

Government Contract Compliance Training



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TOPICS COVERED

- Gifts & Entertainment to Government Customers
- Hiring of Former Government Employees
- False Claims Act Basics & Whistleblower Complaints
- Ethics Hotline/Non-Retaliation Policy

GIFTS – GRATUITIES: BBNC POLICY

BUSINESS COURTESIES TO NON-GOVERNMENT PERSONNEL

BBNC employees may provide or accept meals, refreshments, entertainment, and other business courtesies of reasonable value to or from non-government persons in support of business activities, provided:

- The practice does not violate any law, regulation, or standard of conduct of the recipient's organization. It is your responsibility to inquire about prohibitions or limitations of the recipient's organization before offering any business courtesy; and
- The business courtesy must be consistent with marketplace practices, infrequent in nature, and not lavish or extravagant. Use common sense and good judgment in this area

GIFTS – GRATUITIES: BBNC POLICY

- **Business Courtesies to Government Personnel:**
 - Government personnel are subject to a different standard. Under both federal and state law, government personnel are generally prohibited from accepting entertainment, meals, gifts, gratuities, and other things of value from businesses and persons with whom they do business or over whom they have regulatory authority.

GIFTS – GRATUITIES: BBNC POLICY

- Employees of the executive branch are permitted to accept unsolicited business gifts (except cash or investment interests) of up to \$20 in market value per occasion (the entire visit). The sum of these gifts cannot exceed \$50 from one company per calendar year. Offering or giving gifts in excess of these amount may be a criminal offense, regardless of intent and regardless of whether paid with BBNC or personal funds.

WHAT ARE GIFTS?

Gifts include anything having monetary value – some include:

- Cash or gift certificates
- “Friends and Family” programs
- Favors
- Discounts
- Meals or entertainment
- Transportation or lodging
- Training
- Donations to favored charities

GIFTS/GRATUITIES (CONT'D)

- Keep in mind that improper “gifts” can include items that do not have a dollar value, such as offering to recommend a person’s relative for acceptance into a prestigious school or for a job.
- Analysis is more complex where an employee is friends with someone who does business with the company, independent of the business relationship.
- In this context, personal gifts, such as wedding or congratulatory gifts, generally are not prohibited by anti-bribery laws, provided they do not reflect indicia of impropriety, i.e., influencing a contract award, inducing the recipient to act favorably toward the company, creating a quid pro quo arrangement in business dealings, etc.

HIRING FORMER GOVERNMENT EMPLOYEES: WHAT IS THE “REVOLVING DOOR”?

- Restrictions on:
 - Discussing employment with current Government officials
 - Hiring current and former Government officials
 - Representational activities by current and former Government officials

HIRING FORMER GOVERNMENT EMPLOYEES - BBNC POLICY

4.6 Hiring of Government and Former Government Employees

Special restrictions apply to hiring or retaining a government or former government employee as an employee or consultant of BBNC. In addition, there are special constraints regarding any communication concerning possible employment of government employees designated as “procurement officials” during the conduct of any procurement action with which the government employee may have a connection. BBNC employees shall not conduct any discussions regarding potential employment or business opportunities to any procurement official connected to a contract for which BBNC has submitted a bid or has been awarded. In order to be sure that you do not run afoul of restrictions in this area, before discussing potential BBNC employment with any government employee, contact the Legal Department for advice.

HIRING FORMER GOVERNMENT EMPLOYEES

There are no exceptions to this policy

Authorization from a member of BBNC's Executive Management team must be obtained before even mentioning proposed employment to current or recently separated government employees, and then only after they have publicly announced that they are leaving government service. In addition, any plans to employ retired military officers of general or flag rank, or civilian officials having the rank of Deputy Assistant Secretary or above, must be approved by the President/CEO of BBNC prior to an offer of employment.

HIRING FORMER GOVERNMENT EMPLOYEES: CONSEQUENCES OF VIOLATING THE ETHICS REFORM ACT

- **Penalties for Individuals**

- Up to 5 years in prison per violation **AND**
- Civil fine up to \$50,000 per violation OR the amount of compensation received or offered for the prohibited conduct, whichever is greater.

