

Maintaining an Effective Compliance Program for Government Contractors

Holland & Knight, LLP

June 18, 2026

Introduction



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David Black is a nationally recognized government contracts attorney who advises federal contractors, grant recipients, and subcontractors throughout the full contract lifecycle. He serves as a trusted advisor, problem solver, and advocate, helping clients secure opportunities, manage risk, maintain compliance, and navigate complex government contracting challenges. His experience spans a broad range of industries, including technology, healthcare, professional services, and research and development.

Areas of Focus

- Government Contract Bid Protests & Contract Disputes
- Government Investigations, Audits, Suspension & Debarment
- Government Contracts Compliance & Risk Management
- Small Business & SBA Matters
- Intellectual Property & Data Rights
- Government Contract Transactions & Due Diligence
- Grants & Cooperative Agreements
- Teaming Agreements & Subcontracts

Introduction



Leila George-Wheeler
Partner | Tysons & D.C.

Leila George-Wheeler is an attorney in Holland & Knight's Litigation and Dispute Resolution Practice, and a member of the firm's Government Contracts and White Collar Defense and Investigations Teams. She focuses her practice on white collar defense, government and internal investigations, government contracts (GovCon) disputes and regulatory compliance, as well as complex civil litigation. She represents clients in heavily regulated sectors, including government contracts, healthcare, finance, information technology, transportation and infrastructure.

Areas of Focus

- Government Enforcement and Internal Investigations
- Government Contracts Compliance & Risk Management
- Complex Civil Litigation
- Grants & Cooperative Agreements
- Emerging Technology/Startup Representation

Introduction



Angela M. Jimenez
Partner | Tysons, Virginia

Angela M. Jimenez focuses her practice on government investigations and enforcement, government contracts compliance, regulatory compliance, white collar defense, and civil litigation. She represents individuals and corporations in matters involving the U.S. Department of Justice and other government agencies, including DOJ and Inspector General investigations, procurement fraud matters, internal investigations, and complex enforcement proceedings. She works closely with clients to navigate compliance obligations, respond to government inquiries, and mitigate legal and regulatory risks.

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- Government Enforcement and Internal Investigations
- Government Contracts Compliance & Risk Management
- Government Contracts Due Diligence in Mergers & Acquisitions
- Complex Civil Litigation
- Grants & Cooperative Agreements

Agenda

- Federal Acquisition Regulation (FAR 52.203-13) requirements for contractor ethics and compliance programs
- Key elements of an effective contractor ethics and compliance program
- U.S. Department of Justice guidance on the Evaluation of Corporate Compliance Programs
- Practical strategies for implementing and maintaining an effective compliance program
- The Mandatory Disclosure Rule and contractor reporting obligations
- Recent developments and enforcement trends in government contract compliance.

Why Compliance Readiness Matters More Than Ever

- Compliance Programs are **MANDATORY** for Contractors
- Recent enforcement activity has continued to focus on government contracting and small business programs in particular
- The evolution of the U.S. Department of Justice's (DOJ) Guidance on the Evaluation of Corporate Compliance Programs
- Government contractors that invest in compliance now are better positioned to respond to future regulatory and enforcement developments
- There has been a lull in regulatory activity, especially with respect to the FAR (its overhaul) and compliance certification enforcements.
- It's always a good time to catch up on compliance!

FAR 52.203-13

Contractor Code of Business Ethics and Conduct
Building an Effective Compliance Program

What Is FAR 52.203-13?

FAR 52.203-13 contract clause requires government contractors to maintain a code of business ethics and conduct, an ethics awareness and compliance program, an internal control system, and mandatory disclosure obligations.

Origin:	FAR Subpart 3.10, originally added late 2008
Current Version:	November 2021 (FAC 2026-01 effective 03/13/2026)
Purpose:	Promote highest degree of integrity and honesty
Policy Basis:	FAR 3.1002 - Contractor standards of conduct

Applicability: When Does FAR 52.203-13 Apply?

Requirements for Inclusion

- Contract value expected to exceed \$7.5 million and performance period of 120 days or more
- Inserted in solicitations and resulting contracts
- Important Caveats:
 - Federal fraud and ethics laws apply regardless of contract value.
 - Agencies may include FAR 52.203-13 even when not required.
 - Many contractors adopt compliance programs below the threshold as a best practice and risk mitigation measure.

