

Subject: ETHICS AND COMPLIANCE IN CONTRACTING WITH THE UNITED STATES GOVERNMENT

1.0 PURPOSE AND RATIONALE

To set forth AM General's policies to guide its employees with respect to standards of conduct. The following policy expresses unequivocally the firm commitment of AM General to the highest standards of conduct and practices with respect to transactions with the United States Government. The written code of business ethics and conduct and on Ethics Training is a requirement of AM General under DFAR 203.7000.

2.0 BACKGROUND

- 2.1 The purpose of these guidelines is to serve as a framework for an understanding of the nature of certain key Government procurement practices and conflict of interest regulations. These guidelines are intended to familiarize employees only in a very general manner with these areas.
- 2.2 The matters reviewed in these guidelines do not, in any sense, encompass all the statutes, regulations and contract provisions applicable to Government contracts. This policy supplements and amplifies, but does not supplant other policy statements and directives equally applicable to dealing with the United States Government. Each manager is cautioned to determine carefully all requirements of each Government solicitation and/or contract and to be aware that other requirements may have been equally serious penalties for noncompliance beyond those set forth below.
- 2.3 Each employee should carefully review these guidelines, consider the application to their activities within the Corporation and discuss any questions he or she may have with management, with their financial control officer or General Counsel, as appropriate to the particular question.

3.0 POLICY

AM General has a firm commitment to the highest standards of conduct and practices with respect to transactions with the United States Government. The Corporation will strictly observe the laws, rules and regulations that govern the acquisition of supplies and services by the United States Government and will compete fairly and ethically for all such business opportunities. In furtherance of that objective, no employee shall, in connection with any transaction with the United States Government, engage in any conduct in violation of such laws, rules and regulations or otherwise engage in any conduct inconsistent with the standards of honesty and integrity necessary to achieve that objective.

4.0 COMPLIANCE

- 4.1 The standards of conduct covered by this policy explicitly require that scrupulous attention be given to the matters described below:

- 4.1.1 Recording, Allocations and Charging of Costs

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Variably-priced Government contracts, e.g., cost reimbursement, fixed-price incentive and time and material, require that only those costs properly allocated to the contract may be reimbursed by the Government.

The intentional mis-charging of costs to a Government contract may result in substantial criminal and financial penalties to AM General and to the individuals involved. Cost mis-charge may result from the improper charging of labor costs on employee time cards or other improper allocation or transfer of costs, including indirect costs.

Many contracts with the United States Government require that only those costs properly allocated to the contract may be reimbursed by the Government. Care must be taken to ensure proper recording and charging of all costs to the appropriate account, regardless of the status of the budget for that account. The falsification of time cards, charging of non-supportable indirect costs, incorrect classification of costs, improper shifting of costs between contracts or other intentional allocation of costs to a Government contract contrary to the contract provisions or related laws, rules and regulations are prohibited by this policy.

#### **4.1.2 Cost and Pricing Data**

In the negotiation of certain contracts with the United States Government, cost and pricing data must be submitted to the Government and there must be a certification that the cost or pricing data submitted is current, accurate and complete. The definition of data that must be disclosed is quite broad and includes not only facts but also other information that a reasonable person would expect to affect the negotiations. Such disclosures and certifications are obligations imposed by law. This policy requires that disclosure of complete and accurate cost and pricing data that is current up to the date of agreement on price. (See Policy 4.13 Disclosure Statement and 1.10 Protection of Limited Rights/Proprietary Data.)

#### **4.1.3 Truth In Negotiation Act**

The Truth in Negotiation Act and the provisions pertaining to defective pricing pertains to disclosure of information to the Government. The requirement to disclose does not constitute a requirement to use any or all disclosed data in the development of a price. AM General may pick and choose available data using best judgment in estimating costs and developing a price. The lack of use of any data in developing a price, is NOT defective pricing. However, the lack of disclosure to the Government that such data was available (even if in the contractor's view it is not appropriate in pricing considerations) IS defective pricing.

