

GovCon 101: Ethics and Compliance



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- Prior experience includes 21 years at Electronic Data Systems Corporation, including Director of Contracts and Legal for EDS Federal.



Let's Get Acquainted

I work for a

A) Contractor

B) Government Agency

C) Law Firm

D) Myself

Agenda

Introduction

Bribery, Gifts and Gratuities

Kickbacks

Contingent Fees

Procurement Integrity

Organizational Conflicts of Interest

Hiring from the Government

Doing business overseas

Cybersecurity

False Claims, False Statements, Suspension and Debarment

Compliance Programs

Purpose of Course

Legal, ethical, and compliant conduct is necessary to succeed in the government marketplace.

Objectives:

- Understand the ethical and compliance rules that apply in the federal government marketplace.
- Emphasize the importance of our conduct when doing business for or with the federal government.

Recognize compliance issues and dangers before you take irreparable action!



Government Employees' Duties to the Public

Federal Acquisition Regulation 3.101: Standards of Conduct:

3.101-1 General

“Government business shall be conducted in a manner **above reproach** and, except as authorized by statute or regulation, with complete **impartiality** and with **preferential treatment for none**. Transactions relating to the expenditure of public funds require the highest degree of **public trust** and an **impeccable standard of conduct**. The general rule is to avoid strictly any **conflict of interest** or even the **appearance of a conflict of interest** in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have **no reluctance to make a full public disclosure** of their actions [i.e., **accountability**].”

What About the Contractor?



- Part of Team
- Wearing a different uniform
- That means
- Contractor employees (and government employees) must respect differences in their roles.

but

- **Contractor employees must support the agency's responsibility to protect the public interest and maintain public trust.**



What Does This Mean?

- Federal government contracting is a heavily regulated marketplace.
- ***Practices or activities that are legal and acceptable in the commercial marketplace or on commercial property may not be legal or acceptable in the federal government marketplace or on federal government property!***
- Contractor must maintain a rigorous Compliance Program  
 - To avoid/mitigate risks of non-compliance
 - To comply with federal regulations
- **Employees must be sensitive to issues before they take improper and irreversible actions.**



What Can Happen If We Don't?

Violations can involve civil and criminal penalties, fines and imprisonment.

- Company is at risk:
 - Cancellation/protest of contracts
 - “Suspension” or “debarment” – i.e., temporary or permanent preclusion from seeking government business
 - Negative “responsibility” determinations (via Federal Awardee Performance and Integrity Information System (FAPIIS)), available to customers and competitors)
 - Damage to company’s reputation
 - Criminal penalties
- Individual employees are also at risk:
 - Loss of employment
 - Criminal penalties
 - Suspension or debarment



Ask Yourself

- How will this action look to a government investigator or prosecutor?
- How would this action look in the newspaper?
- Does it “feel” appropriate in my gut?





Bribes and Gratuities

Bribery and Gratuities Statute

18 U.S.C. §201

- Prohibits:
 - giving or offering/requesting or receiving
 - money or anything of value
 - directly or indirectly
 - to or by a public official
 - to influence an official act (bribe)
 - for or because of an official act (gratuity)
- **Specific Intent is required. How does one prove intent? How does one disprove intent?**
- These statutes punish BOTH public official and gift giver.
- Even if the offer is NOT accepted!
- Contractor has duty to report violations.
- States have bribery laws, too.



Executive Branch Regulations (5 C.F.R. 2635)

- -Executive branch employees may not:
 - solicit or accept “items of value” from contractors or contractor employees.
 - solicit or accept gift given because of employee’s official position
- -Regulation doesn’t apply directly to contractors – but do you really want to get your customer in trouble?
- -Good news: This is not a criminal statute.
- -Bad news: “Intent” is irrelevant. This is a strict liability regulation. “Unintentional” violations are still violations.
- -Note that FAR 52.203-3 provides for termination if contractor offers gratuity “to obtain favorable treatment”



Items of Value - Examples

- **Travel / Transportation**

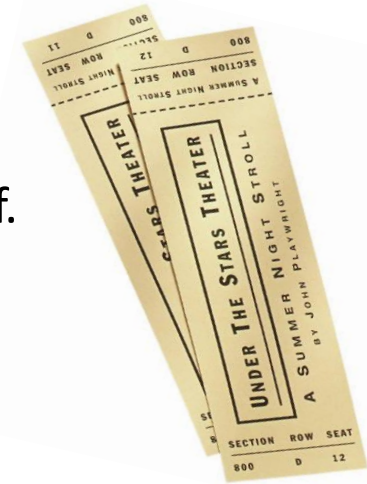
- Contractor employees may not pay expenses or provide transportation.
- (By the way, contractor employees may not use government vehicle for personal travel.)

- **Food**

- Contractor employee should not pay for government employee's meal.
- "Taking turns" does not satisfy regulation. Auditors will look at event by itself.