Key Exemptions

Commercial product/commercial service contracts are exempted from:

- Ethics awareness program (paragraph (c)(1))
- Internal control system (paragraph (c)(2))

But are NOT exempted from:

- Written code requirement (paragraph (b))
- Mandatory disclosure obligations (paragraph (b)(3))

The Three Core Requirements of FAR 52.203-13

1

Written Code of Business Ethics and Conduct

Paragraph (b)

2

Business Ethics Awareness and Compliance Program

Paragraph (c)(1)

3

Internal Control System

Paragraph (c)(2)

Plus: Mandatory Disclosure obligations woven throughout the clause

Requirement #1: Written Code of Business Ethics

Within 30 Days of Award (paragraph (b))

- Must have a written code of business ethics and conduct
- Must make a copy available to each employee engaged in contract performance
- Exercise due diligence to prevent and detect criminal conduct
- Promote organizational culture encouraging ethical conduct and compliance

Important

This applies to ALL contractors meeting the \$7.5M and period of performance of 120 days or more.

No exemptions for small business or commercial items.

The code is the foundation of the entire compliance program.

What Should the Written Code of Conduct Address?

- Bribery and Gratuities / Anti-Kickback Statute
- Procurement Integrity Act
- Organizational and Personal Conflicts of Interest
- Whistleblower Protections
- False Claims Act Awareness
- Cost Accounting and Billing Integrity
- Cybersecurity Requirements
- Export Controls / FCPA (if applicable)
- Buy American / Trade Agreements Act (if applicable)
- Company-Specific Risk Areas

Requirement #2: Ethics Awareness & Compliance Program

Paragraph (c)(1) - Within 90 Days

- An **ONGOING** program (not a one-time event)
- Reasonable steps to communicate standards and procedures
- Effective training programs
- Training provided to principals, employees, agents, subcontractors
- Must be practical and appropriate to individual roles

Exemptions

Does **NOT** apply if:

- Contractor represented itself as a small business for this award, OR
- Contract is for commercial product or commercial service

But remember: the written code (paragraph (b)) still applies regardless.

Building an Effective Training Program

Best Practices for Meeting Paragraph (c)(1)

- Tailor training to roles and responsibilities
- Cover the written code of ethics and key procurement laws
- Address special requirements of government contracting
- Include scenario-based training on key risk areas
- Document completion and attendance thoroughly
- Provide refresher training periodically (at least annually)
- Extend training to agents and subcontractors where appropriate
- Make training accessible, practical, and engaging

Requirement #3: Internal Control System

- Must be established within 90 days of contract award (paragraph (c)(2))
- Must facilitate timely discovery of improper conduct in connection with government contracts
- Must ensure corrective measures are promptly instituted and carried out
- Same exemptions as awareness program (small business / commercial items)
- Must be tailored to size of company and extent of government contracting
- Seven minimum elements specified in FAR 52.203-13(c)(2)(ii)(A)-(G)

Internal Control System: Minimum Requirements

FAR 52.203-13(c)(2)(ii)(A)-(G)

- A Assignment of responsibility at sufficiently high level with adequate resources
- B Conduct due diligence before appointing principals to ensure ethical compliance
- C Periodic reviews of business practices, procedures, policies, and internal controls
- D Internal reporting mechanism allowing anonymity or confidentiality (e.g., hotline)
- E Disciplinary action for improper conduct or failure to prevent/detect
- F Timely disclosure to OIG (Mandatory Disclosure Rule)
- G Full cooperation with government audits, investigations, or corrective actions

Deep Dive: Periodic Reviews (FAR 52.203-13(c)(2)(ii)(C))

Three Required Elements

- 1. Monitoring and Auditing: to detect criminal conduct in connection with government contracts
- 2. Effectiveness Evaluation: periodic evaluation of program and internal control system effectiveness, especially if criminal conduct detected
- 3. Risk Assessment: periodic assessment of risk of criminal conduct, with steps to design, implement, or modify program to reduce identified risks

Deep Dive: Internal Reporting Mechanism

FAR 52.203-13(c)(2)(ii)(D) Requires:

- Must allow for anonymity or confidentiality
- Employees must have instructions encouraging reports
- Examples: hotline, web portal, email, designated officer

Best Practices

Multiple reporting channels available

24/7 availability

Multilingual options if workforce requires

Clear non-retaliation policy

Regular communication reminding employees

Employees must **TRUST** the system

Flow-Down Requirements (Paragraph (d))