- **Penalties for Corporations**

- Criminal fine of up to \$500,000, or twice the gain to the corporation or loss to the Government, whichever is greater **AND**
- Civil fine up to \$50,000 per violation OR the amount of compensation received or offered for the prohibited conduct, whichever is greater.

- **Additional Consequences for Contractors**

- Basis for bid protests
- Contract rescission
- Suspension and debarment

HIRING FORMER GOVERNMENT EMPLOYEES

§208 – DISQUALIFICATION

- When a Government official begins negotiating employment with a contractor, the official is disqualified from participating in matters that could affect the contractor's financial interest
 - Disqualification is accomplished by simply not participating in the matter
 - Written disqualification notice is required for Department of Defense employees, but not civilian employees

HIRING FORMER GOVERNMENT EMPLOYEES

§208 – OGE REGULATIONS

- The Office of Government Ethics (OGE) regulations require disqualification when a Government official begins “seeking employment,” which includes:
 - Negotiating employment;
 - Making an unsolicited communication regarding possible employment; and
 - Making a response other than an unconditional rejection to an unsolicited communication regarding possible employment.

HIRING FORMER GOVERNMENT EMPLOYEES §207 – BASIC PROHIBITION

- Restricts a former Government official's ability to make a “communication” to or “appearance” before the Government with the “intent to influence” the Government on behalf of any other party.
- Restrictions last for a one-year, two-year, or lifetime period depending upon the former Government official's:
 - Level of seniority
 - Level of involvement in the matter.

§207 – SPECIFIC PROHIBITIONS

- Lifetime ban on switching sides (§207(a)(1))
- Two-year official responsibility ban (§207(a)(2))
- One-year cooling off period for former senior Government officials (§207(c))
- One-year cooling off period for former very senior Government officials (§207(d))

HOTLINE/COMPLAINTS

- Reporting a Complaint
- BBNC's Corporate Culture and Commitment
 - Open Door Policy
 - Non-retaliation
- Responding to and Handling Complaints
- The Investigation
- Reducing Likelihood of Complaints



BBNC's CULTURE AND COMMITMENT

2.2 Report Violations of the Code Speak Up, Speak Out

Take the time to either report to your supervisor, the Human Resources or Legal departments, the BBNC Compliance Officer or use the BBNC hotline if you suspect that the Code is not being followed.

The Code is designed to protect you the employee, the Company, and our clients. Reports will be investigated promptly, with due respect for the rights and privacy of all who may be involved in such an investigation.

Persons reporting potential violations should be aware that the need to investigate and correct any impropriety may require disclosure of the matter reported to a restricted group.

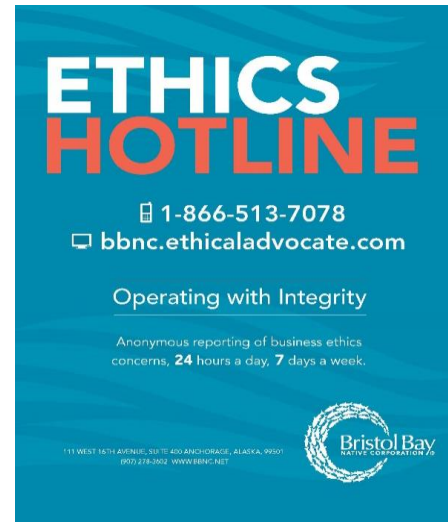
You will not get into trouble for asking questions or for reporting suspected problems. There will be no retaliation against any person who reports what they believe in good faith to be a violation of this Code of Ethics or of any law, rule, or regulation applicable to BBNC's business. Use your own good judgment and common sense. However, employees who make frivolous or bad faith allegations of improper conduct may be subject to discipline up to and including termination of employment.

BBNC also maintains an Ethics Hotline and Website to which employees can report any suspected violations of the laws, regulations, and compliance requirements of the Code of Ethics. A third-party provider runs the Reporting Hotline and Website. Employees may make reports anonymously.

Consultants, Partners, Sub-Contractors, and others associated with BBNC and its subsidiaries may also report suspected violations via the Ethics Hotline and Website.

