PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

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Parent topic: SUBCHAPTER A—GENERAL

Subpart 2803.1—Safeguards

2803.101 Standards of conduct.

2803.101-3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 5 CFR part 2635.

2803.104 Procurement integrity.

2803.104-7 Violations or possible violations.

(a) Upon receipt of information regarding a violation or possible violation of 41 U.S.C. 2102, 2103, or 2104, the contracting officer must make the determination required by FAR 3.104-7(a) and follow the procedures prescribed therein.

(1) Make the determination required by FAR 3.104-7(a) and follow the procedures prescribed therein.

(2) [Reserved].

(b) The individual referenced in FAR 3.104-7(a)

(1) is the BPC.

(c) The HCA or designee must follow the criteria contained in FAR 3.104-7(g) when delegating authority under this subpart.

(d) The HCA or designee shall refer information regarding actual or possible violations of section 41 U.S.C. 2102, 2103, or 2014 to the OIG or other office designated in Attorney General Order 1931-94.

(e) If the HCA or designee, after receiving information relating to a violation, or possible violation, determines that award or extension of a contract potentially affected by the violation is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then the HCA may authorize the contracting officer to award or extend the contract after notification to the OIG or other office designated in Attorney General Order 1931-94.

(f) The HCA will advise the contracting officer as to the action to be taken. Criminal and civil penalties, and administrative remedies, may apply to conduct that violates 41 U.S.C. chapter 21, see FAR 3.104-8.

(g) The contracting officer shall advise the SPE in writing of all allegations of violations. The

contracting officer must describe the alleged violation as well as actions taken.

Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the Gratuities clause.

DOJ personnel shall report suspected violations of the gratuities clause, FAR 52.203-3, to the contracting officer or chief of the contracting office in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the time period in which it occurred, the behavior or action the gratuity was intended to influence, and the persons involved. The contracting officer or chief of the contracting office, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the HCA, or designee.

2803.204 Treatment of violations.

(a) The HCA or designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) may be taken. In reaching a decision, the HCA or designee shall consult with the contracting activity's legal advisor and the OIG or other office designated in Attorney General Order 1931-94.

(b) The SPE shall be advised of all instances where violations have been determined to have occurred and any action taken as a result.

(c) Prior to taking any action against the contractor, the HCA or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204(b).

Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

DOJ personnel shall report suspected antitrust violations to the Attorney General (AG) through the Assistant Attorney General (AAG) for the Antitrust Division (ATR).

(a) The report for the AG shall be addressed to: Attorney General, Attention: AAG/ATR, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530.

(b) The report shall include:

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

Subpart 2803.4—Contingent Fees

2803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Employees who suspect, or have evidence of, violations by a contractor of the Covenant Against Contingent Fees, see FAR subpart 3.4, must report the matter to the contracting officer or appropriate higher authority, in accordance with agency procedures. Employees who suspect or have evidence of fraudulent or criminal activities must report the matter to the SPE and the OIG.

Subpart 2803.8—Limitations on the Payment of Funds to Influence Federal Transactions

2803.806 Processing suspected violations.

Evidence of suspected violations of 31 U.S.C. 1352, Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, may be submitted in accordance with agency procedures to the SPE and the OIG or other office designated in Attorney General Order 1931-94.

Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.901 Definitions.

As used in this subpart—

Covered Individual is defined as an employee of a contractor at any tier required by the Department to sign a Non-Disclosure Agreement (NDA), whether the NDA is directly between the Covered Individual and the Department or between the Covered Individual and a contractor, and whether the NDA is required by a contract or otherwise (*e.g.,* pursuant to a vendor demonstration, product trial, market research effort, or other non-contract efforts).

General NDA means an NDA, other than an Intelligence-Related NDA, required by the Department to be signed by a Covered Individual.

Intelligence-Related NDA means any NDA required by the Department to be signed by a Covered Individual who is connected with the conduct of an intelligence or intelligence-related activity.

Non-Disclosure Agreement means any nondisclosure or confidentiality agreement, policy, or form, including the agreements in Standard Forms 312 (Classified Information Nondisclosure Agreement) and 4414 (Sensitive Compartmented Information Nondisclosure Agreement).

2803.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint filed pursuant to FAR 3.904, the Inspector General shall conduct an investigation and provide a written report of findings to the HCA, or designee.

(b) The HCA or designee will ensure that the Inspector General provides the report of finding to the individuals and entities specified in FAR 3.905(c).

(c) The complainant and contractor shall be afforded the opportunity to submit to the HCA or designee a written response to the report of findings within 30 days of receipt of the report. The HCA or designee may grant extensions of time to file a written response.

(d) The HCA or designee may request that the Inspector General conduct additional investigative work on the complaint at any time.

2803.906 Remedies.

(a) Upon determination that a contractor has subjected one of its employees to a reprisal for providing information as set forth in FAR 3.906(a), the HCA or designee may take one or more actions specified in that section.

(b) Whenever a contractor fails to comply with an order issued pursuant to FAR 3.906(a), the HCA or designee shall notify the Attorney General and request that DOJ file an action for enforcement of such order in the United States District Court.

2803.908 Enhancement of contractor employee whistleblower protections.

2803.908-9 Contract clauses.

2803.908-70 Whistleblower Protection in General Non-Disclosure Agreement.

The contracting officer shall ensure that any General NDA that DOJ requires a Covered Individual to sign contains the required Whistleblower Protection Provision at JAR 2852.203-70.

2803.908-71 Whistleblower Protection in Intelligence-Related Non-Disclosure Agreement.

The contracting officer shall ensure that any Intelligence-Related NDA that DOJ requires a Covered Individual to sign contains the required Whistleblower Protection Provision at JAR 2852.203-71.

Subpart 2803.10—Contractor Code of Business Ethics and

Conduct

2803.1004 Contract clauses.

The information required to be inserted in the clause at FAR 52.203-14, Display of Hotline Poster(s), is the following: Office of the Inspector General, Fraud Detection Office, Attn: Poster Request, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530.