Investigations – Part I: Figuring Out the Facts

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Scenario 1: Facts

- Two days before BAFOs are due, capture lead hears a rumor that the pricing team “knows” the pricing of the two other offerors in the competitive range.
- Capture lead reports this rumor to legal.
Scenario 1: Considerations

- Sequencing of investigation
- Preservation issues
- Disclosures
- Corrective actions
Scenario 2: Facts

- On a hardware development contract, prime contractor has outsourced the pre-delivery testing to a subcontractor.
- The government has rejected several deliveries due to quality issues.
- Prime contractor’s program manager confronts the subcontractor’s CEO, who
  - admits that testing was not being done regularly
  - says that he had previously told the prime’s COO
- Prime contractor program manager seeks advice.
Scenario 2: Considerations

• Dealing with Subcontractors
  – Proactively
  – Reactively

• Yates Memo – handling potential individual liability

• Others?
Scenario 3: Facts

- During a routine compliance review at a hospital system, a risky billing practice is discovered, i.e., choosing claim codes when elements are missing without the necessary clinical expertise or knowledge of the medical record.
- Compliance notifies Legal and performs a limited sample audit targeting the billing practice.
- Due to billing and claims data storage and tension between billing and compliance, the results of the internal audit suggest overbilling, but is inconclusive as to overpayments.
Scenario 3: Considerations

- Investigational Interviews
  - Order
  - Upjohn Warning
- Dealing with Experts
  - Expert Selection
  - Defining Scope
  - Preserving privilege
- Corrective Action
  - System Modifications
  - Internal Controls
- Board Notification
  - Duty
  - Timing
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