- Must include substance of the clause in subcontracts that:
 - Exceed \$7.5 million (FAR 3.1004(a) threshold) on date of subcontract award; and
 - Have a performance period of more than 120 days
- All disclosures directed to the agency OIG with copy to Contracting Officer
- Prime contractors should confirm subcontractors have required ethics and compliance programs
- Each subcontractor remains responsible for its own compliance obligations

Building Your Compliance Program: Checklist

Based on FAR 52.203-13 Requirements

- Written code of business ethics and conduct
- Code distributed to all employees on contract
- Ethics awareness and compliance training program
- Training tailored to roles and responsibilities
- Senior compliance official with adequate authority and resources
- Due diligence screening for principals
- Periodic reviews: monitoring, auditing, effectiveness, risk assessment
- Anonymous/confidential reporting mechanism (hotline)
- Disciplinary action procedures
- Mandatory disclosure process and policy
- Full cooperation procedures
- Subcontractor flow-down procedures
- Documentation of all compliance activities

FAR 52-203-13 Requirements Summary

FAR Requirement	Paragraph Reference	Timeline	Exemptions
Written Code	(b)(1)	30 days	None (applies to all)
Due Diligence / Culture	(b)(2)	Ongoing	None
Mandatory Disclosure	(b)(3)	Timely	None
Awareness Program	(c)(1)	90 days	Small biz / Commercial
Internal Controls	(c)(2)	90 days	Small biz / Commercial
Flow-Down	(d)	At subcontract award	Below threshold

Mandatory Disclosure Rule

Contractor Code of Business Ethics and Conduct

Building an Effective Compliance Program

The Mandatory Disclosure Rule

FAR 52.203-13(b)(3)(i) and (c)(2)(ii)(F)

- Must timely disclose, **IN WRITING**, to the agency OIG (with copy to Contracting Officer)
- Trigger: “credible evidence” that a principal, employee, agent, or subcontractor has committed:
 - (A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity (Title 18 USC);
 - (B) Violation of the civil False Claims Act (31 USC 3729-3733)
- Must be in connection with award, performance, or closeout of the contract
- Applies to ALL government contractors at threshold (no commercial item exemption for paragraph (b)(3))

Understanding "Credible Evidence"

- Not defined precisely in the FAR lower threshold than “proof”
- Does not require certainty it is open to interpretation
- When does information rise to the level of credible evidence?
- Balance between thorough investigation and timely disclosure
- May necessitate incremental or supplemental reporting
- Document the basis for disclosure decisions **INCLUDING** decisions **NOT** to disclose
- Principal involvement adds complexity vesting principals with knowledge creates risk

Consequences of Failing to Disclose

- Breach of contract basis for contract termination
- Suspension and/or debarment under FAR Part 9 (FAR 9.406-2(b)(1)(vi) and 9.407-2(a)(8))
- Disclosure obligations continue beyond contract performance until 3 years after final payment
- Individual principals can be subjected to suspension/debarment personally
- Federal Sentencing Guidelines implications
- Reputational damage
- Potential False Claims Act liability

Full Cooperation Requirement

FAR 52.203-13(c)(2)(ii)(G) Requires:

- Disclosure sufficient for law enforcement to identify nature and extent of the offense
- Timely and complete response to document requests
- Access to employees with information

Protections Preserved

Does **NOT** require waiver of:

- Attorney-client privilege
- Attorney work product doctrine
- Fifth Amendment rights

Does **NOT** restrict:

- Conducting an internal investigation
- Defending proceedings or disputes

DOJ Guidance on Evaluation of Corporate Compliance Programs

Evolution of DOJ Guidance on Corporate Compliance Programs 2019-2026

- DOJ expectations have continued to expand. DOJ's Evaluation of Corporate Compliance Programs (ECCP) guidance has evolved significantly since April 30, 2019.
- Key Developments on DOJ's Compliance Guidance:
 - **2019:** Compliance Programs Designs & Effectiveness
 - **2020:** Compliance Resources & Compliance Personnel Authority
 - **2023:** Accountability & Data Preservation
 - **2024:** Technology & Emerging Risks
 - **2025:** No new ECCP guidance, but DOJ reinforced compliance programs must be effective, support self-disclosure, protect whistleblowers, and demonstrate timely remediation.
 - **2026:** No new ECCP guidance, but DOJ through corporate enforcement policies increased focus on certification compliance, voluntary disclosure, and demonstrating compliance effectiveness in practice. Certification Accountability.

