THE CONDO

I

Scott Bennett is the engineer assigned to deal with vendors who supply needed parts to the Upscale Company. Larry Newman, sales representative from one of Upscale's regular vendors, plays in the same golf league as Scott. One evening they go off in the same foursome. Sometime during the round Scott mentions that he is really looking forward to vacationing in Florida next month. Larry says his uncle owns a condo in Florida that he rents out during the months he and his family are up north. Larry offers to see if the condo is available next month -- assuring Scott that the rental cost would be quite moderate.

What should Scott say?

II

Larry tells Scott he can rent his uncle's condo for $100 a week. "My uncle," Larry says, "gets nervous when he rents to total strangers. He likes to have reliable people stay in his condo; the condo is paid for, and my uncle isn't interested in making money on it -- he just wants a little help meeting basic operating expenses and the taxes."

Scott accepts the offer and begins making plans for his vacation. Just before leaving, an Upscale vice president sends out a new policy statement that says, among other things: "Accepting incentives from vendors is strictly prohibited".

What should Scott do?

COMMENTARIES

W. Gale Cutler

Accepting incentives from vendors is a road which sooner or later will lead an engineer, a purchasing agent, etc. into trouble. Even though many such incentives are offered in the spirit of building good will, the vendor who offers major incentives does so to build a "sense of obligation" in the recipient. In the absence of a company policy about incentive gifts, the safe rule is to accept only a gift of <u>token</u> <u>value</u> from a vendor and to be strict about your definition of a token. A necktie at Christmas, a dinner after a working sales conference with a vendor, a package of golf balls inscribed with the vendor's logo probably can be accepted as tokens.

A round of golf at the Country Club, tickets to a major football game, free use of a condo in Florida (or even use at a reduced price) <u>cannot</u> be considered token gifts and should be politely refused when offered. The intended recipient need only say, "Thank you, company policy does not permit me to accept your gift," or, in the absence of company policy say, "My personal policy is to decline such a generous gift."

A company should have a policy on incentive gifts to take pressure off its employees. This company policy should be published for all employees and company management should enforce it promptly and fairly.

The following appropriate statements have been extracted from policies of major companies:

RAYTHEON: "When you negotiate with suppliers, you must base all prices, terms, conditions and agreements on sound business judgment. If you fail to do so, you can get fired. You must show no favoritism or preference to anyone at the expense of the company. You must do no one any favors. **NOR CAN YOU ACCEPT ANY FAVORS**. Gifts, free services, discounts on personal purchases--these are also wrong, whether they are for you or for anyone else in your family or household. So are trips, entertainment or special considerations of any kind. You must decline favors and return gifts. Do it pleasantly and diplomatically, but firmly."

MARTIN MARIETTA: "Employees may accept meals, refreshments, or entertainment of nominal value in connection with business discussions. A common sense determination should dictate what one would consider lavish, extravagant or frequent. Employees are not permitted to accept gifts from individuals, firms or representatives of firms who have or seek to have business relationships with Martin Marietta. Employees should report to the Ethics Office any instance in which they are offered money, gifts, or anything else of value by a supplier or prospective supplier."

AIR PRODUCTS: "It is contrary to Company policy for employees to accept or furnish gifts, favors, or entertainment of a size or nature which might influence or raise doubts as to the impartiality of the recipient."

A company that has a policy of offering generous incentive gifts (with apparently "no strings attached") may believe it is not doing anything wrong, but almost inevitably the offering company does expect to maintain or increase its business by doing so. Ideally, a company's product, quality and price should speak for themselves and not require the support of incentive gifts to those making buying recommendations and decisions.

In this case, Scott should refuse the first offer of condo rental at "moderate cost" and certainly, with Upscale's policy in effect, must let Larry know he cannot--because of his adherence to company policy--accept the offer Larry has made.

The guidelines for use with the fundamental canons of ethics of the Accreditation Board for Engineering and Technology (ABET) recommend a hard line on gratuities: "Engineers shall not solicit nor accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible." Most employers consider this position excessive and only ban gratuities which have more than a "nominal value."

"Other people do it" is not a valid reason for accepting a gift!

