

Good Friends: A Case Study in Contracting Ethics and Integrity

You are a contracting officer at Warren Manor Air Force Base currently on temporary duty (TDY) travel to attend an acquisition community professional development seminar. While at the seminar you are approached during a break by Paul Johnson, the Chief Operating Officer of Water Conservation, Inc., a federal government contractor with whom Warren Manor has had several contracts. You first met Mr. Johnson years ago when he was a Lieutenant Colonel in the Air Force, and the two of you were assigned to the same base. Although you did not work in the same acquisition career field, your paths crossed often because he was the lead engineer on several contracts for which you were the contracting officer. Both of you always had a very cordial but professional relationship. Occasionally, you would also see each other at the officers' club and at various Air Force social functions.

Mr. Johnson greets you warmly, hands you his business card, and begins to reminisce about your old working relationship. He asks about some former colleagues who still work with you and makes other small talk. As the seminar is about to reconvene and you excuse yourself to return to your seat, he asks if he could speak with you after the meeting regarding one of his company's current contracts. You agree to do so, thinking that whatever the issues, a face-to-face meeting with a company senior executive might obviate the need for a week of emails later.

After the seminar ends, you and Mr. Johnson remain behind to discuss the issues on his contracts. You listen, take notes, and promise to investigate further upon returning to work. You advise him that you will get the right people together to fact-find and resolve the issues. Pleased with your quick-handling of the matter, you gather your belongings to leave the conference room, when Mr. Johnson stops you, saying, "There is something else I want to talk to you about." He proceeds to tell you how impressed he is with you and how you would "fit right in" with the senior management team at Water Conservation, Inc. "You know, you could make a lot more money than you are making now. A lifestyle change, actually. Plus, you've already got enough years to qualify for a Government retirement." You are flattered and say, "Someday, perhaps." Mr. Johnson suggests you talk more at the hotel bar during "happy hour" and you agree to meet him there. Over drinks, Mr. Johnson tells you that there is definitely a place at Water Conservation for you—he would only have to say the word to his personnel department and you could pretty much "name your salary." You tell him a job change is not something you are seeking just yet. "Maybe down the road," you say.

By now, you have had several drinks and as you glance at your watch, Mr. Johnson grabs your arm and says quietly, "A job change is not the only way we can help each other out." He alludes to your past association and confides that his company is trying to increase its business with the government. They are targeting some upcoming acquisitions that he "heard through the grapevine" are coming up for competition. He tells you that this is a fiercely competitive business and asks if there is anything you can do to "help a fellow officer." Then, out of the blue, he offers to give you a percentage of

all contracts that you can direct to his company. He tells you that no one will ever know because he will be discreet.

Questions:

What would you do?

For each of the following three scenarios, discuss the integrity and ethics issues.

What laws, if any, have been broken?

What should the contracting officer report and to whom? Why?

Scenario 1

You are totally appalled that someone would approach you with a bribe. You ask yourself what is it about you that would make him think that he could approach you in such a manner. Since you are caught off-guard, you make a small joke about it and quickly retire to your hotel room. There you sit at your desk and collect your thoughts as you allow your breathing and heartbeat to return to near-normal levels. You ask yourself, why would he possibly think I would ever agree to such a thing? Is this sort of business conduct now becoming commonplace? You think back to what you had been told in your last ethics brief—that you are supposed to report such incidents to the Air Force Office of Special Investigations immediately, but you wonder if you will be implicated because you did not directly refuse the bribe. You did not even directly refuse the job offer. You remember that your friend is a Special Agent for the Air Force Office of Special Investigations, so you call her and invite her to lunch the following day when you will have returned to your office. She agrees and over lunch you relay the story to her. After lunch she takes you to her office where you brief the Commander on what has transpired. They ask you to play along with the contractor, and you agree.

Scenario 2

You cannot believe your luck. You are trying to close on the purchase of a new house and, having just bought a new car, you do not have enough cash for the house down payment. If you do this just once, you should make enough money to make a substantial down payment on the house. If things work out, you can probably take a vacation also. That would make things a lot easier with your spouse who has been after you to spend more time at home instead of all the overtime you have been putting in at work. A voice in the back of your head tells you what you are about to do is wrong, but you convince yourself that it is no different than many other practices that you believe are commonplace in federal procurement—noncompetitive awards; skewed source selections that favor incumbent contractors; organizational conflicts of interest that are “papered

over;” senior officials taking high positions in industry. Besides, Water Conservation is not a sham company—they do good work. What is wrong with doing this just once, and who would know? You tell Mr. Johnson that you accept his offer.

Scenario 3

You replay in your mind what just happened. You convince yourself that this was just a “what if” conversation between two guys away from the office. Since you are very near to retiring, you do not want to get involved in anything controversial. You decide that you will not accept Mr. Johnson’s offer, but you also decide to say nothing further about it—to anyone. You will pretend that the conversation never happened.

