

Government Client Guidelines

A Supplement to the IBM Business Conduct Guidelines



Government Client Guidelines

Contents

1.0 Purpose and Scope

- 1.1 Introduction**
- 1.2 Government Clients**

2.0 Marketing and Selling to Government Clients

- 2.1 Marketing and Other Pre-Bid Activity**
 - Obtaining and Using Information
 - Freedom of Information
 - Avoiding Misrepresentation
- 2.0 Securing an Order**
 - Sole-Source Procurements
 - Bid Responses
 - Invoice and Shipping Without a Valid Order
 - Defense Articles and Services
- 2.3 Working with Organizations Outside of IBM**
 - Contingent Fee Relationships
- 2.4 Post-Bid Activity**
 - Bid Protests
 - Fulfilling Contract Requirements
 - Audits and Investigations
- 2.5 Gifts, Amenities and Bribes**
 - Hiring Government Client Employees

3.0 Public Policy Activity

- 3.1 Lobbying**
- 3.2 Testifying at Public Hearings**
- 3.3 Visits by Government Officials**

4.0 Reporting and Communications

- 4.1 Reporting Violations and Non-Retaliation Policy**
- 4.2 External Inquiries and Contacts**

Addendum for U.S. Federal Clients

- A. The Defense Industry Initiative on Business Ethics and Conduct**
- B. Key Federal Policies and Regulatory Requirements**
- C. Notices to Government Employees and Representatives**

1.0

Purpose *and* Scope



Government Client Guidelines

1.0 Purpose and Scope

1.1 Introduction

1.2 Government Clients

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

1.1

Introduction

IBM employees who interact with government clients, or who have access to government confidential information, must exercise due care to properly navigate the unique requirements in that environment. The [IBM Business Conduct Guidelines](#) (BCG) require each of us to behave ethically and lawfully in all our business dealings. To help us do so, the BCG include guidance on the more commonly encountered issues in the public sector. These Government Client Guidelines supplement the BCG with additional information and guidance on those issues.

If you have any questions about interpreting or applying the Business Conduct Guidelines or these supplemental guidelines, consult your manager, IBM Counsel, IBM Trust and Compliance Officer or Government Programs professional. As described in the “Guiding Principles” in Chapter 1 of the BCG, your compliance is critical to conducting IBM’s business.

1.2

Government Clients

The first step to carefully navigating in the public sector environment is understanding when the client you are dealing with is a government client. Be aware that when we refer to government “clients” in this supplement, the term is intended to include not just current IBM customers, but also suppliers, consultants, IBM Business Partners, prospective customers, and other government entities you may engage with as an IBM employee. Also, while IBM’s market segmentation rules and client account sales alignment by industry sectors may help you readily identify some government clients, they should not be relied on for a final determination. For example, in some countries small government agencies and municipalities may be aligned under IBM’s General Business sales sector. In other cases, government owned financial institutions, hospitals and telecommunication clients are aligned to the sectors within which IBM aligns commercial, non-government clients in those lines of business.

As you would expect, government clients include traditional government agencies, departments and public enterprises, whether regional, national, or local, such as national tax authorities and local municipalities. However, you should also know that government clients include government owned and government controlled entities. In IBM we often refer to these clients as “GOEs” and they include the following:

- public schools, utilities and organizations licensed to provide public services;
- public international organizations, such as the United Nations or World Health Organization;
- entities subject to public procurement laws and regulations;

Government Client Guidelines

1.0 Purpose and Scope

1.1 Introduction

1.2 Government Clients

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

- other entities, even those that are privately held and those that are publicly traded, if a government, a public international organization, an entity subject to public procurement laws or a government official, owns or has the ability to exercise control over such entity; and
- U.S. Federal Clients, including: (i) 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) commercial business enterprises operating under a U.S. Federal government power of attorney, or with Management Operating Contractor (MOC) status.

