



**CODE OF BUSINESS ETHICS AND CONDUCT &  
GOVERNMENT CONTRACTING COMPLIANCE POLICY  
FOR MANAGEMENT PERSONNEL**  
(V. 3, JUNE 2020)

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**A Message from Our President and Chief Executive Officer**

Dear Team,

As I come upon the end of my first year, I want to reiterate how honored I am to be serving as JCM's President and CEO and my promise to make JCM the best company it can possibly be.

Our core values, "Integrity," "Respect," "Trust," "Quality," and "Accountability" are fundamental to who we are and how we operate. I am fully committed to continuing to build a strong ethical, respectful and positive culture at JCM and am counting on each of you for your daily support and feedback along the way.

I want JCM to be a place where you feel valued and know that you can talk to your supervisor, the Ethics & Compliance Officer ("ECO"), Chief Financial Officer ("CFO), or me about anything on your mind. Where you wish to report a concern anonymously, you also have our Ethics Helpline. With mutual trust and respect, JCM's future success is unlimited.

Our Code sets forth JCM's expectations for how each of us will act on behalf of the company on a daily basis. It is important that you review and ensure you understand each of the principles set forth in the Code. Where you have any questions, don't hesitate to ask questions. Additionally, we will continue to provide each of you with refresher training on the Code to ensure these principles remain engrained in your minds.

I appreciate your continuing commitment to act ethically and with excellence at all times and to upholding the high standards that make JCM a truly great place to work and to build a career.

I am counting on each of you to ensure that ethics and integrity are your priorities day-in and day-out and that they are never compromised. My door is always open.

Robert Schenkan

## 1 CORE OBJECTIVES



This Code of Business Ethics and Conduct & Government Contracting Compliance Policy (“Code”) sets forth the requirements and expectations for conducting the government contracting business of JCM Engineering Corporation (“JCM” or the “Company”) consistent with applicable laws, regulations, and the highest standards of business ethics. This Code, in conjunction with the Associate Handbook, is designed to fulfill the Company’s responsibilities to comply fully with both the spirit and letter of the Federal Acquisition Regulation (“FAR”) 52.203-13 Contractor Code of Business Ethics and Conduct.

## 2 COMPLIANCE POLICIES & PROCEDURES



### 2.1 OUR CORE VALUES

We are committed to continuous improvement, personal development, and upholding our Core Values. This requires all of us working together to create a culture of honesty, responsibility, and accountability. Each of us at the end of our working day should feel proud of what we have accomplished and the manner in which we accomplished it. JCM will be a leader in every aspect of our business. Our passion at JCM not only drives us to make a significant impact with our customers, but also the lives and careers of our people and the wellbeing of the communities in which we work and live.

We share the responsibility of making our Core Values a central part of our everyday business activities so that our stellar reputation is maintained. You are expected to embrace these values and allow them to guide each and every decision you make on behalf of the Company. We are confident that our trust in you is well-placed. JCM also will do everything in its power to live by these standards:

**INTEGRITY.** Doing our utmost to keep our customer commitments while applying honest, moral, and fair principles in our daily actions. It is our duty to represent the truth and reflect JCM Engineering Corporation’s Code of Business Ethics and Conduct.

**RESPECT.** We relay respect by treating others openly, honestly and with dignity. We must hold in high regard our diversity, our individual skills, and our individual experiences that blend together to make a healthy and respectful environment.

**TRUST.** Earning mutual trust by doing what is right and taking ownership of our actions. We do this by being honest and fair with not only our customers but our fellow associates.

**QUALITY.** Our objective is continuous quality improvement in all that we do, so that we maintain our customer's confidence in our abilities to provide them with the highest quality of precision machined components.

**ACCOUNTABILITY.** Our growth and success is determined by being able to hold ourselves accountable as we work towards keeping our internal and external customer commitments.

Competitive challenges within the workspace places pressure on us all. This pressure to succeed can never be an excuse for making decisions that would compromise our Core Values. Our teaming partners and clients expect and deserve nothing less than the highest level of ethical business practices from every employee at JCM. We take pride in our ability to accomplish greatness without compromising our Core Values.

You are expected to embrace these values and allow them to guide each and every decision you make on behalf of the Company. We are confident that our trust in you is well placed. JCM also will do everything in its power to live by these standards.



## **2.2 ROLE OF THE ETHICS AND COMPLIANCE OFFICER (“ECO”)**

Every employee of the Company has an independent obligation to conduct themselves in a manner that is consistent with the Company's Core Values and governing laws and regulations. To ensure that employees have a “go-to” person to raise any and all ethics and compliance-related questions or concerns, the Company has appointed an ECO to serve as the principal point of contact for questions concerning the Ethics Program.

The ECO reports directly to the Board of Directors, CEO, and leads the daily operations of the Ethics and Compliance Program. The ECO ensures that all employees understand the Company's expectations regarding ethics and compliance, receive adequate training to enable them to adhere to such expectations, and can effectively and safely raise concerns without fear of retaliation. The role and responsibilities of the ECO are set forth in JCM's Charter for the Role of ECO.

At present time, JCM's ECO is **Mr. Marty Bell** who can be reached at: [martybell@ymail.com](mailto:martybell@ymail.com) and 714-318-8850.



**Q**

*I have a concern about another individual's conduct but am not certain if what I observed is an ethical issue or a human resources issue. Should I report my concern to the ECO or the human resources department?*

**A**

Don't worry about what type of issue it is, just report it to either the ECO or HR and JCM will route it to the appropriate person.



### **2.3 ETHICS HELPLINE POLICIES AND PROCEDURES**

While we hope that you always feel comfortable raising concerns or questions directly with your supervisor, the Ethics and Compliance Officer (“ECO”), or Company leadership, JCM has provided you with a mechanism by which to report concerns anonymously. Toward that end, JCM has retained an independent third party, Lighthouse Services, Inc. (“Lighthouse”), to operate a confidential Ethics Helpline on behalf of the Company. Lighthouse administers the ethics helplines of countless employers and is a company that is entirely separate and independent from JCM.

When you contact the Ethics Helpline:

- You will be treated with dignity and respect.
- Your concerns will be addressed, and you will be afforded the opportunity to monitor the outcome of your report.
- Calls to the Ethics Helpline may be made anonymously. If you remain anonymous when you make the report, your identity will not be available to Lighthouse or the Company. If you disclose your name but request that it be maintained in confidence, your confidentiality will be maintained to the greatest extent possible unless disclosure is required by law.
- You are not at risk of retaliation for using the Ethics Helpline. People in a position of authority are subject to disciplinary action up to and including termination of employment if they try to coerce you or prevent you from using the Ethics Helpline or retaliate against you.

### **2.4 HOW TO CONTACT THE ETHICS HELPLINE**

To use the Ethics Helpline, you have several options, including:

- Telephone at **(833) 290-0001** (English speaking) and **(800) 216-1288** (Spanish speaking);
- Website at **[www.lighthouse-services.com/jcmcorp](http://www.lighthouse-services.com/jcmcorp)**;
- E-mail at **[reports@lighthouse-services.com](mailto:reports@lighthouse-services.com)** (must include Company name with your report); or
- Fax at **(215) 689-3885** (must include Company name with report).

Posters displaying this helpline information are also displayed in the Company's facilities.

After a report is made, the Company will receive a copy, which will enable it to investigate the matter and, where appropriate, to take corrective action to mitigate against reoccurrence. In certain instances, JCM also may have an obligation to disclose the matter to the government as discussed herein.

**Q** *I just made a report using the Ethics Helpline. Can I track the progress of the Company's investigation into my report?*

**A** Yes. When you make a report, Lighthouse will provide you with instructions on how to track the progress of the Company's investigation.

## 2.5 REPORTING OBLIGATIONS

As an employee of the Company, you are obligated to bring any issue concerning a suspected violation of this Code, law, or regulations to the immediate attention of the Company, either through your supervisor, the ECO, Company leadership, or the Ethics Helpline.

JCM will consider it a breach of this Code if an individual knows or suspects of a violation and does not report it. Any supervisor who receives such a report should immediately notify the ECO. All reports are treated confidentially to the maximum extent allowed by law and regulation and to the extent consistent with the enforcement of this Code. When JCM investigates such reports, every employee has an obligation to cooperate with the investigation consistent with each employee's rights under the law.

**Q** *John and Mike work together on the shop floor. One evening, Mike sees John carrying tools from the shop floor out to John's truck. John places the tools in the truck and drives away. Should Mike report his observation?*

**A** Yes, Mike should immediately report the observation using one of the reporting channels available to him, including his supervisor, the ECO, the CFO, the CEO, or the Helpline. Failure to report this observation would violate Mike's obligation to report suspected ethics violations.

**Q** *I'm not certain if what I observed is an ethical issue, but it doesn't feel right. What should I do?*

**A** If you see something that troubles or concerns you, just report it using any of the reporting channels. JCM wants you to do so!



## 2.6 NON-RETALIATION POLICY

JCM will not retaliate against an employee who reports known or suspected violations of the law, regulation, or this Code. In fact, JCM prohibits retaliation against an employee who reports known or suspected violations. Additionally, no adverse action of any kind will be taken against an employee for making a report where the report is done in good faith. Our commitment to non-retaliation assures you that in posing any question, raising any concern, reporting suspected misconduct, or cooperating in any investigation, you will not suffer any negative consequences for doing so. Anyone who violates this non-retaliation policy is subject to discipline.

However, in raising any question or reporting any concern, or cooperating with any investigation, you must act in good faith. This does not mean that you need to be right, nor does it mean that your question or concern must have substantial facts to support it. It only means that you are prohibited from intentionally submitting inaccurate, misleading, or false information. Making an intentionally inaccurate, misleading, or false report is subject to disciplinary consequences.

In addition, the firm complies with all statutory and regulatory requirements related to reporting concerns about a government contract, including in certain instances reporting such information to the government.

