



DEC 02 2008

PROCUREMENT MEMORANDUM 2009-02

ACTION

MEMORANDUM FOR: HEADS OF CONTRACTING OFFICES

FROM:

for Helen Hurcombe
Senior Procurement Executive
and Director, Office of Acquisition Management

F. H. Hurcombe DL Clever, Dep. Dir.

SUBJECT:

Preventing and Reporting Contractor Fraud

PURPOSE

The purpose of this Procurement Memorandum is to forward Office of Federal Policy (OFPP) Memorandum dated November 14, 2008, Subject: Preventing Fraud in Federal Contracting (copy attached), highlight recent fraud related revisions to the Federal Acquisition Regulation (FAR), and provide information on where fraud may be reported and where contractors obtain Inspector General Fraud Hotline Posters.

BACKGROUND

The Department, like OFPP, is committed to detecting and deterring fraud in federal contracting. We recognize this is a shared responsibility and ask our contracting officers to closely manage their contracts and be ever vigilant in helping to detect and facilitate the proper reporting of potentially fraudulent activities. DOC contracting officers are reminded to review OFPP's Memorandum and understand the recent FAR requirements intended to help detect and deter fraud.

The most recent and substantial FAR change (FAR Case 2007-006), Contractor Business Ethics Compliance Program and Disclosure Requirements, was published in the Federal Register (FR) on November 12, 2008, under Federal Acquisition Circular (FAC) 2005-028, with an effective date of December 12, 2008. The rule revises Parts 2, 3, 9, 42, and 52 of the FAR to amplify the requirements for a contractor code of business ethics and conduct, an internal control system, and disclosure to the Government of certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The rule provides for the suspension or debarment of a contractor for knowing failure by a principal to timely disclose, in writing, to the agency Office of the Inspector General, with a copy to the contracting officer, certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The rule

implements the Close the Contractor Fraud Loophole Act, Pub. L. 110-252, Title VI, Chapter 1. The statute defines a covered contract to mean “any contract in an amount greater than \$5,000,000 and more than 120 days in duration.” The rule also provides that the contractor’s Internal Control System shall be established within 90 days after contract award, unless the Contracting Officer establishes a longer time period (See FAR 52.203-13(c)). An internal control system is not required for small businesses or commercial item contracts.

The earlier FAR rule, Contractor Code of Business Ethics and Conduct (FAR Case 2005-022), was published in the FR on November 23, 2007, under FAC 2005-022. That rule amended Parts 2, 3, and 52 to address the requirements for a contractor code of business ethics and conduct and contractor display of Federal agency Office of the Inspector General (OIG) Fraud Hotline Posters or any Department of Homeland Security (DHS) fraud hotline poster identified by the contracting officers. Small businesses were exempted from the requirements for a formal training program and internal control system. The rule added two new clauses, 52.203-13, Contractor Code of Business Ethics and Conduct (December 2007) –now substantially revised, and 52.203-14, Display of Hotline Poster(s) (December 2007).

REQUIRED ACTIONS

For purposes of contractor reporting, DOC contracting officers are advised that clause 52.203-13, Contractor Code of Business Ethics and Conduct (December 2008), now includes a requirement at (b)(3) that the Contractor shall timely disclose, in writing to the agency Office of the Inspector General (OIG), with a copy to the Contractor Officer, whenever, in connection with the award, performance, or closeout of the contract or any subcontract there under, the Contractor has credible evidence that a principal, employee, agent, or subcontractor or of the Contractor has committed – (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States code; or (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733). Such disclosures to the OIG shall be directed to: Department of Commerce, Office of the Inspector General (OIG), 1410 Constitution Avenue, N.W., Washington, D.C. 20230, Attention: Todd J. Zinser, Inspector General.

