

Behind the Scenes: Ethics Compliance, Whistleblowers and Real Life Stories



Redstone
Government Consulting

Helping You Navigate the Maze of Government Contracting



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- Background:

- Shareholder Lanier Ford - 1994-2006

- Defended large and small employers, including government contractors, in cases involving sexual harassment, retaliatory discharge, disability, age, religion, race and sex discrimination, FMLA, FLSA and breach of contract

- General Counsel, Vice President of Human Resources, and Corporate Secretary for Digital Fusion, Inc. 2006-2009

- 2009, founded her own employment law compliance business, Practical Employment Solutions, Inc.

- Attorney – Lehr Middlebrooks, Vreeland & Thompson 2013-2017

- BA in English, Political Science and Accounting, The University of Alabama

- Juris Doctorate (Law Degree), The University of Alabama

- Today:

- Director/Senior Legal Consultant with Redstone Government Consulting, Inc.

- Member Alabama State Bar Association

Topics

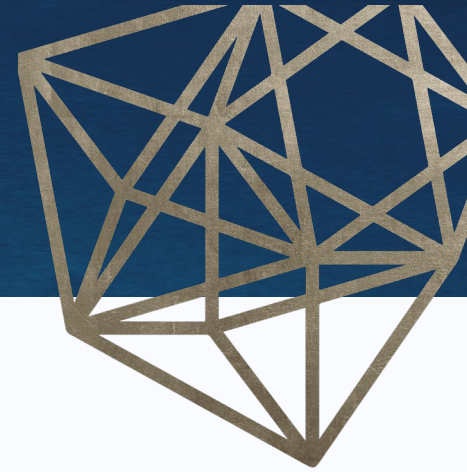
1) Regulatory - FAR Clause 52.203-13

2) DoJ Whistleblower Pilot Program

3) Historical Cases

4) Best Practices

5) Debarment



Business Ethics



FAR 52.203-13: Contractor code of business ethics and conduct (CoBEC)

(b) *Code of business ethics and conduct.*

- 1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—
 - i. Have a written code of business ethics and conduct;
 - ii. Make a copy of the code available to each employee engaged in performance of the contract.
- 2) *The Contractor shall—*
 - i. *Exercise due diligence to prevent and detect criminal conduct; and*
 - ii. *Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.*

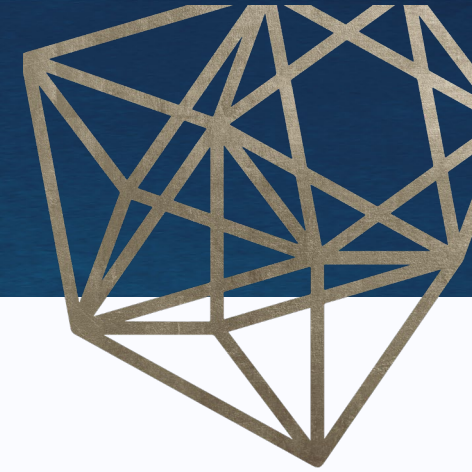


FAR 52.203-13: Mandatory Disclosure

(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

- (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (B) A violation of the civil False Claims Act ([31 U.S.C. 3729-3733](#)).

Types of Issues Contemplated by the Mandatory Disclosure Rule



- **Conflicts of Interest**
- **Bribes, Kickbacks and Payoffs**
- **Meals and Refreshments (Gratuities)**
- **Non-Disclosure of Confidential/Proprietary Information**
- **Company & Customer Records / Property**
- **Labor Charging & Timecard Reporting**
- **Anti-Trust Laws**
- **Compliance with Government Contracts**
- **Marketing Procedures (e.g., Selling vs. Lobbying)**
- **Expense Reports**
- **Ethical Behavior of Customers, Subcontractors, and Consultants**

Recent Examples of FCA Claims



- **Overstating Claims and Requests for Equitable Adjustment**
- **Failing to Perform in Accordance with Contract Requirements**
- **Failure to follow disclosed accounting practices**
- **Performing Deficient Work**
- **Falsely classifying workers**
- **Prevailing wage rate violations**
- **Violating Minority Business MBE and DBE Participation Requirements**
- **Violating Subcontractor Listing or Licensing Requirements**
- **Improperly Substituting Subcontractors**
- **Substitution of Cheaper/Substandard Materials or Equipment**



FAR 52.203-13: Compliance Program

(c) Business ethics awareness and compliance program and internal control system. ... *The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:*

(1) *An ongoing business ethics awareness and compliance program.*

- (i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
- (ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

FAR 52.203-13: CoBEC



(2) An internal control system.

(i) The Contractor's internal control system shall—

- (A)** Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and
- (B)** Ensure corrective measures are promptly instituted and carried out.

FAR 52.203-13: CoBEC



- (ii) At a minimum, the Contractor's internal control system shall provide for the following:
 - A. Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.**
 - B. Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.**
 - C. Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—**
 - (1) Monitoring and auditing to detect criminal conduct;
 - (2) 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

FAR 52.203-13: CoBEC



(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(3) 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.