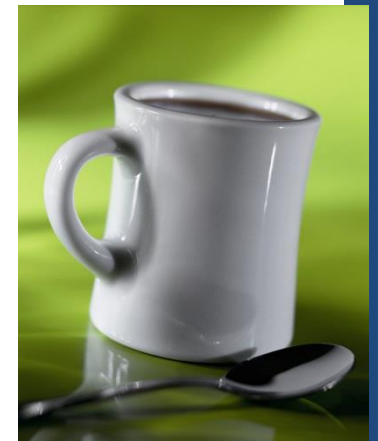
- **Events (sports, entertainment)**

- Contractor employees may not pay for government employee's ticket.
- Government employee must reimburse market value of ticket (which may be greater than face value – e.g., Super Bowl, Masters)
- Training sessions – not permitted unless part of *contract*
- Conferences, trade shows – invitation may not come from individual contractor.



Bribery and Gratuities - Exceptions

- **Government officials can pay their own way.**
 - E.g., taxi fare, cost of meal or ticket
 - Must be based on market value, not contractor's cost
- Modest items of food and refreshments (e.g., soft drinks, coffee) not part of meal
- Greeting cards, plaques, trophies intended for presentation
- **Gifts worth \$20 or less** (e.g., promotional items), **but**
 - Aggregate gifts to government employee from all company employees may not exceed \$50 in calendar year.
 - How will your company track this?
- Some agencies (and many companies) take stricter positions.



Bribery and Gratuities – Exceptions, cont.

- **Gifts made to personal friend or relative** (and not reimbursed by company), **but**
 - Would you make gift if the company did not have a contract?
 - Did “friendship” predate business relationship?
 - Was cost of gift reimbursed by company?
 - Will government investigator believe you?
 - **Facebook “friends” don’t count!**
- **Widely attended gatherings (“WAG’s”)**
 - Large number of persons with diversity of views or interests
 - Opportunity to exchange views
 - Written agency authorization
 - If paid for by other than event sponsor, must be more than 100 persons and cost less than \$375



Bribery and Gratuities - Lessons

- Misconception: Don't sweat the small stuff. Investigators only care about big ticket items. The small stuff will fly under the radar.
 - But it's an easy win for the prosecutor!
 - Investigators look at calendars and expense reports.
 - The walls have ears. So do your customer's enemies!
- Before offering (or accepting) a gift, ask yourself:
 - What is the purpose of the gift?
 - How would it look to a government investigator?
- It is acceptable and common for government personnel to pay for their meals, and for contractor to ask government personnel to reimburse the cost of the meal.
 - **It should not offend the government employee; you are protecting them from legal harm!**





Kickbacks

What Is a Kickback?

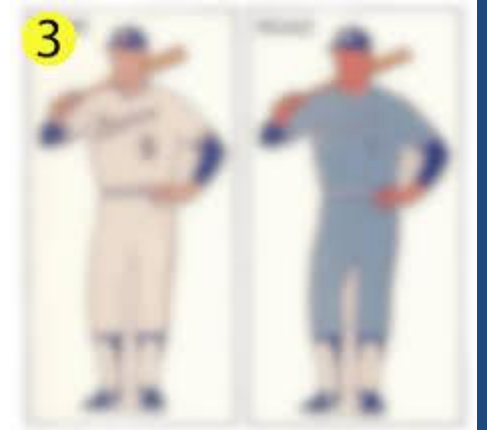
- Any money, fee, commission, credit, gratuity, thing of value, or compensation of any kind
- provided to any prime contractor or subcontractor, or any of their employees
- **“for the purpose of improperly obtaining or rewarding favorable treatment”**
- in connection with a prime contract *or* subcontract.

- Federal Anti-Kickback Act of 1986 prohibits any person or company from:
 - providing, attempting to provide or offering to provide any “kickbacks”
 - soliciting, accepting or attempting to accept a “kickback”
- Kickback does not have to be given or accepted; act of offering or requesting a kickback is a crime.
- Kickbacks are illegal because:
 - They undermine competition.
 - They distort supplier selections.
 - The cost may ultimately be paid by government.



Kickback rule compliance is difficult to manage because:

- Parties are not always clearly identified.
 - Is supplier a commercial vendor or a government subcontractor?
- Violation depends on “intent.”
- Contractors are required to have and follow reasonable procedures to prevent and detect violations.
- Contractors are obligated to report, in writing, suspected violations of kickback laws to the government.



Anti-Kickback Act - Lessons

- Before you accept (or offer) a gift, ask yourself:
 - Why am I receiving (offering) this “gift?”
 - What is the motive for this “gift?”
 - How would it look to a government investigator?
- Misconception: “Everybody does it.”
 - Did you ever whine to the policeman, “but everybody else was speeding, too”? How’d that work out?
- Remember - Company must report suspected violations.
- Business “courtesies” that are normal in the commercial marketplace may be seen as kickbacks in the government contracting world. That makes kickback rules particularly troublesome where commercial and federal supply chain activities are integrated.



Contingent Fees

Contingent Fees

- Contingent fees = any commission, percentage, brokerage or other type of fee that will be paid only if the contract is awarded (“kill and eat” provision).
 - Contractor may not pay contingent fees to third parties. (Don’t worry, sales commissions to employees or “bona fide selling agencies” are allowed!)
 - Opportunity to subcontract is allowed (not a “fee”)
 - Purpose: prevent improper attempts to influence contract awards.
 - Big difference from commercial marketplace.





Procurement Integrity Act

Procurement Integrity Act

- Applies during procurement process.
 - Aren't we always in a procurement process?
- Prohibits:
 - federal officials from knowingly *disclosing*; or
 - contractor employees (or teaming partners) from knowingly *obtaining*, either:
 - Contractor Bid or Proposal information (CBPI), or
 - Source Selection Information (SSI)
- Applies to written or verbal information.
- Purpose: ensure level playing field.
- Note: Act also contains rules re employment discussions with government officials, which will be discussed later.

