Contractors face some onerous new requirements

Government's efforts to crack down on fraud place new burdens on business executives.

Fraud is a persistent problem in government contracting. Most fraud, however, goes undetected. Monitoring and managing the process of federal procurement is resource-intensive for government agencies. There are several existing statutes designed to combat fraud in government work, including the federal False Claims Act and False Statements Act. There are numerous local state statutes as well.

Historically, however, the government has relied upon individual insiders who are willing to report fraud, sometimes at great personal risk but in exchange for significant potential rewards (whistleblowers). But individual participation has not been as great as the government would like or need, so it has issued additional federal regulations placing more emphasis on companies to assist in policing the process. The Federal Acquisition Regulations, codified at 48 CFR Chapter 1, were established to create uniform policies and procedures for the acquisition of products and services by all executive federal agencies.

Although these regulations apply to major contracts for sophisticated and expensive items such as submarines and jets, they also applys to computers, construction materials and other 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, these regulations have been amended to require certain government contractors to institute in-house programs to regulate 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, those compliance standards became much more rigorous. Here are a few of those major changes now required:

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 subcontractors.

Government contractors must have an internal control system for the detection of improper conduct relating to government contracts.

To ensure 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 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.

> "Even if you fall into the limited exceptions, the ethics awareness and compliance programs likely still apply to your business."

Contractors now must have a confidential internal mechanism or hotline for reporting misconduct and must instruct employees to make such reports when necessary.

These are onerous requirements, and it is essential that contractors know their obligations, because many fall within 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. I

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