**Q** *If I report a concern and it turns out to be incorrect, can I be disciplined?*

**A** No. Many reports of suspected misconduct turn out to be incorrect because the reporting party does not have all of the information. JCM expects that reporters may not have all the information when making a report, but as long as you report a concern in good faith, you will not be disciplined if your concern is incorrect. The only time you would face discipline for reporting an issue is if you make an intentionally inaccurate, misleading, or false report.

**Q** *I want to report a concern about my supervisor but am worried that he/she will retaliate against me if he/she finds out. What should I do?*

**A** You should report your concern to the ECO, the CFO, the CEO, or the Ethics Helpline. The Company has adopted a policy that prohibits retaliation and includes discipline (up to and including termination of employment) for those found to have engaged in retaliatory behavior.

**Q** *I feel that I have been retaliated against. What can I do?*

**A** The JCM Code of Conduct and the Non-Retaliation Policy clearly state that retaliation against employees who come forward and raise concerns in good faith will not be tolerated. If an employee feels he or she has been retaliated against, there are several reporting channels available, including your supervisor, the ECO, the CFO, the CEO, or the Helpline.



## **2.7 JCM ONLY DOES BUSINESS WITH RESPONSIBLE COMPANIES AND INDIVIDUALS**

JCM is committed to maintaining an ethical work environment and, toward that end, JCM only desires to transact business with individuals and companies that also are committed to this principle. If JCM does business with another company that is found to have engaged in inappropriate conduct, JCM's reputation could suffer. Therefore, business integrity and responsibility are key requirements for the selection and retention of those who represent JCM.

Each of us is responsible for ensuring that the individuals and entities we choose to do business with have the highest integrity and ethical standards. In addition, procurement personnel shall ensure that contracts with such individuals and entities reflect the requirements of applicable laws, regulations, and government contract requirements.

Before hiring any prospective applicant for employment or entering into any business relationship with a subcontractor, vendor, agent, or consultant, JCM, at a minimum, intends to screen the prospect using the government's database known as the System for Award Management ("SAM"), which identifies all parties that are ineligible for government contracts and subcontracts and non-procurement transactions, such as grants and cooperative agreements. SAM is available at: <https://www.sam.gov/portal/SAM/#1>. Where a prospective individual or entity appears on the excluded list, JCM will not hire or do business with the party unless a government customer determines that there are compelling reasons to continue business with the party and directs JCM to do so. Additionally, JCM expects all employees to report any concerns they have pertaining to a prospective or existing business partner.

Additionally, should any JCM employee ever be listed on the SAM as ineligible for government contracting as a result of being debarred, suspended, or proposed for debarment, that employee must immediately report the matter to the Company. Failure to report such is grounds for discipline, including termination of employment. JCM intends to screen employees through SAM on a semi-annual basis.

## **2.8 COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

Obedying the law, both in letter and in spirit, is the foundation on which JCM's ethical standards are built. All employees must respect and obey the laws of the cities, states and countries in which JCM operates.

## **2.9 COMPLIANCE WITH GOVERNMENT CONTRACTING LAWS**

Our work for the United States government, including our contracts and subcontracts, impose unique requirements of which we must be aware and to which we must adhere. The Company provides periodic training to ensure you are sensitized to the most common issues you may encounter. You have a responsibility to comply with all applicable laws, regulations, and contract requirements. Accordingly, it is your responsibility to be familiar with the laws and regulations applicable to your job responsibilities, as well as applicable contract clauses that are incorporated into our contracts and subcontracts by reference, and to seek guidance and instruction whenever questions arise.



## **2.10 COMPLIANCE WITH OUR GOVERNMENT CONTRACTS AND SUBCONTRACTS**

It is JCM's policy to adhere strictly to the requirements of our contracts. JCM is committed to delivering quality products and services that meet all contractual obligations and quality standards. To achieve this objective, it is mandatory that employees understand the requirements of the contracts on which they are working. Supervisors must ensure that their subordinates understand the requirements and are complying fully. Such contract requirements include, but are not limited to, technical requirements, testing and inspection requirements, including first article testing requirements, adherence to delivery schedules, contract quality standards, packaging requirements, and billing requirements, among any other applicable requirements.

We value our relationships with our customers and believe adherence to the following principles will ensure our customer relationships remain strong for years to come:

- When we enter into a contract, we do so fully intending to comply with each and every term;
- We do not enter into contracts that contain ambiguous terms or requirements, terms we do not understand, or terms we cannot fulfill;
- Where the contract is ambiguous on a particular requirement, and we identify this ambiguity post-award, we will notify the customer promptly, propose a solution, and seek input from the customer. We will ensure that any resolution is memorialized clearly and unmistakably;
- We will maintain open lines of communication with our customers and keep them apprised of developments where appropriate;
- In the event unexpected delays are encountered, we will notify our customer promptly and work diligently to minimize, if not eliminate, the impact of the delay; and
- Where we are asked to do something outside the terms of the contract, we will insist on a formal contract modification from a Government Contracting Officer. It is critical to maintain a written agreement that mirrors the parties' agreement.

When we follow these principles, we can be confident that our customers will continue to use us in the future. Each and every contract we receive is another opportunity to further develop and strengthen an existing relationship.

Compliance with contract terms and conditions is particularly important when dealing with the U.S. government or state and local governments. The knowing nondisclosure of a material deviation from the requirements of a government contract, including product or testing substitution, may be considered criminal fraud. Substitution includes such activities as delivering materials that have not been tested as

required. Intentional substitution of products required under a government 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 written approval of an authorized government representative.

## 2.11 ACCURATE REPRESENTATIONS & CERTIFICATIONS

All individuals acting on behalf of JCM are required to make accurate representations and certifications on its behalf, including in oral and written communications. This requirement extends to both affirmative representations and certifications as well as to implicit representations and certifications. Every time an employee stamps, initials, or signs a document, he or she is approving of the representations contained within the document and independently representing that the statements are accurate. It is a breach of this Code to make any misrepresentations or false statements to any customer, subcontractor, individual or entity you encounter in your dealings on behalf of JCM. Furthermore, such misrepresentation or false statement may constitute a violation of federal law if the ultimate customer is the U.S. Government.

**Q** *My supervisor asked me to sign a certification for a project that I did not work on and know nothing about. What should I do?*

**A** You should not sign the certification. You should inform your supervisor that you do not have the required information to make the certification. If your supervisor continues to insist that you sign the certification, you should immediately report the issue using one of the reporting channels available to you, including to the ECO, the CFO, the CEO, or the Helpline.

## 2.12 CONTRACT NEGOTIATIONS AND DISCLOSURES



When you are negotiating with the government or a prime contractor on behalf of JCM, including but not limited to, contracts, subcontracts, termination settlement proposals, modifications, or other agreements, you must at all times be accurate and complete in all representations. The submission of false, incomplete, or misleading information can result in contractual, administrative, civil, and/or criminal liability for JCM and the involved individuals.

**Q** *A key prime contractor has asked for a specific delivery schedule that you know JCM cannot meet. Can the Company agree to the schedule and just price in the penalties that JCM will pay for late delivery?*

A

No. When JCM is negotiating with the government or a prime contractor, all of the Company's representations must be accurate, honest, and complete. As such, the Company should propose an alternative schedule that it can meet.

## 2.13 **COMPLETE AND ACCURATE RECORDS**



All of JCM's records must be complete, accurate, and reliable in all material respects. Undisclosed or unrecorded funds, payments, or receipts are inconsistent with our business practices and are prohibited. All business and financial transactions must be executed in accordance with applicable law and Company policies and procedures. No one should even consider misrepresenting facts or falsifying records of any type or even attempt to rationalize doing so. Such actions are illegal, will not be tolerated, and will result in disciplinary action up to and including termination of employment. You are responsible for understanding and complying with our record keeping policy.

All records must be stored in a safe and secure location for the period of time required by law or Company policy, whichever is longer. Old records that are no longer needed will be disposed of securely and in accordance with applicable document retention schedules or legal statutes.

Certain laws and regulations govern the proper retention of many categories of records and documents that are commonly maintained by companies. Any record, in paper or electronic format, relevant to a threatened, anticipated, or actual internal or external inquiry, investigation, matter, or lawsuit may not be discarded, concealed, falsified, altered, or otherwise made unavailable, once an employee has become aware of the existence of such threatened, anticipated, or actual internal or external inquiry, investigation, matter, or lawsuit. When in doubt regarding retention of any record, an employee must not discard or alter the record in question and should seek guidance.

## 2.14 **TIME RECORDING & COST CHARGING**

The integrity of the JCM's timekeeping system is essential to the success of the Company. Timely and accurate completion of time sheets is an essential component of every employee's job with JCM.

Every employee must record their time accurately, completely, and in a timely manner. Time mischarging, even if unintentional and inadvertent, is serious and could expose the individual and Company to contractual, civil, criminal, and administrative liability, including suspension and debarment. Over-reporting, under-reporting, or misstating time or other entries on a report—even time devoted to non-billable activities such as marketing, proposal, or administrative work—may result in mischarging labor costs to clients.

Any allocation of costs to a government contract or subcontract contrary to the contract provisions or related laws and regulations is improper. Such improper allocation includes, but is not limited to, charging unallowable costs, the improper execution of employee time cards, charging time to one contract when it should be charged to another contract(s), charging unsupported overhead costs, incorrectly or

inaccurately classifying costs, shifting costs between contracts, or inaccurately representing costs on payment vouchers or progress billing invoices. It is critical that each and every statement and amount contained on a Company invoice be 100 percent accurate.

### **2.14.1 EMPLOYEE RESPONSIBILITIES**

It is imperative that you understand how to account for and charge your time. If you are ever unclear in any way on how to account for and charge your time, seek guidance from your supervisor before charging any time. Do not make any assumptions and do not charge any time until you obtain such clarification and fully understand what is expected of you. If you suspect time mischarging by a fellow employee, you are obligated to report such suspicions using one or more of the available reporting channels.

