

## **TOP 10 RULES FOR DEALING WITH GOVERNMENT CONTRACTORS**

**Rule 1: Recognize that Contractors Are Competitors – Maintain a Level Playing Field.** Be sensitive to whether a meeting, action, or release of information would give a competitive advantage to a contractor. All similarly situated contractors should receive equal treatment. Because of the significant demands on their schedules, many Senior Army Leaders restrict contact with contractors – generally deferring such meetings to their action officers and/or cognizant program managers.

**Rule 2: Decline to Meet with Contractors Regarding Ongoing Competitions.** Decline meetings with competing contractors once a solicitation has been released. Avoid discussing or responding to questions on matters that are being litigated. When in doubt, contact your JAG.

**Rule 3: Avoid Partiality or the Appearance of Endorsement.** Do not give preferential treatment to any private party. Again, if you elect to meet with one contractor, you should be available to meet with other similarly situated contractors. Also, do not give VIP visitor treatment to contractor representatives who visit in that capacity or who intend to discuss contractor business – e.g., no Government vehicle rides from the airport, no all-day escort, no officially-hosted free dining.

**Rule 4: Avoid Private Discussions with Contractors.** You should avoid private meetings or discussions with contractors regarding its business and relationship with the Army. Make it your practice to have a staff member sit in sessions with contractors.

**Rule 5: Should You Meet with a Contractor, Set an Agenda.** After agreeing to meet with a contractor, have the contractor identify the topic for discussion and whether there are any current contracts, competitions, or active proposals that the company has pending with the Army. You may want to have the contracting officer's representative (COR) attend if a particular contract action is involved.

**Rule 6: Primary Purpose of a Meeting Is to Receive.** While it is alright to ask informational and clarifying questions during a briefing, avoid asking contractors to send follow-up information. The meeting should not be the basis for further action, and should not unintentionally solicit formal proposals. Leverage your staff or designated program manager for any follow-up. Use public forums such as Industry Days to “push” information out to contractors on Army needs and requirements.

**Rule 7: “Inside Information.”** Do not release “Inside Information” that is not otherwise available to the public (or relevant community of DoD contractors). Inside Information includes:

- Selective release of advance procurement information, Army requirements, or premature release of contract award decisions;
- Acquisition information, such as: unopened bids, ranking of bids, proposed costs, the Army's estimate of costs, source selection plans, price evaluations, proprietary information (such as labor rates), reports by source selection boards, and information marked as source selection sensitive;
- Information not available to the public under the Freedom of Information Act; and,
- Information protected under the Privacy Act, trade secrets, and classified material.

**Rule 8: Gifts.** Small gifts are occasionally offered in meetings with contractors. Food and refreshments that are not a meal (e.g., coffee and doughnuts) may be accepted. Anything more should be avoided and/or declined. That said, ethics rules allow acceptance of nominal presentation items, such as a commemorative coin, or items worth less than \$20 (but not more than \$50 in total from any one source in a year). Consult your JAG when something other than a nominal gift is offered.

**Rule 9: Restricted Contacts with Former DoD Officials / Retired Military Officers.**

- The One-Year “Cooling Off” Restriction. Former senior DoD civilian employees and retired General Officers are prohibited from attempting to influence official actions in their former department or agency for one year after their departure. (18 USC § 207)
- For two years after leaving Government service, former Government officials may not represent someone else to the Government regarding “particular matters” (e.g., contract actions) that were pending under their responsibility during their last year of Government service. (18 USC § 207)
- Former officers and employees are forever prohibited from representing someone in a particular matter that involved non-Federal parties, and in which they were personally and substantially involved while working for the Government. (18 USC § 207)
- Federal officials who had authority to award contracts, make payments, set overhead rates, and settle claims of more than \$10 million are prohibited for a period of one year after the official action from working for the contractor who received the payment. (41 USC §§ 2101-2107)

**Rule 10: Letters, Star Notes, or Other Statements Addressing Contractor Performance.** A DoD employee is prohibited from using his official position, title, or authority to endorse any person, product, service, or enterprise. This includes the use of official stationery and Star Notes. Additionally, it is DOD policy not to recognize contractors with honorary awards unless the contribution is substantially beyond that specified or implied by the terms of the contract and the recognition is clearly in the public interest – a very high standard. If performance by contractor personnel is deemed to meet the DOD standard, then recognition of a nominal value (for example, letter of appreciation or a unique certificate) may be appropriate. Any such recognition must first be coordinated with the cognizant contracting officer. Obtain legal counsel regarding the propriety of any recognition action involving a contractor. Prior coordination is required because the contracting officer may be taking action to correct deficiencies in the contractor’s performance. The Government must communicate clearly and with one voice to enforce contract performance. There have been incidents where Government statements commending a contractor have been posted on contractor websites.

- “Commander’s coins” purchased with **appropriated** funds may not be presented to contractors.
- Before providing a contractor employee a personal letter of recommendation, contact your JAG for fact-specific advice.

**END NOTE:** Lines of communication between the Government and industry must remain open in a way that do not undermine the integrity of the contracting process. By recognizing the limits discussed above, you may address matters of mutual interest with DoD contractors.