



Army Futures Command

INTERACTION WITH INDUSTRY

Overview of Ethics and Acquisition Issues

**Presented to the 18th Ethics Counselor Course, 2020
The Judge Advocate General's Legal Center and School
<virtual>**



Engagements with industry must be impartial, transparent and in accord with procurement laws and regulations

To maintain public confidence in the integrity of DoD acquisitions, programs and operations, ensure DoD participants in industry engagement:

- are free from financial conflicts
- do not use their public office for private gain of any company or person
- do not suggest preferential treatment to or endorsement of non-Federal organizations
- safeguard procurement-sensitive and other non-public information
- remain responsible stewards of taxpayers' money



ETHICS CONCERNS

- Conflicts of interest
- Impartiality in official duties
- Misuse of position
 - Preferential treatment
 - Release of non-public information

ACQUISITION CONCERNS

- Transparent Engagement--Documentation
- Fair competition
- Authority to bind the Government
- Organizational conflicts of interest
- Impartiality toward potential offerors
- Market research v. post-solicitation
- Trade secrets/intellectual property preservation



Principles of Public Service



You shall:

- Place public service above private gain
- Act impartially and not give preferential treatment to any private organization or individual
- Protect and conserve Federal property and not use it for other than authorized activities

*You shall **not**:*

- Hold financial interests that conflict with the conscientious performance of your duties
- Engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest
- Knowingly make unauthorized commitments or promises of any kind purporting to bind the Government



Interactions with Industry

➤ Basic Obligations for Meeting with Industry

- Treat all companies and individuals with respect. Manage expectations accordingly.
- Provide equal treatment to all similarly situated organizations, including equal access to information, resources, personnel,
- If a company gives us information, safeguard it appropriately and keep it within the Government.
- Do not disclose non-public information.
 - Implied task: know what is / is not public and mark internal documents accordingly.
- Do not promise Government action, or require/imply action from the company.
 - Meeting follow-ups are fine, just not procurement action.
- Avoid conflicts of interest (personal, spouse, children, organizations you are a part of).
- Avoid the appearance of violating law or regulation.



Interactions with Industry

Common situations to ponder...

Protect non-public information per 5 CFR 2635.101(b)(3)

Recall Gifts session, appearances

Official purpose? Avoid improper endorsement or preferential treatment

... talking to a contractor solicitation?

Perhaps I should get the KO

Perhaps I should talk to the KO

... you're a good fit for an open

• A company wants to talk to me

Is this an unsolicited proposal the contracting or small business office should handle?

• A company gave me their pitch book?

• A company tells me that something is confidential / proprietary?

Don't violate grassroots lobbying ban in 18 USC 1913

• A company asks if we can help with their lobbying effort?

• A company offered me a free gizmo?

• A company offered to fly me to their factory and show me their tech?

Evaluate official purpose; 31 USC 1353 travel gift?

Beyond scope of official duties; improper competitive advantage

• A company wants me to come speak to their investors/client

• A company asked me for planning advice?

• A company says that they can do or give something to my organization for free?

Departmental gift acceptance under 10 USC 2601, et SEC. avoid quid pro quo

Refer clients to appropriate channels: Contracting; Small Business Office



Take Aways



The ethics and procurement rules set the *minimum* standard of conduct

For every engagement, ask yourself:

- Even if it may be legal, is it the right thing to do?
- Are my actions in the best interests of the command and its procurement plan?
- Does this serve to enhance public confidence in the command and DoD?
- Will the circumstances cause the public or competitors to question my integrity or impartiality?

If you have legal questions, please contact Army Futures Command Legal office at , 512-726-4145 or usarmy.austin-tx.futures-cmd.mbx.afc-legal-office@mail.mil.