

FAR-Reaching Consequences

Ethics Provisions Push Beyond Federal Boundaries

With the introduction of the federal government's Contractor Code of Business Ethics and Conduct (FAR Part 52.203-13) most every contractor that does business with the federal government or would like to do business with the federal government now realizes the importance of a comprehensive ethics and compliance program.

Yet, the FAR rules and regulations go well beyond these seemingly clear boundaries. Robert Groves, managing director at

Navigant Consulting, says, "There are many contractors that will be impacted by the Federal Acquisition Regulation provisions—and they may not know it. For instance, this new FAR clause may also apply to smaller subcontractors providing services under an affected contract."

At the federal level, the FAR mandates a comprehensive ethics awareness and compliance program that includes a written code of business ethics and awareness within 30 days of contract award

*"The federal government's newly enacted ethics and compliance program has widespread impact on the industry – even if you don't directly contract with the federal government."
Bob Groves, managing director, Navigant Consulting.*



and an internal control system to manage the process within 90 days of contract award. The program must include periodic reviews, employee training and education, a hot line, audits and enforced disciplinary action for misconduct.

There is no room to pick and choose which elements of the required program to implement.

William (Tom) Thompson, partner with Peckar & Abramson, P.C., says, "Contractors are expected to incorporate into their compliance programs all of the required elements defined in the FAR. You can't opt out of any part."

However, for those contractors that do limited business with the federal government, there is some flexibility in the complexity of their ethics and compliance program. Thompson continues, "In meeting the FAR requirements, the level of sophistication of a contractor's compliance program can be scaled to the size of the company and volume of business that it does with the government."

"Implementing a comprehensive program is not an overnight effort," says Navigant's Groves. "Those firms that have gone through the process will tell you that it's an evolving process that is often updated over time to become current with the new regulations."

"We're well past the days when companies develop a corporate ethics statement, hang it on the wall, and hope that everyone across the company complies. Take affirmative steps to make sure you've introduced a comprehensive ethics and compliance management program that reaches every person in your company." Dennis Allen, senior vice president, Hill International Inc.



Perhaps the most important element of an ethics program is a company-wide training program to make sure all employees are aware of the risks of improper conduct. The training program should educate employees about false claims and other risks that have resulted in penalties.

Groves adds, "Executive management might clearly understand the risks, but unless every employee that is involved in contract administration understands those risks, a contractor is still at risk of improper conduct because some employees won't understand that a particular situation is improper."

For instance, a contractor could be accused of making a false claim for payment if he invoices the government twice for same work. Including unallowable costs in the invoice or overstating the contractor's overhead pool might not be such an obvious potential violation.

Bottom line, while most major contractors have always had some sort of ethics program, the new federal requirements dictate that contractors find a way to train and to monitor progress throughout the company.

There are a lot of good reasons to have a compliance program notwithstanding the regulations. Peckar & Abramson's Thompson says, "Industry studies suggest that companies with comprehensive ethics programs find that the incidence of fraud or other ethical violations is significantly reduced because their programs prevent fraud or catch it early enough."

Others have found these programs to be excellent marketing opportunities, a chance to demonstrate to clients a robust and effective compliance program that ultimately benefits the client.

Dennis L. Allen, senior vice president of Hill International, says, "We all agree on the concepts of good ethics. The next step is to integrate those concepts into normal business processes and then document the efforts. The added advantage is that these programs will also help reduce internal losses from waste, fraud and abuse."

Industry experts agree that the starting point for a quality ethics and compliance program is with legal counsel.

"Work with in-house or outside counsel to understand the current and often changing ethics

and compliance regulations that may apply to your specific project," says Groves. ■

For more information, read the FAR clause (http://www.acquisition.gov/far/current/html/52_200_206.html). Additionally, AGC of America has a handbook on CD that offers insight into contractor ethics and professionalism.