

IBM GOVERNMENT CLIENT GUIDELINES

September 2008

Contents

1.0 INTRODUCTION & SCOPE	3
2.0 GENERAL GUIDELINES	4
2.1 Our Government Clients.....	4
2.2 Marketing Activities in the Government Environment.....	5
2.2.1 Obtaining and Using Information.....	5
2.2.2 Freedom of Information.....	5
2.3 Securing an Order.....	6
2.3.1 Handling Sole-Source Procurements.....	6
2.3.2 Bid Responses.....	6
2.3.3 Invoicing and Shipping to a Government Client Without a Valid Order.....	7
2.3.4 Defense Articles and Services.....	7
2.4 Working with Third Parties.....	7
2.4.1 Third Party Types.....	7
2.4.1.1 Subcontractors and suppliers.....	7
2.4.1.2 Consultants.....	8
2.4.1.3 Business Partners.....	8
2.4.1.4 Competitors, including competing Business Partners.....	8
2.4.2 Contingent Fee Relationships.....	8
2.5 Post-Bid Activities.....	9
2.5.1 Bid Protests.....	9
2.6 Avoiding Misrepresentation.....	9
2.6.1 Handling Contract Requirements.....	9
2.6.2 Handling Audits and Investigations.....	10
2.7 Avoiding Conflicts of Interest.....	10
2.7.1 Avoiding Bribes and Kickbacks.....	10
2.7.2 Business Amenities and Gifts.....	10
2.7.3 Client Travel Procedures.....	11
2.7.4 Hiring Government Client Employees.....	11
2.8 Reporting Violations.....	12
3.0 REPRESENTING IBM'S PUBLIC POLICY	12
3.1 Lobbying.....	12
3.1.1 Procurement Matters.....	13
3.2 Testifying at Public Hearings.....	13
3.3 Handling Visits by Government Officials.....	13
3.3.1 Campaign and Political Visits.....	13
3.3.2 Speaking Engagements and Honoraria.....	13
4.0 CONCLUSION	14
SUPPLEMENT FOR U.S. FEDERAL CLIENTS	15
A. The Defense Industry Initiative on Business Ethics and Conduct.....	15
B. The Procurement Integrity Act.....	16
C. Notices to Government Employees and Representatives.....	17
D. Avoiding Fraud, Waste and Mismanagement.....	18
E. Using U.S. Federal Government Classified Documents.....	18
F. Avoiding Defective Pricing and Billing.....	19
G. Invention Reporting.....	20
H. Complying with Government Socioeconomic Policies.....	20
I. Lobbying Disclosure Requirements and Pay-to-Play Restrictions.....	20

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 Owned Entity (GOE) clients (as defined in section 2.1) face legal and ethical questions different and potentially more complex than those encountered by other IBM employees. This document supplements the IBM Business Conduct Guidelines for issues and responsibilities related to our GOE clients. Each of us is required to understand and comply with both the Business Conduct Guidelines and this document in our dealings with GOE clients, and to exercise good judgment in our decisions and actions. IBM's reputation for integrity and business ethics should never be taken for granted. A violation of any IBM guidelines may result in disciplinary action, including dismissal.

Public concern with the relationship between business and government has led to regulation of the interaction between government and business. We must be continually sensitive to this environment. Our business conduct must reflect IBM's commitment to serve the public trust in accordance with the law. Therefore, you must understand and adhere to all applicable laws and regulations while effectively meeting the GOE client's business and information technology requirements. Your management, Governmental Programs, Contracts Professional, and IBM lawyer are available to answer questions about interpreting or applying these guidelines and offer further guidance in specific matters as they arise. Simply abiding by this document and the Business Conduct Guidelines does not ensure that you are compliant with all of the laws governing the GOE clients that you serve.

