

IBM GOVERNMENT CLIENT GUIDELINES - GLOBAL

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1.0 INTRODUCTION & SCOPE

The IBM Business Conduct Guidelines provide direction on issues common to every IBM employee. However, because of unique client-related responsibilities and regulations, those of us who deal with Government Clients (as defined in section 2.1) face legal and ethical questions different and potentially more complex than those encountered by other IBM employees. The IBM Government Client Guidelines - Global supplements the IBM Business Conduct Guidelines for issues related to our Government Clients. Each of us is required to understand and comply with both documents in our dealings with Government Clients.

Your Governmental Programs, Contracts and Negotiations, and IBM Legal support teams are available to answer questions and offer further guidance in specific matters as they arise.

Depending upon the clients you serve, certain parts of these guidelines may be more or less relevant to your daily activities.

2.0 GENERAL GUIDELINES

2.1 Our Government Clients

Government Clients include all entities subject to the applicable country's public procurement laws and regulations, as well as public international organizations (e.g., United Nations). Typically covered are all public entities, associations, bodies, organizations and foundations and any department, agency, public enterprise or instrumentality thereof, whether national, international, state, local or municipal in nature. Generally public schools, utilities, organizations licensed to provide public services, and other publicly-owned or controlled economic entities are also included, as are governmental corporations.

Note that IBM's market segmentation rules are not determinative when classifying a client as a Government Client. For example, if a bank or a telecommunication client is owned directly or indirectly by a government and IBM classifies it as Financial Services Sector or Communications Sector, it may still be a Government Client. In some countries, Government Clients are part of the SMB or other sectors.

In addition, ownership alone may not be determinative as to the status of a client. In certain circumstances, even if the client is not majority owned by a government entity, it must nevertheless be considered a Government Client. In assessing whether the client is a Government Client one must consider a number of factors such as: Are the client's employees public officers or civil servants? Is control over the entity exercised by a government entity? Are its activities financed by a government entity? Is the client subject to the local public procurement rules or entitled to procure products or services from IBM under our contracts with a government agency? If the answer to one or more of these questions is yes, it is likely that the client must be treated as a Government Client.

Finally, commercial business enterprises which hold or are bidding on public sector contracts may be subject to procurement regulations which may require that commercial enterprise to "flow-down" various government procurement regulations to applicable subcontractors and suppliers. If you encounter this situation, you should obtain assistance from Contracts and Negotiations or Legal.

It is your responsibility to determine if a client is a Government Client prior to engaging in marketing or sales activities. Your management, Governmental Programs, Contracts and Negotiations and Legal support functions can assist you in this determination as needed.

2.2 Marketing Activities in the Government Clients Environment

We are often involved with Government Clients prior to a formal solicitation such as a Request for Proposal (RFP), Request for Interest (RFI) or Invitation for Bids (IFB) as a necessary function of government market research and quality procurement. However, any marketing activities you engage in must not be or be seen as attempts to circumvent procurement laws and regulations. You are responsible for identifying and adhering to the regulations and procedures that govern a particular procurement. If at any time you feel your actions may be misunderstood by the client, you should clarify them in writing on IBM letterhead. Any clarification should be reviewed by management and/or Legal before being sent to the client.

In general, you may give Government Clients and their representatives information about products and services to aid them in defining requirements, developing specifications and justifying proposed expenditures. You may also suggest terms, specifications and evaluation criteria that complement

our products and services. All submissions must, however, conform to IBM procedures regarding communications with Government Clients.

Unless IBM has been properly mandated to prepare or assist in the preparation of a solicitation for the Government Client, you generally may only review advance copies of solicitations at a Government Client's request when the documentation is also available to other vendors. Similarly, unless IBM has been properly mandated to prepare a solicitation, you may not otherwise prepare a solicitation, submit any anonymous documents (white papers), or encourage the client to sign an agreement covering the items to be procured prior to an award to IBM.

In addition, many Government Clients restrict companies which participate in the preparation of a solicitation from subsequently bidding on it. Prior to assisting a Government Client with the preparation of a solicitation, you should determine whether IBM is interested in participating in any resulting procurement and, if so, whether our assistance in its preparation could prevent us from bidding.

