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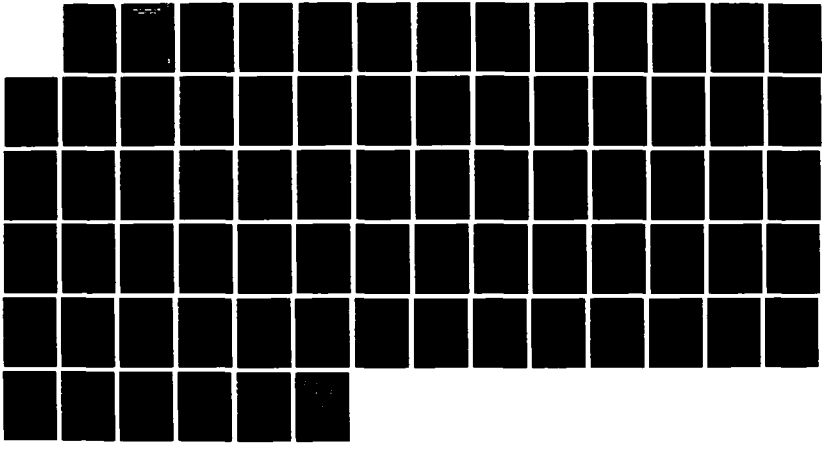

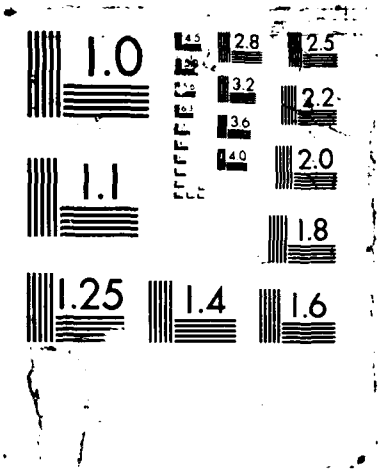
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NAVAL POSTGRADUATE SCHOOL
Monterey, California

THESIS

A MODEL ETHICS PROGRAM FRAMEWORK FOR THE NAVY FIELD CONTRACTING SYSTEM WORK FORCE

by

Mary E. B. Quatroche

December 1987

Thesis Advisor: J.F. McClain III

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A Model Ethics Program Framework for the
Navy Field Contracting System Work Force

by

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Submitted in partial fulfillment of the
requirements for the degree of

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ABSTRACT

The issue of ethics in government contracting is currently of great concern to the American public. The norms for ethical behavior for Navy contracting personnel are established in statute and regulation and prescribed by DoD Instruction 5500.7, "Standards of Conduct." The research and data analysis in this paper examines the characteristics of programs which can effectively implement these ethics requirements. A model ethics program framework is then developed to assist managers of Navy Field Contracting System activities in the effective development and implementation of Standards of Conduct programs.

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I. INTRODUCTION

President Reagan commissioned a Blue Ribbon Commission on Defense Management (Packard Commission) to study all of the issues related to organization and management in the Department of Defense (DoD). The Commission's June 1986 report entitled "A Quest For Excellence" contained several recommendations concerning Government-Industry accountability, including the following:

> The Department of Defense should vigorously administer current ethics regulations for military and civilian personnel to ensure that its employees comply with the same high standards required of contractor personnel. This effort should include development of specific ethics guidance and specialized training programs concerning matters of particular concern to DoD acquisition personnel, including post-government relationships with defense contractors. [Ref. 1:p. xxix]

The Commission determined that DoD's administration of ethics regulations was inadequate; that significant improvements would be required to effectively implement government ethics standards for all its personnel and particularly those involved in acquisition.

Current public opinion shows a great deal of concern about waste and fraud in defense spending. A nationwide survey of public attitudes toward defense management was conducted for the Packard Commission. Perceptions of Americans, reflected in their answers to survey questions, show:

1. When asked to rate the relative seriousness of several critical issues, waste and fraud in federal spending for national defense was considered second only to the federal budget deficit and more serious than the nuclear arms race, waste and fraud in federal domestic spending, unemployment, the fairness of the federal income tax system, inflation, and the effectiveness of the U.S. military as a fighting force. [Ref. 1:Appendix L p. 208]

2. Only seven percent of Americans felt that there was a smaller proportion of waste in the defense budget than 10-20 years ago. [Ref. 1:Appendix L p. 211]

3. Seventy-two percent of those surveyed said they would agree with a proposal to improve training and education of military buying officials to help reduce waste and fraud in defense spending. [Ref. 1:Appendix L p. 227]

Now more than ever, the maintenance of ethical standards in military procurement organizations is critical. The stakes are higher. Enforcement of existing regulations and refinement of the legislation pertaining to ethics continues to increase as the issue of ethics in defense contracting has entered the public domain to stay.

All DoD employees are bound by the same ethical code delineated in Department of Defense Directive 5500.7 "Standards of Conduct." Procurement personnel are entrusted with greater responsibility than other categories of government employees in the control they have over the expenditure of public funds. Their positions are more vulnerable to potential violations of the standards and their post-government employment is more likely to be restricted by law. For these reasons, a working and enforceable understanding of the Standards of Conduct is imperative. This can be achieved through implementation of

an effective model ethics program at each DoD buying activity.

A. OBJECTIVES

There is a myriad of laws and regulations prescribing norms of ethical behavior for DoD employees. Many of these are of particular concern to those involved in defense contracting. In response to a clear need for more effective ethics administration for Navy contracting personnel, the objective of this thesis is to develop a framework for a model ethics program to be implemented at a Navy field contracting activity. This will be accomplished through the study and analysis of:

(1) the history and background of current ethics regulation,

(2) ethics programs in government and industry, and

(3) the unique characteristics of Navy field contracting activities relative to ethics administration.

B. RESEARCH QUESTIONS

The primary question to be answered by this thesis research is: <u>What should be the principal characteristics of a contracting Standards of Conduct program and how might such a program be successfully implemented at a Navy Field Contracting System activity</u>?

Subsidiary research questions used to answer the above question are:

- What are the critical aspects of a Standards of Conduct program, particularly as they relate to policy, controls, training, and audit?

- What are the peculiar features of Field Contracting organizations that should be addressed in a Standards of Conduct program?

- What are the essential ethical issues which must be recognized in the development of a Standards of Conduct program?

- How are ethical standards programs being implemented for defense industry contracting personnel?

- How might a Standards of Conduct program be effectively implemented at a field contracting activity?

C. SCOPE

This thesis reviews the historical and statutory background of ethics requirements for Government employees. It does not question the appropriateness of the laws and regulations defining required ethical standards, but instead its focus is on effective implementation of the prescribed DoD Standards of Conduct. As key points to be addressed, the researcher chose those characteristics of ethics programs which affect policy, controls, training, and audit. Current defense industry and Navy ethics programs are analyzed for comparative evaluation. The purpose of the thesis is to develop a model framework for effective ethics management of contracting personnel at Navy field contracting activities.

D. METHODOLOGY

The research conducted for this paper included an extensive literature search, and correspondence with several defense contractors, all Naval Supply Centers, Naval Supply Depots, and Navy Regional Contracting Centers. Additionally, telephone interviews were conducted to supplement information provided.

E. ORGANIZATION OF THE THESIS

This thesis begins (Part II) by examining the history of government ethics regulation and the legislation in the United States. The next part of the thesis (Part III) explains the ethics standards required of government employees as contained in DoD Directive 5500.7 "Standards of Conduct." This information provides the background of the ethics code for government employees from which an effective ethics program could be developed.

Part IV addresses the development of an ethics program. It then examines current Navy field contracting activity and defense industry initiatives in the area of ethics management as well as the unique characteristics of these organizations which define their particular program requirements.

Part V draws some conclusions based on the theory and comparison of alternatives presented in Part IV and then presents the model ethics program framework developed through the research.

II. HISTORY

The word ethics is defined by Webster as "the system of morals of a particular person, religion, group, profession, etc" [Ref. 2:p. 481]. The word has its origins in the Greek "ethos" which, in the time of the philosopher Aristotle, meant "inner dwelling place" [Ref. 3:p. 12]. Perhaps the first recorded moral code was the Ten Commandments in biblical times.

Over the ages, the philosophy of ethics has evolved:

> It seems reasonable to assume that the meaning of ethics developed as man reflected on the intentions and consequences of his acts. From such reflections, theories of conscience evolved and they, in turn, gave direction to our ethical thinking today. [Ref. 3:p. 12]

For the purposes of this research, ethics is considered to be a code forming the foundation for moral decision making. This work specifically examines ethics for United States Government employees.

A. U.S. LEGISLATIVE FRAMEWORK: PRE-1950

In the short history of the United States, the underlying moral code for government employees has undergone a virtual metamorphosis. The moral standards expected of government employees have evolved to a point where these guardians of the public trust are expected to adhere to a level of ethics beyond that expected of any other group. However, this has not always been the case.

