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## **Code of Business Ethics and Compliance Program for Government Contractors**

## For Many Years – A Good Idea, Best Practice, but Voluntary

Having a code of business ethics has long been a good idea for US government contractors. Many contractors have voluntarily adopted such codes and implemented compliance programs. Among the reasons for voluntary adoption are:

- The Department of Defense and other agencies have stated that government contractors should have such codes
- Before arriving at a debarment decision, debarment officials consider whether the contractor had effective standards of conduct and internal control systems in place
- In deciding whether to charge a corporation for criminal conduct, federal prosecutors consider the existence and adequacy of the corporation's compliance program
- In calculating the sentence to impose upon a corporation under the Federal Sentencing Guidelines, judges consider whether the corporation had an effective compliance and ethics program
- The Sarbanes-Oxley Act of 2002 requires publicly traded companies either to adopt a code of ethics or explain why they do not have a code

*Until December 24, 2007 adoption of a code of business ethics was a good idea, and a best practice but voluntary.*

## After 2007 – A Contract Requirement

The government added Subpart 3.10 to the Federal Acquisition Regulation (FAR) on December 24, 2007. This subpart applies to all federal government contracts except those to acquire commercial items or to be performed entirely outside the United States.

Federal government contractors must comply with FAR Subpart 3.10 upon award of a "triggering" contract that has a contract value of at least US\$5 million (including all options), specifies a performance period of at least 120 days and contains the clauses at FAR § 52.203-13, "Contractor Code of Business Ethics and Conduct (Dec 2007)," and FAR § 52.203-14, "Display of Hotline Poster(s) (Dec 2007)." These FAR clauses require contractors to:

- Adopt written codes of business ethics and conduct within 30 days after award of the triggering contract
- Establish a business ethics awareness program and internal control system within 90 days after award of the triggering contract (contractors that were small businesses with respect to the award of the triggering contract need only promote compliance with their code)
- Display agency fraud information or company hotline posters in common work areas, at contract work sites and on company websites that provide information to employees

According to FAR Subpart 3.10, an effective internal control system must facilitate timely discovery of improper conduct in connection with government contracts, ensure prompt corrective action and include the following:

- Periodic reviews of business practices, procedures, policies and internal controls for compliance with the contractor's code of business ethics and conduct, and the special requirements of government contracting
- An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports
- Internal or external audits, as appropriate
- Disciplinary action for improper conduct

## The Squire Sanders Turnkey Solution

To assist our clients, we have developed a turnkey solution that contractors can implement to comply with the requirements of FAR Subpart 3.10. In developing our turnkey solution, we considered that many companies do not have extensive resources to devote to compliance. However, the US government does not expect smaller companies to implement a compliance program as extensive as large contractors' programs. Our solution complies with the government's requirements but also has a reasonable scope, is not costly to implement and can be readily customized.

### Key Elements

**Code of Business Ethics.** Our model code is the only code that contractors will need and covers unique government contracting compliance issues (e.g., timekeeping policy, procurement integrity, hiring of government employees, false claims/false statements and truth-in-negotiations requirements), as well as more general compliance issues (e.g., equal opportunity, antidiscrimination and antiharassment, intellectual property protection, foreign corrupt practices and personal conflicts of interest)

**Employee Letter.** Effective compliance programs rely on the tone set at the top, and our letter to all employees from the company president describes the company's commitment to ethical business practices and the responsibilities of all employees to know and comply with the code

**Compliance Program.** Our model compliance program covers the compliance responsibilities of the company's directors, officers and employees; ethics training; employee communications; compliance program monitoring; violation reporting; investigations; and disciplinary and corrective actions

**Employee Acknowledgement.** Record keeping is key to demonstrating implementation of an effective compliance program, and each employee is expected to execute our written acknowledgment of receipt of the code and agreement to comply with it, when hired and then annually thereafter

**Hotline.** Implementing a company hotline allows contractors to conduct their own internal investigations into suspected improper conduct before its disclosure to the government; we have identified a commercial hotline service that provides 24/7 availability for anonymous and confidential hotline and website reporting and have also negotiated special discounted pricing for our clients

**Hotline Poster.** Our hotline poster is ready to be tailored to the contractor's hotline and website reporting vehicles and posted in common work areas, at contract work sites and on the company's website

**Board Resolution.** Our draft board resolution adopts the code and compliance program, assigns to the president overall responsibility for conducting business in a way that encourages ethical conduct and compliance with law, and appoints a compliance officer with day-to-day responsibility for the compliance program

**Implementation Checklist.** To help our clients implement the code and compliance program, our detailed but user-friendly checklist identifies more than 20 implementation tasks and the responsible parties

**Awareness Training.** To avoid having an ineffective paper-only program, we have an excellent, easily deployable Internet-based e-learning program that we customize for use with our compliance program; we have negotiated special discounted pricing for clients who elect to use this powerful employee-awareness training tool

**Ongoing Support.** After implementation of your compliance program, we will provide ongoing support including (A) quarterly bulletins covering any recent compliance developments with short discussions of compliance issues that compliance officers can forward to employees as part of the contractor's compliance awareness program, (B) revisions to the code or compliance program required by law, regulation or best practices and (C) up to two hours of consultation on compliance issues that may arise during each year of paid support

## Legal Fees

Contractors wishing to engage us to tailor our turnkey business ethics solution to their operations execute our standard engagement letter setting forth the scope of our services and the terms of our engagement. Engagement will ensure that communications with us regarding compliance issues will be protected by the attorney-client privilege.

For an affordable, fixed fee, Squire Sanders will tailor our turnkey solution to a contractor's operations and provide 12 months of ongoing support. After the first year, the ongoing support option may be renewed annually for a modest fee.

### More Information

To learn more about how Squire Sanders can help federal government contractors adopt codes of business ethics and compliance programs, contact:

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