



Standardization

Policy for Contractor Visits with General Officers and Senior Executive Officers

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This Instruction provides the policies and procedures for arranging and monitoring official visits to general officers and other personnel in the United States Transportation Command (USTRANSCOM).

SUMMARY OF REVISIONS

NOTE: Since this directive has been revised in its entirety, asterisks will not be used to identify revised material.

1. General:

1.1. Visits of contractors to general officers and other personnel in USTRANSCOM are a matter of command interest and must receive every consideration to ensure visit requirements are appropriate and managed in a courteous and professional manner. Everyone who interacts with contractors has ethical responsibilities they must consider when facilitating or arranging contractor visits.

1.2. Contractor visits to USTRANSCOM are governed by the requirements in this Instruction. All USTRANSCOM organizations and personnel will comply with the below rules when responding to requests for contractor visits.

2. Responsibilities:

2.1. Generating activities (i.e., the J Staff) are the primary sponsors for contractor visits. Command Section appointments must normally be sponsored by a Directorate OPR for coordinating contractor visits to general/flag officers and SESs. All other contractor visits will be handled by the USTRANSCOM element that is the recipient of the visit.

2.2. Executive Officers and all OPRs responsible for working a contractor visit will coordinate with TCJA and TCAQ to ensure the subject matter of the proposed briefing or content discussed during the visit does not adversely affect ongoing source selections, result in a perception of preferential treatment or favoritism, or otherwise adversely impact the Command's acquisition integrity.

2.3. The Executive Officer or assigned OPR is responsible for ensuring that contractor personnel visiting with a general/flag officer or SES are informed prior to the start of the visit that appointed Contracting Officers are the only individuals authorized to enter into and administer contracts on behalf of the Government.

3. Rules for Contractor Visits:

3.1. Frequently, former DoD employees (either retired or separated, military or civilian) will gain employment with contractors who seek to do business with USTRANSCOM. Typically, these former employees will seek an audience with Directors or above on the USTRANSCOM staff to establish relationships or to facilitate an exchange

of information. USTRANSCOM personnel will adhere to the ethical considerations in paragraphs 3 through 6 when a visit request is received.

3.2. Personal Visits. A retired DoD official visiting USTRANSCOM activities for purely personal reasons should be accorded billeting, escort, and other privileges and courtesies authorized by law and regulation and deemed appropriate commensurate with the retiree's status.

3.3. Representing Contractors. A retired DoD official visiting USTRANSCOM activities to conduct business on behalf of any Department of Defense contractor is not entitled to special treatment, privileges or access to government personnel or facilities based on his or her retiree status. In such cases, the individual must be treated in the same manner as any similar representative who is not a retired DoD official. The guiding principle should be to avoid even the appearance of impropriety, favoritism, or unfair advantage.

3.4. Representing Other Non-Federal Entities. Retired DoD officials visiting USTRANSCOM activities on behalf of a non-federal entity (NFE) other than a contractor (e.g., a professional association) must be treated in the same manner as any similar representative who is not a retired senior official. An NFE represented by a retired DoD official may be provided support for its events only in accordance with the requirements of the Joint Ethics Regulation (JER), DoD 5500.7R, and only to the extent that support would be provided to a similar NFE represented by an individual who is not a retired senior official.

3.5. Social Events. Retired DoD officials may be encountered at social events, conferences, or other events. Conversations during these encounters may turn to business matters between USTRANSCOM and the contractors or other NFEs which these retired senior officials represent. USTRANSCOM personnel must ensure that during these conversations they do not provide any information that would not be provided to other individuals representing similar contractors or NFEs who are not retired DoD officials.

4. Contractor Visits Involving a Potential Violation of the Procurement Integrity Act:

4.1. To ensure compliance with 41 U.S.C. Section 423 of the Procurement Integrity Act, the following shall be adhered to:

4.1.1. During the conduct of any federal agency procurement of property or services, competing contractors are prohibited, prior to the award of a contract, from knowingly soliciting or obtaining (directly or indirectly) any proprietary or source selection information regarding such procurement from any officer or employee of an agency.

