

## Marshall CIV John C

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**From:** Marshall CIV John C  
**Sent:** Tuesday, February 03, 2009 12:32 PM  
**To:** M\_HQMC\_MCFCS\_Directors/Deputies; Sherman Maj Brad J  
**Cc:** M\_HQMC\_LB; Romano CIV Mark; Oliver CIV R. Kaye; Daise CIV Stanley C; Hobbs CIV Beverly  
**Subject:** APM 09-09: Department of Defense Implementation of the Disclosure Requirement under FAR Clause 52.203-13  
**Signed By:** marshalljc@hqmc.usmc.mil  
**Attachments:** Disclosure Rqmt USD (AT&L) 29Dec08.pdf



Disclosure Rqmt  
USD (AT&L) 29D...

To All,

**SUBJECT:** Department of Defense Implementation of the Disclosure Requirement under FAR Clause 52.203-13

**BACKGROUND:** FAR Case 2007-006 resulted in the publication of a final rule in the Federal Register on 12 November 2008. This final rule amends the FAR to amplify the requirements for a contractor code of business ethics and conduct, an internal control system, and disclosure to the Government of certain violations of criminal law, violations of the civil False Claims Act, or significant overpayment. The final rule implements "The Close the Contractor Fraud Loophole Act," Public Law 110-252, Title VI, Chapter 1.

**POLICY:** Effective 12 December 2008 the new clause at FAR 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008), shall be included in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more. The attached USD (AT&L) memorandum of 29 December 2008, subject as above, provides Contracting Officers with guidance regarding implementation of this clause.

**PROCEDURES:** We have thoroughly reviewed the attached USD (AT&L) memorandum of 29 December 2008, the 30 page Final Rule for FAR Case 2007-006 announced in the Federal Register on 12 November 2008, FAR Clause 52.203-13, and the "significant overpayment" issue addressed in the first two of the above references plus FAR 3.1003(a)(3) and 9.406-2(b)(1)(vi)(C). Pending further guidance from OSD and/or DASN (A&LM), which is expected, our synopsis of responsibilities and procedures to be followed within the MCFCS is as follows:

A. Contractor. Per FAR Clause 52.203-13, 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 the 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 violation found in Title 18 of the U.S.C.; or (B) a violation of the civil False Claims Act (31 U.S.C. 3729-3733). With regard to overpayment or "significant overpayment", the Contractor should follow the procedures in one of the payment clauses included in each Government solicitation and contract (e.g., FAR 52.232-25), wherein specified information is remitted to the payment office cited in the contract, and a copy of the remittance and supporting documentation for the overpayment is to be provided to the Contracting Officer. FAR 3.1003(a)(3) and 9.406-2(b)(1)(vi)(C) also address these payment clauses and Contractor obligation to timely disclose to the Government credible evidence of significant overpayment(s) on the contract.

B. Agency OIG. Per FAR Clause 52.203-13 and the final rule cited, the agency OIG is responsible for investigating contractor disclosures for the cited violations other than "significant overpayment." Per the attached USD (AT&L) memorandum of 29 December 2008, the agency OIG for processing these disclosures (other than "significant overpayment") is

the DoD OIG, not the Contracting Officer, individual Service IGs, nor anyone else. As confirmed during our discussion with the DPAP POC, please note that "significant overpayment" disclosures were incorrectly referenced in the cited USD (AT&L) memorandum. The FAR Clause 52.203-13 does not reference "significant overpayment" which 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.

C. Contracting Officer. Per FAR 3.1004(a) and effective 12 December 2008, the Contracting Officer shall insert the clause at FAR 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008), in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more. If any solicitations or contracts were issued beginning 12 December 2008 without the cited FAR clause, they should be modified to include the clause, if they meet the above criteria. Other key Contracting Officer responsibilities in implementing these new requirements include: (1) provide the agency OIG information identified in the USD (AT&L) memorandum of 29 December 2008 to the Contractor, if the Contractor asks where to submit their disclosure, and (2) forward/refer any Contractor disclosure information received on potential significant overpayments to the DON assistant General Counsel (Acquisition Integrity) per NMCARS 5209.402(d), 5209.406-3(a) and 5209.407-3, via the Marine Corps offices specified in MAPS 9.406-3 and 9.407-3.

NOTE: The final rule that resulted in this policy followed an extended dialogue for over a year among the Civilian Agency Acquisition Council, the Defense Acquisition Regulations Council, industry, the Department of Justice, and many agency OIGs. We expect that there will be questions and that the policies and procedures will be modified or clarified as implementation proceeds. Although we do not anticipate that this policy will significantly impact MCFCS offices, as implementation matures, we will assess the need for any specific policy/procedures that may be necessary for inclusion in future MAPS and/or CMPG updates.

POC: Please direct any questions with regard to the execution of the policy/procedures provided herein to Mr. John Marshall of the HQMC, Policy & e-Business Support Branch (LBP) at john.c.marshall2@usmc.mil <mailto:john.c.marshall2@usmc.mil> , (703) 695-6225 x2548.

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MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Department of Defense Implementation of the Disclosure Requirement Under FAR Clause 52.203-13

Federal Acquisition Regulation (FAR), Case 2007-006, "Contractor Business Ethics Compliance Program and Disclosure Requirements," was published as a final rule in the Federal Register on November 12, 2008, with an effective date of December 12, 2008. The final rule amends the FAR, adding a new contract clause, FAR clause 52.203-13, which reads as follows, "[t]he Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the contracting officer, certain violations of criminal law, violations of the civil False Claims Act, or a significant overpayment."

The purpose of this memorandum is to provide contracting officers with guidance regarding implementation of this clause. Within the Department of Defense (DoD), the designated "agency Office of the Inspector General" is the DoD OIG at the following address:

Office of the Inspector General  
United States Department of Defense  
Investigative Policy and Oversight  
Contractor Disclosure Program  
400 Army Navy Drive, Suite 1037  
Arlington, VA 22202-4704  
Toll Free Telephone: 866-429-8011

This guidance will be incorporated in the DoD FAR Supplement.

My points of contact are Ms. Lynn McCormick, DoD OIG, at Frances.Mccormick@dodig.mil and 604-8711, and Ms. Sandra Ross, Defense Procurement (DPAP), at Sandra.Ross@osd.mil and 703-695-9774.

*John J. Young, Jr.*  
John J. Young, Jr.



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