DEPARTMENT OF THE ARMY
U.S. ARMY MANEUVER SUPPORT CENTER OF EXCELLENCE
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AMIM-LDH-S (360-61a)

19 MAY 2023

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Command Policy 10, Security for Procurement of Sensitive Information and Interacting with Contractors in the Workplace

1. REFERENCES.

a. Department of Defense (DOD) Regulation 5500.7-R, Joint Ethics Regulation, 17 November 2011 (with Changes 1-7).

b. Federal Acquisition Regulation (FAR), Part 3, Improper Business Practices and Personal Conflicts of Interest.

c. Procurement Integrity Act 41 USC 2102

d. Trade Secrets Act (18 U.S.C. §1905)

e. Federal Advisory Committee Act (5 U.S.C. App.2) "FACA"

f. The Contract Attorney's Deskbook, Chapter 17

2. GENERAL.

a. This policy letter establishes an installation-wide standard policy for protecting procurement sensitive 'information such as budget information and source selection information. It also specifies installation policy for processing requests from contractors and vendors to visit the installation for meetings, presentations, and product demonstrations.

b. All commanders and directors will ensure that personnel comply with DOD Reg. 5500.7-R and FAR, Part 3, in all interactions with contractors and commercial firms doing, or seeking to do, business with the government. Inside information, as defined in ACA, Contacts with Industry, shall be safeguarded and not released without the prior approval of a contracting officer or coordination with an Installation ethics official. Vendors will not be invited nor permitted to demonstrate or display equipment on the installation until after a proper vendor demonstration agreement has been executed with the firm by a contracting officer. No unauthorized commitments, nor promises of any kind, shall be made by government personnel in violation of DOD Reg. 5500.7-R.

3. POLICIES AND PROCEDURES.

a. Information Protection Requirement.

(1) Government employees have access to information that may be extremely valuable to contractors. Although Army employees are familiar with protecting information of military value and understand Privacy Act concerns about releasing information about individuals, the need to protect day-to-day For Official Use Only (FOUO) information, which may be available to contractors in the workplace, is not always readily apparent.

(2) Employee's Responsibility. All government employees have a responsibility to ensure that government contracts are awarded fairly and impartially. Part of this responsibility is to ensure that one contractor does not have an unfair advantage over another due to an intentional or accidental release of inside information. Information such as budget projections, cost estimates, and program planning documents are FOUO and an improper release to one contractor confers a tremendous competitive advantage to the firm receiving such information and could potentially subject the releaser to criminal prosecution. In addition to undermining the fairness of the procurement process the release of such information can also directly injure the agency. Examples of problems resulting from an improper release of CUI information include:

(a) The government's negotiating position is undermined. (Imagine going to a car dealer if they knew in advance how much you planned to pay for the car and that you had to have this car today to keep your job.)

(b) A "losing" contractor could protest an award because the winning contractor had an unfair advantage. This type of protest is very serious and could cause a significant delay in the completion of the procurement.

(c) In the case of a commercial activity under commercial activity review, the in-house workforce could be disadvantaged or unfairly displaced.

(3) Security Measures. Avoid letting contractors have information that could have a negative impact on any future contracts. Examples of security measures include:

(a) Use common sense; treat budget data as CUI. Ensure that all procurement sensitive information including budget information is appropriately marked as CUI.

(b) Ensure sensitive material is received on fax machines that are accessible only to government employees with a legitimate need for the information.

(c) Locate government employees physically together so ongoing work on desktops is not easily observed. In addition, ensure that contractor employees are grouped together, rather than scattered throughout the government workforce.

(d) Ensure that the office local area network (LAN) distinguishes access of government and contractor employees. Don't use default organization/directorate distribution lists for forwarding CUI information as these lists often times include contractors as well as personnel who don't have a need to know.

(e) Only distribute CUI information to those personnel who legitimately need access. Do not post CUI information on the shared drives if contractors have access.

(f) Have contractors clearly identify themselves as such, for example, a photo ID badge with employee and company name.

(g) Instruct government employees on reporting any inappropriate actions of contractor personnel such as data access violations or rummaging through a government employees' desk, trashcan, or files (hard copy or electronic).

b. Market Surveys and Product Information. Technical personnel may seek information on products from vendors, e.g. commercial brochures and pamphlets on current products, but care must be taken not to let the contact turn into an information exchange. Personnel must ensure that no procurement sensitive or other nonpublic information is accidentally disclosed during such communications.

c. Rules for Interacting with Contractors in the Workplace.

(1) Matters Involving Ongoing Procurements. Only government contracting officers are authorized to discuss ongoing procurement actions with non-Federal entities. Requiring activities and technical personnel may not contact competing contractors without prior approval of a contracting officer. Likewise, all requests for information regarding procurements, unsolicited proposals and offers of vendor demonstrations or displays should be referred to the local Directorate of Contracting or the Mission and Installation Contracting Command (MICC) Customer Support Element Liaison located in the Directorate of Resource Management.

(2) Meetings with Firms Holding Current Contracts Related to Installation Requirements. When meeting with current government contractors, non-contracting

personnel should not discuss specific problems involving task orders or basic contract issues without the prior permission of the assigned contracting officer. All personnel will refer contractors attempting to raise such issues to the contract's contracting officer's representative (COR) for coordination with the contracting officer.

(3) General Rules for Scheduling Meetings. Meetings shall be scheduled in advance and may be held in government space assigned to the director/command requesting or agreeing to the meeting. Meetings may include presentations by the contractor, but government personnel must avoid requesting equipment (including software) demonstrations without prior negotiation of a vendor demonstration agreement by a contracting officer. Demonstrations shall not involve equipment, devices or systems currently being procured by or for the installation. All unsolicited proposals will be referred to a contracting officer. Government personnel are prohibited from seeking or receiving free design services or any other type of no cost support from the vendor community such as development of specifications. If such services are required, they must be procured by contract. Personnel creating an unauthorized commitment may be held personally liable for the value of the goods or services.

(4) Vendor Displays and Demonstrations. Vendors may not display or demonstrate equipment, devices, or systems on the installation in the absence of an executed vendor demonstration/display agreement. In the processing of a request for a vendor demonstration/display agreement, a sponsoring organization must be identified. It is the responsibility of the sponsoring organization to contact the appropriate contracting office and provide the contracting officer all pertinent information. The agreement shall be negotiated and executed by the contracting officer. Vendor displays shall be restricted to the location approved by the Command. Vendor display agreements must specifically identify the location where the display shall occur. It is the responsibility of the sponsoring organization to coordinate requests for use of government space for vendor displays with the Installation Chief of Staff. No vendor display agreement may be executed prior to approval of the proposed location by the Chief of Staff.

d. Requirement to Review Policy Guidance. Commanders and directors shall ensure that personnel are familiar with this policy guidance and with the content of ACA guides listed in paragraph 1. Personnel receiving requests for information from contractors or who have questions regarding meetings with contractors or vendor displays should coordinate questions with the installation contracting office, MICC Customer Support Element Liaison, or the Staff Judge Advocate.

4. SUPERSESSION. This policy supersedes memorandum, HQ MSCoE, ATZT-CG, 6 February 2019, subject as above, and is effective until superseded or rescinded.

5. PROPONENT. The proponent for this command policy is the Office of the Staff Judge Advocate at (573) 563-0624.

CHRISTOPHER G. BECK
Major General, USA
Commanding

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