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Heads-Up For Government Contractors

By Paul Searles

It's a popular myth that an ostrich will bury its head in the sand when faced with an attack by predators. Under the Defense Department's Voluntary Disclosure Program, defense contractors can opt to voluntarily report potential criminal or civil fraud matters identified through their self-governance efforts. Or they can leave their heads in the sand, at their peril of course.

The latter option is about to disappear as the Federal Acquisition Regulation will, by the end of 2008, require contractors to acknowledge and disclose potential misconduct and violations of the law. Under the "Close the Contractor Fraud Loophole Act," signed into law on June 30, the FAR will be amended to require timely notification by federal contractors of violations of federal criminal law or overpayments in connection with the award or performance of covered contracts, including those performed outside the U.S. and those for commercial items. A contract exceeding \$5 million in amount and 120 days in duration is a "covered contract."

This mandatory disclosure requirement comes after the new FAR rule on "Contractor Code of Business Ethics and Conduct," which became effective on Christmas Eve 2007 and requires, among many other things, an internal control system that "facilitate[s] timely discovery of improper conduct in connection with Government contracts." Moreover, the FAR's proposed "Contractor Compliance Program and Integrity Reporting," pending before passage of the Loophole Act, would call for:

- Timely reporting, in writing, to the agency Office of Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law in connection with the award or performance of any Government contract performed by the Contractor or a subcontractor thereunder; and
- Full cooperation with any Government agencies responsible for audit, investigation, or corrective actions.

Needless to say, the landscape for government contractors is changing as the result of recent efforts to stem fraud and abuse. Contractors will need to increase their internal vigilance if they're to comply with these new obligations.

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