Employees must ensure that costs are recorded to the proper direct (contract) or indirect activity in accordance with contract terms or regulation. General time sheet accounting procedures are enumerated below. Refer to the JCM Associate Handbook for additional details on proper timekeeping procedures.

- Employees shall personally record their time on their time sheets. Execution and submission of a time sheet creates a certification as to the accuracy of the time sheet whether by electronic or manual means.
- Timesheets shall be filled out on a daily basis with blue or black ink.
- Employees shall record time actually worked in accordance with the Timekeeping procedure found in the JCM Associate Handbook.
- Corrections/adjustments to time sheets shall be done as soon as such corrections/adjustments become known and in accordance with the Timekeeping procedure found in the JCM Associate Handbook.

### **2.14.2 SUPERVISOR RESPONSIBILITIES**



Every supervisor must ensure that his/her subordinates understand how to account for and charge their time. While employees are familiar with how to account for and charge their time under JCM's standard fixed-price work, it is important that supervisors periodically remind them and reinforce JCM's policy. Prior to the commencement of performance of any non-fixed priced contract (a cost-type contract, time-and-materials contract, etc.), supervisors are required to ensure each member of his/her team understands how to account for and charge their specific time under the contract. It is the supervisor's responsibility to oversee each team member's time charging for the period and exercise appropriate diligence and scrutiny in reviewing time entries. If there are ever any questions or concerns regarding an employee's recorded time entry regardless of the amount of time involved, the supervisor must notify the accounting department immediately and, where appropriate, the ECO. The Team Lead must review the time sheets and labor adjustment forms for accuracy and completeness. The Team Lead also shall certify as to the accuracy by approving the time sheet with his/her signature.

**Q** *My supervisor asked me to charge my time to an incorrect charge number. What should I do?*

**A** Make sure that your supervisor knows what you are really working on. If your supervisor insists that you charge your time to an incorrect account or number, immediately report the issue using one of the reporting channels available to you, including to the ECO, the CFO, the CEO, or the Helpline.

**Q** *Jane in assembly observes Joe, also in assembly, clock in and then walk away from the area. Jane is concerned because the work Joe clocked into is sitting next to her and he is not working on it. Jane looks for Joe and sees him on his cell phone. 30 minutes later Joe is still on his cell phone. Should Jane report her observation?*

**A** Yes, Jane should immediately report the observation using one of the reporting channels available to her, including to her supervisor, the ECO, the CFO, the CEO, or the Helpline. Failure to report this observation would violate Jane's obligation to report suspected ethics violations.

## 2.15 BILLING & INVOICING



Prior to issuing an invoice to a customer, including a government customer or a prime contractor under a government contract, it is imperative that the responsible employees review and evaluate each entry on the invoice to ensure the billing is wholly consistent and compliant with the Company's contractual, legal, and regulatory obligations under the contract. All entries appearing on an invoice must clearly and precisely identify the nature of the supplies provided, the work performed, and the costs associated with the supplies and work. The customer should never have to guess as to what services or supplies are included in a particular entry. Such transparent and explicit billing ensures that our customers are fully aware of the work and costs underlying the invoice and, in the highly unusual instance that a mistake is made, such a practice affords the customer the opportunity to raise questions or concerns in a timely fashion before the mistake has reoccurred multiple times.

**Q** *While preparing a client's invoice I realized that the time billed on a particular project was inaccurate. I discussed this discovery with my supervisor, but he says that it's too late to submit a change and that he'll just charge the client less next month so it all evens out. What should I do?*

**A** You should report your concerns to your supervisor, the ECO, the CFO, the CEO, or the Ethics Helpline. It is never acceptable to knowingly submit or leave unresolved an inaccurate invoice. Doing so could lead to significant civil or criminal penalties for the Company.

## 2.16 COOPERATION WITH INTERNAL INVESTIGATIONS AND GOVERNMENT INVESTIGATIONS



JCM employees must be truthful and honest and cooperate with internal investigations and government investigations into the Company's business. Employees must preserve all documents, data, and other materials related to any matter subject to investigation, audit, or review. It is JCM's policy to cooperate with any reasonable and lawful request by federal, state, and municipal government investigators seeking information concerning JCM's operations for law enforcement purposes. At the same time, JCM and its employees are entitled to the safeguards provided by law, including the representation of counsel. Therefore, if you are contacted by any authority, notify the ECO and Company leadership immediately.

**Q** *As part of an internal investigation, I was asked about a specific event. I have relevant information about a related issue, should I disclose it to the investigator?*

**A** Yes. If you have information that you believe might be relevant to the investigation, you must provide it, even if the question was not specifically asked.

## 2.17 TRUTH IN NEGOTIATIONS ACT ("TINA")

JCM must comply fully with TINA in conducting business directly with the government or, indirectly, through subcontracting opportunities. Where applicable, TINA requires disclosure of "cost or pricing data" to the contracting officer (or designated representative) or prime contractor and certification that, as of a mutually agreed-to date, such data is current, accurate, and complete.

The purpose of TINA is to give the government an effective means of negotiating a fair and reasonable price with contractors. The rationale is that contractors have a superior bargaining position in negotiated procurements and, thus, TINA, was designed to level the bargaining positions of the parties and requires contractors to disclose all the cost or pricing information a reasonable person would deem relevant to the expected costs of contract performance. Since the government uses and relies on the cost or pricing data submitted in evaluating a contractor's proposal, any defect or omission may lead to a price reduction under the Price Reductions clause of the contract, administrative liability, civil liability, or criminal liability.

"Cost or pricing data" is defined as "all facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred." FAR 2.101.

In addition to accounting data, cost or pricing data includes but is not limited to: (1) vendor quotations; (2) nonrecurring costs; (3) information on changes in production methods and in production or purchasing volume; (4) data supporting projections of business prospects and objectives and related operations costs; (5) unit-cost trends such as those associated with labor efficiency; (6) make-or-buy decisions; (7) estimated resources to attain business goals; and (8) information on management decisions that could have a significant bearing on costs.

TINA is complicated and consultation with the applicable regulations is necessary where issues or questions arise. TINA generally applies to fixed-priced contracts and subcontracts, including modifications to either, where the contract or subcontract exceeds a certain dollar threshold. Presently, that threshold is \$2,000,000. However, in certain circumstances, the head of a contracting agency can authorize a contracting officer to seek cost or pricing data for contract actions exceeding the simplified acquisition threshold.

Where TINA applies, the contractor must submit such information and a Certificate of Current Cost or Pricing Data certifying that to the best of its knowledge and belief, the cost or pricing data submitted is current, accurate, and complete as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price. Typically, the date of agreement is the date of the handshake.

## **2.18 EXCEPTIONS TO TINA**

There are several exceptions to TINA. First, TINA only applies where the value of the contract action is \$2,000,000 or greater. Where the dollar threshold is met, there are several exceptions, including: (1) where the prices are set by a governmental body through law or regulation (i.e., utility rates); (2) where commercial items are being procured (includes modifications to commercial item contracts); (3) where adequate price competition exists; or (4) where TINA is waived.

- **Prices set by law or regulation:** Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.
- **Where commercial items are procured:** Any acquisition of an item that the contracting officer determines meets the commercial item definition in FAR 2.101, or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for certified cost or pricing data. The FAR provides additional rules on the TINA exception for commercial item acquisitions.
- **Adequate price competition:** Adequate price competition exists in each of the following: (a) the government receives two or more, independent, responsible offers that satisfy the government's requirements; (b) one offer is submitted but the contracting agency had a reasonable expectation that two or more, independent, responsible offers would submit offers; (c) where the price analysis of the offer demonstrates that the price is reasonable in comparison with current or recent prices for the same or similar items purchased under comparable terms and conditions under contracts that resulted from adequate price competition; or (d) where waived, in writing, by the head of the contracting agency.
- **Waiver of the TINA requirements:** The head of the contracting activity ("HCA") may, without power of delegation, waive the requirement for submission of certified cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of certified cost or pricing data.

## **2.19 INFORMATION OTHER THAN COST OR PRICING DATA**



Even if TINA is not applicable, the contracting officer may request and obtain information other than certified cost or pricing data “to the extent necessary to determine the reasonableness of the price of the contract.” Such information does not need to be certified, but any false information could lead to criminal or civil liability.

References: FAR 2.101; FAR Subpart 15.4.

## **2.20 RESTRICTIONS ON OBTAINING NON-PUBLIC SENSITIVE INFORMATION**

Companies are prohibited, when competing for a U.S. government contract or subcontract, from knowingly obtaining “source selection information” or “bid or proposal information.” There are also laws and regulations restricting one company from improperly obtaining and utilizing a competitor’s confidential business information. Additionally, there are restrictions placed on government officials regarding their communications with contractors.

## **2.21 SOURCE SELECTION INFORMATION**

Source selection information includes: proposed costs or prices submitted to the government; source selection plans and technical evaluation plans; evaluations of technical and cost/price proposals by the government, competitive range determinations, rankings of bids, proposals, or competitors, and/or reports and evaluations of source selection panels, boards, or advisory councils; and any other information marked Source Selection Information.

All employees are strictly prohibited from seeking to obtain, obtaining or accepting source selection information regarding JCM’s competitors from government sources. Such activity may constitute a violation of the Procurement Integrity Act and may subject the Company and the individual in question to severe criminal and civil penalties. Receiving or using such proprietary or source selection information under conditions that could create even the appearance of impropriety should be avoided. Any questions regarding such information should be directed to JCM’s ECO.

