

A man in a dark blue judge's robe stands behind a desk. He is looking directly at the camera with a serious expression. On the desk in front of him are several books and a wooden gavel. The background is a warm, brownish-gold color.

Chapter 1

Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity

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Key Points

- Ethics are vitally important, particularly in the contingency environment because of the cultural differences.
- Strictly avoid any conflict of interest or apparent conflict of interest.
- You must not forget your duty is to the United States (US) government, Department of Defense (DoD), and your customer.
- You may not accept any gift because of your official position and you may not accept any gift from a contractor, a potential contractor, or a partnering contractor.
- There are very limited exceptions to the gift prohibition. Unavoidable violations must be documented and reported to counsel immediately.
- DoD will not tolerate any form of human trafficking or forced labor by any of its contractors or contractor personnel.
- If you are ever in doubt, contact your legal advisor and notify your chain of command.

Introduction

The need to maintain high ethical standards and procurement integrity is always important for DoD contracting officers. However, this requirement can be even more challenging in a deployed environment where the expectations and business habits of the suppliers with whom you will be dealing may be affected by varying cultural, political, and economic conditions.

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The pressures to meet mission requirements can be even more intense in a contingency contracting environment. If you are not vigilant, these pressures can cloud your judgment as to the *right* way to conduct yourself and represent the US and DoD. Two of your biggest responsibilities as a contingency contracting officer (CCO) are as follows:

- Effectively communicate your customer's need to the supplier.
- Establish a solid working relationship with your customer.
Remember that CCOs and contractors may not be able to work as one team. In many respects, the US government's interests may be directly opposed to a contractor's interests. Therefore, as a protector of US government interests, you must not forget that your duty is to the US government and the DoD.

Most suppliers in the contingency environment, particularly where American forces have an established presence, understand the ethics- and integrity-related restrictions placed on DoD contracting officers; however, you may encounter situations in which you are offered souvenirs to take home with you after your tour, or even a welcome gift upon your arrival, in a possible attempt to gain favor. In these cases, you need to clearly understand what you can and cannot accept.

Tenets of Government Service²

The 14 tenets of government service are as follows:

- You must place loyalty to the US Constitution and the law above your private gain.
- You shall not hold financial interests that conflict with your official duties.

- You shall not engage in financial transactions using nonpublic information or permit the release of such information for any other improper use.
- You shall not solicit or accept any gift from any person or entity seeking official action or doing business with the DoD or elements within the DoD.
- You must put forth honest efforts in the performance of your duties.
- You shall not knowingly make unauthorized commitments or promises that bind the government without authority.
- You shall not use public office for private gain.
- You shall act impartially and not give preferential treatment to any person or entity.
- You must protect and conserve government property and use it only for authorized purposes.
- You shall not engage in or seek outside employment or activities that conflict with your official duties.
- You shall disclose fraud, waste, abuse, and corruption to appropriate authorities.
- You must act in good faith in satisfying the obligations of citizenship, including paying just financial obligations and taxes.
- You shall adhere to all laws that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or disability.
- You shall endeavor to avoid any actions that create the appearance of unethical conduct, as seen from the perspective of a reasonable person.

Conflict of Interest



One of the most basic ethical principles is that you may not take official action on a matter that may impact your personal interests. Thus, the ethics rule provides that an employee is prohibited (by statute) from participating personally and substantially in an official capacity in any particular matter in which he or she (or any person whose interests are imputed to him or her) has a financial interest if the matter will have a direct and predictable effect on that interest. In other words:

- If you are officially involved in a matter that could affect your own financial interests, or those of someone you are related to or associated with, you must remove yourself from acting on that matter in your official capacity.
- If your official involvement creates even the appearance of a conflict of interest to a reasonable person, you should remove yourself from that matter or, at a minimum, seek legal advice.
- It is one of the very few areas of the law where you do not have to be *guilty* to find yourself in trouble—even looking guilty can land you in trouble—appearances count.
- When conflicts of interest arise, there are conventional ways to handle them, with advice from your ethics counselor.
 - Disqualification or recusal (stepping aside from decisions that could affect your financial interests)
 - Waivers of disqualification (continuing your involvement, but only with full disclosure and permission from agency officials)
 - Divestiture (removing the financial interest that creates the conflict, which often involves selling the financial interest at issue)

Gift Prohibition



The overarching rule about accepting gifts from contractor employees is provided via the *Federal Acquisition Regulation (FAR) 3.101-2*. CCOs are reminded that “the general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships.” (*FAR 3.101-1*)