Depending upon the GOE 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 Owned Entity clients include any officer or employee of (i) a government (including a foreign government) or any department, agency, public enterprise or instrumentality thereof, (ii) a public international organization, or any person acting in an official capacity for or on behalf of any such government, department, agency, public enterprise or instrumentality, or for or on behalf of any such public international organization, and (iii) any private company which is owned by, controlled by or under common control with any of the entities in (i) or (ii) above and (iv) any entity subject to the applicable country's public procurement laws and regulations. Typically GOE clients consist of:

- all public entities, associations, bodies, organizations and foundations and any department, agency, whether regional, national, international (e.g. United Nations), federal, state, local or municipal in nature;
- public schools, utilities, organizations licensed to provide public services, governmental corporations, and other publicly-owned or controlled economic entities. Privately owned and controlled public service organizations such as private schools, private utility companies, private hospitals and private research institutes are *not* GOE clients; and,
- U.S. Federal Clients, which are more specifically defined as: (i) the executive, legislative and judicial branches of the U.S. Federal government, (ii) U.S. Government-affiliated corporations (e.g., Tennessee Valley Authority), (iii) quasi-governmental organizations (e.g., The Smithsonian Institution), (iv) U.S. Government-sponsored international organizations (e.g., World Bank), and (v) commercial business enterprises operating under a U.S. Federal government power of attorney, or with Management Operating Contractor (MOC) status.

Note that IBM's market segmentation rules are not determinative when classifying a client as a GOE 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 GOE client. In some countries, GOE clients are part of the General Business 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 may nevertheless be considered a GOE client. In assessing whether the client is a GOE 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 GOE client.

Finally, commercial business enterprises which hold or are bidding on government 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 the Contracts Professional or lawyer.

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

2.2 Marketing Activities in the Government Environment

We are often involved with Government Owned Entity clients prior to a formal solicitation or tender such as a Request for Proposal (RFP), Request for Interest/Information (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 GOE 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 GOE client.

In general, you may give GOE 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 GOE clients.

Unless IBM has been properly mandated to prepare or assist in the preparation of a solicitation for the GOE client, you generally may only review advance copies of solicitations at a GOE 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 GOE client to sign an agreement covering the items to be procured prior to an award to IBM.

In addition, many GOE clients restrict companies which participate in the preparation of a solicitation from subsequently bidding on it. Prior to assisting a GOE 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 have not been released to the general public and which are subject to restrictions regarding their 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 GOE client's decision process which is confidential to the GOE client or any third party. These requirements also apply to information obtained by third parties such as consultants, subcontractors, team members, former employees of the GOE 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 a Contracts Professional or IBM lawyer 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 Owned Entity clients. In most jurisdictions, sole-source procurement is only permitted in unique situations, such as public health and safety emergencies, or when the GOE client's in-house technical evaluation determines that specific products or services commitments should be made.

You must ensure that our marketing efforts do not violate laws or regulations or encourage questionable GOE 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 GOE client's practice to make a permitted exception to competitive procurement rules and we have done nothing improper to motivate this exception. However, in some countries IBM has implemented strict guidelines regarding sole-source procurements. Thus, to avoid mishap, review all sole-source procurements and related marketing activities and guidelines with your management and Legal before proceeding.

2.3.2 Bid Responses

When you receive a GOE 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 Professionals function where it will be reviewed by the appropriate Contracts Professional representative and/or IBM lawyer. Should you receive a bid request or solicitation that is not publicly available, forward all the documentation to the Contracts Professionals function or lawyer for prior approval before taking any action. Depending on country laws, sanctions could apply to both the GOE client and the bidder if a bid is granted in contravention of public procurement laws. This applies also to so called "follow-up" contracts with GOE 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 determine what steps are available, if any, to maintain the confidential nature of these terms. 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 GOE client.

Your bid responses should be carefully written and accurate in every detail. Be sure that statements regarding the GOE 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 GOE 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, 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, 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, Legal, Pricing, Quality Assurance/Risk Management) must be obtained prior to bid submission.

2.3.3 Invoicing and Shipping to a Government Owned Entity Client Without a Valid Order

Products and services must not be shipped/provided or invoiced to a GOE client unless a valid order (e.g., purchase 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, defense services 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.

