

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

The Federal Acquisition Regulations (“FAR”), codified at 48 CFR Chapter 1, were established to create 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, and construction materials and products.

When attempting to procure a government job, contractors must adhere to certain FAR integrity regulations, some of which 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. More recently, the FAR have been amended to require certain government contractors to institute in-house programs to regulate their internal compliance with FAR’s 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 some of those major changes now required by the FAR:

- Contractors must now 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.
- Corporations must have in place ethics and awareness programs; and, the new FAR now require contractors to provide ethics training to employees, agents, and sub-contractors.
- Government contractors must have an internal control system for the detection of improper conduct relating to government contracts.
- To ensure a contractor’s compliance with both federal and in-office ethical compliance standards, the FAR now require that certain ethics management tasks be

assigned to management-level employees, rather than to human resources or other another department.

- Contractors must 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.
- Companies are now required to conduct periodic reviews of their business practices, procedures, policies, and internal controls for compliance with the contractor’s code of business ethics and the special requirements for government contracting.
- Contractors must now have a confidential internal reporting mechanism or hotline for reporting possible misconduct and that they instruct their employees to make such reports when necessary.

These are onerous requirements and it is essential that contractors know their obligations because many contractors fall within the categories of businesses that must comply with the new FAR. In fact, all new FAR requirements apply to contracts valued at more than \$5 million with a performance period of greater than 120 days, with certain limited exceptions. And even if you fall into one of the limited exceptions, the FAR’s ethics awareness and compliance programs likely still apply to your business.

For a full list of the new FAR requirements, or for assistance in bringing your company into compliance with these FAR requirements, please call:

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