## **2.22 CONTRACTOR BID OR PROPOSAL INFORMATION**

Contractor bid or proposal information may include any information submitted by a contractor to a federal agency as part of or in connection with a bid or proposal to enter into a federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly. Examples include: cost or pricing data; indirect costs and direct labor rates; proprietary information about manufacturing processes, operations, or techniques; or information marked by the contractor as “contractor bid or proposal information” or containing a similar restriction on disclosure.

These restrictions also prohibit current and former government employees from knowingly disclosing source selection information or bid or proposal information. Accordingly, special training will be provided to former government employees hired by the Company to ensure that they comply with these restrictions.

**Q** *You are working on a very important and competitive proposal for the Company and have heard through JCM's consultants that pricing is going to be the deciding factor in the Government's award decision. One consultant said that he learned pricing information from one of JCM's competitors based on his connections. He did not provide any specific pricing information, but said that once he sees our proposal he can help make sure that our pricing information looks competitive. Can you obtain this information?*

**A** Absolutely Not. The consultant's information likely constitutes "bid or proposal information" or "source selection" information. You must not accept any information of this kind and should immediately talk to JCM's ECO regarding the consultant's offer.

**Q** *One of JCM's customers (a prime contractor) inadvertently sent you a file that includes information about a competitor's bid for a procurement that JCM is also bidding on. What should you do?*

**A** Whenever you receive a file that you suspect contains competition-sensitive information, follow these simple rules: Don't read the file; Don't use the file; Don't print the file; Don't talk about the file with other JCM employees; Don't forward the file to anyone else at JCM; and Immediately report the incident to JCM's ECO.



## **2.23 OTHER CONTRACTORS' CONFIDENTIAL BUSINESS INFORMATION**

Furthermore, just as JCM does not want competitors trying to obtain or use JCM's confidential business information, JCM does not seek to obtain a competitor's confidential business information. This restriction would pertain to all competitor confidential business information, even if not submitted to the government in connection with a procurement.

We do not gather any proprietary information about our competitors for competitive purposes that is not in the public domain or otherwise available publicly. You may not seek to obtain such information for such purposes either on your own or by acting through a third party. When we team on an opportunity or engage a competitor as a subcontractor, we often receive proprietary or other sensitive information under contractual confidentiality restrictions that limit how that information may be used. When this is the case, you must use the information only for the purposes allowed by the contract and no others.

Similarly, as a result of prior employment elsewhere, you or other employees might possess a company's or client's proprietary information. You may neither disclose that information to other employees nor use it in conducting the Company's business unless the information has since become available publicly. This rule applies regardless of whether or not you signed a non-disclosure agreement ("NDA") with your former employer. You also may not ask other employees for proprietary information obtained from their prior employers. These restrictions do not pertain to information that is publicly available.

References: FAR 3.104.

**Q** *The Company has just hired a new employee who previously worked for one of JCM's competitors. Can you ask the new employee about her former employer's competitive data and proprietary processes?*

**A** No. The simple rule here is that you should not ask for any confidential or proprietary information about the new employee's former employer. Moreover, JCM, during orientation training, will inform the new employee not to disclose such information.

**Q** *You spent the first 10 years of your career working for one of JCM's competitors. Can you use the know-how that you gained from your former employer when doing your job at JCM?*

**A** Yes. The general knowledge you gained in your former position can be used over the course of your career at JCM. However, this does not mean that you can use your former employer's confidential or proprietary information or processes when performing your job at JCM. Thus, since the lines are not always clear in these situations, you should discuss the issue with the ECO.

## **2.24 GOVERNMENT OFFICIALS MAY NOT SHARE "NONPUBLIC INFORMATION"**

Regulations prohibit government officials from allowing the improper use of "nonpublic information" obtained during their federal employment to further his/her own private interest or that of another.

Nonpublic information is defined broadly to include "information that the employees gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public."

References: FAR 5 C.F.R. § 2635.703(a)-(b).

## **2.25 PROPER USE OF NONPUBLIC INFORMATION IN PERFORMING AND BIDDING ON GOVERNMENT CONTRACTS AND SUBCONTRACTS**

Federal agencies rely on contractors like JCM to help accomplish a broad array of complex and mission critical functions. As a federal government contractor, the Company is entrusted to perform specific requirements and tasks on behalf of its federal government customers. To facilitate contract and subcontract performance, the Government may grant JCM employees access to nonpublic government information including, but not limited to: government requirements information; systems information; procurement-sensitive information; source selection information; personally identifiable information; and/or classified information.

JCM employees must act with due care and take appropriate measures to safeguard nonpublic government information as required by their assigned contracts and subcontracts, specific NDAs and other restrictive agreements, and applicable federal laws and regulations. In some cases, as a condition of contract/subcontract performance, the Government may impose enhanced restrictions on JCM

employees regarding the use of nonpublic government information and may require JCM employees to execute personal NDAs. Such agreements not only can restrict employee activities during performance, but also can impose restrictions and obligations on employees beyond the contract/subcontract period of performance. JCM employees must comply at all times with any Government-imposed restrictions regarding nonpublic government information.

When performing as an incumbent contractor, JCM employees may acquire specific firsthand knowledge and expertise regarding a government program or project. While an employee may know certain information regarding the program or project and may have had a role in developing or creating nonpublic government information, a JCM employee may access and use this information only to the extent authorized by the Government. Absent the Government's written consent, JCM employees shall not use nonpublic government information for any purpose other than performance of their assigned federal government contracts and/or subcontracts. Employees, however, may draw upon their firsthand knowledge and technical experience in delivering services and preparing proposals to JCM's U.S. Government customers provided that they do not leverage anything beyond their own memory (i.e., employees cannot use nonpublic government information such as draft documents, deliverables, email correspondence, and other work products even when such information was produced by JCM). While leveraging the incumbent's advantage is permissible, employees must ensure that their activities do not demonstrate preferential treatment or other improper action that could be construed as an organizational conflict of interest that gives JCM an unfair competitive advantage. Any questions regarding such information should be directed to JCM's ECO.



## **2.26 AVOIDING CONFLICTS OF INTEREST OR EVEN THE APPEARANCE OF A CONFLICT**

A personal conflict of interest occurs whenever the private interests or relationships of an individual interfere or appear to interfere with JCM's interests. Avoid any relationship, influence, or activity that might impair, or even appear to impair, your ability to make objective and fair decisions when performing your job on behalf of JCM.

Although it is virtually impossible to list every circumstance that may create the appearance of a conflict of interest, here are some other ways a conflict could arise:

- Employment/consultancy with a competitor, supplier or customer while employed by your company;
- Acceptance of gifts, payment, or services from suppliers seeking to do business with your company;
- Placement of business with a firm owned or controlled by your family; and
- Ownership of, or substantial interest in, a company that is a competitor, customer, or a supplier.

Apparent conflicts of interest can arise easily. If you feel that you may have a conflict situation, actual or potential, you shall report all pertinent details to the ECO.

In addition, Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. 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. While many Federal laws and regulations place restrictions on the actions of government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

**Q** *You've become good friends with one of JCM's long-standing suppliers. Your kids are also good friends and you are thinking about going on a family vacation together. Would this create a conflict of interest?*

**A** Given the appearance of a potential conflict, you should talk to the ECO about the situation. Indeed, even if you truly think that you can separate your personal friendship and your business relationship, others may look at this relationship differently and jump to the conclusion that you will favor this particular supplier in future business dealings with JCM. For that reason, you probably should not be involved in business decisions concerning this supplier or all decisions should undergo a separate review and approval process.

**Q** *A supplier invites you to attend a trade show as his guest, and offers to pay for your hotel and airfare. Can you accept?*

**A** No. The supplier's offer must be declined because the complimentary travel and conference fees could create the potential for a conflict of interest or appearance of one, including a potential kickback. JCM may still desire for you to attend the event but at JCM's cost. Any offers like these should be referred to the ECO.

**Q** *Your brother works for a major JCM supplier. Does that create a conflict of interest?*

**A** Maybe. If you are not responsible for making procurement decisions concerning this supplier, there likely is no conflict of interest. However, if you are involved in procurement decisions affecting this supplier, it could create a conflict or appearance of a conflict so you must disclose this information to the ECO so that JCM can ensure that doing business with the supplier is not influenced in any way by your family relationship.

## **2.27 ORGANIZATIONAL CONFLICTS OF INTEREST**

You also must be attentive to so-called "organizational conflicts of interest," or "OCIs" which may result from prior government work performed by your company.

The organizational conflicts of interest rules address the general situation where, because of previous work for the U.S. Government, a company is deemed to be unable to provide impartial assistance or advice to the U.S. Government, the company's objectivity in performing work is impaired, or the company has an unfair competitive advantage. The underlying principles are to prevent the existence of conflicting roles that might bias a contractor's judgment and to prevent unfair competitive advantage. An unfair competitive advantage exists where a contractor competing for award for any Federal contract possesses and uses—

- Proprietary information that was obtained from a Government official without proper authorization;
- Source selection information (as defined in FAR 2.101) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract; or
- Nonpublic government information obtained while performing a government contract or subcontract unless the government has authorized its use (i.e., consider info given to a contractor under a Non-Disclosure Agreement or through access to a restricted access government system).

Although OCIs often arise in connection with contracts to provide advisory and assistance services or systems engineering and technical assistance to the Government, they can arise in other circumstances.

There are three types of OCIs that generally arise in government contracting:

- Unequal access to information – Through its performance of one government contract, a company has or will have access to non-public information that could provide it an unfair advantage in competing for another government contract;
- Biased ground rules – Through its performance of one government contract, a company is or will be in a position to set the grounds rules (such as through drafting specifications or the statement of work) for a different acquisition and thereby influence that future competition, whether intentionally or not, in its own favor; and
- Impaired objectivity – A contractor or any of its subcontractors may be unable to render impartial advice or judgments to the Government. This type of OCI generally arises when a contractor or subcontractor is in a position to evaluate the performance of another business unit of the same company or advise the Government regarding selection of contractors, which could include a business unit within the same company.