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Case Study continues:

You decide to inform Mr. Johnson that you will accept his marvelous offer. Within two months, you have an opportunity to direct a sole source award to Mr. Johnson’s company. You inform the requiring activity that you know of a small business, capable of meeting the requirement. You advise them that the company they are currently considering, another small business, is not qualified and does not have the experience that Water Conservation has, and you strongly recommend Mr. Johnson’s company. The requiring activity agrees, and the Department makes the award to Mr. Johnson’s company. After performance begins, you and Mr. Johnson meet for lunch at a quiet restaurant away from the air base, where he gives you your first installment of fifty thousand dollars toward your total payment of two hundred thousand dollars. Over the next few months, you receive the remainder of the “referral fee.”

Questions:

Discuss the integrity and ethics issues.

Have any laws been broken?

Discuss how one’s moral compass can be affected by such factors as one’s relationships with others, financial difficulties, or perceptions that misconduct and improper business practices are tolerated in one’s profession.

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Case Study conclusion:

Your second payment is \$100,000. WOW! You never expected anything like this. Mr. Johnson says that he added a little extra because he appreciates what you did for him. He tells you just how easy it is to continue to direct work his way and encourages you to continue to do so. You tell him that you will think about it. Your life is much better now that you have the extra money. You are able to do so much more than you ever could before. You think to yourself, I'll do this just one more time then I WILL QUIT! You continue to direct contracts to Mr. Johnson's company, and he continues to pay. A few people notice that you are a lot less stressed, but they have no idea. Your relationship with Mr. Johnson is very comfortable. The two of you regularly meet for lunch to discuss the next contract, or communicate by e-mail to designate locations for meeting and for payment.

Life is great until the Office of Special Investigations (OSI) calls you in for questioning regarding contracts awarded to Mr. Johnson. It turns out that you were not the only one that Mr. Johnson had approached, but you were the only one that accepted his offer. Your friend, Chester Brazier was offered the same deal as you; however, he contacted the OSI immediately. Two years after the fiasco begins, it ends with you being arrested for accepting a bribe, and conspiracy, and Mr. Johnson being arrested on charges of bribery, fraud, and conspiracy. Both of you are eventually convicted and are serving prison time.

**Mission First:
A Case Study in Contracting Ethics and Integrity**

You are an experienced contracting officer, newly assigned at a Defense agency whose contracting organization has experienced a lot of turnover. Your branch consists of you, two contract specialists who have been with the agency for several years, a college intern, and “TJ,” a support contractor who recently retired from federal service. There are also several vacant positions. Your branch manager, John Smiley, is one year away from retiring from federal service. His office is adorned with a large sign that reads, “Mission First.” John is normally a pleasant fellow but seems to become easily irritated whenever a customer calls to complain about the support provided by the contracting organization. You have been on the job less than a month and have already overheard John snap at your colleagues on several occasions, saying, “I don’t care. Just get it done. Mission first.”

You’ve just set aside the afternoon to process a new award document using the agency’s automated contract writing system. While you focus on the onerous data entry requirements of the new system, your concentration is broken by the intern’s voice: “John wants us all in his office in five minutes for a meeting.”

At the meeting, John explains that the agency’s annual Operations and Maintenance budget has received a sizable supplemental appropriation to support ongoing contingency operations in Iraq and Afghanistan. The agency’s senior leadership wants this funding obligated as soon as possible. The branch has just been inundated with quickly-prepared purchase requests, and customers are demanding prompt action. John hands everyone a pile of purchase requests, and announces, “I want these awarded by the end of next month. Failure is not an option.”

Returning to your desk, you start to review the purchase request folders and become alarmed at what you see. All are for various service contract requirements but are lacking well-written Performance Work Statements (PWS). Many seem to have been specifically written for an incumbent contractor and even have the contractor’s name included in the PWS. Several folders contain documents labeled “Independent Government Cost Estimate (IGCE)” and other documents that appear to be contractor quotes in the exact same amount as the IGCEs. Other purchase request folders have a contractor’s time-and-materials/labor hour quote and a note from the requesting office’s coordinator (the agency does not have a dedicated Price Analysis department) saying, “Looks okay.” Almost all the folders include draft memoranda “Justifications and Approval for Other Than Full and Open Competition,” but almost all are poorly supported and legally insufficient.

As you walk to John Smiley’s office to discuss your concerns, you note that TJ, your support contractor, has already begun processing his assigned workload and is preparing award documents for John’s execution. You glance down and notice that the first one is made out to the same company that employs TJ. As if reading your mind, TJ shouts, “No worries. It’s all good. I don’t have execution authority.” As you continue past the contract specialists, you are amazed at the progress they have already made in preparing award documents. You are concerned that your colleagues appear not only to be disregarding requirements for publicizing contract actions but also to be carelessly using the agency’s contract writing system in selecting

clauses and preparing the prospective solicitation and contract documents. You also suspect they are not bothering to read the associated pricing memoranda and supporting draft justifications and approvals.