In addition, under many laws, any officer or employee of any of the above, as well as any private individual or entity acting in an official capacity on behalf of any of the above, are government officials. This means that, to avoid even the appearance of acting unlawfully, extra caution must be taken in all dealings with such persons or their family members.

It is your responsibility to determine if a client is a GOE, or if the person you are dealing with is a government official, prior to engaging in marketing or sales activities. Your management, Governmental Programs, IBM Counsel and IBM Trust and Compliance can assist you in this determination if needed.

Ownership alone may not determine 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. In assessing whether the client is a GOE, you 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.

2.0

Marketing *and* Selling to Government Clients



Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

2.1 Marketing and Other Pre-Bid Activity

2.2 Securing an Order

2.3 Working with Organizations Outside of IBM

2.4 Post-Bid Activity

2.5 Gifts, Amenities and Bribes

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

2.1

Marketing and Other Pre-Bid Activity

We are often involved in marketing activities with GOEs prior to a formal solicitation or tender such as a Request for Proposal (RFP), Request for Interest/Information (RFI) or Invitation for Bids (IFB). Any marketing activities you engage in must not circumvent, or appear to circumvent, procurement laws or regulations. You are responsible for identifying and adhering to the regulations and procedures that govern a particular procurement.

In general, you may give a GOE 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. However, in all pre-bid activity, make sure you comply with section 4.5 of the BCG, “Selling in the Public Sector.”

In addition, many GOEs restrict companies which participate in the preparation of a solicitation from subsequently bidding on it. Prior to assisting a GOE 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.

Obtaining and Using Information

We operate in a highly competitive environment, where winning or losing a contract often depends on the amount of accurate information we obtain for use in a proposal.

Consistent with section 4.3 of the BCG, you must ensure that we are legitimately entitled to the information you gather or receive. Unless you have obtained prior written approval from an authorized government official, you may not obtain oral or written information (including any government planning and budgetary document) which has not been released to the general public or is subject to restrictions regarding its use. Similarly, when engaged in a government bid, you may not obtain or seek non-publicly available information regarding competitors' bids or the GOE's decision-making process. These restrictions also apply to information obtained by third parties, such as consultants, subcontractors, and former employees of the GOE.

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 IBM Counsel or a Contracts Professional prior to copying, using or distributing the information.

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 operate under laws and procedures that provide for access to government information, known as “Freedom of Information” or “access to public records” laws. You must have approval from IBM Counsel before requesting such information or releasing IBM information.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

2.1 Marketing and Other Pre-Bid Activity

2.2 Securing an Order

2.3 Working with Organizations Outside of IBM

2.4 Post-Bid Activity

2.5 Gifts, Amenities and Bribes

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

Avoiding Misrepresentation

Misrepresentation in the government environment can lead to civil and criminal penalties for both you and IBM, as well as loss of business privileges, such as the right to bid on business with GOEs, to export or import products, or even to remain in business. Whether pre-bid or post-bid, ensure your communication with a GOE is accurate and complete, and that you have retained appropriate backup documentation. Be aware 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 submitted a document or certification with an error, immediately inform your manager or IBM Counsel for appropriate corrective action.

Generally, IBM may accept sole-source contracts where it is a GOE's practice to make an exception to competitive procurement rules and where IBM has done nothing improper to motivate that exception. In some countries IBM has implemented strict guidelines regarding sole-source procurements. Review all sole-source procurements and related marketing activities with your management and IBM Counsel before proceeding.

Bid Responses

When you receive a publicly available bid request or solicitation from a GOE, carefully review it for unique contract terms and ensure it is reviewed by the appropriate Contracts Professional or IBM Counsel. Bid responses should be carefully written and accurate in every detail. In addition, you must retain appropriate backup documentation which supports your bid response.

Bid responses may require special pricing and terms. These prices and terms are generally IBM Confidential. Determine what steps are available, if any, to protect the confidentiality of our prices and terms. Be sure to place the appropriate security classification and other restrictive legends on all proposal pages containing confidential information, to minimize the potential for disclosure to others.