If an employee foresees that a potential OCI might exist for a particular contract, the employee should report the matter to his/her supervisor, the ECO, the CFO, or the President/CEO. The ECO will evaluate if there is in fact an OCI, and, if so, if the OCI can be avoided and/or mitigated.

## **2.28 POST-GOVERNMENT EMPLOYMENT RESTRICTIONS**

Laws and regulations concerning conflicts of interest apply to employment discussions with and the hiring of former or current government personnel. These rules include provisions governing contact or negotiations with current and former government employees to discuss their potential employment with JCM, the hiring of such former government employees, and their retention by JCM as consultants or subcontractors. They also cover what activities former government employees may not engage in after leaving government service. These rules are complex. You are required to consult the President/CEO before contacting any former or current government employee regarding employment, or if any such person approaches you regarding employment with or consulting for JCM. Below is a brief summary of the restrictions.

## **2.29 RESTRICTIONS ON EMPLOYMENT DISCUSSIONS**

The restrictions pertain to government officials who participate personally and substantially in a competitive federal agency procurement in excess of the simplified acquisition threshold. Where a government official receives an unsolicited contact regarding employment from an offeror competing for such a procurement, the official must notify his supervisor and the designated ethics official immediately, and promptly reject the employment opportunity or disqualify himself from further participation in the

procurement until the discussions have concluded without employment or the contractor is no longer an offeror in that procurement.

**Q** *At a recent trade show you ran into an old friend who's going to be retiring next month from his position at the Navy. Your friend asked you if there might be any positions for him at JCM. He used to be a Contracting Officer so you know his experience would be valuable to JCM. Can JCM hire your friend as soon as he retires from the Navy?*

**A** You should refrain from any further communications with your friend regarding employment at JCM and report your previous conversation to JCM's ECO. Indeed, the law restricts JCM's ability to engage in contacts with current federal agency officials relating to future employment opportunities prior to them notifying their ethics office and recusing themselves from certain activities.



### **2.30 ONE-YEAR COOLING OFF PERIOD ON HIRING CERTAIN FORMER AGENCY OFFICIALS**

A former official may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official --

- Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;
- Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or
- Personally made for the federal agency a decision to -- (A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor; (B) establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000; (C) approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or (D) pay or settle a claim in excess of \$10,000,000 with that contractor.

### **2.31 RESTRICTIONS ON A FORMER GOVERNMENT OFFICIAL AFTER LEAVING FEDERAL SERVICE**

The restrictions bar a former government employee from representing another person or entity by making a communication to or appearance before a federal department, agency, or court concerning the same

“particular matter involving specific parties” (e.g., the same contract or grant) with which the former employee was involved while serving the Government. Depending upon the government official’s prior involvement in and role with the government, the restrictions vary:

- If the matter was pending under the employee’s official responsibility during the employee’s last year of government service, the bar lasts for two years;
- If the employee participated in the matter “personally and substantially,” the bar is a lifetime ban;
- In addition, certain high-level officials are subject to a so-called “cooling-off” period. For a period of one year after leaving a “senior” position, a former senior employee may not represent another person or entity by making a communication to or appearing before the former employee’s former agency to seek official action on any matter; and
- A former “very senior” employee is subject to a similar prohibition, except that the bar lasts for two years and extends to contacts with specified high-level officials at any department or agency.

References: FAR 3.104; 18 U.S.C. § 207.

## **2.32 COMPLIANCE WITH ANTITRUST LAWS**

A wide range of transactions or practices are prohibited under the antitrust laws of the United States. No agreement or understanding may be made with competitors to fix or control prices; to refrain from bidding, to bid at a certain price or to submit a “protective” bid (a bid that is obviously less favorable than a competitor’s bid), to allocate products, customers, markets, or territories; to boycott certain customers or suppliers; to exchange information with competitors about prices; or to refrain from or limit the manufacture, sale or production of any product.

It is JCM’s policy to make sales on the basis of product and service excellence, fair pricing and honest salesmanship, and to make purchases on the basis of quality, service and price. It is against JCM’s policy to seek, obtain, or retain business by agreeing to purchase supplies from a particular customer. There is nothing improper in selling JCM’s services to companies that happen to be its suppliers or in buying from suppliers who happen to use its services, so long as this does not result from a practice of reciprocity.

Antitrust laws sometimes restrict the use of joint ventures to produce or market a product or service. Teaming agreements, which are frequently used to bid for work under government contracts, may also be governed by the antitrust laws. In general, joint ventures and teaming agreements are not prohibited where cooperation between companies is necessary to provide all of the products or services required under a certain contract. Nevertheless, in some circumstances JCM may be obliged to inform the government of its plans to form a joint venture or teaming arrangement with another company to bid on a government contract.

You should be aware that any of the following may violate antitrust laws:

- Price fixing;
- Boycotting suppliers or customers;
- Pricing intended to run a competitor out of business;
- Disparaging, misrepresenting or harassing a competitor;
- Teaming with companies to try to block competitors and prevent market entry;

- Bribery, kickbacks, or stealing trade secrets;
- Entering into agreements or understandings with competitors to divide the market in which they compete by allocating territories or markets, and/or limiting the production or sale of products or product lines;
- Conditioning the sale of one product/service on the sale of another unwanted product/service; and/or
- Conditioning the sale or purchase of products/services on the requirement that the seller or purchaser not do business with competitors of the corporation.

You must avoid engaging in or discussing any of the above activities with competitors, suppliers, or customers, and must report any suspected violations.

References: FAR Subpart 3.3.

**Q** *During a trade show event, you meet an individual who works for a competitor and get together after the show for dinner. During the dinner, this individual suggested that you work together to “help both of our companies” and to avoid beating each other up on pricing. In particular, this individual suggests that you alternate making high bids for certain work so that you are not competing directly and that each receives 50% of all work but at higher prices. What should you do in this situation?*

**A** You should report this conversation immediately to the ECO because this individual is suggesting illegal anticompetitive behavior. In fact, you and the Company could face serious civil and criminal penalties if you agreed to this individual’s proposal.



### **2.33 GIFT POLICY - GIVING OR ACCEPTING ITEMS OF VALUE**

A “gift,” for purposes of this Code, is defined broadly as **anything of value** exchanged without payment of fair compensation for the item or service. While sometimes gifts are okay to give or receive, depending upon the value of the gift and the parties involved, other times, the gift can constitute improper gifts, illegal gratuities or bribery. Below is an overview of these issues.

It is improper to give, solicit, or receive any item of value from customers, vendors, subcontractors, or competitors or to any public official **to receive favorable treatment** in connection with a prime contract or subcontract relating to a prime contract with the U.S. Government.

Additionally, accepting or giving any item of value, **even if not done to receive favorable treatment**, may be a violation of law and/or raise **appearances of impropriety** and questions as to JCM's business ethics. It is imperative that all employees guard against creating even an appearance of impropriety.

Because of the sensitivities associated with gifts, the Company has devised the following policies depending upon the parties involved.

### **2.33.1 GIFTS TO U.S. GOVERNMENT OFFICIALS**

Federal criminal and regulatory laws prohibit entertaining, and the offer, promise or gift of anything of value to an employee, agent, or official of the federal government **with an intent to influence** such individual in the performance of an official act, or for (or because of) an official act performed or to be performed by the public official. A number of state and lesser governmental bodies as well as foreign governments have similar statutes or regulations. In addition, as discussed elsewhere herein, the Foreign Corrupt Practices Act, a federal criminal statute, makes it illegal to offer, pay or promise money or anything of value to any foreign government official, political party or candidate for political office, (or to anyone else who might turn over money or anything of value to such a person or political party) for the purpose of directly or indirectly obtaining or retaining business.

JCM's policy is that nothing should be done that may give even an appearance of improperly influencing a government official, whether here in the United States or abroad. The consequences of violating these criminal statutes can be severe for both the Company and the individual involved.

Under applicable law, any item of value offered or given to an employee of the U.S. Government, where no consideration of equal or greater value is received, may be an improper gift, an illegal gratuity, or a bribe. The items or services involved can take almost any form.

Federal officials are governed by certain gift rules, which generally prohibit them from accepting gifts. Federal government employees are permitted to accept certain unsolicited items such as:

- Gifts with a **market value of \$20 or less per occasion**, aggregating **no more than \$50 in a calendar year** from any single source;
- Inconsequential items of a nominal value if offered infrequently (i.e., coffee, cookies, chips, pastries, soda, juice, etc);
- Publicly-available discounts and commercial loans; and
- Free attendance at certain widely-attended gatherings, such as conferences and receptions, when the cost of attendance is borne by the sponsor of the event.

While government officials are permitted to accept gifts of \$20 or less per occasion, which could include meals, engaging in the practice of providing gifts risks creating the appearance of impropriety in the contractor-government relationship. To avoid creating even the appearance of impropriety, JCM employees are prohibited from offering or giving **anything of value to any government official except for:**

- Modest refreshments when the official is visiting JCM's offices and the official would not be able to purchase refreshments otherwise. Modest refreshments are limited to coffee, soft drinks, and light snacks (i.e., a piece of fruit, cookie, donut); and
- Advertising or promotional items bearing JCM's name (e.g., a paperweight, key chain, tote bag, coffee mug, with a clear market value of \$20 or less per occasion, not to exceed \$50 per calendar year).

Accordingly, if your interaction with a government employee may include something more than modest refreshments, be sure to make it clear at the outset that you expect the government employee to pay his or her own way.

References: FAR 3.101-2; 5 C.F.R. Part 2635. Each executive branch agency also maintains supplemental gift rules.

