



Things You Should Know About Contract Terms and Conditions



Current and Pending Changes at CMS

Leisa Bodway

Director

OAGM, Acquisition Business & Services Group

and

Acting Director, Division of Quality Assurance & Technology



Office of Acquisition & Grants Management (OAGM)
Acquisition Business & Services Group (ABSG)
Division of Quality Assurance & Technology (DQAT)

- What we do for acquisitions!

DQAT Functional Areas

- Acquisition and other Policy and Procedures
- Quality Assurance, both Internal & External to CMS.
- Integrity, Compliance and other Organizational and Personal Conflict of Interest oversight.
- Acquisition Information Systems & Support

Agenda

- Health Insurance Portability & Accountability Act (HIPAA) – *Recent Change*
- Invoice/Voucher Payment Provision – *Recent Change*
- Freedom of Information Act (FOIA) – *New Clause*
- HSPD-12 – *Coming Soon*
- 508 – *Coming Soon*
- Organizational & Personal Conflicts of Interest – *Coming Soon*

HIPAA CONTRACT

TERMS & CONDITIONS

WHAT CAUSED THE RECENT CHANGE???

Changes:

- Federal Register Notice (Vol. 78, No. 17, January 25, 2013) Rules and Regulations
- Effective Date:
 - March 26, 2013
- Changes Implemented:
 - September 23, 2013



HIPAA CHANGES



Privacy, Security, and Enforcement Rules - Modified to strengthen privacy and security protections for health information and to improve enforcement as provided for by the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA). Includes:

- Final modifications to the Breach Notification Rule, which will replace an interim final rule originally published in 2009, as required by the HITECH Act.

HIPAA Privacy Rule - Revised to **increase privacy protections** for genetic information, as required by **the Genetic Information Nondiscrimination Act of 2008 (GINA)**.

HHS, Office of Civil Rights, Changes - HHS uses its general authority under HIPAA to make a number of changes to the Rules that are intended to increase workability and flexibility, decrease burden, and better harmonize the requirements with those **under other Departmental regulations**.

HIPAA MODIFICATIONS or HIPAA NEW CLAUSE

- Contracting Officers/Contract Specialists (CO/CS) will, if they have not already:
 - Include the new HIPAA clause in the next contract modification issued; and
 - Include the new HIPAA clause in all new contracts.
- If you need the new clause immediately, please contact your respective CO/CS.

PAYMENTS CLAUSE FOR INVOICES & VOUCHERS

WHAT HAS CHANGED SINCE 2012?

- Consolidated 2 old contract clauses into 1 clause.
- 3 “Types” of Payment Clauses Depending on Contract Type:
 - Firm Fixed Price
 - Time & Material
 - Cost Reimbursement
- 4 “Types” of Payment Processing “Categories”

POSSIBLE PAYMENT CATEGORIES AND PROCESSING TIME FRAMES

INVOICE/VOUCHER REVIEW/APPROVAL PROCESSING TIME FRAMES						
	Contract Payment Category Types (\$ = Total Contract Value)					
	Days = Calendar Days					
	TYPE I		TYPE II	TYPE III		TYPE IV
	Type IA	Type IB		Type IIIA	Type IIIB	
TEAM MEMBER	All Small Businesses (No \$ Limit)	All QIOs (No \$ Limit)	All Other Contracts (No \$ Limit)	Simplified Acquisitions \$3K to \$150K (Small Businesses)	Simplified Acquisitions \$3K to \$6.5M (Large Businesses)	All Large Business Prime Contracts with Small Business Subcontractors (from July 11, 2012 through July 10, 2014)
OFM/DAO	7 Days	7 Days	14 Days	7 Days	22 Days	12 Days
COR	4 Days	0 Days	8 Days	8 Days	8 Days	8 Days
CS/CO	4 Days	8 Days	8 Days	N/A	N/A	8 Days
Total Processing Time	15 Days Not-to-Exceed 30 Days	15 Days Not-to-Exceed 30 Days	30 Days	15 Days Not-to-Exceed 30 Days	30 Days	28 Days Not-to-Exceed 30 Days

UPON AWARD, YOUR CONTRACTING OFFICER WILL DESIGNATE A PAYMENT CATEGORY IN YOUR CONTRACT BASED ON –

- TYPE OF CONTRACT – Simplified, QIO; and,
- BUSINESS SIZE YOUR CONTRACT WAS AWARDED UNDER – Small or Large; and,
- IF A LARGE BUSINESS, DO YOU HAVE SMALL BUSINESS SUBCONTRACTORS.