Federal employees are prohibited from soliciting or accepting gifts offered *because of the employee’s official position* or gifts offered by a *prohibited source*. A gift or gratuity may be anything of monetary value and includes things such as discounts, favors, entertainment, hospitality, loans, and so forth. (*5 Code of Federal Regulations [CFR] 2635.203(b) and FAR 3.101-2*) A prohibited source can be a company doing business or seeking to do business with the federal government. This includes contractors, even partnering contractors. (*5 CFR 2635.203(d)*)

There are exceptions to the above rules regarding gift acceptance that are relevant for you as a CCO (others exist but these will be most applicable):

- You may accept gifts from a prohibited source with a face value up to a total of \$50 per calendar year, but any gifts on a single occasion must not exceed \$20 in value. Additional details and hypothetical scenarios can be found in *5 CFR 2635.204(a)*. Further restrictions may be implemented by deployed commanders.
- When in a foreign area you “may accept food, refreshments, or entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event” if all of the following conditions are met: (*5 CFR 2635.204(i)(1)-(4)*)
 - The market value, converted to US dollars, does not exceed the per diem rate for the foreign area specified in the Department of State’s maximum per diem allowances for foreign areas. (http://aoprals.state.gov/web920/per_diem.asp)

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- There is participation in the meeting or event by non-US citizens or by representatives of foreign governments or other foreign entities.
- Attendance at the meeting or event is part of the employee's official duties.
- The gift of meals, refreshments, or entertainment is from a person other than a foreign government.

The *Anti-Kickback Act of 1986* “prohibits actual or attempted kickback payments or offers to provide kickbacks, which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind, to include obtaining or rewarding favorable treatment. “Any person who knowingly and willfully engages in conduct prohibited [by the *Anti-Kickback Act*] shall be imprisoned for not more than 10 years or shall be subject to a fine ... or both.” (*41 United States Code [USC] §54; Article 92, 134* of the Uniform Code of Military Justice [UCMJ]; US Department of Justice *Criminal Resource Manual*)

You must never solicit gifts of any type, regardless of their nature or dollar value. You must understand that a bribe occurs when someone “directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official.” Giving or accepting a bribe is a crime that is punishable by a fine, imprisonment, or both. (*18 USC §201; Article 92, 134 UCMJ*)

Reporting of Gifts



If a gratuity is delivered to you (for example, left on your desk or car), then you must make every attempt to return it. If a contractor insists on giving you a gratuity, you must do one of the following:

- Attempt to persuade them to take back the gratuity. Explain to the contractor your inability to accept gratuities as a US procurement official, and the repercussions you could face if you did accept the gratuity.
- Pay the fair market value of the item.
- As a last resort, if the contractor appears to be offended, accept the gratuity, and contact legal counsel immediately.
 - Once accepted, safeguard the gratuity. If necessary, notify the finance officer to put it in a safe. Ask for a receipt from the finance officer.
 - Turn the gratuity over to counsel.
 - Write a memorandum for the record (MFR)—include circumstances and approximate value of item. Also, mention in the MFR that legal advice was obtained.
- If perishable (for example, food or flowers), give the gift to a charity or share it within the office.

If ever in any doubt about what you should or should not accept, consult your organization's legal office or ethics advisor and your chain of command.

Combat Trafficking in Persons (CTIP)



As a CCO, you may encounter situations in which local vendors are willing to supply *escorts* as a form of gratuity, kickback, bribery, or compensation. Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” (*48 CFR 22.1702*)

There are specific implications for the CCO. *FAR Subpart 22.17, Defense Federal Acquisition Regulation Supplement (DFARS) Subpart*

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222.17, and *DFARS Procedures Guidance and Information (PGI) 222.17*, provide policy and guidance applicable to all contracts. If faced with a situation involving sex trafficking, CCOs should immediately inform his or her chain of command and legal counsel. CCOs should take immediate action to impose suitable remedies, including termination, on contractors that support or promote trafficking or fail to monitor the conduct of their employees and subcontractors with regard to trafficking in persons.

The US government does not tolerate any form of trafficking in persons or forced labor. DoD *PGI 222.1703(ii)* states, “trafficking includes involuntary servitude and debt bondage. These trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations.”

It is the contractor’s responsibility to know of its employees’ activities, and to comply with CTIP US policy. *FAR 52.222-50, Combat Trafficking in Persons*, is required in all solicitations and contracts.

Identifying Fraud Indicators³



Fraud is the misrepresentation of a material fact with the intent to deceive. Fraud includes:

- Deliberate omission of material facts.
- False or misleading representation.

Fraud can be a single act or combination of circumstances, can be the suppression of truth or the suggestion of what is false, or may occur by direct falsehood, by innuendo, by speech, by silence, by word of mouth, or by look or gesture.