Procurement Integrity Act – Improper Disclosure

- Contractor Bid and Proposal Information (CBPI) = Information submitted to the government by a competitor in connection with a bid or proposal, such as:

- proposals
- technical questions
- cost or pricing information
- technical solutions
- other proprietary information



- Information does not have to be marked to be protected.
- Ask yourself – if this were company’s own information, would you want competitors to be able to see it? If not, you can assume the reverse is true.

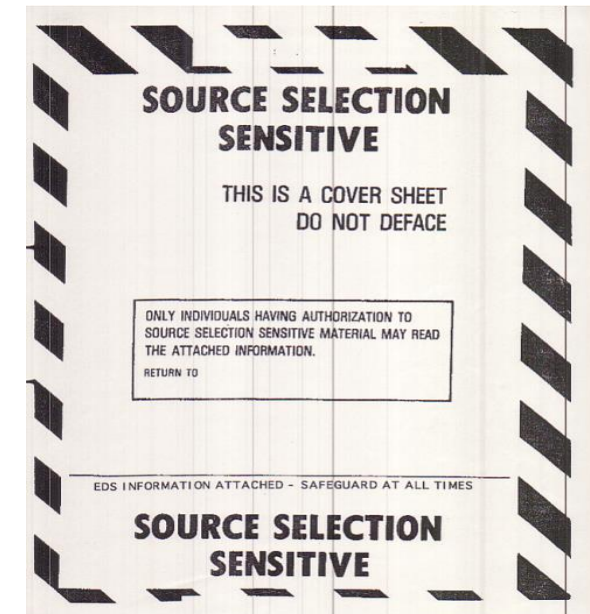
Procurement Integrity Act – Improper Disclosure

Source Selection Information = Procurement-related information developed by the government that has not been made public, and whose knowledge could benefit competitor.

- Includes verbal, electronic, audio, and video material
- Information does not have to be marked to be protected.
- Prohibition applies even if information is obtained “indirectly” from teaming partner or downloaded from a web site.

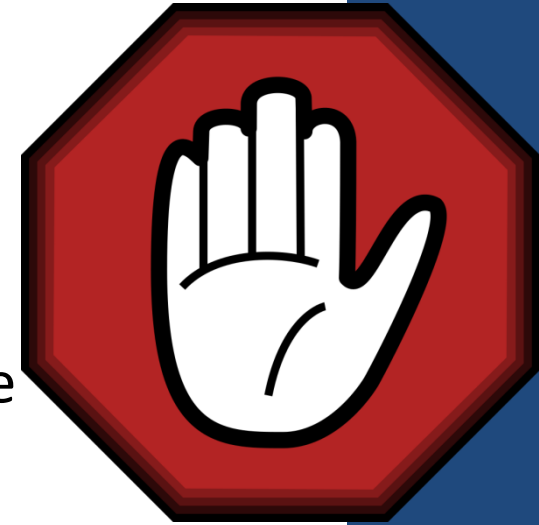
Examples:

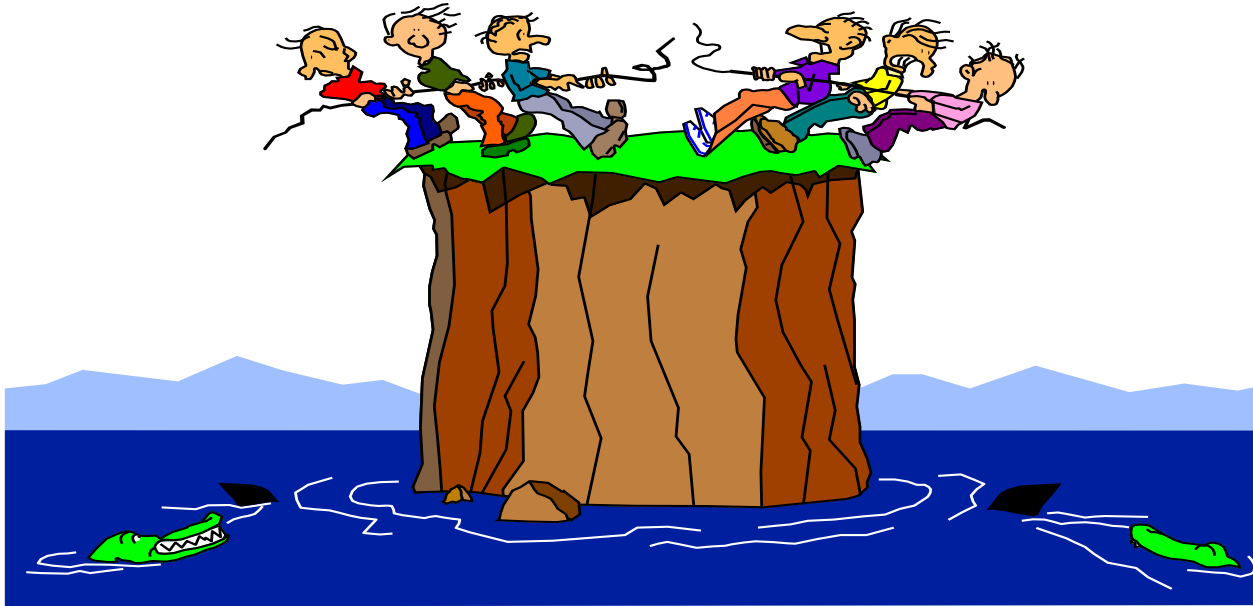
- bid prices, proposed costs
- source selection or evaluation plans, if . . . (what?)
- competitive range determinations
- rankings of proposals or competitors
- government evaluations of proposals
- reports of source selection boards or boards