United States 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 Third Party Types

2.4.1.1 Subcontractors and suppliers are a part of many public procurement contracts. IBM can be held liable for the misconduct of third parties who are working with IBM to pursue a public sector opportunity. Further, your dealings with these businesses in the government environment may be subject to many of the same standards of conduct as your dealings with Government Owned Entity 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.

2.4.1.2 Consultants are sometimes used by IBM in the procurement process. If you plan to use a consultant in a GOE client procurement situation, you may not hire a consultant without proper authorization from your management and the involvement of IBM Global Procurement. You must ensure that such consultants are governed by our Business Conduct Guidelines. You must not engage any consultants where doing so would create a conflict of interest or even the appearance of a conflict of interest.

2.4.1.3 Business Partners including U.S. Federal System Integrators are generally subject to the same rules and standards of conduct as IBM when dealing with GOE 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 upon the terms of such relationship contracts 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 (see Section 2.4.1.4 below).

2.4.1.4 Competitors, including competing Business Partners, are also a part of the procurement process. Collusion of any kind among competitors in connection with bids or proposals is illegal and may subject you and IBM to severe sanctions. There are times when we engage in teaming arrangements with third parties who also may be our competitors. These arrangements are deemed illegal if they are meant to eliminate, or have the result of eliminating, competition or improperly divide procurement awards. It is not permissible to influence competitor (including competing Business Partner) pricing, to compensate losing competitors (including competing Business Partners) for their bidding costs, or to otherwise coordinate bidding with our competitors (including competing Business Partners). Similarly, it is inappropriate to persuade or attempt to persuade a competitor (including a competing Business Partner) 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 teaming arrangements (and interactions) with competitors, including competing Business Partners, related to any GOE client bid or proposal; guidance is available from your Contract Professional and lawyer as needed. Please note that many GOE clients may require IBM to execute a Certificate of Independent Price Determination for bid awards pursuant to which we certify that we have arrived at our prices independently without consultation or agreement with competitors and other third parties.

2.4.2 Contingent Fee Relationships

Contingent fee relationships exist when we pay fees to a third party based on their securing business for us, or a third party pays fees to IBM for helping to secure business for them. Payment or receipt of contingent fees for sales to GOE clients is prohibited or restricted by law in some jurisdictions. Thus, if you intend to use or accept contingent fee arrangements in sales to GOE clients or a GOE client's contractor, you must have prior approval from Legal and Finance. In addition, you must comply with any government limitations and reporting requirements. Please note that in the government environment within the United States, we will generally pay contingent fees only to our employees and certain IBM Business Partners retained by us, and we will refrain from receiving incentive fees from third parties in exchange for the promotion or resale of third party products.

2.5 Post-Bid Activities

It is useful and necessary to maintain Government Owned Entity 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 GOE client when IBM is a bidder (see also guidelines in Section 2.2.1). 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 IBM Contracts Professional or lawyer if you choose to seek a debriefing.

2.5.1 Bid Protests

We occasionally protest or challenge 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 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 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 Owned Entity clients. To avoid such consequences, you should ensure that your communications with GOE 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 GOE 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 only. From time to time, we may need to deviate from those requirements. In such cases, you must obtain the GOE client's written approval prior to shipment.

Similarly, a GOE 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 GOE 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 GOE 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 Owned Entity client award (including both prime and subcontractor awards). Any bribe, kickback or allegation of a bribe or 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, consultants 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 GOE clients in the jurisdiction and in other jurisdictions around the world. For example, some governments debar entities that have been debarred by other governments.

In addition to the general prohibition on bribes and kickbacks, if you conduct business with GOE clients outside the United States, 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 subject to sanction just 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 GOE client 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. As such, before giving any GOE client employee any gift, be sure that you know and follow the most current laws and IBM policies (reference Corporate Instruction FIN 168: Business Amenities and Gifts,

available at <http://w3-03.ibm.com/ibm/documents/corpdocweb.nsf/ContentDocsByTitle/Corporate+Instruction+FIN+168>) regarding gifts that pertain to your GOE 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. Generally, but not always, close personal or social relationships should predate the work association. One should always be aware of the appearance of impropriety that is created when one claims that they have a close personal relationship with someone who is their GOE client. Remember, such purely social gifts are not a reimbursable business expense, nor are they tax deductible.