WHAT'S CHANGED FOR CONTRACTORS?

WHAT DO YOU NEED TO DO?

- You may get paid faster! So how do you make that happen?

- **CONTENT OF VOUCHER - Vouchers shall include, at a minimum:**

- Name and address
- Tax Identification Number (TIN)
- DUNS Number
- Voucher Number
- Include the designation of the Contract Payment Category Type as follows:
 - Contract Payment Category Type **I, II, III, IV** (TBD upon award)
 - If Type IV, All Large Businesses with Small Business Subcontractors, is to be used, the following will ALSO be inserted:
 - **“When Contract Payment Type IV expires on July 10, 2014, the Contract Payment Type automatically changes to Type II, All Other Contracts (No \$ Limit), on July 11, 2014.”**

Other Information such as:

- Contract and Order Number, as applicable
- Contract line item number and/or Subcontract line item number
- Description, quantity, unit of measure, etc.
- Other Information identified in your contract

FREEDOM OF INFORMATION ACT (FOIA)

Brand New Clause

Policy: For all High Visibility/High Public Interest Contracts, CMS will include a FOIA contract clause entitled:

“Open Government Proactive Pre-Disclosure Notification”

Applicability

- **Contracts where CMS receives a significant amount of FOIA requests (contracts may be *modified*),**
or
- **Contracts where CMS could *potentially* receive a significant amount of FOIA requests (*new contracts*).**

Open Government Proactive Pre-Disclosure Notification

- WHY ARE WE DOING THIS?

- CMS receives the 2nd highest number of FOIA requests of all HHS Operating Divisions.



- In 2013 alone, CMS received 55,000+ FOIA requests!
- We want to get the Office of Acquisition & Grants Management (OAGM) and Contractors OUT of the FOIA BUSINESS!

Open Government Proactive Pre-Disclosure Notification

Procedures - Contractor Submission Requirements:

Within 30 days of contract award, the Contractor shall submit to the FOIA office, one (1) Compact Disc (CD) or Digital Video Disc (DVD), with all 5 U.S.C. §552 FOIA, Exemption (b)(4), "...Trade Secrets, Commercial or Financial Information Which is Privileged or Confidential...", otherwise known as public release/non-Confidential Business Information (non-CBI), with the information identified as follows:

1. **Copy of Contract - CBI Highlighted** : One copy of the contract with all CBI **highlighted** for CMS FOIA review; and,
2. **Copy of Contract - Contractor Proposed Redacted for Public Release**: An additional copy of the contract will be provided for public release, with all the identified information redacted. Redactions shall be made using "black" boxes, which cannot be removed or uncovered by a reader; and,
3. **Pre-Disclosure Concerns** - Comments/Rationale for Non-Disclosure of Trade Secrets, Commercial or Financial Information Which is Privileged or Confidential

WHEN IS THE PROACTIVE PRE-DISCLOSURE CLAUSE INCLUDED IN CONTRACTS?

Procedures – CO matters to consider before including the clause in contracts are:

- Do we anticipate FOIA requests?
- Is it a contract where new law is implemented?
- Has the press shown significant interest?
- Is it a program of contracts (e.g. MAC, QIO, ZPICs)?

Open Government Proactive Pre-Disclosure Notification

CMS will continue to post redacted versions of contracts on our new external website in order to cut down on the amount of FOIA requests we receive.

Homeland Security

Presidential Directive (HSPD-12)

Policy for a Common Identification Standard for Federal Employees and Contractors

New Contract Clause Coming Soon to Replace Current Clause Entitled: SECURITY CLAUSE -BACKGROUND – INVESTIGATIONS FOR CONTRACTOR PERSONNEL

HSPD-12 was issued August 27, 2004 by President George W. Bush because there was -

- A wide variations in the quality and security of forms of identification used to gain access to secure Federal and other facilities where there is potential for terrorist attacks need to be eliminated.