Contracting officers play a vital role in the identification, prevention, and reporting of fraud. Contracting officers have an obligation to report any suspected violations or wrongdoing. Contracting officers should

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provide basic fraud awareness, identification, prevention, and reporting training to contracting officer's representatives (COR), quality assurance evaluators (QAE), field ordering officers, and governmentwide commercial



purchase card holders during their initial and refresher training classes. Training our representatives on the front lines will increase the number of trained *sensors* to detect and prevent fraud.

Common Fraud Offenses

- Bribery, kickbacks, and gratuities.
- Making or using a false statement.
- Falsely making or altering a document.
- Making or presenting a false claim.
- Companies conducting business under several names.
- Collusive bidding (bid rigging).
- Conflicts of interest.
- Conspiracy to defraud.
- Disclosure of proprietary data or source selection sensitive information.
- Insufficient delivery of contracted items.
- Intentional failure to meet specifications. Note that not all failures to meet contract specifications constitute a crime. A CCO should discuss any suspected contract fraud with legal support. For example, a contractor uses one coat of paint instead of two; uses watered loads of concrete; installs inferior memory chips in computers; uses inferior automobile replacement parts.

Common Fraud Schemes

- Rigged specifications.

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- The requesting organization tailors specifications to meet the qualifications of one particular company, supplier, or product.
- Unvarying patterns in small purchases.
 - Unvarying patterns in small purchases may indicate that a buyer is awarding contracts to favored vendors without soliciting competitive offers from additional firms. The buyer may also be entering fictitious competitive quotations and consistently awarding to a favored vendor at inflated prices.
- Splitting large requirements.
 - Contracting or requiring activity personnel may be splitting requirements into small purchase orders to avoid the scrutiny required for larger dollar value contracts.
- Duplicate payment.
 - A vendor submits the original voucher for payment, while the purchaser, acting alone or in collusion with the vendor, collects for the same item from the cash fund.
- Overstatement of shipment weights.
 - Carriers may be defrauding the government by artificially inflating the weight of a shipment. Possible methods include:
 - Fuel Bumping. Getting the tare weight with less than a full tank of gas and the gross weight with a full tank.
 - Double Billing on Small Shipments (500 to 3,000 pounds). Getting two tare weight tickets for the truck, picking up the two small shipments, getting two gross weight tickets for the combined weight of both shipments, and then submitting both tickets for payment.
 - False Weights. Paying the weight master to provide a false weight ticket or having a supply of blank or false weight tickets. If blank tickets are used, the weight will usually be handwritten rather than printed.

- Emotional bribery.
 - A government contracting specialist and a vendor representative become friends. The vendor uses his friendship to unduly influence the CCO.

Situations Enabling Fraud

- Failure to properly monitor contract performance.
- No acquisition checks and balances.
 - Persons controlling both the ordering and receiving functions can arrange for diversion of supplies or services for their own benefit.
- Poorly defined specifications.
- Poor physical security.
- Receipt of items that cannot be traced to a valid requisition could have been ordered for personal use or resale with the resulting paperwork destroyed.

Common Fraud Indicators

- Frequent complaints by users of supplies or services.
- Government estimates and contract award prices are consistently very close.



- Contractor complaints of late payment by the agency.
- Abnormal increase in consumption of fuel or supply items.
- Failure to deobligate cancelled purchase orders.
- Excessive number of photocopies of invoices in file.
 - Alter approved invoices with *whiteout* or similar correction fluid and copy the invoice, destroying the original. The attempt may be to manipulate the audit trail or commit the fraud via the alteration. Secure external and internal copies for comparison.

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- Duplicate copies of supplier invoices could also indicate the possibility of multiple payments of the same invoice with the checks diverted.
- Less than adequate consideration.
 - If assets are sold or transferred for what appears to be less than adequate consideration this may indicate a sham transaction with no economic reality. Businesses exist to make a profit and anything in contravention of this goal should be questioned.

Your deployed office must have a list of contractors and vendors that have been identified as companies not to do business with due to fraudulent or performance discrepancies. Make an effort to keep this list updated.

You have an obligation to report any suspected violations or wrongdoing. You should report your suspicions to your chain of command. Some of the lead investigators or sources for reported fraud situations are Air Force Office of Special Investigations (AFOSI), Navy Criminal Investigation Service (NCIS), US Army Criminal Investigation Command (CID), Defense Contract Audit Agency (DCAA), Defense Criminal Investigative Service (DCIS), or US Army Audit Agency. You should report your suspicions through your chain of command and nearest investigative agency.

