



Government Contracts Compliance – Gifts, Gratuities, and Bribes

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Joël Van Over

joel.vanover@pillsburylaw.com

Pillsbury Winthrop Shaw Pittman LLP

1650 Tysons Boulevard
McLean, Virginia 22102

703-770-7604

Gifts

- Office of Government Ethics (OGE) – 5 C.F.R. § 2635 Subpart B
- Prohibits soliciting or accepting a gift
 - From a “prohibited source” or
 - Given because of official position
- Restricts Government conduct – limits acceptance of things of value by federal employees
 - “Any officer or employee of an agency, including a special Government employee” – 5 C.F.R. § 2635.102(h)

Gifts (Cont'd)

- Cannot solicit or accept gifts indirectly – prohibitions extend to:
 - Gifts to parents, siblings, spouses and children
 - Gifts to charitable organizations recommended by Government officials
- Receipt of cash or investment interest is generally *not* acceptable
- Shall not accept gifts on a frequent basis where reasonable person would be led to believe the employee is using public office for private gain - 5 U.S.C. § 2635.202(c)(3)

Gifts (Cont'd)

- The definition of *gift* specifically excludes:
 1. Hospitality – Snacks (such as coffee and donuts) (but not meals)
 2. Greeting cards, plaques, certificates, trophies – little “intrinsic” value
 3. Modest travel expenses to attend meetings relating to official duties (but not to include travel + admission to a meeting)
 4. Opportunities/benefits available to the public or a class of all Government employees (discounts available to Government employees)
 5. Anything paid for at “market value”

Gifts (Cont'd)

- Exceptions to the prohibition:
 1. *De Minimus* Gifts (\$20 or less per gift/\$50 per calendar year)
 - Aggregate corporation's gifts
 - If the value of the gift exceeds \$20, cannot pay the market value difference
 2. Gifts based on purely personal relationships
 - Gift cannot be paid for using corporation's funds
 3. Discounts/benefits based on membership in groups unrelated to Government employment
 4. Awards/Honorary Degrees
 - \$200 or less: may accept
 - X>\$200 or cash/investment interest: need to obtain written determination of agency ethics official
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Gifts (Cont'd)

5. Gifts based on an outside relationship

- Spouse's employer – when not offered or enhanced because of the employee's official position
- Special Government Employees
- *Bona Fide* Prospective Employment Discussions

6. Attendance to widely attended gatherings

- *Speaking Engagement* – free admission from event sponsor
- If not speaking, attendance must be in the best interest of the agency, the number of guests must be >100, free attendance's value must be <\$335, wide diversity of views

Gratuities

- 18 U.S.C. § 201(c); 5 C.F.R. § 2635.202(c); and FAR § 52.203-3.
- Restricts contractor and Government conduct – improper to offer/give and improper to solicit/accept
- Gratuity is an illegal gift
- Anything of value → Public official “for or because of any official act”
 - Public official – Member of Congress, an officer, employee, or person acting on behalf of the United States, or any department, agency or branch of Government and DC
 - Reward for a past official act or in the hope of obtaining general goodwill in the future – *US v. Alfisi*, 308 F.3d 144 (2d Cir. 2002)
- 2 years/\$500,000 – 18 U.S.C. § 201(c)

Gratuities – Conduct to Avoid

- *United States v. Hoffman*, 556 F.3d 871 (8th Cir. 2009)
 - Contractor provided to services to Army Corps of Engineers under a contract and follow-on contract
 - Contractor and agency's point of contact became friends
 - Contractor sought a performance evaluation report
 - Contractor provided agency official, among other gifts, golf clubs
 - In emails regarding the evaluation, the parties discussed the golf clubs
 - Contractor was convicted and his 3 arguments were rejected on appeal
 - Immaterial whether contractor thought the clubs would influence the official to prepare the evaluation or that no evaluation was prepared
 - Email mentioning the golf clubs, even if sent 13 months after the clubs were delivered, was sufficient to prove intent
 - Use of company, not personal, funds refuted claim that clubs were to "treat a friend"

Gratuities – Conduct to Avoid

- *United States v. Gaines*, 996 F.2d 1213 (4th Cir. 1993)
 - Friendship developed as co-workers at defense contractor
 - Both individuals eventually began working for the Navy
 - One friend left the Navy to form a consulting firm
 - Consulting firm provided the official theater tickets, tires, financial support for the Navy official's son's business, and a lithograph
 - Navy official divulged confidential Navy acquisition planning information to & intervened on behalf of consulting firm's clients
 - 4th Circuit held that it was immaterial if gifts were given in part because of the friendship between the parties if the gifts were received in part for or because of the performance of official acts

Bribery

- 18 U.S.C. § 201(b)
- Bribery is more serious than a “gratuity”
- “Corrupt Intent”
 - Quid Pro Quo – Intent to Influence
 - “The intent to receive a specific benefit in return for the payment.” *US v. Jennings*, 160 F.3d 1006 (4th Cir. 1998)
- 15 years/\$500,000 – 18 U.S.C. § 201(b)