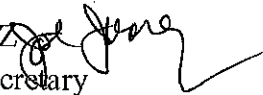




OCT 7 2011

DASVET MEMORANDUM NO. 01-12

MEMORANDUM FOR: ALL VETS STAFF

FROM: JOSEPH C. JUAREZ 
Deputy Assistant Secretary
Operations and Management

SUBJECT: Procedures and Guidance for Interfacing with
Contractor Staff

REFERENCE: ASVET Memorandum 1-11, August 17, 2011

- I. **Purpose:** To establish policy and provide guidance to persons working or interacting with Veterans' Employment and Training Service (VETS) contract staff. It is important for VETS employees to understand the nature of the relationship between Federal employees and the contractor and the contractor's employees. The desire to address the contractor as part of the team is understandable, but employees must realize the potential risks they impose on VETS and the contractor.
- II. **Background:** In the continuing effort to strengthen accountability in contracting, guidance has been developed to ensure staff members have a clear understanding of how Federal employees should interface with contractors. Contractors provide valuable service to VETS and your adherence to this policy and guidance will allow VETS to continue to make good use of the expertise, innovation, and capabilities of contractors for a wide range of management and programmatic support activities.

VETS employees have an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers.

Inappropriate government/contractor relations may cause:

- Contractors to "over-offer" in order to generate business

- Government employee to inadvertently commit the Government
- Legal implications, to include lawsuits
- Impact to the mission resulting from misused funds and wasted resources on ratifications or disciplinary action

III. Action: Immediately implement the following protocols:

A. Only the Contracting Officer's Representative (COR), in conjunction with the Contracting Officer (CO), is authorized to communicate tasks and deliverables to the contractor. Any new requirements to an existing contract are to be communicated with the appropriate COR. Such communication must occur as far in advance of any deadline to ensure adequate time to properly review the current Statement of Work and make the appropriate arrangements.

B. Respect the employer-employee relationship between the contractor and its employees. Don't become so involved as a Government official in the operations and policies of the contractor such that your judgment alone forms the basis for contractor actions such as:

- selecting or recruiting contractor personnel,
- directing, scheduling, or critiquing individual contractor tasks,
- determining who should perform contract tasks or how they should be done, or
- pressuring the contractor to use "favorite" personnel.

C. Do not use Government and contractor personnel interchangeably.

D. Do not request "Out of Scope" work; there is no "*other duties as assigned*" in a contract with the Government.

E. Do not intervene in the contractor's chain of command.

F. There should be no official encouragement for contractor personnel to leave their workplace to attend a morale building activity.

G. Individual contractor personnel time off, and the nature of the time off, are between the contractor and its employees.

H. Government employees generally may not accept items that qualify as gifts from contractor personnel.

I. The Contracting Officer's Representatives are as follows:

1. National Veterans' Training Institute – Heather Higgins (312) 353-4932
2. National Office Support (MSTI) – Stacy Mann (402) 471-9833
3. TAP Facilitation (Inverness) – Tim Winter (202) 693-4705
4. TAP Redesign (MSC) – Tim Winter (202) 693-4705

5. VETS-100 – Mike Parker (202) 693-4750

All VETS contractors will be made aware of these policies. Anyone violating these policies and engaging in directing or influencing of tasks and deliverables with a contractor may result in disciplinary action and the employee being held personally financially responsible for any commitments made or implied.

For additional guidance, three Departmental communiqués are attached.

- IV. **Effective Date:** Immediately
- V. **Inquiries:** Questions concerning this policy should be directed, through your supervisor, to Maria Temiquel at temiquel.maria@dol.gov.
- VI. **Expiration Date:** Until Superseded.
- VII. **Attachments:** Office of Procurement Services (OPS) Bulletin: B5 - - How to Interface with Contractors, issued, August 1, 2007.

Contracting Officer Notice 2008-12 - - Guidance on Vendors Offering “Gifts”, issued July 1, 2008.

Chief Acquisition Officer, Memorandum for Agency Heads - - Avoiding Unauthorized Commitments, issued, December 23, 2008.

OPS Bulletin: B5 — How to interface with contractors

Date: 1 August 2007

Bulletin Number: B5

Subject: How to interface with contractors

Purpose: Provide guidance "tips" to persons working or interacting with contracts on how to interface with contractors

All federal agencies have on-site contractors who work side by side with federal employees. This some times blurs the line on your duties, responsibilities, and restrictions for dealing with contractors. In order to reduce the confusion I am providing some basic "rules of the road" to keep in mind when dealing with contractors. Beyond this simplified version — the ethics or contracting offices can give you more info.