BBNC Ethics Hotline: 1-866-513-7078

BBNC Ethics Reporting Website: <http://bbnc.ethicaladvocate.com>



REDUCING THE LIKELIHOOD OF COMPLAINTS



- Tone from the Top:
Cultivate Company Culture
of Commitment
- Maintain Integrity of
BBNC's Established
Complaint Procedure
- Responsiveness and
Follow Up
- Investigate All Credible
Complaints

WHO CAN FILE A COMPLAINT?

- Within Company
 - Employees
- Outside the Company
 - Consultants
 - Third Parties
 - Vendors
 - Customers
 - Subcontractors

HOW TO REPORT A COMPLAINT

- Your Supervisor
- Human Resources – BBSS or BBNC
- Legal Department – BBSS or BBNC
- Compliance Officer – BBNC or Government Services Group Compliance Liaison
- Ethics Hotline – Anonymous if you choose

ETHICS HOTLINE

A blue rectangular graphic with white and orange text. The title 'ETHICS HOTLINE' is at the top, with 'ETHICS' in white and 'HOTLINE' in orange. Below it is a phone icon and the number '1-866-513-7078', followed by a laptop icon and the website 'bbnc.ethicaladvocate.com'. A horizontal line separates this from the phrase 'Operating with Integrity'. Below that is a line of text: 'Anonymous reporting of business ethics concerns, 24 hours a day, 7 days a week.' At the bottom left is the address '111 WEST 16TH AVENUE, SUITE 400 ANCHORAGE, ALASKA, 99501' and the phone number '(907) 278-3602' with the website 'WWW.BBNC.NET'. At the bottom right is the Bristol Bay Native Corporation logo, which consists of a circular seal with a fish and the text 'Bristol Bay NATIVE CORPORATION'.

1. Anonymous (if you choose)
2. Email or Phone
3. 3rd Party Managed
4. BBNC receives reports
5. Immediately Posts Response
6. Assigns POC to Investigate
7. Investigation Concluded
8. Conclusion Response Posted

SPEAK UP SPEAK OUT

“OPEN DOOR” POLICY



An Open Door Policy:

- Encourages employees to raise concerns,
- in good faith, without fear of retaliation
- Signals to employees they have a voice and will be heard
- Expresses BBNC's expectations that matters are handled transparently and fairly
- Allows BBNC to appropriately address concerns internally before issues escalate to external agency or outside counsel
- Increases loyalty and performance
- Reduces potential for legal fines and penalties

CODE OF ETHICS

NON-RETALIATION POLICY

Section 2.2 of BBNC's Code of Ethics states:



You will not get into trouble for asking questions or for reporting suspected problems. There will be **no retaliation** against any person who reports what **they believe in good faith** to be a violation of this Code of Ethics or of any law, rule or regulation applicable to BBNC's business."

NON-RETALIATION POLICY

EMPLOYEE HANDBOOK

Section 7.5 of BBNC's Employee Handbook :

- BBNC strictly prohibits any acts of reprisal or retaliation against any employee who in good faith reports an allegation of harassment or other discrimination or who in good faith participates in any investigation of such report.

WHAT IS RETALIATION?

Punishing employees for raising a complaint about a violation or ethical issue or participating in workplace investigations.

Retaliation is about making people afraid to complain or assert rights

RETALIATION

- Do not punish employees for complaining about employment discrimination or harassment.
- Asserting EEO rights is called "protected activity," and it can take many forms.
- Does not have to be the person who is allegedly being discriminated against.
- Look at all circumstances before making disciplinary recommendations
- Good faith requirement



RETALIATION CAN TAKE MANY FORMS

- High work performance ratings prior to engaging in protected activity, and low ratings or "problems" thereafter
- Manner in which the employee was informed of his or her transfer or termination
- Inadequate investigation of the charge against the employee
- Discipline, transfer, or termination shortly after employee engaged in protected activity
- The magnitude of the alleged offense
- Absence of previous complaints against employee
- Differences in the way complainant and other employees were treated
- Determination that the employee was not guilty of violating work rule charged under
- Charges of "disloyalty" against an employee for engaging in protected activity.
- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting prospects for promotion
- Reducing pay or hours

WHAT NOT TO DO WITH A COMPLAINT

DON'T MAKE A BAD SITUATION WORSE!

