

# COMPLIANCE FOR DUMMIES

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Dynet Conference 2014

April 2, 2014

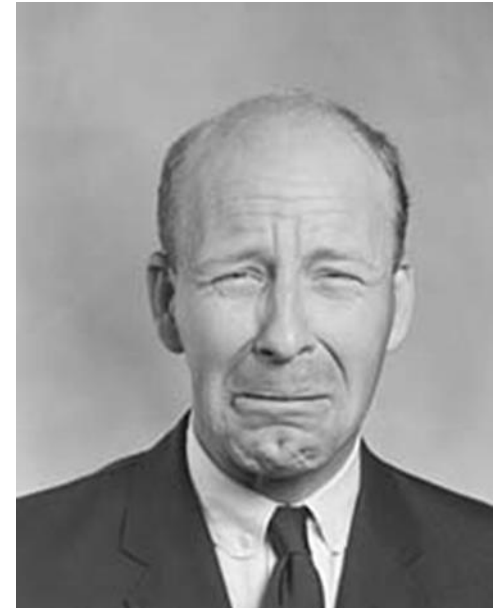
HOW BAD COULD IT BE?

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# This Bad

Failure to properly address the compliance issues we're discussing today could lead to:

- Loss of contracts
- Debarment from doing business with the Gov't (Federal and State)
- Loss of valuable IP
- Civil and criminal liability



# Good News

This is not rocket science.



# COMPLIANCE TOP TEN

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# 1. WHO ARE YOU?

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# System for Award Management

- **“SAM” = Official U.S. Gov’t system that consolidates the capabilities of CCR, ORCA, and EPLS**
- **All Contractors must submit and maintain accurate, complete, and up-to-date information in SAM, including reps and certs**

- <https://www.sam.gov/portal/public/SAM/>



## 2. WHAT ELSE DO YOU NEED TO REPORT?

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# FAPIIS/FFATA Reporting

- “FAPIIS” = Federal Awardee Performance and Integrity Information System
  - Contains Gov’t info from EPLS, PPIRS and CPARS
  - Must report certain criminal, civil, and administrative penalties and settlements semi-annually (5-year look-back)
- “FFATA” = Federal Funding Accountability and Transparency Act
  - Must report information about first-tier subcontractors and, under certain circumstances, executive compensation



3. DO YOU HAVE  
EMPLOYEES?

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# Special Employment Laws

- **Equal Opportunity**
- **Non-Discrimination against Veterans**
- **Non-Discrimination against People with Disabilities**
- **Service Contract Act**
- **Notice of Rights under National Labor Relations Act**
- **E-Verify**



# Service Contract Act

As a prevailing wage law, the SCA requires a specific level of wages and benefits be paid to non-exempt employees.



- Failure to comply can quickly lead to sizable exposure
- Important that employees are properly classified
- Important that proposal pricing reflect prevailing wages and benefits

4. ARE YOU DOING COST-  
TYPE CONTRACTS?

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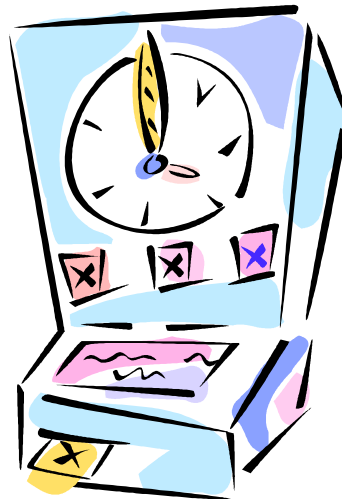
# Cost Accounting Systems

Cost-type contracts require specialized accounting systems to properly document the amount and allocation of allowable costs charged to the Gov't.



# Labor and Material Charging

- Employees who submit timecards must report all hours worked correctly and timely.
- All time must be charged to the appropriate contract or project.
- All costs (materials, travel, etc.) must be accurately documented and charged to the appropriate contract or project.



5. ARE YOU CONFLICTED?

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# Conflicts of Interest

Any situation that:

- Impairs or appears to impair objectivity and impartiality

or

- Results in unfair competitive advantage



Can be  
personal or  
organizational

# Personal Conflicts of Interest / Employing Former Govt Personnel

- Focus:
  - Preventing employees and self-employed subcontractors who have access to non-public information by reason of performance on a Gov't contract from using such information for personal gain
  - Preventing current/former Gov't employees from benefitting personally for providing an unfair advantage to contractor via “revolving door”

**Strict rules and time lines  
govern activities of former  
Govt employees**



# Organizational Conflicts of Interest

- Focus on OCI issues is increasing
- Even the *appearance* of an OCI can lead to civil penalties and the loss of contracts
- Failure to disclose and mitigate can lead to steep penalties
- Does contractor have:
  - Impaired Objectivity
  - Unfair Access to Non-Public Information
  - Ability to Set Biased Ground Rules



6. ARE YOU SELLING IP?

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# Intellectual Property Rights

**Failing to obtain and retain IP rights can drastically reduce the value of a government contract.**



# Allocation of IP Rights



Govt's license rights depend on:

