

DCAA MEMORANDUM FOR REGIONAL DIRECTORS COVER SHEETAUDIT GUIDANCE/AUDIT MANAGEMENT GUIDANCE MEMORANDUM NO. 09-PAS-014(R)Date of MRD: July 23, 2009

Subject of MRD: Audit Guidance on Federal Acquisition Regulation (FAR) Revisions Related to Contractors' Code of Business Ethics and Conduct

Current Audit Guidance and/or Audit Management Guidance Affected:**CAM****Paragraph Explanation of Effect on Current Version of CAM**5-306, 5-311.3, and 5-907g Made necessary changes to CAM sections to address the new FAR provisions.**AUDIT PROGRAMS**

5 Digit Activity Code	Subactivity/Document Name	Step No.	Explanation of Effect on Current Audit Program
<u>11070</u>	<u>Control Environment and Overall Accounting System Controls</u>	<u>C-1</u>	<u>Updated references to the new FAR provisions and changed steps to ensure the new FAR requirements are adequately addressed.</u>

SHELL AUDIT REPORTS

5 Digit Activity Code	Subactivity/Document Name	Sec./Par.	Explanation of Effect on Current Audit Report
<u>NONE</u>			

MEMORANDUMS FOR REGIONAL DIRECTORS

MRD No.	Date	Subject/Explanation of Change
<u>NONE</u>		

INTERNAL CONTROL QUESTIONNAIRE/INTERNAL CONTROL MATRIX/INTERNAL CONTROL AUDIT PLANNING SUMMARY

ICQ/ICM/ICAPS	Section & No.	State Control(s) Affected by the Change
<u>ICM</u>	<u>11070</u>	<u>Updated references to the new FAR provisions and changed steps to ensure the new FAR requirements are adequately addressed.</u>

DCAA PAMPHLETS/REGULATIONS/INSTRUCTIONS

DCAAP/R/I/No.	Date	Page/Sec./Par.	Explanation of Effect
<u>NONE</u>			



DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

IN REPLY REFER TO

PAS 730.3.B.2

July 23, 2009
09-PAS-014(R)

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
DIRECTOR, FIELD DETACHMENT, DCAA
HEADS OF PRINCIPAL STAFF ELEMENTS, HQ, DCAA

SUBJECT: Audit Guidance on Federal Acquisition Regulation (FAR) Revisions Related to
Contractor Code of Business Ethics and Conduct

Summary

Auditors should incorporate the revised procedures discussed in this guidance in any in-process Control Environment and Overall Accounting System Control audits (activity code 11070).

This memorandum is being issued to revise our audit guidance for reviewing the contractor's control environment during our Control Environment and Overall Accounting System Control audits. The guidance is being expanded due to the changes to the Federal Acquisition Regulation (FAR) which was revised to require contractors to have (1) a written code of business ethics and conduct, (2) a business ethics and compliance training program, and (3) an internal control system that facilitates timely discovery and disclosure of improper conduct, and ensures corrective measures are promptly instituted and carried out. We have updated the Control Environment and Overall Accounting System Control audit program (activity code 11070) (Enclosure 2) and CAM (Enclosure 3) to revise the audit procedures to incorporate the new provisions. The audit program is being provided in "track changes" format so that auditors can easily identify the changes made based on this guidance. Additionally, in the beginning of August, we will be issuing a presentation to be used by FAO(s) to communicate this guidance during FAO staff and PWT meetings. By September 15, 2009, we will also be issuing guidance regarding the audit effort to be performed related to nonmajor contractors to be implemented in FY 2010.

Background

A final rule (FAR Case 2006-007) was published on November 23, 2007 and became effective December 24, 2007. The final rule added FAR Subpart 3.10, Contractor Code of Business Ethics and Conduct, and contract clauses at FAR 52.203-13, Contractor Code of Business Ethics and Conduct, and FAR 52.203-14, Display of Hotline Poster(s). These rules include requirements that were formerly in the DFARS regarding contractor code of business ethics, internal controls, and display of hotline posters. Since these FAR changes incorporate

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and expand upon the requirements previously in DFARS 203.70, Contractor Standards of Conduct, the DFARS section was deleted as of August 12, 2008.

A second final rule (FAR Case 2007-006) was published on November 12, 2008 and became effective December 12, 2008. The final rule revised the new FAR Subpart 3.10 and the applicable contract clause FAR 52.203-13. This rule added requirements for disclosure of violations of criminal laws, the civil False Claims Act, significant overpayments, and consequences for failure to disclose. FAR 3.1003 was revised to state that (1) contractors may be suspended and/or debarred for knowing failure to submit timely disclosure to the Government of a violation of federal criminal law (FAR 3.1003(a)(2)) and (2) if the contractor becomes aware that the Government has overpaid, the contractor shall remit the overpayment amount to the Government. A contractor may be suspended and/or debarred for knowing failure to timely disclose credible evidence of a significant overpayment (FAR 3.1003(a)(3)).