In John Smiley's office, you express your concerns that these purchase requests cannot be processed in a timely fashion as received. John listens and then says, "Look, we do not have the luxury of time to cross all the t's and dot all the i's here. Our mission is too important. Do the best you can. Just remember, we have never failed to meet our obligation targets."

- 1. Identify the contracting ethics and integrity issues that are presented in this case.**
- 2. Describe WHAT you would do and WHY you would do it.**
- 3. Describe WHY it is important for members of the acquisition community to have a shared sense of professional integrity.**

[DISCUSSION]

Instructor Guide

Question 1: Identify the contracting ethics and integrity issues that are presented in this case.

It is important for readers of this case study to first determine whether any ethics and integrity issues have been breached before deciding what to do. How they frame the problem will determine what actions they might take. Is this a case where an over-worked contracts staff is merely professionally "sloppy"—cutting corners with procedures and process, oblivious to the impact on procurement system integrity and fairness? If that is so, are there not still integrity and ethical concerns? Are there any indicators of possible fraud in the pre-solicitation phase or award of contracts by this agency? Are the issues confined to the contracting office?

Question 2: Describe WHAT you would do and WHY you would do it.

Answers will vary to the question, "What would you do in this situation?" Some will say they would do something while others might do nothing for fear of making someone angry or "rocking the boat." Discussion should address reasoning behind the decision to act or not act, from a moral, ethical, and legal perspective.

Question 3: Describe WHY it is important for members of the acquisition community to have a shared sense of professional integrity.

Acquisition professionals must fully embrace principles of ethical conduct and integrity in performing their duties. An important teaching point in this case is that ethical transgressions in the acquisition field—even those that do not involve the transgressor receiving an improper financial benefit or engaging in conduct that places a financial interest above public duty—

impact public trust and confidence in a fair and open system. Consider the statement of guiding principles for the Federal Acquisition System at FAR 1.102, and also the Basic Obligations of Public Service under 5 CFR 2635:

FAR 1.102 Statement of guiding principles for the Federal Acquisition System:

“(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, *while maintaining the public’s trust* and fulfilling public policy objectives...

(b) The Federal Acquisition System will....

(3) *Conduct business with integrity, fairness, and openness”*

5 CFR 2635 STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH:

(a) ***Public service is a public trust.*** Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) ***Employees shall put forth honest effort in the performance of their duties.***

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) ***Employees shall act impartially and not give preferential treatment to any private organization or individual.***

**The Plum Assignment:
A Case Study in Contracting Ethics and Integrity**

You have just been assigned as the Contracting Officer for a large, follow-on requirement of great importance to your organization. You can hardly contain your excitement. You are happy to think that the Director of Contracting (DOC) believes that you are prepared to take on this assignment. You have worked hard to hone your skills, and, having personally worked on the original contract four years ago, you are very familiar with the history of this program. Most of the original people are still on the program. The person most likely to be designated as Contracting Officer's Representative (COR) is the best in the organization. Also, you have previously worked with most of the others assigned to the pre-award team, including the designated Budget Analyst, Cost and Pricing Analyst, and Legal Advisor. As you wait to meet with the DOC to discuss the acquisition timeline for the follow-on acquisition, you reflect on how this important assignment has been handed to you. You know that successful execution of this assignment will put you in contention for a promotion.

Over the next six weeks, you work with the requiring activity to prepare and issue the solicitation. Just as you thought, Ruby was designated as COR. You are really happy to have her work with you from the beginning of the process.

Two weeks after the solicitation is released, you hear chatter regarding the incumbent contractor. It appears that the program manager from the incumbent contractor; a former employee of the requiring activity, has been visiting the Government's premises more frequently than usual and spending quite a bit of time with Ruby, who is also the COR on the current contract. You trust Ruby, so you avoid jumping to conclusions that such meetings are anything but proper.

You happen to go to Ruby's office one day when the contractor's program manager is there. Their conversation stops abruptly as you enter the office, and the program manager's greeting seems a bit awkward. You notice that the Independent Government Cost Estimate (IGCE) for the follow-on requirement, along with other government internal documents, is lying on Ruby's desk. While only the cover pages of the documents are visible, not the contents, you still find this strange because Ruby is a very organized person, who keeps everything in its place. Her desk very seldom has any documents on it that are not being used. You decide not to say anything for now. But as you leave the office you realize you are beginning to have concerns about Ruby. There is nothing that you can prove, but you do not have a good feeling.

