DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY MEDICAL COMMAND
2050 Worth Road
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MEDCOM Regulation
No. 715-3

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Procurement

CONTRACTOR/CONTRACTOR'S EMPLOYEES AND MEDCOM PERSONNEL RELATIONSHIPS

Issue of supplements to this regulation by subordinate commanders is prohibited, unless specifically approved by HQ MEDCOM, ATTN: MCAA.

1. **HISTORY.** This is the first printing of this publication.

2. **PURPOSE.** This publication establishes U.S. Army Medical Command (MEDCOM) guidance for the proper relationship between MEDCOM personnel and contractors/contractor's employees and is issued by the Assistant Surgeon General for Force Sustainment, as Head of Contracting Activity, MEDCOM Health Care Acquisition Activity (HCAA), pursuant to the Federal Acquisition Regulation.

3. **REFERENCES.**

a. Title 5, United States Code, Sections 3109, 5308, 5532, and Chapter 51.

b. Title 18, United States Code, Sections 206, 207, and 208(a) and (b).

c. Federal Acquisition Regulation, Part 9, Subpart 9.5, Organizational and Consultant Conflicts of Interest.

d. Federal Acquisition Regulation, Part 17, Subpart 17.5, Interagency Acquisition Under the Economy Act.

e. Department of Defense (DOD) 5500.7-R, Joint Ethics Regulation, change 4.

f. Administrative Instruction No. 2, subject: Employment of Experts and Consultants, current edition.

4. **EXPLANATION OF ABBREVIATIONS AND TERMS.** Abbreviations and special terms used in this publication are explained in the glossary.

5. **APPLICABILITY.** This publication applies to all MEDCOM and subordinate activity personnel and their contractors/contractor's employees. It does not apply to U.S. Army Medical Research and Materiel Command and its subordinate activities.

6. **RESPONSIBILITIES.**

a. The responsibility for our organization's commitment to integrity and values rests with each government employee.

b. MEDCOM personnel are responsible for complying with the command-wide standards of conduct and for presenting issues if they are concerned that standards are not being met.

c. Key personnel and supervisors must apprise their subordinates and associates of the rules applying to MEDCOM personnel and contractor relationships. Additionally, they are required to listen and act on concerns expressed by employees and contractors/contractor's employees about possible violations of government-wide policies, laws, and regulations.

7. **POLICY.** The MEDCOM policy is to support and comply with statutorily mandated rules and regulations intended to maintain the integrity of the acquisition process. An important factor in maintaining a fair and impartial environment is the relationships between MEDCOM personnel and contractors/ contractor's employees. This policy defines general guidelines for daily interactions in accordance with government-wide provisions for procurement ethics. Failure to understand or follow these rules could result in possible civil or criminal penalties. Criminal statutes (reference 3b) apply to everyone and all are obligated to abide and enforce those statutes.

8. **GENERAL GUIDELINES.**

a. MEDCOM personnel must protect procurement information from unauthorized disclosure or compromise. Procurement information generally includes, but is not limited to, budget matters, strategic planning, short-term and mid-term plans, other contractor's proprietary information, and any other information that could be used to gain a competitive advantage.

b. Contractor personnel are not government employees and will not perform inherently governmental functions such as making management decisions on behalf of the government. Other examples of inherently governmental functions are:

(1) Direction, control, and supervision of federal employees.

(2) Approval of position descriptions, performance standards, or appraisals/performance evaluation reports for federal employees.

(3) Selection or nonselection of individuals for government employment, including interviewing individuals for employment.

(4) Leadership representation or command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.

(5) Determination of federal program priorities for budget requests.

(6) Determination of agency policy, such as determining the content and application of regulations.

(7) Approving the work of a contractor. (Contractors/contractor's employees will not make final decisions nor approve their own recommendations; one contractor cannot approve another contractor's recommendations.)

c. Conduct considered inappropriate for contractors/contractor's employees will not be accomplished through subcontractors, suppliers, consultants, or any other means.

d. An unauthorized personal services contract relationship can occur through creation of a supervisor-employee relationship in a nonpersonal services contract. If such a relationship is developed, the contractor becomes subject to the dual compensation provisions as follows.

(1) A retired civilian employee may be hired as an expert or consultant; however, the civil service annuity, computed on a daily rate, shall be deducted from his or her pay for the actual time worked.