2.2.1 Obtaining and Using Information

We operate in a highly competitive environment. Winning or losing a contract often depends on the amount of accurate information we obtain for use in a proposal. An important part of an employee's job may be to get that information. However, you must ensure that we are legitimately entitled to the information you gather or receive.

You may not obtain oral or written information, including government planning and budgetary documents, which has not been released to the general public and which is subject to restrictions regarding its use unless you have obtained prior written approval of the official with government authority. Similarly, when engaged in a government bid, you may not obtain or seek to obtain information regarding our competitors' bids or the Government Client's decision process which is confidential to the Government Client or any third party. These requirements also apply to information obtained by third parties such as consultants, subcontractors, team members and others.

If you are uncertain about the status of information, it is your responsibility to resolve any questions before obtaining the information. If you have already received it, resolve any issues with Contracts and Negotiations or Legal prior to copying, using or distributing the information.

2.2.2 Freedom of Information

Occasionally, it may be appropriate and necessary to obtain information in order to understand our rights in a procurement matter. Government organizations often have various statutes, regulations and procedures which provide for access to government information. These statutes are often known as "Freedom of Information" or "access to public records" laws. You must have all such requests approved by Legal before proceeding. If you are contacted to release IBM information, you must seek advice from Legal before proceeding.

2.3 Securing an Order

2.3.1 Handling Sole-Source Procurements

Procurement regulations generally require competitive bidding for Government Clients. In most jurisdictions, sole-source procurement is only permitted in unique situations, such as public health and safety emergencies, or when the Government Client's in-house technical evaluation determines that specific equipment commitments should be made.

You must ensure that our marketing efforts do not violate laws or regulations or encourage questionable client activities. Even a legally acceptable sole-source order can create the appearance

of favoritism if not handled with sensitivity and good judgment. The result could be competitive protests, potentially damaging public criticism, and exposing IBM to liability.

As a general rule, we accept sole-source contracts in circumstances where it is a client's practice to make a permitted exception to competitive procurement rules and we have done nothing improper to motivate this exception. To avoid mishap, review all sole-source procurements and related marketing activities with your management and Legal before proceeding.

2.3.2 Bid Responses

When you receive a Government Client's bid request or solicitation, carefully review it for unique contract terms. If it contains terms which deviate from IBM's standard terms, forward it to the Contracts and Negotiations function where it will be reviewed by the appropriate Contracts and Negotiations representative and/or Legal. Should you receive a bid request or solicitation that is not publicly available, forward all the documentation to the Contracts and Negotiations function or Legal for prior approval. Depending on country laws, sanctions could apply to both the Government Client and the bidder if a bid is granted in contravention of public procurements laws. This applies also to so called "follow-up" contracts with Government Clients entered into without prior public announcement.

Bid responses may require special pricing and terms. These prices and terms are generally IBM Confidential. Be sure to place the appropriate security classification and other restrictive legends on all proposal pages containing such information to minimize the potential that this material will be disclosed to others by the client.

Your bid responses should be carefully written and accurate in every detail. Be sure that statements regarding the client's and IBM's responsibilities are clear and understandable. In addition, you must retain the appropriate backup documentation which supports your bid response.

Many Government Clients require that the bidder provide formal certifications as part of their bid response and/or certify to the completeness and accuracy of the bid submission. Typical certifications include assurances as to the bidder's financial status, compliance with laws, and independence from other bidders in setting bid pricing and terms, and similar areas of compliance. Incomplete or inaccurate certifications can be grounds for significant penalties for the bidder, including debarment and potential criminal charges. As a result, you must ensure that all bids that require certification be reviewed prior to submission by the appropriate IBM functions, including finance, Contracts and Negotiations, and Legal, and that all certifications are complete and accurate, and that any disclaimers or qualifications that may be needed to ensure completion and accuracy are included in the IBM response.

All required IBM approvals (e.g., Line management, Contracts and Negotiations, Legal, pricing, Quality Assurance/Risk Management) must be obtained prior to bid submission.