Two questions you may want to ponder further:

1. What is the difference between "an incentive gift" and a bribe?

2. Should companies have an ethics statement about giving gifts as well as receiving gifts?

C.E. Harris

Scott's problem could be analyzed in either of two ways. First, it could be analyzed as a conflict between his own self-interest and the company's welfare. Second, it could be analyzed as a "line-drawing" problem. That is, it could be analyzed as a problem of determining whether the offer from Larry, the sales representative, constitutes a bribe. We all agree that bribes are wrong, so the question, according to this second mode of analysis, is whether Scott's acceptance of Larry's offer is a bribe--or close enough to a bribe to be morally impermissible.

In this case the second mode of analysis seems to have the potential of giving more insight into Scott's problem.

In terms of a conflict between mere self-interest and the legitimate claims of the company, most of us would probably say that the company's claims should have priority. The real issue in this case is whether in fact there is such a conflict, and this issue hinges on whether accepting Larry's offer amounts to accepting a bribe. If it does, then Scott's obligations to the company should prohibit his accepting Larry's offer.

In order to determine whether Larry's offer should be considered a bribe, it is helpful to consider a standard case of a bribe. Suppose that Larry, who is not one of Scott's regular vendors, offers Scott a $10,000 check if he will specify Larry's products. Suppose, further, that Larry's products are both inferior in quality and more expensive, relative to alternative products. If Scott accepts the money and specifies Larry's products, he is accepting a bribe. This might be considered a standard or paradigm case of a bribe. Few would question the judgment that Scott's accepting this offer would be wrong.

Bribes are wrong for a number of reasons. First, they corrupt the capitalist system, because competition would ordinarily lead to a person's buying the product that provides the most desirable combination of price and quality. Second, bribery harms the stockholders of Scott's company, because they are not getting the best product for the price. Third, bribery is unfair to the other vendors who do not offer a bribe. Fourth, bribery tends to corrupt both those who offer bribes and those who accept them. It promotes dishonesty, cynicism about human nature, distrust of others, and a purely economic view of human relationships.

Larry's offer to let Scott use his uncle's condo for a minimum fee is not a paradigm case of a bribe. The amount of money involved is probably relatively small, though not insignificant. Furthermore, the offer of a low-rent condo is not made in exchange for any specific promise to purchase particular products. Nevertheless, there are two important similarities to the standard case of a bribe.

First, there is the problem of appearances. It would "look bad" if it were generally known that Scott stayed at a the condo of a vendor's uncle for such a ridiculously low rent. Most people would suspect, probably rightly, that Scott gave his uncle a check for the difference between the usual rent and Scott's payment.

Second, it is reasonable to believe that Scott would feel some obligation to specify Larry's products or at least give them special consideration. Many would argue that these similarities with a standard case of a bribe are sufficient to warrant a judgment that Scott should not take the offer.

The directive of Scott's vice president raises the issue of Larry's offer in an interesting way. The directive prohibits accepting "incentives." Is Scott's offer an "incentive" if not an outright bribe? There are certainly important analogies between a true bribe and Larry's offer, although there are also differences. Perhaps, the term "incentive" is the proper word to designate Larry's offer. If so, accepting the offer is contrary to company policy.

Carl O. Hilgarth

I

Beware of any lurking sales representatives, especially when you encounter them outside of normal business related matters. They seem to belong to many of the clubs and sports leagues, chapters or sections of professional societies, or social organizations as their customers. They sponsor attendance prizes and hospitality suites at professional events. They offer to buy you lunch. They offer tickets for sports events and free passes to trade shows. Many send gifts at holidays, leave you coffee mugs, baseball caps, ties, etc. Their spouses try to establish social relationships with your spouse. They're always looking for an opening. It goes on and on. After

25 years as an engineer with purchasing authority, I've become very cautious in my encounters with sales representatives outside of normal business. Larry Newman fits my paradigm, and I must assume that he is in the golf league for business as much as for leisure reasons.

That Scott mentioned his upcoming vacation in Florida is natural conversation. That Larry offered to check the availability of his uncle's condo for Scott at a quite moderate rental cost is too much of a coincidence. If I'm in Scott's position, I'll decline the offer even though it's presented in a friendly, offhand manner by explaining to Larry that I don't want do anything that has the potential to cloud the objectivity of our supplier relationship or provide any cause to raise any question regarding a potential conflict of interest.