(2) The military retired pay of a retired regular commissioned or warrant officer serving as an expert or consultant shall be reduced in accordance with 5 U.S. Code 5532(b) (reference 3a). Reduction of retired pay is not required for the first 30-day period for which salary is received. The 30-day exclusion does not apply to more than one appointment aggregating more than 30 days within the same work year nor a reappointment to the same position in the succeeding work year. The reduction is effective the 31st calendar day for full-time, temporary appointment and effective with the 31st actual day worked for a temporary, part-time, or intermittent appointment. Temporary, full-time is regular employment with a limited duration. The 30 days are calculated by the full calendar period employed, including Saturdays and Sundays.

e. Army policy allows activities to obtain their acquisition and contracting support from the Army or other DOD organizations that best satisfy their requirement in terms of technical capability, quality, cost (including administrative support costs), and timeliness. To ensure appropriate contractor relationships are established and appropriate strategies or contracting tools are adopted, HCAA will serve as the command's business advisor for contracting matters. This excludes contracting matters specifically provided for by the U.S. Army Medical Research Acquisition Activity, the Defense Supply Center Philadelphia and acquisitions mandated from required sources of supplies prescribed in Federal Acquisition Regulation Part 8 (which has separate statutory authority). All other contractual requirements shall be coordinated through the HCAA Regional Contracting Office assigned to each location. The HCAA reviews are intended to ensure the AMEDD activities receive the best value for their dollars and to enforce the Defense Federal Acquisition Regulation Supplement requirement for development of an Economy Act Determination and Finding for all contracting that is offloaded outside of DOD. Requests for Economy Act Determination and Finding will be sent through the Principal Assistant Responsible for Contracting at the MEDCOM HCAA to the MEDCOM Head of Contracting Activity for approval.

9. **SPECIFIC ORGANIZATIONAL CONFLICTS OF INTEREST.** MEDCOM personnel and contractors/contractor's employees will not engage in conduct or activity that may raise questions as to the MEDCOM's honesty, impartiality, or reputation. Reference 3c further prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organization conflicts of interest. The following summarizes specific prohibitions.

a. Employment discussions with contractors/contractor's employees, implicate serious statutory and regulatory restrictions applicable to certain

current and former U.S. Government employees. MEDCOM personnel will first consult with their ethics advisor to ensure compliance with conflict of interest restrictions.

b. Reference 3a prohibits a government employee from participating personally and substantially as a government officer or employee in a procurement, if he/she has a financial interest in the company, unless he/she makes full disclosure to his/her superiors and either disqualifies himself/herself from further participation in such matters or receives a written determination exempting him/her from the requirement to disqualify himself/herself.

c. MEDCOM personnel must not direct contractors to employ a specifically named individual. This does not preclude MEDCOM personnel serving on source selection panels from evaluating qualifications of key personnel.

d. MEDCOM personnel are not authorized to be involved in deciding the direct compensation of contractor employees and are not to disclose direct compensation information or other elements of costs to other contractors/contractor's employees. Any inquiries of that nature are to be referred to the contracting officer.

e. MEDCOM personnel must ensure that all contract requirements, including development of statements of work, are written independently. If a contractor participates in the preparation of a statement of work or otherwise participates in the development of the requirement, he/she cannot compete for an award of a contract.

f. MEDCOM personnel's market research activities must not include negotiation of prices, terms, and conditions. In addition, the independent government estimates must not be shared with contractors/contractor's employees.

g. MEDCOM personnel must contact the contracting officer when there are any changes in contract requirements. The contractor/contractor's employee and contracting officer's representative cannot negotiate contract changes and jointly prepare submissions to the contracting officer.

h. When MEDCOM personnel and contractors/contractor's employees are collocated, care must be taken to protect procurement sensitive information.

i. MEDCOM personnel and contractors/contractor's employees must conduct business in an atmosphere of openness. All meetings should be scheduled during normal business hours and settings under circumstances that cannot be interpreted to imply concealment.

j. MEDCOM personnel and contractors/contractor's employees must ensure daily activities do not transmit procurement sensitive information or the perception of giving current contractor(s) a competitive advantage. This is particularly important where there may be preexisting social and personal relationships with retired military or retired civil service employees.

