



November 14, 2011

Office of Government Ethics
Attn: Mr. Richard Thomas, Associate General Counsel
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

Re: RIN 3209-AA04 Proposed Amendments to Part 2635, Standards for Ethical Conduct for Employees of the Executive Branch

Dear Mr. Thomas,

On behalf of The Coalition for Government Procurement, the following comments are provided on the proposed rule amending regulation governing standards of ethical conduct for executive branch employees of the Federal Government. The proposed rule was published in the Federal Register on September 13, 2011.

The Coalition for Government Procurement is a non-profit association of approximately 300 firms selling commercial services and products to the Federal Government. Our members collectively account for approximately 70% of the sales generated through the GSA Multiple Award Schedules (MAS) program and about half of the commercial item solutions purchased annually by the Federal Government. Coalition members include small, medium and large business concerns. The Coalition is proud to have worked with Government officials over the past 30 years towards the mutual goal of common sense acquisition.

The proposed amendments to 5 CFR part 2635 "Standards of Conduct for Federal Employees of the Executive Branch" would impose significant limits on the use of gift exceptions by Federal employees to gifts from registered lobbyists and lobbying organizations. The Coalition appreciates the opportunity to provide comments on the proposed rule.

The Coalition is concerned with the degree to which the proposed rule would limit public-private sector engagement in critical areas of public policy. Acquisition policy, cyber security, and information technology management reform are just a few areas where Congress and the Executive Branch have recently called for an increase in communication between Government and industry in order to achieve improved efficiency and information sharing for the benefit of the American taxpayer.

As an example, on February 2, 2011 the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) released a "Myth-busting" Campaign: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process. In this memorandum to federal chief acquisition officers, senior procurement executives, and chief information officers, the OFPP stated:

"Access to current market information is critical for agency program managers as they define requirements and for contracting officers as they develop acquisition strategies, seek opportunities for small businesses, and negotiate contract terms. Our industry partners are often the best source of this information, so productive interactions between federal agencies and our industry partners should be encouraged to ensure that the government clearly understands the marketplace..."

Through the Myth-busters Campaign, the Administration has encouraged acquisition personnel throughout the Executive Branch to increase communication with the private sector in order to achieve efficiencies and make best use of time and resources.

The Myth-busters Campaign is essentially about trust— trusting individuals from both the public and private sectors to engage in discussions about how the acquisition system can be improved and how best value can be delivered to the American taxpayer. The concept is that by increasing opportunities for communication, within the framework of current ethics rules and procurement integrity requirements, more effective procurements can be achieved. Private-public sector engagement in the context of the Myth-buster's Campaign is significant resources for the Government to gather information that can be used to improve the procurement system overall and potentially make it more cost effective for American taxpayers. To a certain extent, the proposed rule demonstrates a lack of faith in the professionalism of Government employees to engage in these types of dialogues without compromising their commitment to the public good.

The proposed rule is inconsistent with the Myth-buster's Campaign. Increased restrictions on communications between the federal acquisition community and the commercial sector may very well result in the unintended consequence of introducing more inefficiency and waste in the federal procurement system. In the current budgetary environment, the Executive Branch cannot afford to create additional barriers in the communications between the public and private sectors on key challenges in federal procurement.

While the Coalition supports existing rules regarding the ability of Executive Branch employees to accept gifts from registered lobbyists, we are extremely concerned with the proposed rule's limitations regarding widely attended gatherings. Conferences and other widely attended events provide significant educational opportunities for Federal employees. In the acquisition community, these events provide a chance for acquisition experts from both the public and private sectors to discuss cross-cutting issues and propose potential solutions. Engaging in these types of events has immense value for Federal agencies, agency programs and operations. Acquisition officials in the government can simply not manage their programs effectively if they are insulated from the industries that they are expected to have expertise in.

Finally, the justification for the proposed rule does not provide any empirical data supporting the application of further restrictions to all Federal employees under 5 CFR part 2635. When properly enforced by Federal agencies, existing rules appropriately restrict employees from attending events where the employee's participation is not in the interest of the federal agency and its agency programs. As currently structured, Executive Branch employees may participate in widely held gatherings that are in the interest of the agency. The unintended consequence of restricting these communications is that federal employees will be further insulated from the private and non-profit sector participants in their agency programs. This restriction is not in the interest of "good government" and effective policy making.

The proposed rule references an article from Anita S. Krishnakumar titled *Towards a Madisonian, Interest-Group-Based, Approach to Lobbying Regulation*. The main theme of Krishnakumar's article is creating more transparency and competition among interest groups to ensure a balanced approach to lobbying reform. Although the quote used in the proposed rule states a concern that officials could "become partial to the causes of lobbyists' clients because they spend a lot of time in lobbyists' company." In actuality, the author explains that the concern is merely the public's own perception of lobbyists and not the proposed focus of lobbying regulation. Krishnakumar does not recommend restricting communication between Government and lobbying organization. On the contrary, she suggests that "monitoring across interest groups could lead to more balanced political participation by interests on both sides of an issue, as opposing groups seek to match or "check" each other's efforts" and that lobbying regulations should "embrace the familiar Madisonian concept of allowing factions to check factions in service of the public good." Krishnakumar's article suggests similar best practices as the federal acquisition system in that competition ultimately leads to the best outcome for the American public. What it does not recommend is a breakdown in communication to protect one interest from the other.

Based on the above, the Office of Government Ethics should not further limit public-private sector communication in acquisition policy by implementing the proposed amendments

regarding widely held gatherings. We believe that if adequately enforced, existing rules governing gifts from outside resources are sufficient.

The Coalition appreciates the opportunity to submit comments on this proposed rule. If you have any questions, please contact me at (202) 331-0975 or rwaldron@thecgp.org.

Regards,

Roger Waldron
President

cc: Administrator for Federal Procurement Policy, Daniel I. Gordon