

Federal Contracts Carry New Ethics Rules

John D. Copeland
J.D., LL.M., Ed. D.

Many U.S. companies depend on federal contracts for much of their income, and the New Year brings important changes in federal contracting. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council agreed on a final rule amending the Federal Acquisition Regulation (FAR), effective December 24, 2007. It requires any company contracting with a federal agency set up an ethics program as a condition of its government contract.

FAR already had a pre-award satisfactory record of integrity and business ethics for prospective federal contractors. The councils determined, however, the general requirement of good business ethics was inadequate.

New requirements

Although the general rule of good behavior remains, the new rule requires written codes of business ethics and conduct by federal contractors within 30 days after a contract award.

To promote compliance, a contractor also must create an employee business ethics and compliance program within 90 days after the contract award. The company must have internal controls for discovering and disclosing improper conduct in performing federal contracts that ensure corrective action for wrongdoing. A company must periodically review its business practices, procedures and controls.

Also, subcontractors must meet the same requirements for an ethics program as the primary contractor.

Reporting and criticism

To report wrongdoing, the new rule gives contractors two choices.

First, a contractor can use an internal company hotline for reporting suspected improper conduct and train employees on the hot line's use. Second, if a contractor chooses not to have a hot line, it must display government-approved fraud posters displaying an agency's name and phone number for reporting wrongdoing.

The federal contracting officer chooses the contact agency which could be the Department of Homeland Security. Common work areas of a company's departments performing work under the contract display the government fraud posters.

During the comment period, some respondents declared the new rule unnecessary because it resembles the Sarbanes-Oxley Act's terms for corporate codes of conduct. The councils rejected the criticism because Sarbanes-Oxley only requires publicly traded corporations adopt a code of conduct for their top two financial officers or disclose why they did not.

Some respondents criticized the rule's short time frame for writing a business ethics code and setting up an ethics program. In response, the councils gave contracting officers the authority to grant companies more time to comply with the rule when needed. But companies should expect few time extensions.

Costs and support

Most concerns about the rule's compliance costs have been dismissed, because many companies already have codes of conduct and ethics programs.

The councils responded to the Small Business Council's concern that compliance costs could restrict smaller companies from competing for federal contracts. To help small businesses, the councils set a monetary threshold for meeting the new ethics rule. It does not apply to government contracts of \$5 million or less with a performance period of fewer than 120 days.

Most respondents expressed support for the new rule during the comment period. They said it would reduce contract fraud and waste, improve integrity in contract procurement and promote clarity in agency requirements.

Many federal contracts impact national security and all involve taxpayers' money. Given past business scandals, an increased emphasis on business ethics and integrity is welcome.