The solicitation closes and a total of five proposals are received, including one from the incumbent. The Source Selection Evaluation Board (SSEB) begins its evaluation. The second day of evaluations, you are asked a question regarding information provided in the incumbent contractor's proposal. It appears the incumbent has made some assumptions in its proposal that the other offerors have not. The first thing that crosses your mind is... Ruby!

The following day, you receive a note from the SSEB. They would like to see you. At the scheduled meeting, you are informed that there is information that is available to the incumbent that would make a big difference if known by the other offerors. Specifically, the incumbent has had access to planning information that is not available to the other offerors.

Your problems do not end there. The Technical Team has discovered a mistake in the Performance Work Statement (PWS). You cannot believe this. Prior to issuing the solicitation, you had several meetings with the program office to discuss the PWS, and they said they reviewed it with a fine-tooth comb. How could they have overlooked this matter? No one identified a problem until all the responses to the proposal failed to address one critical area.

As a result of your determining that there was a PWS deficiency, you decide to issue an amendment to the solicitation to give offerors an opportunity to revise their proposals. Ruby informs you that her supervisor (a senior official with a lot of organizational clout) is not at all happy with this turn of events. She reminds you that her supervisor had told you from the beginning that the contract needed to be awarded within four months and considers that you have now just wasted two months. Both Ruby and her supervisor are upset that you chose to issue a Request for Proposal (RFP) amendment over a technical detail, instead of making the award and issuing a simple PWS clarification as a contract modification afterwards. Ruby states that her supervisor has even threatened to have you removed as contracting officer if you do not get the contract awarded soon.

Late one evening several days later, you are sitting at your desk when Ruby's supervisor comes to your office. He is concerned that the current contract will expire soon and the successor contractor has not yet been decided. Responses to the amended RFP have not even been received yet. He explains that if a contractor other than the incumbent were to win, there must be a sufficiently long transition period to address important Status of Forces Agreement requirements. He tells you that he has no time to waste, and characterizes you as a "toad in the road." What are you going to do?

Prior to the receipt of revised proposals, an anonymous note informs you that the writer believes the "extra" information known only to the incumbent was not information it properly acquired in the course of performing the existing contract. Instead, the note alleges that the information was of a planning nature about the requirements for the ongoing solicitation and was provided to the incumbent by a government employee who incorrectly thought it to be non-critical. Could Ruby be the culprit? Could this planning information be of such a nature that if it were provided to all offerors, it could make a significant difference in the proposals? You ask yourself, why did someone tell you this anonymously? Why now? Ruby's supervisor is not going to be happy if this acquisition is delayed again.

By now, you are a wreck. What happened to the smooth running requirement that you were assigned a few months ago? What can you do? What should you do? What do you do? You close your eyes and decide not to take any action. You will just move on to the next step.

Meanwhile, you are presented with a draft Justification and Approval (J&A) for Other Than Full and Open Competition for the current contract. The requiring activity wants to extend the life of the contract by six months and increase the ceiling on the contract. However, upon review, you see that the draft J&A is very poorly written. You make numerous suggested revisions and comments and return the draft for revision. Ruby returns the document to you two days later. It is still not satisfactory. The document has been extensively revised, but most of your requested changes have been ignored. You tell Ruby that you cannot sign the document as written. You elevate this to your supervisor who tells you that he has had a long conversation with requiring activity personnel and you need to expedite the award. Apparently, you are “taking too much time.”

You decide this situation is one that you cannot brush to the side and advise your supervisor that you will not sign the J&A until it is corrected. You go back and forth with the requiring activity for over a week. The Legal Advisor has reviewed the document and supports you 100 percent. The requiring activity finally makes your requested changes and the J&A is approved.

Prior to receipt of proposal revisions, the requiring activity (the organization that provided most of the members of the SSEB), makes it known that the SSEB has one week to review all proposals and report the results to the Source Selection Authority. You explain to your supervisor why it is critical to allow the two week time frame as planned. Your reasoning falls on deaf ears. By now, the various team members are tired of being in the hurry-up-and-wait mode. There are scheduled vacations, a wedding, and other work to be completed. Everyone, including you, wants this done now, but you also want it done right. You know that if the SSEB takes its time, it may be able to determine whether the incumbent benefited from the “extra” information it possessed. If it rushes the evaluation, this may not be possible. From the beginning, you have had a gut feeling that the right thing to do is to provide the same information to all competing offerors. You decide to discuss the matter with the Legal Advisor who questions why you did not bring this matter to his attention earlier. He advises you immediately either to amend the RFP and provide the information to all offerors, or to cancel the RFP and re-solicit. Now you have gone and done it... another delay.

You decide to amend the solicitation. After a total of seven amendments to the solicitation, you finally receive good proposals, narrow the competitive range to three, and award the contract. There are no protests.

Your “plum assignment” was not what you thought it would be, but the lessons learned are invaluable.