II

Well, the offer was too good for Scott to decline. So he accepted it and began planning his vacation. Now Scott's company sends out a new policy that says among other things: "Accepting incentives from vendors is strictly prohibited." I'll bet that Scott's first reaction will be that since the use of the condo was offered outside of the business relationship, it does not count as an incentive. But what does the company define as an incentive? Usually it is anything having a value of $25 or more. Does the rental cost price break fall into this category? Perhaps. If I were Scott, I wouldn't want to find out the hard way. So at this point I would tell Larry that due to the new company policy, my stay at the condo could be construed as an incentive, explaining that I don't want do anything that has the potential to cloud the objectivity of our supplier relationship or provide any cause to raise any question regarding a potential conflict of interest.

With the loosely worded policy that doesn't define incentives, it's important to avoid even any appearance of impropriety. Make it your own rule not to accept anything from a vendor that costs more than $25 on the open market.

Michael Rabins

The issue of conflict of interest, real or apparent, is of continuing concern to most companies who must deal with vendors and must try to avoid even just the appearance of wrong-doing. If it becomes general knowledge that Company X only buys from vendors who pay a hefty personal kickback to the company's purchasing agent, then that will chill the process of competitive bidding and the resulting honest economies for the company. One company has what it calls the New York Times front page test. The question is, if you are in doubt about whether to accept a proffered gift or consideration, how will it look to other vendors and others in your company if your actions are written up in detail on the front page of the New York Times?

Clearly what Scott Bennett of the Upscale Company should or should not do must be based on well publicized Upscale Company policy. This comes out in part II of this case where, after Scott has accepted the low cost condo rental offer from Larry Newman, the sales representative who does business with Upscale, an Upscale vice-president, sends out the new policy statement that says, in part, "Accepting incentives from vendors is strictly prohibited." Hopefully the new policy says a good deal more than that, because despite first impressions that might indicate that Scott should cancel his trip immediately, there are many other considerations that must be taken into account.

Let's start with the word 'incentive'. Is a plastic ball point pen with Larry Newman's name on it an incentive? What if it's a gold-plated pen? What if it's solid gold? So for starters, the new company policy has erred by not putting some threshold level on the incentive. Some companies put an upper bound of $25 on any acceptable gift. Others flat out say, "No gifts at all."

What if the proffered incentive is a free lunch? Does that mean that you can only order food and drink such that the bill (with tax and tip) is less than $25? Some large companies and the federal government (since Watergate) escape this problem by forbidding acceptance of any free meals.

Even then the problem continues to grow. How do you define "vendor"? What if Larry Newman is a sales representative to Upscale for an industrial chemical supply company and Scott Bennett's engineering responsibility is only to specify and purchase electrical parts. Is Larry truly a "vendor" in this situation, or perhaps just a golfing buddy of Scott's. The answer to this question has to include the consideration of whether Scott knows the Upscale engineer responsible for specifying and purchasing chemicals, and more important, whether he has any significant influence over those purchasing decisions. Even if he does, the book is not yet closed, because the question has to be raised whether there are any significant chemical purchases to be made in the near future, or alternatively perhaps a large 5 year chemical purchase agreement has been signed before Larry and Scott teed off together in their fateful foursome.

Even beyond all of the above considerations the waters still remain muddy. Some companies encourage their employees to socialize with their vendors (in a balanced fashion) so that there is a close personal relationship between the vendor and the purchasing agent. The argument goes that knowing the vendor and his product in a thorough fashion, and being on a first name basis with the vendor will enable the purchasing agent to get treatment for his company in emergency situations that might not be otherwise available. Certainly the reality and appearance of kickbacks has to be avoided, but even then many companies are truly delighted when their purchasing agents spend a weekend fishing, hunting or golfing with the vendors they are doing business with. From the perspective of the company, in one sense, they are getting free overtime effort from their purchasing agent that will translate into improved productivity or profitability.

Finally if two company presidents who are negotiating a contract between their companies go off on a fishing boat together (that one of them owns) to conclude their negotiations, is that truly different from Scott and Larry, way down on the company roster, playing golf together? The company policy must not depend upon rank or salary in the company. When all is said and done, it comes back to the issues of appearances and intent. If the proffered incentive is meant as a bribe and clearly appears to be such, then it must be avoided. Scott might have to discuss with his Upscale vice-president if the new policy applies to his circumstances.

