

Mandatory Disclosures - Basics

- Recommended Prerequisite Training
- False Claims Act
- Truth in Negotiations Act (TINA) Basics
- TINA – Adequate Disclosure

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A Practical Guide to the FAR Mandatory Disclosure Rule

Mandatory Disclosure Rule

3 Key FAR Parts

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Today we are going to cover:

FAR Part 3,
FAR Part 9, and
FAR Part 52

All of which capture requirements and ramifications related to
Mandatory Disclosure.

FAR Basic Requirements

FAR 3.10 – Contractor Code of Business Ethics and Conduct

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Under Subsection 3.1003(a) (2) Whether or not the clause at [52.203-13](#) is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with the award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, **credible evidence of a violation of Federal criminal law** involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code **or a violation of the civil False Claims Act.** Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until 3 years after final payment on a contract (see [9.406-2\(b\)\(1\)\(vi\)](#) and [9.407-2\(a\)\(8\)](#)).

False Claims Act

A Refresh – Theories of Liability

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1. **False Claim:** When a contractor knowingly submits a false claim to the Government or a recipient of Government funds, like another contractor, or causes another to submit a false claim.
2. False Record or Statement
3. Reverse False Claim
4. Conspiracy

Under Theory #1

If we know that we defectively priced a contract, and subsequently submit bills to the government for delivery or work performed on that contract, a defective pricing claim escalates to a violation of the False Claims Act.

On Slide 2, under FAR 3.1003(a)(2) Requirements, FAR 9.407-2(a)(8) was referenced. That citation reads,

(a)The suspending official may suspend a contractor suspected, upon adequate evidence, of-

(8) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of-

(ii) Violation of the False Claims Act (31 U.S.C. 3729-3733);

Mandatory Disclosure

Key Elements and Terms



- **"Principal"**

Officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g. , general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions)

- **"Disclose to the Government"**

- FAR 52.203-13 states,

"The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer disclosure required to IG with copy to CO..."

- **"Credible Evidence"**

- Undefined higher standard

"...the Councils believe that using the standard of ``credible evidence" rather than ``**reasonable grounds to believe**" will help clarify ``timely" because it implies that the **contractor will have the opportunity to take some time for preliminary examination of the evidence to determine its credibility before deciding to disclose to the Government.** Until the contractor has determined the evidence to be credible, there can be no ``knowing failure to timely disclose."

Mandatory Disclosure

Key Elements and Terms

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- **“Timely”**
 - Undefined – Presumption is...“... the timely disclosure would be **measured from the date of determination of credible evidence** or the date of contract award, whichever event occurs later.”
- **“Significant”**
 - Undefined!

FAR 52.203-13 (3)(i) 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 this contract or any subcontract thereunder, **the Contractor has credible evidence** that a principal, employee, agent, or subcontractor of the Contractor has committed:
 - A. ...or
 - B. A violation of the False Claims Act (31 U.S.C. 3729- 3733)
- *Note, it reads if the "Contractor has credible evidence" and not a "Principal"*

From an Ethics Standpoint

- If anyone in our organization has thoughts that we may have defectively price a contract, and it led to False Claims it needs to be investigated.
- We can split hairs among FAR 3, 9, or 52, regarding who is a principle, and who is required to disclose, but at the end of the day, CAES wants to be recognized as a Ethical Contractor deserving to receive US Government contracts, and regardless of whether it is a principle, or a lower level employee, the company has an obligation to investigate.
- It is in the company's interest, the interest of the employees that instances of Defective Pricing, or Defective Pricing leading to False Claims be investigated and resolved.