

Office of Inspector General

Policy Review



**Contractor Employee Participation
in Social Events Sponsored by the
Federal Trade Commission**



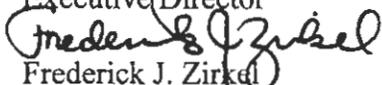
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

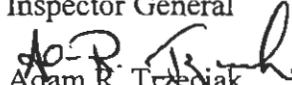
Office of Inspector General

March 31, 2004

MEMORANDUM

TO: Rosemarie Straight
Executive Director

THRU: 
Frederick J. Zirkel
Inspector General

FROM: 
Adam R. Trzeciak
OIG Audit Manger

SUBJECT: Policy Review: Contractor Employee Participation in Social Events Sponsored by the FTC.

BACKGROUND

The Office of Inspector General (OIG) recently received an allegation of a possible violation of government contract regulations relating to the participation of contractor employees in agency sponsored social events, such as holiday and retirement parties.

Resolution of this allegation required the OIG to answer three questions: (1) are contractor employees participating in the planning of agency sponsored social events and/or attending such events; (2) if the answer is yes, then who authorized contractor employees to participate in such activities based on what agency/government-wide guidance; and (3) when contractor employees are involved in such events during normal working hours, then who pays for their participation, the government or the contractor?

The OIG learned the answer to question (1) is yes. Contractor employees have planned and attended FTC sponsored social functions during regular working hours. The answer as to who is authorizing such involvement (question 2) likely varies depending on the relationship between contractor employees and staff. Finally, the answer to question (3), who paid for contractor participation, is likely to vary based on whether agency employees informed contractor

agency employees did not discuss the event with contractor management and did not require contractor management to absorb such cost, then it is likely that FTC paid for some contractor employees to attend agency social functions.¹

When addressing the questions, the OIG first sought to review agency policy on how Contracting Officer's Technical Representatives (COTR) are instructed to handle contractor involvement in this area. After meeting with the Assistant CFO for Acquisitions the OIG learned that there is no written policy that addresses this specific issue, nor has any guidance been provided to COTR's. The OIG also learned that, on occasion, this issue had been raised by management officials but with no ultimate resolution.

The OIG also reviewed General Accounting Office (GAO) and General Services Administration (GSA) reports and guidance to look for government wide policy pronouncements. Again, the OIG could locate little in the way of written guidance that was directly on topic. However, in speaking with GAO's legal staff, the OIG learned that GAO would likely view contractor staff involvement in planning for events or the attendance at parties as time spent in a "non-work" status and thus would not permit such time to be billed to the government. This would be the case even when contractor employees are invited to attend a function by an agency official.

Because of the lack of written policy and/or guidance provided to COTR's in this area, it is likely that contractors and their employees are also not being adequately instructed on their involvement in and attendance at such events. Against this background the OIG decided not to randomly select any particular contractor or COTR for a more detailed review. Instead the OIG will leave it to management to follow-up with the agency's contractors after it has established a policy concerning contractor employees attending FTC social functions.

For the record the OIG recently invited its financial statement audit contractor staff to a retirement party for an OIG employee. The OIG COTR contacted the partner in charge of the engagement extending the invitation to him and two other auditors while making it clear that their attendance was optional and that the contractor was not to bill the FTC for time spend at the party. In short, attendance at this function was at the sole discretion of the contractor.

The OIG believes that a policy that provides practical guidance to agency COTR's on the narrow issue of contractor employees attending FTC endorsed social events (retirement events, holiday parties, etc.) is needed. At a minimum, the policy should address the following **concerns**:

1. **Comply with Contract Provisions** by ensuring that the agency is charged only

¹ Contractor over billing is not an issue when the contract is performance based (number of units produced, etc.) or fixed price. A fixed price contract provides for a price that is not subject to any adjustment on the basis of the Contractor's cost experience in performing the contract. The fixed price contract places the maximum risk and full responsibility for all costs and resulting profit or loss on the Contractor.

for work authorized under the contract.

2. **Encourage Teamwork** by maintaining an integrated (federal and contractor) work force with a high esprit de corps that is committed to the goal of helping the American consumer.
3. **Avoid Conflicts of Interest** by removing any perception of favoritism, e.g., mingling with contractors at social events, regardless of who pays, when contracts are being recompeted.
4. **Avoid Personal Services** by abandoning a process that appears to treat contractor employees as if they are performing work under a personal service contract. That is a process whereby agency staff directly request contractor employees to perform certain social event planning tasks or attend certain functions without the knowledge or involvement of contractor management.

WHO CONTROLS ATTENDANCE

Perhaps the most important question to answer when developing guidelines is *who* is to be ultimately responsible for inviting contractors to attend agency events. Can contractor employees attend because they have a close working relationship with selected FTC staff who will be in attendance at the event? Or should agency policy require that an agency employee invite them? If an agency employee is to invite them to an event, who should it be?

Keeping in mind Concerns 1., 2., 3., and 4., the OIG believes the best choice is to allow contractor participation at FTC events but require an invitation from the COTR. Any agency employee who believes a contractor employee should attend a holiday party during normal working hours should be instructed to request of the COTR that s/he invite them to the function.

Next, who should receive the invitation? Should it go directly to the contract employee(s) who is likely to have a personal interest in attending the event or to his/her management?

Keeping in mind the above Concerns 1. and 4., the OIG believes the only viable choice is to forward the invitation to contractor management, naming the contractor staff invited to the party along with the date and number of hours they are likely to be in attendance. Most importantly, the invitation should end with a standard reminder that states that the contractor agrees to allow its employee(s) to attend the event, with the understanding that it is not to bill the government for the time its staff was in attendance at the event.

Of course, contractor management could decide to have its employees remain on the job and not attend the event. But this is as it should be as under a contract, contractor management, not agency staff, is to direct its employees. This communication chain also avoids contractor management claiming after the fact that attendance at the event was deemed to be part of the contractor's normal duties and, as such, should be reimbursed as agency staff instructed contractor employees to attend.

What are the limits to contractor participation in these events? Attendance at an FTC function at the invitation of an FTC employee is one matter, but what about contract staff being asked or simply volunteering to work on the planning aspects of such events?

Keeping in mind Concerns 3. and 4., the OIG does not feel that participation in these events is entirely appropriate. At a minimum if such activities are to be performed they should flow through the same approval process as the invitation.

In conclusion, Concern 1. is addressed by COTR's routinely reminding contractors not to invoice the agency for any time spent at FTC social function(s). Concern 2. is addressed by providing a process whereby contractor staff can attend agency social functions assuming contractor management permits them to do so. Concern 3. is addressed by providing the COTR with control over the invitation process. For example, the COTR might allow contractor staff to attend a function during the first two years of a three year contract but not attend during the third year when a Request for Proposal to re-compete the contract is on the street, particularly if any agency employees assigned to evaluate such proposals are also expected to be in attendance. Finally, Concern 4. is addressed by following the same general process used every day to administer the contract. Contractor management is involved in the process and is expected to have the final word on which of its employees attends any agency-sponsored function.

RECOMMENDATIONS

To address the findings identified in this review, the OIG makes the following recommendation:

- 1. The Assistant CFO for Acquisitions (i) develop a policy that addresses the issue of contractor participation in FTC sponsored social events and (ii) distribute it to all agency COTR's for discussion with contractor representatives.**
- 2. As no guidance was in place during the past holiday season, any COTR that knows that a contractor employee(s) either attended a function or worked on the planning for some event should ask those contractors to review their billing for the days/hours to determine if any adjustments might be in order. *(Note: this recommendation applies only to contracts that require hourly billing of contractor employees.)***