AFOSI: <http://www.osi.andrews.af.mil/units/>

NCIS: <http://www.ncis.navy.mil/locations.asp>

CID: http://www.cid.army.mil/unit_directory.html

DCAA: <http://www.dcaa.mil/>

DCIS: <http://www.dodig.mil>

DoD Fraud, Waste and Abuse Hotline:

Phone: 1-800-424-9098

E-mail: hotline@dodig.mil

Web address: www.dodig.mil/HOTLINE

Interacting with Contractor Employees

A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

As a CCO or COR who may interact with contractor employees on a daily basis, you must keep in mind that they are not government employees. The terms and conditions of the contract define the obligations of each party and the contractor's performance requirements. It is important to understand that federal and DoD standards of conduct do not apply to contractor employees. With this in mind, you must not:

- Interfere in contractor-employee relations
- Allow work outside the scope of the performance work statement
- Allow work prior to the obligation of funding
- Establish specific hours of duty or grant and deny leave requests

Additionally, CCOs may not mandate any contractor personnel actions, without specific contractual authority to do so, such as the following:

- Tell contractors who to hire or promote
- Reassign contractor employees
- Discipline contractor employees

However, DFARS 237.104, referencing 10 USC §129b, provides limited authority to acquire the personal services of expert consultants if the following conditions are met and documented in a determination and findings:

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- The duties are of a temporary or intermittent nature.
- Acquisition of the services is advantageous to the national defense.
- DoD personnel with necessary skills are not available.
- Excepted appointment cannot be obtained.
- A nonpersonal services contract is not practicable.
- Statutory authority, *5 USC 3109* and other legislation, apply.
- Any other determination required by statutes has been made.

Professional friendships are not prohibited; however, you must act impartially and show no favoritism or preferential treatment. While personal friendships are not prohibited, they may cause the appearance of a conflict of interest. Government employees cannot personally make recommendations and references for contractors, except when providing past performance information to other agencies.

Other ethical considerations with regard to contract administration are discussed in Chapter 6.

Checks and Balances

It is of paramount importance that a system to ensure checks and balances is implemented in your daily routine to fulfill your CCO obligations and to prevent an opportunity for fraudulent activity. The following are some examples of checks and balances systems to consider:

- CCOs should not be tasked by commanders to perform these duties (reference below) unless no other option is available.
 - Ordering and Receiving Goods. It is common practice to be the person who both orders and receives goods. This is not the ideal scenario, but it is the common scenario in a deployed location. Take steps to ensure that documentation, along with customer signatures and contact information, is obtained once you turn

possession over of received goods and immediately add this document to the contract file.

- **Paying Agents.** In some situations you, as a CCO, may be required to be both the CCO and the paying agent. If this becomes part of your function, make sure you track every cent spent in a logical manner (spreadsheet or log). Do this as soon as possible so that you don't waste time relying on your memory of purchased items—and file all your receipts of transactions. Ensure you reconcile your PIIN [procurement instrument identification number] log with your finance counterpart on a daily basis to avoid discrepancies.
- **QAE and COR.** You are responsible for many of the QAEs' and CORs' actions. It is important that a reporting system is in place to ensure fair and proper evaluation, and that direction is being conducted by your contract representative.

There are many other checks and balances that could be named, but the purpose of these examples is to show common sense scenarios. You have an obligation to protect the taxpayer, the warrior, and yourself. You protect the taxpayer by ensuring you use sound judgment in the spending of taxpayer dollars. You protect the warrior by providing goods, services, or awards that are sufficient for their needs. You protect yourself by having all the documentation to back up your sound judgment and acquisitions.

Notes

1. Most of the information in this chapter was taken from the Defense Acquisition University (DAU) "Contingency Contracting Refresher Module" and DAU CLM 049, "Procurement Fraud Indicators." It has been supplemented with information provided by the Office of Counsel for the Commandant of the Marine Corps and the Air Force Logistics Management Agency.
2. Information was taken from the Air Force Center of Environmental Excellence "Contracting Officer Representative's Ethics Briefing."
3. Information was taken from information produced by the Fraud Integrated Process Team and the *DoD Fraud, Waste, and Abuse Hotline* trifold brochure.

Chapter Acronyms

AFOSI – Air Force Office of Special Investigations
CCO – Contingency Contracting Officer
CID – US Army Criminal Investigation Command
COR – Contracting Officer Representative
CFR – Code of Federal Regulations
CTIP – Combat Trafficking in Persons
DAU – Defense Acquisition University
DCAA – Defense Contract Audit Agency
DCIS – Defense Criminal Investigative Service
DFARS – Defense Federal Acquisition Regulation Supplement
DoD – Department of Defense
FAR – Federal Acquisition Regulation
MFR – Memorandum for Record
NCIS – Navy Criminal Investigation Service
PIIN – Procurement Instrument Identification Number
PGI – Procedures, Guidance, and Information
QAE – Quality Assurance Evaluator
UCMJ – Uniform Code of Military Justice
US – United States
USC – United States Code