

A True Story About the Need for Ethics and Procurement Training

BY ROBERT KNAUER

Ethics and procurement integrity—just what does this mean exactly? Seems like all too many people in federal, state, and local government tend to think they know what it is, but they really don't. It is a fact that because they don't know for sure, the rules will get them into big trouble and ruin their lives.

Ethics, standards of conduct, and procurement integrity is one of the many courses I teach today, as well as other contracting courses I teach to federal, state, and local government employees since my retirement from the government. I teach ethics not purely to make money, but because it is truly a calling for me since turning into what some would refer to as a “whistle-blower” in 1983. That incident changed my life and the lives of others forever. Over the years, I have also been involved in saving the career of a retired naval commander, and helping others far too afraid to be whistleblowers or to call the “hotline” or to go to the Office of the Inspector General (OIG) to report wrongdoings.

What I have seen over the last 30 years makes it clear to me that somebody has to tell the truth to government employees, and not just the garbage that OIG and government “ethics” attorneys tend to talk about during the required annual ethics

employee training government employees must endure each and every year.

Ethics can actually be a fun topic with a good speaker, especially from somebody who has actually been involved with the law and whistleblowing aspects of ethics. It is never interesting to sit and listen to a boring old government attorney that has never had to practice what he preaches, and obviously knows little about the real world out there. This is exactly why 99.9 percent of all government employees are bored to tears when they have to receive their mandated ethics training.


Recently, I taught a contracting officers technical representative (COTR) basic class to a group of mid-level federal employees in the Bethesda, Maryland area. When covering the required ethics and procurement integrity sections, I had several employees tell me they had been whistleblowers in the past and how they had suffered. One had recently come back from a luncheon seminar put on by a drug manufacturer which had given out a free DVD player with a company DVD loaded inside it (costing about \$199 on the retail market). The officer in question decided not to take the goodies given out to all the other attendees, simply because I put the fear of God into him in class about taking gratuities from what we all know or should know is a “prohibited source.”

How interesting it is that my class talks sank in and made a difference to at least one federal employee. I wondered to myself if those other attendees he told me about realized just how damning their actions were by merely accepting the free \$199 DVD players, even if they had the firm's logo on it. Who cares, right? Well, that's exactly my point. I am sure that many ethics attorneys preaching ethics today do not stress hard

enough the hardships that can come from accepting such gifts! My teaching impacted somebody, and that is good.

Six months after my COTR class, one of my students from these training sessions called me at home asking for assistance. I will not use this person's name or relay specific details about the actual situation he or she needed help with, so as not to shed light on his or her personal trauma and the case; but once again, ethics and the need for knowledge hit home! Let's call this person “Jim.” Jim was the equivalent of a GS-13 and had been appointed as a program officer right out of college about a year and a half before this incident. Jim knew almost nothing about government contracting rules and regulations, yet his agency made him responsible for acting as a COTR without the required mandatory training. This was and is an egregious insult to any employee by an agency—to make him or her responsible for something without proper training. Had Jim received such training, the likelihood of him getting into trouble would have greatly diminished.

Jim called me early one morning at my home, telling me he remembered my talks about ethics rules, 18 U.S.C. statutes, OIG issues, and how to deal with federal investigators in troublesome situations. He told me that he felt he was in serious trouble, and that federal investigators had or were referring certain actions he may have taken while under the supervision of his senior GS-15 (who was possibly corrupt) to the Department of Justice (DOJ) for further action against him. He was terrified. I could hear it in his voice. This was a very scared young man. Let me say this too: knowing Jim—his demeanor, intelligence, and kindness—this was certainly not the kind of person that would knowingly break the law. Yet, Jim was in deep trouble nonetheless.



Why? Well, for security's sake, I am going to change the story somewhat so as not to shed light on any agency or person, but to demonstrate just how easy it can be for a novice COTR and project manager to get into real trouble with DOJ and possibly suffer the slings and arrows of outrageous fortune that will come in terms of thousands of dollars in out-of-pocket expenses for a criminal lawyer, subcontracted subject matter expert attorney, polygraphs, and, most of all, the stress on families and marriages. This is no joke. Poor David Safavian is a prime example of what can happen and the costs involved in such a situation—he is now bankrupt and going to jail.

Let me tell you what Jim may have done, and what he did not do right. Then let me tell you what the likely outcome will be for him. Jim stated that when he was newly assigned at his agency to a contract and was given a vendor to oversee. He received no procurement training, at least not until a year later when he took my COTR class. All along, he was approving invoices and interfacing with a vendor, not really understanding the contractual terms and conditions that were on the contract he supervised. How crazy is that?

Jim also stated that about one year into the contract, he received an e-mail from the vendor asking him to approve payment of monies on the contract that was not in accordance with the terms and conditions as he perceived it. So, instead of doing the smart, intelligent thing (documenting the e-mail and following it up with another documented e-mail and keeping a copy saying “no” to the vendor), he instead met with the vendor's project officer to tell him that the request was clearly out of line and he couldn't approve it. He kept no record of this conversation, and then went to his supervisor—who he later told me he believed was corrupt (and had had an ongoing business relationship with the vendor for a number of years)—to present the issue about the monies requested by the vendor. When Jim informed his supposedly corrupt supervisor about the request by the vendor for more money by simply fudging invoice amounts for work not actu-

ally performed to cover added expenses incurred as requested by the vendor, his boss said, according to Jim, “You leave it up to me to handle this matter.” So he did, and later Jim found out that his boss had in fact approved illegitimate invoice payments to “keep the vendor happy.”