A summary of the more significant requirements of FAR 52.203-13 and FAR 52.204-14 are contained in Enclosure 1. FAR 52.203-13 is applicable for all contracts and subcontracts in excess of \$5 million with a performance period of 120 days or more. The applicability of FAR 52.204-14 is contained in FAR 3.1004(b)(1).

Guidance

During audits of the contractor's Control Environment and Overall Accounting System Controls, auditors should perform procedures to address the requirements in FAR 52.203-13, Contractor Code of Business Ethics and FAR 52.204-14, Display of Hotline Poster. We have revised the audit program (activity code 11070) to include those procedures. Auditors should incorporate these revised procedures in any in-process Control Environment and Overall Accounting System Control audits (activity code 11070).

The new FAR provisions include policies and procedures related to contractor code of business ethics and conduct. The provisions require Government contractors to conduct themselves with the highest degree of integrity and honesty. In addition, contractors should have a written code of business ethics and conduct, an employee business ethics and compliance training program, and an internal control system that:

- are suitable to the size of the company and extent of involvement in Government contracting;
- facilitate timely discovery and disclosure of improper conduct with Government contracts; and
- ensure corrective measures are promptly instituted and carried out.

One of the more significant provisions requires contractors to disclose certain types of serious wrongdoing in writing to the agency Office of the Inspector General (OIG), with a copy to the contracting officer, whenever the contractor has credible evidence of such activity by a principal, employee, agent, or subcontractor (FAR 52.203-13(c)(2)(ii)(F)). In addition,

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the FAR revisions provide for possible suspension and/or debarment for knowing failure to timely disclose such violations. A contractor's failure to promptly report such wrongdoing should be reported as an internal control deficiency. In addition, if deficiencies are identified related to the requirements in FAR 52.203-13(c)(2)(ii)(F), the DCAA Justice Liaison Auditor (DCAAHQJLA@dcaa.mil) will be included on the distribution for the audit report.

In addition to revising the Control Environment and Overall Accounting System Control audit program we have revised CAM 5-306, Integrity and Ethical Values (Enclosure 3). In the beginning of August, we will be issuing a presentation to be used by FAO(s) to communicate this guidance during FAO staff and PWT meetings. By September 15, 2009, we will also be issuing guidance regarding the audit effort to be performed related to nonmajor contractors to be implemented in FY 2010.

FAO personnel should direct questions to their regional points of contact and regional personnel should direct any questions to Jennifer Quinones, Program Manager, Auditing Standards Division, at (703) 767-3274, or by email: PAS@dcaa.mil.

/s/
Kenneth J. Saccoccia
Assistant Director
Policy and Plans

Enclosures: 3
a/s

DISTRIBUTION: C

Significant FAR Requirements
FAR 52.203-13, Contractor Code of Business Ethics and Conduct
and FAR 52.204-14, Display of Hotline Poster

Code of Business Ethics and Conduct (FAR 52.203-13(b)(1)(i))

- Requires contractors to have a written code of business ethics and conduct, and make a copy of the code available to each employee engaged in the performance of the contract.

Training (FAR 52.203-13(c)(1))

- Requires an ongoing business ethics and compliance program, including conducting effective training programs on the contractor's standards and internal control system. The training shall be provided to the contractor's principals and employees, and as appropriate, the contractor's agents and subcontractors.

Periodic Reviews (FAR 52.203-13(c)(2)(ii)(C))

- Contains specific requirements for companies to perform periodic reviews of company business practices, procedures, policies and internal controls, including:
 - monitoring and auditing to detect criminal conduct;
 - periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system (especially if criminal conduct has been detected); and
 - periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

Internal Reporting Mechanism (FAR 52.203-13(c)(2)(ii)(D))

- Requires the contractor's internal control system to provide for an internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions for employees to make such reports.

Disciplinary Action (FAR 52.203-13(c)(2)(ii)(E))

- Requires the contractor's internal control system to provide for disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

Significant FAR Requirements
FAR 52.203-13, Contractor Code of Business Ethics and Conduct
and FAR 52.204-14, Display of Hotline Poster

Disclosure of Improper Conduct (FAR 52.203-13(c)(2)(ii)(F))

- Provides detailed requirements for making timely disclosure of improper conduct. This provision requires contractors to disclose, in writing, to the agency Office of the Inspector General, with a copy to the contracting officer, whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor has violated Federal criminal law involving fraud, conflict of interest, bribery, or violations with the gratuities regulations or the False Claims Act (FAR 52.203-13(c)(2)(ii)(F)).

Full Cooperation

- Requires full cooperation with any Government agencies responsible for audits, investigations, or corrective actions (FAR 52.203-13(c)(2)(ii)(G)).
- Defines full cooperation as “...disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete responses to Government auditors’ and investigators’ request for documents and access to employees with information” (FAR 52.203-13(a)).

Display of Hotline Posters (FAR 52.203-14)

- Requires, for contracts performed in the United States, display of:
 - Department of Homeland Security fraud hotline poster(s) identified by the contracting officer in the contract clause at FAR 52.203-14;
 - agency hotline poster (unless the contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism); and
 - the hotline poster(s) on the company website for employees (if a website is maintained).