HSPD-12 will –

- Achieve security assurance by verifying the claimed identity of individuals seeking physical and/or logical systems access to Federally controlled government facilities and information systems;
- Establish common identification standard to be used across the Federal government called the Personal Identification Verification (PIV) card;
- “Secure and reliable forms of identification,” for purposes of HSPD-12, means identification that -
 - (a) is issued based on sound criteria for verifying an individual employee's identity;
 - (b) is strongly resistant to identity fraud, tampering, counterfeiting, and terrorist exploitation;
 - (c) can be rapidly authenticated electronically; and
 - (d) is issued only by providers whose reliability has been established by an official accreditation process.
- All CMS contractors are required to have the appropriate investigation on file that corresponds to their level of system's access and/or requiring routine access to CMS' facilities and logical access (By Oct 27, 2008).

Investigation Levels

Top Secret

Secret

Public Trust (PT) 6

5 MBI – Minimum Background Invest.

Moderate Risk- Public Trust Level

NACI - Natl. Agency Check w/Written Inquiries

(Low Risk Level)

SAC – Contractor Empl.

(Mod. Risk - No access to Systems)

Escorted Visitor



Homeland Security Presidential Directive (HSPD-12) for a Federal Government Common Identification Standard

Providers	Counts – 80K+
MACS/Contractors accessing hosted environment	Counts – 20K+
Contractors on the local network	Counts – 5K+
Feds	Counts – 6K+

HSPD-12 Next Steps

- **AUTOMATE THE PROCESS: New system will automate the badging process**
 - **Contract Award**
 - **Automated Message is transmitted to the contractor Program Manager**
 - **Program Manager submits a request in our system for each of its employees that require a PIV Card**
 - **System sends the request to the COR who reviews/approves (COR will work with the Contractor , as appropriate)**
 - **COR sends the request through the system to the CMS Office of Operations Management, Security office who will ensure that the background investigation is conducted and the badge is issued.**
- Review and revise background investigation contract clauses.
- Test the new process with Contractors.
- Communicate implementation date.
- Provide training.

Section 508 of the Rehabilitation Act

Revised Clause Coming Soon!

WHAT IS SECTION 508?: Section 508 refers to a statutory section in the Rehabilitation Act of 1973 (refer to 29 U.S.C. 794d). Congress significantly strengthened Section 508 in the Workforce Investment Act of 1998. Its primary purpose is to provide access to and use of Federal executive agencies' electronic and information technology (EIT) by individuals with disabilities. The statutory language of Section 508 can be found at www.section508.gov.

HOW IS 501 & 504 DIFFERENT FROM 508: Section 508 requirements are separate from, but complementary to, requirements in Sections 501 and 504 of the Rehabilitation Act.

They all require, among other things:

- That agencies provide reasonable accommodations for employees with disabilities,
- Provide program access to members of the public with disabilities, and
- Take other actions necessary to prevent discrimination on the basis of disability in their programs.

WHAT DOES CHANGING THE 508 CONTRACT CLAUSE MEAN FOR CMS CONTRACTORS?

- Contract Clause Will Change.
- Section L – Proposal Instructions, Will Include Requirements for Submission of a V-PAT Form –
- Section M – Evaluation Criteria Will Be Incorporated Into All Solicitations – Evaluation criteria will address the assertion that the vendor's product meets the 508 requirements.

508 Frequently Asked Questions

- **What is "Electronic and Information Technology" (EIT)?**
 - EIT is information technology (IT), as defined at FAR 2.101, and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. In addition to IT, EIT includes:
 - Telecommunication products, such as telephones;
 - Information kiosks;
 - Transaction machines;
 - World Wide Web sites;
 - Multimedia (including videotapes); and office equipment, such as copiers and fax machines.
 - EIT is defined by the Access Board at 36 CFR 1194.4 and in the FAR at 2.101.

DOES 508 COVER IN-HOUSE DEVELOPED TECHNOLOGY?

- The requirements of Section 508 apply to an agency's procurement of EIT, as well as to the agency's development, maintenance, or use of EIT irrespective of the origin of the EIT (in-house development or commercially acquired).

