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Complying With The New Mandatory Disclosure Rule

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On Dec. 12, 2008, a new rule took effect that requires Government contractors and subcontractors to disclose to the Government whenever they have "credible evidence" of certain criminal violations, a violation of the civil False Claims Act, or a "significant overpayment" in connection with the award, performance or closeout of a Government contract or subcontract.[2] Already, two agencies have added to the rule by requiring contractors to certify that their disclosures are "true and accurate."[3] The new rule with its draconian penalties significantly changes the risk equation for Government contractors.

Background

In May 2007, the head of the Department of Justice Criminal Division asked the administrator of the Office of Federal Procurement Policy to consider amending the Federal Acquisition Regulation to, among other things, require contractors to notify the Government without delay whenever they become aware of a violation of criminal law or contract overpayment. In response to the request, OFPP asked the FAR Councils to open a FAR case to consider DOJ's recommendations.

A related, more limited rulemaking effort was already underway when OFPP received the DOJ request. Three months earlier, in February 2007, the Civilian Agency Acquisition Council and Defense Acquisition Regulations Council (the Councils) published proposed changes to the FAR that would require Government contractors to have a written code of business ethics and post inspector general "fraud hotline" posters to encourage their employees to report possible fraudulent contract activity.[4] Similar requirements have been part of the Defense Federal Acquisition Regulation Supplement since 1988.[5]

The Councils finalized their first rulemaking in November 2007, adding new policy guidance to FAR subpt. 3.10 and publishing two new contract clauses: FAR 52.203-13, Contractor Code of Business Ethics and Conduct, and FAR 52.203-14, Display of Hotline Poster(s).[6] The new clauses, which took effect Dec. 24, 2007, applied to contracts expected to exceed $5 million in value and 120 days in length, except commercial-item contracts and contracts to be performed entirely outside the U.S. The exception for overseas contracts was carried forward from existing DFARS regulations, which exempted overseas contracts from the clause requiring contractors to post a "fraud hotline" poster.

At about the same time, the Councils published a second proposed rule in response to the DOJ request.[7] In comments accompanying the proposed rule, the Councils stated that DOJ sought the mandatory reporting requirement because "few companies have actually responded to the invitation of DOD that they report or voluntarily disclose suspected instance violations of Federal criminal law relating to the contract or subcontract."[8] The rulemaking effort met with widespread resistance, and various industry groups and the American Bar Association Public Contract Law Section submitted comments in opposition.

Congress weighed in while the rulemaking was proceeding. The Close the Contractor Fraud Loophole Act was enacted June 30, 2008, as part of the Supplemental Appropriations Act of 2008.[9] The supposed "loophole" refers to the exception for contracts performed outside the U.S. and commercial-item contracts. The Act requires that the FAR, within 180 days after enactment, "include provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items."[10] A "covered contract" is "any contract in an amount greater than $5,000,000 and more than 120 days in duration."[11] The mandatory disclosure rule exceeds the statutory requirements in three respects: (1) the statute does not require disclosure of violations of the civil FCA; (2) the statute does not require disclosure to the IG; and (3) the penalties of suspension and debarment are not required by the statute. According to the drafters' comments, these features were added as a matter of policy.[12]

Mandatory Disclosure

The new mandatory disclosure rule has three distinct parts.

Contractual Requirement to Disclose

First, the new rule revises FAR 52.203-13, Contractor Code of Business Ethics and Conduct (December 2008), to require mandatory disclosure to the IG and contracting officer.

> 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).[13]

The mandatory disclosure obligation is limited to contracts containing the new clause, i.e., those awarded on or after Dec. 12, 2008, worth over $5 million and that have a period of performance longer than 120 days. There is no longer an exception for commercial-item contracts and contracts performed outside the U.S. If they meet the dollar and duration thresholds, commercial-item and overseas contracts must include the new clause.

Because the contractual reporting requirement applies only to contracts that incorporate the clause, it is necessarily prospective. That is, the disclosure obligation is limited to violations that occur after award of a contract containing the clause.

