

901.301-70

Reporting and Recordkeeping Requirements for Safety Management (see 48 CFR 970.5223-1) which is 1910-5103.

[61 FR 41704, Aug. 9, 1996, as amended at 62 FR 34861, June 27, 1997; 65 FR 81005, Dec. 22, 2000; 71 FR 16243, Mar. 31, 2006]

Subpart 901.3—Agency Acquisition Regulations

901.301-70 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.

(a) Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of Contracting Activities (HCA). These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity.

(b) The Procurement Executive has been authorized, without power of re-delegation, to perform the functions set forth at 48 CFR 1.601(b) regarding the assignment of contracting functions and responsibilities to another agency, and the creation of joint or combined offices with another agency to exercise acquisition functions and responsibilities.

[61 FR 41704, Aug. 9, 1996, as amended at 62 FR 53756, Oct. 16, 1997]

901.602-3 Ratification of unauthorized commitments.

(b) (2) The Procurement Executive is authorized to ratify an unauthorized commitment.

(3) The ratification authority of the Procurement Executive in paragraph (b)(2) of this section is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized com-

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mitments of \$25,000 or under. The ratification authority of the HCA is non-delegable.

PART 902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 42 U.S.C. 7101 et seq.; 41 U.S.C. 418(b); and 50 U.S.C. 2401 et seq.

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

As prescribed by FAR subpart 2.2, insert the clause at FAR 52.202-1, Definitions, but modify it to limit the definition at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, or the Under Secretaries of the Department of Energy, and the Chairman, Federal Energy Regulatory Commission. The contracting officer shall also add paragraphs (h) and (i) or (g) and (h) if Alternate I of the FAR clause is used. Paragraph (h) defines “DOE” as meaning the United States Department of Energy, “FERC” as meaning the Federal Energy Regulatory Commission, and “NNSA” as meaning the National Nuclear Security Administration. Paragraph (i) identifies the Senior Procurement Executive, DOE, as the Director, Office of Procurement and Assistance Management; the Senior Procurement Executive, NNSA, as the Administrator for Nuclear Security, NNSA; and the Senior Procurement Executive, FERC, as the Chairman, Federal Energy Regulatory Commission.

[67 FR 14870, Mar. 28, 2002]

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 903.1—Safeguards

Sec.

903.101 Standards of conduct.

903.101-3 Agency regulations.

903.104-1 Definitions.

903.104-7 Violations or possible violations (DOE coverage—paragraph (a)).

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Subpart 903.2—Contractor Gratuities to Government Personnel

- 903.203 Reporting suspected violations of the Gratuities clause.
903.204 Treatment of violations.

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- 903.303 Reporting suspected antitrust violations.

Subpart 903.4—Contingent Fees

- 903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 903.5—Other Improper Business Practices

- 903.502 Subcontractor kickbacks.

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903.902 Applicability.
903.970 Remedies.
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AUTHORITY: 42 U.S.C. 7101 et seq. and 50 U.S.C. 2401 et seq.

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

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.

[49 FR 11940, Mar. 28, 1984, as amended at 60 FR 47307, Sept. 12, 1995]

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 occa-

sionally 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.

[63 FR 56851, Oct. 23, 1998. Redesignated and amended at 74 FR 36361, July 22, 2009]

903.104-7 Violations or possible violations.

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of 48 CFR 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 legal counsel assigned direct responsibility for providing legal advice to the contracting office making the award or selecting the source. 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 48 CFR 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 48 CFR 3.104-7(a) (1) and (2) for Headquarters

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activities is the Agency Ethics Official (Designated Agency Ethics Official).

[62 FR 53756, Oct. 16, 1997. Redesignated and amended at 74 FR 36361, July 22, 2009]

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.

[49 FR 11940, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 74 FR 36378, July 22, 2009]

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 FAR 3.301, and antitrust law violations as described in FAR 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 Procurement Executive. The Office of General Counsel will provide reports to the Attorney General, as appropriate.

[50 FR 12183, Mar. 27, 1985, as amended at 59 FR 9104, Feb. 25, 1994]

Subpart 903.4—Contingent Fees

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Each Standard Form 119 completed in connection with a DOE con-

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tract, together with other relevant information, shall be reviewed by Counsel prior to the initiation of appropriate action.

[49 FR 11940, Mar. 28, 1984. Redesignated and amended at 74 FR 36361, July 22, 2009]

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.

[49 FR 11940, Mar. 28, 1984, as amended at 74 FR 36361, July 22, 2009]

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 FAR 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 FAR 3.601.

[49 FR 11940, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 74 FR 36378, July 22, 2009]

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.

[65 FR 81005, Dec. 22, 2000. Redesignated at 74 FR 36361, July 22, 2009]

903.901 Definition.

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

[65 FR 81005, Dec. 22, 2000. Redesignated at 74 FR 36361, July 22, 2009]

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.

[65 FR 81005, Dec. 22, 2000. Redesignated at 74 FR 36361, July 22, 2009]

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 regard-

ing 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.

PART 904—ADMINISTRATIVE MATTERS

Subpart 904.4—Safeguarding Classified Information Within Industry

Sec.

904.401 Definitions.

904.402 General.

904.404 Solicitation provision and contract clause.

Subpart 904.6 [Reserved]

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

Subpart 904.8—Government Contract Files

904.803 Contents of contract files.

904.804 Closeout of contract files.

904.804-1 Closeout by the office administering the contract.

904.805 Storage, handling, and disposal of contract files.

Subpart 904.70—Facility Clearance

904.7000 Scope of subpart.

904.7001 Applicability.

904.7002 Definitions.

904.7003 Disclosure of foreign ownership, control, or influence.

904.7004 Findings, determination, and contract award or termination.

Subpart 904.71—Prohibition on Contracting (National Security Program Contracts)

904.7100 Scope of subpart.

904.7101 Definitions.

904.7102 Waiver by the Secretary.

904.7103 Solicitation provision and contract clause.

Subpart 904.72—Public Affairs

904.7200 Purpose.

904.7201 Contract clause.

AUTHORITY: 42 U.S.C. 7101 et seq. and 50 U.S.C. 2401 et seq.