There is documentation of ethical conflict in government dating from colonial times. In this period, government officials routinely acted as attorneys for private citizens and sold influence to those with claims against the government. An example of this can be seen in a letter written to the President of the Second Bank of the United States by Senator Daniel Webster. In it he noted "that his retainer by the bank had not been "refreshed as usual" and that if the bank expected his continued services the payment should be sent." [Ref. 4:pp. 6-7]

The Administration of Andrew Jackson (1829-1837) was marked by the "spoils system":

> the system or practice regarding and treating appointive public office as the booty of the successful party in an election, to be distributed, with their opportunities for profit, among party workers. [Ref. 2:p. 1376]

Within this system, public service was treated as a vehicle for private gain. Public officials continued to sell political favors and represent private citizens in court claims against the federal government. There was no agreement on standards for moral decision making even among those government officials with high personal ethics.

Until passage of the Civil Service Act in 1883, the "spoils system" remained in place. With this legislation, it was replaced by a merit system for employee recruitment and retention. [Ref. 5:p. 22]

Legislation attempting to codify ethical behavior in the U.S. government was not passed until the mid-1800's. The

century which then followed provided the legal foundation for the nation's current Standards of Conduct.

The first U.S. statutory ethics requirement was contained in the 1853 Uncompensated Assistance to Claimants Act. It prohibited government employees from assisting in the prosecution of claims against the government except as required in the discharge of their duties. The prohibition applied whether or not the employee received compensation. Members of Congress were exempt, however, until the act was extended to cover them in 1862. [Ref. 5:p. 20]

It was common practice for military officers and congressmen to receive fees for selling war supplies to the government during the Civil War. Instances of abuse of the government contracting system such as the Hall Carbine Affair, in which the government procured carbines which it had previously rejected as defective, resulted in additional conflict of interest legislation. [Ref. 4:p. 8] In 1862, "An Act to Prevent Members of Congress and Officers of the Government of the United States from taking Consideration for Procuring Contracts, Office, or Place from the United States" not only prohibited Federal officials from accepting payment for government contracts, but penalized anyone making such a payment. [Ref. 5:pp. 20-21]

As early as 1872, with the Civil Post Employment Statute, employment after leaving government service was regulated. For a period of two years after leaving

government office, a person was prohibited from "acting as counsel, attorney, or agent in the prosecution of claims if that claim was pending in any department during their employment. [Ref. 5:p. 21]

In 1917, an act entitled "Outside Compensation" was passed. It prohibited compensation of a government employee in connection with his government employment by a non-government source. This law also prohibited both the receiving and the making of such payments. [Ref. 5:p. 22]

B. ESTABLISHING A STANDARD: 1950 AND BEYOND

In 1951, a study stressing the importance of a code of ethics to guide all federal employees and recommending formation of a permanent federal commission on ethics was published by a Senate subcommittee chaired by Senator Paul Dodd [Ref. 5:p. 10]. Representative Charles E. Bennett, former chairman of the House of Representatives Ethics Committee, wrote such a code [Ref. 6:p. 18]. Following one hundred years of ethics-related legislation, it was adopted as the first "Code of Ethics for Government Service" by Congress. It was passed as Concurrent Resolution 175 in 1958 [Ref. 5:p. 23]. Still in force today, it is required that it be displayed in all Federal buildings [Ref. 3:p. 14] (See Appendix A).

President Kennedy made ethics in government a priority of his administration (1961-1963). He stated:

> There is no responsibility of government more fundamental than the responsibility of maintaining the highest standards of ethical behavior among those that conduct the nation's business. [Ref. 6:p. 15]

Kennedy appointed a three-man advisory panel on Ethics and Conflict of Interest in Government. Their report resulted in the President's request that Congress revise conflict of interest laws. [Ref. 4:p. 10] In 1962, Public Law 87-849 was passed. This was a comprehensive bill addressing bribery, graft, and conflicts of interest. It revised, reorganized, and added to the existing law, provided for effective enforcement, and required a specific ethical code be made part of government instructions. [Ref. 5:p. 26]

President Johnson continued the emphasis of his predecessor in this area. He issued Executive Order 11222 in 1965. It provided an additional code of ethical behavior for executive branch personnel through its six prohibitions against:

- Using public office for private gain;
- Giving preferential treatment to any person or entity;
- Impeding government efficiency or economy;
- Losing complete independence or impartiality;
- Making a government decision outside official channels; or
- Acting in any way which adversely affects the confidence of the public in the integrity of the government. [Ref. 7:p. 25]

The order also required senior government officials to provide statements of their financial interests for the first time in our government's history. [Ref. 5:p. 27]

During President Carter's administration (1977-1981), ethics guidelines became significantly more restrictive. He proposed the establishment of more stringent regulation of three specific types of action:

1. public disclosure of financial assets,
2. divestiture of assets that could involve potential conflict of interest, and
3. restrictions on employment after the employee left government service. [Ref. 5:p. 35]

Both houses of the Congress added to the President's proposal and the resulting legislation is known as the Ethics in Government Act (Public Law 95-521).

Key provisions of this act addressed financial disclosure. It required, from senior military and civilian employees, annual financial disclosure statements including:

1. Sources of income, gifts, and reimbursements.
2. Identity and approximate value of property held and liabilities owed.
3. Transactions in property, commodities, and securities.
4. Certain financial interests of a spouse or dependent. [Ref. 8:p. 184]

It provided for a civil penalty for falsification of, or failure to file, the statement or failure to report required information and ensured the availability of these statements to the public. Other provisions of the law established the

Office of Government Ethics in the Office of Personnel Management, and extended to two years the period in which former senior government officials could not appear before the agency in which they previously worked concerning matters for which they formerly had responsibility.

President Reagan has continued in the tradition of his recent predecessors. The focus of his administration (1981-present) has been on management, audit, and internal controls of the conduct of government business. Steps towards further ethics reform include:

- 1981: OMB Circular A-123, "Internal Control Systems," establishing policies for internal control in executive departments [Ref. 6:p. 17].
- 1981: Creation of the President's Council on Integrity and Efficiency to monitor enforcement of management ethics and combat fraud, waste, and abuse [Ref. 9: p. 25]
- 1982: Executive Order 12352, "Uniform Federal Procurement System," which emphasizes training and procurement reform [Ref. 6:p. 17].
- 1985: Establishment of the President's Blue Ribbon Commission on Defense Management.

C. SUMMARY

A study of ethics concentrates on a moral code used for decision making. For the greater part of U.S. history there has been no such code for government employees, though a standard has evolved over time. Prior to the 1850's, the moral standard for government officials was based on local custom with no government regulation. For the next one hundred years, a series of laws concerning appropriate

ethical behavior of government employees were passed. These laws provided a framework for the first "Code of Ethics for Government Service" published in 1958. Since then, further refinement of the legislation has made the ethical standard required of U.S. Government employees one of the most restrictive in the world. Government employees are now expected to exhibit the highest level of ethical behavior.

This chapter is not meant to be an exhaustive accounting for all ethics legislation in the history of the United States. Instead, this information is provided as background to the reader for understanding the Standards of Conduct required of U.S. Government employees today.

III. DEPARTMENT OF DEFENSE STANDARDS OF CONDUCT

The purpose of this research is to determine an effective framework for the development of a standards of conduct program for Navy Field Contracting System personnel. In order to effectively accomplish this, the code which these employees are required to follow must be understood.

Since 1963, ethics for both military and civilian personnel in the Department of Defense have been prescribed by Department of Defense Directive 5500.7, "Standards of Conduct." The Directive was revised, updated, and reissued in 1966, 1967, 1975, 1977, and most recently in 1987. The 1986 Packard Commission Report prompted the latest revision in reporting that:

> DoD's published conduct regulations do not provide timely or effective guidance to personnel engaged in the acquisition process. DoD Directive 5500.7, Standards of Conduct, has not been updated since 1977 or revised to reflect such subsequent legal developments as passage of the Ethics in Government Act of 1978. [Ref. 1:p. 95]

The current version incorporates direction on reporting procedures concerning defense related employment, which had previously been covered by another directive, and provisions of the Ethics in Government Act, Executive Order 11222, and other applicable conflict of interest legislation.

The purpose of the Directive is two-fold. It:

(1) prescribes standards of conduct required of all DoD personnel, regardless of assignment, and

(2) establishes criteria and procedures for reports required of certain former and retired military officers and former DoD civilian officers and employees who are presently employed by defense contractors, and former officers and employees of defense contractors presently employed by the Department of Defense. [Ref. 10:p. 1]

In addition to describing required standards and procedures, the Directive stresses that penalties for their violation "include the full range of statutory and regulatory sanctions." [Ref. 10:p. 1]

A discussion of the ethics requirements contained in DoD Directive 5500.7 follows. Two specific sections of the Directive concerning policy and procedures are highlighted. The policy section addresses specific standards of ethical behavior required of DoD personnel, while the procedures section establishes certain controls and audit procedures required to ensure policy enforcement.

