



## New Federal Procurement Task Force Highlights Need to Assess Compliance Practices

On October 10, 2006, the Department of Justice announced the formation of a new National Procurement Fraud Task Force, with the stated purpose of detecting, preventing, and prosecuting fraud under federal government contracts. The announcement is not surprising. It is but the latest incarnation of government efforts to combat fraud, waste and abuse in an era of increased government spending for natural defense and homeland security. The Task Force is chaired by the head of DOJ's Criminal Division and includes the Inspectors General of virtually every federal agency — from the Departments of Defense, Homeland Security and Veterans Affairs, to the General Services Administration and the U.S. Postal Service — as well as all defense-related investigative services.

The Task Force intends to focus on criminal enforcement in broad areas of procurement fraud: “defective pricing..., product substitution, misuse of classified and procurement of sensitive information, false claims,...accounting fraud,... ethics and conflicts of interest violations, and public corruption...” Although issues related to alleged fraud, waste, and abuse under national defense and homeland security contracts have been much in the news, the Task Force is not limiting its enforcement activities to those areas. Perhaps to emphasize this point, the Justice Department — on the same day that it announced the creation of the Procurement Fraud Task Force — announced that Oracle Corporation had agreed to pay almost \$100 million to settle False Claims Act allegations that a company that Oracle acquired had overcharged the government under its General Services Administration Federal Supply Schedule Contract.

### WHAT CONTRACTORS CAN AND SHOULD BE DOING NOW

Contractors should not wait for a call from the Task Force to take action. They can take steps now to prevent and detect improper procurement activity and to mitigate the damage if any such activity is found.

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- Reexamine existing ethics and compliance policies and procedures. An effective compliance program includes standards of conduct, as well as mechanisms for investigating potential violations and taking prompt and appropriate remedial steps when violations are found. Are your policies and procedures up to date? Do they comprehensively cover all potential risk areas? Are they widely distributed and implemented, or do they simply sit on the shelf? Do employees in all appropriate areas of the company receive proper and regular compliance training? Do your policies and procedures cover current IT systems and recent changes in business processes and personnel?
- Review the role of your compliance officer. Does the company have a government contracts subject matter expert supporting the compliance officer? Does the compliance officer participate in all relevant matters? Is he/she regularly consulted on matters that could raise questions under your compliance programs? One of the seven core elements of an effective compliance program is the designation of an individual whose principal responsibility is to coordinate compliance with the company's procedures. The

individual should have sufficient authority within the company to effectuate change. You should also ensure that there are regular lines of communication between the sales, marketing, accounting and compliance departments within your organization.

- Self-audit high-risk areas. Do not wait for the government to bring problems to your attention. Choose the areas of your government business that may be considered high-risk and review them to ensure that business is being conducted in accordance with your ethics and compliance policies. Are you engaging in new lines of business? Have you recently acquired another government contractor? Have you changed suppliers? These are among the circumstances that can heighten risk. Reviews should be coordinated with your internal audit department (as necessary), with your management, and with your compliance officer.
- Expediently investigate any information suggesting wrongdoing on the part of the company or any of its employees. A corporation's failure to promptly and thoroughly investigate signs of possible wrongdoing by its employees, and to take prompt and appropriate action, may lead prosecutors to decide to

charge the corporation civilly or criminally, and may also result in more substantial fines and penalties, as well as administrative sanctions, such as suspension or debarment.

- Consider a voluntary disclosure. You should consider whether the results of your self-audits or investigations warrant a disclosure to the government. In many circumstances, a voluntary disclosure can lead to less severe sanctions or penalties. Also consider all of the various government agencies that you will need to address in coordinating a global resolution of identified problems.
- You should not presume that compliance with federal requirements is sufficient. If you sell goods or services to state and local governments, you must understand the ethics and compliance requirements that apply to each of your government customers.

With the creation of the National Procurement Fraud Task Force, government contractors should expect even greater scrutiny by the agencies with which they contract, those agencies' Offices of Inspector General, and perhaps the Department of Justice. Now is the time for contractors to take steps to prevent and detect improper procurement activity and to mitigate

the damage if any such activity is found. Arnold & Porter can help in these efforts. The firm has extensive experience advising clients in a broad range of industries in matters related to detecting and preventing procurement fraud, and responding to government accusations that a client or its employees have committed wrongdoing related to a government contract. Our experience includes representing clients in *qui tam* suits; suspension and debarment matters; and internal and government investigations regarding alleged procurement fraud and FCPA, export control, and pricing violations.

*We hope you find this summary helpful. If you would like more information, please feel free to contact your Arnold & Porter attorney or:*

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