

***Acting Astutely in Government Acquisition:
Procurement Integrity, Corporate Ethics and Avoiding Fraud in Logistics***
by [Kevin Govern](#)

Abstract:

To maintain global repute for integrity, both military and civilian leaders need to keenly understand the operating environment in which they are and want to be located: they recognize legal obligations, cultural expectations and ethical dilemmas; they avoid conflict when possible; they balance the interests of various stakeholders; and finally they develop strategies for legally, morally, and ethically influencing friendly and adversarial individuals and entities.

This “executive summary” of a forthcoming paper will highlight not only domestic and international legal obligations but also guiding ethical and moral principles critical to procurement and acquisition integrity. Most common ethics and procurement integrity issues can be avoided by avoiding circumstances of public officials using their office for private gain, treating all members of the public with fairness and impartiality, and preserving the notion of public service as a public trust. Much more subtly, all involved in government procurement and acquisition must employ what business executives define as “cultural astuteness;” “[t]he ability to get out of your . . . comfort zone and navigate smoothly through the cultural nuances of your specific area of responsibility.”¹

This paper will help define the ways in which procurement officials cooperatively “move . . . goals forward in a way that is not seen as self-serving . . . through a combination of direct communication, influence, and asking other people to be [their] advocate or champion,”² in ways that comport not just with legal and ethical requirements but promote efficiency, effectiveness, and economy.

Procurement and Acquisition Integrity:

To establish a common vocabulary, the term *procurement* involves the acquisition of goods, services or works from an outside external source. When speaking of and acting consistent with *integrity*, there should be a firm adherence to a code or standard of values. Together, *procurement integrity* encompasses a range of legislation, regulations, directives, actions, and attitudes for preserving the integrity of procurement and assuring the fair treatment of bidders, offerors, contractors, and others with a legal and / or operational stake in the outcome.

Commonly accepted cornerstones of procurement integrity are to: refrain from using public office for public gain; treat all members of the public with fairness and impartiality, and; act consistent with the notion that public service is a public trust

Some [Common Ethics and Procurement Integrity Issues](#) include but are not limited to:

- Conflicts of Interest
- Financial Conflicts

¹ Connie Glaser, *Doing a good job isn't enough – 'cultural astuteness' is needed to succeed*, BUS. FIRST – LOUISVILLE (July 20, 2007) < <http://www.bizjournals.com/albany/stories/2007/10/22/smallb2.html>>.

² Id.

- Impartiality Issues
- Gifts (from / to contractors and from/to US and Foreign Government Officials)
- Procurement and Other Nonpublic Information
- Restrictions on Employment Discussions
- Seeking (post-government and concurrent outside-) Employment (with a bidder or offeror, after government)
- Accepting Compensation from a Contractor
- Post-Employment Restrictions
- Fundraising
- Letters of Recommendation

Acquisition Logistics and [Fraud, Waste and Abuse](#) (FWA):

Acquisition logistics is a multi-functional technical management discipline associated with the design, development, test, production, fielding, sustainment, and improvement modifications of cost effective systems that achieve the user's peacetime and wartime readiness requirements. In this field of technical management, fraud is a type of illegal act involving the obtaining of something of value through willful misrepresentation; a judicial or other adjudicative system beyond an auditor's professional responsibility.

Waste involves the taxpayers not receiving reasonable value for money in connection with any government funded activities due to an inappropriate act or omission by players with control over or access to government resources (e.g., executive, judicial or legislative branch employees, grantees or other recipients). Waste goes beyond fraud and abuse and most waste does not involve a violation of law; it relates primarily to mismanagement, inappropriate actions and inadequate oversight.

Abuse is the sort of behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Whether one-off instances by those who are otherwise good stewards of resources and leaders of people, or by "toxic" leaders whose *modus operandi* is such consistent practice, abusive behavior includes, but is not limited to, misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. It is notable that abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement, but inevitably is inconsistent with the morale and welfare of teams and work groups, and may well erode corporate "good will" or organizational reputation.

Preventing and remedying FWA saves valuable resources by identifying illegal, inefficient and wasteful practices. This also makes funds available for other, better uses than detection, investigation, correction, and remediation. The key to prevention, detection and reporting of FWA is recognizing early indicators; that is, conditions that allow management controls to be exploited. These early indicators often show up as minor administrative or managerial irregularities but are initial warning indicators key to prevention.