Procurement Integrity Act – “The Drill”

- If you hear information you think may be CBPI or SSI – **STOP** the conversation!
- If you receive (or come into contact with) written information you think may be CBPI or SSI, immediately:
 - **limit accidental access**: retrieve and secure all copies.
 - **limit further exposure**: do not discuss, show, or forward (via email) the information to anyone, including your manager.
 - **report it**: call [Legal/Contracts/Compliance], explain how you received the information and who else has it.
- If you are in doubt about whether you or company should have certain information, contact Legal/Contracts/Compliance.
 - verifying your right to have information before you use it is better than trying to mitigate improper use of information.





Organizational Conflicts of Interest

Organizational Conflicts of Interest (OCI)

- An OCI “means that because of other activities or relationships with another person, a person is unable or potentially **unable to render impartial assistance or advice** to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an **unfair competitive advantage.**”
- There are three kinds of Organizational Conflicts of Interest:
 - Unequal access to information
 - Impaired objectivity
 - Ability to set biased ground rules

Organizational Conflicts of Interest

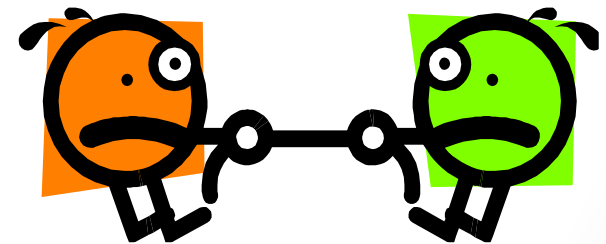
Unequal Access to Information

- Arises when contractor, as part of its performance, has access to nonpublic information that will give it an unfair competitive advantage over other offerors.
- As a general rule, simply being the incumbent (and thereby having a better understanding of the customer) does not create an OCI. “Experience” is considered a “natural advantage of incumbency.”
- An OCI will arise, however, when an incumbent contractor has proprietary information, source selection information, or other nonpublic information not provided to competitors that gives the contractor ***unique insight*** into the bidding or evaluation process (i.e., knowledge of future requirements, budget estimates)
- Unfair competitive advantage may be presumed if knowledge is shown, or even if access to information is shown.
- Usual mitigation is “firewall” between company employees who have access to information and employees on proposal team, or disclosure of procurement-related information to all bidders.

Organizational Conflicts of Interest

Impaired Objectivity

- Arises when contractor has opportunity to provide advice that might affect its own interests:
 - E.g., evaluating work contractor performed under another separate contract
 - E.g., evaluating work performed by a competitor
 - E.g., providing advice that might affect an affiliate's business interest
- Government's primary concern is that contractor will not be able to act objectively because of other economic pressures and consequences.
 - Usual mitigation involves limiting scope of work or excluding conflicted team member from activity.



Organizational Conflicts of Interest

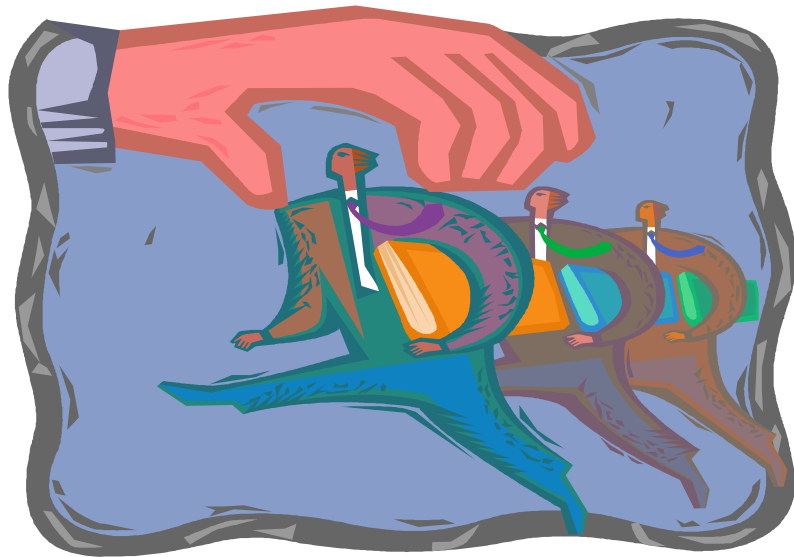
Biased Ground Rules

- Arises when contractor has the ability to **set the ground rules** (e.g., write specification) for another procurement. Unfair advantage is presumed.
- Government's primary concern is that contractor could
 - skew the competition, whether intentionally or not, in its own favor, or
 - gain an unfair advantage in the competition by tailoring competition or early knowledge of the agency's requirements.
- Very difficult to mitigate after the fact.
- DFARS has strict rule for Major Defense Acquisition Programs. SETA contractor may not participate as contractor or Major Subcontractor in development or construction of "MDAP's."
- As a result, major defense contractors (Northrop Grumman, Lockheed Martin, ITT, SAIC) divested their SETA divisions.
- Note: Trying to "shape the deal" before the RFP is issued does not create an OCI, as long as other potential bidders are free to do the same.