#### **4.1.4 Certification of Cost and Pricing**

AM General submits proposals for reimbursement of indirect costs to the United States Government. The law provides that certain designated Company official(s) certify his or her belief that the proposal does not contain expressly unallowable costs such as, among others, costs for advertising, donations, entertainment, fines and penalties, lobbying, defense of fraud proceedings and goodwill. This policy further requires that the

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Company request reimbursement only for those indirect costs that are reasonable in amount and allowable. It is every employee's responsibility to make certain that any data, which may affect the contract price, is known to the Estimating, Pricing, Contracts and other negotiating personnel in order to assure that all cost or pricing data is current, accurate and complete. The Company official that affixes his or her signature to the certification must be assured that individuals furnishing information to them are treating it with the same care as if they too were signing the certification.

#### 4.1.5 Competition in Contracting Act (CICA)

The CICA is part of the Deficit Reduction Act of 1984 (Title VII of Div. B) and requires the Government to obtain "full and open competition" in procuring supplies and services. In conjunction with this Act, Congress instituted further reforms by passing the Small Business & Federal Procurement Competition Endowment Act of 1984. This Act sets the basis for a uniform policy with respect to technical data.

The manner in which AM General deals with its suppliers and consultants who provide products and services in connection with Government contracts is important. AM General has issued policy statements which address relationships in the marketplace and establish standards of conduct in dealing with firms that supply products and services through our Purchasing Department.

The regulation requires that the Government's needs be satisfied at the lowest overall costs and that there be maximum practical full and open competition from the maximum number of qualified sources.

#### 4.1.6 Design, Manufacture and Testing of Products

The knowing nondisclosure of a material deviation from the requirements of a Government contract, including product substitution, may be considered criminal fraud.

Product substitution involves such activities as failing to deliver supplies that have been paid for under a contract, delivering similar goods that have been made from lower quality materials, delivering materials that have not been tested as required and providing foreign-made materials when domestic materials are required by the contract. The intentional substitution or reconditioning of products required under a contract, or the intentional failure to provide the required quality control, may constitute a false statement or false claim against the Government. Accordingly, no substitution of materials or products or change in testing requirements or quality controls specified in a Government contract should be made without the approval of an authorized Government representative.

The United States Government or its prime contractors often require AM General to certify compliance with Quality Control specifications and testing requirements for the Corporation's products. The customer has a right to expect, and we have an obligation to take reasonable steps to ensure, that all products delivered meet all contract requirements. Actions, such as the failure to conduct required testing, or manipulation of test procedures or data, are prohibited by this policy.

#### 4.1.7 Gratuities (Anti-Kickback Statute)

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The manner in which business is obtained and conducted with the United States Government also is important. Improper payments or gratuities in connection with any Governmental activity are prohibited. Additionally, when a Government agency has published policies with respect to the acceptance of entertainment, gifts or other business courtesies by employees of that agency, such policies shall be respected by Company personnel. The best advice for employees on the issue of gratuities is 'DON'T OFFER ANY – DON'T ACCEPT ANY'. From a legal standpoint even minimum value "gratuities" may be the basis for an allegation of improper conduct.

Companies who offer gratuities to Government officials may have contracts terminated based on contractual clauses in most contracts. Employees who accept gratuities from Government personnel or vendors can result in severe personnel actions taken against that individual.

**4.1.8 Classified Information**

AM General personnel must exercise the appropriate standard of care with respect to the handling of classified information.

Federal laws specifically address the subject of unauthorized possession or disclosure of classified information. AM General personnel should also be aware that there are rules and regulations associated with the use, control, retention and disposition of classified materials to which AM General has agreed to adhere as a condition to remaining eligible for receipt of classified information.

**4.1.9 Government Property (See Procedure 647)**

Government regulations prescribe specific procedures and impose associated obligations on contractors in the possession of Government property whether the property was fabricated under a Government contract, furnished by the Government or received under a facilities contract.

