

CHAPTER 4

Procurement Ethics and Acquisition Oversight

OVERVIEW

“Always do right. This will gratify some people and astonish the rest.”

— Mark Twain

Members of the acquisition team work closely together to satisfy the customer's requirement. Each member depends on the others to achieve the objectives. Ethics must permeate the relationships, including the relationship with your industry partners: the suppliers and contractors. Maintaining professional business practices among all parties will ensure adherence to ethical standards of conduct. This is, indeed, what is expected of us by the American citizens, whom you represent. You must maintain that credibility with the public.

Learning Objectives

Given choices, explain the critical need for all parties involved in procurement business to reflect the highest standards of integrity and ethical behavior. Specifically, upon completion of this chapter, you should be able to:

- 4.1 EXPLAIN standards of conduct and ethical principles that apply to procurement decisions.
- 4.2 EXPLAIN the rules and applicability of the Procurement Integrity Act.
- 4.3 RECOGNIZE actions to avoid fraud, waste, and abuse.
- 4.4 DEFINE the missions of the organizations responsible for oversight of the acquisition process.
- 4.5 DESCRIBE the impact of these oversight organizations on the acquisition process.
- 4.6 RECOGNIZE a common ethical issue as it applies to the contracting professional.
- 4.7 DESCRIBE ethical values and an ethical decision-making plan.

STANDARDS OF CONDUCT AND ETHICAL PRINCIPLES

Many professions establish a “code of ethics” or a “code of professional responsibility” to set members’ ethical standards. Generally, such codes establish standards of acceptable behavior without regard to the member’s own personal or cultural values. In some instances, a member’s deviation from accepted standards of behavior may result in exclusion from the profession, such as disbarment of an attorney for a serious breach of professional responsibility.

The government has established such standards of conduct both by regulation and by statute. These standards apply to you and to the contractor employees you will deal with in the business environment. Your relationship with the contractor and their employees must be above reproach at all times.

Most of the statutory guidelines appear in Titles 5, 10, 18, and 41 of the United States Code. The Office of Government Ethics has established standards of conduct for all government employees, which are found in Title 5 of the Code of Federal Regulations, §2635. Acquisition regulations provide additional guidance. Where necessary, individual agencies have authority to issue supplemental regulations. In general, ethical standards address:

- criminal bribery and graft;
- receipt of gratuities by government employees;
- financial and other personal conflicts of interest;
- certain outside activities of government employees;
- dual employment;
- prosecution of claims against the government;
- former employees' dealing with the government on matters that were in their agencies at the time of government employment;
- retired regular military officers' selling to the Department of Defense;
- contracting with government employees; and
- organizational conflicts of interest.

You are required to acquaint yourself with these guidelines. Within agencies, officials are designated to inform and assist you in these matters. You should consult these officials when a question arises to avoid embarrassment from honest but mistaken actions, and to protect the government from potential conflicts.

Government business must be conducted in a manner above reproach and with complete impartiality. The official conduct of government personnel must be such that they would have no reluctance in making a full public disclosure of their actions. It is essential that all agency personnel observe proper standards of conduct in the discharge of their official duties, especially those duties involved in acquisition programs.

Standards of Ethical Conduct for Employees of the Executive Branch

Because of their importance in acquisition programs, you should be familiar with the following principles of ethical conduct found at 5 CFR 2635:

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, laws, and ethical principles above private gain.
2. Employees must not hold financial interests that conflict with the conscientious performance of duty.
3. Employees must not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.
4. An employee must not, except pursuant to such reasonable expectations as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees must put forth honest effort in the performance of their duties.
6. Employees must make no unauthorized commitments or promises of any kind purporting to bind the government.
7. Employees must not use public office for private gain.
8. Employees must act impartially and not give preferential treatment to any private organization or individual.
9. Employees must protect and conserve federal property and must not use it for other than authorized activities.
10. Employees must not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.
11. Employees must disclose waste, fraud, abuse, and corruption to appropriate authorities.

12. Employees must satisfy in good faith their obligations as citizens, including all just financial obligations, especially those — such as federal, state, and local taxes — that are imposed by law.
13. Employees must adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, gender, national origin, age, or disability.
14. Employees must endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to Executive Order 12674 and 5 CFR 2635.

These 14 principles set a very high standard for government employees. It is important for us to understand each one of the principles. You must live by these standards of conduct each day while performing your jobs.

Those in government are not the only ones who have an established code of ethical behavior. Almost all professional organizations have similar guidelines. Sometimes members of professional organizations are expelled from membership if there is evidence to substantiate their violation of the code of ethics. An example is the legal profession. An attorney may be discredited, and his ability to practice law can be taken away if he is found to be unethical. Government personnel may also suffer adverse actions and penalties for unethical behavior.

Loyalty to the Constitution, Laws, and Ethical Principles — 1st Principle

The first principle calls you to be loyal to moral principles and to country. Although you have customers, supervisors, and managers to serve, your ultimate loyalty must be to integrity, ethical behavior, duty, and country. You are responsible to the American people at whose pleasure you serve because you are entrusted with authority to make decisions on behalf of the government.

