



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

NOV 24 2009

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Personal Conflicts of Interest (PCIs) of Contractors' Employees

Section 813 of the John Warner National Defense Authorization Act for FY 2007 directed the Secretary of Defense to convene a panel of senior leaders to conduct a DoD-wide review of progress made by the Department to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur and to recommend changes. The Panel identified personal conflicts of interest of contractor employees as an area of vulnerability.

The Government's increased reliance on contracted technical, business and procurement expertise has increased the potential for PCIs. Unlike Government employees, contractor employees are not required to disclose financial or other personal interests to the Government that may conflict with the responsibilities they are performing on behalf of the Government.

The risk associated with PCIs is directly related to the supply or service being acquired and the type of contract used to secure the supply or service. Attachment 1 depicts levels of risk created as a function of the relationship between potential impacts of PCIs and the likelihood that contractors will influence Government decisions. PCIs present lesser risk to the Government on fixed-price, supply contracts; however, risk increases as the supply or services become more sophisticated or the relationships between Government and contractor blur into inherently governmental functions. Attachment 2 provides scenarios of contractor employee PCIs and the level of risk associated with each scenario.

Section 841 of the Duncan Hunter National Defense Authorization Act for FY 2009 directed the Administrator of the Office of Federal Procurement Policy (OFPP) to issue policy to prevent PCIs by contractor employees performing acquisition functions closely associated with inherently governmental functions.

Pending issuance of the OFPP guidance on contractor employees' conflicts of interest, the Department should follow the policies and procedures of FAR 9.5, Organizational and Consultants Conflicts of Interest.

The acquisition community must consider the risks of a contractors' employee having PCIs when performing acquisition functions closely associated with inherently governmental functions on behalf of the Department. The risk increases when contractor

employees are involved with substantially subjective judgmental work. We must remain vigilant in identifying and avoiding or mitigating impacts of PCIs by using appropriate contract types and establishing effective controls.

A handwritten signature in black ink, appearing to read "Ashton B. Carter". The signature is fluid and cursive, with the first name being the most prominent.

Ashton B. Carter

Attachments:

