

BENNETT ENVIRONMENTAL INC.

**CODE OF BUSINESS CONDUCT AND ETHICS
APPLICABLE TO UNITED STATES GOVERNMENT
PROCUREMENT ACTIVITIES**

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**CODE OF BUSINESS CONDUCT AND ETHICS
APPLICABLE TO UNITED STATES GOVERNMENT
PROCUREMENT ACTIVITIES**

This Code of Business Conduct and Ethics Applicable to United States Government Procurement Activities (“Code”) is intended to supplement our existing Code of Business Conduct and Ethics and summarize the principles that guide all Bennett Environmental Inc. (“BEI” or the “Company”) employees who conduct business with the United States Government. We have established high ethical standards, and we are committed to strictly observing all U.S. laws and regulations.¹

This commitment applies to all of BEI’s employees, members of the Board of Directors, agents, consultants, contract labor, and others when they are acting on behalf of the Company. Those who violate the principles set forth in this Code will be subject to disciplinary action.

Related policies and procedures on BEI’s standards of business conduct are available through the Company website or by contacting the Company’s Chief Financial Officer (CFO). In addition, should you need further guidance regarding the standards and requirements described in this Code, you should call the CFO at 905-339-1540.

DIFFERENCES BETWEEN THE PUBLIC AND COMMERCIAL SECTORS

Doing business in the public sector is very different from doing business in the commercial marketplace. The laws related to contracting with the U.S. Government are far-reaching and complex, placing responsibilities on the Company that are beyond those faced in the commercial sector. Many of these laws apply to both prime contracts and subcontracts with the U.S. Government.

Statutes and regulations define the way in which U.S. government contracts are conceived, structured, competed, awarded, performed, and completed. Contract terms and the manner in which contracts are administered also are defined by these statutes and regulations. This means that many behaviors that are acceptable and often expected in a commercial setting are not allowed in the government context.

Even the natural desire to “please the customer” can result in unexpected consequences in the public sector. For example, certain types of gifts, meals, and entertainment that are a standard part of doing business with commercial customers are forbidden under government contract rules.

In this environment, the failure to comply with an applicable law or contractual obligation can have consequences that go beyond what is typical in a commercial setting.

¹ Most state and local governments in the U.S. follow similar ethical standards. Therefore, the guidance in this Code is generally applicable and should be followed in all dealings with government entities in the U.S.

For example, submitting an invoice or filing a claim that relies on false supporting data can lead to civil fines or penalties, and even criminal prosecution in the most serious cases. Similarly, improper conduct by a contractor can result in price reduction, cancellation of a contract, and the contractor's suspension or debarment from doing business with the U.S. Government. In short, doing business with the U.S. Government - - as a prime contractor or subcontractor -- exposes a company and its employees to a range of monetary and other sanctions for failure to comply with applicable laws and regulations. It is, therefore, imperative that employees conduct the Company's business in accordance with all applicable laws and regulations.

This Code should be examined carefully by all employees who participate, directly or indirectly, in the Company's efforts to obtain and perform U.S. government contracts. The Code is not intended to cover every requirement that you may encounter in connection with the award or performance of a U.S. government contract, but knowledge of its contents will help ensure that neither you nor the Company engages in unacceptable conduct. Any question(s) about the application of these requirements should be referred to the CFO.

ENTERTAINMENT, GIFTS, AND GRATUITIES

The sale of BEI products and services should be free from the perception that favorable treatment was sought, received, or given in exchange for business courtesies such as entertainment, gifts, or gratuities. A business courtesy must be consistent with acceptable marketplace practices, not lavish or extravagant, and not violate the recipient organization's own rules or standards of conduct.

U.S. Government employees and officials are governed by laws and regulations that limit their ability to accept entertainment, meals, gifts, gratuities, and other things of value from firms and persons with whom the government does business or over whom they have regulatory authority. BEI's policy is to comply strictly with those laws and regulations according to the guidelines set forth below.

BEI employees are prohibited from giving anything of value to U.S. Government employees and officials, except as follows:

- BEI advertising or promotional items of little intrinsic value (generally \$20.00 or less) such as a coffee mug, calendar, golf balls, or similar item displaying the company logo;
- Modest refreshments such as soft drinks, coffee, and donuts on an occasional basis in connection with business activities; or
- Business-related meals and local transportation valued at \$20.00 or less per occasion, provided that such items do not in the aggregate exceed \$50.00 in a calendar year. Although it is the responsibility of the government employee to track and monitor these thresholds, no BEI

employee shall knowingly provide meals or transportation exceeding these limits.