Contractual Requirement for an Internal Control System

Second, the revised Contractor Code of Business Ethics and Conduct clause requires contractors to establish and maintain an internal control system that includes mandatory disclosure to the IG and CO. Among other things, the internal control system must include

> 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 subcontractor 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).[14]

The internal control system requirement does not apply to small businesses or commercial-item acquisitions.

The internal control reporting obligation is broader than the obligation imposed by paragraph (b)(3)(i) of the clause because it covers violations in connection with *any* Government contract or subcontract, not just the contract containing the clause. Accordingly, as with the new cause for suspension or debarment discussed below, disclosures under the internal control system may include violations that occurred *before* award of the contract containing the clause.

In fact, the Councils expressly rejected a suggestion that disclosures under the internal control system and as a cause for suspension or debarment should be prospective only. The comments accompanying the new rule state,

> The Councils do not agree with the respondents who think that disclosure under the internal control system or as a potential cause for suspension/debarment should only apply to conduct occurring after the date the rule is effective or the clause is included in the contract, or the internal control system is established. The laws against these violations were already in place before the rule became effective or any of these other occurrences. This rule is not establishing a new rule against theft or embezzlement and making it retroactive. The only thing that was not in place was the requirement to disclose the violation. If violations relating to an ongoing contract occurred prior to the effective date of the rule, then the contractor must disclose such violations, whether or not the clause is in the contract and whether or not an internal control system is in place, because of the cause for suspension and debarment in Subpart 9.4.[15]

However, the Councils agreed that the disclosure obligation should not stretch back indefinitely, and therefore limited it to three years after final payment.[16]

Failure to Disclose as a Cause for Suspension or Debarment

Third, the rule amends FAR 9.406-2 and 9.407-2 to add the knowing failure to disclose credible evidence of specific crimes, false claims and significant overpayments as a cause for suspension or debarment.

> *Knowing failure* by a *principal*, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, *credible evidence* of—
>
> (A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;
>
> (B) Violation of the civil False Claims Act (31 U.S.C. 3729–3733); or
>
> (C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in 32.001.[17]

As with disclosures under an internal control system, the disclosure obligation imposed by the suspension/debarment rule applies to violations in connection with *any* Government contract or subcontract, and therefore includes violations occurring *before* December 12. However, it is limited to *knowing failure* by a *principal* to timely disclose *credible evidence* of the violation. The comments accompanying the final rule state: "The Councils note that [the definition of principal] should be interpreted broadly, and could include compliance officers or directors of internal audit, as well as other positions of responsibility."[18]

Timely Disclosure

There are separate timeliness requirements for the three parts of the new rule. All three parts require "timely" disclosure after the contractor has "credible" evidence of a violation. The new rule does not define "timely" and the Councils expressly rejected establishing a set period of time, such as 30 days, because they determined that doing so would be "arbitrary and cause more problems than it would resolve, e.g., how to determine when the 30 days begins."[19] What differs among the three parts of the new rule is the effective date of the reporting requirement.

The contractual requirement to disclose applies only to contracts that incorporate the clause, i.e., contracts awarded on or after December 12.[20] Accordingly, the contractual reporting requirement does not apply unless the contractor (1) is awarded a contract containing the clause, *and* (2) determines that there is credible evidence that a principal, employee, agent or subcontractor of the contractor has violated one of the specified criminal laws or civil FCA in connection with that contract or a subcontract issued under it.[21]

The contractual requirement to implement an internal control system applies 90 days after award of a contract incorporating the clause.[22] Thus, the earliest that a contractor might have to make a disclosure under an internal control system is 90

days after December 12. Put another way, timely disclosure of credible evidence as required by an internal control system is measured from the date that a contractor determines that credible evidence exists, or the date of establishment of the internal control system, whichever is later.

