

FEDERAL GOVERNMENT COMPLIANCE

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As with anything related to the federal government, selling goods and services to the feds is anything but simple. Similar to the commercial marketplace, contracting with the U.S. government requires the careful targeting of potential buyers, beating the competition and then, if ultimately successful, the skillful negotiation of terms. That, unfortunately or not, is where the similarities end. The United States government is the biggest single customer in the world spending over 365 billion dollars on goods and services each year. As such, and armed with this purchasing power, the federal government uses its distinct status to enforce a myriad of laws and regulations of varying designs. Some are intended to protect a contractor's workers, some aim to promote government contracting for businesses of certain sizes, while yet others seek to promote the purchase of American made products among other things. The breadth and scope of these requirements is too expansive to be covered here in its entirety. However, the compliance requirements below should serve as a good example of the various compliance requirements that could apply in a contract with the federal government that you wouldn't find in the commercial marketplace.

Almost all government contractors are subject to unique labor and employment requirements. At a minimum, federal contractors must comply with the Department of Labor's equal opportunity and affirmative action requirements under Executive Order 11246, the Rehabilitation Act of 1973 and the Vietnam Veterans Readjustment Assistance Act of 1974. Contractors of a certain size must prepare written affirmative action plans that will pass muster with an Office of Federal Contract Compliance

Programs audit or investigation. In addition, contractor's must comply with workplace and labor standards such as the Walsh-Healey Act, the Davis Bacon Act, the Service Contract Act and the Contract Work House and Safety Standards Act. These laws impose certain tracking and reporting requirements on a federal contractor in addition to mandating the wages and benefits to be paid to their employees depending on the services rendered.

In order to augment the financial well-being of small businesses, the U.S. government also exerts its contracting power by not only setting its own goals for doing business with small companies but also by requiring its large federal contractors to aggressively seek to do business with various small business classes such as certified HUBZone and small-disadvantaged businesses. Similarly, in order to boost and protect the U.S. economy, government contractors are also often required to provide U.S. made goods or goods from preferred countries pursuant to legislation such as the Berry Amendment, the Buy American Act and the Trade Agreements Act. Likewise, the federal government uses its procurement arm as a way to boycott or otherwise prohibit the purchase of goods or services from countries that are in bad standing with the U.S.

Federal contractors are also faced with unique ethical obligations not normally found in the commercial marketplace such as expansive prohibitions on gratuities, kickbacks, conflicts of interests and the like. Procurement integrity is paramount in government contracting and the federal government has implemented many requirements designed to level the playing field between competitors and eliminate collusive and fraudulent bidding.

Failure to comply with any one of these requirements can result, at a minimum, with the cancellation of the contract. Some compliance requirements, however, carry heavier penalties including debarment, suspension, fines and even jail time. A savvy federal contractor understands the implications of these various obligations and is wise to implement codes of conduct and compliance policies to educate their employees on the added level of scrutiny which applies to business dealings with the government before entering the federal marketplace.

There are some exceptions to these requirements but ultimately, where applicable, a contractor's only real choice is to comply with these requirements or stay out of the federal government procurement arena.

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