

An Ethical Code of Conduct Is Good for Business



Having a well-drafted and properly implemented ethics code can help a company stay out of trouble, protect it if it gets into trouble and maybe even save it from debarment. Contractors engaged in federal procurement contracting are required to have a code of business ethics and conduct if:

- the contract value exceeds \$5 million; and
- the contract performance period is 120 days or more.

Federal Acquisition Regulations (FAR), as amended Dec. 12, 2008, require the contract clause at FAR 52.203-13 to be included in solicitations and contracts that meet those two criteria. The contract clause imposes several requirements, including:

- Within 30 days of the contract award, a contractor must have a written code of business ethics and conduct and give a copy to each employee engaged in contract performance.

- Unless a contractor is a small business entity or the contract is for a commercial item, the company also must establish an ongoing business awareness and compliance program, as well as an internal control system.
- A contractor must notify the government of certain unlawful conduct by a principal, employee, agent or subcontractor of the company. Failure to do so in a timely manner could result in the company being suspended or debarred.



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- The contractor must exercise due diligence to prevent and detect criminal conduct and promote an enterprise culture that encourages ethical conduct and compliance with the law.
- The contractor must flow the contract clause down to subcontracts that meet the \$5 million and 120-day threshold criteria.

CONTENTS OF AN ETHICS CODE

In addition to a message from the company’s leadership emphasizing the importance of ethical and legal behavior, the ethics code should address:

- the company’s vision, mission and core values;
- the company’s commitment to shareholders, customers, suppliers, lenders, investors, employees and the community;
- required, permitted and prohibited business conduct;
- discrimination, harassment, safety, alcohol and drug policies;
- use of company assets, intellectual property and maintaining accurate books and records; and
- if applicable, topics such as bribery, kickbacks, the Truth in Negotiations Act, political contributions, lobbying costs, hiring government employees, and export and import compliance.

A certificate should be signed by each employee indicating he has received the ethics code and agrees to comply with its requirements.

BENEFITS OF AN ETHICS CODE

Having a code of business ethics and conduct reflects well on a firm’s reputation. Investors, lenders, customers, suppliers and vendors have greater confidence in companies that practice good corporate governance and business ethics.

Additionally, a code will facilitate education and training opportunities for employees on identifying legal and ethical pitfalls, doing the “right thing” from the company’s perspective and making ethical decisions on a consistent basis.

In terms of recruitment, employees usually are happier, more productive and possess greater morale in an environment in which responsibility, accountability, honesty, teamwork and ethics are expected and rewarded.

Having a well-drafted and properly implemented code of business ethics and conduct cannot guarantee that a business will not get into trouble. However, if this should occur, the fact that the contractor has a rigorous ethics program—a strong ethics code, education and training programs and internal controls—will be considered in mitigation of any criminal liability a business may face.

Another consequence of getting into trouble is the possibility of being suspended,

debarred or proposed for debarment, which can devastate a business. (The causes for debarment and suspension are listed in FAR 9.406-2 and 9.407-2.)

If a contractor is debarred, suspended or proposed for debarment, it will be excluded from receiving new contracts, as well as subcontracts of more than \$30,000. Also, the business will be entered into the Excluded Parties List System (EPLS). This listing places all federal agencies, as well as the general public, on notice that the contractor is excluded from participating in any procurement or non-procurement transaction during the period of the listing. This restriction essentially covers all government programs, which means debarred contractors also are debarred from participating in non-procurement programs.

Federal government debarment has other far-reaching consequences. Virtually every state government routinely reviews the EPLS; upon learning of a suspension, debarment or proposed debarment by the federal government, the state will exclude the contractor from bidding on state work. The same is true of many counties and municipalities throughout the country.

But that is not the end of the story. Many commercial companies will refuse to do business with debarred firms. In short, federal debarment could mean the death of a company, even if most of its business has nothing to do with federal contracting.

However, debarment officials, like judges, recognize the existence of a strong ethical compliance program as a mitigating factor that must be considered in connection with any proposed debarment.

Having an effective code of business ethics and conduct is far more than just a legal requirement; it is a valuable asset that can enhance a contractor’s reputation and stature, help it avoid ethical and legal pitfalls, and protect it from disaster if an employee’s transgression causes the company to face criminal charges, false claims act liability, or suspension and debarment. An ethics code is, in fact, an insurance policy against these possibilities.

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