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Parent topic: Defense Federal Acquisition Regulation

203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406-3 or 209.407-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

(a) Certificate of Independent Price Determination (FAR 3.103).

(b) Procurement integrity (FAR 3.104).

(c) Gratuities clause (FAR 3.203).

(d) Antitrust laws (FAR 3.303).

(e) Covenant Against Contingent Fees (FAR 3.405).

(f) Kickbacks (FAR 3.502).

(g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

Subpart 203.1 - SAFEGUARDS

203.104 Procurement integrity.

203.104-1 Definitions.

Federal agency procurement, defined at FAR 3.104-1, also includes commercial solutions openings.

203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(d)(3) For purposes of FAR 3.104-4(d)(3) only, DoD follows the notification procedures in FAR 27.404-5(a). However, FAR 27.404-5(a)(1) does not apply to DoD.

203.170 Business practices.

To ensure the separation of functions for oversight, source selection, contract negotiation, and contract award, departments and agencies shall adhere to the following best practice policies:

(a) Senior leaders shall not perform multiple roles in source selection for a major weapon system or major service acquisition.

(b) Vacant acquisition positions shall be filled on an “acting” basis from below until a permanent appointment is made. To provide promising professionals an opportunity to gain experience by temporarily filling higher positions, these oversight duties shall not be accrued at the top.

(c) Acquisition process reviews of the military departments shall be conducted to assess and improve acquisition and management processes, roles, and structures. The scope of the reviews should include—

(1) Distribution of acquisition roles and responsibilities among personnel;

(2) Processes for reporting concerns about unusual or inappropriate actions; and

(3) Application of DoD Instruction 5000.2, Operation of the Defense Acquisition System, and the disciplines in the Defense Acquisition Guidebook.

(d) Source selection processes shall be—

(1) Reviewed and approved by cognizant organizations responsible for oversight;

(2) Documented by the head of the contracting activity or at the agency level; and

(3) Periodically reviewed by outside officials independent of that office or agency.

(e) Legal review of documentation of major acquisition system source selection shall be conducted prior to contract award, including the supporting documentation of the source selection evaluation

board, source selection advisory council, and source selection authority.

(f) Procurement management reviews shall determine whether clearance threshold authorities are clear and that independent review is provided for acquisitions exceeding the simplified acquisition threshold.

203.171 Senior DoD officials seeking employment with defense contractors.

203.171-1 Scope.

This section implements section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

203.171-2 Definition.

"Covered DoD official" as used in this section, is defined in the clause at 252.203-7000 , Requirements Relating to Compensation of Former DoD Officials.

203.171-3 Policy.

(a) A DoD official covered by the requirements of section 847 of Pub. L. 110-181 (a "covered DoD official") who, within 2 years after leaving DoD service, expects to receive compensation from a DoD contractor, shall, prior to accepting such compensation, request a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to activities that the official may undertake on behalf of a contractor.

(b) A DoD contractor may not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service unless the contractor first determines that the official has received, or has requested at least 30 days prior to receiving compensation from the contractor, the post-employment ethics opinion described in paragraph (a) of this section.

(c) If a DoD contractor knowingly fails to comply with the requirements of the clause at 252.203-7000 , administrative and contractual actions may be taken, including cancellation of a procurement, rescission of a contract, or initiation of suspension or debarment proceedings.

203.171-4 Solicitation provision and contract clause.

(a) Use the clause at 252.203-7000 , Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Use the provision at 252.203-7005 , Representation Relating to Compensation of Former DoD Officials, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations for task orders and delivery orders.

Subpart 203.2 - [RESERVED]

Subpart 203.3 - [RESERVED]

Subpart 203.4 - [RESERVED]

Subpart 203.5 - OTHER IMPROPER BUSINESS PRACTICES

203.502-2 Subcontractor kickbacks.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under 41 U.S.C. chapter 87, Kickbacks:

(i) U.S. Army Criminal Investigation Command.

(ii) Naval Criminal Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

203.570-1 Scope.

This subpart implements 10 U.S.C.4656. For information on 10 U.S.C. 4656, see PGI 203.570-1 .

203.570-2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203-7001 , Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

(a) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570-2 (a); and

(b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570-2 (b).

203.570-3 Contract clause.

Use the clause at 252.203-7001 , Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial products and commercial services.

Subpart 203.7 - VOIDING AND RESCINDING CONTRACTS

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of re-delegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition and Sustainment).

Subpart 203.8 - LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

203.806 Processing suspected violations.

Report suspected violations to the address at PGI 203.806(a).