You should always be aware of your duty as agents of the American people, sworn to uphold laws, act fairly, spend wisely, and be above reproach. You must exhibit allegiance to your country and abide by the Constitution, laws, and regulations. You must never act in such a way as to appear to be unethical. You have, no doubt, heard the phrase, “Perception is reality.” If American citizens doubt your adherence to integrity and ethical behavior, as well as to upholding all laws, your loyalty will be questioned and you lose their trust.

Having the trust of the American people is your fiduciary responsibility. You are an agent of the government with authority to spend tax dollars. Your behavior must be beyond reproach.

Don't Use Position for Personal Gain — 2nd, 3^d, and 10th Principles

Sometimes, because of your position, you are exposed to information that you cannot disclose because others might use the information unfairly. For example, you might see the prices proposed by all competing companies seeking a contract with the government. If you disclosed the price offered by one company to a competing company, there would be an unfair competitive advantage to the one with more knowledge. Certainly, you must not take a personal gain in unethical disclosure of information. You cannot use any information you learn while performing your job to make a private profit in some other situation.

Be Fair, Don't Grant Favors to Anyone — 4th, 6th, 7th, and 8th Principles

These principles charge us to be absolutely fair in making decisions. You must not make judgments that discriminate unfairly with one contractor over another, and you must not give preference to any contractor or family member when making contracting decisions. You must not make decisions that bring personal gain. If there is any doubt about your objectivity in making a decision, you must withdraw from the situation and allow someone else, who is not perceived in any way to be biased, to be the decision-maker. This is to avoid any conflict of interest. A conflict of interest might be perceived if you could have divided loyalties. An example of a conflict of interest might be choosing among companies when awarding a contract while a family member is employed by one of the potential awardees. You must avoid being viewed as favoring the company for whom a family member works. You must not make decisions based on what's in it for you personally.

Earn Your Pay — 5th and 9th Principles

You should be a good steward of the time and resources you spend on the job. These principles remind you to be conscientious at work and to be diligent in executing your responsibilities. You are asked to give your best efforts on the job, to be innovative, and seek more efficient ways of performing. You should always be conscious of the costs associated with your tasks, both the expenditure of human resources as well as of the costs of buying supplies and services for your customers.

Expose Corruption — 11th Principle

The eleventh principle is about exposing corruption. It is your duty. You have no choice in the matter. You are asked to report for investigation any suspected fraud, waste, or abuse in the workplace.

Be Law-Abiding Citizens — 12th and 13th Principles

These principles are a reminder to be a law-abiding citizen in your private life as well as in your position of public service. You are to fulfill your obligations outside of work and at the office.

Avoid Appearances of Unethical Behavior — 14th Principle

You must avoid even the appearance of a violation of ethics in all you do on the job.

Definitions

To ensure understanding of concepts, it is wise to review definitions of some terms often discussed in the context of ethical or unethical behavior.

- **Fiduciary relationship.** A relationship founded on trust or confidence reposed by one person in the integrity and fidelity of another. As agents of the government, contracting officers are entrusted to make decisions for the good of the country and to spend money wisely and fairly.
- **Collusion.** A secret agreement or cooperation especially for an illegal or deceitful purpose. Example: A contracting officer offers to sole-source a contract to a company if they will give him or her a job upon retirement from the government; or the awards given will create the job you will eventually get after you retire.
- **Kickback.** A payment back to the buyer by the seller of a portion of the purchase price or to a public official in order to induce the purchase or to influence future business transactions. Also known as a payoff, payola, cut, illegal compensation, illegal fee.
- **Bribe.** A gift of money or of something of value given to influence the conduct of the receiver. Example: The contractor offered the quality assurance representative a Rolex watch if he would not report nonconforming products to the contracting officer.

- **Conflict of interest.** A clash of loyalties. Serving two different masters, divided loyalties, clash of interests, dilemma, compromising situation. Example: A contract specialist is overseeing a contract with a company where his wife works. The contractor is not complying with the contract. If the contract is lost due to poor performance, the company may be harmed and his wife may lose her job. The contract specialist recommends to the contracting officer that the company be given more time or chances to correct problems or that certain requirements should be relaxed.
- **Fraud.** A generic term embracing all means that human ingenuity can devise and that are resorted to by one individual to get advantage over another by false suggestions or by suppression of the truth, and includes all surprise, trick, cunning, concealment, and any unfair way by which another is cheated.
- **Waste.** Waste is the extravagant, careless, or needless expenditure of government funds, or the consumption of government property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.
- **Abuse.** Abuse is the intentional or improper use of government resources.

Standards of Conduct for Contractors

Contractors must abide by the standards of conduct as established by statute and regulation when doing business with the government. For non-commercial item contracts that are expected to exceed \$5 million, are performed entirely within the United States, and where the performance period is 120 days or more, contractors must have a written code of business ethics and conduct within 30 days after contract award, unless the contracting officer establishes a longer time period. (FAR 3.1004 and 52.203-13) Violations could result in contractors being subjected to criminal, civil, administrative, and contractual remedies.