A. POLICY

1. General

The general policies set forth in the Department of Defense "Standards of Conduct" are intended to provide a broad base for employees' moral decision making. For this reason, the scope of this section is necessarily broad. The following excerpt illustrates this point:

> Government service or employment is a public trust requiring DoD personnel to place loyalty to country, ethical principles, and the law above private gain and other interests. DoD personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of U.S.

> laws, Executive orders, or applicable Directives, Instructions, or Regulations. [Ref. 10:p. 2]

In order to ensure their compliance, the requirements placed on DoD personnel include both (1) familiarizing themselves with all aspects of their assigned responsibilities and (2) acquiring a working knowledge of standards of conduct prohibitions in the U.S. statutes.

Employees are directed to consult their service's legal counsel or designated ethics official for guidance when the appropriateness or legality of an action or decision is unclear. The DoD policy on equal opportunity (regardless of race, color, religion, sex, age, national origin, or handicap) and the prohibitions contained in Executive Order 11222 (see page fifteen of this text) are provided as basic guidance for decision making. The requirement to avoid the appearance of impropriety as well as any actual violation of the Standards is emphasized.

2. Conflicts of Interest

A "conflict of interest" is defined as "a conflict between one's obligation to the public good and one's self interest" [Ref. 2:p. 298]. Simply stated, DoD policy is:

> DoD personnel shall not engage in any personal, business, or professional activity, nor hold direct or indirect financial interest that conflicts with the public interests of the United States related to the duties and responsibilities of their DoD positions. [Ref. 10:p. 3]

Activities and interests of an employee's spouse, minor children, and other household members are also considered subject to these restrictions.

The Standards of Conduct instruction provides specific guidance in the area of conflicts of interest. Twelve specific potential violations are addressed:

(1) Using "inside information" for personal, business, or professional purposes while employed by DoD and after employment is terminated;

(2) Using official DoD position to influence any person for personal benefit or to endorse a commercial or non-profit (with listed exceptions) enterprise;

(3) Release of acquisition information other than in accordance with authorized procedures;

(4) Making unauthorized commitments with respect to award of contracts;

(5) Memberships in associations which are incompatible with one's official DoD position;

(6) Commercial solicitation of DoD personnel who are junior in rank or grade;

(7) Assignment of reserves for training to duty that could provide them with unfair business advantage;

(8) Dealing with former government personnel in transactions prohibited by ethics legislation;

(9) Acceptance of honoraria or salary supplementation for performance of government duties;

(10) Representing the Government in any matter involving an organization with which one is seeking employment;

(11) Outside employment of DoD personnel incompatible with assigned government duties or the public interest; and

(12) Acceptance of gratuities, reimbursements, or other benefits from those who have business with, seek

business from, or otherwise have interests affected by DoD. [Ref. 10:pp. 3-9]

This listing is a simplification of the extensive conflicts of interest guidance provided by the Directive. Appended to DoD Directive 5500.7 is a digest of the actual laws on which each of the prescribed standards is based.

3. Exemptions

The conflict of interest regulations are extremely restrictive. DoD Standards of Conduct allow for specific exemptions from the listed restrictions for situations which could not reasonably be construed as involving significant conflicts between personal and government interest. The exceptions are enumerated and include such things as acceptance of unsolicited promotional items with retail value less than ten dollars and benefits available to the general public such as scholarships. For situations not specifically covered, action may be taken where the "sound judgement" of the DoD employee or his superior deems it to be in the Government's interest. In such cases,

> a written report of the circumstances shall be made in advance, or when advance report is not possible, within forty-eight hours, by the individual or his or her supervisor or superior to the DAEO (Designated Agency Ethics Official) or designee. [Ref. 10:p. 11]

The exemptions section of the Standards of Conduct also addresses the conditions, requirements and procedures:

- under which DoD personnel may attend training, orientation, and refresher courses given by defense contractors;

- for reporting any gratuity received to one's superior and to the DAEO for a decision on disposition;

- under which expense reimbursement from other than government sources is acceptable;

- to be followed for special ceremonies such as ship launchings;
- for appropriate use of government facilities, property and personnel;

- prohibiting unauthorized gambling activity on government controlled property; and

- requiring DoD personnel to pay their just debts. [Ref. 10:pp. 11-15]

This guidance, along with the "Code of Ethics for Government Personnel" which is appended to the Directive, completes the underlying code for moral decision making prescribed for DoD military and civilian personnel.

B. PROCEDURES

Certain procedures for the enforcement and monitoring of standards of conduct provisions are required by statute. These regulations cannot be followed in the same way as the policies just outlined. Instead, "they are meant to be referred to, to get expert advice on, and to be complied with when an employee realizes he is contemplating something to which such regulations may apply" [Ref. 11:p. 27]. They include reporting requirements for violations, personal financial interests, and DoD related employment as well as procedures for resolution of suspected violations.

1. Reporting of Suspected Violations

Department of Defense personnel are required to report suspected violations of the Standards of Conduct. Reports are to be made to both (1) the supervisor of the suspected violator or a law enforcement official and (2) the DoD Inspector General. Cooperation by employees with official investigations in ethics matters is required.

2. Resolution of a Violation

Prompt resolution at the lowest effective level of all suspected violations is required by the directive. Several possible corrective measures are considered appropriate:

(1) disqualification from particular official actions,

(2) limitation of duties,

(3) divestiture,

(4) transfer or reassignment,

(5) resignation,

(6) exemption under 18 U.S.C. 208(b) (for financial interest deemed in advance not substantial enough to affect the integrity of the Government), or

(7) other appropriate action as provided by statute or administrative procedure. [Ref. 10:p. 19]

Employees with interests that create conflicts of interest must either disqualify themselves in writing from dealing officially in any matter related to the organizations or people in conflict with government interest, or, if necessary to perform their official duties,

must divest themselves of their interest or be removed from their position.

3. Financial Disclosure

Certain senior military and civilian employees are required to submit DD Form 1555 "Confidential Statement of Affiliations and Financial Interests" on an annual basis. The principal purpose of this is:

> to enable supervisors and other responsible DoD officials to determine whether there are actual or apparent conflicts of interest between the individual's present and prospective official duties and the individual's non-federal affiliations and financial interests. [Ref. 10:p. 5-1-1]

The form requires certification as to the completeness and correctness of the listing of an individual's affiliations, financial interests, creditors, and interest in real property. It is reviewed by the employee's supervisor or the Designated Agency Ethics Official.

More senior, DoD officials are required to submit SF 278 "Financial Disclosure Report." This form is required for the same purpose as the DD Form 1555, but receives scrutiny at a higher level and is available for public examination.

4. Defense Related Employment Reporting

Reporting of two types of employment is required by the Standards of Conduct. The first of these is by retired regular officers of the armed forces. Upon retirement, after changing employers or assigned duties, and every three

years regardless of change in status, a "Statement of Employment" DD Form 1357 must be filed. The stated purpose of this submission is:

> To enable DoD personnel to determine if retired regular officers are engaged in activities prohibited by law or regulation, including those that could result in the loss or reduction in retired pay due to other Federal employment. [Ref. 10:p. 7-1]

The form requires certification to the accuracy and completeness of information provided on current employment. The required information includes specific information concerning involvement with contracts with government agencies:

- Signing a bid, proposal, or contract;
- Contacting an officer or employee of the agency for the purpose of:
  (1) obtaining or negotiating contracts,
  (2) negotiating or discussing changes in specifications, price, cost allowances, or other contract terms,
  (3) settling disputes concerning performance of a contract;
- Negotiating a contract; or
- Any other liaison activity toward the ultimate consummation of a sale even though the actual contract is later negotiated by another. [Ref. 10:p. 7-1]

A retired regular officer is prohibited from "selling" to the service in which he has the retired status. This prohibition applies to all the activities listed above. If the officer was "personally and substantially" involved in a contract while on active duty, he is permanently barred from

representing the contractor when dealing with the government. If the contract was under the former employee's official responsibility when he retired, he is prohibited from representing the contractor before the government for a period of two years after retirement. [Ref. 10:pp. 3-4 through 3-7]

The second provision for reporting defense related employment concerns both former military officers of rank O-4 and above and DoD civilian employees paid at a GS-13 rate or above. If, within two years of termination of DoD employment, or (for civilians only) within two years prior to government employment, the individual is (was) employed by a contractor with $10,000,000 or more in DoD contracts and is (was) compensated at a rate of at least $25,000 per year, he is required to file DD Form 1787 "Report of DoD and Defense Related Employment." A detailed description of assigned duties is required on order to determine if any violations of Standards of Conduct may have occurred. Former DoD officials effected must resubmit the form biannually. [Ref. 10:pp. 22-24]

C. SUMMARY

Ethics, for Department of Defense personnel, are prescribed in DoD Directive 5500.7 "Standards of Conduct." This document is a comprehensive compilation of the requirements contained in statutes, regulations, directives, and executive orders. Its eighty-five pages of text and

appendices make up an ethics code which includes specific behavioral prohibitions as well as guidelines to be followed in situations not specifically addressed. The code prohibits even the appearance of a conflict of interest. Reporting requirements for past and future employment by defense contractors are explained as are provisions for enforcing the code. All Department of Defense military and civilian employees are required to understand and meet the requirements set forth in the "Standards of Conduct."