Many GOEs also require that bidders certify to the completeness and accuracy of their bid submissions. 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. Incomplete or inaccurate certifications can be grounds for significant penalties for the bidder, including exclusion from doing business with GOEs and criminal charges. Ensure that all IBM certifications are complete and accurate and include any necessary disclaimers or qualifications, and that any bid requiring certification is reviewed prior to submission by the appropriate IBM functions, including Finance and Legal.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

2.1 Marketing and Other Pre-Bid Activity

2.2 Securing an Order

2.3 Working with Organizations Outside of IBM

2.4 Post-Bid Activity

2.5 Gifts, Amenities and Bribes

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

If you receive a bid request or solicitation that is not publicly available, forward all bid documentation to IBM Counsel before taking any action. Do not review, use or distribute the information in the bid request. Depending on country laws, sanctions could apply to both the GOE and the bidder if a bid is granted in conflict with public procurement laws. This also applies to “follow-up” contracts with GOEs entered into without prior public announcement.

Invoice and Shipping Without a Valid Order

Products and services may not be shipped, provided or invoiced to a GOE before a valid order (e.g., purchase order) containing terms and conditions acceptable to IBM has been received.

Defense Articles and Services

When doing business with government agencies, IBM may become involved in defense articles, services or brokering, defined as:

- Defense articles: any items or technical data specifically designed, developed, configured, adapted, or modified for a military application or purpose. Commercial satellites and related technology are also defense articles.
- Defense services: assisting in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.
- Defense brokering: 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.

Regardless of where in the world you are located, as an IBM employee you need to be aware that 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. Adequate protections must be in place to safeguard defense items and data regardless of who you intend to include in your engagement. If you have questions on defense control-related issues, contact the [IBM Export Regulation Office](#).

2.3

Working with Organizations Outside of IBM

IBM often works with other organizations in connection with government procurements, including subcontractors, suppliers, consultants, IBM Business Partners and competitors. The BCG provides guidance on working with these organizations, including on how to compete fairly (see BCG sections 4.1, 4.2 and 4.5). The following reminders are critical in the public sector:

- IBM can be held liable for the misconduct of third parties, such as consultants, who are working with IBM to pursue a public sector opportunity. For this reason, we require that these third parties adhere to IBM guidelines.
- Your dealings with third parties in the government environment may be subject to many of the same standards of conduct as your direct dealings with GOEs. For example, when IBM is a subcontractor or supplier to another entity on a government bid, IBM may be subject to “flow-down” government procurement regulations.
- When Business Partners compete with IBM for government procurements, they do so as independent bidders.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

2.1 Marketing and Other Pre-Bid Activity

2.2 Securing an Order

2.3 Working with Organizations Outside of IBM

2.4 Post-Bid Activity

2.5 Gifts, Amenities and Bribes

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

- Do not 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, or vice-versa.
- Do not accept, use, or distribute any information from subcontractors and suppliers without authorization from the owner of the information.
- Management must approve in advance all teaming arrangements with competitors, including competing Business Partners, related to any GOE bid or proposal.
- When IBM teams with competitors, we need procedures in place to ensure that each entity has arrived at its pricing independently. Whether we are teaming or subcontracting, a GOE may require IBM to execute a Certificate of Independent Price Determination, certifying that we arrived at our prices independently and without consultation or agreement with competitors or other third parties.

IBM should not indirectly, through any other organization or individual, undertake any unethical or illegal action. If you learn of any improprieties in our dealings with third parties, promptly report the issue to IBM Counsel or an IBM Trust and Compliance Officer.

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. Because contingent fees may incent improper behavior, the payment or receipt of contingent fees for sales to a GOE is prohibited or restricted by law in some jurisdictions.