Examples

- *A Company employee goes to a deli with an EPA employee during the course of a conference they are both attending. When the bill for their sandwiches arrives, the Company employee pays for the EPA employee's sandwich. This is acceptable because the sandwich was valued at less than \$20. However, the Company employee should be careful not to pay for more than \$50 worth of gifts to this individual annually.*
- *A Company employee works closely with an out-of-town FBI agent during the course of an investigation. On a regular basis during the investigation, the Company employee drives to the airport on his way to work and gives the agent a ride to the Company's plant. Cab fare for this trip would be \$25.00. The Company employee has regularly violated Company policy by providing transportation valued at more than \$20 to a federal employee, as well as transportation, in the aggregate, of more than \$50 per year.*

CONFLICTS OF INTEREST

Integrity in a business relationship means that all participants are working together for the common good and are not making decisions based on improper self-interest. BEI employees should avoid any relationship, influence, or activity that might impair -- or even appear to impair -- the employee's or the Company's ability to make objective and fair business decisions.

1. *Hiring and Employment Discussions With Government Employees*

Former government employees often are subject to "revolving door" rules that limit their efforts to influence government decision-making. Former U.S. Government employees are permanently barred from appearing before a government agency on matters in which they personally participated or had a direct and substantial interest while employed by the government. There also are two-year and one-year restrictions on former U.S. Government employees holding certain positions within the Company or representing the Company in connection with certain matters or activities.

In addition, it is improper to even communicate with a U.S. Government employee regarding employment if the Company is involved in a procurement valued in excess of \$100,000 and the government employee is participating personally and substantially in that procurement. Personal and substantial participation has been interpreted broadly, so this rule may apply to a wide range of government employees.

These rules on employment of U.S. Government employees are complex and, if violated, can have significant adverse effects for both the Company and its employees. All employees therefore must be sensitive to and abide by these rules whenever the Company is:

- Contemplating the hire of a former government employee with specialized knowledge of an agency or program; or
- Employing a former government employee.

As a rule, no Company employee should contact a current or former government employee, regardless of seniority, about employment with the Company (as either an employee or consultant) without the approval of the Company's Chief Executive Officer (CEO). In addition, the Company may require current or former government employees to seek advice from their agency's Compliance Officer or Legal Department before taking on: (i) any assignment related to their former agency; or (ii) any tasks that relate to matters that they know or should have known were pending under their official responsibility during their last year of employment.

Examples

- *A former senior official of the Department of Defense ("DOD") approaches the Company about employment. He is interviewed by the Company and, seven months after leaving the Government, is hired by the Company or retained by it as a consultant. Shortly thereafter, the former DOD official learns that the DOD is considering soliciting offers for a new service contract. He offers to intercede with the DOD on behalf of the Company to determine whether the service can be procured using the Company on a non-competitive or sole-source basis. The Company and its employee may have violated the conflicts of interest statute. As a former senior DOD official, he is prohibited, within one year of his termination from government service, from attempting to influence his former agency.*
- *A contracting officer with whom the Company has dealt on a current U.S. government contract is planning to retire from the Government. Four months before his planned retirement date, he mentions to a Company sales manager that he is helping to draft the statement of work for the follow-on contract. In the same conversation, he also tells the sales manager that the Company has done a superb job on the current contract and he hopes to work for a similarly successful company upon his retirement. The sales manager thanks the government employee, tells him that the Company has openings in its Sales group, and invites the government employee to submit his resume for consideration. The Company may have violated the Procurement Integrity Act*

because prior to the award of the follow-on contract (for which the Company is likely to compete), it had employment discussions with a federal agency procurement official who is personally and substantially involved in the procurement.

2. Organizational Conflicts of Interest

An Organizational Conflict of Interest (“OCI”) arises when factors create an actual or potential conflict of interest for the Company on a contract, or when the nature of the work to be performed by the Company on one contract creates an actual or potential conflict of interest on a future procurement. In deciding whether an improper conflict exists, the two underlying principles are:

- Preventing the existence of conflicting roles for the Company that might bias the Company’s judgment in one of those roles; and
- Preventing an unfair competitive advantage, including situations in which the Company may obtain access to proprietary or competitively sensitive government information.