IV. PROCUREMENT ETHICS PROGRAMS

In this chapter, three areas will be discussed. First, concepts of ethics management, as found in the literature, will be presented. These are intended to serve as a foundation for program analysis. Next, a review of Standards of Conduct programs required and those currently in place at Navy Field Contracting System activities is presented for evaluation. Finally, a discussion of Defense contractor initiatives is included to provide a contrast for comparison with the Navy programs. An analysis of the Navy programs completes the chapter.

A. THEORY

Procurement ethics has been described as:

> the actions displayed when conducting business that would be morally right, socially acceptable, within the limits of the law, honest and beneficial not only to the individual, business, or government, but to society as well. [Ref. 6:p. 14]

Because the procurement process involves the expenditure of large amounts of public money using a great deal of personal judgement, activities involved in government procurement are under a great deal of pressure to exhibit high standards of ethics. A purchasing professional should be conscious of his obligations to the government (the public), defense contractors, and to his peers for ethical

behavior. In addition, management has the obligation to create a program which fosters such awareness and standards.

The first step toward assurance of procurement ethics is the establishment of a standard. The Packard Commission described key characteristics of ethical standards, noting that they are "only as easy to observe, administer, and enforce, as they are certain in scope, simple in concept, and clear in application" [Ref. 1:p. 97]. Established standards should not only provide specific basic guidance for decision making, but should include streamlined procedures for resolving ethical questions and dealing with possible violations. Guidelines which maintain the organization's ethics without unduly restricting the individual's personal judgement are ideal.

Once established, a standard must be articulated in writing and effectively disseminated to all concerned, including employees, contractors, and the general public. Employees should receive indoctrination which answers any questions they might have about the code. Discussion and "story telling," by using pertinent examples of situations in which ethical decisions must be made, are ideal vehicles for training. Two-way communication on ethics issues should be encouraged in the normal course of business, with points of contact identified for dealing with ethics questions and violations. Review of the organization's standards should

be routinely conducted, so that updating of ethics policy is made in a timely fashion.

Management's setting an example to be followed can determine the success or failure of an ethics program. In A Passion for Excellence, the authors describe a boss's responsibility to be a "value shaper." They note that "trust and integrity of vision is learned only by example, not from procedure manuals, training courses, or Labor Day speeches." [Ref. 12:p. 333] A survey by the American Management Association indicated that the most significant determinant of ethical behavior and actions in an organization was the behavior demonstrated by both superiors and peers [Ref. 11:p. 27]. Dealing with daily public judgement of his actions, the procurement manager faces key tests in his ability to:

- Compromise, but not too often
- Make decisions without knowing all the facts
- Accept responsibility for the mistakes of subordinates, but not allow too many
- Live up to the image associates demand, but do not become a victim
- Succeed as a person of thought as well as a person of action. [Ref. 3:p. 15]

His personal values are displayed in every decision that he makes. He must ensure that his personal values don't appear to conflict with the established organizational standard.

Beyond training and leadership, enforcement of the code is essential. All potential violations of the code must be

investigated. Those found guilty of transgressions must be appropriately disciplined.

The structure of a purchasing organization can and should discourage ethics violations by eliminating potential opportunities for them to occur. Appropriate internal controls and audit procedures would ensure a high level of compliance with ethics policy. Those inclined to "bend the rules" are less likely to do so if they think they may be found out.

B. NAVY FIELD CONTRACTING ACTIVITIES

1. Regulation

Department of the Navy personnel are subject to DoD Directive 5500.7 as implemented by SECNAV Instruction 5370.2H "Standards of Conduct and Government Ethics" of 24 October 1984 and OPNAV Instruction 5370.1C "Standards of Conduct and Related Requirements" of 18 August 1977. These instructions do not alter the basic guidelines set forth in the DoD Standards of Conduct instruction, but serve to reiterate and amplify key points and provide direction for administering the requirements. Secretary of the Navy and Chief of Naval Operations instructions emphasize the following managerial requirements:

- dissemination of DoD Instruction 5500.7 to all personnel at least semi-annually,
- ensuring that all personnel are familiar with and complying with the instruction,

- periodically directing the attention of representatives of business to the requirements of the instruction,
- ensuring that personnel understand their responsibility to report suspected violations of "Standards of Conduct," and
- ensuring compliance with financial interests and employment reporting requirements. [Ref. 13:pp. 1-6]

The Secretary of the Navy includes a "Bedrock Standards of Conduct For Department of Navy Personnel" (see Appendix B) in his instruction as a streamlined code of ethics.

The Secretary of the Navy established the Navy Integrity and Efficiency Training program in December 1983 with three objectives:

1. Sharpen the existing focus on fraud, waste, and abuse prevention;
2. Reemphasize Standards of Conduct; and
3. Train naval supervisory and non-supervisory personnel in their respective responsibilities to help prevent fraud, waste, and abuse. [Ref. 14:p. 1]

The Navy's Fraud, Waste, and Abuse Program includes this training, the Fraud, Waste, and Abuse Hotline, and promotion of Incentive and Military Cash Award Programs. All Navy commands and activities were directed to plan, organize, and schedule training to achieve these "Integrity and Efficiency" goals. [Ref. 14:p. 1]

2. Current Programs

For the purposes of this research, all Naval Supply Centers, Naval Supply Depots, and Navy Regional Contracting Centers were queried concerning the Standards of Conduct programs currently in place for contracting personnel. The

researcher received responses from seven of these fourteen activities. A review of their command policies and programs follows.

a. Policy

Most commands surveyed have written instructions on "Standards of Conduct." Those commands without local written policies on the subject were following the direction contained in SECNAV Instruction 5370.2H "Standards of Conduct and Government Ethics" without modification. The written policies in effect at the other commands generally express command support of the SECNAV instruction's requirements and place emphasis on specific policies.

Among the policies highlighted in the instructions are the prohibitions contained in Executive Order 11222 (see page fifteen of this text). This can function as a streamlined ethics code.

Another area directly addressed in more than one instruction is the business relationship between Government and private industry. The Commanding Officer of Naval Supply Center (NSC) Charleston, South Carolina elaborated on this topic in a memorandum to all NSC personnel:

> Persons who represent the Government in business dealings with representatives of industry have positions of trust and grave responsibility which require them to observe the highest ethical standards. Practices which may be accepted in the private business world are not necessarily acceptable for Naval personnel. No person will allow himself to be placed in a position in which conflicts of interests may arise or might justifiably be

> suspected... It is emphasized that prohibited conflicts and apparent conflicts of interests can sometimes arise even from relationships and transactions which the personnel concerned perceive as inconsequential. Where there is doubt as to the propriety of accepting gratuities, attending functions, or accepting other invitations of a hospitable nature, Naval personnel will refrain therefrom. [Ref. 15:p. 3]

Other commands expressed strong guidance concerning the direction provided in SECNAV Instruction 5760.4B on membership in "trade and professional associations." The Commanding Officer of NSC Oakland, California quotes the following pertinent paragraphs:

> DoD personnel shall not accept an honorary office or honorary membership in any trade or professional association which includes in its membership business entities which are engaged or endeavoring to engage in providing goods and/or services to a component of the Department of Defense, including non-appropriated fund activities of the Department of Defense. An honorary office includes any office whether termed honorary or not, when the selection for that office is on the basis of an official Department of Defense position or assignment.
>
> These policies shall not apply to membership or participation by officers or employees of the Department of Defense, as individuals, in private organizations or associations, including technical and professional societies, and military or veterans organizations, otherwise consistent with the law, including the Hatch Act, and Anti-Lobby Act, and other laws which prohibit government officers and employees from engaging in activities inconsistent with their government employment. [Ref. 16:p. 2]

The intricacies of maintaining appropriate business relationships to avoid conflicts of interest is recognized as the most significant problem in Ethical Standards for Government personnel.

One of the Navy field contracting activities surveyed (Naval Regional Contracting Center, Naples) has issued an instruction addressing Standards of Conduct for Naval Reserve personnel. In recognizing the need for addressing this issue, it notes:

> It is necessary to establish procedures which will facilitate the early identification, reporting, and resolution of actual or apparent conflicts of interest in order to ensure the integrity of NRCC procurement operations while, at the same time, allowing the broadest possible participation in such operations by Naval Reserve personnel. [Ref. 17:p. 1]

Generally, then, "Standards of Conduct" policies tend to follow the guidelines provided in DoD Directive 5500.7. Commands reviewed have only tailored these standards by providing directed emphasis.

b. Controls

Control procedures for managing ethics requirements are listed in most command "Standards of Conduct" instructions. An effective program requires appropriate delegation and coordination of these responsibilities. While different procedures have been established at the various activities, several key areas of responsibility are addressed in the instructions:

- Filing DD form 1555: Responsibility for ensuring submission and review is assigned to one or more of the following: Deputy Ethics Counsel, command legal counsel, supervisors, or civilian personnel director.
- Questions concerning possible Standards of Conduct violations: These are generally to be directed to the Deputy Ethics Counsel or command legal counsel.