(D) 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 that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

FAR 52.203-15: Whistleblower Protections



(a) The Contractor shall post notice of employees' rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are funded in whole or in part with Recovery Act funds.

DOJ Whistleblower Program



- **On March 7, 2024, DOJ announced a new pilot program to pay whistleblower rewards for individuals who report corporate misconduct.**
- **The intent is clearly to encourage more companies to make voluntary self-disclosures.**
- **Payments to individuals who provide information about “significant corporate or financial misconduct.”**
- **“Reward” to be paid from asset forfeiture funds.**
- **Intended to “fill gaps” not covered by other whistleblower programs.**
- **Pilot program launched August 2024.**

DOJ Whistleblower Program - Guardrails



- **Whistleblower rewards are offered only:**
 - After all victims have been properly compensated
 - For truthful information not already known to the government
 - For those not involved in the underlying criminal activity
 - When information is provided voluntarily
 - Where there is not an existing financial disclosure incentive, such as a qui tam or another applicable whistleblower program
- **Also note – there is a total bar on payments to those who are involved in the underlying criminal activity.**

DOJ Whistleblower Program



- **Program is still in development**
 - What is the range of the potential reward?
 - Who will be responsible for determining eligibility & amount of the reward?
 - What is the criteria for determining the award?
 - Does a whistleblower have to report directly to the DOJ?
 - Will internal reporting be sufficient to establish eligibility for an award?

DOJ Whistleblower Program Recommendations



- 1. Companies should evaluate whether their compliance programs include effective measures to identify potential misconduct, including ongoing monitoring and reporting. Adopt clear whistleblower policies.**
- 2. Companies should ensure that they appropriately foster a speak up culture, and have clear and accessible communication channels for employees to report misconduct easily and anonymously.**
- 3. Companies should also evaluate the robustness of their internal reporting and investigating processes—including timely follow-up on all complaints—to promote employee reliance on the company’s own internal mechanisms. Always encourage whistleblowers to report internally first!**
- 4. Companies should continue to carefully evaluate whether voluntary self-disclosure is appropriate given the increased risk of whistleblower reports.**

“Fat Leonard”



In 2015, Leonard Glenn Francis pleaded guilty to plying more than 30 officials, including more than two dozen naval officers, with a slew of bribes to gain lucrative contracts for his Singapore-based company Glenn Defense Marine Asia Ltd.

According to the Department of Justice, officers were lavished with a criminal potpourri of cash, prostitutes, wild sex parties and luxury travel and items such as "Cuban cigars, Kobe beef and Spanish suckling pig."

Francis also admitted to overcharging the Pentagon for made up services. In all, the Department of Justice said he bilked the Navy out of \$35 million, leading officials to call it "one of the most brazen bribery conspiracies in the U.S. Navy's history."

In exchange, officers handed over classified and other sensitive material to Francis' company, which had a contract to resupply and service Navy ships in Asia.

When Trust Goes Wrong



CRAFTY CASEY & DUDLEY THE DUMBA*S

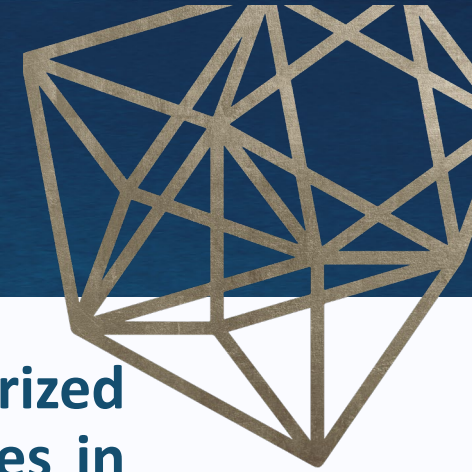


Kickback Case Examples



- **Prime contractor provided rifles to Government and demanded \$25k from a supplier of rifle parts in exchange for continued business**
- **Employee for prime referred real estate work to his friend in exchange for cash payments of \$15k**
- **Employee of prime working on Navy ships received 10% of every payment to sub in exchange for award of subcontract.**
- **Employee of subcontractor provided gifts of candy, cigars, golf outings, baseball games, whiskey and beer to employee of prime contractor**

Kickbacks Case



- **Executive with a subcontractor (EGL) provided or authorized entertainment and other items of value to prime's (KBR) employees in exchange for favorable treatment in getting the subcontracts.**
 - Smoot was sentenced to 14 months (faced up to 15 years) in prison and ordered to pay fines and restitution of \$25k (could have been up to \$500k in fines)
- **Whistleblower suit against EGL, Inc.**
 - U.S. Intervened
 - EGL paid the US \$750k to settle allegations that it, in violation of the False Claims Act and the Anti-Kickback Act, had paid gratuities to employees of KBR
- **Whistleblower suit against KBR**
 - U.S. Intervened
 - KBR found vicariously liable for actions of its employees

Another Case



- June 2008 – Martin was a subcontracts administrator for KBR in Kuwait
- Awarded \$4.6 M subcontract to a Kuwaiti company to provide 50 semi-tractors and 50 refrigeration trailers to the US military for a 6-month period. The Kuwaiti company agreed to pay Martin approximately \$170/tractor/per month under any government subcontract that Martin awarded them under the applicable prime contract. The amount of the kickback was incorporated into the subcontract!
 - Martin sentenced to a year and a day in prison and ordered to pay \$200k in restitution
- **One thing to note about these cases is that (particularly in Afghanistan and the Middle East), the amount of bribes/kickbacks offered is often staggering which subjects employees to a higher degree of temptation.**

Procedures are Extremely Critical!