Many jurisdictions limit or restrict payments for GOE 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.

For additional requirements governing meals, entertainment and similar personal benefits please see the Business Amenities Procedures for Government Clients and applicable local business amenities guidelines such as those applicable to U.S. Federal client employees, referenced in Section C., "Notices to Government Employees and Representatives" under the "IBM Government Client Guidelines Supplement for U.S. Federal Clients."

2.7.3 Client Travel Procedures

In general, IBM does not pay for or reimburse GOE clients' travel expenses, including flights, hotels, and meals (other than as permitted by our Business Amenities policy). Before inviting a GOE 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 to the client trip from an official with relevant government authority for the GOE client. These guidelines also apply to client trips funded by third parties (including IBM Business Partners) but organized by IBM.

Where local laws permit the use of private aircraft, be sure that you comply with all laws and regulations which apply to your GOE client. It is worthy to note that many jurisdictions restrict the use of private aircraft by GOE client employees. Contact IBM Legal or Governmental Programs for guidance as needed. IBM aircraft must not be used to transport U.S. Federal Client employees or others acting for the U.S. Federal Client.

2.7.4 Hiring Government Owned Entity Client Employees

Hiring GOE client 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 any event, you may not initiate or continue any of these discussions if the person is working on a current solicitation or is designated to work on a pending solicitation.

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 environment, we must comply with government procurement laws and IBM guidelines at all times. It is essential to our business with Government Owned Entity 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 Professionals/Legal function, or IBM Internal Audit and Business Controls
- Confidentially Speaking Program
- The Open Door Process
- Your Defense Industry Initiative (DII) focal point or the IBM DII Compliance Officer - *in United States only*

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 and IBM Communications will typically address issues with the press or media. Both should be involved in sensitive situations as necessary.

3.1 Lobbying

Any contact with Government Owned Entity client 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 must 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. However, we must ensure that such visits are in accord with applicable local laws, regulations and IBM guidelines. For example, in the United States, such visits should not be permitted within 60 days of an election in which the official is a candidate. IBM Governmental Programs must approve all exceptions.

Political campaigning is never allowed on IBM property. This prohibition includes meeting employees and having press coverage for campaign purposes. For example, in the United States, IBM Governmental Programs must approve all visits requested by presidential and vice presidential candidates during an election year.

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 government officials including, but not limited to: (i) elected officials, and their staffs, and (ii) presidentially or government appointed, executive-level officials of federal or central government agencies or departments.
- Candidates for regional, national, federal, state, or local government offices
- Prominent former regional, national, federal, state, or local 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 - customer and client trust.” Marketing to Government Owned Entity clients presents some unique legal and ethical questions. The IBM Business Conduct Guidelines and these IBM Government Client Guidelines outline standards of business ethics related to the government 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 GOE clients. Contact your manager, Governmental Programs, Contracts Professional or lawyer for clarification or guidance as needed.

IBM GOVERNMENT CLIENT GUIDELINES

SUPPLEMENT FOR U.S. FEDERAL CLIENTS

In addition to the IBM Government Client Guidelines described in this document, our dealings with U.S. Federal Clients are subject to requirements established by industry or government initiatives. These are described in this IBM Government Client Guidelines Supplement for U.S. Federal Clients. Since failure to follow the complex U.S. Federal procurement laws and regulations could expose IBM to serious consequences, marketing to a U.S. Federal Client must be done only with the involvement of the IBM Federal Team. The guidelines in this supplement are also generally applicable when dealing with U.S. state and local clients.

A. The Defense Industry Initiative on Business Ethics and Conduct

In June 1986, IBM adopted the Defense Industry Initiative on Business Ethics and Conduct (DII). These principles were included in a presidential commission's report on ways to improve conduct and accountability between government and industry on defense procurement matters. The current Initiative, shown below, contains six principles:

- **Principle 1:** Each company will have and adhere to a written code of business ethics and conduct.