- Ignore it
- Joke about the incident with others
- Rush to judgment and take sides
- Fire, demote or discipline the person making the complaint
- Discuss the complaint with anyone outside the company other than those with a business need to know, i.e, HR, Legal, Compliance
- Label the person making the complaint, i.e. identifying the person as a troublemaker, complainer, or whiner.
- Change behavior towards the person making the complaint, i.e., ignoring the person, not inviting person to meetings, changing duties
- Threaten or criticize the person for filing complaint

FOREIGN CORRUPT PRACTICES ACT



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WHAT ABOUT GREASE PAYMENTS (CONT.)? (FCPA)

Bribes or Grease Payments?

Grease Payments -

- Relatively small sums of money given to minor officials for the purpose of getting them to:
 - Do what they are supposed to be doing
 - Do what they are supposed to be doing faster
 - Do what they are supposed to be doing better

Bribes -

- Relatively large amounts of money given for the purpose of influencing officials to make decisions or take actions that they otherwise might not.
- Money given, often to high-ranking officials, to get them to purchase goods or services.

THE GREASE PAYMENT EXCEPTION

- The FCPA contains a “facilitation payment” exception:
 - Liability exemption where payments are made “to expedite or to secure the performance of a routine governmental action”
 - All facilitation (grease) payments must be properly accounted for as such

IN PRACTICE, THE GREASE PAYMENT EXCEPTION MAY BE ILLUSORY

- In the aggregate, small grease payments may be deemed to equal one large bribe
 - DynCorp International (2009) - \$300,000 in total payments to subcontractors to expedite the issuance of visas and licenses triggered an internal investigation and the termination of top management – probably at U.S. Government request
- Even payments that comply with the FCPA may violate local law
 - China has stepped up internal anti-corruption enforcement

IN PRACTICE, THE GREASE PAYMENT EXCEPTION MAY BE ILLUSORY

- FCPA accounting provisions still apply
 - Dow Chemical (2007) – Failure to record and account for payments that were arguably FCPA-compliant resulted in \$325,000 fine

FOREIGN CORRUPT PRACTICES ACT (FCPA)

- Anyone subject to U.S. jurisdiction
 - who, with corrupt intent,
 - makes a payment (or does some act in furtherance of an offer, promise, gift or authorization of the giving of anything of value)
 - to a foreign “official”
 - Directly or
 - Indirectly to anyone while *knowing* that it will go to foreign official
 - to obtain or retain business . . .
- . . . is liable under the FCPA.

BUSINESS ENVIRONMENT

FCPA RED FLAGS

- Highly regulated industry or transaction
- Use of agents or third party intermediaries without formal agreements or use of “success fees”
- Excessive fees or commissions to agents, distributors, other intermediaries
- Subcontractors or consultants adding little value
- Cash payments requested
- Third parties recommending government officials or who are government officials

BUSINESS ENVIRONMENT

FCPA RED FLAGS

- Payments to third parties
- Multiple agents for same scope of work
- Use of shell companies
- Non-transparent or oral contracts
- Political contributions to a potential customer
- Refusal to sign FCPA certification
- Country has a reputation for corruption
- Excessive expenses requested by customer or agent
- Customer recommends the use of agent or subcontractor

COMMON SCHEMES

- Most common schemes
 - Subcontractors who do not add value
 - Fraudulent training and travel expenses
 - Payments routed to, from or through foreign countries

FCPA DUE DILIGENCE: KNOW YOUR PARTNERS, KNOW YOUR SUBS

- Check publicly available information
- Ask for and check references
- Maintain records of checking and keep them for at least 5 years
- Use formal contracts with clear payments terms and defined SOWs
- Require signed FCPA certifications and include FCPA reps and warranties in contracts

FCPA DUE DILIGENCE: KNOW YOUR PARTNERS, KNOW YOUR SUBS

- Have third party contracts approved by WHPacific legal
- Know the project managers – interview them and make sure they are competent
- Make sure third parties have their own code or are familiar with WHPacific's Code of Ethics and Business Conduct (Code)
- Conduct, or require third parties to provide evidence of, anti-corruption training
- Retain audit rights in all third party contracts

Questions?

Thank you!