In the government environment, we generally pay contingent fees only to our employees and certain approved IBM Business Partners retained by us as agents, under an authorized complimentary marketing program. In all cases, use of contingent fee arrangements with GOEs or their contractors must have prior approval from Legal and Finance. In addition, you must comply with any government limitations and reporting requirements. As described in [Corporate Instruction FIN 186](#), generally IBM will not receive incentive fees from third parties. Any exception would require preapproval from Legal and Finance.

2.4

Post-Bid Activity

It is useful and necessary to maintain client contact after submitting a proposal. You may continue your marketing efforts unless regulations or bidding rules prohibit post-bid marketing activity. However, you may not have access to competitive bids when IBM is a bidder. Once IBM has been excluded from the competition or the contract has been awarded to another bidder, you may be able to seek a debriefing from the contracting officer regarding IBM not getting the award. Such information may include feedback on the proposal's weaknesses or deficiencies, the evaluated cost or price, and the ranking of the bidders. Because strict deadlines apply, you should promptly contact your IBM Contracts Professional or Counsel if you choose to seek a debriefing.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

- 2.1 Marketing and Other Pre-Bid Activity
- 2.2 Securing an Order
- 2.3 Working with Organizations Outside of IBM

2.4 Post-Bid Activity

2.5 Gifts, Amenities and Bribes

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

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, be aware that there may be strict time limits within which a protest can be filed. All proposed protests require prior approval from IBM Counsel and the applicable Sector executive, and IBM Counsel must be advised of any known or suspected bid irregularities. If you learn of any protest activity by another vendor on a competition in which IBM is involved, immediately advise your manager and IBM Counsel.

Fulfilling Contract Requirements

Products shipped to a GOE must conform to all applicable government requirements. These requirements vary from procurement to procurement, and may include delivery of “New” or “Domestic Source” equipment only. Government requirements may also include unique inspection and testing. If IBM needs to deviate from any of those requirements, you must obtain the GOE’s written approval prior to shipment. Accurately reflect IBM’s compliance in supporting documentation and retain the applicable records.

Audits and Investigations

IBM and GOEs periodically conduct audits, studies, and investigations of our operations. It is our practice to cooperate with all such audit and investigation activities. Promptly inform your management and the appropriate staff functions concerning all audits or investigations, and contact IBM Counsel prior to responding to a government investigator’s inquiry.

2.5

Gifts, Amenities and Bribes

IBM prohibits the giving or receiving of any bribe or kickback. In addition to the guidance in Section 4.4 of the BCG on the giving and receiving of gifts, amenities and anything of value, you should familiarize yourself with the ethics rules and anti-bribery laws applicable to the GOEs with which you engage on IBM business. A few things to keep in mind when dealing with GOEs include:

Gifts: With a few minor exceptions, such as jurisdictions that allow for gifts of nominal value, you are generally prohibited from offering anything of value, directly or indirectly, to GOE officers, employees, or their families, as well as any private individual or entity acting in an official capacity on behalf of a GOE.

Amenities: Many jurisdictions limit or restrict the amenities, such as meals, entertainment, and other personal benefits, an employee of a GOE may accept, as well as what IBM may provide. You must determine the requirements of the jurisdiction prior to providing or offering to provide such amenities. For additional requirements governing meals, gifts, entertainment, and other client amenities, follow the [Client Travel, Entertainment and Business Amenities \(CTEBBA\)](#) process and applicable local business amenities guidelines.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

2.1 Marketing and Other Pre-Bid Activity

2.2 Securing an Order

2.3 Working with Organizations Outside of IBM

2.4 Post-Bid Activity

2.5 Gifts, Amenities and Bribes

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

Trips: In general, IBM does not pay for or reimburse a GOE's travel expenses, including flights and hotels. Before inviting a GOE on trips (including trips for education sessions, site visits, study tours, executive briefings, sales conferences, etc.) you must ensure that the applicable CTEBA approval procedures or other local processes are followed. Be aware that IBM aircraft may not be used to transport U.S. Federal government employees or others acting for the U.S. Federal government. Similar restrictions may apply for other GOE employees. Contact IBM Counsel and Governmental Programs for additional guidance. IBM Finance and Counsel approval is required prior to offering to pay or reimburse travel expenses for GOE employees or their families. In some cases, you may also be required to obtain express written consent from an official with relevant government authority for the GOE. Similar guidelines apply to client trips subsidized by IBM, and those funded by third parties (including IBM Business Partners) but organized by IBM.