PROCUREMENT INTEGRITY

While these principles and other specific standards of conduct apply to all government employees, certain special considerations, such as the Procure-

ment Integrity Act (Section 27 of the Office of Federal Procurement Policy Act (OFPP), 41 United States Code (USC) 423), are applicable only to those involved in the procurement process. Procurement integrity is addressed in FAR 3.104. The prohibitions are set out in FAR 3.104-3.

Definitions

FAR 3.104-1 defines terms necessary to understand the restrictions of the Procurement Integrity Act.

Contractor bid or proposal information means any of the following information submitted to a federal agency as part of or in connection with a bid or proposal to enter into a federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- cost or pricing data;
- indirect costs and direct labor rates;
- proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation;
- information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation; and
- information marked as “restricted data” in accordance with FAR 52.215-1.

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-federal sources by a federal agency using appropriated funds.

An official is:

- an officer, as defined in 5 USC 2104;
- an employee, as defined in 5 USC 2105;
- a member of the uniformed services, as defined in 5 USC 2101(3); or
- a special government employee, as defined in 18 USC 202.

Participating personally and substantially in a federal agency procurement means active and significant involvement of an official in any of the following activities directly related to that procurement:

- drafting, reviewing, or approving the requirements document for the procurement;
- preparing or developing the solicitation;
- evaluating bids or proposals, or selecting a source;
- negotiating price or terms and conditions of the contract; and
- reviewing and approving the award of the contract.

Participating personally means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

Participating substantially means that the employee's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be *substantial* even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. A series of peripheral involvements may be insubstantial, whereas the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures does not constitute substantial participation in a procurement.

Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in:

- agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;
- performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular pro-

curement, notwithstanding that such effort subsequently may be incorporated into a particular procurement;

- clerical functions supporting the conduct of a particular procurement; and
- procurements conducted under the procedures of OMB Circular A-76, management studies, preparation on in-house cost estimates, preparation of most efficient organization analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection information is defined in FAR 2.101 as any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into a federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- bid prices submitted in response to an agency invitation for bids (IFB) or lists of those bid prices before bid opening;
- proposed costs or prices submitted in response to an agency solicitation or lists of those proposed costs or prices;
- source selection plans;
- technical evaluation plans;
- technical evaluations of proposals;
- cost or price evaluations of proposals;
- competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract;
- rankings of bids, proposals, or competitors;
- reports and evaluations of source selection panels, boards, or advisory councils; and
- other information marked as “Source Selection Information — See FAR 2.101 and 3.104” based on a case-by-case determination by the head of the agency or the contracting officer that its disclosure would

jeopardize the integrity or successful completion of the federal agency procurement to which the information relates.

Figure 4-1 summarizes the provisions of the Procurement Integrity Act.

Figure 4-1
Procurement Integrity Act Provisions

Title	Applies to	Prohibition	Penalties for Violation
Procurement Information			
Prohibition on disclosing procurement information	- Present and former officials of the U.S. - Persons who are acting on behalf of the U.S. with respect to a procurement who, by virtue of their office, employment, or relationship have or had access to information.	Knowingly disclosing contractor bid or proposal information prior to award of a contract to which the information relates.	41 USC 423(e) provides for both criminal and civil penalties for violation of the prohibitions regarding procurement information. It also provides for administrative action in the event of a violation.
Prohibition on obtaining procurement information	Everyone not otherwise authorized by law.	Knowingly obtaining contractor bid or proposal information prior to contract award to which the information relates.	Criminal Penalty: Imprisonment up to five years, fined as set out in 18 USC, or both. Civil Penalty: Up to \$50,000 (individual) or \$500,000 (organization) for each violation plus twice the amount of compensation received or offered for the violation.

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Title	Applies to	Prohibition	Penalties for Violation
Employment Issues			
Actions required of agency officials contacted by offerors regarding non-federal employment	Any agency official who participated personally and substantially in a federal agency procurement for a contract in excess of the simplified acquisition threshold.	Must promptly report the contact in writing to supervisor and agency ethics official and either: ■ reject possibility of non-federal employment; or ■ disqualify self from substantial and personal involvement in procurement until bidder/offeree is no longer a bidder/offeree or discussions have ended without agreement for employment.	The civil and administrative penalties discussed above for procurement information violations are also applicable to employment issues.

Title	Applies to	Prohibition	Penalties for Violation
Prohibition on former official's acceptance of compensation from contractor	Former official of a federal agency who, in a procurement in excess of \$10 million: ■ served as procuring contracting officer, source selection authority, member of source selection evaluation board, or chief of the financial or technical evaluation team; ■ served as program manager, deputy program manager, or administrative contracting officer; ■ personally made a decision (of an amount in excess of \$10 million) to: — award a contract, subcontract, modification, or task or delivery order; — establish overhead or other rates; — approve issuance of contract payment(s); or — pay or settle claim.	May not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor for a period of <i>one</i> year. However, employee may work for another division or affiliate of the contractor as long as it does not produce like products or services.	The civil penalties and administrative actions discussed above for violations regarding procurement information are also applicable to violations of the prohibition on former employee's acceptance of compensation from a contractor.

