

PART 3--IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Add Subpart 3.10 to read as follows:

Subpart 3.10--Contractor Code of Business Ethics and Conduct

Sec.

3.1000 Scope of subpart.

3.1001 [Reserved]

3.1002 Policy.

3.1003 Mandatory requirements.

3.1004 Contract clauses.

3.1000 Scope of subpart.

This subpart prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct and display of ~~agency Office of Inspector General (OIG)~~ **the General Services Administration** fraud hotline posters.

3.1001 Definitions.

United States, as used in this subpart, means the 50 States, the District of Columbia, and outlying areas.

Code of Business Ethics and Conduct, as used in this subpart, means a code, policy or policies governing business ethics and conduct in areas relevant to the government contract or contracts to which the Government contractor is a party.

Government contract means a contract with the Government that exceeds the thresholds in clause 3.1004(a).

3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

(b) Contractors should have a written code of business ethics and conduct. To promote compliance with such a code of business ethics and conduct, contractors should have an employee business ethics and compliance training program **or programs** and an internal control system that--

(1) Are suitable to the size of the company and extent of its involvement in Government contracting;

(2) Facilitate timely discovery of improper conduct in connection with Government contracts; and

(3) Ensure corrective measures are promptly instituted and carried out.

3.1003 Mandatory requirements.

(a) Requirements: Although the policy in section 3.1002 applies as guidance to all Government contractors, the contractual requirements

set forth in the clauses at 52.203-13, Contractor Code of Business Ethics and Conduct and 52.203-14, Display of Hotline Poster(s), are mandatory if the contracts meet the conditions specified in the clause prescriptions at 3.1004.

(b) Fraud Hotline Poster. ~~(1) Agency OIGs are responsible for determining the need for, and content of, their respective agency OIG fraud hotline poster(s).~~

~~(2) When requested by the Department of Homeland Security, agencies shall ensure that contracts funded with disaster assistance funds require display of any fraud hotline poster applicable to the specific contract. As established by the agency OIG, such posters may be displayed in lieu of, or in addition to, the agency's standard poster.~~

(1) The General Services Administration (GSA) shall publish a government-wide fraud hotline poster and shall determine the content after consultation with agencies and representatives of government contractors from industry, nonprofit organizations and academic institutions. Different content may be prescribed for industry and nonprofit and academic institutions.

3.1004 Contract clauses.

Unless the contract is for the acquisition of a commercial item under part 12 or will be performed entirely outside the United States--

(a) Insert the clause at FAR 52.203-13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more.

(b)(1) Insert the clause at FAR 52.203-14, Display of Hotline Poster(s), if--

(i) The contract exceeds \$5,000,000 or a lesser amount established by the agency; and

~~(ii)(A) The agency has a fraud hotline poster; or~~

~~(B) The contract is funded with disaster assistance funds.~~

(ii) The exemption under 52.203-14(c) of the clause does not apply.

(2) In paragraph (b)(3) of the clause, the contracting officer shall--

~~(i) Identify the applicable posters; and~~

(ii) Insert the website link(s) or other contact information for obtaining the agency and/or Department of Homeland Security poster.

(3) In paragraph (d) of the clause, if the agency has established policies and procedures for display of the OIG fraud hotline poster at a lesser amount, the contracting officer shall replace ``\$5,000,000'' with the lesser amount that the agency has established.

PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 52.203-13 and 52.203-14 to read as follows:

52.203-13 Contractor Code of Business Ethics and Conduct.

As prescribed in 3.1004(a), insert the following clause:

CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DATE)

(a) Definitions.

United States means the 50 States, the District of Columbia, and outlying areas.

Code of Business Ethics and Conduct, as used in this subpart, means a code, policy or policies governing business ethics and conduct in areas relevant to the government contract or contracts to which the Government contractor is a party.

Government contract means a contract with the Government that exceeds the thresholds in clause 3.1004(a).

(b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the contracting officer establishes a longer time period, the Contractor shall--

(i) Have a written code of business ethics and conduct; and

(ii) ~~Provide a copy~~ Communicate the existence and importance of the code to each employee engaged in performance of the contract.

(2) The Contractor shall promote compliance with its code of business ethics and conduct.

(c) Awareness program and internal control system for other than small businesses. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract. The Contractor shall establish within 90 days after contract award, unless the contracting officer establishes a longer time period--

(1) An ongoing business ethics and conduct awareness and compliance program or ~~programs~~; and

(2) An internal control system.

(i) The Contractor's internal control system shall--

(A) Facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) ~~Ensure~~ Provide for corrective measures ~~are to be~~ promptly instituted and carried out.

(ii) For example, the Contractor's internal control system shall provide for the following:

(A) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and ~~the~~ any special requirements of Government contracting,

(B) An internal reporting mechanism, such as a hotline or other means of reporting, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(C) Internal and/or external audits, as appropriate, and

(D) Disciplinary action for improper conduct.

(d) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the subcontract--

(i) Is for the acquisition of a commercial item; or

(ii) Is performed outside the United States.

52.203-14 Display of Hotline Poster(s).

As prescribed in 3.1004(b), insert the following clause:
DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) Definition.

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)--

(1) During contract performance in the United States, the Contractor shall prominently ~~post display in common work areas within business segments performing work under this contract and at primary contract work sites~~

~~(i) Any agency the GSA fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and~~

~~(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.~~

(2) ~~Additionally,~~ if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s) Obtain from

(Contracting Officer shall insert-- ~~(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and~~

~~(ii) The website(s) or other contact information for obtaining the poster(s).)~~

(c) If the Contractor has implemented a business ethics and conduct awareness program ~~or programs~~, including a reporting mechanism, such as a hotline poster ~~or other means of reporting~~, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, ~~other than any required DHS posters.~~

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract--

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)