Contractors must perform the job in their Statement of Work (SOW)

No "extra" work — Unless it is covered in their SOW, they can not do the work and bill the Government for it. So if one of your other staff or contractors is out — do not pull the contractor off their duties to go do the other work. Find a federal employee to assist you. No matter how critical the other work is, the contractor employees have to stick to the work under their contract. These are not Federal employees and there is not such thing as "other duties as assigned".

No "excused" non-performance — You can not excuse them from the work set forth in the SOW. The contract is a LEGAL obligation — you can not decide to not have them do the work. No one can change the terms of the contract without a contract modification. If you decide to not have them do the work in the SOW — get the contract modified to make the change.

You do not "supervise" contractors. You are supposed to check their work products against the SOW requirements

When federal employees direct contractors in doing day-to-day work assignments and provide oversight, the contractor is then moved into a type of contract called "personal services". This is PROHIBITED type of contract unless you have a special statutory authority. (Congress has deliberately differentiated the two types of actions. Contract employees cannot be used as if they were federal employees, which equates to the fact they cannot be supervised on a day-to-day basis.)

If you have a SOW that details the contractor's duties and set performance measures for these, proper management to avoid slipping into personal services arena is not hard. (We have noted many SOWs need to be revised to more clearly direct the vendor's performance.)

Contractors can not provide free work

The Government is barred from accepting free services without special approvals. You cannot accept services from a contractor that are not paid for. For example, a contractor can not be allowed to volunteer to stay a couple of hours "off the clock" to help out.

Do not accept gifts from vendors without careful consideration/approval

The general rule is a federal official may not solicit or accept a gift for performance of their duties. If you take a "thing of value" from a vendor then makes a decision that somehow benefits the vendor — it is not going to be a good thing. A "thing of value" can include a wide range of items... from a concert tickets, unpaid services they perform for you, etc.

Common sense should tell you that the only reason the contractor is giving you something is they hope have a "good relationship" with you... which of course, from the vendor's point of view, equates to the fact that you will give them more business. If you decide you just really have to take a "gift" — check with the ethics guides re dollar values and time restriction.

Accepting things of value, whatever they may be, without careful consideration and appropriate approvals, is not a good idea. There are very few things that a contractor can offer you that are worth the public embarrassment, disciplinary action, or even prison terms than accepting such gifts can result in.

Be careful about taking promotional items from a vendor

You can accept small gifts of nominal value. Generally, these fall into the area promotional items. These are small trinkets provided by the vendor to display the firms name, the problem is, if you have one vendor's cute little toy on your desk, or their calendar on your wall, it makes other vendors nervous their competitor is doing better marketing job. They will want you give you something to have their name displayed. So unless you are willing to have 600 calendars or pens with vendor names — it is best not to start.

Don't accept Seasonal Gifts

Most vendors know they are not supposed to send gifts. But sometime this becomes a problem. Particularly in the holidays — One vendor sees the competitor sent one and so they feel they have to send one. It can turn into a competition and reflects poorly on the offices ethics (Hey, did you see XYZ office; they got all kinds of stuff from the contractors!)

Do not seek to "upgrade" contractor employees

Contractors are hired to do a type of job (Admin, Assistant level 1, System Analysis level 3). The level of the contract is set by the work that position does. Offices will frequently come in and want to change the labor category to a higher level. Not because the work has changed - but to "reward" or "promote" or "maintain" a good contractor employee. The problem is, the contractor is supposed to provide

Contracting Officer Notice 2008-12 — Guidance on Vendors Offering “Gifts”

Date Issued: 7/1/2008

Several questions have been asked as to whether or not people can accept prizes or gifts resulting from placing federal purchases; as a result, the following guidance is being sent to address the questions.

The first consideration in doing government purchasing is to ensure all our actions are at the highest levels of “public trust.” For this reason, we have to be very careful in the area of accepting gifts from firms seeking to do business with us.

Factors to consider:

1. Any kind of gift or promotional item that is provided as result of placing a federal order is the property of the government.
2. Contractors do promotions on the theory that it will influence your decision to buy from them. All factors that influence your decision must be documented. If you do consider a promotion in your buying process, you must document how the total order, including the gift, is a good value.
3. To become the property of the government it must have value and use to the government. You cannot accept things that are in excess of the government's requirement and you cannot accept things that would be of no use or legal value to the government.
4. If you take a promotional item provided based on a government order for your own use, you must check the Government ethics rules carefully. If you exceed the values set under the rules, then that “gift” would be considered a “kickback” or a “bribe.”

