22 May 2006

INFORMATION PAPER

SUBJECT: Working with Contractor Employees

1. **Purpose.** To provide guidance on common issues involving contractor employees who work in the federal workplace.

2. **Facts.**

a. **Status.** The Army does not have an employer-employee relationship with contractor employees who work in the federal workplace, as it does with DA civilian employees. Instead, the Army contracts with a company, corporation, or agency, which, in turn, provides the Army contractor employees to accomplish specified tasks or services. In all instances, contractor employees are not government employees, and must not be treated as such - this distinction is important.

b. **Attendance at Official or Unofficial Events.** Contractor personnel may attend official or unofficial events (e.g., Organization Days, office parties, Special Emphasis Programs, etc.) if invited by the government and the contracting supervisor approves, provided the contractor employees are in a leave or other non-billing status. Except for contracting officers, no federal employee may alter the terms of an existing contract to allow attendance to these events. Contractor personnel may voluntarily attend these events so long as the government is not paying for their time.

c. **Commander's Coins.** Commander's coins purchased with appropriated funds may be used to recognize Soldiers or DA civilian employees for excellence. Absent exceptional circumstances, however, coins purchased with appropriated funds may never be presented to contractor employees. Coins purchased with personal funds may be given to contractor employees (or any one else).

d. **Awards.** Federal statutes govern the awards and incentives programs for service members and civilian employees. Contractor employees are not authorized recipients of these military or civilian incentive awards. Awards and performance incentives for contractor employees, such as award fees and incentive payments, are often times built into a particular contract. Heads of organizations may, however, recognize contractor employees by presenting a certificate or a commander's note. Commanders or supervisors may inform contractors that one or more of their employees has performed exceptionally well by forwarding to the responsible contracting officer information about how the contractor employees have significantly exceeded contract

requirements. All such recognition must be coordinated with the contracting officer responsible for the contract.

e. **Identification.** Contractor employees must always be readily identifiable by wearing appropriate identification badges and by other identifiers in email, correspondence and phone calls (including when participating in conference calls or VTCs).

f. **Gifts.** Contractor employees and their employers are "prohibited sources." Government employees may not solicit them for gifts of any kind. Government employees may, however, accept items of little intrinsic value from contractor employees, such as coffee, cakes, or donuts shared in the office setting. Government employees may also accept unsolicited gifts up to $20 per occasion, but not more than $50 per contractor source per calendar year. Cash gifts may never be accepted from contractor employees.

g. **Fundraising.** Government employees may not solicit contractor employees for office internal fundraising. Contractor employees may voluntarily participate in office fundraising for things such as the office coffee fund, cup and flower fund, birthday cakes, and departing mementos.

h. **Information Protection.** Government employees should protect classified, proprietary information, and trade secrets from contractor employees who do not have an official need to access such information.

i. **Use of Government Resources.** Contractor employees may not use government resources except in the performance of the contract.

j. **Personnel Issues.** Government supervisors do not control the leave and work schedules of contractor employees. Holiday work schedules for contractor employees are governed by the contract or by the internal rules of the contractor, not by government supervisors.

k. **59-Minute Rule and Training Holidays.** Heads of organizations or government personnel, regardless of position, may not grant contractor employees "59 minutes" as is permitted for government employees. The same prohibition applies to granting contractor employees time off for training holidays.

l. **Terminal Leave.** Military officers on terminal leave may not work as contractor employees in the federal workplace. They may, however, work on "Army matters" for the contractor "behind the scenes" at a contractor office or otherwise away from the government workplace.

m. **Contractor Personnel Cannot:**

(1) Be placed in a position where they are under direct supervision, direction or evaluation of a government employee.

(2) Be placed in a position of command, supervision, administration or control over government personnel or employees of other contractors.

(3) Be used in the administration or supervision of government procurement activities.

n. **Letters of Recommendation.** Letters of recommendation for contractor personnel raise certain ethics and contract law issues. All inquiries requesting letters of recommendation should be forwarded to the servicing Ethics Counselor or legal office to be evaluated on a case-by-case basis.

o. **Use of Legal Services.** Contractor personnel are not authorized to request or receive legal services from the supporting military legal office on behalf of the military organization in which they work.

CPT Davenport/ATJA/2302
Approved by COL Curry, TRADOC SJA

TOP 15 RULES FOR WORKING WITH CONTRACTOR EMPLOYEES IN THE FEDERAL WORKPLACE

Rule 1 – Contractor employees are not DA civilian employees – so the Rules are different! Consult early and often with Ethics Counselor/legal advisor.

Rule 2 – Contractor employees may attend official or unofficial events, like Organization Day, if invited by the government and the contracting supervisor approves, provided the contractor employees attend in a leave or other non-billing status.

Rule 3 – "Commander's coins" purchased with **appropriated** funds may not be presented to contractors.

Rule 4 – Contractor employees have their own company awards/bonus programs and are **not** authorized recipients of military or civilian incentive awards.

Rule 5 – Contractor employees **must** be readily identifiable through badges or other identifiers in email, phone calls, VTCs, and meetings.

Rule 6 – Government employees may **not** solicit contractor employees for gifts (because they are considered to be "prohibited sources"). Government personnel may, however, accept unsolicited gifts (never cash) up to $20 per occasion, but not more than $50 per source per calendar year.

Rule 7 – Government employees may **not** solicit contractor personnel for office internal fundraising. Contractor personnel may voluntarily participate in office fundraising for things such as the office coffee fund, cup and flower fund, birthday cakes, and departing mementos.

Rule 8 – Government employees must protect all trade secrets, classified, and proprietary information from contractor employees who do not have an official need to access such information.

Rule 9 – Contractor employees may not use government resources except when in performance of the contract.

Rule 10 – Contractor employers control the leave and work schedules of their employees.

Rule 11 – Supervisors may not grant contractor employees "59 minutes" or time off for training holidays.

Rule 12 – Contractor employees may **not** be placed under the direct supervision, direction or evaluation of a government employee.

Rule 13 – Contractor personnel may **not** command, supervise, or exercise administrative control over government personnel or employees of other contractors.

Rule 14 – Contractor personnel may **not** be used in administration or supervision of government procurement activities.

Rule 15 – Before providing a contractor employee a personal letter of recommendation, contact the Ethics Counselor/legal advisor for fact-specific advice.