

BASIC RULES GOVERNING GRATUITIES FOR FEDERAL GOVERNMENT EMPLOYEES

1.0 BASIC RULES.

Generally, government employees may not accept gifts or gratuities from individuals and/or companies who seek to do business with the **government**. The law prohibits any gift given to a government employee with the intent to influence or reward official action. In order to ensure uniformity of application and avoid even the suspicion of impropriety, the regulations implementing this rule extends the ban to all items of any value, whether or not an intent to influence can be demonstrated.

There are two exceptions to this rule which are important for _____ (“Company”) employees to know. First, government employees may accept gifts of \$20.00 or less per occasion. The total value of gifts accepted by a government employee under this exception may not exceed \$50 per calendar year. 5 C.F.R. § 2635.203(b)(1). Thus, a Company employee may give a Government employee a Company shirt or other promotional item that does not exceed \$20 in value, providing the recipient has not already received over \$30 worth of other exempt gifts from anyone at Company in the same year.

Second, government employees may accept modest items of food or drink, such as coffee, soft drinks, or donuts, that are not offered as part of a meal. 5 C.F.R. § 2635.203(b)(1). Thus, government employees may be served beverages and modest food items in connection with meetings with Company employees. Company may not, however, pay for lunches or other meals for government employees under this exception. Such entertainment counts as gifts which are subject to the limitations described above.

While government employees have an obligation to ensure their own compliance with these rules, this rule is also incorporated in Company’s Metro Expense Reporting process. It is incumbent upon Company to pay attention to this matter, and to take appropriate measures to ensure that unacceptable gifts are not offered in the first place.

2.0 PURPOSE.

The purpose of this policy is to ensure that Company personnel fully comply with all federal laws and regulations pertaining to the offering and providing to government persons of any gratuities, such as meals, gifts, technical briefings, promotional training, and other items of value. The federal Gratuities clause is incorporated in several of Company’s prime government contracts or subcontracts. (A copy of the clause is attached to this policy for general reference).

The importance of understanding this policy is underscored by the fact that a violation of the gratuities laws may subject either an individual or the company to prosecution under federal *criminal* laws, in addition to civil and other agency administrative penalties. Accordingly, when in doubt, don’t. And, whenever possible, even the appearance of impropriety should be avoided.

3.0 SCOPE.

This policy shall apply to all Company employees and consultants who are engaged in selling Company products or services, either directly or indirectly, to the U.S. Government.

4.0 DEFINITIONS.

What Is A Gratuity?

The federal criminal law (18 U.S.C 201) provides that:

*"Whoever –
otherwise than as provided by law for the proper discharge of official duty—
(A) directly or indirectly gives, offers, or promises anything of value to any public official . . . for or because of any public act performed or to be performed by such public official ...
shall be fined under this title or imprisoned for not more than two years, or both."*

"Anything of value" is defined broadly under the gratuity law. It can include dinners or other meals, use of real estate, paid vacations, promotional technical briefings, gift items bearing the Company logo, and similar items. Under the above law, Company personnel are prohibited from giving, offering, or promising "anything of value" to a public official "for or because of an official act." A person can violate the gratuity law by merely offering a gift to influence a government official, or as a reward for a favorable decision.

Key Exceptions to the Definition of a Gratuity.

There are certain exceptions to the definition of an illegal gratuity, some (but not all) of which are as follows:

- **The 20/50 Rule:** Government employees may accept unsolicited gifts with a market value of \$20 or less per occasion. The total value of gifts accepted under this exception may not exceed \$50 per calendar year, provided the gift is not given to influence or reward the employee's actions.
- **Modest Food Items:** Government employees may accept modest items of food or drink, such as coffee, soft drinks, or donuts, that are not offered as part of a meal. When other than modest items of food or drink are provided for a meeting attended by Government personnel, a basket or other container must be presented to solicit contributions from Government personnel for the value of the meal.

These Exceptions Apply to Company as a Whole.

The limits on minimal gifts apply to Company as a whole and not to individual employees. Minimal gifts should not be given on a recurring or regular basis. Thus, Company may not provide government employees with any single item bearing the Company logo that exceeds \$20 in value. Moreover, Company may not give federal employees such items with a cumulative value of more than \$50 in any given year.

For other possible exceptions, such as the attendance by government personnel at widely attended gatherings, and other special events, please refer your inquiries directly to Company's Federal Attorney.

5.0 REFERENCES.

- 18 U.S.C. § 201(b) (prohibits public officials from accepting anything of value in return for being influenced in the performance of an official act);
- 18 U.S.C. § 209 (prohibits public officials from receiving any salary supplements from sources other than the United States);
- DOD Directive 5500.7;
- FAR Subpart 3.2 (Contractor Gratuities to Government Personnel);
- 5 C.F.R. Part 2635 (The Office of Government Ethics Standards of Conduct Regulations); and
- 10 C.F.R. Part 3601 (Supplemental Standards of Conduct for Employees of the Department of Defense).

6.0 GRATUITIES POLICY FOR COMPANY EMPLOYEES DOING FEDERAL BUSINESS.

6.1 General

No Company employee shall offer or provide anything of value to a federal government customer, contractor, or employee of such customer or contractor: (1) for the purpose of influencing the award, renewal, or modification of a contract; (2) in exchange for some official act; or (3) to secure or reward favorable treatment in connection with procurement activities.

6.2 Entertainment of Federal Customers

Although entertaining customers through paid invitations to dinners or other events may be part of Company's marketing practices for its commercial customers, such activities are expressly prohibited for Company's federal government customers unless they fall within the exceptions noted above.