Examples:

1. A vendor offers a drawing where people ordering goods or services can win free gasoline. In the event a government order resulted in winning the gasoline, the gasoline would become the property of the government. If you have a need to fuel government vehicles, you could use the gas for that appropriately. The purchase file would have to be documented that the fuel was part of the “value to the government”. To avoid possible audit scrutiny down the line, you should notify the ethics office about “winning” the gasoline and the disposition (i.e. use in a government vehicle).
2. The vendor offers a promotion on toner cartridges: buy two and get one free. The first thing to remember is that the toner cartridge is not really “free.” In making your buying decision you need to assess the total cost against the total goods delivered. If the office needs three toner cartridges, you could factor this in to your determination that this would be a good purchase for the government. The government would retain the promotional toner cartridge.
3. The vendor offers a promotion on printers: buy two and get one free. But in this case, the office only needed two printers. Because you're not allowed to buy anything in excess of the government's need, and this would be in excess of the government's requirement, legally you could not purchase it.
4. The vendor offers a promotional deal where you buy \$100 worth of supplies and you receive a large bag of M&Ms. There are two concerns here. First, under appropriations law we don't buy food except in rare (pre-approved) cases, therefore the government does not have a requirement for M&Ms. (Again, any of the items provided under a promotional deal would be the property of the government.) Second, while the Government ethics rules do allow the acceptance of nominal gifts, under DOL's purchasing system, we would like to ensure all our actions are at the highest levels of “public trust,” and accepting gift from vendors for our personal use or consumption would not help us maintain that standard. Therefore, we recommend a different approach, instead of receiving the free bag of M&Ms, you should request the contractor provide discount to the government, equal to the value of M&Ms, or substitute an item the Government could use instead of the candy.
5. The vendor offers a promotional deal: you buy \$2500 worth of supplies, they include an iPod Nano. If your office has a valid requirement for an iPod Nano you could factor this into your procurement decision. The Nano would become government property. If your office did not have a valid requirement for the Nano, you should seek a discount rather than accepting the Nano.
6. A vendor sends you one \$25 gift certificate or three \$10 gift certificates *across the year* which you use for personal items (rather than buying items for the office). In either case, you have exceeded the Government's “gift” limits, and have fallen into the area of “bribes” or “kickbacks.” It is your responsibility to understand the ethics rules and not violate them; and, the easiest way to avoid problems is not to take gifts from vendors for your personal use.

If you have specific questions concerning procurement rules we have many resources to assist you: your management, the procurement policy office, the procurement law staff, the ethics advisor, and the appropriations law experts. If you have an issue you and your managers would like advice on, feel free to send me an e-mail and I will try to ensure it gets to the best person to answer your question. (If your question has wide spread application I may send the response out to a larger distribution).

Thank you,


Valerie L. Veatch
 Director, Office of Acquisition Management Services
 Department of Labor
 Phone: 202-693-7245
 Room: S-1519B

Posted: March 2010



DEC 23 2008

MEMORANDUM FOR AGENCY HEADS

FROM: PATRICK PIZZELLA 
Assistant Secretary for Administration and Management,
Chief Acquisition Officer

SUBJECT: Avoiding Unauthorized Commitments

Agencies are reminded that an unauthorized commitment occurs whenever a contractor is directed or allowed to perform services or deliver goods by a government employee who does not have the procurement authority to authorize such performance. This can occur when someone who does not have procurement authority gives direction to a contractor to perform. However, more often unauthorized commitments occur when a contractor—

- is allowed to begin performance prior to the start date of their contract;
- is allowed to perform beyond their contract's expiration date; or
- performs work that is not within the contract's statement of work.

Unauthorized commitments must be ratified in accordance with the Department of Labor Acquisition Regulation 2901.602-3, Ratification of Unauthorized Commitments. The process for approving a ratification takes significantly more time than the authorized procurement process. In addition, the contractor that performed the services or delivered the goods experiences a significant delay in receiving payment.

To prevent premature contractor performance or lapses in contract coverage, agencies should ensure that their designated contracting officer technical representatives (COTRs) have adequate internal management controls in place to—

- ensure that contractors do not begin performance until the date specified in the contract;
- initiate procurement actions well in advance to extend contract coverage prior to the contract expiration; and,
- compete or obtain sole source approval from a contracting officer for requirements not within the contractor's statement of work.

It is requested that this reminder be shared with your program managers and staff. If you have any questions, please have your staff contact Valerie Veatch, Director, Office of Acquisition Management Services, at (202) 693-7245 or by e-mail at Veatch.Valerie@dol.gov.

Your cooperation is appreciated.

cc: Administrative Officers
Contracting Officers