A common OCI problem involves “bid writing” by a contractor. When a contractor develops the specifications or statement of work for a competitive procurement, and the same contractor (or an affiliate) then submits a proposal under that procurement, an OCI typically arises. In this instance, to avoid a situation in which the contractor could draft specifications or work statements favoring its own products or capabilities, the U.S. Government typically disqualifies the contractor from competing in the procurement.

Another OCI problem arises when a contractor provides systems engineering and technical direction (or system test and evaluation services) on a program. In this instance, the contractor typically may not be awarded a contract or subcontract to supply the system or any of its major components.

Similarly, if a contractor in one capacity legitimately obtains access to proprietary information of a competitor (*e.g.*, by performing advisory and assistance services for an agency), then the contractor and its affiliates may be disqualified from further participation in later stages of the procurement involving that information.

If the Company wishes to participate in a procurement that may involve any of the foregoing circumstances, the CEO should be consulted for advance review and approval of the effort.

PROHIBITION AGAINST OBTAINING PROCUREMENT INFORMATION

U.S. law prohibits contractors from knowingly obtaining contractor bid or proposal information or source selection information before the award of a government procurement contract or subcontract to which that information relates. Contractor bid or

proposal information means the type of information the Company would not want its competitors to obtain (*i.e.*, pricing information, proprietary processes and techniques, and any information marked with a legend prohibiting disclosure outside the Government). Source selection information means information the Government develops or relies upon internally to conduct a procurement (*i.e.*, source selection plans, ranking of offerors, information marked “Source Selection Information – See FAR 2.101 and 3.104”). Significant civil fines and criminal penalties, including imprisonment for up to five years, may apply to violators. The Government also can take administrative actions, such as canceling or rescinding a contract or reducing the contract price.

BEI does not solicit or otherwise attempt to obtain such information prior to the award of a government procurement contract or subcontract. If you become aware that such information has been obtained, inadvertently or otherwise, your responsibility is to stop reading the information as quickly as possible, quarantine the information immediately, and promptly notify the CFO.

Examples

- *A recently retired military officer is hired by the Company to coordinate business development activities at a particular location. The former officer had helped draft the agency source selection plan on a procurement for which the Company intends to compete. Prior to the submission of the Company’s proposal, he discusses the agency’s source selection plan with other Company employees. This may violate the Procurement Integrity Act. The Company has obtained source selection information (the source selection plan) prior to the award of a federal procurement contract (the new contract).*
- *After submitting a proposal to the Army for a services contract, the agency elects to conduct discussions with offerors before accepting final proposal revisions. At the conclusion of the discussions, an Army technical representative in attendance leaves a copy of an independent government cost estimate on the conference room table. Without reviewing it anymore than is necessary, you should secure the document in an envelope and contact the CFO or CEO immediately.*

PROHIBITION AGAINST KICKBACKS

U.S. law prohibits the giving or receiving of “kickbacks” -- *i.e.*, anything of value for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or subcontract. “Favorable treatment” is defined broadly, and can include, for example, the award of a subcontract, the granting of unwarranted waivers of deadlines, or the acceptance of non-conforming services. Including the cost of a kickback in the price of a contract also is a violation. Civil and criminal penalties are possible for violations of this prohibition.

The anti-kickback regulations require a company with a prime contract or subcontract exceeding \$100,000 to have in place and follow “reasonable procedures designed to prevent and detect possible violations [of the Anti-Kickback Act].” The regulations further require the contractor or subcontractor to report possible violations to the appropriate agency’s Inspector General and to cooperate in any investigation. The contracting officer also can order the refund of a portion of the contract or subcontract price affected by the kickback. The Company strictly forbids conduct that presents even the appearance of a kickback or bribe.