ACTIONS TO FIGHT FRAUD, WASTE, AND ABUSE

As the world's largest purchaser of goods and services, the federal government has a significant responsibility to the American taxpayers to avoid fraud, waste, and abuse. Procurement personnel have historically played an important role in detecting and reporting fraud to the appropriate authorities. Reporting fraud is never an option but always the obligation of the federal employee. The failure to report such activities is itself an ethical violation.

Criminal Remedies for Fraud

Contractors that commit fraud against the government subject themselves to a vast array of criminal, civil, contractual, and/or administrative remedies under statutes, and regulations. In addition, it is the government's policy to only contract with contractors that have a sufficient record of integrity and business ethics. Contractors that cheat the government can be deemed "non-responsible" and can receive adverse past performance scores that will be entered into contractor performance databases. This will make it highly unlikely they will receive future awards when past performance is used as an evaluation factor in the procurement.

Preventing Fraud

You must be vigilant in prevention, detection, investigation, and sanctions. These are countermeasures against fraud, waste, and abuse. Report any questionable behavior to your supervisor and consult with your ethics advisor in the legal office as a first course of action. Only then, and upon their advice, would you report any questionable conduct to one of the investigative organizations listed below:

- Federal Bureau of Investigation;
- Inspector General;
- Department of Justice; or
- Government Accountability Office.

Those within DoD should also consider contacting the following:

- Defense Contract Investigative Service;

- Criminal Investigation Division;
- Naval Criminal Investigation Services; and/or
- Office of Special Investigation.

Indicators of Fraud by Contractors

The indicators listed below may suggest that the contractor may be engaging in fraud. If you suspect a contractor may be committing fraud, do not personally initiate an investigation — refer the matter to the appropriate investigative body.

1. **Unauthorized product substitution.** The term product substitution generally refers to attempts by contractors to deliver to the government goods and services that do not conform to contract requirements, without informing the government of the deficiency, while seeking reimbursement based on alleged delivery of conforming products or services.
2. **Errors in cost reporting.** One of the most common abuses found in the procurement system is cost mischarging. This is due in large part to the fact that most high-dollar government research and development and production contracts are awarded as cost-type contracts. Mischarging can occur in a number of situations, with a variety of results. It can involve charging labor hours from one contract to another, charging at higher-than-allowed rates, charging to indirect accounts those charges that should be direct or vice versa, as well as other schemes.
3. **Potential defective pricing.** In the 1950s and 1960s, GAO discovered numerous instances of “overpricing” by government contractors on negotiated contracts. That is, costs quoted to the government as those that would be incurred by the contractor in performing the work were found to be higher than the actual expenditures. Consequently, Congress passed the Truth in Negotiations Act (TINA), which requires submission of complete and current cost and pricing data to the government during pre-award negotiations for all contracts valued at more than \$650,000 (FAR 15.403-4). This ensures that the government has the information necessary to determine the reasonableness of the contractor’s proposal price. TINA also provides government access to contractor records for purposes of assessing the costs of the

contract. When a contractor's data submission is "defective," TINA permits the government to reduce contract payments by the amount attributable to the defective data.

4. **Errors in progress payment requests.** Progress payments are payments made as work progresses under a contract, based on the costs incurred, the percentage of work accomplished, or the attainment of a particular stage of completion. Fraud in progress payments occurs when a contractor submits a progress payment request based on falsified direct labor charges, on material costs for items not actually purchased, or on a falsified certification of a stage of completion attained or work accomplished.
5. **Errors in fast payment statements.** Fast pay is a special procedure that allows certain contractors to be paid for contract work prior to receipt and inspection of the product by the government. In general, the fast pay procedure is limited to contract orders that do not exceed \$30,000 (FAR 13.402). The fast payment procedures set forth in FAR 13.4 are designed to reduce delivery times and to improve relations with certain suppliers by expediting contract payments. The procedure provides for payment based on the contractor's submission of an invoice. The invoice is a representation by the contractor that the supplies have been delivered to a post office, common carrier, or point of first receipt. Fraud in fast pay occurs when a contractor submits an invoice requesting payment for supplies that have not been shipped or delivered to the government. If the supplies are not in transit or actually delivered at the time the contractor submits the invoice, a criminal violation has occurred because the contractor submitted a false statement. It does not matter if the supplies are subsequently delivered to the government.
6. **Other indicators.** Anytime you find frequent errors in documents submitted to the government, you might consider whether someone is attempting to misrepresent the truth. When you often find errors in vouchers for reimbursement of labor costs, you should question whether the contractor is disciplined sufficiently to report correctly. You should always analyze such reports and ask questions of the preparer. If you learn that the contractor is charging overhead rates that are higher than approved rates, the result would be overpayments for labor and materials. You can always consult with an auditor, such as your agency inspector general (IG) or the Defense Contract Audit Agency, when you have questions.

ACQUISITION OVERSIGHT

The oversight process is in place to keep us focused on doing the correct job for the taxpayers. The oversight process is found at all levels of the government. The organizations performing acquisition oversight influence policy and procedures relating to procurement of goods and services for the government and the conduct of government employees.

