purchase the gift. He makes it clear to everyone that donations are voluntary and no donation larger than \$5 will be accepted from an individual. May Jason ask the contractor employees for voluntary donations?

No, he may not. The general rule regarding gifts from outside sources is that an executive branch employee is prohibited from soliciting a gift either directly or indirectly from a prohibited source or from accepting a gift from a prohibited source. Government contractors and those companies who seek to do business with the Government are prohibited sources. In the example, Jason may not ask the employees of Capital A Corporation for donations because the company and its employees are prohibited sources.

A **gift** is anything that has monetary value, such as food, travel, entertainment, discounts, and loans.

Example 2: May the employees of Capital A Corporation voluntarily contribute to the group gift that the Government employees are buying?

Again, the answer is no. On a special, infrequent occasion such as a marriage or a retirement, it is permissible for an employee to solicit voluntary contributions from other executive branch employees to purchase for a superior a more expensive gift appropriate to the occasion. It is this exception that allows Jason to solicit the other Government employees in his office. But this exception applies **only** to executive branch employees. There is

no similar exception for contractor employees to contribute, even voluntarily, to the gift the Government employees are buying. For that reason, the Capital A employees may not contribute to this gift.

4 Revolving Door: Looking for Employment Outside the Federal Government

Suppose you will soon be completing your Government service, and you are beginning to search for a new job outside the Federal Government. As you are searching for that new job, keep in mind that under the conflict of interest laws and ethics rules you are prohibited from working on a Government matter that would have an effect on the financial interests of a company with which you are seeking or negotiating for employment.

Example 1: As an active duty officer with the Coast Guard, Captain Charles works extensively on a new aircraft navigation system for Coast Guard aircraft. The Coast Guard contracted with a private consulting company, Company X, to oversee a project to integrate the new technology with the GPS systems in the aircraft. Captain Charles drafted a statement of work related to the project. After drafting the statement of work, Captain Charles provides technical support for

the project on behalf of the Coast Guard. Company X contacts Captain Charles concerning possible employment in the division that is overseeing this project. May Captain Charles continue to work on the project for the Coast Guard if he informs the company that he is interested in the employment offer?

No, he may not. If he intends to continue to work on the project for the Coast Guard, he must reject the job offer from Company X. If he does not reject the job offer and he continues to work on the project, he will be in violation of a criminal statute, 18 U.S.C. § 208.

Example 2: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. He will soon be retiring from the VA and is looking for a new job in the private sector. He is interested in working for a lab that is a subcontractor under the VA contract he is auditing. May he send his resume to this lab?

Not until he takes certain steps under the ethics rules. Before sending his resume to the lab, the employee should disqualify himself from participation in the audit. Because he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in the work assignments can be made.

Appropriate oral or written notice of an employee's disqualification may be made to co-workers by the employee or the supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

5 Reverse Revolving Door: Moving From the Private Sector to the Government

The conflict of interest laws apply not only to employees leaving the Government but also to individuals moving from the private sector to the Federal Government. Depending upon your duties in your new Government position, you may be required to divest stock in a company that has contracts with your agency. Other financial conflicts may arise from your ties to your former employer, such as pension plans and stock options.

Example 1: Two months ago, Kate left her job at a brokerage house and began working for the Securities and Exchange Commission. In her new job with the Government, she has been assigned to an investigation of insider trading by her former employer.

She believes that there is a potential appearance problem if she participates in the investigation. She informs the agency ethics official of the issue and requests a determination about whether there is an appearance problem if she participates in the investigation. What decision should the agency ethics official make?

Because Kate left her position at the brokerage house within the last year, she has a "covered relationship" with that former employer, and the agency ethics official may determine that her impartiality will likely be questioned. Given the sensitivity of the investigation, the agency ethics official may be unable to conclude that the Government's interest in Kate's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though Kate has severed all financial ties with the company. As a result, the agency ethics official may determine that her participation cannot be authorized, and she will be disqualified from working on the matter.

Example 2: Sam, who left his job with M Corporation two years ago, is now an undersecretary with the Department of Defense. Sam has a 401(k) plan that is invested in M Corporation stock. M Corporation has numerous contracts with the Department of Defense, and matters involving some of these contracts may come before Sam in his job as an

undersecretary. May Sam participate in matters involving the contracts of his former employer?

No, he may not. If Sam has a 401(k) retirement account which is invested in M Corporation stock, he cannot participate in any matter involving the contracts of his former employer because he has a financial interest in M Corporation through his ownership of M Corporation stock.

Conclusion

We hope this brochure has helped you identify some of the ethics issues that can come up when you are working with Government contractors. For more information on these issues, contact your agency ethics official.

About OGE

The Office of Government Ethics (OGE) is the agency that exercises leadership in the executive branch to prevent conflicts of interest on the part of Government employees and to resolve those conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

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