Many contracts with the United States Government involved the use or control of information that has been or must be classified in the interests of national security or the use and control of Government property. This policy requires the exercise of the appropriate standard of care to ensure proper accounting, control and maintenance of such property or information consistent with contract provisions and related laws, rules and regulations.

**4.1.10 Sherman Act**

No employee shall enter into any understanding or agreement with a competitor in violation of the Sherman Act nor shall he or she enter into any improper collusive arrangement in selling or bidding to the United States Government. This policy requires adherence to Antitrust guidelines as they apply to Government business.

**5.0 RESPONSIBILITY OF EVERY EMPLOYEE**

- 5.1 An employee's actions under this policy are deemed to be significant indications of the individual's judgment and competence. Accordingly, those actions constitute an

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important element in measuring employee performance and evaluation for position assignments and promotion. Correspondingly, insensitivity to or disregard of the principles of this policy will be grounds for appropriate disciplinary action as provided below:

- 5.1.1 Any violation of this policy will be grounds for discharge or other disciplinary action, as appropriate to the circumstances of the particular violation.
- 5.1.2 Disciplinary action may be taken not only against individuals who authorize or participate in a violation of this policy but also against:
  - a. Any employee who fails to report a violation as required by this policy;
  - b. Any employee who withholds relevant and material information concerning a violation of this policy; and
  - c. The violator's supervisor(s), to the extent that the circumstances of the violation reflect inadequate leadership or a lack of appropriate diligence.

**6.0 EMPLOYEE REPORTED VIOLATIONS**

- 6.1 Any employee who is requested to engage in an activity which the employee believes would be contrary to this policy will promptly report such information to his or her supervisor or the General Counsel.
- 6.2 Any employee who acquires information that gives such employee reason to believe that another employee is engaged in conduct prohibited by this policy, or that any other person or firm representing AM General is engaged in such conduct, will similarly promptly report such information in the manner provided in paragraph 6.1 above.
- 6.3 Any AM General manager or the General Counsel receiving a report under paragraph 6.1 or 6.2 above will promptly report the matter to the President.
- 6.4 This policy expressly recognizes the importance of creating and maintaining a work environment of openness, where raising concerns of potential misconduct is expected and accepted behavior. Accordingly, the making of reports hereunder in good faith shall be viewed positively and no retribution for making any such reports shall be taken against any employee.
- 6.5 To foster the making of such reports, AM General has created a reporting mechanism independent of the line of functional management reporting chain. The Regulatory Compliance Manager has the responsibility, under the direction of the President, for utilizing procedures directed at ensuring appropriate confidentiality, follow-up, review and disposition of all alleged violations of this policy. Employees may satisfy their reporting obligations hereunder by contacting the assigned individual listed above.
- 6.6 The use of the Open Door Policy which contains a variety of reporting channels should be the primary means of illustrating concerns of employees to the appropriate Manager up to and including the President of AM General Corporation.
- 6.7 The Information Line (284-2932) may be used as an alternate means of reporting violations if the employee so chooses.
- 6.8 Audits and investigations as may be necessary under this policy will be conducted

under the direction of the General Counsel.

**7.0 RESPONSIBILITY OF EVERY MANAGER**

- 7.1 All Managers must be careful in words and conduct to avoid placing, or seeming to place, pressure on subordinates that could cause them to deviate from the requirements of this policy or alter acceptable norms of conduct.
- 7.2 Each manger is responsible for taking timely actions to provide reasonable assurance that all employees subject to his or her supervision comply with this policy, including the taking of prompt remedial action when required.
- 7.3 The Vice President of Human Resources will be responsible for maintaining regular educational programs for familiarizing personnel with requirements applicable to doing business with the United States Government.
- 7.4 The President, General Counsel and/or V. P. of Contracts/Subcontracts will be responsible for identifying other areas of sensitivity and concern in Government contracting.