- Reporting of possible conflicts of interest: The established mechanism for means of making these reports is through the chain of command of the reporting individual.

- Resolution of apparent conflicts of interest: Alternatively, supervisors or the Deputy Ethics Counselor are assigned this responsibility.

Policies and procedures are only effective if they properly fit the structure of the organization. This idea is embodied in the concept of internal control:

> the plan of organization and all of the coordinate methods and measures adopted within (an organization) to... promote operational efficiency and encourage adherence to prescribed managerial policies. [Ref. 18:p. 144]

For a field contracting activity, effective internal controls would, among other things, help ensure that Standards of Conduct policies were followed. Organizational controls in the Navy Field Contracting System activities studied were not tied to a program of standards of conduct implementation, however representatives of several of these buying organizations mentioned the importance of such controls. Generally, there are separate local instructions mandating internal controls, at the contracting activities studied, which are not tied to the ethics enforcement policy.

c. Training

Though conducting of training in Standards of Conduct is the responsibility of the Commanding Officer, each individual employee is responsible for understanding

the responsibilities of his assigned position and how all applicable ethics legislation affects him in it.

The level to which training responsibilities are delegated can affect the way the requirements are perceived by employees. At the activities surveyed, commanding officers delegated the responsibility for ethics training to either the Deputy Ethics Counselor, the Civilian Personnel Officer, the supervisors, or not at all. At one command, each employee was to be provided with Standards of Conduct information on at least a semi-annual basis. No mention was made of training.

At most commands, employees are required to certify in writing that they have received ethics training or have read and understood the Standards of Conduct on a regular basis.

One unique training problem was noted by all overseas contracting activities: "cultural differences." Much of the acquisition work force at these commands is made up of foreign nationals. Ethics are not universal. The underlying principles are to a great extent culturally defined. Employees of other than American cultural heritage require extensive and regular training to overcome their predisposition towards the generally accepted way of "doing business" in their country.

None of the command instructions provide guidelines, other than frequency, for required ethics

training. A generalized format, recommended by the Deputy Ethics Counselor at Naval Supply Depot Subic Bay, Republic of the Philippines, for a Standards of Conduct presentation is presented in APPENDIX C. This particular example explains a simplified code of conduct utilizing a "story telling" mechanism.

d. Audit

Auditing for compliance with established guidelines is an effective means of policy enforcement. It also can serve as an assurance to interested third parties, such as the American public in this case, that standards are being enforced. Audits can only be as effective as the established guidelines used to conduct the review.

Unfortunately, requirements for implementation of the "Standards of Conduct" are not specific. The only organizational review for compliance with these ethics requirements is a check of personnel training records to see that bi-annual familiarization with the standards has taken place. This type of audit tends to encourage good record keeping rather than effective training and implementation of a Standards of Conduct program.

C. MAJOR DEFENSE CONTRACTORS

1. Background

The area of contractor ethics has been one of increasing concern for Government contract professionals and the American public. The President's Blue Ribbon Commission

on Defense Management studied this concern in depth and concluded that there was a need for contractors to become more actively involved in assuring their compliance with federal procurement regulations, applicable statutes, and the contracts to which they are a party.

The Commission advocated the concept of "self-governance." Two of their recommendations are that contractors:

(1) must promulgate and vigilantly enforce codes of ethics that address the unique problems and procedures incident to defense procurement.

(2) develop and implement internal controls to monitor these codes of ethics and sensitive aspects of contract compliance. [Ref. 1:p. xxix]

Following these recommendations, more than thirty-two defense contractors have signed the "Principles of the Defense Industry Initiatives on Business Ethics and Conduct" of June 1986. This document commits the businesses involved to the following standards:

- have and adhere to written codes of conduct;
- train their employees in such codes;
- encourage employees to report violations of such codes, without fear of retribution;
- monitor compliance with laws incident to defense procurement;
- adopt procedures for voluntary disclosure of violations and for necessary corrective action;
- share with other firms their methods for and experience in implementing such principles, through annual participation in an industry-wide "Best Practices Forum;" and

- have outside or non-employee members of their boards of directors review compliance. [Ref. 1:p. 78]

The revised ethics programs of four of the signatories of this agreement were reviewed to provide a contrast with DoD programs. The defense contractors studied were: Grumman Aerospace, Hughes Aircraft Company, Martin Marietta Aerospace, and the Boeing Company.

2. Programs

a. Policy

Each company distributes its ethics policy to all employees. Certain characteristics of these distributed policy statements were common for all of the companies:

- concise: 8-15 pages as compared to eighty-five for the DoD Standards of Conduct Instruction.
- easy to read: not written in complex language or legal jargon.
- include an emphasis or commitment to enforcement.
- include corporate philosophy as well as applicable regulations.

The format of the policy statements varies from company to company. However, various effective formats are employed. These include use of question and answer format, the establishment of standard operating procedures, and the use of examples to illustrate the points covered.

b. Controls

Extensive control systems have been established by the companies studied. The strength of these controls can be attributed to the organizational additions made to

their corporate structures. Among the programs studied, the following were usually in place:

(1) Corporate level Ethics Steering Committees

(2) Offices of Corporate Ethics

(3) Corporate level Ethics Directors

This structure allows for the administration of a strong ethics program.

In addition, administrative control procedures are in place to ensure that:

(1) All employees are issued a copy of the ethics policy;

(2) Effective mechanisms are in place for:

- answering employees' questions

- reporting suspected violations: These mechanisms include appropriate points of contact for reporting anonymously and outside the normal chain of command;

(3) ALL allegations are investigated in a timely manner; and

(4) Regular reports of these investigations are made to the corporate level for review.

An understanding of the process by affected employees is critical to effective control procedures. In order to facilitate this kind of understanding, Figure 1 below is included as part of the Grumman ethics policy. It diagrams the mechanisms for resolving issues of legal requirements and corporate policy, and possible violations of ethics standards.

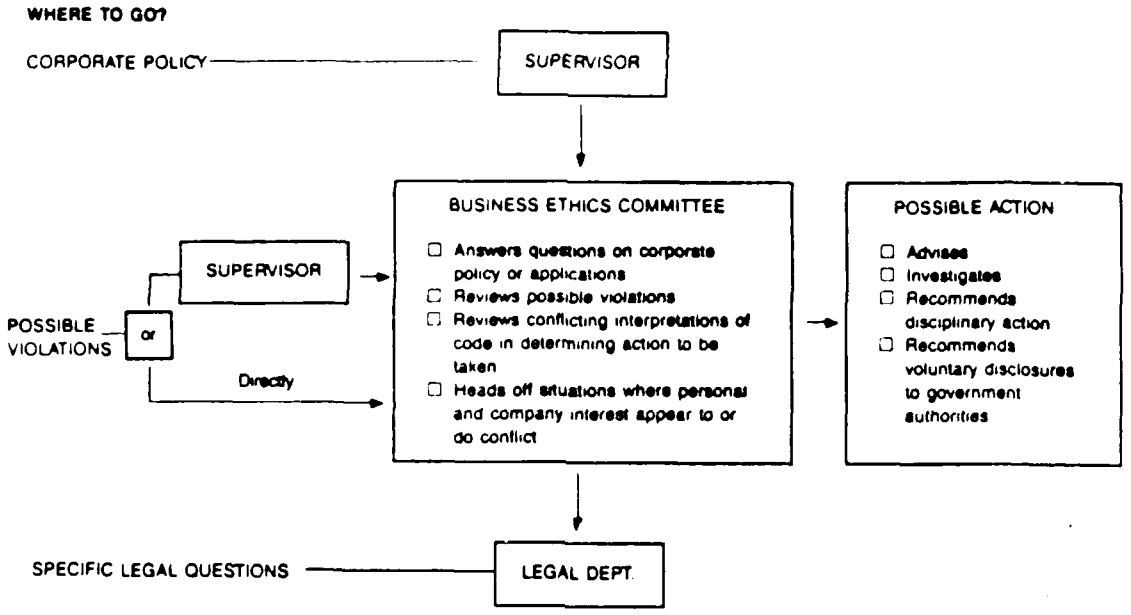

Figure 1
[Ref. 19:p. 28]

c. Training

The defense contractors studied have training/education programs for ethics characterized by strong focus and structure. For Martin Marietta Corporation, this is facilitated by the following objectives for training set by its Ethics Subcommittee:

- All employees understand the importance of the Code of Ethics and what is in it.
- All employees be made aware that management fully supports the code.
- All employees look at the Code with a positive attitude.
- All employees realize that Ethics is not simply obeying all laws and regulations.
- The training program should both create employee sensitivity to ethical problems and help employees development on ethical matters. [Ref. 20:Enclosure 2 p. 3]

The training conducted by the various corporations is generally geared specifically to the level of responsibility and the type of work of the employees. Extensive use is made of workshops with case studies and discussion. Videotaped presentations on ethics are also the norm.

d. Audit

The standards set by the "Principles of the Defense Industry Initiatives on Business Ethics and Conduct require compliance review by an external auditor. The review serves to add a quality of integrity to the program itself by ensuring that the companies are maintaining the standards agreed to in that document. The audit is made

annually by a private accounting firm. Answers to the following set of questions are required to be audited:

1. Does the company have a written code of business ethics and conduct?

2. Is the code distributed to all employees principally involved in defense work?

3. Are new employees provided an orientation to the code?

4. Does the code assign responsibility to operating management and others for compliance with the code?

5 Does the company conduct employee training programs regarding the code?

6. Does the code address standards that govern the conduct of employees in their dealings with suppliers, consultants, and customers?