The text of **FAR 52.203-13** has not changed. The expectations for demonstrating compliance have evolved.

The Government's Evolving Expectations

DOJ Evaluation of Corporate Compliance Programs (Updated September 2024)

1

Well Designed?

Policies, risk assessment, training,
third-party management

2

**Implemented
Effectively?**

Leadership commitment, resources,
autonomy, incentives

3

**Works in
Practice?**

Detection, investigation,
remediation, continuous
improvement

The text of FAR 52.203-13 has not changed significantly since 2008 but how the government evaluates compliance programs has evolved dramatically from 2008 to 2026.

Documentation Is Everything

- If it was not documented, it was not done
- Document: investigations, corrective actions, training completion
- Document: risk assessments, management reviews, compliance committee meetings
- Document: disclosure decisions (including decisions **NOT** to disclose)
- Organized, retrievable documentation reduces enforcement risk
- Documentation demonstrates program effectiveness to investigators

2026 Enforcement Trends in Government Contracts Compliance

Key Compliance Takeaways for 2026

- FAR 52.203-13 remains the foundation of contractor compliance
- DOJ is expanding FCA theories beyond traditional procurement fraud
- Cybersecurity certifications remain a top enforcement priority
- Civil rights compliance has become an FCA issue
- Record whistleblower activity is reshaping enforcement
- Effective compliance programs are now a competitive necessity

Why This Matters

\$6.8B

Recovered under FCA
in FY 2025

~1,300

Qui tam filings
in FY 2025

780+

Filings already
in FY 2026

Government contractors face increasing scrutiny of compliance certifications and internal controls. DOJ reported record-shattering whistleblower filings in FY 2025.

FAR 52.203-13 Is More Than Disclosure

The Five Functions of an Effective Program

- Prevention: proactive measures to avoid misconduct
- Detection: systems that identify issues early
- Investigation: thorough, timely fact-finding
- Remediation: corrective action addressing root causes
- Reporting: timely disclosure when required
- The government increasingly evaluates whether programs actually work

DOJ's Current Enforcement Playbook

Focus Areas

- Cybersecurity: NIST 800-171, CMMC, FedRAMP certifications
- Civil Rights Compliance: FCA liability for discrimination
- Procurement Fraud: bid rigging, collusion, false certifications
- Trade Compliance: TAA, country of origin, supply chain
- Whistleblower Complaints: record-breaking qui tam filings
- Certification-Based FCA Theories: compliance representations as FCA basis

The Rise of Certification-Based Enforcement

The Shift in DOJ's Approach

- Old questions: “Was the contractor compliant” or “Did the contractor have a compliance program?”
- New question: “Did the contractor accurately represent compliance?”
- False certifications drive FCA liability
- Misrepresentations not mere noncompliance are the target

Key Insight

The government is not asking whether you achieved perfection.

It is asking whether your representations to the government were accurate.

Knowing or reckless misrepresentation of compliance status creates FCA exposure.

What DOJ Expects from Compliance Programs

- Management commitment and leadership engagement (tone at the top)
- Training that is current, relevant, and documented
- Reporting systems that employees actually use
- Investigations that are timely, thorough, and documented
- Remediation that addresses root causes
- Documentation that demonstrates program effectiveness

Procurement Integrity Remains Critical

- Bid rigging continues to be a top DOJ priority
- Market allocation among competitors is actively prosecuted
- Improper communications during procurement process
- DOJ Procurement Collusion Strike Force enhances enforcement
- Compliance training for procurement personnel is essential
- Monitor communications with competitors

False Certifications

- Common theme: contractor knew or should have known representation was inaccurate
- Certification areas: cybersecurity, civil rights, trade/origin, pricing, performance
- Not just about being wrong about knowing (or reckless disregard of) inaccuracy
- Implications: every certification made to the government is a potential FCA trigger
- Self-assessments, compliance representations, and certifications all count

The Explosion of Whistleblower Activity

- Whistleblowers remain DOJ's most important source of fraud information
- Can employees report concerns through accessible channels?
- Are complaints investigated promptly and thoroughly?
- Do employees trust that reporting will not result in retaliation?
- Corporate Whistleblower Awards Pilot Program: up to 30% of forfeitures
- Expanded May 2025 to healthcare, immigration, trade/customs, sanctions

