You Can Run, But You Can't Hide: Government Contracting Compliance Risks and How to Mitigate Them

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Agenda

- Introduction
- Scenario-based training
  - International sourcing compliance considerations
  - Information security and related training
  - Human resources-related compliance risks
- Risk mitigation strategies

Scenario 1

Company A manufactures a complex computer system, made up of smaller, electronic components and sells this system to the General Services Administration ("GSA"). While Company A currently sources all of its parts from within the United States and manufactures its system in the United States, it is contemplating sourcing its parts from China and moving its manufacturing operations to outside the United States, possibly Malaysia, to save costs. It also is contemplating entering into a contract with the Department of Defense to manufacture the system.

What compliance risks stand out?

Compliance Risks to Consider

- Counterfeit electronic parts
- Human trafficking
- Compliance with the Buy American Act (BAA) and the Trade Agreements Act (TAA)

Changes to Scenario 1

- Do these risks change in the following situations?
  - The system is commercially available
  - Company A sells its system to the U.S. Government through a prime contractor
  - Company A manufactures the product in Mexico
  - Company A sources its parts from the United Kingdom

Scenario 2

Company B contracts with the Department of the Education to repair, maintain, and upgrade certain of its information processing systems. These systems contain personally identifiable information ("PII"). While Company B has access to this data in performing these services, because none of the information on the system is classified, Company B is not required to have, and does not have, a security clearance.

What compliance risks stand out?

Compliance Risks to Consider

- National Archives and Records Administration (NARA) regulations on safeguarding Controlled Unclassified Information (CUI)
- FAR final rule on the basic safeguarding of federal contract information
- FAR final rule on privacy training

Changes to Scenario 2

- Do these risks change in the following situations?
  - The services are commercially available
  - Company B does not have a direct contract with the U.S. Government but is a subcontractor
  - Company B is a small business
  - The procuring agency is DOD

Scenario 3

Company C sells waste remediation services to the Department of Energy and the Army Corps of Engineers. Over the past five years, it has grown from a five-person company to a 500-person company. It knows that there are a host of labor-related rules with which it must comply, but it is having a hard time keeping track of all of the new and changing requirements.

Which new rules should Company C be concerned about?

Compliance Risks to Consider

- Revised Fair Labor Standards Act overtime rules (on hold)
- Fair Pay and Safe Workplaces rule (void)
- Paid sick leave requirements
- New sex discrimination guidelines
- Prohibition on retaliating against employees who disclose compensation information

Changes to Scenario 3

- Does the application of these rules apply in the following situations?
  - Company C sells products instead of services
  - Company C performs construction services for the U.S. Government
  - Company C performs its services outside of the United States
  - Company C does not have a direct contract with the U.S. Government but is a subcontractor

What Can Be Done to Mitigate These Risks?

- Identify applicable requirements
- Review and analyze existing policies, procedures, and systems to identify gaps in risk mitigation
- Fill in gaps through development or enhancement of policies, procedures, and systems
- Socialize policies, procedures, and systems
- Conduct regular audits of program
- Establish reporting mechanisms (i.e., business ethics line) and "safe zone" for reporting concerns (i.e., non-retaliation policy)
- Remain open to continual improvement

Summary of Key Compliance Considerations

- Counterfeit electronic parts
- Human trafficking
- BAA and TAA compliance
- Safeguarding information and information systems
- Data privacy/data protection
- Labor and employment-related laws and regulations

Questions?

DENTONS