52.203-13 Contractor Code of Business Ethics and Conduct.

As prescribed in 3.1004(a), insert the following clause:

Contractor Code of Business Ethics and Conduct (Nov 2021)

(a) *Definitions. As used in this clause—*

Agent means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

Full cooperation-

(1) Means 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 response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from-

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business *segment*; and similar positions).

Subcontract means any contract entered into by a *subcontractor* to furnish *supplies* or services for performance of a prime contract or a *subcontract*.

Subcontractor means any supplier, distributor, vendor, or firm that furnished *supplies* or services to or for a prime contractor or another *subcontractor*.

United States, means the 50 States, the District of Columbia, and *outlying areas*.

(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; and

(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.

(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).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government *may* transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a *Governmentwide acquisition contract*, a *multi-agency contract*, a multiple-award schedule contract such as the Federal Supply Schedule, or any other *procurement* instrument intended for use by multiple agencies, the Contractor *shall* notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the *acquisition* of a *commercial product* or *commercial service* as defined at FAR 2.101. 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*.

(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.

(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

(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.

(F) Timely disclosure, *in writing*, to the agency OIG, with a copy to the *Contracting Officer*, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a *subcontract* thereunder, the Contractor has credible evidence that a principal, employee, *agent*, or *subcontractor* of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False *Claims* Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor *may* make the disclosure to the agency OIG and *Contracting Officer* responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a *Governmentwide acquisition contract*, a *multi-agency*

contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other *procurement* instrument intended for use by multiple agencies, the contractor *shall* notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' *contracting officers*.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) *Full cooperation* with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts*.

(1) The Contractor *shall* include the substance of this clause, including this paragraph (d), in *subcontracts* that exceed the threshold specified in FAR 3.1004(a) on the date of *subcontract* award and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False *Claims* Act or of Federal criminal law *shall* be directed to the agency Office of the Inspector General, with a copy to the *Contracting Officer*.

(End of clause)

Parent topic: 52.203 [Reserved]