PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 49 FR 11940, Mar. 28, 1984, unless otherwise noted.

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Parent topic: SUBCHAPTER A—GENERAL

Subpart 903.1—Safeguards

903.101 Standards of conduct.

903.101-3 Agency regulations.

Detailed rules applicable to the conduct of DOE employees are set forth in 10 CFR part 1010.

903.104-1 Definitions.

As used in this section and for the purposes of the post-employment restrictions at 48 CFR 3.104-2(b)(3)—

Deputy program manager means the individual within DOE who normally acts as the program manager in the absence of the program manager, and does not mean an individual who occasionally acts for the program manager or the deputy program manager.

Program manager means the individual within DOE who:

(1) Exercises authority on a day-to-day basis to manage an acquisition program—

(i) For a system attained through the acquisition process; and

(ii) With one or more contracts, at least one of which has a value exceeding $10,000,000; and

(2) Is generally the person at the lowest organizational level who has authority to make technical and budgetary decisions on behalf of DOE.

System means a combination of elements that function together to produce the capabilities required to fulfill a mission need, including, but not limited to hardware, equipment, software, or any combination thereof.

903.104-7 Violations or possible violations.

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of FAR 3.104-7(a)

(1) and (2), relative to contracting officer conclusions on the impact of a violation or possible violation of subsections 27 (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act, shall be the individual who has procurement authority and is one supervisory level above the Contracting Officer. The legal counsel is the Chief Counsel for the Operations Offices or the Federal Energy Technology Center; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; the General Counsel for National Nuclear Security Administration (NNSA), and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in FAR 3.104-7(a)

(1) and (2) regarding questions of disclosure of proprietary or source selection information is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding FAR 3.104-7(a)

(1) and (2) for Headquarters activities, or for any other office that does not have authority through procurement operations, is the Agency Ethics Official (Designated Agency Ethics Official).

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the Head of the Contracting Activity (HCA) in writing detailing the circumstances. The HCA will evaluate the report and, if the report appears to substantiate the allegations, the matter will be referred to the Senior Procurement Executive for disposition.

903.204 Treatment of violations.

Apparent violations will be processed in accordance with the debarment and suspension rules set forth at Title 10, part 1035, of the Code of Federal Regulations.

Subpart 903.3—Reports of Suspected Antitrust Violations

903.303 Reporting suspected antitrust violations.

(a) Potential anti-competitive practices, such as described in 48 CFR 3.301, and antitrust law violations as described in 48 CFR 3.303, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive. The Office of General Counsel will provide reports to the Attorney General,

as appropriate.

Subpart 903.4—Contingent Fees

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Before the Chief of the Contracting Office initiates appropriate action, the action shall be reviewed by Legal Counsel.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity, or designee, to the Office of General Counsel.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

(a) When the needs of the Government cannot be reasonably supplied by sources other than employees of the Government or sources which are substantially owned or controlled by Government employees, the contracting officer, in accordance with 48 CFR 3.602, may submit, through the HCA, a request to the Senior Procurement Executive, with appropriate justification, for approval of an exception to the prohibitions contained in 48 CFR 3.601.

Subpart 903.7—Voiding and Rescinding Contracts

903.700 Scope of subpart.

The HCA is the designee for determining whether to void or rescind a contract. This authority is nondelegable.

Subpart 903.9—Whistleblower Protections for Contractor

Employees

Source: 65 FR 81005, Dec. 22, 2000, unless otherwise noted.

903.900 Scope of subpart.

This subpart implements the DOE Contractor Employee Protection Program as set forth at 10 CFR part 708. Part 708 establishes criteria and procedures for the investigation, hearing, and review of allegations from DOE contractor employees of employer reprisal resulting from employee disclosure of information to DOE, to Members of Congress, or to the contractor; employee participation in proceedings before Congress or pursuant to this subpart; or employee refusal to engage in illegal or dangerous activities, when such disclosure, participation, or refusal pertains to employer practices which the employee believes to be unsafe; to violate laws, rules, or regulations; or to involve fraud, mismanagement, waste, or abuse.

903.901 Definition.

Contractor, as used in this subpart, has the meaning contained in 10 CFR 708.2.

903.902 Applicability.

10 CFR part 708 is applicable to complaints of retaliation filed by employees of contractors, and subcontractors, performing work on behalf of DOE directly related to DOE-owned or leased facilities, if the complaint stems from a disclosure, participation, or refusal described in 10 CFR 708.5.

903.970 Remedies.

(a) Contractors found to have retaliated against an employee in reprisal for such disclosure, participation or refusal are required to provide relief in accordance with decisions issued under 10 CFR part 708.

(b) 10 CFR part 708 provides that for the purposes of the Contract Disputes Act (41 U.S.C. 605 and 606), a final decision issued pursuant to 10 CFR part 708 shall not be considered to be a claim by the Government against a contractor or a decision by the contracting officer subject to appeal. However, a contractor's disagreement and refusal to comply with a final decision could result in a contracting officer's decision to disallow certain costs or to terminate the contract for default. In such case, the contractor could file a claim under the Disputes clause of the contract regarding the disallowance of cost or the termination of the contract.

903.971 Contract clause.

The contracting officer shall insert the clause at 952.203-70, Whistleblower Protection for Contractor Employees, in contracts that involve work to be done on behalf of DOE directly related to

activities at DOE-owned or leased sites.

Subpart 903.10—Contractor Code of Business Ethics and Conduct

903.1003 Requirements.

In accordance with FAR subpart 7.5, DOE does not contract for inherently governmental functions. However, DOE may contract for services that can require contractors to perform duties that require regular contact with DOE and the public related to DOE's mission. To ensure that all parties know the status of individuals as contractor personnel, contractors and their employees must properly identify themselves as contractors in all DOE internal and external communications and meetings.

903.1004 Contract clauses.

(a) The Contracting Officer shall insert the DOE website address *https://www.energy.gov/sites/prod/files/2017/05/f34/HotlinePoster.pdf* in paragraph (b)(3)(ii) of the clause at FAR 52.203-14, Display of Hotline Poster(s).

(b) The Contracting Officer shall insert the clause at 952.203-1, Identification of Contractor Employees, in all solicitations and contracts for services over the micro-purchase threshold.