7. Is there a corporate ombudsman, corporate compliance or ethics office or similar mechanism for employees to report suspected violations to someone other than their direct supervisor, if necessary?

8. Does the mechanism employed protect the confidentiality of employee reports?

9. Is there an appropriate mechanism to follow-up on reports of suspected violations to determine what occurred, who was responsible, and recommended corrective and other actions?

10. Is there an appropriate mechanism for letting employees know the result or any follow up to their reported charges?

11. Is there an ongoing program of communication to employees spelling out and re-emphasizing their obligations under the code of conduct?

12. What are the specifics of such a program?

    a. Written communication?
    b. One-on-one communication?
    c. Group meetings?
    d. Visual aids? [Ref. 1:Appendix p. 30]

C. ANALYSIS

Assessment of the effectiveness of an ethics program is a complex problem. Several critical aspects are not measurable. The degree to which a command climate encourages ethical behavior is perhaps most important, however, it is difficult to measure the impact on employee actions of supervisory and management example. Controls and Audit are other areas of concern. To be effective, there should be neither too little nor too much audit and controls.

While the task is not a simple one, the Navy Field Contracting ethics programs can be reviewed in light of the background of ethics in U.S. Government and business. While their are real differences between the functions performed by government and contractor acquisition personnel, their ethical standards should be at the same high level. An evaluation of the Navy programs studied by the standards established for DoD contractors is quite revealing:

1. Five of the seven commands have written instructions on Standards of Conduct. All of the Navy commands utilize the DoD Standards of Conduct as the foundation of their programs.

2. All commands are required to distribute the DoD "Standards of Conduct" to all personnel involved in contracting. The commands with written policies have included provisions for this.

3. Each of the five commands with a written Standards of Conduct policy assigns a specific individual the task of conducting indoctrination in the code for new employees.

4. Rather than holding management responsible for ensuring that the Standards are met, DoD Instruction 5500.7 holds each individual personally responsible for compliance.

5. Other than initial briefings of employees upon assumption of their duties, only two of the seven Navy contracting activities studied conduct regular training on ethics. Three of the commands disseminate Standards of Conduct information periodically. The remaining two commands do not have local ethics programs in place.

6. DoD Instruction 5500.7 "Standards of Conduct" addresses conduct in dealings with suppliers. Each of the five Navy activities with an established program places emphasis on requirements related to conflicts of interest.

7. Each command is required to have a Deputy Ethics Counselor by DoD Instruction 5500.7. This individual was assigned administrative and ethics indoctrination duties in the five commands with established ethics programs. None of the commands studied facilitated reporting of ethics violations outside the normal chain of command.

8. None of the commands studied had established mechanisms to protect the confidentiality of employee reports.

9. Only two commands had established specific direction on follow-up on reports of suspected violations of the Standards of Conduct.

10. There were no established mechanisms for letting employees know the result of the follow-up on their reports of suspected violations.

11. Other than the required semi-annual familiarization with the Standards of Conduct and scheduled training (at two commands), the only ongoing program of communication to employees spelling out and re-emphasizing their obligations under the "Standards of Conduct" was established at Naval Supply Center Charleston. Here, the Plan-of-the-Day was routinely utilized to disseminate such information.

In general, the programs at the majority of the commands studied only have those characteristics which are required by higher authority. Few have taken the initiative to employ effective mechanisms which are not required.

There are many areas in which Navy Field Contracting Activities can improve the effectiveness of their ethics programs. Implementation of any of these improvements does require utilization of the scarce resources of time and staff, however, which may not be readily available. The U.S. Government expects a commitment from the defense contractors to ethics in contracting. It is the author's firm belief that it is up to the Government to devote adequate resources to at least match that commitment.

V. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

From the research data and evaluation presented in this paper, significant conclusions about the implementation of Standards of Conduct for U.S. Government personnel may be drawn. The following are key points.

1. The issues, procedures, regulations, and statutory requirements of government employees pertaining to ethics are complex and dynamic.

Personnel cannot be expected to become knowledgeable of all of their responsibilities with regard to ethics without expert assistance in the form of training and counsel as required. They can, however, be greatly assisted in choosing appropriate ethical behavior by indoctrination in a simplified code of ethics.

2. Government contracting personnel work in an environment where the opportunity for ethics code infractions is great, and yet the public demands of them the highest ethical standards.

Those involved in government contracting have direct control over the expenditure of significant public funds. The history of the U.S. government is full of examples of the combination of this type of responsibility with direct interfacing with private industry in an official capacity

leading to the use of public office for private gain. The modern American public refuses to accept such a standard. Through the outcry of the press and the control of the Congress, the highest standards are mandated.

3. While no specific standard has been developed to measure the effectiveness of administration of ethics requirements for DoD employees, there is a clear need for improvement in this area.

Prosecution for ethics violations by government employees is rare. Yet, there is a public outcry over perceived abuses by government personnel. The Congress has legislated more and more stringent ethics regulation. The President commissioned a Blue Ribbon panel which studied the matter. On all fronts, the judgment is the same: THE ETHICS STANDARDS ACTUALLY EXHIBITED ARE INADEQUATE.

4. Characteristics of programs which have proven successful in managing ethics can be identified in both government and industry.

Due to the pressure on both government contracting agencies and defense contractors to maintain high ethics standards, some have significantly increased their focus on effective Standards of Conduct and ethics administration. The resulting programs show both common and unique features which have been effective. The 'Model Ethics Program Framework' presented below incorporates many of these ideas.

B. RECOMMENDATIONS

The following recommendations resulting from this research are directed toward Navy Field Contracting Activities. To ensure good ethics administration, the following are suggested:

1. PUBLISH SIMPLIFIED STANDARDS TAILORED TO THE CONTRACTING FUNCTION TO SUPPLEMENT THE DOD STANDARDS OF CONDUCT INSTRUCTION: Appendix D illustrates a simplified code used by the National Contract Management Association.

2. IMPROVE TRAINING PROGRAMS: These should include regularly scheduled training using case studies, visual aids, and discussion tailored to the work responsibilities of the employees as well as ongoing communication on ethics issues in the work place. Appendix C presents a good example of such a training methodology.

3. EMPHASIZE EMPLOYMENT REPORTING REQUIREMENTS: While commands are not responsible for the employment reporting by former employees, training in post-employment requirements and enforcement of employment reporting requirements for current employees could decrease the number of violations of "Revolving Door" type legislation in the future.

4. FACILITATE REPORTING OF VIOLATIONS: The easier it is for an employee to report a violation, the more likely he is to do so. Mechanisms which guarantee protection of the individual from retribution and allow for reporting other than through the chain of command are most effective.

Agency hotlines are the greatest source of conflict of interest allegations DoD-wide [Ref. 21:p. 7].

5. ENSURE ENFORCEMENT: DoD-wide administrative action is taken in only 72.6 percent of identified violations and prosecution in only one percent of the cases [Ref. 22:p. 31]. In order to show employees that management is serious about ethics in the work place, more emphasis on follow through and enforcement of policies and regulations must be carried out.

6. ESTABLISH AN ETHICS PROGRAM: Each Navy Field Contracting Activity must have a definitive ethics program established in writing and efficiently implemented if DoD is to avoid both perceived and actual ethics problems. It is strongly recommended that each activity adopt such a program if one is not already in place. A model framework for such a program is presented in Section C below.

C. A MODEL ETHICS PROGRAM FRAMEWORK

The ethics program of every contracting activity should be developed and implemented in a manner which addresses the unique character of the activity's work force, the nature of its contract actions, and its suppliers. The following framework, from which such an effective program can be developed, consists of characteristics of a strong program and proven implementation techniques as highlighted and discussed in this thesis.

1. Characteristics

Policy: must be based on the laws included in the DoD "Standards of Conduct," but presented in a simplified format with emphasis placed on specific contracting-related provisions for ease of understanding. The policy should include strong commitment to enforcement. It should be distributed to all employees and to defense contractors.

