



**CORPORATE ACCOUNTING & FINANCIAL PROCEDURES**

SERIES NUMBER 140	SEQUENCE NUMBER 90
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DATE ISSUED: Nov 2016  DATE REVISED:  LAST REVIEWED: April 2017	SUBJECT:  FEDERAL GOVERNMENT CONTRACTING POLICY	Page 1 of 12
DEPARTMENT:  Legal Compliance Department	DEPARTMENT CONTACT:  VP, Chief Ethics & Compliance Officer (414) 524-2370	APPROVED:  Matt Tanzer

**APPLICABILITY**

- Corporate .....Yes
- U.S. Divisions and majority owned subsidiaries .....Yes
- Non-U.S. divisions and majority owned subsidiaries.....Yes
- Consolidated joint ventures and affiliates.....Yes
- Unconsolidated joint venture affiliates ..... No

**POLICY STATEMENT**

The Johnson Controls Ethics Policy provides guidance and includes standards for Johnson Controls’ Personnel to follow while conducting the business of the company. When Johnson Controls’ Personnel are interacting with United States Government personnel, whether such government personnel are employees, appointees, or elected officials, there are compliance requirements in addition to those in the Ethics Policy. Those additional U.S. Government compliance requirements are explained in this policy document.

“**Johnson Controls’ personnel**” means employees of Johnson Controls, including its subsidiaries, as well as the Board of Directors, company officers, agents, contract workers, and others acting on behalf of the company.

This policy applies regardless of location. For example, this policy applies to work that a non-U.S. Johnson Controls office undertakes on a U.S. Embassy or overseas military base contract, whether as a prime or subcontractor.

**INTRODUCTION**

Because Johnson Controls contracts with the United States Government, our personnel must be aware of and comply with the laws, rules, and regulations that govern the acquisition of goods and services by the government and its various departments. Johnson Controls is dedicated to furnishing services of the highest quality - that meet all contractual obligations to the U.S. Government - at fair prices and in compliance with contractual, statutory, and regulatory requirements.



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A hallmark of contracting with the U.S. Government is the goal of fairness in decision-making. To ensure that Johnson Controls doesn't impede this effort, company personnel must never induce or otherwise encourage U.S. Government personnel to take any action that such personnel are prohibited from doing or to engage in activities that create the perception or the existence of improper business relationships or conduct.

You should report any suspected violations of this policy. Refer to the Johnson Controls Ethics Policy for guidance on making a report. You may discuss the issue with any supervisor, Human Resources, Internal Audit, the Legal Department, or use the Johnson Controls 24 hour Integrity Helpline at [www.jci.ethicspoint.com](http://www.jci.ethicspoint.com) or call the phone numbers listed in the Ethics Policy.

In circumstances of illegal activity or fraud perpetrated by Johnson Controls' Personnel in connection with a contract with the U.S. Government, Johnson Controls, must under the law, disclose the misconduct to the government. Accordingly, it is vital that you report any instances of suspected fraud related to government contracts. This policy ONLY covers Johnson Controls' contractual relationship with the U.S. Government; it does not cover our contractual relationships and legal requirements related to state and local government.

Violation of this Policy can lead to disciplinary action up to and including termination of employment, and could also lead to civil or criminal prosecution under various federal laws.

If any Johnson Controls employee wants further information or clarification on any of the topics outlined in this policy, contact the Johnson Controls' Law Department.

**THIS POLICY COVERS THE FOLLOWING TOPICS:**

- 1.0 Providing business courtesies (gift and entertainment) to U.S. Government personnel
- 2.0 Organizational conflicts of interest
- 3.0 Cost accounting and contract pricing
- 4.0 Proper timekeeping on U.S. Government jobs



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- 5.0 Submission of documents to and claims for payment from the U.S. Government – the False Claims Act and the False Statements Act
- 6.0 Soliciting and hiring U.S. Government employees
- 7.0 Prohibition on receiving or providing improper benefits in contracting – the Anti-Kickback Act
- 8.0 Proper handling of information during the bidding process – the Procurement Integrity Act
- 9.0 Security, clearances and sensitive information – ensuring that U.S. Government secrets and information are treated appropriately
- 10.0 Proper management of U.S. Government furnished resources
- 11.0 Restrictions on using U.S. Government funds for lobbying activity

