Michael Rabins' Commentary on "Gifts From a Supplier"

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Gifts From a Supplier

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.