Government Accountability Office

GAO is the investigative arm of Congress. GAO is informally referred to as the watchdog for the Congress. GAO employs economists, attorneys, accountants, information technology specialists, auditors, people with business and acquisition backgrounds, and other disciplines, so they can make recommendations on a wide range of topics. GAO performs several functions directly related to the acquisition process.

- **Oversight and investigations.** GAO audits and investigates agency programs and management, focusing on fraud and mismanagement. GAO looks at how the government is spending public money, giving attention to the government programs and activities using the money. GAO works to see how the government is implementing directives, policies, regulations, and their recommendations. To report fraud, waste, or abuse to GAO, use fraudNET on GAO's homepage:

<http://www.gao.gov/fraudnet/fraudnet.htm>

- **Protests.** The Comptroller General is authorized to recommend decisions to agency heads on protests that are filed against the government with GAO.
- **Work products.** GAO provides a lot of different work products depending on the need and issue. GAO performs audits, program reviews, evaluations, analyses, renders legal opinions, conducts investigations, and provides other services to Congress. GAO ultimately provides advice and recommendations to Congress on these issues so Congress can make decisions on oversight, policy, and funding.
- **Reports.** Reports are called "blue books." Blue books are open to the public and can be found on the Internet at:

<http://www.gao.gov>

Most reports are done at the request of members of Congress — often committee chairpersons and ranking minority members. The agency responds, as possible, to requests from individual members. For example, a Senator might ask GAO to examine fraud in the Food Stamp Program. Or a house committee might request a study of a weapon system that's over budget and behind schedule. Other program reviews are required by law or are self-initiated under the agency's own authority.

Reports usually contain results in brief, background, description of issue, conclusions, and recommendations.

- **Testimony.** Testimony requires directly and personally reporting to Congress on a significant and or high-visibility issue when called.
- **Letters.** Letters are generated for limited interest issues and when no recommendations are included.
- **Legal opinions.** GAO is available to assist in drafting legislation and reviewing legislative proposals before Congress. In addition, GAO reviews and reports to Congress on proposed rescissions and deferrals of government funds.
- **Financial data.** GAO ensures Congress has current, accurate, and complete financial management data. The agency prescribes accounting principles and standards for the executive branch, advises federal agencies on fiscal policies and procedures, and issues standards for auditing and evaluating government programs.
- **Resolution of protests.** During competitive acquisitions, dissatisfied offerors or bidders can send protests to the contracting officer, agency, or GAO when they believe they have not been given fair treatment. GAO hears and reviews the issues and issues a decision.

With virtually the entire federal government subject to its review, the agency issues a steady stream of products: in 2004 alone, it published 2,700 recommendation and testified 217 times before dozens of congressional committees.

Core Values

GAO's activities are designed to ensure the executive branch's accountability to Congress under the Constitution and the government's accountability to

the American people. GAO is dedicated to good government through its commitment to the core values of accountability, integrity, and reliability.

Accountability

Accountability describes the nature of GAO's work as it assists Congress in overseeing federal programs and operations to assure accountability to the American people. GAO's analysts, auditors, lawyers, economists, information technology specialists, and other multidisciplinary professionals seek to enhance the economy, efficiency, effectiveness, and credibility of the federal government both in fact and in the eyes of the American people.

Integrity

Integrity describes the high standards GAO sets for themselves in the conduct of their work. The agency operates under strict professional standards of review. All numbers and statements of fact presented in GAO work are thoroughly checked and referenced. GAO takes a professional, objective, fact-based, nonpartisan, non-ideological, fair, and balanced approach to all of its activities. Integrity is the foundation of reputation, and GAO's approach to their work assures both.

Reliability

Reliability describes GAO's goal for how their work is viewed by Congress and the American public. It produces high quality reports, testimony, briefings, legal opinions, and other products and services that are timely, accurate, useful, clear, and candid.

Availability of GAO Products

GAO posts full-text files on its website daily, often within 24 hours of when a report or testimony is publicly released. All unclassified GAO reports are available to the public. However, congressional requesters of GAO work are allowed to restrict reports for up to 30 days before public release.

To keep up-to-date on the latest GAO study, you may want to check out "Today's Reports," a daily list (title and document number) of issued reports, testimony, and correspondence. GAO updates this information on its website every afternoon. Correspondence, however, is not available in electronic format. You can also arrange to have "Today's Reports" e-mailed to you free of charge.

The Month in Review provides the best overall picture of the agency's work. Each month, subscribers receive a free comprehensive listing of released re-

ports and testimony, which are briefly summarized and grouped under subject headings, correspondence and legal publications. An order form is included. GAO also publishes an Annual Index, which lists all reports, testimony, and correspondence issued during the past fiscal year (October 1 to September 30). Both the Month in Review and the Annual Index are available on GAO's website.

Copies of reports and testimony are available from the GAO's Document Distribution Center, 202-512-6000. For more information, contact the Office of Public Affairs, 202-512-4800.