508 Frequently Asked Questions

- Is EIT limited to products?
- No. EIT, like IT, also includes services.
 - For example, some agencies seek to satisfy their desktop computing needs through so-called "seat management" service contracts. Under a seat management arrangement, the contractor provides the software, hardware, and technical support services necessary to support full service desktop computing resources to the agency for a given period of time. Although the agency does not acquire title to the hardware and software, the agency would still need to comply with Section 508 in acquiring desktop computing resources.
- Does 508 cover contract deliverables?
 - Yes! All contract deliverables are required to be 508 compliant.

508 Next Steps

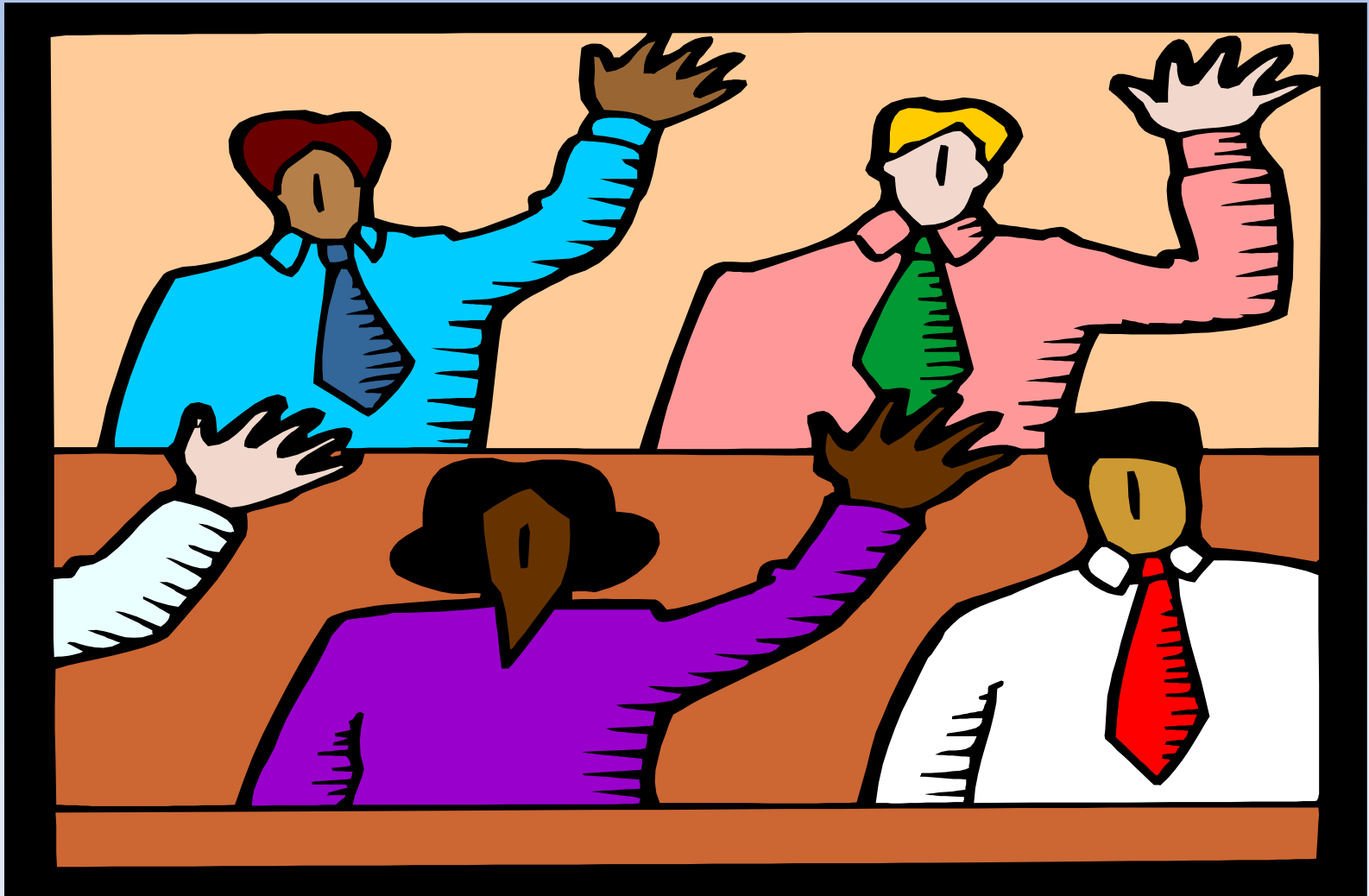
- OAGM is working with OIS to define CMS requirements.
- HHSAR Rewrite – HHS is working internally to update its HHS Acquisition Regulation (HHSAR) clauses.
- Expected date for implementation: 30 Apr 2014

CMS Conflict of Interest Clause Update

Coming Soon!