**Q** *You have become friendly with a government contracting officer who you met as a result of JCM's work with the official's agency. Can you offer to take the official out to a Lakers basketball game?*

**A** No. Even though your intentions may be innocent, the offer of a ticket to a sporting event likely would exceed the \$20/\$50 gift rule. But, even if the ticket value was below \$20, JCM does not wish for you to do so because such creates the appearance of conflict of interest even if one does not exist. If you develop a friendship with a government official, you may attend sporting events so long as each individual pays his/her own costs.

**Q** *You just completed giving a government customer a tour of JCM's facility and you desire to have a cup of coffee. May you offer some coffee to the government customer?*

**A** Yes. JCM authorizes individuals to offer government customers, when they are on-site at JCM's facilities, modest non-alcoholic refreshments so long as they are below \$20 in value, including water, coffee, juice, soda, etc.

**Q** *Following a trade show, you go out to dinner in a group with government officials. May you pick up the tab for the group?*

**A** No. While the gift rules allow gifts up to \$20 per occasion (no more than \$50 per year), JCM does not wish to engage in such activities as it concerns government customers as the gift could create the appearance of a conflict of interest.



### **2.33.2 GIFTS TO COMMERCIAL PARTIES**

The strict gift rules pertaining to U.S. Government officials are not applicable to commercial customers, but JCM always seeks to win business on the basis of quality, price, excellent service, and fair contract terms and conditions. JCM expects all employees to exercise moderation and prudent judgment in offering and accepting gifts from commercial customers and commercial suppliers. JCM's policy as it

relates to giving gifts to and accepting gifts from commercial customers is that the total value of the gift must not exceed \$100.00 per person, unless approved in advance, in writing, by Company leadership.

**Q** *At a recent trade conference, you placed your JCM business card in a company's raffle and won an Apple Watch. If JCM does not currently work with this company, can you keep the Apple Watch?*

**A** Yes. You are permitted to accept the Apple Watch if the raffle was open to all attendees at the conference. However, in such situations, it is best practices to talk with your manager and the ECO to ensure that accepting such a gift could not reasonably be construed as an attempt by the offering party to secure favorable treatment with JCM down the road.

## 2.34 **BRIBERY & ILLEGAL GRATUITIES**

It is improper to give or accept bribes and illegal gratuities.

Bribery refers to a situation where an individual or company corruptly gives or offers anything of value to a public official with the specific intent to influence an official act or induce the public official to commit some fraud or violate an official duty. In the bribery context, the gift is viewed as a "quid pro quo" for the official action taken by the government official.

In the illegal gratuities context, the government need not prove corrupt intent or that a "quid pro quo" existed; just that there is an offer or acceptance of anything of value "for or because of an official act." As a practical matter, the illegal gratuities statute prohibits all gifts to public officials made as a reward for an act that they would perform anyway. Oftentimes even permissible gifts create the appearance of an illegal gratuity, JCM prohibits all employees from providing gifts to government officials.

References: FAR 52.203-3 Gratuities; FAR Subpart 3.2.

**Q** *A military contracting officer approaches you and suggests that he could use some extra money and inquired into whether JCM needs any inside information. What should you do?*

**A** You should contact the ECO immediately. The official's statement suggests that he is looking for a bribe.

## 2.35 **KICKBACKS**

JCM is committed to ensuring that all transactions and business dealings with its prime contractors, subcontractors, and suppliers are conducted in compliance with the provisions of the Anti-Kickback Act. The Anti-Kickback Act prohibits prime contractors and subcontractors from offering, soliciting, providing, or accepting **anything of value** for the purpose of obtaining or rewarding favorable treatment in connection with the award of government prime contracts and subcontracts.

A "kickback" includes anything of value, including: any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a government prime contract or subcontract.

JCM deals fairly and honestly with its suppliers and its prime contractor customers. This means that our relationships are based on price, quality, service, and reputation, among other factors. Employees dealing with suppliers should carefully guard their objectivity. Specifically, no employee should accept or solicit

any personal benefit from a supplier or potential supplier. Similarly, no employee should offer or provide any personal benefit to a prime contractor customer.

It is JCM's policy that:

- Employees must never pay, offer, or give a kickback in an effort to receive a contract or subcontract;
- Employees must never solicit or receive a kickback from any party seeking a contract;
- Employees must never include, directly or indirectly, the amount of any kickback: (i) in the contract price charged by JCM's subcontractor to JCM; or (ii) in the contract price charged by JCM to the government or to a prime contractor, or to any higher-tier contractor with whom we work; and/or
- Any employee, who offers, provides, solicits, accepts or discusses offering or accepting a "kickback" will face prompt disciplinary action.

Under the Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58) and FAR 52.203-7(c)(2), JCM has an affirmative disclosure obligation to the Government where it has "reasonable grounds to believe" that a violation of the Anti-Kickback Act may have occurred.

Should you suspect that a kickback or attempted kickback has occurred, you must report it immediately to the Company so the Company can investigate the matter and determine whether it has any mandatory reporting obligations.

References: FAR 3.502-2; FAR 52.203-7 (Anti-Kickback Procedures).

**Q** *A key prime contractor's procurement manager tells you that other suppliers have "donated money" to send her and her significant other to Paris to celebrate their wedding anniversary. She asks you whether JCM is willing to contribute \$1,000 to help fund her trip. What should you do?*

**A** Neither you, nor JCM should contribute money to the procurement manager's trip. Because making such a payment could be construed as an attempt by JCM to secure favorable treatment in connection with the customer's government contract, any contribution by JCM would likely be considered an impermissible kickback. You should therefore report the matter immediately to JCM's ECO.

## **2.36 COMPLIANCE WITH IMMIGRATION LAWS**

Federal immigration law requires all employers to verify both the identity and employment eligibility of all persons hired to work in the United States. FAR 52.222-54 requires contractors to enroll in a federal program known as E-Verify and to verify the employment eligibility of all new hires who are working in the United States within three business days after the date of hire. The program also requires contractors to verify the employment eligibility of all employees assigned to the contract or subcontract.

It is JCM's policy to hire only employees who are legally authorized to work in the United States. JCM participates in the E-Verify program (<http://www.dhs.gov/E-Verify>) operated by the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Service. The program enables JCM to verify the employment eligibility of all newly-hired employees. JCM expects you to notify your supervisor of any information indicating that an individual who is working for JCM is ineligible to work in the United States.

References: FAR Subpart 22.18.

## 2.37 **COMPLIANCE RISKS FACING INTERNATIONAL PROCUREMENT TRANSACTIONS**

### 2.37.1 **BUY AMERICAN ACT**

The Buy American Act (“BAA”) establishes a domestic preference for the use of articles, materials, and supplies manufactured in the U.S. when the government purchases such for use within the United States. This is a preference and does not prohibit the use of foreign materials where the cost of the domestic end item is found to be unreasonable, an issue discussed in further detail below. The BAA applies to supply and construction contracts and “contracts for services that involve the furnishing of supplies,” but does not apply to pure service contracts; separate rules govern construction contracts and are not addressed herein.

- BAA applies to contracts above the micro-purchase threshold; and
- A two-part test must be satisfied in order for the product to qualify as a “domestic end product.”
  - First, the product must have been manufactured (assembled) in the United States. The assembly of an end product’s components in the U.S. will constitute domestic manufacture so long as it is more than simple assembly; mere reassembly of foreign components will not constitute domestic manufacture. Further, work on components that does not alter the form or use of the components does not necessarily constitute manufacturing.
  - Second, the cost of domestic components comprising the product must exceed 50-percent of the cost of all the components. Components are defined as “an article, material, and supply incorporated directly into an end product or construction material.” The country where the component is mined, produced, or manufactured becomes the component’s country of origin; there is no subcomponent cost test for determining a component’s country of origin test. In determining the cost of a component, for purchased components, transportation costs should be included. For manufactured components, all costs associated with the manufacture should be included, including transportation, overhead but exclude profit. *This component test has been waived for the acquisition of commercial items meaning that you need only satisfy the first part of the test.*
- For DoD acquisitions, the component test is expanded to include U.S. and “qualifying country components” as opposed to just “domestic” components.
  - “Qualifying country” means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country.

### 2.37.2 **EXCEPTIONS TO THE BAA**

The BAA contains several exceptions, which were designed to give procuring agencies flexibility. In relevant part, these include:

- **Use outside the U.S.:** BAA does not apply to contracts where the solicitation calls for end products that will be used outside the U.S.

- **Information technology commercial items:** BAA does not apply to acquisitions of information technology commercial items where the procurement is at a certain threshold.
- **Unreasonable cost:** Where the price of the domestic end product is “unreasonable,” award may be made to the lowest priced foreign offer. The cost of a domestic end product is “unreasonable” if it is not the low offer when the evaluation factors are applied to the foreign offers. Civilian agencies add a 6 percent or 12 percent evaluation factor to the price of the foreign offer depending upon whether the “lowest domestic offer” is a small or large business. If the adjusted price of foreign end product is lower than the price offered for the domestic end item, the domestic price is deemed unreasonable and award is made to the lowest priced foreign offer.
  - Notably, for DoD, a 50 percent evaluation factor is added to the price of the foreign offer. (DFARS 225.502(c)). The FAR contains a list of items that have been determined to be unavailable.
- **Non-availability of product:** BAA does not apply to products that are not reasonably available in commercial quantities and satisfactory quality, as determined by the agency.
- **Public interest:** Where the application of the BAA would not be in the “public interest,” it may be waived. This exception applies where an agency has an agreement with a foreign government that provides a blanket exception to the BAA; qualifying countries are listed at DFARS 225.872-1.

### 2.37.3 TRADE AGREEMENTS ACT

The Trade Agreements Act (“TAA”), where applicable, waives the BAA requirement for supplies from certain designated countries under certain circumstances. Designated country end products are treated the same as domestic end products and no evaluation factor is applied. The designated countries are countries that are parties to certain trade agreements with few exceptions. To encourage countries to become parties to such trade agreements, the TAA, however, creates an absolute prohibition on the procurement of foreign end products that are not from a designated country. Thus, where the TAA is applicable to the procurement, a contractor is prohibited from supplying end products from certain countries (*i.e.*, China). As a general rule, the TAA is only a relevant consideration where the supply contract exceeds a certain dollar threshold and the threshold depends upon the origin country.