**1.0 PROVIDING BUSINESS COURTESIES (GIFT AND ENTERTAINMENT) TO U.S. GOVERNMENT PERSONNEL**

The following standards must be observed while interacting with U.S. Government personnel:

- 1.1 Johnson Controls’ Personnel may not give gifts, meals, entertainment, or anything of value to U.S. Government personnel in excess of \$20 per occurrence.
- 1.2 One reason why Johnson Controls’ Personnel may not give gifts, meals, entertainment or anything of value to U.S. Government personnel in excess of \$20 is that, unlike most commercial entities, U.S. Government personnel are often not reimbursed directly for their business expenses. Many government employees receive a per diem to cover certain travel expenses and are permitted to retain any unspent balance. Therefore, if a contractor provides meals or transportation to a government employee, the contractor could be supplementing the government employee’s permissible expense allowance and that government employee would realize a personal benefit from such action.



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1.3 Johnson Controls’ Personnel may not give or offer to give to any U.S. Government employee any favor, service, entertainment, meal or gift, regardless of value, that would be in violation of the rules or regulations applicable to that employee. U.S. Government departments and agencies have strict regulations concerning acceptance of entertainment, meals and gifts by their employees from firms and persons that they do business with or that they have regulatory authority over.

1.4 Johnson Controls’ Personnel may not make loans, guarantee loans, or make payments to any U.S. Government employee.

1.5 Items of modest or essentially no value are exempted from these restrictions on giving items of value to U.S. Government personnel. These exceptions include:

- 1.5.1 Beverages (coffee, tea, juice, soft drinks (no alcohol)) at business meetings.
- 1.5.2 Light snacks at business meetings where U.S. Government personnel are attending.
- 1.5.3 Mementos or promotional items with little or no intrinsic value displaying Johnson Controls’ logos such as disposable pens, pads of paper, or certificates.

1.6 Johnson Controls’ Personnel may not provide a meal to U.S. Government personnel with a value in excess of \$20 unless that person pays Johnson Controls for the meal’s actual cost. This applies to working lunches as well as off-site lunches. While, as mentioned above, beverages and light snacks are permitted, such items may not be of a volume so as to constitute a meal.

1.7 Johnson Controls’ Personnel may not offer to or actually provide transportation to U.S. Government personnel unless that person pays Johnson Controls the fair value of that transportation.

**2.0 ORGANIZATIONAL CONFLICTS OF INTEREST**

2.1 An organizational conflict of interest (“OCI”) exists when, as a result of the existence of other contracts, interests, or relationships, a company or person (i) is unable to give impartial assistance



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or advice to the government, (ii) is unable to objectively perform contracted work for the government, or (iii) has an unfair competitive advantage in securing work.

2.2 If the motivation of the contractor could be improperly influenced by other activities that it currently or was previously engaged in, such that the U.S. Government may not be getting the best and most objective pricing or performance from the contractor, then an OCI may exist.

2.3 There are three main types of OCIs. They are:

2.3.1 Biased Ground Rules: In this type of OCI, competition is reduced as a result of a contractor’s prior work allowing it to favor itself in how current requirements are determined. For example, a contractor that was paid by the Department of Defense to establish technical requirements for the performance of a new weapon cannot also compete for the award of the contract based on those technical requirements; otherwise, the contractor would have an incentive to set up the requirements to favor itself.

2.3.2 Impaired Objectivity: A contractor’s work on one project might not allow its unbiased performance on another. For example, one office of a contractor should not be responsible for evaluating the performance of another office of that contractor providing services at a government installation. In such a case, the contractor would be evaluating its own performance, which is inappropriate.