DOJ's New FOCUS Initiative (April 30, 2026)

Data-Driven Enforcement Is the Future

- Fraud Oversight through Careful Use of Statistics
- DOJ Civil Division strengthening relationship with data-miner whistleblowers
- Data miners analyze publicly available government data for fraud signals
- DOJ prioritizes data miners with sophisticated technological capabilities
- Builds on National Fraud Enforcement Division (April 7, 2026)
- Data miners should understand regulatory frameworks and FRCP 9(b) standard

Practical Strategies for Maintaining Effective Compliance Programs

Common Compliance Failures

- Ignored hotline complaints that later become whistleblower cases
- Assuming that 0 or very few hotline complaints reflect a compliant environment
- Poor documentation of investigations and corrective actions
- Poor documentation of decisions **not** to investigate or report suspected noncompliance or misconduct
- Inadequate training that does not reach operational employees working on government contracts
- Weak oversight by management and compliance committees
- Delayed investigations allowing problems to compound

The “Shelf Policy” Problem

Organizations Often Have:

- Written policies and procedures
- Training programs and certifications
- Compliance committees and officers

But Often Lack:

Ongoing monitoring and testing

Regular auditing of program effectiveness

Accountability for non-compliance

Evidence of actual implementation

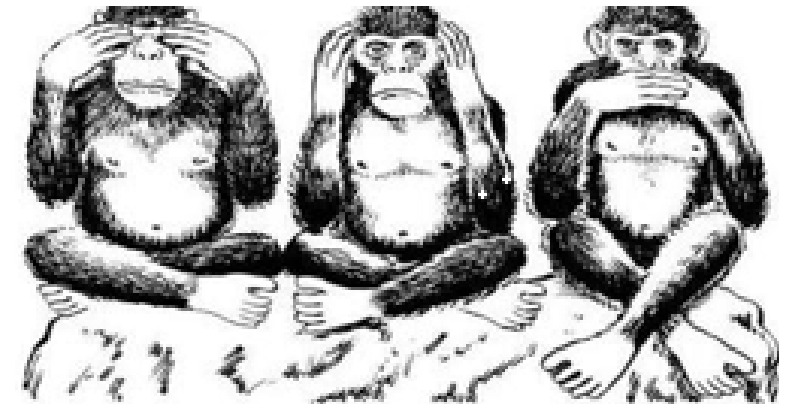
The greatest risk is the gap between written policy and actual practice

The Compliance Culture Test for Government Contractors

- Do employees know how to report concerns?
- Are they comfortable raising issues?
- Do they trust the process will be fair?
- Have they seen retaliation against reporters?
- Is there a dedicated compliance lead or team that is empowered and adequately resourced to be effective?
- Does the compliance program fit the organization (consider size, resources, internal controls)?
- A compliance program that employees do not trust (or know about) does not work.

The Most Dangerous Complaint

- The one that is never reported internally
- Fear of retaliation from management
- Lack of trust in the reporting process
- Belief that nothing will change
- Management indifference to previous reports
- These unreported complaints become whistleblower cases filed with DOJ



Practical Tips for Effective Compliance Implementation

- Start with a risk assessment understand your specific risk profile
- Designate a senior official with adequate authority and resources
- Tailor the program to the size and complexity of your operations
- Don't let perfect be the enemy of good start with fundamentals
- Review government contracts (Sections H and I) for special requirements
- Conduct periodic compliance program reviews and update based on findings
- Test the compliance program don't just check boxes
- Train investigators on the Mandatory Disclosure Rule

Compliance Metrics That Matter

Beyond Training Completion

- Track hotline reports and response rates (not just training completion)
- Measure investigation timelines from report to resolution
- Monitor repeat findings across audits and assessments
- Track corrective action completion rates and timeliness
- Analyze audit results for trends and systemic issues
- Assess risk assessment trends over time

The New Compliance Enforcement Reality (2025-2026)

- Federal contractors will be judged by whether they:
 - Accurately represented their compliance program and certifications to the government
 - Recognized and escalated the issue when it arose
 - Responded appropriately and promptly to identify concerns
 - Implemented corrective actions and addressed root causes
 - Disciplined responsible individuals when warranted
 - Learned from the experience
 - Prevented recurrence through systemic changes
 - The best compliance programs are not those without problems, they are those that identify, address, and remediate problems effectively.

Questions?

