

Global Regulatory Enforcement Alert

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Mandatory Disclosure Rule Compliance Checklist

On February 10, 2009, attorneys from Reed Smith's Global Regulatory Enforcement Group presented a teleseminar titled, "Mission Impossible? Follow the FAR Mandatory Disclosure Rule Without Harming Your Government Contracts Business." We recommend that all government contractors assess current legal and compliance resources and undertake a self-investigation, including review of their codes of ethics and internal controls. The following checklist is intended to be a convenient reference to supplement the presentation and to guide the conduct a self-investigations.

Code of Ethics

- Ensure that the company has a written code of ethics that is made available to each employee engaged in performance of government contracts. The code should provide clear directions regarding actions that employees may or may not take, including a duty to report any facts that could support violations of any ethical standards, government overpayments, etc.
- Establish regular ethics training, as well as procedures for testing employees' comprehension
- Require employees to acknowledge, in writing, the code of ethics and the receipt of ethics training
- Review company compliance programs to determine effectiveness and to assess legal and compliance resources, strengths, and weaknesses
- Establish specific consequences employees will face for violating the code of ethics
- Establish procedures for documenting ethical breaches and adopting plans to prevent future breaches of the same type
- Ensure that Federal Acquisition Regulation ("FAR") clauses are "flowed down" to subcontractors where required

Internal Controls

- Establish procedures to detect overpayments and report (via a hotline or the equivalent) any potential violations
- Establish procedures for conducting and documenting investigations of any ethical violations, overpayments, or similar issues that employees report
- Appoint a senior official to be responsible for coordination of internal investigations
- Ensure disciplinary action is taken for improper employee conduct
- Periodically audit and review business practices and internal controls

Mandatory Disclosures

- Identify, survey, and obtain certifications from principals regarding their knowledge of information that could trigger a duty to disclose
- Create a written protocol for reporting, reviewing, and vetting potential disclosures
- Establish procedures for documenting the rationales underlying decisions to make, or not to make, disclosures in particular cases
- Ensure that the mandatory disclosure process is part of the government contract record retention policy and procedure

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