2.3.3 Unequal Access to Information: This conflict can arise when a contractor has access to nonpublic information gained through its performance of a U.S. Government contract and that information could provide the incumbent contractor a competitive advantage in a subsequent contract competition. This does not include the know-how and experience gained from executing on a U.S. Government contract. The Government Accountability Office has stated: “an incumbent contractor’s acquired technical expertise and firsthand knowledge of the costs related to a requirement’s complexity are not generally considered to constitute unfair advantages the procuring agency must eliminate.” However, nonpublic information (that could be shared by the government with others) that gives the incumbent an unfair advantage cannot be used.



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- 2.4 The contracting agency is tasked with determining whether an actual or apparent OCI exists. Contracting officials are directed to avoid, neutralize or mitigate potential OCIs to prevent unfair competition or conflicting roles that might impair a contractor’s objectivity.
- 2.5 Johnson Controls’ personnel must ensure they review requests for proposals and invitations for bid carefully to identify these possible limitations resulting from an OCI, which can create compliance issues later. It is essential for Johnson Controls’ personnel to be aware of potential conflicts of interest so that the company does not preclude itself from winning future work and also does not find itself in a situation where an OCI exists. In some cases, a contract may have special clauses that govern OCIs.
- 2.6 If a Johnson Controls employee has knowledge that an OCI may exist, he or she must immediately seek guidance from the Legal Department. If an OCI is found, Johnson Controls will report it to the contracting authority in order to avoid or mitigate that OCI. In many instances, a contractor that has refrained from notifying the contracting authority of a known OCI can have a contract award successfully protested because of that OCI.

**3.0 COST ACCOUNTING AND CONTRACT PRICING**

- 3.1 Depending on the contract type used by the U.S. Government, payment to contractors can be a function of the costs actually incurred by that contractor. When this is the case, regulations require consistency in estimating, accumulating, and reporting costs. The intentional mischarging of costs to a U.S. Government contract may result in criminal and financial penalties both to the company and to the individual involved. The following are **examples, but not an exhaustive list** of mischarging:
  - 3.1.1 Improper charging of direct costs on a U.S. Government contract that should be charged to another U.S. Government contract.
  - 3.1.2 Allocating the cost of labor (direct or indirect) or material to a U.S. Government contract where those costs were not incurred in the performance of that contract.
  - 3.1.3 Charging noncontract costs, such as bid and proposal costs, as direct costs to a contract.



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3.1.4 Including unallowable costs in determining the contractor’s reimbursable costs.

3.1.5 Claiming unallowable charges on U.S. Government contracts. Unallowable costs include alcohol, gifts and entertainment expenses, losses on other contracts, lobbying costs, promotional item costs, charitable contributions and donations, and interest and other financial costs. This is **not an exhaustive list** of unallowable costs, but is an illustration of certain ones.

3.1.6 Management must ensure that all costs are accurately recorded. Adjustments and transfers of costs must be adequately documented and explained.

**3.2 Contract Pricing**

3.2.1 In pricing U.S. Government contracts subject to the Truth in Negotiations Act (“TINA”), Johnson Controls must disclose to the government all relevant cost or pricing data and certify that the data supplied is accurate, complete, and current as of the date on which the price is agreed. This disclosure requirement applies to any Johnson Controls’ employee required to provide cost or pricing data upon which the Company’s proposals are based.

3.2.2 Cost or pricing data includes all facts which would have a significant effect on price negotiations. If a cost to the contractor is one that a reasonable commercial purchaser would want to know, then it should be disclosed. Like other serious violations of U.S. Government contracting requirements, pricing violations can result in civil and criminal liability for the company and participating Johnson Controls’ Personnel, including suspension or debarment of Johnson Controls from receiving future U.S. Government contracts.

3.2.3 Johnson Controls’ Personnel that have pricing responsibility may not submit artificially low prices, or prices at a loss, in order to win a project with the hope of making that contract profitable through overcharging on subsequent change orders or follow-on contracts.

**4.0 PROPER TIMEKEEPING ON U.S. GOVERNMENT JOBS**

4.1 Johnson Controls’ Personnel required to directly bill their time or to maintain current and accurate time charging data on U.S. Government contracts are personally responsible for the accurate



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completion of these records in a timely manner since these are the primary input documents that allow Johnson Controls to be paid.

