

06 x 11

Letter to a Designated Agency Ethics Official
dated December 12, 2006

RE: [A Certain Corporation's Employee Purchase Program]

This is in response to your November 30, 2006, letter requesting the Office of Government Ethics' (OGE) views on whether the employees of [your agency] may accept [a certain] Corporation's offer to participate in its Employee Purchase Program (EPP). As explained in your letter and in subsequent conversations with staff, the program would provide all [agency] employees, regardless of position, with the opportunity to purchase [the Corporation's] products for personal use at a discounted price. These conversations also indicated that the discount is only available to agencies that purchase a certain number of licenses from [the Corporation]. As discussed in more detail below, the ethics rules do not prohibit [agency] employees from participating in the [Corporation's] EPP if you determine it to be a benefit secured by a Government contract; however, we would encourage you to take steps to avoid the appearance of preferential treatment or endorsement of [the Corporation]. We also caution that there may be appropriations restrictions that prevent the [agency] from accepting the program, but we cannot comment definitively because those issues are outside the jurisdiction of OGE.

Employees are generally prohibited from accepting gifts, including discounts, offered by a prohibited source or given because of their official position by the Standards of Ethical Conduct for Employees of the Executive Branch. 5 C.F.R. § 2635.202(a)(1) and (2). Employees, however, may accept goods that are procured by the Government under a Government contract because the gift prohibition no longer applies. 5 C.F.R. § 2635.203(b)(7). This is so because items secured under a Government contract are benefits to the employee from the Government, rather than a gift from a prohibited source. 57 *Fed. Reg.* 35006 (Aug. 7, 1992). A determination as to whether a benefit is secured by a Government contract is within the discretion of the employing agency or department. OGE

Informal Advisory Memorandum 99 x 1. Thus, it is up to the [agency] to determine whether the [Corporation's] EPP is a benefit secured by a Government contract. If the [agency] determines that the [Corporation's] EPP is such a benefit secured by a Government contract, [the agency's] employees may participate in the program without violating the ethics gifts rules.

Employees also are required to act impartially, giving no preference to any private organization or individual. 5 C.F.R. § 2635.101(b)(8). Employees generally may not use or permit the use of their Government positions or titles to endorse any product, service or enterprise. 5 C.F.R. § 2635.702(c)(1). Thus, while acceptance is not necessarily prohibited, we recommend that any literature or information provided to employees about the [Corporation's] EPP also include information about other vendors who offer similar products. This could help to avoid the appearance that the [agency] is giving preferential treatment to or providing an endorsement of [the Corporation's] products over other similar products. In addition, the [agency] may want to consider including a disclaimer on documents or websites that feature information about the [Corporation's] program to clarify that the [agency] is not endorsing [the Corporation] or its products.

In conclusion, while it is up to the [agency] to determine whether the [Corporation's] EPP is a benefit secured by a Government contract, making it permissible under the ethics gift rules, we caution that there may be restrictions on the use of appropriated funds that would limit or prohibit the [agency] from accepting the [Corporation's] EPP. We recommend that the [agency] investigate further any appropriations restrictions on employee purchase plans before allowing employees to participate in the purchase program. We also suggest that [the agency] take steps to reduce the appearance of preference or endorsement of [the Corporation] as discussed above.

We hope that you have found this information helpful. Please do not hesitate to contact my staff if you have further questions.

Sincerely,

Robert I. Cusick
Director