



November 2005 – Volume 1, Issue 2

AS THE PENDULUM SWINGS // Ethics and Business Conduct

It has been almost twenty years since the Defense Industry Initiative (DII) on Business Ethics and Conduct was established. Its essential purpose was to combine the common dedication of its signatories (now over 60 government contractors) to a culture and practice of ethics and right conduct in all business with the Department of Defense (DOD) and with others. These signatories united in the commitment to adopt and implement principles of business ethics and conduct that acknowledge and address their organizational responsibilities under federal procurement policy and law to create an organizational culture in which ethics is paramount, and compliance with federal procurement laws is a strict obligation.

Earlier this year the GAO published a report (www.gao.gov/cgi-bin/getrpt?GAO-05-341) that assessed (1) DOD's efforts to train and counsel its workforce to raise awareness of ethics rules and standards as well as DOD's measures of the effectiveness of these efforts and (2) DOD's knowledge of defense programs to promote ethical standards of conduct. The Government Accountability Office (GAO) concluded that DOD lacked knowledge of training, counseling, and reported allegations of misconduct and was not positioned to assess the effectiveness of its efforts. DOD regulations provide that contractors should have certain management controls, such as ethics training for all employees and systems to detect improper conduct in connection with government contracts (DFARS 203.7001). An independent review of one of DOD's largest contractors found that the company lacked the management controls needed to ensure an effective ethics program. The final GAO recommendation was for DOD to "beef up" its efforts to assess internal and contractor ethics training programs.

On top of all of this, the Service Acquisition Reform Act (SARA) advisory committee is considering whether to add a separate working group to address oversight and ethics issues, the Office of Government Ethics (OGE) is considering whether it should make contractor employees subject to a separate set of ethics rules through changes to the FAR or requiring ethics clauses in contracts, and the Justice Department has created a special task force to combat fraud among defense and homeland security contractors. U.S. District Attorney Paul McNulty (recently nominated to be deputy attorney general, the second-ranking position at the Justice Department), whose office is heading this initiative, has been quoted as saying "It is imperative that we take action to prevent, deter, and prosecute those unscrupulous contractors whose theft of critically need resources threatens America's safety." To accomplish his goal he is being assisted by the FBI, DCIS, NCIS and inspector general offices at the National Reconnaissance Office and the Homeland Security, State and Transportation Departments.

DFARS 203.7000 requires that government contractors conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that:

- Are suitable to the size of the company and the extent of their involvement in Government contracting,
- Promote such standards,
- Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and
- Ensure corrective measures are promptly instituted and carried out.

It appears that the government contracting community is back where it was twenty years ago. The wise contractor should revisit their system of management controls including actual business practices, established policies and procedures and internal controls for compliance with the government-required standards of business conduct and ethics.