Wade L. Robison

I

The question is raised of what Scott should say because of a potential conflict of interest. Presumably a vendor is competing against other vendors for sales, and if Larry does Scott a favor, then he may well presume, and he may be correct in presuming, that Scott will feel that he is under some obligation to return the favor in some way when bids are made to Upscale.

One might see how there could be a problem in this way. Suppose that Larry and another vendor both put in a bid for parts, and that the bids are essentially the same--same material, same costs--so that no objective observer could choose between the two and would even think, if he or she did not know that the two bids came from different vendors, that they are the same bid: they are at least interchangeable. How is Scott to choose between the two?

If the two bids are identical, then he has no objective way of making a choice. He can draw straws or flip a coin, decide, that is, in some way that makes the choice undetermined by any additional feature of either vendor. But if Larry has done Scott a favor, and Scott does feel an obligation to do a favor in return, what better chance will he have? He will not be harming the company in giving Larry the bid because the company will be equally served by Larry or the other vendor getting the bid. And the other vendor cannot complain that he or she had a better bid that was turned down for favoritism. But what he will have done is harm the other vendor by making the choice between the two vendors on some basis other than chance. The choice will be determined by some additional feature of one of the vendors, namely, that Larry plays in the same golf league as Scott and so saw him so he could make an offer to him of his uncle's condo and that he did make such an offer. If the other vendor does not ever see Scott socially, then Larry has an advantage in bidding that the other vendor does not have, namely, being able to do Scott favors that Scott feels that he has to return.

So the question is what Scott should do if Larry offers to check out the condo for Scott. There seems to be no harm in Larry checking with his uncle to see if the condo is available and how much the rental will be--provided that Scott tells him up front that he is not able, because of his position, to return the favor in any way in making decisions about what bids to accept or not.

II

A crucial assumption underlying the position just articulated is that the only favor Larry is doing is letting Scott know about his uncle's condo. If Larry fixes it so that the rent is cheaper than normal, then that would be a different situation. For then Larry would be effectively putting money into Scott's pocket, and the presumption any objective observer would make is that Scott's decisions could well be less than objective regarding which bids to accept. That is, even if Scott's decisions were perfectly proper, even given what Larry has done, if he gets a condo for him more cheaply, they will not necessarily be perceived as perfectly objective by any other vendor. Scott will have lost the trust vendors have a right to impose in him that his decisions be determined by the bids made rather than the favors offered and accepted.

So when Larry tells Scott that the condo is $100 a week, Scott should tell him that he cannot accept the offer--even if, as Larry says, his uncle just wants someone to help a bit with taxes and operating expenses. He should ask what the usual rate is when Larry's uncle rents: what does he charge those who are not recommended to him by his nephew? And he could check, as presumably he has checked, on what the normal cost of renting a condo is in that season where he wants to go. Presumably the cost of the latter is more than $100 per week, and under that circumstance, Scott ought not to accept the offer even if Larry's uncle normally does rent to those Larry recommends at such a low rate. For other vendors would still perceive the offer as a favor. And if Larry's uncle did usually rent the condo for more, the case is even clearer.

So, under the principles so far articulated, Scott would not accept the offer. Were he to do so and begin making plans for his vacation, he would be in difficulty should Upscale announce a new policy that says, among other things, that accepting incentives from vendors is strictly prohibited.

He could argue that he made the decision to accept the favor before the new policy was announced, that it is now too late to refuse without insulting the vendor, which presumably the company would not want, and without causing him great problems, since he would now have to get another place to stay at the last minute.

Or he could argue that he did not, strictly speaking, accept an incentive from Larry since he has no intention of having Larry's offer make any difference at all to what he will do in any event regarding bids. After all the policy presumably prohibits employees from accepting something from vendors that would be an incentive to provide preferential treatment, and Scott does not intend to treat Larry preferentially.

But the difficulty is that he is likely to be perceived as treating Larry preferentially and that it is no doubt the perception as much as the reality that the company wants to avoid. After all, if it allows gifts and disallows only those that bias the judgment of those accepting bids, it will be in the terrible position of having to make complex judgments about who accepted what for what. These are always difficult judgments to make, and they are time-consuming and expensive: no company ought to want to put itself in a position where it has to make such determinations. So the new policy is undoubtedly intended to preclude any gift or favor that might be perceived as an incentive.

