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A different perspective of compliance

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Have you heard the saying, "The good news is, you won a federal contract; the bad news is, you won a federal contract"? As tongue-in-cheek as this phrase may be, it is frequently quoted when an organization takes that step to becoming a government contractor. But why is this phrase so accurate? The basis for this phrase can be traced to unique and burdensome compliance requirements a government contractor must follow. And depending on function, compliance has different meanings.

Healthcare organizations provide a myriad of goods and services, from pharmaceuticals and equipment, to administrative services. Many of the goods and services healthcare organizations provide commercially are also procured by the federal government and, to grow revenue, organizations frequently end up playing in the government's sandbox. Generally, compliance for healthcare under a federal government contract, grant, or cooperative agreement requires specific controls to address and comply with Chapters I, IV, or V of Title 42 — Public Health of the Code of Federal Regulations (42 CFR).[1]

Because the scope of 42 CFR addresses a spectrum of healthcare services and oversight, ranging from patient safety to the requirements of programs like Medicare and Medicaid, and Office of Inspector General (OIG) oversight, organizations gravitate to the 42 CFR compliance requirements, as they should. However, organizations frequently don't adapt to the administrative requirements unique to the government contracting environment beyond those found in 42 CFR. Unfortunately, organizations take a "we'll figure it out later" approach to address challenges associated with the negotiation, administration, and settlement of federal contracts.

The administrative requirements and rules of the game in which the federal government operates are different from the commercial world, don't permit a "we'll figure it out later" approach, and should be understood by organizations prior to expending valuable resources pursuing or performing a federal contract. By not understanding the administrative challenges of a federal contract, organizations may be putting themselves in significant financial and compliance risks that far outweigh the benefits they initially expect.

Federal government contracting policies and procedures

The federal government attaches unique administrative clauses to its procurements and contracts for goods and services outside those of 42 CFR, and as a result, the unique clauses frequently get overlooked. Primarily originating within the Federal Acquisition Regulations System (48 CFR) and Office of Management and Budget (OMB) Guidance for Grants and Agreements (2 CFR), a wide-ranging set of clauses and requirements provide for the codification and publication of uniform policies and procedures for acquisition by all executive agencies.[2],[3] Clauses found within these regulations address organizational and contract-specific administrative requirements, providing the government unique rights and access to administrative aspects of organizations' operations, which are not normally included in commercial arrangements and many of which may arise years

after contract performance. These administrative clauses and requirements are what is considered to be, for this article, "a different perspective of compliance," and they carry additional administrative and financial implications.

48 CFR Chapter 1 — Federal Acquisition Regulation (the FAR) crosses all executive agencies, in addition to agency-specific acquisition regulations and requirements. Two supplements of note include 48 CFR Chapter 3 — Health and Human Services Acquisition Regulation (HHSAR), which provides specific acquisition policies and procedures unique to the U.S. Department of Health and Human Services (HHS) contracting activities[4]; and 48 CFR Chapter 2 — Defense Federal Acquisition Regulation Supplement (DFARS)[5] in cases where healthcare organizations may perform contracts supporting the Department of Defense, such as TRICARE and other Defense Health Agency contracts.

Regardless of whether organizations obtain revenue directly from the government, or through a subcontract under a federal prime contract, in order to avoid undesirable and damaging administrative and financial consequences, it is critical that organizations be knowledgeable of "other compliance" topics within the FAR, HHSAR, DFARS, and applicable sections of 2 CFR Part 200[6] that are outside the scope of 42 CFR. It is with this other half of compliance that, if not properly understood, can unexpectedly negate the revenue growth an organization hopes to obtain through government contracts. The following sections provide a high-level overview of a few of the more important regulations and compliance requirements related to federal contracts.