

OGC, the HCA may make the determination and concurrence specified in FAR 3.104-7(a)(1).

(b) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see FAR 3.104-3), the HCA will take action in accordance with FAR 3.104-7(b). The HCA must also report violations or possible violations to the VA Office of the Inspector General.

(c) The authority to make the determinations specified in FAR 3.104-7(b)(5) and 3.104-7(d)(2)(ii)(B) is delegated to the SPE and is further delegated to the DSPE.

(d) As provided in FAR 3.104-7(f), the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.

Subpart 803.2—Contractor Gratuities to Government Personnel

803.203 Reporting suspected violations of the Gratuities clause.

(a) Any VA employee must report a suspected violation of the Gratuities clause to the contracting officer or a higher level VA official.

(b) The report must identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(c) The contracting officer or higher level official must supplement the file with appropriate information and promptly forward the report to the DSPE, with copies to the VA Office of the Inspector General and the Assistant Secretary for Management.

803.204 Treatment of violations.

In providing the notice and hearing required by FAR 3.204, the SPE may make the determinations required by FAR 3.204. This authority is further delegated to the DSPE. The DSPE shall use the following procedures to determine whether or not a violation of the Gratuities clause has occurred:

(a) Upon receipt of an allegation or evidence of a violation of the Gratu-

ities clause, the DSPE shall refer the matter to the D&S Committee to conduct a fact-finding. Upon completion of the fact-finding, the D&S Committee shall present the facts and recommendations for further action to the DSPE.

(b) If the DSPE finds a basis for further action, the D&S Committee shall prepare a notice under FAR 3.204 for signature of the DSPE. If suspension or debarment is also being considered, the D&S Committee shall also follow the procedures contained in 809.4. The signed notice will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. In the case of a business, the D&S Committee may send the notice to any partner, principal, officer, director, owner or co-owner, or joint venture.

(c) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice, the D&S Committee will prepare a recommendation and refer the case to the DSPE for a decision on whether or not to take further action under FAR 3.204.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice, the D&S Committee must consider the information in the reply before the D&S Committee makes its recommendation to the DSPE.

(e) The D&S Committee, upon the request of the contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee, in person or through a representative, to present information or argument. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the presentation for submission to the DSPE and must consider the information presented when making its recommendation to the DSPE.

(f) If the D&S Committee finds that the contractor's submission in opposition to further action under FAR 3.204

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raises a genuine dispute over facts material to the action, then the D&S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to a designee for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor. The DSPE should consider any mitigating factors, such as those listed at FAR 9.406-1 and 809.406-1, prior to making a final decision.

Subpart 803.3—Reports of Suspected Antitrust Violations

803.303 Reporting suspected antitrust violations.

(a) Any VA employee who suspects or has evidence of possible antitrust violations must report the suspected violations, in accordance with FAR 3.303, to the VA Office of the Inspector General and to the Assistant Secretary for Management for review and submission to OGC.

(b) Either the General Counsel or the Inspector General will determine whether to submit the case to the U.S. Attorney General.

Subpart 803.4—Contingent Fees

803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees

must report the matter to the contracting officer or to the VA Office of Inspector General.

(b) In addition to the requirement in paragraph (a) of this section, a contracting officer must report a suspected or actual misrepresentation or violation to the DSPE.

(c) Before taking any administrative action under FAR 3.405, a contracting officer must consult with his or her Regional Counsel. A contracting officer in the Central Office must consult with OGC.

(d) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under FAR 3.405(b)(4) through OGC or the VA Office of the Inspector General, with a copy to the Assistant Secretary for Management. The General Counsel or the Inspector General will determine whether to forward the referral to the Department of Justice.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

A VA employee who suspects a violation of the Anti-kickback Act must report the suspected violation to OGC for review.

803.570 Commercial advertising.

803.570-1 Policy.

It is VA policy that contractors will not advertise the award of contracts or refer to VA contracts in contractors' commercial advertising in such a manner as to state or imply that VA endorses a product, project, or commercial line of endeavor. The intent of this policy is to preclude the appearance of bias toward any product or service.

803.570-2 Contract clause.

The contracting officer shall insert the clause at 852.203-70, Commercial advertising, in solicitations and contracts expected to equal or exceed the micro-purchase threshold.