The IBM Business Conduct Guidelines (BCG) and other applicable guidelines such as the IBM Government Client Guidelines (GCG) and this Supplement constitute our code of business ethics and conduct.

- **Principle 2:** The company's code establishes the high values expected of its employees and the standard by which they must judge their own conduct and that of their organization; each company will train its employees concerning their personal responsibilities under the code.

As a continuing part of IBM's training process, each of us certifies that we have reviewed, and will comply with, our code of business ethics and conduct.

- **Principle 3:** Each company will create a free and open atmosphere that allows and encourages employees to report violations of its code to the company without fear of retribution for such reporting.

All of us are expected to report violations and are protected from retribution, as outlined in the section entitled "Reporting Violations" in the GCGs.

- **Principle 4:** Each company has the obligation to self-govern by monitoring compliance with U.S. Federal procurement laws and adopting procedures for voluntary disclosure of violations of U.S. Federal procurement laws and corrective actions taken.

To ensure that IBM properly discloses violations, if you believe a violation of U.S. Federal procurement laws has occurred, you must report it to IBM as outlined in the section entitled "Reporting Violations" in the GCGs.

- **Principle 5:** Each company has a responsibility to each of the other companies in the industry to live by standards of conduct that preserve the integrity of the defense industry.

In addition to expecting full compliance with our standards, we participate in defense industry forums on ethics and standards of conduct.

- **Principle 6:** Each company must have public accountability for its commitment to these principles.

IBM audits and publicly reports on our compliance with the DII principles.

IBM North Americas Public Sector counsel, located in Bethesda, Maryland, is the focal point for advice on DII.

B. The Procurement Integrity Act

The Procurement Integrity (PI) Act prohibits certain activities by contractors and subcontractors during the U.S. Federal procurement process.

Under the Act, you are generally prohibited from engaging in the following conduct during the course of a U.S. Federal procurement:

- Obtaining or disclosing "Contractor Bid or Proposal Information" or "Source Selection Information" or
- Discussing future employment with an agency employee involved in the procurement unless that employee has properly disqualified himself from participating in the procurement.

In light of these PI Act rules, once a Federal agency issues a final solicitation, we must take care in how we communicate with the agency on that procurement, either directly or through third parties such as consultants or agents, to avoid even an appearance of impropriety. Because government solicitations often identify the Contracting Officer as the point of contact on all matters relating to a procurement, it is a good practice to coordinate agency contacts about the procurement with this official unless the solicitation otherwise directs.

There are other U.S. Federal conflict of interest statutes that govern our relationships with U.S. Federal Client employees. Therefore, you must review the applicable rules with IBM Legal and your IBM Human Resources partner before discussing employment opportunities with a U.S. Federal Client employee.

B.1 Definitions

"Contractor Bid or Proposal Information" means (i) cost or pricing data; (ii) indirect costs and direct labor rates; (iii) data legended by the submitter as confidential or proprietary.

"Source Selection Information" means (i) proposed pricing; (ii) source selection plans; (iii) technical evaluation plans; (iv) technical and cost evaluations of proposals; (v) competitive range determinations; (vi) rankings of proposals; (vii) source selection reports and evaluations; and (viii) data marked "SOURCE SELECTION INFORMATION."

If you have any questions about the PI Act or communications with agency officials during a procurement, you should contact IBM Legal.

C. Notices to Government Employees and Representatives

C.1 Vendor Promotional Training

Prohibitions or limitations on providing gifts to U.S. Federal Client employees may include so-called "vendor promotional training." This could include all non-billable courses, and certain seminars, product announcement meetings and also certain events such as executive seminars, even if they are billable events. You must contact IBM Legal before extending to any U.S. Federal Client employee or other representative an opportunity to attend an IBM training course, product announcement meeting, seminar or conference.

In addition, you must ensure that the following notice is included in all such training announcements to U.S. Federal Client employees or other representatives and is also posted at the event:

Notice to Government Employees and Representatives IBM Training and Education

IBM conducts marketing presentations, executive briefings, product exhibitions and demonstrations, seminars and other sessions to familiarize clients and potential clients with IBM solutions to information processing problems. In accordance with established IBM practices, these sessions are provided at no charge.