Failure to timely disclose is a cause for suspension/debarment as of Dec. 12, 2008, regardless of the contract clause. Accordingly, timely disclosure of credible evidence as a cause for suspension or debarment is measured from Dec. 12, 2008, or the date the contractor determines that there is credible evidence of a violation or significant overpayment, whichever is later. Thus, of the three parts of the new rule, the suspension/debarment part has the earliest effective date. As the Councils explained,

> To some extent, the effective date of the rule actually trumps the other events, because the failure to timely disclose as a cause for suspension/debarment is independent of the inclusion of the contract clause in the contract or establishment of an internal control system. At least in those instances where disclosure was not timely in regard to effective date of the rule, but was reported as soon as the clause was in the contract, or as soon as the control system was in place, then it would not be a violation of the contract or a mark against the internal control system. It could still be a cause for suspension or debarment, although the Councils consider that suspension or debarment would be unlikely, if the contractor came forward as soon as the clause or the internal control system was in place (before that, the contractor might have been unaware of the requirement to disclose).[23]

Credible Evidence

Thankfully, the mandatory disclosure requirements are not completely open-ended. In comments accompanying the new rule, the Councils' emphasized "that in all cases the reportable violations are linked to the performance of Government contracts."[24] In addition, the "rule is addressed to the contractor—the entity that signed the contract, and subcontractors thereunder," rather than to the organization as a whole.[25] A significant limitation, however, is that the disclosure obligation applies only if the contractor determines that there is "credible evidence" of a violation or significant overpayment. The Councils stated that the credible evidence standard is intended to "help clarify 'timely' because it implies that the contractor will have the opportunity to take some time for preliminary examination of the evidence before deciding to disclose to the Government," and "[u]ntil the contractor has determined the evidence to be credible, there can be no 'knowing failure to timely disclose.' "[26] However, the Councils noted that "[t]his does not impose on the contractor an obligation to carry out a complex investigation, but only to take reasonable steps that the contractor considers sufficient to determine that the evidence is credible."[27]

Crimes

The crimes that must be disclosed under the contract clause and internal control system are limited to fraud, conflict of interest, bribery and gratuity violations found in Title 18 of the U.S. Code.[28] This listing may appear deceptively short because there are no criminal statutes actually entitled "fraud," "conflict of interest," "bribery" or "gratuity." The "Fraud and False Statements" chapter of Title 18 includes 37 criminal offenses,[29] not to mention the chapters on "Claims and Services in Matters Affecting Government" and "Mail Fraud," each of which includes another eight offenses.[30] The chapter on "Bribery, Graft, and Conflicts of Interest" includes 17 different criminal offenses,[31] one of which—somewhat misleadingly entitled "Bribery of public officials and witnesses"—proscribes *both* bribery and gratuities.[32] However, given that the only violations requiring disclosure are those that occur in connection with a Government contract performed by the contractor, or a subcontract thereunder, the criminal violations most likely to require disclosure are:

- Fraud: (1) 18 USCA § 287, "False, fictitious or fraudulent claims"; and (2) 18 USCA § 1031, "Major fraud against the United States."
- Conflict of Interest: (1) 18 USCA § 203, "Compensation to Members of Congress, officers, and others in matters affecting the Government"; (2) 18 USCA § 205, "Activities of officers and employees in

claims against and other matters affecting the Government"; (3) 18 USCA § 207, "Restrictions on former officers, employees, and elected officials of the executive and legislative branches"; and (4) 18 USCA § 208, "Acts affecting a personal financial interest."

- Bribery: 18 USCA § 201(b).
- Gratuity: 18 USCA § 201(c).

False Claims

The universe of FCA violations that must be disclosed unfortunately is far more difficult to quantify. The FCA establishes civil liability for (1) the knowing submission to the Government of a false or fraudulent claim, (2) the knowing submission of a false statement in support of a claim, (3) a conspiracy to defraud the Government regarding a claim, (4) the willful concealment of Government property or delivery of less property than the amount for which the individual receives a receipt, (5) the knowing delivery of a false receipt of property used or to be used by the Government, (6) the knowing purchase or receipt of public property from a Government employee not authorized to sell it, and (7) the knowing submission of a false statement to reduce an obligation owed to the U.S.[33] The term "knowing" includes actual knowledge, deliberate ignorance and reckless disregard for the truth or falsity of the information,[34] but it does not include innocent mistakes or negligence.[35]

FCA cases often present difficult legal and factual issues that may make it virtually impossible to determine definitively whether a violation occurred. Indeed, the federal courts are sharply divided on numerous aspects of the FCA,[36] and twice in the last two years, the U.S. Supreme Court has granted certiorari in FCA cases to help resolve some of the confusion.[37] Perhaps not surprisingly, both cases involved Government contracts. Moreover, the universe of potential FCA violations continues to grow as relators and DOJ pursue novel and aggressive interpretations of the Act. As a consequence, many breach of contract claims could be construed as FCA violations. For example, recent cases have found Government contractors liable for FCA violations in the following circumstances:

- failing to disclose an organizational conflict of interest (OCI),[38]
- employee violations of contractual and regulatory OCI provisions,[39]
- defective pricing,[40] and
- a Cost Accounting Standard Disclosure Statement that failed to list an affiliated subcontractor among the companies with whom the contractor engaged in interorganizational transfers.[41]

Still other Government contractors recently settled FCA allegations involving

- false time records and inflated claims for hours worked by company employees at Camp Taji, Iraq,[42]
- paying gratuities to a prime contractor's employees,[43]
- selling defective products,[44]
- improperly charging labor, marketing, bid and proposal and unallowable costs,[45]
- receiving payments and other things of value under undisclosed alliance agreements common in the information technology industry,[46] and
- failing to fully disclose discounting practices during negotiation of a General Services Administration schedule contract.[47]

Significant Overpayments

The new mandatory disclosure rule does not require notification of overpayments, but instead establishes as a cause for suspension or debarment the knowing failure by a principal to disclose credible evidence of a significant overpayment, other than a contract financing payment. The obligation to report overpayments is imposed by the existing "Payment" clauses—FAR 52.232-25, 52.232-26, 52.232-27 and 52.212-4(i)(5),[48] which did not require a contractor to notify the Government of overpayments until Feb. 19, 2002.[49] Before that time, contractors that had been overpaid were not required to notify the Government of the overpayment or refund the money unless the Government issued a demand letter.[50] Although the new cause for suspension or debarment is not

expressly tied to a violation of the Payment clause incorporated in a particular contract, the comments accompanying the new rule suggest this is the Councils' intent.

> The Councils dispute the allegation that 'contractors currently have no obligation to report overpayments' and refer[] the respondent to the payment clauses at FAR 52.232-25, 52.232-26, 52.232-27, and 52.212-4(i)(5). Although other clauses already require reporting of overpayment, this inclusion of the requirement in Subpart 9.4 to disclose significant overpayments is necessary to make it clear that**,** *if a contractor does not meet this condition of the contract*, it can be subject to suspension or debarment.[51]

The Payment clauses do not have a threshold for notifying the Government of overpayments. In fact, in extending the notification of overpayment requirement to contract financing payments in October 2003, the Councils specifically rejected a suggestion that there should be a notification threshold, such as $25,000 or some other reasonable amount.[52] The new suspension/debarment rule applies only to "significant" overpayments, but provides very little guidance about the meaning of that term. The drafters' comments state,

> The Councils agree with the suggestion by the DoJ that it is appropriate to limit the application of suspension or debarment to cases in which the unreported overpayment is significant. This will resolve some of the respondents' concerns over routine contract payment issues. The Councils have revised the final rule to address only significant overpayments, which implies more than just dollar value and depends on the circumstances of the overpayment as well as the amount. Since contractors are required by the Payment clauses to report and return overpayments of any amount, it is within the discretion of the suspension and debarment official to determine whether an overpayment is significant and whether suspension or debarment would be the appropriate outcome for failure to report such overpayment.[53]

To Whom the Disclosure Must Be Made

The contractual reporting requirement and disclosures under the internal controls system require disclosure to the IG and CO.[54] If a violation relates to more than one Government contract, the disclosure may be made to the IG and CO responsible for the highest-dollar value contract impacted by the violation.[55] If a violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a GSA schedule contract or any other contract intended for use by multiple agencies, the disclosure must be made to the IG and CO of both the ordering activity and the agency responsible for the basic contract.[56]

The suspension or debarment rule requires disclosure to the "Government" rather than to the IG.[57] Moreover, only the suspension or debarment rule requires notification of overpayments, and that notice must be made to the CO rather than to the IG. Interestingly, disclosing an issue to the CO as a significant overpayment potentially could avoid the need to determine whether there is credible evidence of a crime or violation of the civil FCA. In a Jan. 14, 2008 letter to OFPP, DOJ suggested modifications to the then-proposed rule. Among other things, DOJ urged the Councils to add a duty to disclose overpayments, and pointed out that disclosing an overpayment benefits the contractor because it avoids the need to determine whether there has been a criminal violation, and the disclosure may be made to the CO rather than the IG.[58] The DOJ letter stated in pertinent part:

- Overpayments.
  - Proposed FAR 3.1002(c): It appears the drafters neglected to incorporate "knowing failure to timely disclose an overpayment" reflected in proposed 9.406-2(v)(A). *In our view, the duty to disclose overpayments is just as important as the disclosure of a criminal violation and also relieves the contractor from having to decide whether there is an actual criminal violation before deciding to disclose*. In addition, to limit the scope of the requirement to disclose overpayments, a materiality requirement is appropriate.
  - For some reason, the proposed rule does not also require disclosure of material overpayments in each of the instances in which it calls for disclosure of violations of federal criminal law. While the duty is captured in proposed FAR 9.406-2 and 9.407-2, it is not found at proposed FAR 3.1002 Policy section or the contractor Code found at proposed FAR 52.203-XX(c)(2)(ii)(F). *The concept of a duty to*

disclose material overpayments is critical here, since it both requires and allows a contractor to make a disclosure without having to find evidence of fraud. The proposed rule should also explain that disclosure of overpayments need be made only to the contracting officer, and not the Inspector General.

DOJ's letter did not address whether disclosing an overpayment similarly relieves a contractor of having to decide whether an FCA violation occurred.

In the final rule, the Councils mentioned but did not explicitly adopt or reject DOJ's suggestion.[60] Given the rulemaking history, a reasonable argument could be made that it is not necessary for a contractor to determine whether there is credible evidence of a criminal violation or violation of the civil FCA if the contractor timely reports the overpayment to the CO. On the other hand, after a contractor *has* determined that there is credible evidence of a criminal or FCA violation, disclosure to the CO would not satisfy the requirements of the Contractor Code of Business Ethics and Conduct clause.

Conclusion

The new rule has been aptly described as a "sea change" in Government contracting, and it certainly increases the risk of doing business with the Government. Now more than ever it is important for Government contractors to ensure that their employees understand the rules and that they have meaningful compliance programs that *prevent* misconduct so they can avoid having to make a mandatory disclosure.

❖ Endnotes

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2 See generally 73 Fed. Reg. 67064 (Nov. 12, 2008).

3 The inspectors general of the Small Business Administration and Department of Defense have published forms that include a contractor certification. The General Services Administration IG reporting form is posted at *oig.gsa.gov/integrity/cover/htm* and the DOD IG form is posted at *www.dodig.osd.mil/Inspections?/IPO/voldis.htm.* The Council of Defense and Space Industry Associations expressed industry's concern about these unauthorized certification requirements in a Dec. 22, 2008 letter to the acting administrator of the Office of Federal Procurement Policy, and the chief procurement officials at GSA, DOD and NASA.

4 See 72 Fed. Reg. 7588 (Feb. 16, 2007).

5 See DFARS 203.7000–7001.

6 See 72 Fed. Reg. 65873 (Nov. 23, 2007).

7 See 72 Fed. Reg. 64019 (Nov. 14, 2007).

8 72 Fed. Reg. at 64020.

9 P.L. 110-252, 122 Stat. 2386, tit. VI, chap. 1 (June 30, 2008).

10 Id. at § 6102.

11 Id. at § 6103.

12 See 73 Fed. Reg. at 67067.

13 Id. at 67091 (new FAR 52.203-13(b)(3)(i)) (emphasis added).

14 Id. at 67092 (new FAR 52.203-13(c)(2)(iii)(F)) (emphasis added).

15 Id. at 67073–67074.

16 Id. at 67074.

17 Id. at 67091 (new FAR 9.406-2 and 9.407-2) (emphasis added).

18 Id. at 67079.

19 73 Fed. Reg. at 67074.

20 See FAR 52.203-13(b)(3).

21 See FAR 52.203-13(b)(3)(i).

22 See FAR 52.203-13(c)(2)(ii)(F).

23 73 Fed. Reg. at 67075.

