



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR - 2 2018

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Engaging with Industry

Our National Defense Strategy (NDS) directs our intentional engagement with industry to harness and protect the National Security Innovation Base as well as modernize key capabilities. Cultivating a competitive mindset requires that we optimize our relationships with industry to drive higher performance while always remaining within the letter and spirit of ethics and procurement regulations. This policy updates Deputy Secretary of Defense memorandum, Subject: Policy for Communications with Industry, dated June 21, 2010, to achieve the objectives of the NDS and reiterates the guidance in the Secretary of Defense memorandum, Subject: Dialogue with Industry, dated April 24, 2017.

The Department relies upon thousands of contractors spanning a wide array of industry segments and supporting a multitude of mission requirements. Industry is often the best source of information concerning market conditions and technological capabilities. This information is crucial to determining whether and how industry can support the Department's mission and goals. Conducting effective, responsible, and efficient procurement of supplies and services while properly managing the resultant contracts requires Department personnel to engage in early, frequent, and clear communications with suppliers. As the NDS makes clear, dialogue helps industry make informed investment and business decisions necessary to meet near- and long-term requirements of the Department. Proactive engagement will maximize support to the



OSD002648-18/CMD003358-18

Warfighter; set realistic expectations and technologically achievable requirements; enhance the ability of organizations to meet cost, schedule, and performance objectives; and establish policies and business practices that promote the long-term viability and competitiveness of the industrial base supporting defense.

We must always comply with the ethics and procurement laws and rules governing interactions with industry. They should not, however, cause officials to be reluctant to engage in exchanges with industry. While we must always be mindful of our legal obligations, they do not prevent us from carrying out our critical responsibility to engage with industry. There is a broad range of opportunities for communications with industry in a fair, impartial, and transparent manner that fall well within the parameters of the ethics and procurement laws. For example, events hosted by industry associations may provide opportunities to efficiently, effectively, and ethically connect the DoD with leaders from across a particular industry or segment.

The Department's policy continues to be that representatives at all levels of the Department have frequent, fair, even, and transparent dialogue with industry on matters of mutual interest, as appropriate, in a manner that protects sensitive information, operations, sources, methods, and technologies. Leaders must talk with personnel about the importance of having dialogue with industry and help them understand the parameters for doing so. To assist personnel, attached are DoD Myth-Busters on Communications with Industry, which are intended to update and supplement the "Myth-Busting" memoranda previously issued by the Office of Federal Procurement Policy. Also attached is a synopsis prepared by the DoD Standards of Conduct Office of applicable ethics and procurement laws that form the boundaries within which personnel must operate in their communications with industry.

A handwritten signature in black ink, reading "Patrick M. Shanahan". The signature is written in a cursive style with a prominent initial "P" and a long, sweeping underline.

Attachments:
As stated

ATTACHMENT A
DoD Myth-Busters - Communications with Industry

1	<p>Myth: DoD officials should never hold individual meetings with a defense contractor.</p> <p>Fact: DoD officials may hold individual meetings with a defense contractor. However, officials should take into account several factors, including the topic(s) to be discussed, whether the official is willing and able to hold such meetings with all similarly situated entities, any pending matters involving the contractor (procurements, claims, audits, etc.), and any other factors that might give rise to an appearance of impropriety. In fact, there may be situations where an individual meeting with a contractor is to DoD's advantage or necessary to further DoD's mission, such as where a discussion of a company's proprietary information is necessary to an overall understanding of industry status and capabilities. Of course, group meetings, such as "industry days" are always a safe bet if you don't need to have an individual meeting.</p>
2	<p>Myth: Outside of communications required as part of the procurement process or contract administration matters, only senior leaders should meet with members of industry.</p> <p>Fact: While there certainly may be occasions where a senior leader needs to meet with industry representatives, it is always best to ensure that meetings are held at the lowest appropriate level relative to the topic and purpose of the meeting. This helps to avoid any appearance of "special access" or "favoritism," as well as negating any perception that the boss favors a particular entity. Additionally, when senior leaders meet with industry, they should consider having appropriate members of their staff present, particularly if there is an ongoing procurement or other sensitive matter. Staff can provide valuable input and backup to assist in mitigating procurement integrity, litigation or other risks.</p>
3	<p>Myth: Industry does not have ethics rules of their own.</p> <p>Fact: Many companies not only have their own ethics policies, but may actually have more stringent restrictions with significant penalties. While Government ethics rules are applicable only to Government personnel, contractors may have their own set of ethics rules that govern their interactions with customers, to include their Government clients. Additionally, since many industry personnel are "at will" employees, they may be subject to immediate termination for violations.</p>
4	<p>Myth: Industry's interests are diametrically opposed to the Government's interests.</p> <p>Fact: While this may be true at times (for example, where the Government is engaged in litigation with a contractor), it is not universally true. Generally, both parties have an interest in successful contract execution. Appropriate communications that are frequent and meaningful are key to reaching that mutual goal and can significantly reduce the misunderstandings and miscommunications that lead to adversarial relationships and proceedings.</p>