Examples

- *Another contractor has been awarded a services contract at a military base. The Company intends to compete for a subcontract. A representative from the prime contractor approaches you and states that if the Company makes a contribution to the firm’s charity fund for education, the Company will be awarded the subcontract. If the Company makes the payment, it may be violating the Anti-Kickback Act. Despite its charitable nature, the payment is still a thing of value that is provided in order to improperly obtain a subcontract.*
- *The Company requires certain services under a subcontract with a consultant. The consultant misses the first two scheduled dates for delivery of the services. The Company is contacted by a sales representative from the consultant who offers the Company a month of free training on its latest product offerings in exchange for a waiver of these missed deliveries. If the Company accepts the offer, it may be violating the Anti-Kickback Act. The payment (free training) in exchange for unwarranted favorable treatment (delivery-date slippage) under the subcontract may qualify as a kickback.*

LOBBYING RESTRICTIONS

Recipients of U.S. government contracts, subcontracts, or financial assistance agreements that exceed \$100,000 must not use appropriated funds (*i.e.*, contract payments) to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a contract, grant, cooperative agreement, or loan.

To the extent that non-appropriated funds (*i.e.*, dollars obtained through commercial business) are used for such activities, the contractor or subcontractor must disclose to whom such funds will be paid, and the amounts. Finally, offerors are required to certify their compliance with these requirements as a condition of the award of contracts. The restrictions do not apply to reasonable amounts paid to company employees for lobbying activities, or to employees or consultants providing technical or professional services in preparing bids or proposals.

Contractors and subcontractors also must monitor carefully the expenditure of lobbying funds -- particularly by outside consultants -- and ensure that those funds are not included in overhead pools used to compute contract prices. For this reason, BEI requires that all lobbying activities and related expenditures be pre-approved by the VP Government Relations or the CFO.

Example

- *The EPA issues a solicitation for a major new soil remediation services contract. The Company determines that, because of the contract's potential size, assistance should be sought from congressmen with remediation sites in their districts. A well-connected firm is retained to emphasize to these congressmen how important it is for the Company to obtain the contract. The costs for the lobbying firm are accounted for in the Company's books as overhead. The overhead costs are then allocated to all Company contracts. The Company may have violated the lobbying restrictions, because the costs of the lobbying will be included in the price charged to federal agencies -- by reason of the accounting system's distribution of non-operating costs. As a result, "appropriated funds" (contract payments by the Government) will be paying part of the lobbying costs.*

USE OF CONSULTANTS, AGENTS, AND REPRESENTATIVES

Honesty and integrity are key standards for the selection and retention of those who represent BEI in the public sector. Paying bribes or kickbacks, engaging in industrial espionage, obtaining the proprietary data of a third party without authority, or gaining inside information or influence are just a few examples of what could give us an unfair competitive advantage in a U.S. government procurement and could result in serious violations of law.

Use of "marketing consultants" is particularly scrutinized on the theory that contractors may obtain proprietary and government-sensitive information by acquiring the services of marketing consultants. Contractors are required to make inquiries of marketing consultants to ensure that the consultant has provided no unfair competitive advantage.

BEI's policy is that agents, representatives, or consultants must be willing to certify their compliance with the Company's policies and procedures and must never be retained to circumvent our ethical and business standards. In addition, the CFO and the CEO must review and approve all consulting agreements for the Company.

Example

- *The Company hires a consultant to assist in the preparation of a large proposal for a U.S. government contract. Within the past year, the consultant worked for the Company's principal competitor on a similar project, and he volunteers to brief the proposal team on the competitor's cost structure and likely bidding strategy. If the Company accepts such information from the consultant, it may be disqualified from the competition. It also may face Trade Secret actions brought by the competitor.*

CONTINGENT FEE AGREEMENTS

The U.S. Government generally prohibits contractors from entering into contingent fee agreements to obtain U.S. government contracts. For all government contracts exceeding \$100,000, the Company is required to warrant that it has not employed or retained any person or selling agency under a contingent fee agreement to solicit or obtain the contract.

An exception to this general prohibition exists for any contingent fee agreement made with a "bona fide agency," or an established commercial or selling agency maintained by the contractor to obtain business. The Company therefore requires that the VP Government Relations pre-approve any effort to retain an employee or consultant to facilitate government business. Similarly, if you are approached regarding entering into a contingent fee arrangement with a person or agency, contact the VP Government Relations immediately.

COMPETING FOR GOVERNMENT WORK

BEI must comply with the laws and regulations that govern the acquisition of goods and services by government agencies. The Company must compete fairly and ethically for all business opportunities. In addition, all statements, communications, and representations to government customers must be accurate and truthful.