**8.0 POLICY AND REVIEW PROCESS**

A Government Contract Compliance Review Board (the "AM General's Self Governance Steering Committee") is hereby established. Initially, the Self Governance Steering Committee will consist of the President, the Chief Financial Officer, the General Counsel, the Corporate head of the Human Resources function and the Compliance executive as assigned. The principal responsibility of the Committee will be to oversee compliance with this policy. The Self Governance Steering Committee will have available to it such resources as may be necessary to discharge its responsibilities. Meetings of the Self-Governance Committee will be held for the purpose of reviewing compliance issues. Manager of Regulatory Compliance will schedule meetings.

**9.0 SELF-GOVERNANCE**

The Corporation is committed to monitoring adherence to this policy and to the procurement laws of the United States Government through self-governance. Appropriate procedures will be established for voluntary reporting of violations of such laws and corrective actions.

**10.0 VIOLATIONS OF ETHICS POLICY**

- 10.1 As a condition of employment, all employees, upon accepting new employment or re-employment, are expected to read and study the Standards and to sign a card acknowledging they understand the Standards to represent the policy of AM General Corporation.
- 10.2 Violations of the Standards will not be tolerated. In accordance with applicable company regulations and collective bargaining agreements, violations will result in one or more of the following sanctions, as appropriate:
  - a. A warning
  - b. A reprimand (all sanctions of this severity or greater will be noted in individual's permanent personnel record)

- c. Probation
  - d. Demotion
  - e. Temporary suspension
  - f. Discharge
- 10.3 In addition to the sanctions listed above, in appropriate cases the company may require reimbursement of losses or damages and/or refer the matter for criminal prosecution or civil action.
- 10.4 To encourage all employees in the fulfillment of their obligation to uphold the Standards, the company:
- a. Will, to the maximum extent possible, protect the identity of anyone reporting a possible violation. Any employee involved in any capacity in an investigation involving possible violations of the Standards must not discuss nor disclose any information to anyone outside of the investigative process.
- Employees against whom allegations have been brought are entitled to fair treatment and protection from unfair or premature exposure.
- b. Has established a communications process, which enable any individual who has knowledge of a possible violation of the Standards to report the matter to appropriate company personnel without fear of retaliation or inappropriate exposure.
- 10.5 In order to assure appropriate external disclosure and to avoid inappropriate exposure of either the company or employees involved, all external communication governing any case will occur only with approval by the General Counsel of the Corporation.
- 10.6 It is the purpose of the procedure that follows, to establish the guidelines to be met in identifying and investigating alleged violations of the Standards and in determining sanctions. While the implementing procedures may be supplemented, the requirements set forth in the procedure below must be met as a minimum.

**PROCEDURE**

**Reports of Possible Violations**

- 10.6.1 All possible violations of the Standards must be reported immediately to the Manager of Regulatory Compliance, Hot Line and/or the General Counsel.

**Investigations**

- 10.6.2 The investigation of an alleged violation is to be conducted under the direction of the General Counsel to facilitate the impartiality and confidentiality of the investigation. This will likely require working through other offices or disciplinary structures already existing within the company, including Industrial Relations, Internal Audit, Security, Finance, Contracts and Pricing, as well as outside resources, (e.g., Board of Directors) as appropriate. It is the General Counsel's responsibility to consider legal conditions such as

attorney-client privilege.

- 10.6.3 The results of the investigation are to be compiled in a report to be made to Counsel directing the investigation. Before a specific sanction is recommended, the results of this report are to be discussed with the Ethics Program Director involved and other Company personnel with a need to know or to be involved.

### 10.7 Recommendation of Sanctions

Based on the findings of the report, the Vice President of Human Resources, in conjunction with General Counsel and the Ethics Program Director and others as required, will recommend appropriate sanctions to the President. The severity of the sanction can depend on many factors, including the nature of the violation, the degree of involvement, the level of cooperation of the accused in the investigation, etc.

- 10.7.2 The Company President is required to determine appropriate sanctions, if any, based on the report of the investigation made to General Counsel and the recommendations provided by the Vice President of Human Resources. If the report of the investigation indicates a clear violation of Company policy and/or law, then some sanctions must be imposed.

References: DFAR 203.7000

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