5	<p>Myth: Industry is more risk tolerant than the Government.</p>
	<p>Fact: Companies do not want negative media or Congressional attention any more than Government agencies do. Publicly traded companies are particularly sensitive to the potential for negative coverage to impact stock prices and must answer to shareholders and boards of directors when mishaps occur. Of course, for both industry and the Government, there may be individual personnel who intentionally or inadvertently cause issues. However, the impact that these individuals have can be mitigated, or even eliminated, with proper training and clear communication of expectations (both internally from leadership and externally between Government and industry personnel/leaders). By keeping appropriate lines of communication open, we can facilitate our mutual interests in avoiding potential issues and maintaining public trust.</p>
6	<p>Myth: I'm just meeting with my old buddy "MG (ret.) Smith" who happens to work for a major defense contractor so I don't need to worry about ethics or procurement integrity issues.</p>
	<p>Fact: This one can cut both ways, and it's all about the details. Of course, you may meet with your old friends, even if they work for defense contractors. But, depending on your position/participation in relation to the work performed by the contractor, there may be appearance or impartiality issues. Obtaining information about the intent of the meeting beforehand is important. The first step is to consider whether the meeting really is purely social:</p>
	<p>* What will you be discussing? If, for example, it's the kids and grandkids - no problem. If it's his company's contract or capabilities, then it's probably not a personal meeting.</p>
	<p>*Where are you meeting? If it's at the office on official time, probably not a personal meeting. If it's at a home or social establishment on personal time, then more likely a personal meeting.</p>
	<p>*If you are going out, who is paying? If his company is paying or reimbursing, then it's not personal.</p>
	<p>Conversely, what about the retired GO/FO who used to be your boss, not your buddy? What if he calls and wants to meet now that he works for a major defense contractor? Depending on his post-employment restrictions, this may be a problem. You should contact your ethics office to determine what restrictions may be in effect.</p>
7	<p>Myth: The Secretary's message to "play the ethical midfield" restricts my ability to engage in frequent communication with industry.</p>
	<p>Fact: DoD policy is that personnel can and should engage in communication with industry. However, the policy also clearly states that such communications should be fair, even, and transparent and conducted in an appropriate manner, taking into consideration applicable ethics and procurement laws and regulations. This requires that personnel maintain awareness of what is and is not appropriate to ensure that lack of knowledge is not causing them to unnecessarily restrict communications, on the one hand, or to engage in inappropriate communications, on the other hand. In other words, personnel should find that midfield between not communicating due to fear of a misstep and inappropriately communicating due to lack of knowledge.</p>

ATTACHMENT B

Applicable Laws

The following are statutory and regulatory limitations on communicating with any non-federal entity, to include members of the defense industrial base:

- Conflicts of Interest (18 U.S.C. § 208)
 - Law - Government officials may not participate personally and substantially in a particular matter that will have a direct and predictable effect on their financial interests or those of their spouses, minor children, general business partners, or prospective employers.
 - Communications Impact – Personnel should not participate in meetings or other exchanges where the topics include matters that will impact the finances of a company in which they have an actual or imputed financial interest.
 - Allowed – participation in general discussions about policies, programs, and capabilities, particularly where multiple vendors are present.
 - Prohibited – participation in discussions about a specific contract involving the entity whose interests are imputed to the employee or matters having a financial impact on a narrow class of entities, of which the conflicting entity is one.

- Procurement Integrity (41 U.S.C. § 2102 and 48 C.F.R. § 3.104-4)
 - Law - Government officials shall not knowingly disclose contractor bid or proposal information or source selection information.
 - Communications Impact – Personnel should not discuss matters relating to ongoing procurements without proper authority and should never discuss offeror bid/proposal data or source selection information with anyone outside of the procurement team.
 - Allowed – Any communications permitted or required by the FAR, such as clarifications, discussions, negotiations, and debriefing information, when conducted under the oversight of a contracting officer. Discussion of public information, such as information contained in any solicitation or other posted documents, information provided to the media, or information announced in relation to prior contract awards.
 - Prohibited – Sharing a bidder/offeror's proposed approach, proprietary data or other non-public information about methodology or business.

- Trade Secrets Act (18 U.S.C. § 1905)
 - Government officials may not disclose trade secrets or other proprietary information (which includes processes, operations, style of work, or apparatus, as well as the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures) unless authorized to do so by law. Such legal authority is rare.

➤ Federal Advisory Committee Act (5 U.S.C. App.2) “FACA”

- Law – Government officials must comply with the Federal Advisory Committee Act when seeking collective advice or recommendations from a group that includes persons who are not on active military duty, full-time or permanent part-time Federal officers or employees.
- Communications Impact - This does not apply to any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole. It also does not apply to any group that meets with a Federal official(s) for the purpose of exchanging facts or information.
- Allowed – FACA does not apply to meetings or discussions held for purposes of obtaining individual recommendations from the attendees (e.g., the group is not providing collective advice or recommendations). It also would not apply where the Government is seeking to exchange or obtain factual information (e.g., an industry day discussing capabilities or new initiatives).
- Prohibited – FACA would apply to a meeting or discussion where the assembled non-federal participants are requested to develop and provide advice or recommendations as a group.

➤ Impartiality (5 C.F.R. § 2635.101 and § 2635.501-503)

- Law - Employees shall act impartially and not give preferential treatment to any private organization or individual. Employees should not participate in particular matters where the circumstances would cause a reasonable person with knowledge of the relevant facts to question the employee’s impartiality.
- Communications Impact – In deciding whether to meet with industry, officials should consider whether they are able and willing to meet with all similarly situated parties in the same manner. Officials should also consider whether the circumstances and their own personal and business relationships would cause the public to question their impartiality.
 - Allowed – Meeting with suppliers of a particular product type to determine whether industry has the production capability to meet anticipated requirements, but limiting the invitees to those with existing high volume production lines.
 - Not Recommended – Meeting with only a single supplier in an industry where there are 3 or 4 suppliers of equivalent capability and experience to discuss that same production capability.
 - Prohibited – Meeting only with the incumbent contractor, to discuss requirements for the follow-on contract.

➤ Use of Nonpublic Information (5 C.F.R. § 2635.501-703)

- Employees shall not use or allow the use of nonpublic information to further any private interest, whether through advice or recommendation, or by knowing unauthorized disclosure.