

Caught in the Federal Procurement Fish Bowl

26th Annual Ounce of Prevention Seminar



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Compliance Check- Up: Ten Questions Contractors Should Be Prepared to Answer

Shauna Alonge
Jonathan Baker

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Compliance Check-Up

- Government contracting never was a picnic
- First they took away the company holiday party, then the donuts for customers (almost)
- Government contracting: not for the squeamish
- Rx: compliance, compliance, compliance

Compliance Check-up

- Question # 1
- How much did the contractor spend on compliance last year?

Compliance Check-up

- Compliance program adequately resourced
- Definition of compliance functions
- DOJ, OIG, CO inquiries
- How much is enough?
 - Reckless disregard/deliberate ignorance
- Metrics and scalability
- Best practices

Compliance Check-up

- Question # 2
- When did the Board last receive ethics and compliance training?

Compliance Check-up

- Governing body
- Tone at the top
- Active, not passive
- Can't provide oversight without knowing the specifics of risks and elements of the compliance program

Compliance Check-up

- Question # 3
- When did the contractor last perform an anonymous cultural survey of its employees?

Compliance Check-up

- Corporate culture is measurable
- Poor corporate culture can sink a contractor's compliance program
- Don't wait for problems to occur
- What to do with the results?
 - disclosure issues

Compliance Check-up

- Questions # 4, 5, and 6
 - What is the contractor's process for hiring former government employees?
 - How are post-employment restrictions determined? What is a DAEO?
 - How are the restrictions communicated to management? What happens when an employee changes jobs within the company?

Compliance Check-up

- Questionnaires, DAEs, tracking systems
- How to define “representation”
- What about prior access to Government source selection information? Competitor trade secrets information?
- Should you ask the business people: why do you really want to hire Joe?
- Partial or complete firewalls
- Bid protests and OCIs (and disclosures?)

Compliance Check-up

- Question # 7
- Same as questions 5, 6, and 7, but substitute “competitor employee” for “government employee.”

Compliance Check-up

- Who is in the best position to monitor?
 - Legal? Compliance? BD? Program?
- Are NDAs enough?
- Most compliance training is now electronic
 - does this risk area call for in-person, proposal team training? Real-life scenarios? Desk checks? Sleuthing?

Compliance Check-up

- Question # 8
- Why should Compliance or Legal be concerned about employee self-appraisals and exit interview forms?

Compliance Check-up

- Treasure trove of unresolved compliance concerns – close at hand
- Self-evaluations: opportunity to blame inefficiencies on management (“I’m so far behind in my work, but my boss keeps telling me to just get the DOD reports out the door.”)
- Exit interview forms: “I hope the cops show up soon! I hate this place!”

Compliance Check-up

- Question # 9
- How does the contractor maintain and update its list of “principals”?

Compliance Check-up

- Key to
 - Mandatory disclosure avoidance
 - Mandatory disclosure compliance
 - Suspension/debarment proposal certification
 - FAPIIS certification
 - Document preservation obligations
- And “principals” of related entities? JV partners?

Compliance Check-up

- Question # 10
- Crowell & Moring: do you have any pearls of wisdom concerning how a contractor is supposed to ask its employees to disclose – much less assess - “personal financial interests” or “personal activities” or “relationships that might compete with the employee’s ability to act impartially and in the best interest of the Government when performing the contract?”

Compliance Check-up

- No, we're asking the questions here!