

Government Contract Compliance

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Today's Discussion

1. Basic Compliance Obligations Under Federal Government Contracts

- SAM registration/Reps and Certs
- Compliance program
- Employment obligations

2. Compliance Obligations Under D.C. Government Contracts

- Comparison to Federal contracts
- Unique compliance obligations



Compliance obligations can be daunting

- Ethics and compliance programs
- Truth in Negotiations Act
- Allowable cost principles
- Cost Accounting Standards
- Buy America Act/Trade Agreements Act
- False Claims Act
- False Statements Act
- Debarment and suspension
- Inspector general investigations
- Audit rights (DCAA)



Compliance obligations can be daunting

- Procurement Integrity Act
- Bribery and Gratuities
- Anti-Kickback Act
- Service Contract/Davis-Bacon/Walsh-Healey Acts
- Security and classified information
- Foreign ownership, control and influence
- Organizational conflicts of interest
- Records Retention



Compliance is Good Business

Benefits beyond avoiding fines/penalties:

- Improved communication
- Improved business systems
- Focus on effective management across company
- Engaged employees: better morale and passion

Small business has some advantages:

- Direct interaction with senior leadership
- Right-sized program: “take into account the sophistication of the program in relation to the size of the corporation.” *Sentencing Guidelines*, 8B2.1, Application Note 2(c).



Where do you start?

- SAM: register and complete reps and certs
- Equal Opportunity Obligations
- Code of Business Ethics and Compliance
- Former Government Officials
- Improper Payments and Gifts, Anti-Kickback
- Timekeeping & Record Retention
- Mandatory Disclosure
- Export Control
- GSA Schedule Contract: Basis of Award tracking



SAM: register & complete reps and certs

- New website aggregating several different websites: CCR, ORCA, EPLS
- Register: DUNS number
- Complete annual Reps and Certs
 - Independent Price Determination
 - Small Business Representations
 - Employment Compliance
 - Domestic Sourcing/Buy American Obligations



Equal Opportunity Obligations

- Equal Opportunity clause, FAR 52.222-26, is applicable to nearly all contracts/subcontracts
 - any contractor/subcontractor with \$10,000 in Federal contracts or subcontracts in the previous 12 months.
 - Requirements increase at certain dollar thresholds
- Compliance certification: FAR 52.222-22 Previous Contracts and Compliance Reports



Code of Business Ethics and Compliance

- FAR Subpart 3.10
 - “Contractors must conduct themselves with the highest degree of integrity and honesty.” FAR 3.1002(a).
 - Written code of business ethics and conduct. FAR 3.1002(b).
 - Must have proper internal controls to assure ethical behavior.
 - Hotline posters



Mandatory Disclosure

Mandatory disclosure required where credible evidence of:

- violation of criminal laws re fraud, conflict of interest, bribery, or gratuity violations
- violation of civil False Claims Act; or
- significant overpayment;

Disclosure is to be made to the agency IG and the Contracting Officer



Former Government Officials

- Restrictions on employment discussions with certain current or former government personnel
- Permanently prohibit, or limit for certain periods of time, the type of work that may be performed by a former government employee



Improper Payments and Gifts

- Bribery: a crime to offer or give anything of value—even a token gift—for official act
- Gratuities: strict guidelines regarding the acceptance of “gratuities” by their workers
- The safest course of action is to assume the gift is prohibited
- Anti-kickback Act prohibits exchange of anything of value “for the purpose of improperly obtaining or rewarding favorable treatment” in connection with a prime contract or subcontract



Timekeeping & Record Retention

- Accurate timekeeping necessary to demonstrate hours works where that is the deliverable or metric
- Time mischarging results in overbilling of government and can require mandatory disclosure
- Record retention: Contractors must maintain contract related records for 3 years after the final payment
- Subject to government audit



Export Control

- Understand whether your information is controlled: ITAR (“defense articles/services”) or EAR (“dual use”)
- ITAR:
 - Not just guns (“defense articles”), but information (“technical data”)
 - Not just shipping to a foreign country, but “foreign persons” in the United States
- Screening of parties and end uses
- Training
- Documentation



GSA Schedule Compliance

- Must track GSA sales and your Basis of Award (BOA) customer or customer class
- Industrial Funding Fee (.75%) to GSA determined by GSA Contract sales.
- Basis of Award customer or class is the basis upon which your contract pricing was negotiated
- Change in discounting practices to BOA must be reported to your Contracting Officer and may trigger Price Reductions Clause.



GSA: Mandatory Disclosure

Mandatory disclosure required where credible evidence of:

- violation of criminal laws re fraud, conflict of interest, bribery, or gratuity violations
- violation of civil False Claims Act; or
- significant overpayment;

Disclosure made to the agency IG and the Contracting Officer (for GSA Schedule, also to the ordering agency IG)

Part 2: Compliance obligations when contracting with the D.C. Government

- D.C. contracting regulations are set by the District, and are distinct from federal contracting regulations
- In many cases, compliance obligations echo the federal obligations but may have different standards or reporting requirements

DC: Registration and Certs and Reps

1. Registration

- In order to apply for solicitations posted by the D.C. government, a business must first register as a vendor with OCP
 - www.ocp.dc.gov

2. Certification

- After registering, you should certify your business with the Department of Small and Local Business Development
 - www.dslbd.dc.gov



Requirements for Doing Business with the District

- Must have Federal Tax ID Number & DUNs Number
- Proof of Tax Compliance
- Proof of Unemployment Tax Compliance
- Meet Minimum Insurance Requirements: minimum insurance required based on nature of contract



DC: First Source Agreement

Enter Into First Source Agreement: must utilize DOES as the first source for employee recruitment, referrals, and placement in jobs created under the proposed contract.

- Monthly compliance report: employees needed; new job openings; District residents hired
- 5% fine (based on contract labor costs)



DC: Equal Opportunity

Equal Opportunity Certification:

- additional categories—age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap

Must submit an Affirmative Action Plan



DC: Payments, Gifts, Employment

Bribery: Federal bribery law includes DC Government officials

Gifts: DC Government employee may not solicit or accept—

- Anything of value
- From a person or entity doing or seeking business with the District through a contract, grant or other financial arrangement.

Post-Government Employment: Federal restrictions apply to DC Government officials

D.C. Supply Schedule Compliance

- Similar obligation to track sales: vendors must pay back a total of 1% of business to the District
- Similar price reduction obligation