General Legal Considerations: Procurement Integrity Act ([PIA](#)) and [FAR 3.104](#) (Procurement Integrity) with the special DoD, Service and Command Regulatory Supplements

The Federal Acquisition Regulation (FAR) is a system that codifies and publishes the “uniform polices and procedures for acquisition by all executive agencies.” The FAR system consists of the primary document of the FAR, “and agency acquisition regulations that implement or supplement the FAR,” such as the Army Federal Acquisition Regulation (AFAR), the Defense Federal Acquisition Regulation (DFAR) and the Special Operations Federal Acquisition Regulation Supplement (SOFARS). Consistent across the board of these legal considerations, there exists with few exceptions or exclusions:

- A ban on disclosing procurement information ("contractor bid or proposal information" and "source selection information");
- A ban on obtaining procurement information;
- A requirement for procurement officers to report employment contacts by or with a competing contractor; and
- A 1-year ban for certain personnel on accepting compensation from the contractor.

Special Legal Considerations Abroad - Foreign Corrupt Practices Act ([FCPA](#))

Anti-bribery provisions of the FCPA prohibit any U.S. Company or person in the U.S. from “corruptly” giving “anything of value” directly or indirectly to Government Officials for the purpose of obtaining or retaining business or securing an improper advantage; in short, no bribery. The FCPA contains accounting provision that prohibit secret accounts, and requires keeping books, records and accounts in reasonable detail that accurately and fairly reflect the transactions and dispositions of the company.

The “cardinal rule” of an FCPA–compliant accounting program is documentation of expenditures. At a minimum, such programs should document every marketing expense, facilitating payment; the effect is also to discourage cash payments. FCPA-compliant programs also maintain an internal accounting system assuring that transactions are executed and assets are disposed of only in accordance with management’s authorization; recorded to meet generally accepted accounting procedures (GAAP), and include periodic audits of existing assets

Department of Defense Standards:

To protect the trust the Nation bestows upon Government employees, it is necessary that Government employees uphold the highest ethical standards. Department of Defense (DoD) employees abide by the standards of ethical principles ([Principles of Ethical Conduct](#)) and set a personal example for fellow employees in performing official duties within the highest ethical standards. Government employees fulfill the public’s trust when following the ethical standards.

The [Ethics in Government Act of 1978, October 26, 1978](#), as amended, the Office of Government Ethics implementing regulations, and the [DoD Joint Ethics Regulation DoD 5500.7-R](#) (JER) are sources of the standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosures and post-employment rules among other matters.

For uniformed service members, Congress has promulgated Exemplary Conduct Statute prescriptions and proscriptions, with a heritage that dates back to the Colonial Era rules established by John Paul Jones for the nascent Navy; as an exemplar, the Exemplary Conduct Statute for the U.S. Army, at [10 U.S.C. 3583](#), and notable for private industry partners who work with uniformed service members, the statute reads as follows:

- All commanding officers and others in authority in the Army are required—
- (1) to show in themselves a good example of virtue, honor, patriotism, and subordination;
 - (2) to be vigilant in inspecting the conduct of all persons who are placed under their command;
 - (3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and
 - (4) to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

Business Ethics Standards – the Essence of Any Business With DoD and Any Client / Customer

Every business entity should have a “Corporate Vision” that is consistent with its clients'/customers' needs and “vision,” or at least not at cross-odds with it.

Case in point, and by way of comparison, Lockheed Martin's [Vision](#) is as follows:

Lockheed Martin is the leading global security and aerospace company, solving our customers' most difficult problems through our employees' innovation, performance and unmatched integrity.

The DoD Chief Information Officer's (CIO's) [Vision](#) is:

DoD and partners securely access information and services they need at the time, place and on approved devices of their choosing.

Similarly corporate values must be lived and not just stated. Lockheed-Martin exhorts its employee team members to:

Do What's Right: Committed to the highest standards of ethical conduct in all that they do. Believe that honesty and integrity engender trust, which is the cornerstone of our business. Abide by the laws of the United States and other countries in which they do business, strive to be good citizens and take responsibility for their actions.