A product is considered to be a “designated country end product” if it is “wholly the growth, product, or manufacture of the designated country.” “Designated country end product” includes World Trade Organization Government Procurement Agreement country end products, Free Trade Agreement country end products, least developed country end products, and Caribbean Basin country end products.

Where the article, in question, consists in whole or in part of materials from a non-designated country, it may, nonetheless, qualify as a designated country end product where it “has been substantially transformed [in a designated country] into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.” The concept of substantial transformation is fact intensive and focuses on whether the product was subject to a manufacturing process in that country which resulted in a “new and different” article of commerce bearing a new name, character or use. Rulings from the U.S. Customs Service have developed five general characteristics of manufacturing operations in deciding whether a manufacturing process caused a substantial transformation.

Unlike the FAR implementing provisions, which base waivers to the BAA solely upon whether a designated country is involved, the DFARS provisions restrict the TAA waiver to the BAA to *designated products* from designated countries (*i.e.*, products that fall within one of the specified “Federal supply

groups” (“FSG”), and further states that “[i]f an end product is not in one of the listed groups, the trade agreements do not apply” meaning that the TAA does not apply to the procurement and the BAA applies.

#### **2.37.4 EXCEPTIONS TO THE TAA**

The TAA does not apply to: (1) acquisitions set aside for small businesses; (2) the purchase of arms, ammunition or war materials or purchases indispensable for national security or for national defense purposes; (3) acquisition of end products for resale; (4) acquisitions not using full and open competition if authorized by certain sections of the FAR; (5) where offers of domestic or eligible products are either not received or are insufficient to fulfill the government’s requirements; and (6) where DoD has waived the TAA and entered into a reciprocal procurement agreement or memorandum of understanding with a country.

Any questions concerning the application of the BAA or TAA to a particular contract shall be brought to the attention of the ECO, the CFO, or the President/CEO.

#### **2.37.5 BERRY AMENDMENT**

The Berry Amendment applies to DoD procurements exceeding the simplified acquisition threshold and requires that DoD procure food, clothing, fabrics, specialty metals,<sup>1</sup> and hand tools from domestic sources or, in certain instances, qualifying countries. The Berry Amendment, unlike the BAA, applies to contracts performed within the U.S. and outside the U.S. The Berry Amendment requires that the end item be entirely domestic (i.e., there is no component test allowing up to 49-percent of foreign components as with the BAA).

As to procurements where specialty metals are being delivered as the end item, the Berry Amendment requires that any specialty metals delivered shall be melted or produced in the United States or its outlying areas.

As to procurements for an end item containing specialty metals, the Berry Amendment applies to procurements for the following items or components of the following items if such items or components contain specialty metal: (A) aircraft; (B) missile or space systems; (C) ships; (D) tank or automotive items; (E) weapon systems; and (F) ammunition. Allows specialty metals to be melted or produced in a “qualifying country” in addition to the United States or its outlying areas.

However, it no longer applies to acquisitions outside the U.S. in support of combat operations or for acquisitions of food, specialty metals, or hand tools in support of contingency operations or times of unusual and compelling urgency.

There are exceptions to the Berry Amendment and it can be waived under certain circumstances.

#### **2.37.6 BALANCE OF PAYMENTS PROGRAM**

The Balance of Payments Program applies to contracts for the purchase of supplies for use outside the United States and restricts the purchase of supplies that are not domestic end products for use outside the United States. Its restrictions are similar to those of the Buy American Act.

References: FAR Part 25; DFARS Part 225.

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<sup>1</sup> The term specialty metals is defined in FAR 252.225-7008 Restriction on Acquisition of Specialty Metals, and FAR 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

### 2.37.7 FOREIGN CORRUPT PRACTICES ACT

The Company is committed to fair and open business conduct throughout the world. Underlying this commitment is the conviction that businesses should compete on the basis of price, quality and service, and in full compliance with applicable law. One of the applicable laws is the Foreign Corrupt Practices Act (“FCPA”), which prohibits U.S. companies and their representatives from trying to obtain or retain business by offering improper gifts or payments to foreign officials.

The FCPA and other anti-bribery laws and regulations prohibit payments of money or giving any gifts or other items of value, directly or indirectly, to any non-U.S. Government officials to obtain or retain business or to secure any improper business advantage. Specifically, it prohibits you, directly or through a third-party intermediary, from giving, offering, or promising anything of value to non-U.S. Government officials—defined very broadly—or political parties, officials, or candidates for the purpose of influencing them to misuse their official capacity to obtain, keep, or direct business or to gain any improper advantage.

JCM does not currently do direct business with any foreign government. However, should you encounter a foreign government official, you are prohibited from providing the official with any item of value unless the official is on-site at JCM’s facility in which case you may follow JCM’s policy governing U.S. Government officials.

**Q** *I am responsible for overseeing the work of a subcontractor in a foreign country. The subcontractor told me that certain shipments are delayed at the border because a foreign official insists on certain fees being paid. Can I instruct the subcontractor to make these payments?*

**A** No, it is a FCPA violation even if the subcontractor actually makes the illicit payment. You should never assume that such payments are permissible and should contact the ECO before making or authorizing any such payments directly or indirectly through a subcontractor.

### 2.37.8 PROHIBITED DEALINGS WITH CERTAIN COUNTRIES

Sanctions imposed by the United States may restrict or prohibit business or personal dealings with certain countries and with companies or individuals from those countries. Please contact the President/CEO in the event you encounter a potential transaction or business arrangement involving a company or individual located in a foreign country.

### 2.37.9 EXPORT CONTROL COMPLIANCE

The United States has export control laws governing strategically necessary technologies and products. These laws are extremely important, and they are extremely complex. Moreover, they change and take unpredictable turns as governments adjust to new geopolitics and security pressures. Violations of export controls can harm U.S. national security and foreign policy. Penalties for violations are severe and can include monetary penalties, imprisonment, and suspension of export and Government contracting privileges.

Early coordination with export experts is critical. The applicable regulatory regime depends on the type of goods, technology, or services being exported and the intended destination. The identity of the customer and the intended end user (if different) are also critical. The major U.S. export laws include:

- **International Traffic in Arms Regulations (“ITAR”).** The ITAR, administered by the U.S. Department of State in furtherance of the Arms Export Control Act, controls exports and temporary imports of a military nature, including defense articles, services, and

technical data. Such products and services are identified on the U.S. Munitions List contained in the ITAR. The ITAR contains the requirements for export licenses and other approvals for permanent export, temporary export, or temporary import transactions.

- **Export Administration Regulations (“EAR”).** The EAR, administered by the U.S. Department of Commerce, controls exports of commercial and “dual-use” commodities and technology. Dual-use items are products, software, and technical data developed for civil applications, but which can be used militarily without further modification. Items requiring export licenses appear on the Commerce Control List (“CCL”) contained in the EAR. Items on the CCL are subject to U.S. export control whether they are exported from the United States or are re-exported from one non-U.S. country to another.
- **Foreign Assets Controls.** To comply with the Trading with the Enemy Act or the International Emergency Powers Act, and in some cases to comply with sanctions imposed by the United Nations, the United States imposes sanctions and embargoes on certain countries. The Department of Treasury Office of Foreign Assets Control (“OFAC”) administers regulations that can involve blocking property, prohibiting exports and re-exports, and other activities with respect to those countries. OFAC maintains a list of “Specifically Designated” nationals or persons, who are also subject to restrictions.
- **Anti-boycott Regulations.** In addition to export and import controls, the EAR contains anti-boycott provisions, which prohibit companies from complying with foreign-nation imposed boycotts of countries friendly to the United States. The Internal Revenue Code also imposes tax penalties for agreements to comply with such boycott actions.

**Q** *A JCM employee emails blueprints of one of our parts to a business partner in another country. Is this an export?*

**A** Yes, it is an export. For this reason, JCM employees always should check with their managers before sending product information abroad to make sure they are following all applicable laws and regulations.

**Q** *I learned after the fact that an unauthorized foreign person was present when I gave an ITAR-controlled presentation on JCM’s products. What should I do?*

**A** You should report the matter immediately to JCM’s ECO. The company may need to file a disclosure (with the U.S. State Department’s Directorate of Defense Trade Controls) if an ITAR violation occurred.

**Q** *I have an opportunity to enter into a contract with a private commercial company in the Middle East. However, one of the terms of the commercial contract directs JCM to adhere to and obey all laws of the commercial company’s host nation, which mandates a boycott of Israeli goods and services. What should I do?*

**A** You should contact the ECO before entering into such an agreement. In this example, the agreement to obey all local laws presents a problem because the local law requires support of a boycott not sanctioned by the U.S. Government. Thus, even if the offending language can be deleted, JCM must report to the U.S. Government any request to engage in an unlawful boycott.

## 2.38 POLITICAL CONTRIBUTIONS

JCM reserves the right to communicate its position on important issues to elected representatives and other government officials. It is JCM's policy to comply fully with all applicable laws, rules and regulations regarding political contributions.

- **Federal Elections**

- **General Rule** – JCM cannot make political contributions: The Federal Election Campaign Act ("FECA") prohibits corporations like JCM from making contributions or expenditures in federal elections. Under this law, JCM cannot contribute corporate funds, goods, or services (*i.e.*, employee's work time), directly or indirectly, to any national political party, committee, or candidate for federal office. Additionally, JCM cannot indirectly make political contributions by asking an employee, officer, or any other individual to make the contribution or by subsequently reimbursing an individual for a political contribution the individual previously made.
- **Exception** – Political Action Committees: While the Company's corporate money may not be used in federal elections, FECA does permit corporations like JCM to establish separately segregated funds, called Political Action Committees ("PACs") to raise voluntary contributions. PAC contributions can be pooled to make contributions to federal campaign activities under federal law. JCM does not currently have a PAC.

