



## Contractor Code of Business Ethics and Conduct

**Laura K. Kennedy**

**Senior Vice President, Ethics and Compliance**

**SAIC**



# Origin of FAR Clause on Business Ethics and Compliance

## FAR Clause on “Contractor Code of Business Ethics and Conduct” (52.203-13)

- Requires government contractors to:
- Exercise due diligence to prevent and detect criminal conduct
  - Promote an organizational culture that encourages ethics and compliance
  - Submit mandatory disclosures to the government

## DCAA Audit Guidance

Audits compliance with each specific element of the FAR clause.

1991

2004

2008

2009

2010

### U.S. Sentencing Guidelines

Companies can reduce sentences if have “effective compliance and ethics programs.”

### Revised U.S. Sentencing Guidelines

“Effective compliance and ethics programs”:

- Exercise due diligence to prevent and detect criminal conduct
- Promote an organizational culture that encourages ethical conduct and commitment to compliance

### Amendments to U.S. Sentencing Guidelines:

Companies can reduce sentences if:

- Chief Compliance Officer has “direct reporting obligations” to governing authority (i.e. Board)
- Company detects offense before discovery outside, and promptly reports offense to government
- Compliance and ethics personnel did not participate in, condone, or were willfully ignorant of offense.

# Sections of the FAR 52.203-13



- Definitions
- Code of Business Ethics and Conduct
- Business Ethics Awareness and Compliance Program and Internal Control System
- Subcontracts

# Key Definitions



- “Full Cooperation”:
  - Disclosure to the Government of information sufficient for law enforcement to identify nature and extent of offense and individuals responsible for conduct.
  - Not require waiver of attorney-client or work product privileges or Fifth Amendment rights
- “Principal”:
  - Officer, director, owner, partner or person having primary management or supervisory responsibilities within a business entity
  - Examples: general manager, plant manager, head of subsidiary, division or business segment
- “Subcontract”:
  - Contract entered into by subcontractor to furnish supplies or services for performance of a prime contract or subcontract.
  - Subcontractor is a supplier, distributor, vendor or firm that furnished supplies or services to or for a prime contractor

# Code of Business Ethics and Conduct



1. Within 30 days after contract award, contractor shall:
  - Have written code of business ethics and conduct
  - Make a copy available to each employee engaged in contract performance
2. Contractor shall:
  - Exercise due diligence to prevent and detect criminal conduct
  - Promote an organizational culture that encourages ethical conduct and a commitment to compliance with law.
3. Contractor shall timely disclose in writing to agency Inspector General whenever in connection with the award, performance or closeout of the contract or subcontract, Contractor has credible evidence that a principal, employee, agent or subcontractor has committed certain violations of law.

# Business Ethics Awareness and Compliance Program and Internal Control System



- **Provision does not apply to small businesses or commercial item contracts**
- **Within 90 days of contract award, Contractor shall establish:**
  1. Ongoing ethics awareness and compliance program
    - Reasonable steps to communicate periodically and in practical manner Contractor's standards and procedures by
      - conducting effective training programs and
      - otherwise disseminating information appropriate to individual's respective roles and responsibilities
    - Training for contractor's principals and employees and, as appropriate, contractor's agents and subcontractors.
  2. Internal Control System
    - Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts
    - Ensure corrective measures are promptly instituted and carried out.

# Internal Control System: Minimum Requirements



1. Assignment of responsibility at sufficiently high level and adequate resources to ensure effectiveness of program
2. Reasonable efforts not to include individual as a principal, whom due diligence would have exposed conduct in conflict with Code
3. Periodic reviews of business practices, procedures and internal controls (slide 8)
4. Internal reporting mechanism, such as hotlines, to report suspected misconduct and instructions that encourage employees to make reports
5. Disciplinary actions for improper conduct or failing to take reasonable steps to prevent or detect improper conduct
6. Timely Disclosure to the agency Inspector General of certain violations of law
7. Full Cooperation with Government agencies for audits, investigations and actions

# Periodic Reviews of Business Practices, Procedures and Internal Controls for Compliance

1. Monitoring and auditing to detect criminal conduct
2. Periodic evaluation of effectiveness of business ethics awareness and compliance program and internal control system
3. Periodic assessment of the risk of criminal conduct
  - Appropriate steps to design, implement or modify business awareness and compliance program and internal control system as necessary to reduce risk of identified criminal conduct.