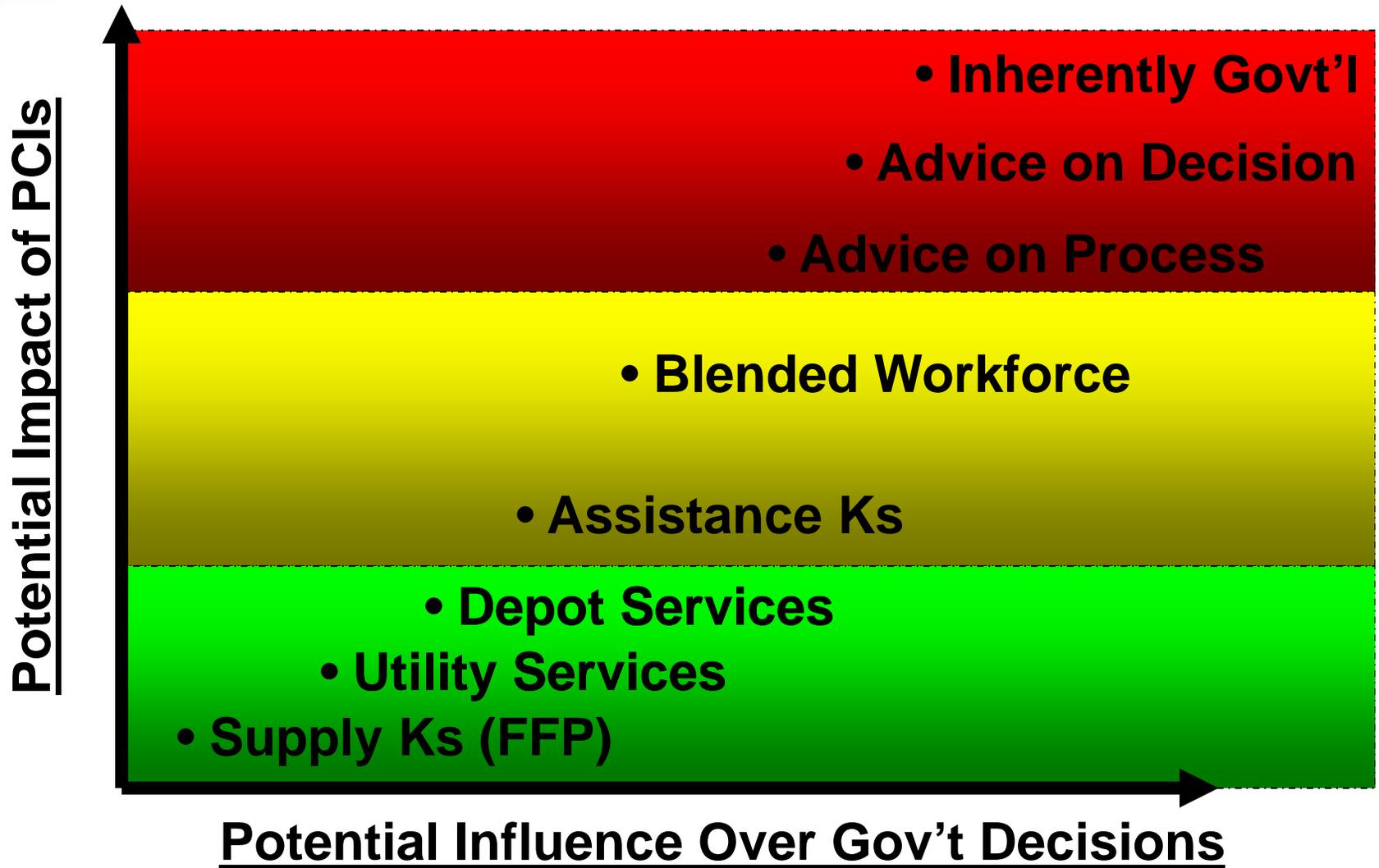
As stated

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# Contractor Employee PCI Risk



## **Scenarios of Contractor Employee Personal Conflicts of Interest (PCIs) and Associated Levels of Risk**

### **SCENARIO 1**

Jane is an employee of government contractor Company A. Company A assigned Jane to work supporting a Government Agency. As part of her duties she is signing DD Forms 250, Material Inspection and Receiving Reports. Company A is a subsidiary of Company B, a large defense contractor. In performing her job for Company A, Jane signs DD Forms 250 submitted to the government by both Company A and Company B.

**Risk: High.** Jane has a personal conflict of interest in this scenario. She has a financial interest in both Company A and Company B. Whether Jane is signing the DD Form 250 as evidence that Quality Assurance has been performed or to accept the goods, her association with both A and B causes a conflict. The acceptance of the goods as to the quantity and the condition is an inherently governmental function. Jane's performance of either of these functions as an employee of Company A puts the Government at high risks of paying for goods that were not received or were not in good condition when received.

### **SCENARIO 2**

John is an employee of government contractor Company C. Company C assigned John to work supporting a Government Agency as an advisor on a source selection panel. The acquisition is valued at \$300 million. John's wife, Mary, works for Company D as the director of engineering. Company D is one of three offerors on the procurement where John is serving as an advisor on the source selection panel.

**Risk: High.** John has a personal conflict of interest in this scenario. His household finances are likely to be directly affected by the outcome of the award decision which could impair his ability to be totally objective with his advice. Therefore, the actual or perceived risk is high that the Government may not receive impartial advice. This endangers the public trust.

### **SCENARIO 3**

Paul is an employee of government contractor Company E. Company E assigned Paul to work supporting a Government Agency as an advisor on a source selection panel. Paul has \$10,000.00 worth of stock in Company F. Company F is one of three offerors on the procurement where Paul is serving as an advisor on the source selection panel.

Risk: Low. Paul has a personal conflict of interest in this scenario due to his financial interest in Company F. Those overseeing source selection panels must ensure that all participants providing advice to the panel are free from conflicts of interest. Once all conflicts are brought to light, steps can be taken to determine if the stock is of de minimis value or the financial interests are far too remote or inconsequential to warrant disqualification.

#### **SCENARIO 4**

Mr. Jones is an employee of government contractor Company G. After full and open competition, Company G has been awarded a firm fixed-price contract to manage a Defense Agency's depot. Company G has appointed Mr. Jones as their project manager for this contract. Mr. Jones' wife owns a moving franchise. In his role as project manager for Company G, Mr. Jones orders boxes, pallets, tape, and other like items from his wife's moving company.

Risk: Low to None. Although Mr. Jones' behavior may not appear ethical, this personal conflict of interest has no inappropriate financial effect on the Government. Company G's award was based on a firm fix price that was determined fair and reasonable as the result of full and open competition. Any loss to Company G due to Mr. Jones' actions has no effect on the Government.

#### **SCENARIO 5**

David is an employee of government contractor Company T. Company T was awarded a contract to assist in developing the requirements for a new, high-tech procurement. David has been assigned by his employer, Company T, to work on this project to develop the requirements. David's wife works for H, a high-tech company likely to offer on this new procurement.

Risk: Medium to High. David does have a personal conflict of interest because he will be giving advice to the Government that may impact the company for which his wife works. The degree of risk depends on how much information David knows about the technologies of Company H and what position David's wife has in Company H. For instance, is she a mail clerk or a technical engineer and does she have or could she have access to Company H's employees who would offer on this procurement?

#### **SCENARIO 6**

Shirley is an employee of government contractor Company X. Company X has assigned Shirley to work supporting a Government office. That office has contract responsibility

to ensure the swift and effective performance of specific aspects of a contract. The contract to which Shirley is assigned was awarded to Company X. The award is a cost-plus-award-fee contract. Shirley's yearly bonus will be based on the award-fee Company X receives on the contract. Shirley finds that the performance of the contract is impeded by an operational conflict over which she has influence.

Risk: High. Shirley has two personal conflicts of interest. First she has a conflict because she has oversight responsibilities on a contract between the government and her employer. Second, she has another conflict because her bonus is not based on how well she carries out her contract oversight responsibilities in support of the Government Office, but rather on the overall quality of the performance of her employer's contract -- the same contract on which she has oversight responsibilities. There is an actual or perceived risk that her decisions, rather than being based only on the best interests of the Government, might be influenced on what is best for Company X and her own financial interest.