Scott could no doubt make a case to the Vice President that what he is doing is not an appropriate object of concern--not that much of a favor and initiated before the policy went into effect--and he might try, as a last course, to talk to the Vice President to see if he can go in any case. That gives him one more course of action, and if the Vice President says that it is acceptable to go, then he can go--though he, and the Vice President and the company, will have to live with the perception of others that Scott's decisions may be biassed by such a favor. But if Scott asks the Vice President, any decision will be on the Vice President's head, not on his, and if the Vice President says it is acceptable to go, then he may.

Henry West

I

Larry Newman's offer looks like a benefit for both Scott Bennett and Larry's uncle. Scott needs a place to stay at a moderate price; Larry's uncle needs to rent his condo. It looks like a mutually beneficial arrangement. In asking Larry to see if the condo is available, Scott does not put himself under any greater obligation to buy from Larry's company than he has already done by playing golf with him, does he? Is there any reason for him to refuse the offer?

II

When Larry tells Scott that the condo is available for $ 100 a week, Scott might well feel that he is getting into something more than a business transaction, for the going rate for condos in vacation areas is several times that. The cheapest motel room would cost more than that. But Larry reassures him that his uncle isn't interested in renting to strangers at the market rate. After all, although he is getting it through Larry's recommendation of Scott as a reliable renter, it is Larry's uncle's condo, not Larry's or Larry's company's. And it is a bargain, not a free gift.

When the vice president issues the new policy statement, two questions arise. First, is Scott accepting an incentive from a vendor? And, second, if he is, isn't he still obligated to go through with the rental since he has agreed to do so and he agreed to do so before the new policy was stated?

Scott could easily claim that he has not accepted an incentive from a vendor. Larry has done Scott a favor, but he has done it as an individual acquaintance in the golf league, not as a representative of his firm. Does this make any difference? If the company that Larry represents is not paying for anything, does that mean that it does not classify as an incentive? If this is not an incentive, what could count as one, given by the representative but not the company? If Larry had gotten the condo for him for free, would that have been an incentive? If Larry had said something about remembering him the next time he called as a sales representative, would that have made it an incentive?

From the description of the case, it sounds as if Scott Bennett and Larry Newman are only golf and business acquaintances, not close friends. If they were close friends, accepting a favor would be different; but it could still involve delicate ethical issues when company policy prohibits accepting incentives from vendors.

Supposing that Scott does interpret the favor as an incentive, what should he do? Since the vice president's is a "new" policy statement, Scott might feel that it does not apply to an agreement made before the statement came out. Would that be true? Should Scott have known without such a statement that he should not accept incentives from vendors?

Having agreed to take the condo, Scott is under some obligation to Larry's uncle. Larry's uncle is now counting on him to occupy the condo and to pay the rent. He could get in touch with the uncle and explain the situation, offering to pay the rent but not occupy the condo or offering to pay a full market price for it so that it does not count as an incentive. Would one of those be an appropriate way out? Suppose Larry's uncle says that he has no connection to Larry's company, and if Scott doesn't take the condo at that price, he wants to find someone else who will. He is looking for someone to occupy the place so that it won't be burglarized and to merely cover his costs, not to make money. So he would still like for Scott to take it. In fact, Scott's telephone call convinces him more than ever that Scott is a responsible person who could be relied upon to take care of the place. Should that ease Scott's qualms about it being an incentive, so that he could now take it with a clear conscience?

If it isn't clear whether accepting the condo is an incentive, what should Scott do? One possibility is to go to his superior to get clarification. But then he puts his superior on the spot. Isn't Scott capable of making a responsible decision on his own? What would his superior know that Scott doesn't know? The superior is likely to be extra conservative and not want to get himself into trouble, and he may feel that whatever decision he makes will set a precedent.

It might be better to go ahead with the use of the condo this time, since Scott would be in a difficult situation if he were told that it is prohibited, and learn that he should avoid ambiguous favors in the future.

Why do you think that Upscale is stating a policy against incentives from vendors? Can't its buyers be trusted to do what is best for the company, rather than buy an inferior product or one at a higher price because of a favor? If they can't be trusted not to be corrupted by incentives, can they be trusted not to play favorites with their golf friends? Should Upscale have a policy against socializing with vendors?

Politicians are often offered contributions from interest groups who have something to gain from legislation that the politician must vote on. Should they refuse the contributions? If they don't accept contributions from someone, they can't finance their campaigns. Is there any difference between the situation of public officials and private officials in accepting favors?