- 4.2 Under no circumstances may any cost be charged or allocated to a U.S. Government contract, or to any customer, which is unallowable, contrary to the contract or to applicable law or regulation, or is otherwise improper.
- 4.3 Johnson Controls' Personnel must report only the true and actual hours worked. Charging or shifting costs to incorrect accounts is strictly prohibited.

**5.0 SUBMISSION OF DOCUMENTS TO AND CLAIMS FOR PAYMENT FROM THE U.S. GOVERNMENT – THE FALSE CLAIMS ACT AND THE FALSE STATEMENTS ACT**

- 5.1 Johnson Controls' Personnel must not knowingly submit or concur in the submission to the U.S. Government of any claim, proposal, or any other document of any kind that is false, fictitious, or fraudulent.
- 5.2 Companies violating these rules also risk being debarred or suspended from receiving further U.S. Government contracts.
- 5.3 Examples of prohibited activities include:
  - 5.3.1 Submitting invoices on projects that include charges for hours not worked (whether as a prime or subcontractor).
  - 5.3.2 Billing for equipment not provided to the customer.
  - 5.3.3 Falsifying quality or test records to ensure customer acceptance.
  - 5.3.4 Submitting expenses for repayment that were not incurred.
  - 5.3.5 Conspiring with others to get false claims paid by the U.S. Government.
- 5.4 Violations of the False Claims Act or the False Statements Act can result in criminal prosecution of Johnson Controls and the employee involved, as well as the imposition of civil damages.





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**6.0 SOLICITING AND HIRING U.S. GOVERNMENT EMPLOYEES**

6.1 In recruiting and employing former U.S. Government employees, U.S. military personnel, and particular contractors, it is essential that pertinent federal requirements be observed throughout the solicitation and hiring process. Restrictions apply during pre-employment talks, even if the person is to be hired as a consultant rather than as an employee.

6.2 The restrictions can be very broad. For example:

6.2.1 A number of federal statutes place restrictions on a former government official from receiving compensation from government contractors. These restrictions last for a one year, two year, or lifetime ban depending on that person’s level of seniority within the government and his or her involvement in particular matters.

6.2.2 These statutes also include a lifetime ban on “switching sides” on a particular transaction. For example, a government official can’t represent the government on a certain contract or task order negotiation and then, before that negotiation is complete, leave government service and work for the contractor on the other side of that same matter.

6.2.3 A former U.S. Government employee who is ineligible to perform certain work for a government contractor may still be able to work for that contractor in another capacity, provided his or her duties are segregated and do not put either the contractor or the U.S. Government in jeopardy of having divided loyalties. Decisions on segregation of duties are fact specific and complex. Guidance from the HR team as well as the Legal Department is required before any such arrangement can be put in place.

6.3 If Johnson Controls’ Personnel are approached by a **current** U.S. Government employee seeking employment, those employees should not engage in such discussions. Current U.S. Government employees have to recuse themselves from working with particular contractors if that person is considering pursuing employment with that contractor or others within that industry. Johnson Controls’ Personnel must immediately contact the Human Resources team or the Legal Department for guidance.



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6.4 Johnson Controls’ personnel must always obtain guidance from Human Resources or the Legal Department before entering into employment discussions with current or former U.S. Government employees or members of the military.

**7.0 PROHIBITION ON RECEIVING OR PROVIDING IMPROPER BENEFITS IN CONTRACTING - THE ANTI-KICKBACK ACT**

Johnson Controls’ personnel must not provide, attempt to provide, or offer to provide a kickback to any U.S Government personnel, prime contractor, or subcontractor on a U.S. Government contract. Additionally, Johnson Controls’ Personnel may not solicit, accept, or attempt to accept such kickbacks.

A ‘kickback’ is defined as something which is provided, directly or indirectly, to any U.S. Government personnel, prime contractor, or subcontractor or their employees or personnel for the purpose of improperly obtaining or rewarding favorable treatment in connection with a U.S Government prime or subcontract. A kickback can take the form of money, fees, commissions, credit, gifts, gratuities, any thing of value, or compensation of any kind.