4.1.2. On receipt of a request for a contractor visit, the Executive Officer, or other USTRANSCOM point of contact will take action to notify TCAQ. TCAQ will research ongoing source selections and other procurement actions to ascertain whether the subject contractor visit might have a negative impact on the action. In particular, any request from a participating contractor in a source selection to visit or brief the source selection authority (SSA) or technical advisors to the source selection should be postponed until after the award of the contract.

4.1.3. Refer all requests for contractor visits involving a potential violation of the Procurement Integrity Act to TCJA for a legal recommendation. TCJA will then work with the appropriate Contracting Officer on each individual request to determine the best approach to protect the government's interests.

5. Contractor Visits Involving Other Potential Violations of Post-Government Employment Restrictions.

5.1. The Joint Ethics Regulation (JER), DoD 5500.7-R (paragraph 9-900), states that current DoD employees shall not knowingly deal, on behalf of the government, with former DoD employees, if the employee's participation in the transaction would violate any statute or DoD directive, regulation, or policy. Thus, Federal employees should not deal with a former employee if they believe that doing so would cause that person to violate any of the following rules:

5.1.1. Lifetime Representation Ban (18 U.S.C. Section 207(a)(1)). Military officers and federal civilian employees who participate personally and substantially in a government contract or other particular matter are prohibited for life from representing the contractor (or any other third party) before any federal agency, in connection with that contract or matter. The ban does not apply to enlisted personnel.

5.1.2. Two-year Representation Ban (18 U.S.C. Section 207(a)(2)). Military officers and federal civilian employees who have a contract or other particular matter under their official responsibility during their last year in the government may not, for two years, represent the contractor (or any other third party) before any federal agency, in connection with that contract or matter.

5.1.3. Ban on Representation during Terminal Leave (18 U.S.C. Sections 203 and 205). Military officers and federal civilian employees are prohibited from representing any person, company, or organization before any other federal agency. This ban does not apply to enlisted personnel.

6. Rules and Prohibitions Against Disclosure of Government Information

6.1. Government personnel must safeguard proprietary, Privacy Act, and other sensitive and non-public information. Release of certain types of information to unauthorized contractor personnel to analyze, create charts and graphs, enter into databases, etc., could violate the Procurement Integrity Act, the Trade Secrets Act, the Privacy Act, or other laws or regulations, and could subject the releaser to civil and/or criminal penalties and adverse personnel actions.

6.2. Prohibition Against Giving Preferential Treatment (5 CFR 2635.101(b)(8)). Federal employees are prohibited from giving preferential treatment to any private individual or company. Giving all interested contractors the same information at the same time is the preferred (and the legally most prudent) method of disseminating information.

6.3. Prohibition Against Disclosure of Non-Public Information (5 CFR 2635.703(a)). Employees will not disclose non-public information to further the private interests of any individual, company, or organization. Non-public information means information the employee gains by reason of federal employment, and which he or she knows (or reasonably should know) has not been made available to the general public. All government contracts that authorize contractor employees to access Privacy Act material must contain the appropriate Privacy Act restriction clauses. (See FAR Part 24).

6.4. Prohibition Against Disclosure of Information Related to a Source Selection. Employees will not disclose contractor bid or proposal information, or source selection information. (See 41 U.S.C. 423(a), (f)(1), (f)(2) and Federal Acquisition Regulation (FAR) 3.104-4(a).) **Note:** This is information related to a specific source selection.

6.5. Prohibition Against Disclosure of Advance Procurement Information. According to the FAR, a high level of business security must be maintained in order to preserve the integrity of the acquisition process (FAR 5.401(a)). According to FAR 5.401(b) and (c), employees participating in the acquisition process may not disclose:

6.5.1. Information on plans that would provide undue or discriminatory advantage to private or personal interests.

6.5.2. Information received in confidence from an offeror.

6.5.3. Information otherwise requiring protection under DoD 5400.7-R, DoD Freedom of Information Act and the Privacy Act as described in FAR 5.401(b)(3).