Agency Inspectors General

The mission of agency inspectors general is to help agencies effectively carry out their responsibilities and protect the public interest by bringing about positive change in the performance, accountability, and integrity of agency programs and operations. Agency inspectors general work to continuously improve the economy, efficiency, and effectiveness of agency programs and ensure the integrity of agency operations. Agency IGs also investigate reports of fraud, waste, and mismanagement pursuant to the authority of the Inspector General Act of 1978. An IG may investigate allegations of violations of ethics rules and laws as well as other federal statutes and regulations. Where it is necessary and appropriate, allegations of ethics violations are generally forwarded to the agency inspector general to look into the matter. IGs may also perform independent financial, program, and compliance audits; criminal and civil investigations; and reviews of proposed legislation and regulations.

Most agencies have an inspector general either by statute or by the agency's own administrative determination.

DoD Inspector General

Unlike GAO, which supports Congress in meeting its Constitutional responsibilities, the DoD Inspector General (DoD IG) was established to support DoD to help improve the performance and accountability of the operations of that agency. The DoD IG:

- serves as an independent and objective official in DoD responsible for conducting, supervising, monitoring, and initiating audits and investigations relating to DoD programs and operations;

- provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations; and
- keeps the Secretary of Defense and Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for, and progress of, corrective action.

The DoD IG regularly issues reports or audits and recommendations. Reporting is its ultimate work product. Upon the issuance of an IG report, the agency and the IG negotiate a corrective action plan. The IG tracks the accomplishment of the corrective actions and conducts a follow-up inspection. There are a number of reasons why the IG may audit an area.

The DoD IG is organized as follows:

- Assistant Inspector General for Auditing
- Assistant Inspector General for Investigations
- Director for Administration and Information Management
- Director for Departmental Inquiries
- Director for Intelligence Review

Each military department (i.e., Army, Navy, Air Force) has its own office with qualified personnel to conduct reviews and investigations. Internal procedures and guidance are also available for each Service.

Department of Justice

United States Department of Justice (DOJ) receives all procurement fraud investigations since it will ultimately handle any subsequent prosecution against the contractor. The Criminal Division of the Justice Department has a Government Fraud Branch within the Criminal Division Fraud Section for the specific purpose of monitoring prosecutions for fraud against the govern-

ment. Prosecutions are the responsibility of Assistant United States Attorneys.

IMPACT OF OVERSIGHT ORGANIZATIONS ON THE ACQUISITION PROCESS

Through its oversight and ultimate work products regarding government acquisitions and related matters, the organizations responsible for acquisition oversight not only shape and make recommendations on particular acquisitions, policies, and processes coming to their attention, but they effectively mold and influence the overall and larger federal acquisition system and workplace by addressing so many varied, significant, critical, and high-interest issues.

Compliance with Recommendations

Compliance with GAO or other acquisition oversight organizations is not mandated or required by law. In other words, when GAO issues a decision on an issue, the decision is actually a recommendation, which is advisory. The agency involved may use its discretion to decide which, if any, of the recommendations it will follow.

Practically speaking, the recommendations are generally followed by the agency. In fact, GAO reports that over the past 4 years, agencies implemented 83% of its recommendations. If the recommendations are not implemented, that information is ultimately reported to Congress. If an agency decides not to comply with the recommendations, that noncompliance will be reported up the chain of command. Agencies listen when GAO “talks.”

RECOGNIZE A COMMON ETHICAL ISSUE

We will now study a common ethical problem that can confront contracting personnel. Although ethics rules are based on common sense, we will see that the mere application of common sense will not always provide the correct answer. The bottom line is that we must understand the specific rules to answer many common problems.

Question

A contracting officer is about to award a contract to ABC Corporation. The contracting officer owns stock in ABC. Can the contracting officer award to ABC?

Answer

The answer is NO. The stock ownership would present a financial conflict of interest for the contracting officer. The contracting officer would have to disclose the stock ownership to his or her supervisor and sell the stock to alleviate the conflict of interest. Once sold, the contracting officer could maintain his or her involvement in the contracting action. If the contracting officer was not willing to sell the stock, ethics rules would require the contracting officer's written withdrawal from any further involvement in the contracting action. See 5 CFR 2635.402 and, for DoD, JER Chapter 5, 18 USC 208(a).

Exception: If the stock is publicly traded and has a fair market value of \$15,000 or less, the contracting officer could keep the stock and continue involvement with the contracting action. However, the contracting officer would still have to fully disclose the ABC stock holding to his or her contracting supervisor prior to awarding the contract. This exception is found at 5 CFR 2640.202(a).

Actual Scenarios

The scenario just discussed involves a hypothetical problem. However, each year, hundreds of government employees commit ethical violations and damage their careers. The following are actual cases of contracting employees who were prosecuted for violating the rules. Examples such as these are regularly posted on government ethics websites.

A notable investigation into the conduct of former Air Force executive, Darlene Druyun, revealed that she had favored The Boeing Company in multiple contract negotiations as a result of employment and other favors provided to her by Boeing. Investigators found that Druyun violated federal conflict-of-interest regulations by paying higher prices than she believed were appropriate to curry favor with the company as her future employer, providing another contractor's proprietary pricing data to Boeing during contract negotiations, and awarding a \$4 billion contract to Boeing when an objective selection authority may have awarded to another contractor. After a lengthy

investigation, Druyun pled guilty and was sentenced on October 1, 2004 to nine months in federal prison and seven months in home confinement. She also received three years of probation and was fined \$5,000.