Respect Others: Recognize that their success as an enterprise depends on the talent, skills and expertise of their people and ability to function as a tightly integrated team. Appreciate diversity and believe that respect - for colleagues, customers, partners, and all those with whom they interact - is an essential element of all positive and productive business relationships.

- ✓ *Perform With Excellence:* Understand the importance of missions and the trust customers place in them. With this in mind, strive to excel in every aspect of our business and approach every challenge with a determination to succeed.
- ✓ Compliance with the Anti-Corruption Laws (a very specific “Do What’s Right”)
 - Conduct every international business transaction with integrity.
 - See, e.g., Lockheed-Martin’s policy on [compliance with Anti-Corruption Laws](#).
- ✓ Corporate Public-Private Partnership Ethos
 - For instance, suppliers are an integral part of Mission Success; value their support. Partnership is a critical factor to business and customers. Expect all employees to set the standard" for ethical business conduct, and, in turn, we build relationships with suppliers who commit to integrity and share values. Want suppliers to understand, foster, and mirror the ethical conduct they expect from their employees in all business challenges and transactions.
 - Expect contractors and suppliers to conduct themselves in a manner consistent with the principles of a [Code of Ethics and Business Conduct](#).
 - In addition, as may be required by the [Federal Acquisition Regulation](#) (FAR), strongly encourage the supply chain to have proactive and meaningful ethics programs established within their organizations.
 - Commitment not only to having a sound and robust Ethics & Business Conduct program within our organization, but committed to helping ensure that one exists throughout the supply chain as well.

Differing Cultural Overlays, Ethical Conduct, And Anti-Corruption:

Whether a uniformed service member, defense department civilian, or civilian contractor, those involved with government procurement have more challenges and responsibilities than meeting or exceeding published, domestic legal standards. The onus is on leaders of every level involved in procurement, whether in the US Government or corporate executives and other civilians to understand local customs. By doing so, they are better equipped to head off potential conflicts before they become conflicts.

This is part and parcel of what many would call “cultural astuteness.” Business executive Karen Benjack Glatzer defines “cultural astuteness” as “[t]he ability to get out of your . . . comfort zone and navigate smoothly through the cultural nuances of your

specific area of responsibility.” Organizational consultant Kevin Hummel asserts a critical component of “cultural astuteness” as being able to “move your goals forward in a way that is not seen as self-serving . . . through a combination of direct communication, influence, and asking other people to be your advocate or champion.”

When values collide, it is important to understand the consequences of drawing the line and standing on principle. In the tradition of “[seek first to understand, then to be understood](#),” those involved in government procurement, in advancing and enhancing integrity, should ask themselves at every step of the process:

- Is there a “meeting of the minds” on requirements, the terms of reference, technical specifications or statement of work (depending on the procurement category), including an estimate of the budget, and, most importantly, the procurement lead-time?
- Is what is being called for – or being offered – legally required?
- Is what is being called for – or being offered – ethically prudent?
- Is what is being called for – or being offered – operationally sound?
- Is what is being called for – or being offered – enhancing the organizational image and reputation?

Adapted in part from:

References:

1. Ethics in Government Act of 1978 (5 U.S.C. App. § 101 et. seq.).
2. Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.)
3. Procurement Integrity Act of 1988 as amended (formerly 41 U.S.C. §423, 51 U.S.C. §§ 2101-2107, implemented at FAR 3.104-4).
4. Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989, as amended.
5. Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635 (Office of Government Ethics Rules).
6. DOD 5500.07-R, JOINT ETHICS REGULATION (JER), 30 Aug 93. Change7, effective 17 November 2011.
7. Federal Acquisition Regulation (FAR), includes amendments thru FAC 2005-69 effective September 3, 2013.
8. 10 USC § 3583 - REQUIREMENT OF EXEMPLARY CONDUCT
9. Ethical Dilemmas Across Cultures, Ceo Middle East, September 2007, 54 et seq.
10. Connie Glaser, *Doing a good job isn't enough – 'cultural astuteness' is needed to succeed*, BUS. FIRST – LOUISVILLE (July 20, 2007).
11. Stephen Covey, *Seven Habits of Highly Effective People* (1989).