Also, when completing paragraph (a)(3) of clause 52.203-14, Display of Hotline Poster, DOC contracting officers shall indicate in (i) that the appropriate agency name(s) is “DOC Office of Inspector General Hotline Poster” and in (ii) that the DOC’s OIG Hotline Poster is available from OIG’s website at http://www.oig.doc.gov/oig/img/Hotline_Poster.pdf.

DOC contracting officers are encouraged to work closely with the Office of the Inspector General and Office of General Counsel Contract Law Division in all matters involving actual or potential contractor fraud. Also, finally, in accordance with OFPP Memorandum, contracting officers are advised to consult the Department of Justice

National Procurement Fraud Task Force website at <http://www.usdoj.gov/criminal/npftf/> for information and resources regarding fraud training, reporting and other information.

For further information, please contact Nancy Barrere at Nbarrere@doc.gov or 202-482-5519.

Attachment

Copies: Office of the Inspector General, T. Zinser
Office of General Counsel, Contract Law Division, M. Langston



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

November 14, 2008

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM: Lesley A. Field
Deputy Administrator

SUBJECT: Preventing Fraud in Federal Contracting

The government remains committed to detecting and deterring fraud in federal contracting. As this is a shared responsibility, I ask that you advise your agencies of the affirmative steps being taken to combat and prevent this unacceptable activity, and reiterate the steps your agency is taking to deter fraudulent contracting actions in your agencies.

The Federal Acquisition Regulation (FAR) was recently changed to require contractors to disclose violations of criminal law and the False Claims Act in connection with award and performance of government contracts and subcontracts. Contractors are subject to debarment and suspension from government contracting for knowingly failing to disclose such violations and overpayments on government contracts in a timely manner. Contractors are also required to establish internal control systems to facilitate timely disclosure of improper conduct and fully cooperate with government agencies responsible for audit, investigation, and corrective actions. This FAR change, which is effective on December 12, 2008, was published in the Federal Register on November 12, 2008 (73 FR 67064).

This FAR change is in addition to another recent FAR amendment that requires government contractors to have a written code of business ethics and an ethics compliance training program for contractor employees, and to post "fraud hotline" posters at contractor worksites, which encourage contractor employees to report fraudulent activity in connection with performance and award of government contracts.

In October 2006, the Office of the Deputy Attorney General announced the formation of the National Procurement Fraud Task Force (the Task Force) to promote the early detection, prevention, and prosecution of procurement fraud associated with increased contracting activity for national security and other government programs. More than 350 civil and criminal procurement fraud cases were filed since the Task Force began its efforts. The Task Force, which is chaired by the Assistant Attorney General of the Criminal Division, coordinates its efforts with the U.S. Attorneys' Offices, the Justice

Department's Civil, Antitrust, Environmental and Natural Resources, National Security, and Tax Divisions, other law enforcement agencies, and the office of Management and Budget. One of the key objectives of the Task Force is to increase coordination and strengthen partnerships among all Inspectors General (IGs), law enforcement, and the Department of Justice to fight and eliminate procurement fraud. The Task Force works with contracting and audit offices and the private sector to more effectively detect and report fraud.

Additionally, the Task Force has a Web site that provides significant resources regarding fraud training, reporting, and other information that agencies will find helpful as they guard against unethical behavior by their contractors and employees. Please ensure that all of your acquisition professionals have access to this information on <http://www.usdoj.gov/criminal/npftf/>.

All agencies must take immediate actions before the effective date of the FAR change to inform their acquisition workforce of the FAR changes described above, the resources provided by the National Procurement Fraud Task Force, and their workforce's responsibilities to deter procurement fraud. Actions might include issuing agency guidance, memoranda, or other communications.

Agencies that are required to have Chief Acquisition Officers pursuant to the Services Acquisition Reform Act (P.L. 108-136) shall report to the Office of Federal Procurement Policy the steps taken to disseminate this information and to disseminate agency specific policies or requirements related to deterring procurement fraud. Please send this information to Mike Gerich, at mgerich@omb.eop.gov, no later than December 10, 2008.

Thank you for your attention to this serious matter.