In another example, an investigation by the GSA Office of Inspector General resulted in the conviction of a former GSA employee for accepting a gratuity while working as a contracting officer's assistant. Based on a tip to the IG Hotline concerning alleged contract mischarges, investigators found that the former employee had accepted a gratuity from the contractor for \$17,000 worth of renovations to her personal residence. In return, the employee steered contract work to a specific company. The former employee was charged with accepting a gratuity. She pled guilty in U.S. District Court and was sentenced on September 8, 2001, to 2 years supervised probation, 30 days imprisonment, and 60 days home detention with electronic monitoring. She was ordered to pay \$17,000 in restitution. The employee resigned from GSA while under investigation.

The general rule is that you are not allowed to accept a gift from a prohibited source. A prohibited source is a contractor or potential contractor. There is an exception to this gift rule that would allow any government agent to accept a gift having a fair market value of \$20 or less per occasion. If multiple gifts are accepted within the calendar year from the same source, no more than \$50 per calendar year is allowed. The government agent cannot solicit a gift from a source, nor accept cash as a gift. The contractor cannot expect an action or favor in exchange for the gift. See 18 USC 201(c) and, for DoD, JER Chapter 5.

ETHICAL VALUES AND DECISION-MAKING PLAN

Nearly everyone in government service will make job-related decisions, some more important than others. But all decisions should be made with ethics in mind. Sometimes, it will require little effort, and other times, complex, thoughtful deliberation. Bear in mind, there will always be consequences, whether big or small; so you should approach such dilemmas with care.

The JER, Chapter 12, Ethical Conduct, gives DoD its abiding ethical values (Section 5) and an ethical decision-making plan (Section 6) to use in official decision-making. See Exhibit 4-1.

Ethical Values

Ethics are standards of action based on values. Values are our core beliefs, such as duty, honor, and integrity, that motivate our attitudes and actions. These values are derived from the JER in DoD; however, they should characterize the work of all contracting professionals.

Figure 4-1 JER Ethical Values	
Honesty	...Truthful, straightforward, and candid. Don't mislead or deceive...
Integrity	...Courage of convictions; acting with honor and independent judgment and impartiality....
Loyalty	...Faithfulness but not blind obedience...
Accountability	...Accepting responsibility and considering consequences; avoiding the appearance of impropriety...
Fairness	...Open-mindedness and impartiality; equal and tolerant treatment of others...
Caring	...Compassion, kindness and courtesy...
Respect	...Treating people with dignity and honor privacy...
Promise Keeping	...Keeping commitments and promises...
Responsible Citizenship	...Exercising discretion, pursuing justice...
Pursuit of Excellence	...Setting the example of excellence, being all you can be...

Ethical Decision-Making Plan

The point of an ethical decision-making plan is to have clear guidance to work through ethical decisions. Many ethical decision-making plans or models have been generated. One example is the JER, which gives a 10-step plan for making ethical decisions. Although this plan was developed for DoD, the steps are generic enough to be applied to any ethical decision.

1. Define the problem — state the issue and be willing to modify as needed.
2. Identify the goal(s) — short and long-term best possible results.

3. List applicable law or regulation — must take into account relevant laws and regulations before you can make an ethical decision.
4. List the ethical values at stake — makes you think about things (problems, goals, stakeholders) you may not have considered.
5. Name all the stakeholders — who's likely to be affected?
6. Gather additional information — don't hurry; take the time to get all the needed information.
7. State all feasible solutions — another time to think of the stakeholders and what might happen.
8. Eliminate unethical options — not all solutions are ethical; don't sacrifice the long-term problems of an unethical decision for the short term.
9. Rank remaining solutions — according to how close they bring you to your goal and to solve the problem.
10. Commit to and implement the best ethical solution — make the right decision or someone else might make an unethical one.

SUMMARY

Ethical issues can arise during an employee's career. You cannot be expected to memorize all the rules. Nevertheless, you should be familiar with the standards of ethical conduct and various ethics websites that can help us understand the rules. You can expect to receive periodic training on integrity and ethics from legal representatives in your organization. In addition, you should seek the advice of your supervisor and agency ethics counselor whenever you are unsure of the proper response. You have a duty to report procurement fraud to the appropriate investigative agency. With this knowledge, you can pinpoint ethical problems and seek the correct outcome or response through an ethical decision-making plan.

CHAPTER REFERENCES

Air Force Ethics Office:

<http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/JA/lo/lojaf/ethics/>

Army Office of General Counsel and Fiscal Law Section:
<http://www.hqda.army.mil/ogc/EandF.htm>

Department of Justice: <http://www.usdoj.gov/jmd/ethics/>

Government Contract Law Textbook, 16th Edition (1999), Chapter 8-Fraud

Navy Ethics Office: <http://www.ethics.navy.mil/>

U.S. Office of Government Ethics: <http://www.usoge.gov>

EXHIBIT 4-1
JOINT ETHICS REGULATION
DOD 5500.7-R

CHAPTER 12 — ETHICAL CONDUCT

Section 5. Ethical Values.