1. Source of **Funding**

Government = Unlimited

Mixed = Government Purpose

Private = Limited/Restricted

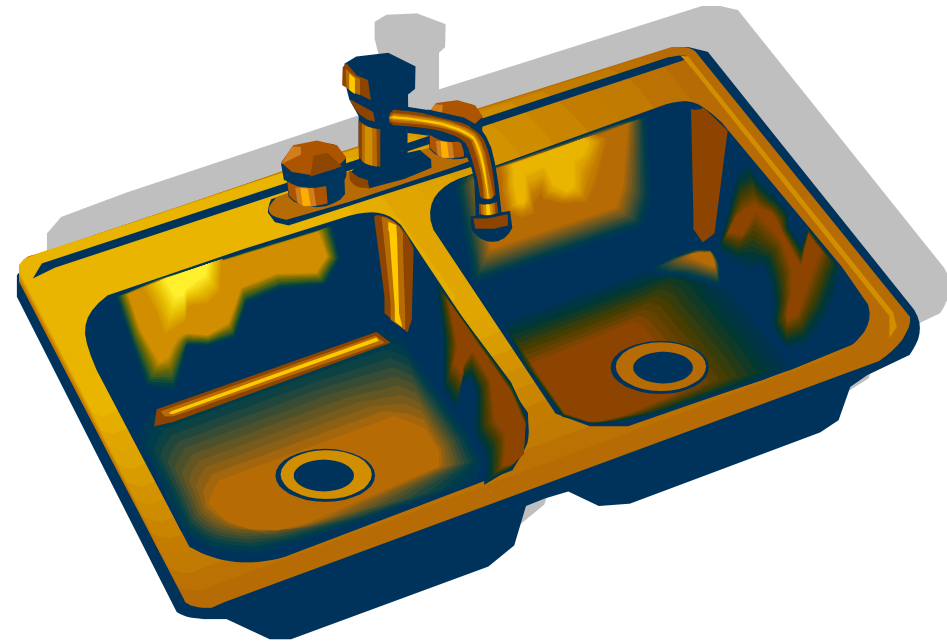
2. Contractor's **Assertion** of Rights

3. Proper **Marking** Consistent with Assertion

# 7. ARE YOU SUBCONTRACTING?

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# Subcontracts



- **Certain Prime Contract Clauses Must Be Flowed Down**
- **“Kitchen Sink” approach costs less in short term**

**Take time to get it right,  
so everyone understands requirements**



# Negotiating Subcontracts



**Sign**  
**Shelve**  
**Surprise!**

**vs.**

**Review**  
**Question**  
**Revise**  
**Understand**  
**Sign**

# 8. WHAT CAN YOU CERTIFY?

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# Certifications

Many Gov't contracts require various types of certifications during both the contract formation and contract performance phases.

Examples: Certifications that ...

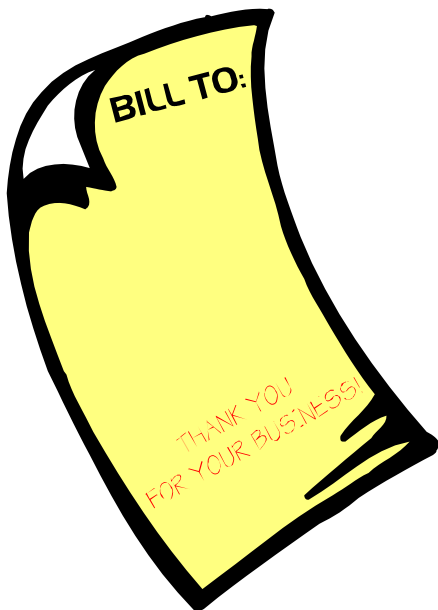
- Contractor has certain status or meets certain requirements
- Specific procedures were used
- Required tests were performed
- All contract requirements are met

Must Be Truthful and Complete



# Invoices, Claims, Requests for Payment

- Regardless of whether specific certifications are required in the contract, the preparation and submission of invoices and claims are serious matters.
- You may not knowingly or in deliberate ignorance of the facts provide a false statement or false claim to the Gov't.



- ✓ Do not charge, directly or indirectly, for work not performed
- ✓ Take reasonable steps to confirm the accuracy of information before submitting invoice or claim

# False Claims

Usually arise in connection with presentation of claim for money.



**But often relate to false test results  
or other lack of contract compliance.**

9. DO YOU HAVE A CODE?

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# Code of Ethics and Business Conduct

- Federal requirements:
  - **Written Code**
  - **Formal Compliance Program**
  - **Internal Control System**



# Ethics & Compliance Representative

- **Responsible for ensuring compliance**
- **Investigates reports of violation of the ethics and conduct principles**
- ***In-house* resource for ethics and compliance issues**

**Publicize position, person  
and procedures for  
contacting**





# Hotline and Online Reporting

**An internal reporting mechanism (e.g. hotline) is an integral part of any effective compliance program.**



- **Allows employees to report suspected improper conduct**
- **Ensures anonymity or confidentiality**
- **Encourages employees to submit reports**

# Training

- **The best policy in the world won't do you any good if no one knows about it or understands what it says.**

- Maximize effectiveness by tailoring roll-out to target audiences
- Leverage existing infrastructure and procedures
- Recognize that training is an ongoing process



# Mandatory Disclosure

- **Contractors are required to disclose all “credible evidence” related to a government contract of (1) violations of criminal law involving fraud, conflicts of interest, or bribery; (2) violations of the civil False Claims Act; or (3) significant overpayments on a government contract.**



# 10. WHAT NEXT?

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# Take a Deep Breath

**Remember, this is not rocket science.**

Many companies have been able to establish effective, efficient compliance programs that allow them to properly perform Govt contracts and make money doing it.



**Thank you for your time.**

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