6.5.4. Information pertaining to internal agency communications; for example, technical reviews, market research reports, acquisition strategy documents, etc.

6.6. Prohibition Against Release of Information about a Procurement before Solicitation is Issued. Information concerning proposed acquisitions will not be released outside the government before solicitation except for pre-solicitation notices in accordance with FAR 14.205 or FAR 36.213-2, long-range acquisition estimates in accordance with FAR 5.404, or synopses in accordance with FAR 5.201. Within the government, such information will be restricted to those having a legitimate interest in the information. Releases of information will be made to all prospective offerors as nearly as possible at the same time, so one prospective offeror is not given an unfair advantage over another (FAR 14.211(a)).

6.6.1. Sensitive Government Meetings. Government personnel must exercise great care against unintentional disclosure of information protected by the Procurement Integrity Act and the Trade Secrets Act to a contractor

employee. Government personnel must be aware of the identity and status of all participants at any meeting in which sensitive DoD information will be discussed and must ensure only contractor personnel who have a legitimate contractual purpose for attending and who have signed the appropriate nondisclosure agreement are allowed to attend the meeting.

6.6.2. Non-disclosure Agreements. Government personnel must ensure that all contractor employees who are granted access to another contractor's information in furtherance of a contract task must sign the appropriate non-disclosure agreements with the affected company. The contracting officer shall obtain copies of these agreements and ensure they are properly executed per FAR 9.505-4(b).

6.7. Organizational Conflicts of Interest. Government personnel should not request or allow contractor employees to participate in developing government requirements or evaluate offers in response to a government requirement unless they have a contractual requirement to do so. Contractor personnel participation in such activities could result in their employer being prohibited from competing for that requirement in any resultant source selection. (*See FAR 9.5*).

6.8. Trade Secrets Act. The Trade Secrets Act states that, unless authorized by law, an employee may not publish or disclose any information that comes to him or her in the course of employment or official duties and that concerns or relates to the trade secrets, processes, operations, style of work, or apparatus; or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association (18 U.S.C. Section 1905).

6.9. Intelligence. Releasing intelligence to contractors must be in compliance with DCID 1/7 (1), Security Controls on the Dissemination of Intelligence Information.

6.10. Classified Material. If a visiting contractor proposes discussion of any classified material, the hosting office will take action to obtain and process a visit authorization letter (VAL) from the contractor's security office in accordance with DoD 5220.22-M, National Industrial Security Program Operating Manual Supplement. Direct any questions concerning this requirement to TCJ3-FP.

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Attachments:

1. Glossary of References, Abbreviations, Acronyms, and Terms

Attachment 1

GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

Section A – References

Federal Acquisition Regulation (FAR)

Title 18 U.S.C., Chapter 11, Section 203, *Compensation to Members of Congress, Officers, and others in Matters Affecting the Government*

Title 18 U.S.C., Chapter 11, Section 205, *Activities of Officers and Employees in Claims Against and other Matters Affecting the Government*

Title 18 U.S.C., Chapter 11, Section 207, *Restrictions on Former Officers, Employees and Elected Officials of the Executive and Legislative Branches*

Title 18 U.S.C., Chapter 11, Section 1905, *Disclosure of Confidential Information Generally*

Title 41 U.S.C., Chapter 7, Section 423, *Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Section Information*

5 CFR 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*

DoD 5220.22-M, *National Industrial Security Program Operating Manual Supplement*

DoD 5400.7-R, *DoD Freedom of Information Act Program*

DoD 5500.7-R, *Joint Ethics Regulation*

Section B - Abbreviations and Acronyms

DoD—Department of Defense

FAR—Federal Acquisition Regulation

JER—Joint Ethics Regulation

OPR—Office of Primary Responsibility

NFE—Non-Federal Entity

SES—Senior Executive Service

SSA—Source Selection Authority

TCAQ—USTRANSCOM Directorate of Acquisition

TCCC-E—USTRANSCOM Commander's Executive Officer

TCJA—USTRANSCOM Staff Judge Advocate

USTRANSCOM—United States Transportation Command

U.S.C.—United States Code

Section C - Terms

Not Used