k. Contractors/contractor's employees will not attend meetings, briefings, video-teleconferences, or other exchanges of information where the subject matter being discussed could provide a competitive advantage (or the appearance of gaining a competitive advantage). Contractors/contractor's

employees may be used to plan conferences or serve as facilitators; however, care must be taken to ensure that information is not discussed which could potentially provide a competitive advantage in future acquisitions.

l. Contractors/contractor's employees must identify themselves as contractors or employees of contractors and not as members of a particular directorate or command in phone, correspondence, or other communications.

m. Contractors/contractor's employees will not represent commanders or directorates at meetings, conferences, or at any other gathering.

n. Contractors/contractor's employees are not authorized to participate in social events, training holidays, organization day activities and other similar activities, unless the specific activity is defined in the contract. Exceptions include all professional meetings, such as the National Contract Management Association and the Association of Military Surgeons of the United States.

o. The Joint Ethics Regulation limits acceptance of gifts and gratuities from contractors and contractor's employees. MEDCOM personnel will not solicit anything of value from contractors/contractor's employees. Small gifts are occasionally offered in meetings with contractors. Food and refreshments that are not part of a meal (e.g., coffee and donuts) may be accepted. MEDCOM personnel also may accept presentation items, such as a commemorative coin or plaque, or other items worth less than $20. While MEDCOM personnel may generally accept these small gifts, they may not do so if their acceptance will create an appearance of impropriety. As gifts and gratuities present a real danger of creating a conflict or an appearance problem, MEDCOM personnel should discuss acceptance with an ethics counselor, preferably in advance of acceptance.

p. As a condition of doing business with the MEDCOM, contractors and contractor's employees are absolutely prohibited from bringing food or drink into the government work area, unless it is for personal consumption.

q. MEDCOM employees should not attend repetitive social events with contractors/contractor's employees. Examples of social events are lunches, physical training, sports, or other recreational events.

r. Contractors/contractor's employees will not participate in government provided training, unless specifically provided for in their contract.

10. **PROCEDURES.**

a. **Badges.** All contractors/contractor's employees will be required to wear a distinct colored badge identifying themselves as contractors/ contractor's employees and not government employees.

b. Voice and data services for contractors/contractor's employees. Contractors/contractor's employees providing nonappropriated fund type service will normally be provided access to data services and networks for the conduct of official business. Contractors/contractor's employees providing appropriated fund type support in the government workplace will receive access to voice/data services and networks as government-furnished equipment and/or service.

c. Questions. Questions in regards to specific issues may be addressed on a case-by-case basis in consultation with the HCAA management and the MEDCOM Ethics Advisor.

GLOSSARY

Section I
Abbreviations

DOD.....Department of Defense

HCAA.....Health Care Acquisition Activity

MEDCOM.....U.S. Army Medical Command

Section II
Terms

Contract. A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.

Contracting Officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

Contracting Officer's Representative. An authorized representative of the contracting officer acting within the limits of his/her authority as delegated by the contracting officer.

Consultant. An individual possessing uncommon, special, current knowledge or skill in a broad area, combined with extensive experience in the application of such knowledge or skill in an operational setting. As a consequence, consultants are well-recognized outside of their peer group.

Expert. An individual possessing uncommon, special, current knowledge or skill in a particular field. An expert is an outstanding specialist with a high level of peer recognition.

Intermittent Appointment. Occasional or irregular employment on programs, projects, or problems, or phases thereof, requiring intermittent service not to exceed 130 workdays in a service year. (If at any time it is determined that the expert's or consultant's work no longer is intermittent in nature, the employment shall be terminated immediately or converted to full-time, if circumstances allow.)

Market Research. Collecting and analyzing information about capabilities within the market to satisfy agency needs.

Organizational Conflict of Interest. Means because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Personal Services Contract. A contract that, by its expressed terms or as administered, makes the contractor personnel appear, in effect, to be government employees.

Temporary Appointment. Full- or part-time employment in an authorized billet on programs, projects, or problems, or phases thereof, requiring temporary services for 1 year or less.

The proponent of this publication is the U.S. Army Medical Command Health Care Acquisition Activity. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to Commander, U.S. Army Medical Command: ATTN: MCAA, 2050 Worth Road, Suite 37, Fort Sam Houston, TX 78234-6037.

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