

IF YOU DO WORK FOR THE FEDERAL GOVERNMENT NEW COMPLIANCE AND ETHICS RULE EFFECTIVE DECEMBER 24, 2008

On February 16, 2007, The Department of Defense (DOD) General Services (GSA) and National Aeronautics and Space Administration (NASA) proposed an amendment to Federal Acquisition Regulation (FAR) Case 2006-007, Contractor Code of Ethics, CFR parts 2, 3 and 52.

On November 23, the federal government promulgated a new regulation requiring most federal contractors and subcontractors to adopt and promote a code of business ethics.

**Federal Contractors Code of Business Ethics and Conduct
FAR Case 2006-007
48 CFR Parts 2, 3 and 52
Final Rule: November 23, 2007
Effective December 24, 2007**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the requirements for a contractor's code of business ethics and conduct and the display of federal agency Office of the Inspector General (OIG) Fraud Hotline. The amended section is 48 CFR Parts 2,3 and 52. The rule requires contractors to present themselves with the highest degree of integrity and honesty. Contractors should have a written Code of Business Ethics and Conduct. To promote compliance with such a code of business, contractors should have an Employee Training Program and an internal control system that is:

- **Suitable to the size of the company and extent of its involvement in Government contracting. This applies to contractors and subcontractors receiving awards of \$5,000,000 that have performance periods of 120 days or more, shall have a written code of ethics and business conduct within 30 days after contract awards. The contractor shall promote compliance by establishing an internal control system, within 90 days after contract. A contracting officer has been given authority to increase the 30- day time period for preparation of a code of business ethics and conduct and the 90 day time period for establishment of an ethics awareness and compliance program and internal control system, upon request of the contractor. This rule does not apply to small businesses or commercial contractors**
- **Facilitate timely discover of improper conduct in connection with Government**
- **Ensure corrective measures are promptly instituted and carried out.**
- **A contractor does not need to display government fraud hotline posters if it has established a mechanism by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.**

NEW – November 14, 2007

Contractor Compliance Program and Integrity Reporting

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR), at the request of the Department of Justice.

On May 23, 2007, the Office of Federal Procurement Policy received a request from the Department of Justice to amend the proposed FAR rule to require contractors to have a code of ethics and business conduct, and to establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of government contracts or subcontracts. They must also notify contracting officers without delay whenever they become aware of violations of Federal Criminal law with regard to government contracts or subcontracts. This proposed rule is open for comments to the FAR Secretariat on or before January 14, 2008.

This proposed rule covers some of the same areas requested by DOJ. However, several aspects of the DOJ request go beyond that proposed rule. The Councils propose to modify Clause 52.203—XX, Contractor Code of Ethics and Business Conduct, which was proposed under FAR case 2006-007, to more closely match the U.S. Sentencing Commission Guidelines Manual, Section 8B2.1. The U.S. Sentencing Commission Guidelines provide guidance on what the U.S. Sentencing Commission expects in the way of an effective compliance and ethics program from organizations convicted of a felony or Class A misdemeanor.

The Department of Justice and other respondents to the FAR Case 2006-007 considered that the proposed rule left out important elements that are covered in the U.S. Sentencing Guidelines and that this can cause confusion. Businesses (especially small businesses) may believe they have met all the compliance requirements of the U.S. Government by following the FAR and this will create a false sense of security.

AUDIO/WEB CONFERENCE

New Rules For Federal Contractors How to Develop an Ethics and Compliance Program

The Society of Corporate Compliance & Ethics has joined with The Association of General Contractors for an Audio/Web conference on Thursday, January 10, 2008. 2:00 p.m. EST. For further information go to SCCE: www.corporatecompliance.org