- **Most violations involve personal contact – not always a paper trail**
But beware of expense reports!
- **A good compliance program is so important:**
 - Periodic review of written practices and standard procedures
 - Hotline
 - Internal audits
- **** Remember – you are required to have a detection program in place and to report suspected violations (if they meet the standards earlier discussed)**

DOJ Evaluation of Corporate Compliance Programs



Guidance for companies facing enforcement action:

- **DoJ will consider whether the company reported/remediated conduct**
- **DOJ will not seek guilty plea when company reports/remediates misconduct**
- **DOJ will reward companies who invest in compliance - they seek to incentivize other companies to invest**
- **DOJ seeks to empower compliance officers and GCs to encourage voluntary self-disclosure**
- **Undue delay in disclosure will reduce cooperation credit. You cannot just disclose bad acts but also must identify individuals.**

Best Practices



Tone at the Top – promote ethical culture committed to compliance with these and all laws

Establish a written Code of Business Ethics and Conduct & appoint a Compliance Officer

Establish an Awareness /Training Program and ensure dissemination of information appropriate per each individual employees' respective roles and responsibilities

Periodic reviews of company's business practices, procedures to ensure ongoing compliance

Ensure procedures /internal control systems are in place to facilitate timely discovery of potentially improper conduct

Internal hotline or other anonymous reporting mechanism is recommended

Best Practices



Establish protocols for intake and processing of allegations of potential misconduct – *include documentation that investigation of allegations will be conducted at the express direction of counsel*

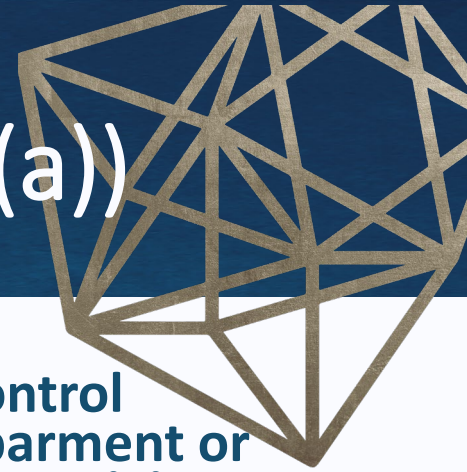
Conduct a neutral, timely investigation of any allegations or potential issues

Guarantee that effective corrective measures are taken

Make mandatory disclosures as required.

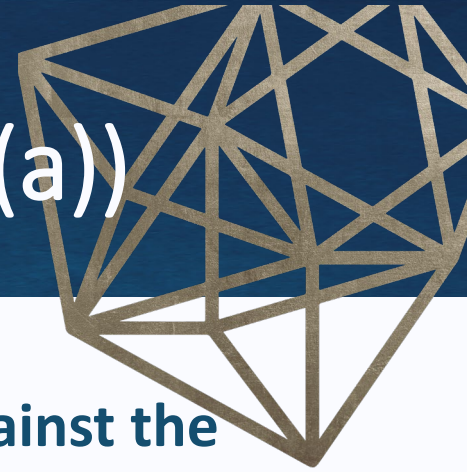
Full Cooperation with any Government agency responsible for audit, investigations, or corrective action.

Debarment – Mitigating Factors (FAR 9.406-1(a))



- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.**
- (2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.**
- (3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.**
- (4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.**
- (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.**

Debarment – Mitigating Factors (FAR 9.406-1(a))



- (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.**
- (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.**
- (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.**
- (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.**
- (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.**

Questions and Discussion



About Redstone Government Consulting, Inc.



Redstone Government Consultants are a team of the most senior industry veterans and the brightest new talent in the industry. Our Consultants are: Former executive level DCAA and DCMA, CPAs, Attorneys, and GovCon industry executives.

We support and assist government contractors with government contract compliance, proposal pricing, contracts and subcontracts administration, HR consulting, accounting systems implementation and accounting outsourcing.

- Compliant Accounting Systems
- Incurred Cost Proposals
- Proposal Pricing and Cost Volume Support
- Forecasting & Budgeting
- DCAA Audit Support
- Human Resources GovCon Consulting/Outsourcing
- Contracts and Subcontracts Administration

- DFARS Business Systems Reviews
 - Accounting & Billing Systems
 - Material Management and Accounting System (MMAS)
 - Contractor Purchasing System Review (CPSR) Service
 - Estimating Systems
 - Government Property
 - Earned Value Management System (EVMS)

- Litigation Consulting Support
- Labor Law Compliance and Support
- REAs, Claims & Terminations
- Cost Accounting Standards (CAS)
- Contract Closeout Assistance
- Deltek and Unanet implementations
- ITAR/EARS Consulting

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 - Project Controls
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