2.3.3 Invoicing and Shipping Without Government Purchase Order

Products and services must not be shipped/provided or invoiced to the Government Clients unless a valid government order containing terms and conditions acceptable to IBM has been received.

2.3.4 Defense Articles and Services

When doing business with government agencies, IBM may become involved in defense articles or services.

- **Defense articles:** Includes any items or technical data specifically designed, developed, configured, adapted, or modified for a military application/purpose. Commercial satellites and related technology are also defense articles.

- **Defense Services:** Under U.S. rules, consists of furnishing assistance (including training) to non-U.S. persons, whether in the U.S. or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles. Other countries may impose similar restrictions on their defense services.
- **Defense brokering:** IBM acts as a broker for others when negotiating or arranging contracts, purchases, sales, or transfers of defense articles or services, regardless of origin, in return for a fee, commission, or other consideration.

Government authorization is required prior to any transfer or disclosure of U.S. defense articles or services outside the U.S. or to non-U.S. persons. Other countries apply similar restrictions on transfers and disclosures of their defense articles and services. Controls must also ensure adequate protections are in place to safeguard defense items and data regardless of who you intend to include in your engagement.

Penalties for failure to comply with defense laws and regulations are severe and can result in fines, imprisonment, and loss of export privileges. If you have questions on defense control-related issues, talk with your manager or your local Export Regulation Coordinator, or contact the IBM Export Regulation Office (w3.ibm.com/chq/ero).

2.4 Working with Third Parties

2.4.1 Subcontractors and Suppliers are a part of many public procurement contracts. Your dealings with these businesses in the Government Clients environment may be subject to many of the same standards of conduct as your dealings with Government Clients and their representatives. In particular, do not accept, use, or distribute any information from subcontractors and suppliers without proper authorization. If you learn of any improprieties in our dealings with our subcontractors and suppliers, you must report them to IBM management. You may not hire a subcontractor or supplier without proper authorization from your management and the involvement of IBM Global Procurement.

2.4.2 Consultants are sometimes used by IBM in the procurement process. If you plan to use a consultant in a government client procurement situation, you may not hire a consultant without proper authorization from your management and the involvement of IBM Global Procurement.

2.4.3 Competitors, including competing Business Partners, are also a part of the procurement process. Collusion among competitors in connection with bids or proposals is almost always illegal and may subject you and IBM to severe sanctions. There are times when we engage in teaming or consortium-like arrangements with third parties who also may be our competitors. These arrangements may be illegal if they are meant to or have the result of eliminating competition or improperly divide procurement awards. It is not permissible to influence competitor pricing, to compensate losing competitors for their bidding costs, or to otherwise coordinate bidding with our competitors. Similarly, it is inappropriate to persuade or attempt to persuade a competitor to drop its independent bid and join IBM's bid as our subcontractor, and vice versa. As a result of these risks, management must approve in advance all interaction with competitors related to any Government Client bid or proposal; guidance is available from Contract and Negotiations and Legal as needed.

2.4.4 Business Partners are generally subject to the same rules and standards of conduct as IBM when dealing with Government Clients and their representatives. In their relationship contracts

with IBM, our Business Partners agree to comply with all applicable laws and are prohibited from making unauthorized commitments on behalf of IBM. However, merely relying on our contract terms is not sufficient; IBM should not indirectly through Business Partners undertake any unethical or illegal action. If you learn of any improprieties by a Business Partner, you must report them to IBM management. When Business Partners compete with IBM for government procurements, they do so as independent bidders. Accordingly, our dealings with them related to competitive procurements are subject to the same guidelines as with other competitors. It is not permissible to coordinate bids among Business Partners and IBM, or among multiple Business Partners, to influence Business Partner pricing, or to compensate losing Business Partners for their bidding costs. Similarly, it is inappropriate to persuade or attempt to persuade any competing Business Partner to drop its independent bid and join IBM's bid as our subcontractor, and vice versa.

2.4.5 Contingent Fee Relationships exist when we pay fees to a third party based on their securing business for us. Payment of contingent fees for sales to Government Clients is prohibited or restricted by law in some jurisdictions. Thus, if you intend to use contingent fee arrangements in sales to the government or a government contractor, you must have prior approval from Legal and Contracts and Negotiations. In addition, you must comply with any government limitations and reporting requirements.