Some government agencies permit acceptance of this training by employees; other agencies may not. You should ascertain whether your agency's standards of conduct regulations permit you to attend this IBM-sponsored education or training session, as it is not IBM's intent or desire that you, your organization, or IBM violate any statutes or regulations.

Under IBM's established business practices, the fair market value for non-billable IBM education or training session is zero, as it is normally provided to commercial clients, government clients and potential clients on a no-charge basis.

The offer of IBM training or education made in conjunction with this notice is void where prohibited by U.S. Federal, state or local government statute or regulation.

C.2 Food and Refreshments

As described previously in the GCG section entitled "Avoiding Conflicts of Interest," on occasion you may offer coffee, pastries and similar refreshments of nominal value to U.S. Federal Client employees. Occasionally, we offer more substantial food and refreshments to clients at IBM business functions if allowed by the laws and regulations which apply to the Government Client. For U.S. Federal Executive Branch employees such food and refreshment should not exceed a retail value of twenty dollars (\$20) per employee per occasion and \$50 in a calendar year. For guidelines regarding other U.S. Federal Client employees contact IBM Legal. You must ensure that the following notice is included in all announcements to U.S. Federal Client employees and is also posted at the event:

Notice to Government Employees and Representatives Food and Refreshments

At this IBM function, IBM is providing food and refreshments and considers this a normal business courtesy. Some U.S. Federal, state or local government agencies do not permit their employees to accept food or refreshments from contractors doing business with them.

If your agency requires, or if you desire, you may pay the fair market value for the food and refreshments you consume.

A receipt will be provided upon request.

C.3 Door Prizes and Raffles

At events such as business shows that are attended by both government and commercial clients our marketing activities may include a raffle or door prize drawing. For those events, you must ensure that the following notice is included in all announcements and is also posted at the event:

Notice to Government Employees and Representatives Door Prizes and Raffles

Participation in this Raffle or Door Prize Drawing is only offered to commercial non-government-related personnel.

U.S. Federal government regulations and some state or local government regulations prohibit the offer by contractors or acceptance by government employees of gifts or prizes such as these.

D. Avoiding Fraud, Waste and Mismanagement

The U.S. Government has defined fraud as deception of the government with the intent to induce action or reliance on that deception. You are prohibited from engaging in fraud, which includes the following activities: making false statements or claims (including false invoices); offering or paying bribes or kickbacks; suppressing the truth; misrepresenting facts; and falsifying books and records. This prohibition applies not only when we are a prime contractor, but also when we act as a subcontractor on a government procurement.

The U.S. Government defines waste as the extravagant, careless or needless expenditure of government funds, or the misuse of government property as a result of deficient practices, systems, controls or decisions. Mismanagement is the misuse of assigned government resources or programs that causes waste or contributes to fraud.

We do not engage in any of these activities, and we must avoid any other activities which could result in allegations of fraud, waste or mismanagement.

E. Using U.S. Federal Government Classified Documents

U.S. Federal government-classified materials must be handled appropriately. At a minimum, when handling classified information, keep records on the originating agency, the IBM recipient, the date of receipt, the means of transmittal, the classification, the disposition and a brief description of the document. You should also protect the document physically in accordance with the appropriate

procedures. If an agency's regulations supersede our practices, you should be sure to follow the agency regulations.

In order to receive U.S. Federal government classified documents, you and the facility in which the document will be kept must be properly cleared. If you have any questions, consult your local security office or the IBM Defense Industrial Security Field Program Office in Bethesda, Maryland.

F. Avoiding Defective Pricing and Billing

Certain government procurement activities may involve cost-based government contracting. If you engage in these activities for IBM, you must comply with the following guidelines.