- **OAGM Internal Procedures** – Updated to provide:
 - Templates for staff to use to perform a Pre-solicitation assessment of the requirements to determine if there are OCIs that must be mitigated; and,
 - Tools to analyze and document rationale for decisions made.
 - Tools to make future analysis available to all COs (from previous analyses conducted).
 - Standardized Alternate Section H language to choose from, depending upon the contract program.
- **Section H – Conflicts of Interest Updates**
 - Includes:
 - Definitions for Biased Ground Rules, Unequal Access and Impaired Objectivity.
 - Requirements for “Personal” Conflicts of Interest.
 - Other helpful definitions.
 - Subcontractors will follow the same submission requirements.
- **Section K – New certification requirements**
 - Includes standard templates for contractors to use for
 - Proposal submission; and,
 - Personal COI disclosures.
- **Section L – New and better instructions.**

Questions???



Up Next...

Ethics and Federal Government Contracts



*Presented by
Leigh Snyder*

Ethics and Federal Government Contracts

Leigh A. Snyder
Ethics Program Administrator
410-786-6081



Government Ethics

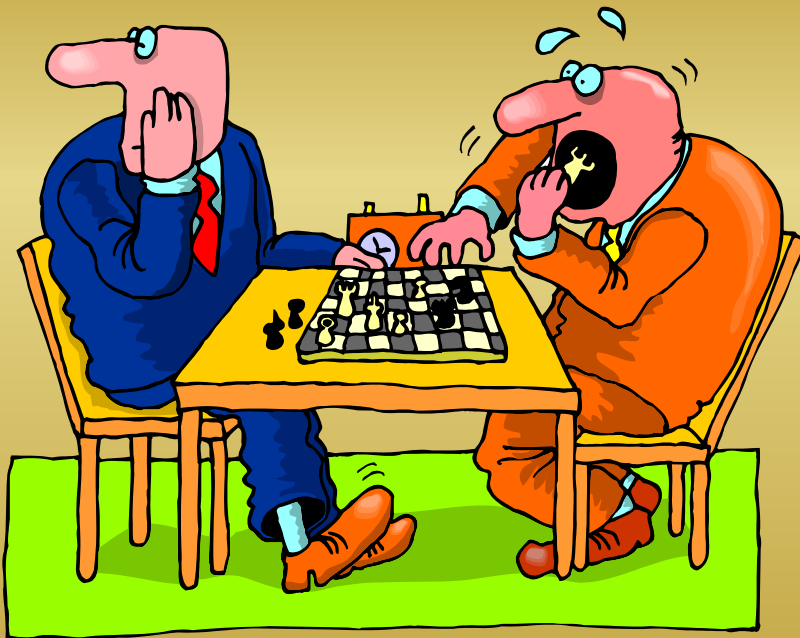
- Ethics laws and regulations apply to all Executive Branch employees
- Not applicable to contractors unless explicitly agreed to in the contract itself
- However, contractors who “help” employees break ethics rules put their companies and Federal government contracts at risk



Conflicts of Interest

The most important question

What does it look like to others?



**APPEARANCES APPEARANCES
APPEARANCES**



What to know.....

- Be aware that conflicts of interest can cause bid protests and otherwise negatively impact federal government contracts
- Contact your supervisor or your federal contract liaison if you suspect a conflict of interest or appearance issue



And remember...**WHAT DOES IT LOOK LIKE?**

Financial Conflicts of Interest



18 U.S.C. § 208

Criminal conflict of interest statute.