Organizational Conflict of Interest - Prevention

- Early recognition is crucial – be sensitive to potential OCI situations. Sleeping dogs will awaken.
- Communication between contractor and government is crucial. Mitigation plans may need time to prepare and negotiate.
- Communication within company (and with vendors) is also important.
- Remember: Your competitors are always on the lookout.
- Contractor may have to choose – you can't always have your cake and eat it, too.
- Front line OCI defense lies with government and contractor employees who work together – be careful about information disclosure (e.g., email, at meetings), requests for advice beyond scope of contract, using contractor information to prepare specifications.





Hiring and Recruiting from the Government

Hiring and Recruiting from the Government

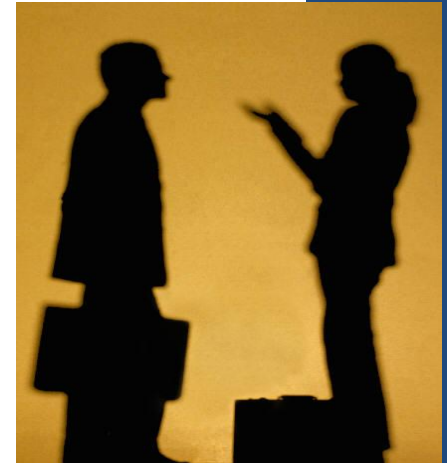
“Revolving Door” Statutes:

- Regulate hiring and recruiting of government personnel
 - Prohibit some government personnel from even discussing employment with some contractors.
 - Restrict some current and former government personnel from accepting employment with some contractors.
 - Restrict some former government personnel from communicating to government.
- Limit the ability of contractor to recruit, hire or use (hired) government personnel.



Can We Talk Employment?

- Government employee who is “personally and substantially involved” in a procurement (>\$150K) must promptly report employment discussions with a bidder, and either:
 - immediately disqualify him/herself from participation in the procurement, or
 - immediately reject possible employment
- This includes “casual” conversations about “possible” jobs. **Beware: Employment “discussions” are defined very broadly!**
- Government employee seeking or negotiating for employment with contractor may not work on any particular matter “directly and predictably” affecting financial interests of prospective employer.
- Contractor: What might happen if you ask government employee whether they are interested in working for your company?



Can We Hire (Be Hired)?

- Government personnel on major programs (>\$10M) are ***prohibited for one year*** from accepting “compensation” (employment or consulting) from any contractor or subcontractor who supports that program if they played major role or held key positions:
 - Contracting officer
 - Source Selection Authority or SSEB member
 - Program manager or deputy PM
 - Decision-maker for award, rates, or claim

What Can't We/They Do?

- Per 18 U.S.C. 207 (a criminal statute!) government personnel are prohibited from communicating with their former agencies relating to any particular matter (i.e., contract) in which the employee was involved during their government service. The time restrictions can be:
 - “lifetime” (of the contract or program, not the official) if they were “personally and substantially” involved,
 - two years, even if not personally and substantially involved, if “particular matter” fell under former employee’s jurisdiction,
 - one year for “senior” and “very senior” persons
- Wrongful participation in proposal activity may also create organizational conflict of interest (unfair competitive advantage).
- Former government employee can work “behind the scenes” because that does not involve representation. But be careful! They should not sign letters or attend meetings (even if silent).

Written Ethics Opinions

- Good news: Government employee can get “30-day letter” from Designated Agency Ethics Official (DAEO). Addresses employment discussions and hiring limitations.
- Bad news: Letter rarely addresses representation restrictions (unless requested); instead, provides “do it yourself” legal guidance.
- Letter is required for some senior DoD officials (SES, flag officer, PM, CO, SSO) who “participated personally and substantially” in acquisition (>\$10M), before accepting position from major DoD contractor within 2 years of DoD service.
- DoD contractors may not knowingly compensate such officials without determining that they have written opinion, and must represent that “covered DOD officials” are in compliance with post-employment restrictions
- Contractor violations can be a cause for contract rescission, suspension or debarment.



CyberSecurity

CyberSecurity Requirements

If you have or process Federal Contract Information (FAR) or Covered Defense Information (DFARS):

- FAR 52.204-21 (2016) – basic protections for safeguarding covered information systems.
- DFARS 252.204-7012 (2013) – “adequate security” for protecting covered information systems, and incident reporting requirements
- NIST 800-171 et seq. – basic coverage
- Cloud services – FedRAMP Moderate Baseline
- October 3, 2023 – Proposed FAR rules addressing cyber incident reporting (8 hours!) and cybersecurity requirements for contractors maintaining a Federal Information System. Violations are “material.”

Interim Rule

Interim Rule issued September 29, 2020, effective November 30, 2020:

- If you are obligated to comply with NIST SP-800-171 (i.e., if your contract contains DFARS 252.204-7012, -7019, -7020), you will need to conduct “Basic” self-assessment and post it on the SPRS (Supplier Performance Risk System) database.
- Self-assessment must be posted prior to contract or task order award or exercise of option. (Previously contractors had only to submit system security plan and plan of action.)
- Flows down to subcontractors who receive CUI (Controlled Unclassified Information).
- Allows government to do audits on some systems, for Medium and High levels of assessment.