Jim let it slide and did not bring the issue up to his supervisor ever again. He told me he was scared and intimidated by his senior supervisor, and knew that if he raised a stir about it, his career might suffer. Several weeks later, the OIG came to see Jim at his

office. Evidently, someone blew the whistle on his boss and the vendor. Jim sat with the OIG investigator after being informed of his rights, and spilled his guts on what he knew of the situation. From my perspective, as a contracting officer, and having been involved with the OIG several times over the course of my career, that was Jim’s very first big mistake. Unfortunately, as a federal employee, you do not have the luxury of refusing to speak with the OIG about a case they are investigating. If you do, they can simply refer your refusal to the HR department and have you terminated on the spot.

What I find amusing about all of this is that 99.9 percent of all federal employees do not seem to know this fact. From a legal standpoint, Jim probably, and unfortunately, said far too much during the initial interview with OIG. The fact is, he could have agreed to cooperate with the OIG, but at the same time, it should have been in the presence of his attorney. Again, 99.9 percent of all employees do not know this, and they should. The OIG wants to keep it that way because to do otherwise hampers its ability to “get at the truth.”



As an employee, you cannot refuse to cooperate, but you can refuse until you have an attorney present. Again, Jim failed on this point. What Jim did not know was that his career was, in fact, probably going to suffer because of his actions and statements made in that initial interview with OIG. I refer anyone who reads this to a previous article of mine, “What Government Employees Need to Know to Avoid Going to Jail under 18 U.S.C. 1001 When Talking to Agents or Police,” available here: www.acquisitioninstitute.com/uploads/How_to_Avoid_Going_to_Jail_under_18_USC_1001.pdf.

Jim just did not know that when being interviewed by OIG at that moment, his life was actually going to change. So, one night one year later at 8:00 p.m., federal investigators came to his house to present him a letter of referral to the DOJ. He knew what I had talked about in class had come true, and that’s when he called me.

Jim stated, “I did not do anything wrong, and I did not approve any false invoices, but maybe they suspect my boss, and the fact that I knew of that, well—maybe they are trying to get to my boss through me.” I told him that was a good possibility, but you will never know, buddy. Jim knew I have lots of experience working with OIG and agents, and asked what he should do now.

I am about to tell you what I told Jim and would tell every federal employee from GS-4 to the Senior Executive Service involved in the same situation (and I am not blowing smoke on this issue!):

- First and foremost, keep your mouth shut!
- Get a very good criminal attorney quickly.
- Never, ever speak to law enforcement without legal representation!
- Let your attorney do all the talking.
- Say nothing to any other co-workers (a natural tendency).

- Say nothing to your supervisor, even if questioned (they don’t have a need to know).
- Let your attorney broker any deal he can get for you (if you are not the real target, have your attorney negotiate with the feds so you won’t be charged if you turn in state’s evidence against the real target).
- Get a big home loan (home equity), because you are going to spend anywhere from \$5,000 to \$25,000 on a plea deal, and about \$50,000 to \$1 million if you go to a six-person jury trial to prove your innocence, which could last from two days to four weeks.

Now, can you imagine yourself in this situation, and how scared you would be? You should be! The simple fact is, each and every day in our country, innocent people are caught in the legal snare trap by federal investigators for just trying to do their jobs in cases where the feds don’t really want you, but want to get at somebody higher up in the food chain.

Federal employees just like Jim need to understand that investigators and prosecutors are not your friends. They do not care what happens to you or your family. If they say they do, it’s pure bull. They have one job to do, which they will do at all costs, even sometimes vindictively...simply look at the vindictive prosecution of David Safavian by DOJ—and it was vindictive.

When I got through talking to Jim about his plight, and what he should do, he was a broken soul. How broken? I asked him how the feds coming to question him at night with his wife was going to impact his marriage. There was silence, and Jim didn’t seem to know the outcome, and there was a trembling in his voice. I know how that feels, and I can understand him. As an honest former contracting officer, I know how it feels to be accused of wrongdoing by an investigator. That’s why I always had everything in writing, always kept memos for the record, and yes, even taped many conversations on a phone over the years to have a record of it—just in case. Sometimes

I am ashamed our judicial system works like it does, especially when I see dedicated feds just trying to do their job to the best of their abilities. What people like Jim need is strong, intense ethics and procurement training, and slowly they are getting it. For goodness sake, please, if you are a senior-level acquisition or project manager in the government, do not make your subordinates responsible and accountable for contracts without proper contracting and ethics training!

Lastly, as a former fed myself, I would tell anyone that when it comes down to you or your supervisor, if you know that your supervisor has committed a criminal act, and there is even the slightest possibility of your involvement, get an attorney (you can obtain one for a quick retainer for about \$500–1,500), and then go jointly to OIG and turn yourself in as a witness for the state. You will then be off the hook, but your failure to do so can open yourself up to the same issues Jim has today.

Finally, and prospectively, Jim probably is not the target of their investigation, but—like most of us in government who are not rich and cannot afford a jury trial—you will go broke fighting the system to defend your honor. Only indigent criminals and illegal immigrants get free representation in America. So, for the most part, most of you will have to end up pleading guilty to a lesser charge, and thus wind up with a criminal conviction on your records because you don’t have the money for a jury trial to prove you are innocent. DOJ knows that and uses that as leverage when negotiating with people like Jim. So now, just for a moment, pause and ask yourself: “What would I do if this happened to me?” **CM**

Send comments about this article to cm@ncmahq.org.