

COMMUNICATIONS WITH INDUSTRY

Key References: JER; DEPSECDEF Memo of 21 Jun 10

Key Concepts:

- The Navy's ability to meet the challenges of the future is enhanced by frequent, fair, even, and transparent communication with members of the industrial base.
- There is no per se legal or ethical prohibition on Navy officials communicating with industry members. Nevertheless, such communication must be done in a manner that (a) gives no preferential treatment; and (b) protects sensitive or non-public information from unauthorized release.
- Officials within Navy are encouraged to communicate with industry on matters of mutual interest, as necessary to conduct official business.
- It is important to consult legal counsel early when you receive an industry communication request. Because of the need to protect the fairness and integrity of current or future acquisitions and to avoid unfair competitive advantage, it is important that legal counsel with acquisition experience be consulted. Legal counsel can advise on methods to ensure fair and equal treatment, and to ensure protection of non-public information.

General Rules

- Impartiality. DoD officials must act impartially and not give preferential treatment to any private organization. Exercise caution to ensure that your actions do not give a competitive advantage to a particular company.
- Information. Do not release or discuss any non-public information.
- Commitments. Do not make any commitments or promises that could bind the government. Remember, only a warranted contracting officer or real estate contracting officer is authorized to bind the government by entering into, or changing, a contractual agreement or real property interest. Although you may ask informational and clarifying questions during a meeting, or ask contractors to send follow-up information, you must always preface these requests with a specific disclaimer that you are not authorizing award of any new contract or agreement, or authorizing changes to an existing contract/agreement scope of work. Your counsel will assist you in drafting such a disclaimer.

"Best Practices" for Communicating with Industry:

- Group Setting. The applicable ethical and legal rules require fair and even treatment of industry representatives. Although large industry forums that are open to the public are preferable settings to inform industry of Navy needs and priorities, smaller groups and even one-on-one sessions may be appropriate in particular cases. If you engage in smaller group or one-on-one sessions, fairness requires that you must be able and willing to grant similar requests that you receive from other industry members.
 - o One-on-one meetings concerning emerging capabilities requirements

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- not currently under contract should generally be avoided if not preceded by a broader announcement to industry that Navy is seeking information in this area.
- Process. Route industry schedule requests through your legal counsel for review and advice. In addition, your PAO, and other senior staff members may also advise on particular factors that should be considered in your decision-making process.
 - o Contracts. Prior to agreeing to a meeting or commencing communications, request participants to identify all current DoN contracts and proposals pending with DoN. This is to ensure that you do not inadvertently jeopardize the integrity of an ongoing procurement (See Federal Acquisition Regulation Part 15). It is also advisable to contact your supporting contracting office/officer to ensure there is no on-going procurement action which might be impacted by your discussions with a member of industry. Consider having your contracting officer attend meetings that may touch on contract issues or action.
 - o Read-Aheads. If the meeting or communication is at the request of industry, request that the industry member provide a copy of any read-ahead that may be available. This provides you additional advance details or information to assist you and your senior staff, or subject matter experts in preparing for the meeting.
 - o Agenda. Determine an agenda in advance that will clearly identify the topics/issues that are open for discussion and those that are off-limits for discussion.
 - o Subject Matter Experts. Include appropriate subject matter experts in the discussion. They will prepare you beforehand and respond to inquiries after the meeting. Their participation enhances their ability to assist in communicating Navy positions.
 - o Meeting Logs. Maintaining a log or other organized written record of all meetings with industry representatives. This can be helpful documentation of minimum details if there are any later questions about fairness or propriety of the meeting.
 - Appearance Concerns. Do not participate in a matter that presents an actual or apparent conflict between your official duties and your personal interests. Counsel, PAO, and senior staff will assist you in identifying conflict of interest issues or appearance concerns that should be considered in your decision-making process.
 - Personal Conduct. Be sure to follow the applicable gift rules and post government employment rules. For example, a member of industry coming for a meeting may bring a small gift or model that they wish to give you. Be sure to consult with your counsel prior to accepting any gifts from members of industry. Additionally, post government employment rules are very specific regarding when someone is "seeking employment." Consult with counsel to ensure you know and understand these rules and their impact on your official duties.
 - Engagement Strategy. Develop a comprehensive industry engagement strategy that aligns your mission responsibilities with DoN and DoD strategy and position. Leverage the knowledge and expertise on your

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staffs in creating strategy and utilize it in your decision-making process.

- Seek Guidance. When in doubt, discuss the matter with counsel and/or your chain of command. Make industry interaction a topic of discussion with other Commanders.