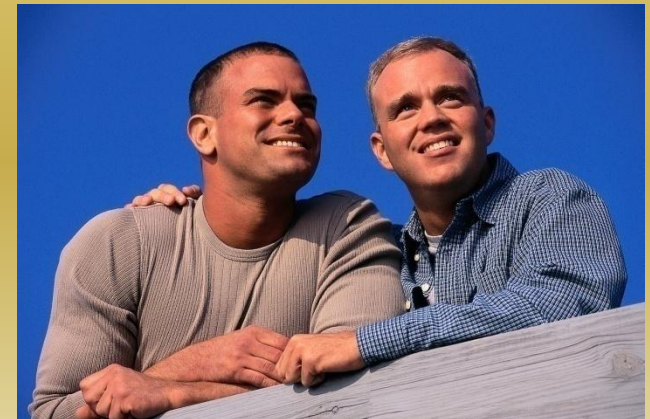
- Employees may not participate as a Government official in a matter that will have a direct and predictable effect on their financial interests, or the financial interests of their spouse, minor children, general partners, outside employers, **or prospective employers.**

Prohibited Sources and Appearances

- A “prohibited source” is a person, company, or organization that:
 - (1) Seeks official action by CMS
 - (2) Does business or seeks to do business with CMS
 - (3) Conducts activities regulated by CMS
 - (4) Has interests that may be substantially affected by the performance or nonperformance of one’s official duties, or
 - (5) Is an organization a majority of whose members are described above.

Covered Relationships

- Members of employee's household
- Close family members of employee
- Someone with whom employee seeks a business relationship
- A person with whom the employee's spouse, parent, or dependent child is serving or seeks to serve as an officer, director, agent, consultant, or employee
- A non-Federal employer for whom the employee worked within the last year



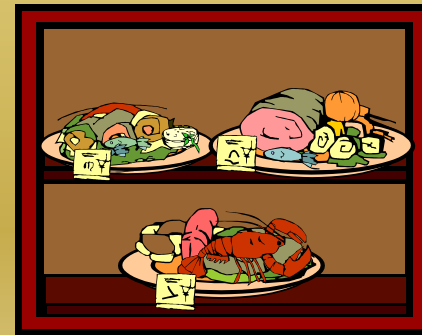
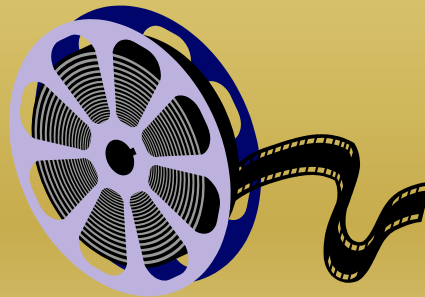


GIFTS



Definition of Gift

- A gift is anything of monetary value, including but not limited to gratuities, favors, discounts, entertainment, hospitality, loans and other services





Gifts from Contractors

- Employees may not solicit or accept gifts from prohibited sources or gifts given because of their Government positions
- The rules allow employees to accept:
 - Light Refreshments (not part of a meal)
 - Greeting Cards, and other items of little intrinsic value
 - Gifts under \$20 per occasion
 - Up to \$50/ year from any one source
 - Gifts based on long standing personal relationships
 - Free attendance at meetings on the day of an employee's official duty participation or presentation

Gifts From Contractors

- Exceptions:
 - Gifts under \$20 per occasion
 - Up to \$50/ year from any one source
 - Gifts given because of family relationship or longstanding personal friendship
 - Certain gifts resulting from outside business or employment relationships of employees and their spouses
 - Invitations to social events from non prohibited sources, provided no one is charged a fee to attend the event
 - Free attendance provided by the sponsor

But remember ...

- It's always prudent for Government employees to refuse a gift – in fact we often advise that they should.
- It's best to refrain from gift-giving.



Gifts To Contractors

- Government ethics rules do not cover gifts to contractors
- Consider favoritism and appearance issues
- Consider contractor's rules and policies about gift-giving

Post-Employment and Contractors

- Post employment statutes cover all executive branch employees
- Managers, senior employees, and certain contracting officials involved in procurement are subject to additional restrictions
- These criminal statutes prevent former employees from making influential representations back to the Federal government on behalf of a third party about specific matters they worked on in the government

How Can I Prevent Post-Employment Issues?

- Most common source of bid protests as they relate to ethics
- If you are involved in hiring, ensure that the employee has consulted with his/her ethics official about matters
- If you have concerns, ask the employee for the contact information of his or her ethics official. We can provide post-employment letters for employees