# Subcontracts



- Contractor shall include the substance of the clause in contracts over \$5 million and a performance period of more than 120 days.
- Disclosures of violations of the civil False Claims Act or Federal criminal law shall be directed to the agency Inspector General, with a copy to the Contracting Officer.

# Business Ethics Awareness and Compliance Program



## Specified Requirements

## Sample Practices

**Communications and Training**



**Ethics Training; Targeted Compliance Training; Quarterly Newsletters and Communications Tools; Ethics and Compliance Website**

**Procedures to Facilitate Timely Discovery of Improper Conduct and Ensure Corrective Actions**



**Robust system of reporting suspected misconduct; procedures to ensure independent, expert and timely investigation of alleged misconduct; valid cases require corrective measures, including remedial and disciplinary actions**

**High-Level Personnel to Oversee Program**



**Dedicated Ethics & Compliance Staff with senior leader reporting to executive management and the Board of Directors; Employee Ethics Committee representing each business and key corporate function**

**Efforts Not to Include as Principals Individuals Engaged in Misconduct**



**Screening Procedures to identify broad range of categories of potential wrongdoing; Maintain database of misconduct**

**Monitoring, Auditing and Evaluating Program Effectiveness**



**Ethics Review Board; Ethics Surveys; Benchmarking; Focus Groups; Case Trend Analyses**

**Periodic Risk Assessments and Remedial Action**



**Tracking of Key Risk Areas and Implementation of Controls; Continual process improvements based on case data**

**System for Internal Reporting of Suspected Misconduct**



**8 Alternative Disclosure Channels with procedures for anonymous and confidential reporting; Code of Conduct encourages or requires reporting of observed misconduct**

**Disciplinary Action for Improper Conduct**



**Policy statement to discipline misconduct; HR Tracking of disciplinary actions to establish consistency; Reporting disciplinary actions to senior management and Board of Directors**



# Appendix

# FAR 52.203-13: “Contractor Code of Business Ethics and Conduct” - Template



PRIMARY REQUIREMENT	SECONDARY	TERTIARY	PROGRAM IN PLACE?	METHOD TO ADDRESS
Written Code Available to All Employees	n/a	n/a		
Due Diligence to Prevent/Detect Criminal Conduct	n/a	n/a		
Promote Org Culture that Encourages Ethical Conduct/Commitment to Compliance with the Law	n/a	n/a		
Written Disclosures to OIG When Violations of Federal Criminal Law or Civil False Claims Act are Identified	n/a	n/a		
Ongoing Ethics & Compliance Program				
	Periodic communication of standards/procedures	n/a		

# FAR 52.203-13: “Contractor Code of Business Ethics and Conduct” - Template



PRIMARY REQUIREMENT	SECONDARY	TERTIARY	PROGRAM IN PLACE?	METHOD TO ADDRESS
	Effective training program on roles and responsibilities	n/a		
<b>Internal Control System</b>				
	Establishes standards/procedures to facilitate timely discovery of improper conduct	n/a		
	Ensures corrective measures are promptly instituted and carried out	n/a		
	Assigns responsibility at a sufficiently high level, ensures sufficient resources to ensure effectiveness of E&C program and internal control system	n/a		
	Reasonable effort not to include principals whom due diligence would have exposed as having engaged in improper conduct	n/a		

# FAR 52.203-13: “Contractor Code of Business Ethics and Conduct” - Template



PRIMARY REQUIREMENT	SECONDARY	TERTIARY	PROGRAM IN PLACE?	METHOD TO ADDRESS
	Periodic review of business practices, procedures, policies, and internal controls for compliance with Code and regulations specific to Govt contractors			
		Monitoring/auditing to detect criminal misconduct		
		Evaluating E&C and internal control system effectiveness		
		Assessing risk of criminal conduct with appropriate steps to design, implement, or modify existing E&C or internal control programs as necessary to reduce risk		
	Internal reporting mechanism allowing for anonymous or confidential employee reports of misconduct, and instructions that encourage employees to report	n/a		
	Disciplinary action for improper conduct or for failing to take reasonable steps to prevent/detect improper conduct	n/a		
	Timely disclosure of violations to OIG	n/a		
	Fully cooperates with any Government agencies responsible for audits, investigations, or corrective actions.	n/a		