

Proposed Ethics Rule for Federal Contractors

March 2007

Under a proposed rule now open for public comment, federal contractors who receive awards in excess of \$5 million with performance periods exceeding 120 days would be required to have a written code of ethics, employee compliance training programs, and procedures for displaying an agency inspector general fraud hotline poster. If ultimately accepted, this rule, proposed by the Department of Defense, General Services Administration, and the National Aeronautics and Space Administration, would become part of the Federal Acquisition Regulation (FAR) and would become part of all contracts that meet the above thresholds. The proposed rule is FAR Case 2006-007, available at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-698.pdf>. Comments are due on or before April 17, 2007.

The Departments of Defense, Veterans Affairs and the Environmental Protection Agency already have similar types of agency-specific ethics rules. The proposed rule, however, would apply a uniform contract dollar threshold for all agencies and provide one address and telephone number for the Office of Inspector General from which a fraud hotline poster could be obtained.

The proposed rule first provides a general policy that "[g]overnment contractors must conduct themselves with the highest degree of integrity and honesty." Contractors who would be covered by the uniform dollar and performance period thresholds would have 30 days from contract award to institute a written code of ethics and 90 days from contract award to institute an employee ethics and training compliance program, along with an internal control system. That internal compliance system is to include periodic reviews of business policies and practices, an internal reporting mechanism for employees to use for reporting improper conduct, internal and

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

external audits when necessary, disciplinary measures for those who act improperly, and timely reporting and full cooperation with government agencies and investigators.

All federal contractors with contracts that meet the above monetary threshold would also be required to display a fraud hotline poster designed by the agency with whom they are contracting. The proposed rule also includes specific remedies for failure to comply, including the withholding of contract payments or loss of award fee during the performance period in which compliance did not occur. Finally, federal contracts would be required to include a flow-down provision, imposing the above requirements on all subcontracts that meet the same \$5 million threshold.

While the proposed federal rule would mandate the implementation of certain ethics policies for federal contractors, ethics and lobbying rules for those companies that contract with certain state governments and agencies also exist. In New York, for example, state lobbying and gift laws apply to state contractors. New Jersey and Connecticut, among other states, impose substantial campaign finance limitations upon contractors, prospective contractors, and, in the case of Connecticut, the principals of contractors or prospective contractors. Ethics and lobbying rules for contractors also exist at the municipal level. For example, New York City prohibits its officials and employees from accepting gifts over \$50 from contractors who do or seek to do business with the city.