F.1 Pricing (Truth in Negotiations Act)

As a government contractor, we must ensure that we submit accurate prices. In the cost-based U.S. Federal contracting area, this is covered under the Truth in Negotiations Act. This Act requires that we submit and certify to the accuracy of the cost and pricing data that supports our bid prices. This data must include all facts that a prudent buyer or seller would find important in pricing negotiations. It should also include any data used in arriving at the estimated cost. If you have any doubt as to particular facts, the best rule to follow is "when in doubt, disclose."

Under this Act we must certify that to the best of our knowledge and belief, the data is accurate, complete and current as of the date the price was agreed to. The government has both pre- and post-award audit rights to determine if required cost or pricing data was furnished.

F.2 Charging Costs

U.S. Federal government regulations specify certain categories of cost as unallowable, i.e., we cannot charge them to U.S. Federal government contracts. With the exception of travel expense accounts, you are unlikely to be involved in classifying costs unless you are engaged in cost-based government contracts. However, if you are ever involved in cost classification and need guidance, you should consult the IBM North Americas Government finance organization in Bethesda, Maryland.

F.3 Labor Claiming

Managers in IBM units engaged in cost-based U.S. Federal government contracting are responsible for obtaining the appropriate project numbers before beginning or assigning work. Each employee is responsible for accurately recording and submitting labor claims. All employees must understand the assignments they are undertaking with respect to the cost objective, project number, or account being charged. Employees who are responsible to record time to individual project numbers should record their time daily in an approved time recording system.

Always charge a cost to the proper project number. Do not accept the word or direction of someone else when you know, or think, the proposed labor charging is wrong or subject to misinterpretation. It is unacceptable to charge an inappropriate project number in anticipation of receiving authorization for a particular scope of work. It is also unacceptable to switch charges from one project number to another to avoid funding limitations or to knowingly leave an expense charged against an account to which it does not belong.

G. Invention Reporting

This section applies to U.S. Federal government funding of research and development (R&D) and the inventions that arise from such funding. When IBM receives R&D funding from the U.S. Federal government, we are frequently required by law or contract to report information relating to inventions created to the funding government agency. Failure to comply with these reporting obligations can result in loss of ownership or sufficient license to permit IBM to re-use the inventions or to license others to do so. It is thus essential that inventors submit to Intellectual Property Law (IPL), as promptly as possible, invention disclosures identifying inventions created with government funding and identify the relevant funding agreement with the U.S. Federal government in the Patent Value Tool (PVT) questions provided in the Worldwide Patent Tracking System. For additional information, contact your intellectual property attorney.

H. Complying with Government Socioeconomic Policies

Government Clients frequently pass legislation to advance socioeconomic policies and impose those policies on their contractors. One of those policies, for example, adopts a zero tolerance policy regarding contractors or their employees engaging in trafficking in persons or using forced labor to perform a U.S. Government contract. This restriction on contractors and their personnel extends to a prohibition on engaging in commercial sex acts during the period of performance of a U.S. government contract. Failure to adhere to these rules may subject you to disciplinary measures by IBM, including dismissal. In addition, if you are performing a contract outside the United States, certain host country laws and regulations may apply. If you have any questions, contact IBM Legal.

I. Lobbying Disclosure Requirements and Pay-to-Play Restrictions

Lobbying activities described in Section 3.1 of the GCG (including, in certain cases, public sector marketing activities) may require IBM or you to file lobbying reports with the relevant government authorities. You are responsible for providing timely and accurate data in order for IBM or you to file these reports. In addition, federal lobbying rules require IBM to report, semiannually, certain non-lobbying expenditures by IBM for: (i) events that honor or recognize certain federal legislative or executive branch officials; (ii) events hosted by, or in the name of, certain federal officials; or (iii) entities controlled or designated by certain federal officials. For guidance on specific matters or questions regarding these requirements, contact IBM Legal.

Some U.S. state and local governments impose unique restrictions and disclosure requirements on public sector contractors, known as “pay-to-play” restrictions. These requirements may restrict the personal political giving of IBM officers, directors, senior executives, employees with substantive responsibilities for the negotiation and oversight of the contract, and their spouses and dependent children. IBM could be barred from doing business with the particular government customer if we fail to comply with these requirements. If you have questions, contact IBM Legal.