2.5 Post-Bid Activities

It is useful and necessary to maintain client contact after submitting a proposal. In particular, you should continue your marketing efforts unless regulations or bidding rules prohibit post-bid marketing activities. However, you may not have access to or take part in the evaluation of competitive bids for a Government Client when IBM is a bidder. Once a determination is made that IBM has been excluded from the competition or that the contract award was made to another bidder, you may be able to seek a debriefing or written statement from the contracting officer that will give you information concerning the rationale for IBM not getting the award. Such information may include feedback on the proposal's weaknesses or deficiencies, the evaluated cost or price, and/or the ranking of the bidders. Because strict deadlines apply, you should promptly contact the Contracts and Negotiations function or Legal if you choose to seek a debriefing.

2.5.1 Bid Protests

We occasionally protest procurements when the bid specifications, selection criteria or award processes have precluded fair competition. If you want to consider a bid protest, you must immediately consult Legal, as there may be very short, strict time limits within which a protest can be filed. In addition, all proposed protests must be approved by Legal and the Public Sector executive concerned.

If you learn of any protest activity by another vendor on a competition in which IBM is involved, immediately advise your manager and Legal.

2.6 Avoiding Misrepresentation

Honesty is essential in dealing with all of our clients. However, misrepresentation in the Government Clients environment has some additional considerations. For example, you and IBM could be subject to civil and criminal penalties. In addition, you and IBM could be barred from doing business with Government Clients. To avoid such consequences, you should ensure that your communications with Government Clients are accurate and complete, and that you have retained appropriate backup documentation. Bear in mind that misrepresentation can be caused by intentional omission of important facts, information, or disclaimers, as well as by intentional misstatements. If you are unsure whether a document or certification is accurate and complete, do

not submit it until you have established its accuracy and completeness. If you subsequently discover that you or anyone else has submitted a document or certification with an error, immediately bring the matter to the attention of your manager or Legal for appropriate corrective action.

2.6.1 Handling Contract Requirements

Products shipped to Government Clients must conform to all relevant government requirements. These requirements vary from procurement to procurement, and may include delivery of "New" or "Domestic Source" equipment. From time to time, we may need to deviate from those requirements. In such cases, you must obtain the client's written approval prior to shipment.

Similarly, a client may impose unique inspection, testing or other related requirements. All our inspection and testing must conform to such requirements, and be accurately reflected in our supporting documentation. The client must approve any deviations in writing prior to shipment. Be sure that you retain all documentation relating to test results, inspections and deviation approvals.

2.6.2 Handling Audits and Investigations

IBM and Government Clients periodically conduct audits, studies, and investigations of our operations. It is our practice to cooperate responsibly with all audit and investigation activity.

You are to ensure that your management and the appropriate staff functions are informed promptly concerning all audits or investigations. Contact Legal for guidance in advance of responding to a government investigator's inquiry.

2.7 Avoiding Conflicts of Interest

2.7.1 Avoiding Bribes and Kickbacks

You are prohibited from providing or attempting to provide, receive, or solicit any bribe or kickback. A bribe or kickback is anything of value that is offered or provided to anyone for the purpose of improperly obtaining favorable treatment in connection with a Government Client award (including both prime and subcontractor awards). Any kickback or allegation of a kickback must be immediately reported in accordance with section 2.8, "Reporting Violations," of these guidelines.

IBM's position on bribes and kickback is simple: IBM will not tolerate any employee involvement in bribery or kickbacks. This prohibition applies wherever IBM does business, regardless of whether bribes and kickbacks are considered legitimate business methods in the local culture or whether those bribes are paid by Business Partners or other third parties. IBM's policy bans bribes and kickbacks made or accepted by IBM employees, or by any other person or entity acting for IBM, including Business Partners, subcontractors and suppliers. You must report any actual or attempted violation to your manager or Legal immediately.

