

May 7, 1999

MEMORANDUM FOR DESIGNATED AGENCY ETHICS OFFICIALS  
DEPUTY DESIGNATED AGENCY ETHICS OFFICIALS

SUBJECT: Serving as Advisors to Defense Contractors

This memorandum supersedes my memorandum of August 5, 1996, "Serving on Advisory Boards of Defense Contractors" (Attached). That memorandum responded to situations in which senior officials were asked, because of their DoD positions, to serve on advisory boards of commercial entities that did business with this Department. The memorandum cited several appropriate regulations and policies, and concluded by advising DoD employees to decline such invitations. Subsequently, that memorandum has been interpreted by some to prohibit all such service.

The underlying policy and limitations identified in the 1996 guidance have not changed. Service as an advisor or consultant to a Defense contractor has the potential to undermine the fairness of our acquisition process, and otherwise to call into question the integrity of this Department. This memorandum clarifies the application of the governing regulations to assist ethics officials to advise DoD personnel who are invited to serve as advisors to Defense contractors.

Official Capacity: Personnel who seek to serve as advisors to Defense contractors (including serving on advisory boards and user groups) in their official capacity must adhere to paragraphs 3-200 to 3-202 of DoD 5500.7-R, Joint Ethics Regulation (JER). However, since such official representation would involve a great potential for preferential treatment, improper official endorsement, improper use of official time, and improper disclosure of non-public information, it is unlikely that such official participation would ever be proper. Exceptions would include advice given pursuant to a contract, authorized by the Federal Acquisition Regulations, or approved as part of a Cooperative Research and Development Agreement.

Personal Capacity: Personnel who seek to serve as advisors to Defense contractors in their personal capacity must adhere to paragraphs 3-300 to 3-302 of the JER. Personnel may not accept a position in their personal capacity if offered to them due to their official position. Undertakings in their personal capacity also present a heightened risk that DoD personnel may inadvertently violate the standards of conduct, engage in conduct that calls into the question the impartiality or fairness of our acquisition process, or create the appearance of such violations. In some circumstances, such as serving on advisory boards of colleges and universities, or committees of professional associations, it may not be inappropriate for DoD personnel to serve as advisors to these entities, even if these entities do business, or seek to do business, with DoD.

Personnel who are invited to serve, in their personal capacity, as advisors to Defense contractors should consult with their ethics officials and be familiar with applicable restrictions, including:

- a. Personnel may not take official actions involving particular matters in which they (or any organization in which they are an officer, director, or employee) have a financial interest, if the particular matter has a direct and predictable effect on that interest. (18 U.S.C. 208, 5 C.F.R. 2635.502 and 402, JER 3-302)
- b. Personnel must be impartial in performing official duties. (5 C.F.R. 2635.502)
- c. Personnel may not use their public office for the private gain of themselves, friends, or organizations with which the employees have an employment or business relationship. (5 C.F.R. 2635.702(a))
- d. Personnel may not permit the use of their Government position, title, or authority to imply Government sanction or endorsement. (5 C.F.R. 2635.702(b) and (c), JER 2-304)
- e. Personnel may not serve on advisory boards in their personal capacities if they were invited to serve because of their official positions. (JER 3-301)

- f. Personnel may not engage in outside activities that conflict with their official duties, and, in some cases, must obtain approval prior to undertaking such outside activities. (5 C.F.R. 2635.802 and 803, JER 2-206, 3-306)
- g. Since this is an outside activity, conducted in the employee's personal capacity, no appropriated funds, use of Government resources (including personnel), or official time may be expended. (5 C.F.R. 2635.704 and 705)
- h. Personnel may not use nonpublic information, nor allow its improper use, to further their own private interest or those of another. (5 C.F.R. 2635.703)
- i. Certain noncareer senior employees are limited in the amount of compensation that they may receive as a result of outside activities. (5 C.F.R. 2636 Subpart C)
- j. Full-time, non-career, Presidential appointees may not receive outside earned income for activities performed during their Presidential appointment. (Executive Order 12674)
- k. Since some positions involve fundraising, personnel are reminded that they may not personally solicit funds or other support from subordinates or prohibited sources. (5 C.F.R. 2635.808(c))
- l. Personnel who file financial disclosure reports (SF 278 and OGE Form 450) must disclose their advisory positions in their financial disclosure report (5 C.F.R. 2634.307).

In conclusion, it is DoD policy to scrutinize carefully requests from personnel who are invited to serve in their personal capacity as advisors for commercial entities that do business with DoD. While such outside activity is not always barred as a matter of DoD policy, its nexus with a Defense contractor inherently involves a heightened risk of a violation, or an appearance of a violation, of ethical standards, thereby mandating careful evaluation and scrutiny.

Please contact the DoD Standard of Conduct Office at (703) 695-3422 if you have questions.

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