Intermediaries: You and IBM may be held responsible for the actions of intermediaries, such as agents, consultants, Business Partners and the other third parties mentioned in Section 2.3 above. Even if IBM did not explicitly authorize the intermediary's actions, if we know an intermediary will offer or pay a bribe or kickback, or under the circumstances we have reason to believe there is a high probability that such an offer or payment will be made, IBM may be held accountable. Therefore, if you know or have reason to suspect that a party engaged by IBM or authorized to resell IBM products or services is engaged in violations or unethical practices, report the matter promptly to your local IBM Trust and Compliance Officer or IBM Counsel.

Hiring Government Client Employees

Hiring GOE client employees or their family members, even as consultants or marketing assistants, may pose a conflict of interest. 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 IBM Counsel, management and Human Resources.

In the case of employees who are currently working for the government, you must require the candidate to obtain government clearance before discussing employment prospects with IBM. The government may require these employees to disqualify themselves from all matters involving IBM. In any event, you may not initiate or continue any employment discussions if the person is working on a current solicitation or is designated to work on a pending solicitation.

3.0

Public Policy Activity



Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

3.1 Lobbying

3.2 Testifying at Public Hearings

3.3 Visits by Government Officials

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

IBM has 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. Therefore, IBM has an interest in legitimately influencing government decision-making, such as through lobbying on legislation and rule-making.

IBM's public policy activity includes more than lobbying. It includes maintaining good public relations and effective relationships with government officials and departments that affect our business. It also includes establishing a public position on the issues relevant to IBM, and communicating those positions to government officials, the press, and business associations of which we are members. IBM Governmental Programs is responsible for directing and supervising all IBM public policy activities, and IBM Communications addresses issues with the press or media.

3.1

Lobbying

Guidance on lobbying can be found in Section 4.5 of the BCG. Be aware that lobbying can include normal marketing and sales activities, in addition to legislative lobbying. Accordingly, ensure you follow the BCG and obtain IBM Governmental Programs approval when needed. If you are authorized by IBM Governmental Programs to engage in lobbying activities, you are responsible for knowing and complying with the relevant lobbying laws and reporting requirements.

3.2

Testifying at Public Hearings

You may be asked to testify as an IBM employee before an agency, legislative or other public hearing. Testimony on all matters, including procurement activity, requires prior approval from IBM Counsel and Governmental Programs.

3.3

Visits by Government Officials

In addition to the limitations on campaign and political visits addressed in section 4.5 of the BCG, the following guidelines apply to speaking engagements and honoraria:

- IBM Governmental Programs must review and approve proposals prior to inviting the following people to speak at an event:
 - 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 government officials must comply with all applicable government laws, policies, and regulations. In any event, such invitations should not be extended if it would create even the appearance of a conflict of interest.

IBM generally does not pay honoraria to public officials, and any exceptions must be approved in advance by IBM Governmental Programs. If permitted by applicable law and regulation, with prior IBM Counsel and Governmental Programs approval, we may reimburse the actual and reasonable travel expenses incurred by the invitee in connection with an approved speaking engagement.