Depending on country corruption laws, sanctions could apply to both the giver and the taker of bribes or kickbacks, and may consist of criminal and civil charges (fines and imprisonment for individuals, and at times fines for a legal entity) and a ban on doing business with the Government Clients in the jurisdiction.

In addition to the general prohibition on bribes and kickbacks, you should be familiar with the laws of the country where you operate and with the United States Foreign Corrupt Practices Act (FCPA). The FCPA is a United States anti-bribery law that applies to IBM's activities around the world. The FCPA prohibits the offering or payment of anything of value to a foreign (non-US) official, political party, or political candidate, for the "corrupt purpose" of inducing the official to act or refrain from acting in their official capacity to assist the provider in obtaining, retaining or directing business. The FCPA also makes it illegal to make such payments or offers through an intermediary.

Intermediaries include all of the third parties mentioned in Section 2.4 “Working with Third Parties” above. In this regard it must be noted that “willful blindness” to the actions of a third party can be just as sanctionable as if IBM actively supported the corrupt action. The FCPA is a criminal statute and provides for civil and criminal sanctions on both companies and individuals (fines and for individuals also imprisonment). You must immediately bring any suspected violation of the FCPA to the attention of your management and Legal.

2.7.2 Business Amenities and Gifts

With a few minor exceptions, you are generally prohibited from offering directly or indirectly to government employees or their families anything of value. In some cases, you may give promotional items of minimal retail value, such as paperweights and pocket calendars. Before giving a Government Client employee any gift or gratuity, be sure that you know and follow the most current laws and IBM policies regarding gratuities that pertain to your clients. In the case of doubt, you should contact your management or Legal.

Government directives generally permit the exchange of gifts when those exchanges are motivated solely by a close personal, social or family relationship. These exchanges must not be or give the impression of being connected with a business relationship. Holiday or birthday gifts exchanged with a friend who works in government would fall into this category. In general, your decision as to what is acceptable should be based on why you are making the gift and how it would appear to others. Remember, such purely social gifts are not a reimbursable business expense, nor are they tax deductible.

Many jurisdictions limit or restrict payments for Government Clients employees’ meals, entertainment and similar personal benefits to the employee. You must determine the requirements of the jurisdiction prior to making or offering to make such payment. The IBM Governmental Programs function or Legal can assist you with this as needed.

Please refer to Corporate Instruction FIN 168: Business Amenities and Gifts, available at http://w3.ibm.com/ibm/documents/corpdirect/ci/fin/fin_168.html

2.7.3 Client Travel Procedures

In general, IBM does not pay for or reimburse Government Clients’ travel expenses, including flights, hotels, and meals (other than as permitted by our Business Amenities policy). Before inviting a Government Client on business related trips or events (including education sessions, site visits, study tours, executive briefings, sales conferences, etc.) you must ensure that the applicable client trips approval procedures are correctly implemented. In almost all cases, you will be required to obtain Finance and Legal approval. In addition, you must obtain the express consent of the Government Client management to the client trip. These guidelines also apply to client trips funded by third parties (including IBM Business Partners) but organized by IBM.

2.7.4 Hiring Government Employees

Hiring government employees, their family members or their close political associates, even as consultants or marketing assistants raises conflict of interest questions. As a result, we generally do not solicit these persons to work for IBM. Before engaging in any such hiring activities, even preliminary discussions, be sure that you have obtained prior approval from Legal, location management and the appropriate Human Resources function.

In the case of employees who are currently working for the government, you must also obtain government clearance before discussing employment prospects. The government may require these employees to disqualify themselves from all matters involving IBM.

There may be additional laws and regulations that relate to the employment of present and former government personnel. Consult Legal and Human Resources for guidance beforehand.

2.8 Reporting Violations

In the Government Clients environment, we must comply with government procurement laws and IBM guidelines at all times. It is essential to our business with Government Clients that you report all violations of these laws and guidelines of which you become aware to IBM in one of the following ways:

- Your management chain
- Staff functions, such as Human Resources, Contracts and Negotiations, Legal or IBM Internal Audit
- The Speak Up Program
- The Open Door Program

We are also committed to ensuring that no retribution of any kind will occur as a result of employees reporting violations or suspected violations perpetrated by others. In the event you believe anyone is subjecting you to some form of retribution, use any of the above reporting methods to express your concerns.