(a) **General.** Ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Not all values are ethical values (integrity is; happiness is not). Ethical values relate to what is right and wrong, and thus take precedence over non ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties.

(b) **Primary Ethical Values—**

(1) **Honesty.** Being truthful, straightforward and candid are aspects of honesty.

- (i) Truthfulness is required. Deceptions are easily uncovered and usually are. Lies erode credibility and undermine public confidence. Untruths told for seemingly altruistic reasons (to prevent hurt feelings, to promote good will, etc.) are nonetheless resented by the recipients.
- (ii) Straightforwardness adds frankness to truthfulness and is usually necessary to promote public confidence and to ensure effective, efficient conduct of Federal Government operations. Truths that are presented in such a way as to lead recipients to confusion, misinterpretation or inaccurate conclusions are not productive. Such indirect deceptions can promote ill will and erode openness, especially when there is an expectation of frankness.
- (iii) Candor is the forthright offering of unrequested information. It is necessary in accordance with the gravity of the situation and the nature of the relationships. Candor is required when a reasonable person would feel betrayed if the information were withheld. In some circumstances, silence is dishonest, yet in other circumstances, disclosing information would be wrong and perhaps unlawful.

- (2) **Integrity.** Being faithful to one's convictions is part of integrity. Following principles, acting with honor, maintaining independent judgment and performing duties with impartiality help to maintain integrity and avoid conflicts of interest and hypocrisy.
- (3) **Loyalty.** There are many synonyms for loyalty: fidelity, faithfulness, allegiance, devotion and fealty. Loyalty is the bond that holds the nation and the Federal Government together and the balm against dissension and conflict. It is not blind obedience or unquestioning acceptance of the status quo. Loyalty requires careful balancing among various interests, values and institutions in the interest of harmony and cohesion.
- (4) **Accountability.** DoD employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety because appearances affect public confidence. Accountability promotes careful, well thought out decision making and limits thoughtless action.
- (5) **Fairness.** Open mindedness and impartiality are important aspects of fairness. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious or biased. Individuals must be treated equally and with tolerance.
- (6) **Caring.** Compassion is an essential element of good government. Courtesy and kindness, both to those we serve and to those we work with, help to ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.
- (7) **Respect.** To treat people with dignity, to honor privacy and to allow self determination are critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.
- (8) **Promise keeping.** No government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the

importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

(9) **Responsible citizenship.** It is the civil duty of every citizen, and especially DoD employees, to exercise discretion. Public servants are expected to engage personal judgment in the performance of official duties within the limits of their authority so that the will of the people is respected in accordance with democratic principals. Just must be pursued and injustice must be challenged through accepted means.

(10) **Pursuit of excellence.** In public service, competence is only the starting point. DoD employees are expected to set an example of superior diligence and commitment. They are expected to be all they can be and to strive beyond mediocrity.

Section 6. Ethical Decision-Making.

(a) **General.** Virtually everyone in Federal Government service makes job related decisions. Some of these decisions may seem more important than others, but all should be preceded by a consideration of ethical ramifications. In some cases, the ethical element of decision making will go no further than to consciously acknowledge that there are no significant ethical ramifications to consider. In other cases, in depth ethical analysis is called for in addition to application of ethics rules. The following plan for decision making ensures careful review of ethical consequences when there are alternative solutions that seem proper under existing laws and regulations. DoD employees should consider incorporating the following plan in official decision-making.

(b) Ethical Decision-Making Plan.

(1) **Define the problem.** Proceed from a general statement of the problem to specific statements of the decisions to be made. As you take the following steps, such as identifying goals and naming stakeholders new problems or needed decisions may become apparent. Be willing to add these to your problem list as you go.

(2) **Identify the goal(s).** Proceed from a general statement of an end result both long term and short term. Be prepared to add to this list as you take the following steps. Goals are something to strive toward. They are statements of the best possible results. The very best is not

always achieved for everyone. Many problems do not allow for “win/win” outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.

- (3) **List applicable law or regulations.** Laws and regulations are basic constraints within which official decisions are made. Until all relevant laws and regulations are considered, ethical decision making is impossible. Although it is conceivable that an ethical decision could violate a law or regulation, such circumstances are rare.
- (4) **List the ethical values at stake.** Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when stress of the problem may cause you to forget.
- (5) **Name all the stakeholders.** A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support, both at work and at home. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.
- (6) **Gather additional information.** This step is frequently overlooked. The stress from the problem urges speedy solutions. However, hasty decisions usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.
- (7) **State all feasible solutions.** By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and “brain storming.” As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.
- (8) **Eliminate unethical options.** There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions

will not be worth the short term advantages. Eliminate the unethical solutions.

- (9) **Rank remaining solutions.** Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or “gut feelings” to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solutions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.
- (10) **Commit to and implement the best ethical solution.** Commitment and implementation are vital to the ethical decision making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution follows. If the right decision is not implemented, the door is left wide open for others to implement unethical solutions.

