



American Subcontractors Association

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The New Federal Acquisition Regulations Require Your Business to Have a Compliance Plan, Ethics Training and Internal Controls

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The Federal Acquisition Regulations (“FAR”), codified at 48 CFR Chapter 1, were established in order to propagate uniform policies and procedures for the acquisition of products and services by all Federal executive agencies. Although the FAR applies to major contracts for sophisticated and expensive items like submarines and jets, it also applies to smaller wares like computers as well as to construction projects.

When attempting to procure a government job, contractors must adhere to certain FAR integrity regulations. Some key regulations prohibit the offering of gratuities to government officials, contingent fee contracts, and the offering or acceptance of kickbacks. Further, contractors may be required to certify to the Government that their prices were determined independently and without consultation or agreement with competitors regarding price. More recently, the FAR have been amended so as to require certain government contractors to institute in-house programs to regulate their compliance with ethical standards. The FAR now also requires contractors to disclose fraud by their employees to the Government in a timely fashion.

In 2008, the FAR was overhauled so as to make FAR compliance standards much more rigorous. The following are the major changes.

- The FAR now requires contractors to exercise due diligence to prevent and detect criminal conduct within their organizations and to promote a company culture encouraging ethical conduct and compliance with laws.
- The new FAR fortified the requirements for corporate ethics and awareness programs, now requiring contractors to provide ethics training to employees, agents, and subcontractors.
- The FAR requires government contractors to have an internal control system for the detection of improper conduct relating to government contracts.
- In order to ensure a contractor’s compliance with both federal and in-office ethical compliance standards, and the FAR now requires that certain ethics management tasks be assigned to management rather than human resources or other another department.

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- The FAR mandates that contractors make reasonable efforts to exclude as principals individuals who have committed illegal acts or acted contrary to the contractor's code of business ethics and conduct.
- The FAR now requires periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the contractor's code of business ethics and the special requirements for government contracting.
- The FAR now requires contractors have a confidential internal reporting mechanism or hotline for reporting possible misconduct and that they instruct their employees to make such reports when necessary.
- The FAR now requires disciplinary action for improper conduct and for failing to report improper conduct.
- When a contractor has "credible evidence" that a violation of federal criminal law or the False Claims Act has occurred during the award, performance, or closeout of any government contract performed by the contractor or its subcontractors, the contractor must provide timely disclosure of the violation.
- The FAR now requires "full cooperation" with any government agencies responsible for auditing, investigating, or taking corrective actions.

These are onerous requirements and it is essential that contractors know their obligations, since many contractors fall within the categories of businesses that must comply. In fact, ALL of the aforesaid requirements apply to contracts where the value of the contract is anticipated to exceed \$5 million with a performance period of greater than 120 days unless. If a contract meets the \$5 million/120 day threshold, the only exceptions to compliance are if the contract is either (a) for commercial items or (b) will be performed by small a business. Even if these exceptions apply, if the contract exceeds \$5 million, all of the aforesaid provisions except the regulation relating to ethics awareness and compliance programs still apply.

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