4.0

Reporting and Communications



Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

4.1 Reporting Violations and Non-Retaliation Policy

4.2 External Inquiries and Contacts

Addendum for U.S. Federal Clients

4.1

Reporting Violations and Non-Retaliation Policy

Chapter 2 of the BCG advises you of your responsibility to report potentially unlawful or unethical conduct. As a reminder, IBM will promptly review your report, and will not tolerate threats or acts of retaliation against you. Report known or suspected violations of these supplemental guidelines to IBM Counsel, an IBM Trust and Compliance Officer or, if you prefer, through IBM's Confidentially Speaking program. If the report relates to a U.S. government matter, you may also contact an IBM Defense Industry Initiative (DII) focal point or the IBM DII Compliance Officer.

4.2

External Inquiries and Contacts

You may receive external inquiries or contacts from others regarding IBM's business, such as from law enforcement or other government officials. Immediately report such inquiries or contacts to IBM Counsel or an IBM Trust and Compliance Officer.

Addendum *for* U.S. Federal Clients



Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

A. The Defense Industry Initiative on Business Ethics and Conduct

B. Key Federal Policies and Regulatory Requirements

C. Notices to Government Employees and Representatives

In addition to the guidelines described above, IBM's dealings with U.S. Federal Clients are also subject to unique regulatory requirements. Those additional requirements are addressed in this Addendum for U.S. Federal Clients, and are also generally applicable when dealing with U.S. state and local clients. In light of the complexity and potential impact of the U.S. Federal procurement laws and regulations, the IBM Federal team must be engaged when marketing to a U.S. Federal Client.

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). DII is designed to improve conduct and accountability between government and industry on defense procurement matters, and includes the following five principles:

- *Principle 1: We shall act honestly in all business dealings with the U.S. government, protect taxpayer resources and provide high-quality products and services for the men and women of the U.S. Armed Forces.*
- *Principle 2: We shall promote the highest ethical values as expressed in our written codes of business conduct, nurture an ethical culture through communications, training, and other means, and comply with and honor all governing laws and regulations.*
- *Principle 3: We shall establish and sustain effective business ethics and compliance programs that reflect our commitment to self-governance, and shall encourage employees to report suspected misconduct, forbid retaliation for such reporting, and ensure the existence of a process for mandatory and voluntary disclosures of violations of relevant laws and regulations.*

• *Principle 4: We shall share best practices with respect to business ethics and compliance, and participate in the annual DII Best Practices Forum.*

• *Principle 5: We shall be accountable to the public, through regular reporting by DII to Congress and the public. These reports will describe members' efforts to build and sustain a strong culture of business ethics and compliance.*

[IBM Corporate Policy 103](#) (Business conduct and ethics), the BCG, and these Government Client Guidelines, among other company policies and procedures, are premised on principles consistent with all of the above. If you have questions regarding the DII or this Addendum, contact the IBM DII focal point or the IBM DII Compliance Officer.

B. Key Federal Policies and Regulatory Requirements

The Procurement Integrity Act

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

- Obtaining or disclosing “Contractor Bid or Proposal Information,” which includes (i) cost or pricing data; (ii) indirect costs and direct labor rates; and (iii) data marked by the submitter as confidential or proprietary;
- Obtaining or disclosing “Source Selection Information,” which includes (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”; and

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

A. The Defense Industry Initiative on Business Ethics and Conduct

B. Key Federal Policies and Regulatory Requirements

C. Notices to Government Employees and Representatives

- Discussing future employment with an agency employee involved in the procurement unless that employee has properly disqualified himself from participating in the procurement. (Refer to Section 2.5 above for additional guidance.)

In light of these 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. It is therefore recommended that all agency contacts about a procurement be coordinated through the government designated Contracting Officer unless the solicitation directs otherwise.

Using U.S. Federal Government Classified Documents

In order to receive and handle U.S. Federal government classified documents, you and the facility in which the documents will be kept must be properly cleared. Department of Defense Manual 5220.22-M, the National Industrial Security Program Operating Manual (NISPOM), defines the standards for the receipt and proper handling of this information. If you have questions regarding these matters, consult your local IBM Security office or IBM Government Security Operations.