Recent Cases

- August 2019 - Cisco Systems Inc. agreed to pay \$8.6 million to settle allegations that it violated FCA by selling video surveillance systems to state and federal agencies that contained software flaws that exposed those agencies to potential cyber intruders, and failed to disclose that software did not comply with FISMA standards.
- March 2022 – Comprehensive Health Services agreed to pay \$930K to settle claims that it falsely reported compliance with contract requirements re security of patient medical information.
- July 2022 – Aerojet Rocketdyne paid \$9M to settle claims (made by relator, defendant's former director of cybersecurity) that defendant fraudulently misrepresented compliance with minimum standards for safeguarding controlled technical information.
- September 2023 – Qui tam suit against Penn State University alleging non-compliance with DoD cybersecurity requirements.
- September 2023 – Multi-million dollar settlement with Verizon under Civil Cyber Fraud Initiative.

CMMC Rulemaking

- December 26, 2023 (Merry Christmas!) – DoD published proposed CMMC 2.0 Rule
- Level 1- contractors who process FCI (63%) – must comply with FAR requirements (52.204-21), must self assess, and must submit affirmation of compliance signed by senior official.
- Level 2 – contractors who process CUI (37%) must comply with NIST SP 800-171, mix of self- and third-party assessments, SPRS reporting, limited POA&M (Plan of Action and Milestones)
- Level 3 – Contract-by-contract basis (1%), DCMA assessments.
- Levels 1,2 phased in when DFARS provision is issued. Phase 2 starts phase 2 (Level 3).





Doing Business Overseas

Foreign Corrupt Practices Act (FCPA)



- U.S. foreign public corruption statute
- Covers activities outside the U.S., or within the U.S. for effects outside the U.S.
- Has both anti-bribery and recordkeeping provisions.
- Applies to
 - U.S. companies
 - U.S. nationals and residents
 - Non-US employees or agents acting on behalf of U.S. company
 - Controlled non-US subsidiaries
 - Companies that trade on US exchanges

FCPA – Prohibited Behavior

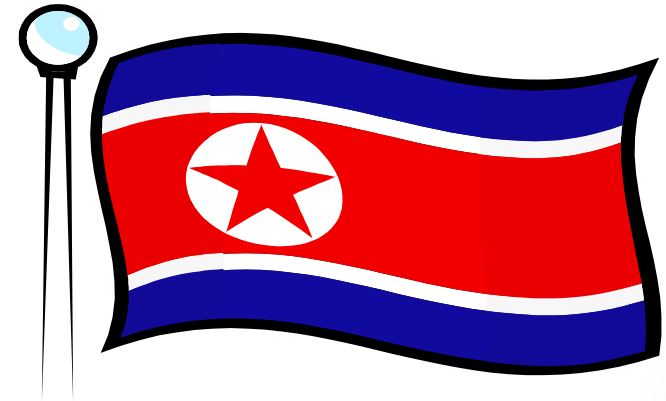
- To offer, promise or give (whether or not delivered)
- Anything of value (no de minimus exception)
- Directly or indirectly, to any “foreign official” or foreign political party, corruptly
 - To influence official action/inaction
 - To obtain or retain business, or
 - To secure any other improper advantage
- Statutory exception for facilitation payments to expedite routine, non-discretionary government actions. (But can you prove that to the satisfaction of the investigator?)
- Penalties: criminal fines (up to \$2M/company, \$100K/person), civil penalties, imprisonment (up to 5 years), suspension, debarment, ineligibility to export



- Export Administration Regulation (Commerce) – dual use products
 - requires licenses
- ITAR (State Department) – defense products, services
 - requires registration plus licenses
- OFAC (Office of Foreign Assets Control) – exports to certain countries, entities, or persons
- Applies to transfers (or re-transfers) outside territorial US
- Includes commodity or information given to person within U.S. with knowledge or intent for person to send or carry it outside U.S.
- “Deemed Export” = foreign national is shown technical data in U.S.
- Severe sanctions for violations
 - Fines (up to \$1M or five times value of export)
 - Prison
- Record keeping/tracking is important.
- Voluntary disclosure mitigates penalties.

Mislabeling

- “Made in USA” sells better, but
- The Government cares where products come from:
 - **Domestic preference (“Buy-America”) laws**
 - Percentages raised by Executive Orders
 - “Made in America” Office
 - “Buy America, Build America Act” (BABAA) tightens requirements for infrastructure projects.
 - Trade Agreements
 - Foreign policy
- The consequences for violations are serious.
 - Falsely affixing a “Made in America” label is a basis for suspension or debarment.