Controls: which minimize the opportunity for potential ethics violations should be inherent in the assignment of responsibilities to the contracting office staff. Responsibility for oversight of ethics administration should rest with a single knowledgeable individual outside the normal chain of command, if possible. Reporting of suspected violations directly to this individual should be facilitated. Procedures for reporting financial interests and defense related employment should be implemented effectively.

Training: should be a responsibility at every managerial and supervisory level. It should be tailored to the responsibilities of the employees and their cultural backgrounds. Formal training should be scheduled regularly, informal training should take place on the job, and ethics issues and cases should be publicized in command Plans-of-the-Day or other periodic publications.

Audit: should be conducted through the command internal review process to ensure that the program is ir

place and that both local and Navy-wide policies are being effectively administered and enforced.

2. Management Implementation

a. Set an appropriate example. This is a key determinant of success.

b. Facilitate communication. Encourage an ongoing dialogue with employees and suppliers on ethics issues. Establish easy to use mechanisms for answering questions and reporting suspected ethics violations (outside the working chain of command when necessary) and encourage their use.

c. Conduct regular, effective training. Utilize effective media such as case study discussions and videotapes for formal training and articles in command publications for informal training.

d. Aggressively enforce ethics regulations. Follow up on all alleged ethics violations with appropriate administrative or judicial action. Use these actual examples in training other employees.

D. RECOMMENDATIONS FOR FURTHER RESEARCH

Based on this paper, further research in the following area is recommended: Establishment of specific Navy-wide requirements for the establishment and implementation of Standards of Conduct programs for contracting activities. Centrally mandated standards for an ethics program would ensure a uniformly high level of ethics management similar to that being adopted by major defense contractors. They

would allow for meaningful management audit of program effectiveness, while providing sufficient emphasis to achieve desired results.

APPENDIX A

CODE OF ETHICS FOR GOVERNMENT SERVICE
[Ref. 10:p. 4-1]

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for renumeration or not; and never accept for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of Governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of Governmental duties.

8. Never use any information gained confidentially in the performance of Governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

APPENDIX B

BEDROCK STANDARDS OF CONDUCT

FOR DEPARTMENT OF THE NAVY PERSONNEL
[Ref. 23:p. 6-1]

To maintain public confidence in the integrity of the Department of the Navy which is essential to the performance of its mission, all naval personnel shall comply with the following standards of conduct:

1. Avoid any action, whether or not specifically prohibited, which might result in or reasonably be expected to create the appearance of:

   - Using public office for private gain,

   - Giving preferential treatment to any person or entity,

   - Impeding Government efficiency or economy,

   - Losing complete independence or impartiality,

   - Making a government decision outside official channels, or

   - Adversely affecting the confidence of the public in the integrity of the Government.

2. Do not engage in any activity or acquire or retain any financial interest which results in a conflict between your private interest and the public interest of the United States related to your duties.

3. Do not engage in any activity that might result in or reasonably be expected to create a conflict of interest.

4. Do not accept gratuities from defense contractors.

5. Do not use your official position to influence any person to provide any private benefit.

6. Do not use inside information to further private gain.

7. Do not use your rank, title, or position for commercial purposes.

8. Avoid outside employment or activity that is incompatible with your duties or may bring discredit to the Navy.

9. Never take or use Government property or services for other than officially approved purposes.

10. Do not give gifts to your superiors or accept them from your subordinates.

11. Conduct no official business with persons whose participation in the transaction would be in violation of the law.

12. Seek ways to promote efficiency and economy in Government operation and public confidence in its integrity.

APPENDIX C

STANDARDS OF CONDUCT PRESENTATION
[Ref. 24:Enclosure]

_____ CODE OF ETHICS

(PROPOSED)

As an employee/military member of the Department of the Navy, occupying a position of trust and responsibility to the Navy and the country, I pledge to observe the highest ethical standards in the performance of my responsibilities. In furtherance of this pledge, I shall:

- Not use my position for personal or family gain.
- Not accept gifts, favors, or entertainment from individuals or corporations who do or may do business with the government.
- Not tolerate theft or personal use of government materials, services, or facilities, no matter how insignificant.
- Not give preferential treatment to any person or entity regardless of prior personal or professional association or for any other reason.
- Insure the government gets a dollar's worth for every dollar spent.
- Report any actual or suspected violation of this Code of Ethics or any other questionable conduct of government personnel.

EXPLANATION OF THE CODE OF ETHICS (with problem examples)

1. Not use my position for personal or family gain;

PROBLEM: The son of a _____ contracting officer will be graduating soon from college. He has scheduled interviews with a number of engineering firms. One of these firms does substantial business with _____, in fact, subject contracting officer is currently conducting negotiations with the firm. What should the contracting

officer do? Suppose the son accepts employment with the firm?

SOLUTION: The contracting officer should disqualify himself from further work relating to the contractor until the question of his son's employment with the firm is resolved. If his son accepts employment with the firm and continues to reside at home, the CO should disqualify himself from work relating to the firm until his son leaves the household. At that time, he should make full disclosure to his superiors and seek their decision relating to future involvement with the firm. Regardless of the decision of his superiors allowing future involvement with the firm, the appearance of impropriety will continue to exist.

PROBLEM: Mr. Errington is the head of contracts at a _____ field contracting activity. He has been concerned recently over the filling of a contract specialist position in his organization. He will interview the applicants and make a selection. One of the applicants is an individual who works at the local bank with whom Mr. Errington has a pending loan application. What should he do?

SOLUTION: A conflict exists. Mr. Errington should withdraw himself from any participation in the selection process.

PROBLEM: You work for the Assistant Technical Director of the Navy lab in San Diego. It comes to your attention that your boss's son is working on a study that is part of the contract work being performed under your supervision. Investigation shows that the study was funded as part of a $24,999 non-competitive add-on to the existing contract. This contract action was proposed and authorized by the Assistant Technical Director, in the amount specified and as a sole source award to the subject firm. What should you do?

SOLUTION: The facts presented indicate fraud and violation of the Standards of Conduct regulations. The matter should be turned over to appropriate command, IG, or Navy investigative channels. As this case actually developed, it was determined that the individual involved had falsified the DD 1555 he had submitted by not indicating his son's employment by the Navy contractor. With regard to the contractor, the contract add-on was terminated for default and any funds paid the contractor were recovered.

2. Not accept gifts, favors, or entertainment from individuals or corporations who do or may do business with the government.

PROBLEM: Supreme Business Machines has sold some of its business machines to _____. Your secretary, who uses some of the machines, advises that she and a number of other _____ secretaries have received invitations to a show of Supreme's new line. Refreshments and a lunch will be provided. What should you do?

SOLUTION: While the secretaries do not have the responsibility to select _____ equipment, their opinions may be valuable. It appears that the contractor is attempting to start a campaign within your organization for his equipment. The lunch and refreshments being provided are in the form of gifts, favors, or entertainment. The invitations should be declined and, if deemed appropriate, a _____ technical representative could be sent to the show.

PROBLEM: You are the ethics/standards of conduct advisor to the F-30 Program Manager at NAVAIR. He has received an invitation to the American Seapower Association's annual dinner at a Washington, D.C. hotel. The VCNO will be the guest speaker. He requests your advice re attending the affair. He relates to you that Navy brass attend this affair every year. You investigate and discover that the association is a private association which supports a strong Navy; that its program has been approved annually by the Director for Community Relations, OASD(PA); that the organization invites guests and not individual contractors; there is random seating; that it is the practice of the association to use funds provided by contractors to invite Navy personnel dealing with the contractor; that these dinners bring together important Navy officials with representatives of the Defense industries; and that Navy personnel are often invited to company hospitality suites after dinner. You have a gut feeling that the contractors are only using the affair to do indirectly what they cannot do directly, ie. ingratiate themselves with Navy personnel through the use of gratuities. What do you advise?

SOLUTION: Attendance at the affair under the circumstances outlined is not a violation of Navy Standards of Conduct. You should advise that attendance at contractor hospitality suites is not appropriate, as it constitutes a proscribed gratuity. You should also encourage him not to be corralled at a table of Navy personnel and contractor representatives of the F-30 contractor. Random seating should be insisted upon. Any business that needs to be conducted should be conducted at the office during the normal business day. This problem focuses on the difficulty of providing advice in the area of government ethics. The gratuities problem is a serious one that needs to be addressed in more detail by DoD. Congress is also looking

at this area in light of its concern over gratuities at shipbuilding ceremonies.

PROBLEM: The APWO goes out to lunch with a service contractor on the base. During lunch, the contractor pays the tab, including drinks. A few days later, the APWO signs a change order to the service contract providing substantial additional funds to the contractor. Had the APWO acted improperly?

SOLUTION: It is clear that the APWO has accepted gratuities from the contractor in violation of Navy Standards of Conduct. Whether the resultant contracting action is tainted cannot be determined on the facts presented herein, although there exists a strong inference of improper action. Appropriate investigation must be made to determine if action against the contractor is warranted. Even if the change order was appropriate, the actions of the contractor in providing a gratuity to the APWO is a violation of the Gratuities Clause in the contract which could subject the contractor to possible termination of the contract.

