



08-12

Procurement Information Circular

December 22, 2008

CONTRACTOR ETHICS

PURPOSE: This Procurement Information Circular (PIC) is issued to call attention to the new contractor ethics requirements and to advise acquisition personnel of their roles and responsibilities in implementing the programs and processing reports of violations under the program.

BACKGROUND: Over the past year, two significant FAR rules related to contractor ethics have been issued. In November of 2007, the FAR was revised to require contractors to establish a written code of business ethics and conduct. Furthermore, on December 12, 2008, the Contractor Business Ethics Compliance Program and Disclosure Requirements went into effect, requiring contractors to report criminal violations and overpayments.

Under the first rule, contractors are required to:

- Establish a written code of business ethics (FAR 52.203-13)
- Establish an internal control system that facilitates timely discovery of improper conduct in connection with Government contracts and ensures that corrective action is taken.
- Train their employees in business ethics; promote business ethics awareness

The second rule builds upon the first by additionally requiring contractors to:

- Timely disclose any violations of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or a violation of the civil False Claims Act (31 U.S.C. 3729-3733) to the Agency Office of the Inspector General, with a copy to the contracting officer.
- Timely disclose and remit any significant overpayments made by the Government.

GUIDANCE: Successful implementation of these rules will require the joint efforts of all those involved in the contracting process. The regulations require contractors to report criminal violations to the Agency Office of the Inspector General (OIG). Within NASA, the Acquisition Integrity Program (AIP) in the Office of General Counsel will work with the OIG, Procurement Office and DOJ to coordinate remedies and recommend actions. Contracting Officers (COs) and Contracting Officer Technical Representatives (COTRs) play an important role in relaying reports of violations that they may receive to the OIG and the AIP and in supporting the Agency investigations. COs and COTRs shall coordinate any contractor ethics issue or criminal violation with the designated AIP attorney at their Center. The NASA FAR Supplement will be amended (NFS 1803-104) to reference NASA's internal process for coordinating the investigations. The process to be followed is specified in NPD 2086.

It is important to note that the reporting procedures for overpayments differ from those for criminal violations. In the case of overpayment, the Contracting Officer is the primary point of contact and is responsible for determining the causes for overpayment and collecting the repayment. Overpayments may be the result of administrative errors or automated system glitches. They are not necessarily indicative of unethical behavior but COs should make a determination regarding the causes of overpayments, and if fraud is suspected, the matter should be coordinated with the AIP and the OIG.

The new rule also includes contractual remedies when contractors fail to comply. Failure by a principal to timely disclose violations of Federal laws of significant overpayments may be cause for suspension and debarment. Similarly, failure to disclose and the violations themselves should be considered when conducting past performance evaluations.

EFFECTIVE DATE: This PIC is effective as dated and shall remain in effect until canceled or superseded.

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