



LEGAL CORNER

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Feds Mandate Ethics and Compliance Programs

On December 24, 2007, significant amendments to the Federal Acquisition Regulation ("FAR") became effective. The newly amended FAR establishes new ethics requirements for government contractors and subcontractors.

Under the amended FAR, companies contracting with any federal agency are required to establish a "Contractor Code of Business Ethics and Conduct." That is, government contractors, within thirty days after the contract award, must establish a written ethics code. Under the new requirements, the contractor must provide a copy of the ethics code to each employee who is to work on the contract. In addition, the contractor must insist on compliance with this code of business ethics. This new ethics requirement was in addition to the general rule of good behavior, which had already existed in the FAR.

In furtherance of the "Ethics Code," government contractors must establish a written ethics and compliance program within ninety days after the contract award. The program must include an internal control system, designed to facilitate timely discovery of improper conduct in the performance

of government contracts. In addition, the internal control system should ensure that proper corrective measures are promptly implemented in any instances of "misconduct."

Under the amended FAR, proper internal control systems must consist of periodic reviews of company practices, procedures and policies for compliance with the code of business ethics and conduct in addition to all special requirements of government contracting. The internal control system must also include an internal reporting mechanism, such as a hotline, so that employees can re-

port instances of suspected misconduct. Contractors need to instruct and encourage employees to make such reports where necessary. The internal control system should also provide for internal and external audits. Lastly, contractors must provide for disciplinary action for improper conduct within this internal control system.

To address concerns that these deadlines may give rise to artificial ethics codes and programs, the amended FAR provides for time extensions for compliance with these requirements. Therefore, under the new FAR, the Contracting Officer may lengthen the thirty day period in which the contractor must establish its ethics code. Likewise, the

As a contractor will have a limited period of time by which to establish an ethics code and internal ethics compliance program, it must consider establishing these programs in advance to ensure compliance with the newly amended FAR.

Contracting Officer may permit the contractor more than ninety days to establish an ethics compliance program.

The new FAR also requires for the display of fraud hotline posters. Under the newly amended regulation, government contractors must prominently display either an agency fraud hotline poster or a Department of Homeland Security fraud hotline poster in common work areas. In addition, contractors that use websites as a method of providing information to employees must display an electronic version

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of the fraud hotline posters on its website. If a contractor has established a business ethics and conduct awareness program that includes an internal reporting mechanism, however, the contractor need not display agency hotline posters, except those that may be required by the Department of Homeland Security.

The amended FAR does have some exemptions. If the contract is a commercial acquisition under Part 12 of the FAR or if the contract is entirely performed outside the United States, the new ethics requirements do not apply. Also, a contractor is exempt from the new ethics requirements if the contract value is not greater than \$5 Million and if the performance period is fewer than 120 days. The contractor is also exempt from establishing an ethics program within ninety days after the contract award if a "small business."

Contractors and subcontractors who intend to pursue federal work must take notice of these new requirements of the Federal Acquisition Regulations. As a contractor will have a limited period of time by which to establish an ethics code and internal ethics compliance program, it must consider establishing these programs in advance to ensure compliance with the newly amended FAR.

Finally, it also may not be long before contractors who work on projects which receive federal aid, may also be required to implement such programs. ■



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