6.3 Special Rule for Procurement Officials

Company is particularly sensitive to the risk of improperly influencing an ongoing procurement. Accordingly, Company has adopted a special rule for procurement officials who are responsible for pending and/or prospective procurements. *No item of value, without exception, shall be offered, promised or given to a procurement official.*

6.4 Promotional Training and Technical Briefing Sessions

General Prohibition. In most cases, providing free or below market-value vendor promotional training or product briefing sessions will constitute illegal gratuities

under applicable law. Thus, federal government customers generally should not be invited to such promotional training or technical briefing sessions.

6.5 Approval Process

There are certain limited circumstances in which government employees may participate in training or product briefing sessions sponsored by Company. However, each agency has particular rules regarding the acceptance of such training. Company employees must consult with and obtain approval from Company's Federal Attorney before inviting government employees to such training sessions or providing discounts on training attendance fees to government employees.

6.6 Enforcement and Reporting Responsibilities

Regional Managers and Systems Engineering Managers have the primary responsibility for enforcing this policy for employees under their supervision. RMs and SEM's shall review the expense reports submitted by Account Managers/Systems Engineers under their respective supervision to determine that no expenditure violates this policy.

6.6.1 The expense reports submitted to and approved by RM's and SEM's shall be subject to periodic, internal audit by Company.

6.6.2 Information relating to potential violations of this policy should be immediately reported to Company's Federal Attorney or Company's Legal Department.

6.7 Policy Administration

This policy shall be reviewed at least annually by Company's and Government Compliance Specialist to ensure that it correctly reflects applicable federal laws and regulations regarding this matter, and is followed by Federal Operations personnel.

This policy, and any amendments or changes to it, shall be distributed via email by the Government Compliance Specialist to sales-fed, cs-fed, Company's Legal Department, and to relevant personnel in Company Service Business and Finance departments.

A copy of this policy (as it may be amended) shall be included in the new hire training materials to be provided to new Company employees working on behalf of Company's Federal Operations. And, a copy of this policy (and any amendments) shall be made available on one or more of Company's internal web sites.

EXHIBIT A

Expense Audit Procedure for Auditing Compliance with Company's Gratuities Policy

1.0 PURPOSE.

The purpose of this audit procedure is to monitor and ensure that Company personnel fully comply with the Gratuities Policy for Company Employees doing Federal Business. ("Gratuities Policy").

2.0 SCOPE.

Company's Gratuities Policy applies to all Company employees and consultants who are engaged in selling Company products or services, either directly or indirectly, to Company's federal customers. This audit procedure applies to those personnel performing audits of expense reports submitted by covered Company employees to determine compliance with the Gratuities Policy.

The following departments are responsible for implementation of this Procedure and the Gratuities Policy:

- Legal: Government Compliance Specialist;
- Finance: Metro and Manual Expense auditors within the Finance Organization; and
- Human Resources: HR representatives that update personnel files

3.0 DEFINITIONS.

Gratuity: Any item or service of value offered or given to a federal government employee. See Gratuities Policy.

Federal Customers - Quick Reference Guide: An alphabetical list of most of Company's Federal Customers. The list is a compilation of Federal acronyms, agencies, and bases from the Federal Yellow Book, which shall be available from Company's Government Compliance Specialist or Federal Attorney.

4.0 PROCEDURE.

4.1 Review of Expense Reports.

During random audits that are routinely performed by Metro and Manual auditors of "Business" and "Entertainment" expenses incurred by Company employees, the Metro or Manual auditor will review and cross reference the Customer name with the "Federal Customers - Quick Reference Guide." If, based upon that review or from other facts, it appears to the auditor that the customer is one of Company's Federal Customers, the auditor shall check to make sure that the Company employee did not spend more than \$20 on that particular customer per person, and per occasion.

4.2 Notice of Questioned Expenses.

If the employee's expense report indicates that the employee spent over \$20 per person and per occasion with that Federal Customer, a notice (email) will be sent to the Company employee, with copy to the Government Compliance Specialist in Company's Legal Department, that provides as follows:

NOTICE: Company Employee:

An audit of this Metro Expense report indicates that your Entertainment/Business expenses/meals may exceed the \$20.00 gift limit per person, per occasion for your Federal Government customer. Company's Gratuities Policy provides, in relevant part, that Company employees may give unsolicited gifts or gratuities to Government employees, providing the gifts or gratuities have a market value of \$20 or less per occasion and are not given to influence or reward the employee's actions. The total value of gifts given under this exception may not exceed \$50 per calendar year. Also, Company employees may not give such officials anything of value while a procurement is pending.

Please respond to this notice and advise whether or not your stated expenditure complies with Company's Gratuities Policy.

4.3 Referral of Questioned Expenses to Legal Department.

If the employee confirms that the expenditure does not conform to the Gratuities policy, the Metro or Manual auditor will forward the above notice and employee response to:

Company's Government Compliance Specialist and Company's Federal Attorney, working with the relevant employee's manager and HR personnel will take the appropriate steps to resolve any inappropriate employee expenditures that may conflict with Company's Gratuities policy.

4.4 Treatment of Questioned Expenses Pending Resolution.

During the time that the questioned expense is under review by Company's Government Compliance Specialist, the status of the expense on Metro or on the Manual expense report will be renamed or described as "under audit" while the rest of the expense report will be paid.

Company's Government Compliance Specialist will advise the Expense Department regarding the appropriate resolution of any questioned expenditure by email to _____, and will provide a copy of such notification to the employee and the employee's manager.