

TOP 10 “DOs and DON’Ts” FOR AGENCY AND CONTRACTOR COMMUNICATIONS CONTRACT

Communication between the government and industry must be fair, even, and transparent. This guidance offers an overview for properly communicating with contractors. **Do not hesitate to request the assistance of the MRDC OSJA (shannon.m.morningstar.civ@mail.mil).**

Rule 1: DO Recognize that Government Policy Encourages Federal Government Agencies to Communicate with Contractors – as long as No Contractor Receives Preferential Treatment.

See Office of Federal Procurement Policy (OFPP) memo, SUBJECT: “Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry, dated February 2, 2011.

Rule 2: DO Recognize that Contractors are Competitors – Maintain a Level Playing Field and Avoid Preferential Treatment or the Appearance of Endorsement (be careful of being photographed in uniform). *All similarly situated contractors should receive equal treatment.* Senior Army Leaders, however may restrict contact with contractors – generally deferring such meetings to their action officers and/or program managers. *Do not give preferential treatment to any private party. If you elect to meet with one contractor, you should be available to meet with other similarly situated contractors.* **DO NOT REVEAL too much information about existing research or contract requirements. DO NOT discussing ongoing litigation or competitions. DO NOT DISCUSS changes to ongoing contracts and unauthorized commitments.** Also, do not provide VIP visitor treatment to contractor representatives, to include retired DoD personnel – e.g., no Government vehicle rides from the airport, no all-day escort, no officially-hosted free dining.

Rule 3: DO Recognize that the Primary Purpose of a Meeting with a Contractor is to Receive Information. While it is acceptable to ask informational or clarifying questions during a meeting, avoid asking contractors for 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 coordinated through the appropriate contracting office to “push” information out to contractors on Army needs and requirements. If you are uncertain, contact your JAG.

Rule 4: DO Set an Agenda Prior to Meeting with a Contractor. *After agreeing to meet with a contractor, have the contractor identify the topic(s) for discussion and whether there are any current contracts, competitions, or active proposals that it has pending with the Army.* You may want to have the contracting officer’s representative (COR) and contracting officer (KO) or the Agreements Officer Representative (AOR) or Agreements Officer (AO) attend if a particular contract action is involved.

Rule 5: DO Understand Restricted Contacts Rules applicable to Retired Gov. Personnel.

- **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 - Criminal)
- **Two-Year “Cooling Off” Restriction.** 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 - Criminal)
- **Permanent Restriction.** Former officers/employees are forever prohibited from representing someone in a particular matter involving non-Federal parties, in which they were personally and substantially involved while working for the Government. (18 USC § 207 - Criminal)

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- 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 § 2104)

Rule 6: DON'T Meet with Contractors Regarding Ongoing Competitions or Ongoing Litigation. Decline meetings with competing contractors once a solicitation has been released; instead, refer contractors to the designated contracting officer. Avoid discussing or responding to questions on matters that are being litigated. When in doubt, contact your JAG.

Rule 7: DON'T Engage in Private One-on-One 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 at least one staff member attend sessions with contractors, preferably a representative from the Contract Administration Support Office (CASO).

Rule 8: DON'T Release “Inside Information.” Do not release “Inside Information” that is not otherwise available to the public (or the relevant community of DoD contractors). This includes:

- Selective release of advance procurement information, Army requirements, or premature release of contract award decisions;
- Acquisition information, to include: unopened bids, ranking of bids, proposed costs, the Army's estimate of costs, source selection plans, proprietary information (e.g., 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.
- Allowing contractors to assist in developing requirements without proper firewalls in place.

Report any incident of disclosure or improper inquiry immediately to the KO and JAG. When in doubt, contact JAG.

Rule 9: BE CAREFUL OF Gifts From Contractors. You are not required to accept gifts from contractors and can always decline gifts. Contractors are Prohibited Sources. Only gifts falling into specified exceptions may be accepted. As an example, ethics rules allow acceptance of “nominal items” worth less than \$20 per instance (but not more than \$50 in total from any one source in a year). Food and refreshments that cost less than \$20 per instance, or in the aggregate \$50 per year for multiple nominal items from the same source, and are not a full meal may be accepted (e.g., coffee and doughnuts are acceptable). Anything more must be avoided or declined. Consult your JAG when an item other than nominal is offered.

Rule 9a: If you have a Financial Interest then DON'T Participate.

18 U.S.C. § 208(a) prohibits an officer or employee from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

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- The statute is intended to prevent an employee from allowing personal interests to affect his official actions and to protect government processes from actual or apparent conflicts of interest. If an employee has a financial interest in a particular matter, it may prevent him from being entirely objective in carrying out his official duties related to that matter.
- The fact that an employee is an honest person is not relevant.
- The fact that an employee does not make the final decision is not relevant.
- All that is required for a violation is that the employee participate personally and substantially in a particular matter and that the particular matter have a direct and predictable effect on his financial interest.
- Criminal Statute. Violators are subject to criminal penalties provided in 18 U.S.C. § 216.

Rule 10: *DON'T Issue Contractor Letters, Star Notes, Awards.* *DoD officials are prohibited from using their official position, title, or authority to endorse any person, product, service, or enterprise.* This includes the use of official stationery and Star Notes. *It is DOD policy not to recognize contractors with honorary awards or coins unless the contribution is unrelated and completely outside any DOD contractual relationship, and the recognition is clearly in the public interest – a very high standard.* If conduct by contractor personnel is deemed to that DOD standard, then recognition is limited to a letter or a certificate of appreciation signed at the lowest organizational level. Recognition of contractors must be coordinated with the cognizant contracting officer. Prior coordination is required because the contracting officer may be taking action related to contractor performance. Obtain legal counsel prior to any recognition action involving a contractor.

- “Commander’s coins” purchased with appropriated funds **or personal funds** may not be presented to contractors.
- Before providing a contractor employee a letter of recommendation, contact your JAG. Note: Due to the severe limits on contractor recognition, such a letter of recommendation would only be appropriate if the contract that the two individuals had worked together on expired.
- DoD agencies must not permit persons, organizations, or companies with a commercial/profit-making relationship with DoD to participate in award programs or create awards programs to recognize such persons, organizations, or companies. (See DoDI 1400.25 – V451.)