Human Trafficking Rule

- “Zero tolerance” policy re trafficking in persons.
- Covers contractors, subcontractors, and agents:
 - Actions involving minors
 - Actions induced by force, fraud, or coercion
 - Procuring sex acts
 - Using forced labor
- Examples of prohibited activities:
 - Misleading or fraudulent recruitment practices, fees
 - Failing to pay for return transportation, or providing unsafe housing
 - Failing to provide understandable employment contract





False Claims and False Statements

False Claims Acts

- Prohibit knowing attempts to obtain money or property from government relating to false or misleading information.
- Apply to statements material to getting payment from Government or to reduce liability to Government.
- May be violation even if not presented “directly” to government – e.g., to prime contractor or grantee who is reimbursed by government.
- “Knowing” includes recklessly disregarding or ignoring truth.
 - Routine mistakes are not violations if they are corrected promptly.
 - But . . . will Justice Department be persuaded that mistake was innocent if result was that company got money?
- Note: 32 states and 7 municipalities have false claims laws. Some go farther – e.g., California imposes liability on beneficiaries of “inadvertent submission of false claim” who discover falsity of claim and fail to disclose within reasonable time.

False Claims Acts – Criminal vs. Civil

Criminal (18 U.S.C. 287)

- **Penalties** = Imprisonment (up to 5 years), fine (up to \$250,000)
- **Elements** = "knowing claim to be false, fictitious, or fraudulent"
- **Burden of Proof** = Beyond a reasonable doubt

Civil (31 U.S.C. 3729 et seq.)

- **Penalties** = Fine (~~\$5,500~~ \$13,946 to ~~\$11,000~~ \$27,894 per false claim (invoice), plus treble damages.)
- **Elements** = "knowingly presents, or causes to be presented, . . . a false or fraudulent claim"
- **Burden of Proof** = Preponderance of evidence
- **Qui Tam Relators** can share in recovery (more than \$40 billion recovered since 1986!)

Prosecutors prefer to bring civil cases because penalties are similar but burden of proof is lower!

Civil False Claims Acts - FY2023 Recoveries

\$2.7B was recovered in FY2023.

\$2.3B was from qui tam cases.

High percentage of recoveries involved healthcare industry (Medicaid, Medicare Advantage).

False Claims/Statement -Examples

- **False claims:**

- Submitting invoices for services not provided, completed or accepted
- Submitting invoices on the basis of erroneous time cards, prices, or indirect rates
- Charging costs to an incorrect task order (e.g., cost-plus instead of fixed-price)

- **False statements:**

- Altering information or results in reports provided to government (e.g., test results, milestone completions, etc.)
- False certifications (of any sort)

- **Special FCA issues for schedule contracts**

- Failure to disclose “discounts” and “concessions” on Commercial Sales Practices Format
- Failure to update these disclosures during negotiations (new data or newly discovered inaccuracies in data previously provided)
- Failure to implement price reductions clause



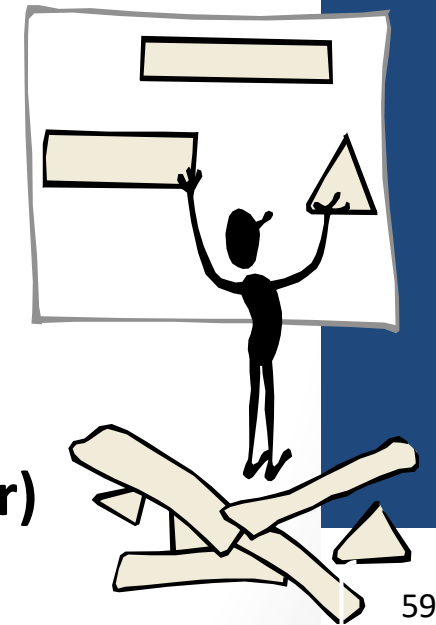
Product Substitution occurs when Contractor delivers product or service that does not totally conform with what is specified in Contract or Delivery Order.

- Do not unilaterally deliver a substitute – e.g., a different product, or personnel whose qualifications do not match contract requirements - even though:
 - The substitute is technically superior.
 - The substitute is cheaper to the Government.
 - The required item will not work.
 - The personnel can do the job.

UNLESS YOU MODIFY THE CONTRACT!

It may be considered **FRAUD** by an auditor (or successor contracting officer)

Disclose instances of mistakes, or contract ambiguities!



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False Claims Act/False Statement Act - Lessons

- Innocent mistakes may not look innocent to a government investigator.
- False statements can include concealment of material facts.
- Do not submit false information to your government!
- Do not substitute or change products or services without government approval.
- Explain ambiguities or limitations of data presented to Government.



Suspension and Debarment



Suspension and Debarment

- Government will do business only with “responsible” contractors.
- “Responsibility” includes having “a satisfactory record of integrity and business ethics.”
- Agency may suspend or debar a contractor to effectuate this policy.
 - Suspension may occur on basis of indictment or “adequate evidence” of fraud; antitrust violation; embezzlement; theft; forgery; bribery; false statements; destruction of records; violation of Drug-Free Workplace Act; false label of origin, or serious cause or other offense that affects present responsibility.
 - Debarment generally requires conviction or judgment for similar offenses, or willful failure to perform or history of failure to perform.

