



DOT ACQUISITION POLICY LETTER

This Acquisition Policy Letter is issued under the authority of the Senior Procurement Executive of the Department of Transportation

Subject: Preventing Fraud in Federal Contracting

References:

Office of Federal Procurement Policy (OFPP) Memo Nov 14, 2008 Preventing Fraud in Federal Contracting

When is this Acquisition Policy Letter (APL) Effective?

This APL is effective upon issuance.

When Does This APL Expire?

This APL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Cassandra Wells of the Office of the Senior Procurement Executive, Acquisition Policy, Oversight and Business Strategies Division (202) 366-4960 or by email at Cassandra.Wells@dot.gov.

Visit our website at <http://www.dot.gov/ost/m60/> for additional information on DOT Acquisition Policy Letters and other policy issues.

What is the Purpose of this Acquisition Policy Letter?

This APL serves to inform the acquisition workforce of the impending FAR change which amplifies the requirement pertaining to contractor code of business ethics, the resources provided by the National Procurement Fraud Task Force and workforce responsibilities to deter procurement fraud.

What is the Background?

Each year the federal government spends billions of dollars to procure goods and services, making federal contracts one of the fastest growing components of the federal budget. With increased procurement, including a rise in the outsourcing of services, there is also the potential for an increase in procurement fraud, which includes product substitution, defective pricing or other irregularities in the pricing and formation of contracts, misuse of classified or other sensitive information, labor mischarging, accounting fraud, and ethical and conflict of interest violations.

Procurement fraud squanders limited funds, threatens safety and national defense, cheats American taxpayers, and harms government efforts to obtain goods and services. At this critical time when our nation's economy and resources are precious, it is imperative that we take action to promote the early detection and prevention of procurement fraud.

What is the Guidance?

1. The Federal Acquisition Regulation (FAR) was recently changed to require contractors to disclose violations of criminal law and the False Claims Act in connection with award and performance of government contracts and subcontracts. This FAR change as published in the Federal Register on November 12, 2008 (73 FR 67064) is effective on December 12, 2008.

FAC-2005-28 amends the FAR as specified:

Item I—Contractor Business Ethics Compliance Program and Disclosure Requirements (FAR Case 2007–006).

This final rule amends the Federal Acquisition Regulation to amplify the requirements for a contractor code of business ethics and conduct, an internal control system, and disclosure to the Government of certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The rule provides for the suspension or debarment of a contractor for knowing failure by a principal to timely disclose, in writing, to the agency Office of the Inspector General, with a copy to the Contracting Officer, certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments. The final rule implements “The Close the Contractor Fraud Loophole Act,” Public Law 110–252, Title VI, Chapter 1. The statute defines a covered contract to mean “any contract in an amount greater than \$5,000,000 and more than 120 days in duration.” The final rule also provides that the contractor’s Internal Control System shall be established within 90 days after contract award, unless the Contracting Officer establishes a longer time period (*See* FAR 52.203–13(c)). The Internal Control System is not required for small businesses or commercial item contracts.

2. The Office of Management and Budget (OMB) is taking affirmative steps to combat and prevent this unacceptable activity. In a collaborative effort to increase coordination, strengthen partnerships, and eliminate procurement fraud, the Office of the Deputy Attorney General formed a National Procurement Fraud Task Force to coordinate its efforts with those of OMB. The Task Force, which is chaired by the Assistant Attorney General of the Criminal Division, will coordinate efforts among the U.S. Attorney’s Offices; the Justice Department’s Civil, Antitrust, Environmental and Natural Resources, National Security, and Tax Divisions; and other law enforcement agencies. The Task Force will also work with acquisition professionals, contracting, and audit offices to more effectively detect and report fraud, and to provide resources, i.e. fraud training and access to information on their website at <http://www.usdoj.gov/criminal/npftf/>.

3. In a June 2008 memorandum, the U.S. Department of Transportation (DOT) Deputy Secretary announced the institution of an annual training program for all Departmental acquisition and financial assistance (grants) management personnel. This training will supplement required annual ethics training and concentrate on ethics, conflicts of interests, the detection and prevention of procurement fraud and other contracting matters. Employees to be

trained include Contracting Officers, Contract Specialists, Contracting Officer's Technical Representatives (COTRs), Program and Project Officers, Procurement and Acquisition Specialists, employees who participate in cooperative agreement and financial assistance (grants) matters, legal personnel, and personnel who supervise acquisition matters.

4. In an effort to promote the early detection, prevention, and prosecution of procurement fraud, the Office of the Senior Procurement Executive (OSPE) will collaborate and strengthen partnerships with the Office of Inspector General (OIG), Office of General Counsel, and Defense Contract Audit Agency.

5. The Office of Inspector General maintains a hotline to facilitate the reporting of allegations of fraud, waste, abuse, or mismanagement in U.S. Department of Transportation DOT programs or operations. You may report such allegations through the contact information listed on this page. Allegations may be reported by DOT employees, contractors, or the general public. OIG's hotline is open 24 hours a day, seven days a week and is operated by a third party contractor.

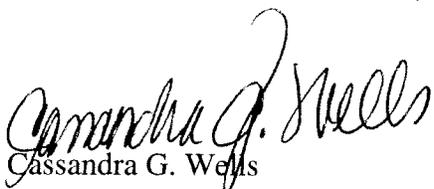
OIG Hotline Number: 1.800.424.9071 or 202.366.1461

Issues that should be reported:

- Contract, Procurement, and Grant Fraud
- Environment, Health, and Safety Violations
- Computer Crimes
- Product Substitution and Suspect/Counterfeit Parts
- Bribery, Kickbacks, and Gratuities
- False Statements and False Claims
- Conflicts of Interest and Ethics Violations
- Travel Fraud
- Theft and/or Abuse of Government property
- Other Violations of Federal Laws and Regulations

Callers are encouraged to provide relevant and specific details of their complaints, including the identity of the person, company, or organization alleged to have engaged in wrongdoing; a description of the alleged impropriety; the DOT facility and program affected by the alleged misconduct; contract number(s); date(s) of alleged wrongdoing; how the caller is aware of the alleged impropriety; the identity of potential witnesses; and the identity and location of supporting documentation.

The OIG will protect the identity of complainants to the maximum extent possible by law.



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