These restrictions pertain solely to the company and, in certain instances, principals of the company, and do not restrict your decision as a non-principal employee to personally participate in civil affairs and the political process and to support the political parties and candidates of your choice. JCM encourages all employees to participate on an individual basis in political activities that interest them, on their own time and in their own way. Your involvement and participation in the political process must be entirely separate and independent from your work for the company and be on your own time, using your own personal resources, and at your own expense. Do not reference or associate JCM with any political contributions you make.

References: 2 U.S.C. § 441f; 2 U.S.C. § 441c; 11 C.F.R. Part 115; 11 C.F.R. 110.4(b).

**Q**

***I want to stay late at the office and make telephone calls on behalf of a political candidate I am supporting. Can I do that?***

**A**

No. JCM prohibits the use of company resources, such as company facilities or office telephones, to conduct activity in support of political candidates.

## 2.39 BYRD AMENDMENT – PROHIBITION ON LOBBYING

Federal law prohibits the use of federally appropriated money (funds derived by JCM from federal contracts) to pay any person for influencing or attempting to influence officials of the Executive or Legislative branches, including members of Congress and their staffs, in connection with the award or modification of U.S. Government contracts.

## 2.40 PROHIBITION ON INSIDER TRADING

While JCM is not currently a publicly-traded company, several companies we partner and work with are. Under our contractual agreements we are held liable for the release of their proprietary information.

There are significant criminal and civil penalties for violations of the insider trading provisions of federal securities laws. These laws prohibit transactions, whether buying, selling or otherwise, in a publicly-traded company's securities by anyone who is in possession of "material nonpublic information" regarding that company.

These laws also prohibit the passing of confidential nonpublic information to others who may buy or sell securities on the basis of such material nonpublic information. Material nonpublic information generally includes any information concerning a company which is not yet publicly known, but which, if publicly known, could reasonably be expected to either affect the price of the company's stock, or be considered important by a reasonable investor in deciding whether to purchase, sell or retain the security. Some examples of material nonpublic information include quarterly and annual financial results of operations prior to a company's public disclosure of such information and information relating to significant acquisitions or joint venture transactions to which a company expects to be a party but which has not yet been publicly disclosed. Such information is sometimes made available to employees so that they can do their jobs better, not so that they, or others can personally benefit by using the information in the stock market. If an employee possesses such information, he or she must wait until the information becomes public before buying or selling a company's securities or disclosing the information to others.

Liability could also extend to an employee who "tips" (provides inside information) another person who uses such information in a securities transaction. Inadvertent tipping (accidental disclosure of inside information to another party) is a serious breach of corporate confidentiality and can result in insider trading. For this reason, every employee must avoid discussing sensitive information in any place (for instance, at lunch, on public transportation, in elevators) where such information may be heard by others. All known incidents of accidental disclosure of inside information must be reported to the ECO and the Human Resources Department immediately.

## **2.41 MANDATORY DISCLOSURES TO THE GOVERNMENT**

**FAR 52.203-13 Contractor Code of Business Ethics and Conduct:** The Company, through its counsel, will make timely disclosures, in writing, to the appropriate government officials, including where applicable to the appropriate Office of Inspector General and/or Contracting Officer(s), whenever, in connection with the award, performance, or closeout of any government contract or subcontract performed by the Company, the Company has "credible evidence" that a principal, employee, agent, or subcontractor of the Company has committed a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733). The Company similarly will disclose to the agency Contracting Officer credible evidence of a "significant overpayment."

The FAR provides that a cause for suspension (9.407-2) and a cause for debarment (9.406-2) exist where a contractor knowingly fails to timely disclose "credible evidence" of a Title 18 violation identified above, a violation of the civil False Claims Act, or a "significant overpayment."

**The Company will return overpayments:** FAR 3.1003(a)(3), in conjunction with the payment clauses, provides that if a contractor becomes aware of an overpayment, it shall remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment.

**FAR 52.203-7 Anti-Kickback Procedures:** The Company, through its counsel, will also make timely disclosures, in writing, to the appropriate government officials, whenever the Company has "reasonable grounds" to believe a violation of the Anti-Kickback Act ("AKA") of 1986 (41 U.S.C. §§ 51-58) occurred. The AKA prohibits: (1) providing or attempting to provide or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

## **2.42 DEALING WITH GOVERNMENT OFFICIALS**

Many of the potential problems in this area relate to subjects covered elsewhere in this policy, including conflicts of interest, related party transactions, gifts, and entertainment. To the extent that an employee deals with federal, state, municipal and public authority officials in connection with contracts, licenses or other arrangements, it is extremely important to avoid even the appearance of impropriety. Failure in this regard can result in loss of business, as well as damaging publicity for JCM and the employee involved. Bear in mind that each governmental entity will probably have its own rules governing the conduct of its employees and these rules may be very different from others an employee may have encountered. If an employee deals with such officials on a regular basis, obtain a copy of such entity's governing ethics guide or rules, if any. In addition, employees must be sensitive to requests or comments by government officials that appear perfectly proper but may be susceptible to a different interpretation by other government officials or the media. All questions or uncertainties should be raised immediately with JCM's ECO.

## **2.43 RELATIONSHIPS WITH SUPPLIERS AND HIGHER TIERED CONTRACTORS**

Whenever possible, materials, supplies, equipment, and other services purchased by JCM should be procured from qualified suppliers at the lowest reasonable cost, keeping in mind the requirements for quality, performance and the vendor's ability to meet delivery schedules. Whenever feasible, JCM will encourage, establish and maintain competition among potential suppliers qualified for the award of contracts. JCM will comply with applicable Government regulations and contractual requirements governing JCM's purchasing power, including those pertaining to small, disadvantaged businesses.

All employees must conduct Company business with suppliers and higher tiered contractors fairly and impartially. Employees involved in any aspect of the vendor selection process must be particularly careful to avoid actions that create the appearance of conflict or favoritism or that may compromise the Company's reputation for impartiality. A special business situation could arise where an exception may be granted; if so, consult with JCM's ECO.

## **2.44 SECURITY**

JCM has a special obligation to comply with those government regulations and laws that protect our nation's security and safeguard our nation's defense secrets, including classified information. As JCM employees, security is an integral part of the job, whether or not an employee works directly with classified information. Any employee who observes or gains knowledge of a potential violation of the security regulations and/or laws relating to classified or government information must immediately report it to the respective JCM Facility Security Officer.

### **2.44.1 CLASSIFIED INFORMATION**

Employees possessing a valid security clearance and requiring access to specific classified information must ensure that such information, in whatever form it exists, is handled in strict compliance with applicable government regulations.

JCM employees should not seek access to, accept or retain any classified information for which they have no need or to which they are not entitled. The unauthorized possession or disclosure of classified information in any form, or failure to properly safeguard such information, can endanger the security of this country and is punishable under the Espionage Laws and other Federal Criminal Statutes.

### **2.44.2 CYBERSECURITY**

Federal regulations require that federal contractors and subcontractors apply a basic level of "safeguarding" of federal contract information. JCM employees must practice good computer "hygiene" and adhere to the following security controls when dealing with such information:

- Do not share your login credentials with anyone – your credentials belong to you and you alone;
- Do not attempt to access a controlled system using another individual’s login credentials;
- Do not copy or distribute federal contract data except as authorized;
- Do not connect external media (including flash drives) to a controlled system unless authorized to do so;
- Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse;
- Report any suspicious activity or information system flaws in a timely manner.

#### **2.45 INTERNAL REVIEWS TO ENSURE COMPLIANCE**

The Company will periodically conduct internal reviews of its business practices to monitor and assess compliance with this Code and to identify areas where increased attention and focus is needed. JCM is committed to continual improvement as a government contractor.

### **3 VIOLATIONS OF THE CODE**

An employee who violates any part of this Code, governing laws, or governing regulations may be subject to disciplinary action in the form of oral reprimand, written reprimand, suspension, and/or termination. The previous list is not all-inclusive, as the nature and seriousness of the violation may warrant other disciplinary action. JCM reserves the right to take whatever disciplinary action it deems appropriate. Additionally, violations of this Code, governing laws or regulations may require disclosure to the government, which may also take action including, but not limited to, criminal, civil, or administrative action, including suspension or debarment from government contracting.

**CODE OF BUSINESS ETHICS AND CONDUCT & GOVERNMENT CONTRACTING  
COMPLIANCE POLICY ACKNOWLEDGMENT & ANNUAL CERTIFICATION**

The Code of Business Ethics and Conduct & Government Contracting Compliance Policy addresses a host of complex laws, regulations and related principles governing JCM's business operations. JCM does not expect each employee to be an expert in each of these areas. The purpose of the Code is to ensure employees are aware of these legal and ethical principles and, where a potential issue arises or where they have concerns, to report such matters to the appropriate JCM personnel. JCM asks that all employees sign the below acknowledgement indicating that they have received and read the Code, generally understand the principles and concepts discussed herein, and agree to comply fully with the Code as a condition of employment. Employees are required to periodically review the Code, at least once annually, and to acknowledge and re-certify, annually, their commitment to comply. Records of employee acknowledgments will be maintained by JCM's ECO.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employee's Name (Please Print)

\_\_\_\_\_  
Date

**My Internal Contacts for Raising Questions and/or Reporting Concerns:**

**My Supervisor is:** \_\_\_\_\_

**The ECO is:** \_\_\_\_\_

**The President/CEO is:** \_\_\_\_\_

**I can find information on using the Ethics Helpline on page \_\_\_\_\_ of the Code.**