PROBLEM: It is Christmas time and the _____ staff is invited to attend a Christmas party hosted by one of the contractors who does business with the _____ office. The party is scheduled to last all afternoon, there will be an open bar, an all you can eat buffet, as well as live entertainment and dancing. The contractor has indicated that there will be a charge of $5.00 per person for all attendees. A large number of the _____ staff attends. Is there a violation of the Standards of Conduct?

SOLUTION: It is a violation of the Standards of Conduct for Navy personnel to attend a contractor sponsored party. The fact that a charge of $5.00 was required would only alter this conclusion if the $5.00 amounted to a reasonable share of the actual per person cost of the party. On its face, considering the likely cost of what is being provided, $5.00 does not cover the reasonable cost of the party. Therefore, attendance at the party is a violation of the Standards of Conduct. Once again, the contractor faces possible contract action because of his violation of the Gratuities Clause.

PROBLEM: The facilities administrator of family housing at a large Public Works Center oversees contractor performance on a number of PWC facility contracts. During the course of one meeting he mentions to the contractor that he is planning to have his roof replaced at home. A week later he returns home from work to discover that the roof on

his home has been replaced by the contractor. Has there been a violation of the Standards of Conduct?

SOLUTION: A gratuity has been provided by a government contractor. The fact that it was not sought by the employee is only relevant to potential wrongdoing on the part of the employee. The employee must immediately make full disclosure and will likely be expected to reimburse the contractor for the reasonable value of the roof work performed. Once again, the contractor faces possible adverse contract action.

3. Not tolerate theft or personal use of government materials, services, or facilities, no matter how insignificant.

EXAMPLES: personal photocopying, improper use of government vehicles, sick leave abuse, selling commercial products on government time or in government facilities, and personal telephone calls.

PROBLEM: Mr. Wilson is the ROICC at White Marsh NAS. As part of the emphasis to train contracting personnel, he has arranged for his contracting personnel to attend courses at a local educational institution. These courses are paid for by the Navy as appropriate training. Later, the attendees notify Mr. Wilson that the school overcharged the Navy and desires instructions relating to making a refund to the government. The amount of the refund is approximately $500.00. Mr. Wilson, aware that there is course material available from other courses, the receipt of which would be beneficial to the training of his personnel, advises the school to make the refund check payable to him, as ROICC. When the check arrives, Mr. Wilson deposits it in his checking account and proceeds to order the material noted above. Through careful purchasing he is able to secure $503.15 worth of materials for the office. He does not seek reimbursement of the $3.15. Has Mr. Wilson acted improperly?

SOLUTION: Regardless of Mr. Wilson's motives and actions, he has acted improperly in converting government funds to his own use, outside of proper fiscal, accounting and contractual channels. He has violated statutory and regulatory requirements relating to the receipt of funds due the government. The $500.00 must be turned into the Treasury.

PROBLEM: A Navy employee at a Naval Weapons Station is authorized the use of a government vehicle to perform his work. Each day at lunch time, he departs his office and drives into the secured portion of the base to have lunch

with a group of his co-workers and play cards. As he is not able to take his private vehicle into the security area, he drives his government vehicle. The trip is approximately 6 miles each way. Has the employee violated the Standards of Conduct?

SOLUTION: The use of the government vehicle to go to lunch and play cards is improper. Government property has been converted to the private use of the employee.

PROBLEM: A government employee is required to make delivery runs throughout the San Diego area. On one day, the employee drives 3 miles out of her way to stop by her friend's house on the way to one of her deliveries. An accident occurs, which is in no way the fault of the government driver. Has there been a violation of the Standards of Conduct?

SOLUTION: The departure from the normal route of travel, the most direct and reasonable route, results in the conversion of the vehicle to the personal use of the employee. As such, there is a violation of the Standards of Conduct. This example demonstrates the added potential for adverse impact on an employee who converts a government vehicle to his/her own use. If the government vehicle liability is determined, the potential for recovery from the employee exists in light of the employee's conversion of the vehicle to personal use.

PROBLEM: An employee works as a real estate agent on a part time basis. He is a supervisory employee and has his secretary type a few sales notices for him. In addition, he receives phone calls at the office concerning his real estate sales and places local return calls from the office as necessary. He often is required to attend real estate closings for which he always takes leave. On a few occasions, however, he has not felt good enough to go to work, taken sick leave, but still attended a real estate closing. Has the employee violated Navy Standards of Conduct?

SOLUTION: There is no violation of Standards of Conduct for a government employee to have a part time job. The actions of this particular employee, however have violated Standards of Conduct. This employee has used government facilities, equipment, and personnel for his personal use. In addition, the use of sick leave is improper. If the individual is unable to work, he is likewise unable to perform his part time responsibilities. As a general consideration in dealing with the question of part time employment, the supervisor should be advised of the prospective employment. If there exists a question relating

to Standards of Conduct, contact should also be made with the activity counsel.

4. Not give preferential treatment to any person or entity regardless of prior personal or professional association or for any other reason.

PROBLEM: CDR Friendly is a member of the technical evaluation board to evaluate the technical proposals of a number of firms for a significant _____ contract. You learn that one of the proposers has as his representative, an individual who was the best man at the CDR's wedding, his long time friend, and bought the CDR's house in San Diego 2 years ago. What should you do?

SOLUTION: The relationship outlined above is not a violation of any ethics standards as long as no preferential treatment is actually given. However, the proper command officials should be notified so that the matter can be reviewed with the CDR to determine whether his continued participation serves the best interests of the Navy. The necessity of his participation as well as the impact of the appearance of impropriety need to be evaluated.

PROBLEM: You work in the Public Works Office of a large Navy activity. You notice that a local firm has begun to receive a much greater share of local contracting work than before. The president of the firm is a woman whom you discover has had a recent affair with the Head of the Purchasing Office at the PWO office. What should you do?

SOLUTION: The facts presented indicate potential misconduct on the part of the division director. Appropriate command officials should be notified as indicated above. In this particular case, further investigation verified that improper conduct had actually occurred on the part of the contracting official.

5. Insure the government gets a dollar's worth for every dollar spent.

DISCUSSION: Fraud, waste, and abuse have become a high priority item within DoD. Its detection and correction require the dedication of significant DoD resources. A major component of any such program must include the active participation of each of us to insure the government gets what it is contracting for and that its property, personnel and resources are not misused. Therefore _____ expects us to: aggressively perform our contracting responsibilities, apply sound business judgement to all _____ procurement, pursue any contractual, administrative or other legal remedies for any improper

contractor activity, aggressively monitor contractor performance, and be alert, question, protect the Navy as you would your own resources.

6. Report any actual or suspected violation of this Code of Ethics or any other questionable conduct of government personnel.

DISCUSSION: Each of us must accept the responsibility to police ethical conduct in the federal service. We ignore such conduct at our own peril. Failure to report such improper conduct could result in actions being taken against you. The reporting of such suspected improper conduct can be to your supervisor, the IG offices, the DoD criminal investigatory organizations, counsel, or the confidential hotlines available.

CONCLUSION: The purpose of this presentation has been to heighten your awareness of this very important part of our responsibility as a government employee. We are responsible for our own conduct as well as for reporting suspected misconduct by others. Violations of Standards of Conduct can no longer be ignored or swept under the rug, if in fact that ever occurred in the past.

APPENDIX D

NATIONAL CONTRACT MANAGEMENT ASSOCIATION

CODE OF ETHICS
[Ref. 25]

PREAMBLE

Each member of the National Contract Management Association accepts the obligation to uphold the purposes of the organization as set forth in the NCMA constitution, to strive for the increase of knowledge in job performance and the field of contract management, and to abide by the letter and spirit of the ethical standards of the Association.

As prescribed in Article X of the By-laws to the Constitution of NCMA, this Code of Ethics establishes for the member a foundation of professional conduct. However, ethical conduct may require more than merely abiding by the letter of the Code. It is therefore incumbent upon each member of the Association to make a commitment to honorable behavior in all aspects of work and professional activity.

STANDARDS

Each member of NCMA shall:

1. Strive to attain the highest professional standards of job performance, to exercise diligence in carrying out the duties of his or her employer, and to serve that employer to the best of one's ability.

2. Keep informed of acquisition developments, through academic course work and attendance at symposia, in order to increase knowledge, skill, and thoroughness of work preparation.

3. Respect the confidence and trust reposed in the member by one's employer.

4. Conduct oneself in such a manner as to bring credit upon the Association, as well as to maintain trust and confidence in the integrity of the acquisition process.

5. Avoid engagement in any transaction that might conflict with the proper discharge of one's employment duties by reason of a financial interest, family relationship, or

any other circumstance causing a breach of confidence in the acquisition process.

6. Not knowingly influence others to commit any act that would constitute a violation of this Code.

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