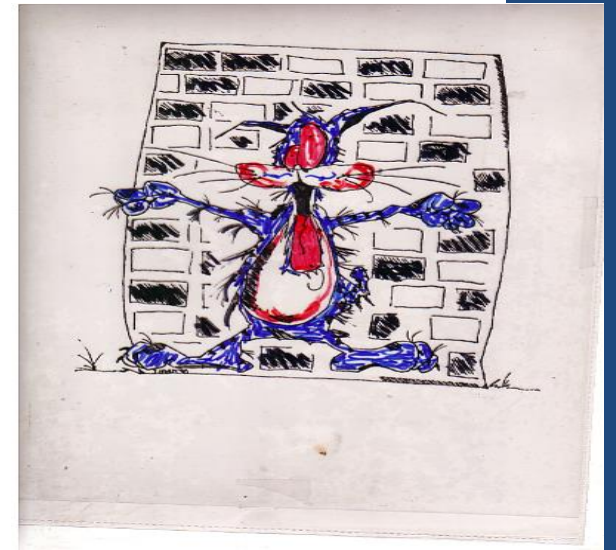
Additional Grounds

Knowing failure by a principal, until 3 years after final payment on any Government contract, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or subcontract, credible evidence of

- (A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
- (B) Violation of the civil False Claims Act; or
- (C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in FAR 32.001.

Suspension or Debarment - Consequences

- General Services Administration ("GSA") maintains a List of Excluded Parties (government-wide) at www.sam.gov.
 - Prime must verify (and should document) that subcontractors are not on excluded parties list.
- Consequences of suspension or debarment:
 - No new contracts (unless waiver)
 - No new subcontracts (unless waiver)
 - Loss of teaming opportunities
 - No new mods or options to previously awarded contracts
 - No orders beyond guaranteed minimum in IDIQ contracts
 - No orders under Federal Supply Schedule, BPA's, BOA's
 - Keep previously awarded contracts (but CO could decide to terminate for convenience because of integrity concerns)





Compliance Programs

Contractor Code of Business Ethics and Conduct

- Threshold is \$6 Million, performance > 120 days
 - Commercial items and small business contracts require limited version (code of conduct, due diligence, timely disclosure)
- FAR 52.203-13 (derived from DOJ Sentencing Guidelines) requires that contractor must
 - conduct business “with the highest degree of honesty and integrity.”
 - have ongoing business ethics awareness and compliance program, including written code of business ethics and compliance, which it must provide to all employees, plus training “as appropriate” (usually annually).
 - May include subcontractors and agents.

Contractor Code of Business Ethics and Conduct

- Contractor must have internal control system that:
 - Assigns responsibility at sufficiently high level (Ethics Officer reporting to senior management) and provides adequate resources to ensure effectiveness.
 - Keeps “bad actors” out of the company’s performance – reasonable due diligence in delegation of authority.
 - Conducts periodic internal reviews of business practices, policies and controls to assess effectiveness.
 - Includes internal reporting mechanism such as a hotline.
 - Provides for corrective actions and disciplinary action for improper conduct (or “failing to take steps to prevent or detect improper conduct”).

Contractor Code of Business Ethics and Conduct

- Contractor must make timely written disclosure whenever it has “credible evidence” that principal, employee, agent or subcontractor has committed violation of criminal law involving fraud, conflict of interest, bribery or gratuity, or violation of Civil False Claims Act.
 - “Super Circular” (2 C.F.R. 200) contains similar disclosure obligations.
- “Full cooperation” must be given to all Government agencies involved with audits, investigations or corrective actions.
- DCAA will audit reporting and cooperation
 - List of violations and reports
 - Policy and procedures
 - List of open investigations
- This makes it vital that questionable or illegal conduct be reported internally.

PART G



Conclusión

Who Are the Violators?

- Employees who violate the rules and policies
- Company employees who authorize, condone, or conceal violations
- Managers who approve or disregard violations
- Managers who, through lack of diligence, fail to prevent or report violations
- Employees who retaliate against employee who reports violations
- Employees who knowingly and falsely accuse another employee of violations

Possible Penalties for Violations



- Criminal prosecution
- Fines
- Suspension or Debarment
- Termination of employment
- Negative news coverage



Is it safe to run near the sideline, or should we stay in the middle of the field?

- **It depends on the Risk/Reward ratio.**
 - **What might you gain?**
 - **What happens if you are wrong?**

WHEN little will be gained and much could be risked – stay in the middle of the field!

- Bribery and Gratuities
- Kickbacks
- Contingent Fees
- False Claims and False Statements



WHEN much might (and should) be gained - run near the sideline – BUT DO NOT STEP OUT OF BOUNDS

- Procurement Integrity
- Organizational Conflicts of Interest
- Hiring from the Government



Compliance

- There are potential pitfalls and traps in the government marketplace.
- Whether you work for the government or for a contractor, you must avoid illegal practices and foster and encourage exemplary conduct.

At a minimum:

- **be aware of the various rules and prohibited activities.**
- **comply with those rules.**
- **avoid prohibited activities.**
- **know when and where to ask for information.**
- **engage assistance where needed.**

Ask Yourself

- How will this action look to a government investigator or prosecutor?
- How would this action look in the newspaper?
- Does it “feel” appropriate in my gut?



Business Ethics

- **Integrity is doing what is right, even when no one is looking:**
 - Exceeding the minimum requirements of the law.
 - Conducting business in accordance with both the *letter* and the *spirit* of the law.

Ask yourself: “Could we do business in complete trust with someone who acts the way we do?”

The answer must be “YES!”

Mark Twain's Perspective on Ethics

Always do right. This will
gratify some people,
& astonish the rest.

Very
Yours
Mark Twain

New York, Feb. 16, 1901.



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