We also should avoid unduly influencing the development of an agency's requirements. While diligent marketing of BEI's products and services is appropriate, government customers -- unlike their commercial counterparts -- typically must follow rigorous competitive procedures in the solicitation and award of contracts. If we undermine the agency's ability to comply with competition requirements, we can harm both our immediate business objectives and the Company's long-term reputation in the public sector.

For example, a government agency generally must specify its needs in broad terms to promote maximum competition for the product or service being acquired. Thus,

the following principles typically apply to the drafting of government specifications and work statements:

- Agencies shall specify needs using market research in a manner designed to promote full and open competition;
- Agencies shall include restrictive specifications only to the extent necessary to satisfy the needs of the agency;
- Agency requirements shall not be written so as to require a particular “brand name” product or service, or a feature peculiar to one company, thereby precluding other companies’ products or services, unless the specified product or feature is essential to the agency and no other company can provide it.

While it is always the Government’s obligation to specify its requirements properly, BEI employees should not take or encourage actions that clearly prevent an agency from meeting this obligation.

ANTITRUST IMPLICATIONS OF TEAMING AGREEMENTS AND COLLABORATIVE VENTURES

Teaming agreements and joint ventures are permissible and commonly used in major government procurements. Nonetheless, these business arrangements warrant particular attention when used in the context of U.S. government procurement.

First, government agencies sometimes encourage companies to enter into such arrangements believing that they will result in better overall proposals. Such encouragement from a procuring agency, however, does not remove these arrangements from the operation of the normal antitrust rules. Accordingly, rules related to collusive pricing, bid rigging, market allocation, boycotts, and trade association activity, among others, are enforced.

Second, the Government generally must be notified in the proposal of the existence of such arrangements, as well as the parties’ relationships to one another. If the arrangement is agreed upon after award, the Government must be informed before it takes effect. The government has been known to require the dissolution of such arrangements where they are deemed to violate antitrust laws.

All teaming agreements or joint ventures that the Company is contemplating must be reviewed and approved in advance by the CEO and the CFO.

Example

- *The Company anticipates that it will have only one competitor in a strategically important procurement. The Company and its competitor are each capable of performing*

the entire scope of the contract; neither company, however, wants to risk losing the competition and missing out on this important contract. Therefore, the Company is contemplating a teaming agreement in which it would split the work with its competitor and, thus, guarantee the Company at least a share of the contract. This arrangement may violate antitrust laws on collusive bidding.

SUSPENDED AND DEBARRED CONTRACTORS

Contractors that have committed certain specified offenses that indicate a lack of business integrity or responsibility may be suspended or debarred from doing business with the U.S. Government. The names of these contractors appear on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (“excluded parties list”), which is available on-line at <http://epls.arnet.gov>. U.S. law generally prohibits contractors from entering into subcontracts in excess of \$25,000 with companies that have been suspended, debarred, or proposed for debarment.

BEI’s policy is to refrain from doing business with any contractor or subcontractor that has been suspended or debarred by the U.S. Government. Any employee who has reason to believe that a contractor with whom we intend to contract is suspended or debarred must notify immediately his or her supervisor or the CEO.

CERTIFICATIONS

BEI provides only complete, accurate, and truthful information to its customers. Accordingly, the Company:

- Does not make false statements, oral or written;
- Submits only independent bid and proposal pricing information; and
- Ensures the accuracy and completeness of all submissions to the U.S. Government for payment or approval.

The Company’s Chief Executive and Chief Financial Officers are the only individuals authorized to certify to the U.S. Government or approve pricing information on behalf of the Company.

RECORD RETENTION AND AUDIT RESPONSIBILITY

The U.S. Government generally requires contractors and subcontractors to maintain books and records pertaining to a contract or subcontract for three years after final payment. Unless you are advised otherwise by the CEO, you must keep for this period in a secure and accessible location all documents (regardless of media) related to any government contract or subcontract performed by the Company.

In addition, the Government frequently conducts audits and investigations as means to address procurement fraud. If you are approached by an investigator or a government auditor for any reason, you must contact the CEO immediately. Moreover, you must not alter, destroy, or conceal any documents relating to an investigation or take any action that could hinder an investigation. Violations of these laws are punishable by fines and/or up to 20 years imprisonment.