**8.0 PROPER HANDLING OF INFORMATION DURING THE BIDDING PROCESS - THE PROCUREMENT INTEGRITY ACT**

Under the Procurement Integrity Act, the U.S. Government may not disclose, and Johnson Controls may not obtain, source selection information from any party, until a contract is awarded. This information includes prices submitted by competitors, indirect costs or labor rates, proprietary information about manufacturing processes and techniques, or proposed processes, technical or price evaluations, rankings, reports and results of evaluation panels, or any information identified by the bidding company as “contractor bid or proposal information.”

After a procurement transaction is completed, some of this information may be obtained through appropriate channels such as an agency provided debriefing (which is usually required to be offered) or the Freedom of Information Act. Johnson Controls’ Personnel must never try to gain an advantage in the bidding process by soliciting or receiving this information from the U.S. Government or another bidder.



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If any Johnson Controls' Personnel become aware that a competitor has possibly obtained Johnson Controls information in violation of the Procurement Integrity Act, he or she must immediately inform the Legal Department as bid protest rules place a time limit on when such issues can be raised.

**9.0 SECURITY, CLEARANCES AND SENSITIVE INFORMATION - ENSURING THAT U.S. GOVERNMENT SECRETS AND INFORMATION ARE TREATED APPROPRIATELY**

- 9.1 As a contractor for the Departments of Defense and Energy, Johnson Controls has a special obligation to comply with U.S. Government laws and regulations that protect the nation's security and safeguard the nation's defense secrets and nuclear technology.
- 9.2 Johnson Controls' Personnel requiring access to specific classified information to which they possess a valid security clearance must ensure that such information is handled in strict accordance with Department of Defense or Department of Energy procedures for its safeguarding. These cleared Johnson Controls' Personnel must undergo annual training required by their security clearance status.
- 9.3 Security is an integral part of every Johnson Controls employee's job; whether or not that person has a security clearance or works directly with classified information. In addition to classified information, Johnson Controls' personnel handle documents and information every day that are subject to confidentiality and non-disclosure agreements, including commercially confidential information, Sensitive But Unclassified (SBU) information, For Official Use Only (FOUO) information, and export controlled data and material.
- 9.4 Johnson Controls' Personnel must not seek access to, accept, or retain any classified materials or information for which they have no need to know or to which they are not entitled. Additionally, Johnson Controls may not use their authorization for access (including the use of Company ID or badge) for purposes other than as authorized by the company. The unauthorized possession of classified or other sensitive documents or information in any form, or failure to properly safeguard such information, can endanger the security of the United States and is not only a violation of this policy, but is punishable under federal espionage and criminal statutes.



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**10.0 PROPER MANAGEMENT OF U.S. GOVERNMENT FURNISHED RESOURCES**

When executing on U.S. Government contracts, Johnson Controls’ personnel are frequently entrusted with U.S. Government-furnished resources, such as information, equipment, property, supplies, buildings, and land. In using such resources, any possible fraud, waste, or abuse must be avoided. If any improper handling of U.S. Government furnished resources is encountered, a supervisor or the Legal Department must be notified. It is essential that no government furnished resources are used for private, other commercial use, or any use not specifically outlined in the governing contract. While in the care of Johnson Controls, such resources must be properly stored and safeguarded from weather, vandalism, and theft. Detailed property inventory records must be maintained to ensure safekeeping. In certain circumstances, Johnson Controls may have to institute a government furnished property control plan to ensure that proper procedures are followed when such property is in the company’s custody.

**11.0 RESTRICTIONS ON USING U.S. GOVERNMENT FUNDS FOR LOBBYING ACTIVITY**

Johnson Controls’ Personnel may not use funds received from the U.S. Government for lobbying or attempting to influence government decision makers (agency personnel and elected officials) in connection with the award of any federal contract or agreement with the government. All such efforts must be funded with separate Johnson Controls corporate funds. The U.S. Government wants to ensure that the money it pays out is not turned around and used to lobby or influence the government itself.