24 Id. at 67073.

25 Id. at 67068.

26 Id. at 67074.

27 Id.

28 See FAR 52.203-13(b)(3)(i)(A) and (c)(2)(iii)(F).

29 See generally 18 USCA §§ 1341–1350.

30 See generally 18 USCA §§ 285–292 and 1001–1037.

31 See generally 18 USCA §§ 201–225.

32 See 18 USCA § 201(c).

33 31 USCA § 3729(a).

34 Id., § 3729(b).

35 See, e.g., *U.S. ex rel. Hochman v. Nackman*, 145 F.3d 1069, 1074 (9th Cir. 1998); *Hindo v. Univ. of Health Scis.*, 65 F.3d 608, 613–14 (7th Cir. 1995).

36 See generally 2 *Gov't Cont. Costs & Pricing* 91:A:5.

37 See *Allison Engine Co., Inc. v. U.S. ex rel. Sanders*, 128 S. Ct. 2123 (2008); *Rockwell Int'l Corp. v. U.S.*, 549 U.S. 457 (2007).

38 See *U.S. v. Sci. Applications Int'l Corp.*, 502 F. Supp. 2d 75 (D.D.C. 2007).

39 See *U.S. v. Dynamics Research Corp.*, 2008 WL 886035 (D. Mass. March 31, 2008).

40 See *U.S. v. United Techs. Corp.*, 2008 WL 3007997 (S.D. Ohio Aug. 1, 2008).

41 See *U.S. ex rel. Oliver v. The Parsons Corp.*, 498 F. Supp. 2d 1260 (C.D. Cal. 2006).

42 See DOJ Press Release, "L-3 Communications Corp. Pays U.S. $4 Million to Settle Overbilling Allegations on Iraq War Contract" (Dec. 8, 2008).

43 See DOJ Press Release, "EGL Pays U.S. to Resolve False Claims & Kickback Allegations Related to Overseas Shipments for the Military" (Nov. 4, 2008).

44 See DOJ Press Release, "Armor Holdings Products LLC Pays U.S. $30 Million for the Sale of Defective Zylon Bullet-Proof Vests" (Oct. 7, 2008); see also DOJ Press Release, "Pratt & Whitney and PCC Airfoils to Pay More Than $52 Million to Settle Allegations of Selling Defective Jet Engine Parts" (Aug. 1, 2008).

45 See DOJ Press Release, "Cosmos Corporation Agrees to Pay $1.55 Million to Settle Claims Alleging Government Contract Fraud" (Jan. 22, 2007).

46 See DOJ Press Release, "Computer Sciences Corporation Settles False Claims Action Involving Government Contracts" (May 13, 2008); see also DOJ Press Release, "IBM & PricewaterhouseCoopers to Pay U.S. more than $5.2 Million to Settle Allegations of False Claims" (Aug. 16, 2007).

47 See DOJ Press Release, "Oracle Agrees to Pay $98.5 Million for False Pricing Information" (Oct. 10, 2006).

48 See 73 Fed. Reg. at 67066.

49 See 66 Fed. Reg. 65353 (Dec. 18, 2001).

50 Id. at 65354 (citing GAO Report, "Greater Attention Needed to Identify and Recover Overpayments" (GAO/NSAID-99-131) (July 1999)).

51 73 Fed. Reg. at 67080 (emphasis added).

52 See 68 Fed. Reg. 56682, 56682–56683 (Oct. 1, 2003).

53 73 Fed. Reg. at 67080.

54 See FAR 52.203-13(b)(3)(i) and (c)(2)(iii)(F).

55 See FAR 52.203-13(c)(2)(iii)(F)(1).

56 See FAR 52.203-13(c)(2)(iii)(F)(2).

57 See FAR 9.406-2(b)(1)(vi); FAR 9.407-2(a)(8).

58 See Letter from Alice S. Fisher, Assistant Attorney General, Criminal Division, Department of Justice, to Laurieann Duarte, General Services Administration, Regulatory Secretariat, "Comments on FAR Case 2007-006" (Jan. 14, 2008).

59 Id. at Atch. A, p. 1 (emphasis added).

60 See 73 Fed. Reg. at 67080.