Subpart 203.9 - WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

203.900 Scope of subpart.

This subpart implements 10 U.S.C. 4701 and section 883 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).

(a)(i) 10 U.S.C. 4701 provides DoD whistleblower protection policies and procedures for contractor employees. Use sections 203.901 through 203.906 of this subpart in lieu of FAR sections 3.901 through 3.906 to implement 10 U.S.C. 4701 .

(ii) 10 U.S.C. 4701 does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). Sections 203.901 through 203.906 do not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(A) Relates to an activity or an element of the intelligence community; or

(B) Was discovered during contract or subcontract services provided to an element of the

intelligence community.

(c) Section 883 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) prohibits the award of a DoD contract to contractors that require their employees to sign internal confidentiality agreements or statements that would prohibit or otherwise restrict such employees from lawfully reporting waste, fraud, or abuse related to the performance of a DoD contract to a designated investigative or law enforcement representative within DoD authorized to receive such information.

203.901 Definitions.

“Abuse of authority,” as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

203.903 Policy.

(1) *Prohibition*. 10 U.S.C. 4701 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (3) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) *Classified information*. As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

(3) *Entities to whom disclosure may be made*:

(i) A Member of Congress or a representative of a committee of Congress.

(ii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.

(iii) The Government Accountability Office.

(iv) A DoD employee responsible for contract oversight or management.

(v) An authorized official of the Department of Justice or other law enforcement agency.

(vi) A court or grand jury.

(vii) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(4) *Disclosure clarified.* An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or

abuse on a DoD contract shall be deemed to have made a disclosure.

(5) *Contracting officer actions*. A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

203.904 Procedures for filing complaints.

(1) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a complaint with the Inspector General of the Department of Defense.

(2) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(3) The complaint shall be signed and shall contain—

(i) The name of the contractor;

(ii) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(iii) The violation of law, rule, or regulation giving rise to the disclosure;

(iv) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(v) The specific nature and date of the reprisal.

203.905 Procedures for investigating complaints.

(1) Unless the DoD Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903 , or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the DoD Inspector General will investigate the complaint.

(2) If the DoD Inspector General investigates the complaint, the DoD Inspector General will—

(i) Notify the complainant, the contractor alleged to have committed the violation, and the head of the agency; and

(ii) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the agency.

(3) Upon completion of the investigation, the DoD Inspector General—

(i) Either will determine that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903 , or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

(ii) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, as agreed to by the person submitting the complaint.

(4) The DoD Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(i) Made with the consent of the person alleging reprisal;

(ii) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(iii) Necessary to conduct an investigation of the alleged reprisal.

(5) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the DoD Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

203.906 Remedies.

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905 , the head of the agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 203.903 and shall either issue an order denying relief or shall take one or more of the following actions:

(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 203.905 (3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 4701 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than 2 years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) of this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to 10 U.S.C. 4701(c) .

(4) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 4701 , the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued by the head of the agency in accordance with 10 U.S.C. 4701 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, Unites States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(6) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

203.909 Prohibition on providing funds to an entity that requires certain internal confidentiality agreements or statements.

203.909-3 Solicitation provision and contract clause.

Use the provision at FAR 52.203-18, Prohibition on Contracting with Entities That Require Certain Internal Confidentiality Agreements or Statements—Representation, and the clause at FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements, prescribed at FAR 3.909-3 to implement section 883 of the National Defense Authorization Act for Fiscal Year 2021.

203.970 Contract clause.

Use the clause at 252.203-7002 , Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

Subpart 203.10 - CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

203.1003 Requirements.

(b) *Notification of possible contractor violation*. Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office:

Department of Defense Office of Inspector General

Administrative Investigations

Contractor Disclosure Program

4800 Mark Center Drive, Suite 14L25

Arlington, VA 22350-1500

Toll-Free Telephone: 866-429-8011.

Website: https://www.dodig.mil/Programs/Contractor-Disclosure-Program/.

(c) *Fraud hotline poster*. For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster required by 203.1004 (b)(2)(ii), such as private employee written instructions and briefings.

203.1004 Contract clauses.

(a) Use the clause at 252.203-7003 , Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

(b)(2)(ii) Unless the contract is for the acquisition of a commercial product or commercial service, use the clause at 252.203-7004, Display of Hotline Posters, in lieu of the clause at FAR 52.203-14, Display of Hotline Poster(s), in solicitations and contracts, if the contract value exceeds $7.5 million. If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster (see FAR 3.1003).

Subpart 203.70 - Reserved