Obviously, public sector project managers and their team members must avoid the acceptance of bribes and gratuities in exchange for contract awards. Conflicts of interest can be a grayer area, and federal and state laws and regulations covering those matters are complex.

Sometimes, the conflicts of interest of which public officials are accused are clear-cut. Cibinic, Nash, and Nagle state that it would be an egregious violation of the conflict-of-interest provisions if a contractor selected for a government contract were to subsequently hire a government employee who worked on the procurement before the contract award was made. They note, for instance, the case of Darleen A. Druyun, the Principal Deputy Assistant Secretary of the Air Force for Acquisition, who pled guilty in 2004 to a violation of 18 U.S.C., section 208 when she met with an officer of Boeing to discuss future employment at the same time she was negotiating a major contract with that company.[16]

In many cases, however, potential conflicts of interest do not necessarily fall into such bright categories. Example 7.2 provides an illustration of one of many types of potential conflicts that may not violate state or federal laws, but which can nevertheless result in an appearance of favoritism and run counter to the GAO guideline for integrity in public procurement.

Example 7.2: Potential conflicts of interest in Port of Seattle contracts

In the construction of the Third Runway Project at the Seattle-Tacoma International Airport (first discussed in Examples 4.1 and 4.3 in Chapter 4), a consultant (identified as SK) was working as a construction manager for the Port of Seattle, according to the Washington State Auditor.[17] In that capacity, SK was overseeing a contract with a construction company (identified as AH) for which SK had previously worked for 25 years.

The audit stated that although SK did not have authority under the Port of Seattle policies to approve contractor payments or change orders, he routinely signed off on such transactions, recommending their approval. The auditor concluded that even if SK no longer had any direct financial interests in Construction Company AH, there remained the appearance of a conflict of interest "in that SK may be inclined to afford favorable treatment to his former employer and former co-workers."

In another case, the auditor stated that a consultant identified as SW, who was working for a consulting company (E), was also the senior manager for the Port of Seattle for a large program management service contract. Consultant SW served on a selection committee that awarded a separate $5.8 million contract for work related to a terminal expansion project at the airport. The contract was awarded to Company AI, which was also a subcontractor to Company E on the program management service contract.

The state auditor maintained that both SK, in the first example, and SW, in the second, were in positions to give favorable treatment to companies with which they or their companies had current relationships or former relationships. The Port of Seattle responded to the auditor's findings by stating that SK had no financial interest in his former employer and that SW lacked any financial interest or direct connection to the selected firm. The auditor responded in turn that conflicts of

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interest are not limited solely to situations in which there is a direct financial interest. "At minimum," the auditor stated, "the appearance of these clear conflict of interest situations furthers the negative reputation that POS (the Port of Seattle) has among others in the contractor community that some contractors receive favored treatment by POS."[18]

In these two instances, a "Special Investigative Committee," which was led by a former United States Attorney, sided with the Port of Seattle and concluded in December 2008 that these cases did *not* constitute perceived conflicts of interest. Neither consultant, the Committee concluded, was in a position to exert undue influence. In an interview, an author of the state audit report said he stood by his conclusion that there was an appearance of a conflict of interest in both situations.

Whether or not any laws were violated and regardless of whether direct financial interests were involved in the two cases in Example 7.2, top Port of Seattle officials did not appear to be adhering to Cohen and Eimicke's advice that they "bend over backwards" or think proactively to avoid potential conflicts. The auditors, moreover, cited the Federal Acquisition Regulation, which states, in part:

> Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest *or even the appearance of a conflict of interest* in government-contractor relationships. (FAR 3.101-1) [emphasis added]

To avoid the potential for conflicts of interest at the Port of Seattle, the Washington State Auditor recommended, among other things, the appointment of a chief procurement officer at the agency, establishment of an independent contract administration function, and changes to the delegations of authority for approving construction management expenditures. The Port responded that it agreed these recommendations had merit, and was exploring ways to implement them.

TIP FOR SUCCESS:

The GAO describes competitive characteristics of a successful public procurement system as involving "specifications that do not favor a single source and solicitations widely publicized to benefit from the efficiencies of the commercial marketplace."

Successful Public Procurement Characteristic #4: Competition

Competition is widely agreed to be one of the most effective ways of ensuring that the best contractors and consultants are hired to undertake public sector projects and programs and that the supplies and services they provide are cost-effective.

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