3.0 REPRESENTING IBM'S PUBLIC POLICY

We have interests in government activities outside of procurement. What we are able to do as a business increasingly depends on what government authorities will allow us to do. Consequently, we have an interest in influencing government decision making processes through legitimate means. More often than not, this influence takes the form of lobbying on legislation and rule making of particular interest to us.

However, a successful public policy entails much more than lobbying. It means maintaining good public relations and effective relationships with all elected officials and government departments that affect our business. It also means that we must establish a public position on the issues that affect our business. In so doing, we must consider whether that position conforms to IBM's policies and practices, and how the public is likely to view it. We must also ensure that this position is articulated not only to government officials, but also to the press and to the business associations of which we are members. IBM Governmental Programs has the responsibility for directing and supervising all IBM public policy activities.

3.1 Lobbying

Any contact with government personnel for the purpose of influencing legislation or rule making is considered lobbying. All lobbying is the responsibility of IBM Governmental Programs. You are not permitted to lobby or authorize anyone else (for example, a consultant, agent, Business Partner, etc.) to lobby on IBM's behalf without prior approval from IBM Governmental Programs. Similarly, you must also obtain approval before registering yourself or anyone else as a lobbyist.

If you are authorized by IBM Governmental Programs to engage in lobbying activities, you are responsible for knowing and adhering to all the relevant lobbying laws and for compliance with all reporting requirements.

3.1.1 Procurement Matters

When marketing or procurement matters become the subject of legislative action or executive branch rule making, they become matters of public policy. Any lobbying activities on government procurement and appropriation matters require the prior approval of IBM Governmental Programs.

Some laws define lobbying very broadly. Under these laws, some of our normal marketing activities are lobbying. In that case, we may need to register our marketing representatives as lobbyists, or track and disclose their activities to the relevant government authority. As long as these normal marketing activities do not involve influencing legislation or rule making, IBM Governmental Programs' approval is not required.

3.2 Testifying at Public Hearings

You may be asked to testify as an IBM employee before an agency, legislative or other public hearing. If this testimony involves procurement matters, you will review the issue in advance with Legal. In all other matters, IBM Governmental Programs must approve your testimony prior to the hearing.

3.3 Handling Visits by Government Officials

3.3.1 Campaign and Political Visits

We encourage public officials to make nonpartisan visits to IBM locations to better understand our products, programs and our views on public policy issues. Political campaigning is never allowed on IBM property. This prohibition includes meeting employees and having press coverage for campaign purposes.

3.3.2 Speaking Engagements and Honoraria

We often invite public officials to speak at various events. IBM Governmental Programs must review and approve proposals prior to inviting speakers in the following categories:

- All elected officials, and their staffs
- Candidates for regional, national or federal offices
- Prominent former regional, national or federal officials
- All government officials

Invitations to public officials should not create even the appearance of a conflict of interest and must conform to all applicable government laws, policies, and regulations. We generally do not pay honoraria to public officials – any exception to this must be approved in advance by IBM Governmental Programs. Where permitted by applicable law and government regulations, and with prior IBM Governmental Programs approval, we may reimburse the invitee's actual and reasonable travel expenses in connection with an approved speaking engagement.

Contact IBM Governmental Programs for approval of all honoraria, and to obtain assistance in determining the amount of proposed payments.

4.0 CONCLUSION

IBM employees have an obligation to exercise sound business judgment and act ethically. As stated by Sam Palmisano, IBM Chairman and Chief Executive Officer, "Ethical behavior is important in its own right. However, it is also good for our business because it fosters one of our greatest assets - client and client trust." Marketing with Government Clients presents some unique legal and ethical questions. The IBM Business Conduct Guidelines and these Government Clients Guidelines - Global outline standards of business ethics related to the Government Clients environment. Additional guidelines may be provided by Legal or IBM Governmental Programs in specific countries or geographies where local rules / laws so suggest. Be certain to understand and comply with them in your dealings with Government Clients. Contact your manager, Governmental Programs, or Legal for clarification or guidance as needed.