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 whether we are a prime contractor or 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. Do not engage in any of these activities, and avoid any other activities which could result in allegations of fraud, waste or mismanagement.

Avoiding Defective Pricing and Billing

In addition to the guidelines in Section 4.2 of the BCG and Section 2.1 above, the following apply to government procurement activities involving cost-based government contracting:

Pricing (Truth in Negotiations Act)

In the cost-based U.S. Federal contracting area, the Truth in Negotiations Act requires government contractors to submit accurate prices. This Act also requires that we certify that the cost and pricing data submitted is accurate, complete and current as of the date the price was agreed to. The data must include all facts that a prudent buyer or seller would find important in pricing negotiations, and should also include any data used in arriving at the estimated cost. If you are uncertain about whether to include particular facts, the best rule to follow is "when in doubt, disclose." The government has both pre- and post-award audit rights to determine if required cost or pricing data was furnished.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

A. The Defense Industry Initiative on Business Ethics and Conduct

B. Key Federal Policies and Regulatory Requirements

C. Notices to Government Employees and Representatives

Charging Costs

U.S. Federal government regulations prohibit contractors from charging certain categories of cost under a U.S. Federal government contract. If you are ever involved in cost classification and need guidance, you should consult with the IBM North America Government finance organization.

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 working on individual projects should record their time daily in an approved time recording system, record all hours worked, and 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.

Invention Reporting for Federally-Funded Research and Development

When IBM receives funding from the U.S. Federal government for research and development (R&D), we are frequently required by law or contract to report information to the funding government agency related to inventions created from that funding. 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. Therefore, it is essential that inventors promptly submit disclosures to IBM Intellectual Property Law, identifying inventions created with government funding, and identify the relevant funding agreement with the U.S. Federal government in the Patent Value Tool (PVT) in the Worldwide Patent Tracking System. For additional information, contact your IBM Intellectual Property Counsel.

Lobbying Disclosure Requirements and Pay-to-Play Restrictions

Lobbying activities described in Section 4.5 of the BCG and Section 3.1 above (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.

Some U.S. state and local governments also 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 regarding lobbying disclosure requirement or pay-to-play restrictions, contact IBM Counsel or IBM Government Programs.

Government Client Guidelines

1.0 Purpose and Scope

2.0 Marketing and Selling to Government Clients

3.0 Public Policy Activity

4.0 Reporting and Communications

Addendum for U.S. Federal Clients

A. The Defense Industry Initiative on Business Ethics and Conduct

B. Key Federal Policies and Regulatory Requirements

C. Notices to Government Employees and Representatives

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 Counsel.

C.

Notices to Government Employees and Representatives

Vendor Promotional Training

Prohibitions or limitations on providing gifts to U.S. Federal Client employees may include “vendor promotional training.” This could include non-billable courses, seminars, product announcement meetings, as well as certain billable events such as executive seminars. Contact IBM Counsel before extending an invitation to any U.S. Federal Client employee or representative to these training activities. In addition, you must ensure that the following notice is included in all such training announcements to U.S. Federal Client employees or 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 similar sessions to familiarize current and prospective clients with IBM's products and services. IBM's established practice is to provide these sessions at no charge.

Some government agencies permit acceptance of this training by employees; other agencies may not. You should determine 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. Please note that the fair market value for a non-billable IBM education or training session is deemed to be 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.

Food and Refreshments

Consistent with the guidance in Section 2.5 above and Section 4.4 of the BCG, on the giving and receiving of gifts, amenities and anything of value, you may on occasion 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 fifty dollars (\$50) in a calendar year. For additional guidelines regarding other U.S. Federal Client employees,

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contact IBM Counsel. 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.

Door Prizes and Raffles

At business events that are attended by both government and commercial clients, IBM's marketing activities may include a raffle or door prize drawing. For those events, ensure that the following notice is included in all announcements and 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.



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