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3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

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

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (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.

(3) 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.

(b) Whenever a contractor fails to comply with an order, 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 section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, 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, United States Code.

48 CFR Ch. 1 (10–1–11 Edition)

3.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

3.907–1 Definitions.

As used in this section—

Board means the Recovery Accountability and Transparency Board established by Section 1521 of the Recovery Act.

Covered funds means any contract payment, grant payment, or other payment received by a contractor if—

(1) The Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(2) At least some of the funds are appropriated or otherwise made available by the Recovery Act.

Covered information means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to covered funds.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978. In the Department of Defense that is the DoD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

Non-Federal employer, as used in this section, means any employer that receives Recovery Act funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Acquisition Regulation.

[74 FR 14634, Mar. 31, 2009, as amended at 75 FR 34259, June 16, 2010]

3.907–2 Policy.

Non-Federal employers are prohibited from discharging, demoting, or

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otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities or their representatives:

- (1) The Board.
- (2) An Inspector General.
- (3) The Comptroller General.
- (4) A member of Congress.
- (5) A State or Federal regulatory or law enforcement agency.
- (6) A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct.
- (7) A court or grand jury.
- (8) The head of a Federal agency.

[74 FR 14634, Mar. 31, 2009]

3.907-3 Procedures for filing complaints.

(a) An employee who believes that he or she has been subjected to reprisal prohibited by the Recovery Act, Section 1553 as set forth in 3.907-2, may submit a complaint regarding the reprisal to the Inspector General of the agency that awarded the contract.

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

- (1) The name of the contractor;
- (2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
- (3) The covered information giving rise to the disclosure;
- (4) The nature of the disclosure giving rise to the discriminatory act; and
- (5) The specific nature and date of the reprisal.

(c) A contracting officer who receives a complaint of reprisal of the type described in 3.907-2 shall forward it to the Office of Inspector General and to other designated officials in accordance with agency procedures (*e.g.*, agency legal counsel).

[74 FR 14634, Mar. 31, 2009, as amended at 75 FR 34259, June 16, 2010]

3.907-4 Procedures for investigating complaints.

Investigation of complaints will be in accordance with section 1553 of the Recovery Act.

[74 FR 14634, Mar. 31, 2009]

3.907-5 Access to investigative file of Inspector General.

(a) The employee alleging reprisal under this section shall have access to the investigation file of the Inspector General, in accordance with the Privacy Act, 5 U.S.C. 552a. The investigation of the Inspector General shall be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.

(b) In the event the employee alleging reprisal brings a civil action under section 1553(c)(3) of the Recovery Act, the employee alleging the reprisal and the non-Federal employer shall have access to the investigative file of the Inspector General in accordance with the Privacy Act.

(c) The Inspector General may exclude from disclosures made under 3.907-5(a) or (b)—

(1) Information protected from disclosure by a provision of law; and

(2) Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the Inspector General determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(d) An Inspector General investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with 5 U.S.C. 552a or as required by any other applicable Federal law.

[74 FR 14634, Mar. 31, 2009]

3.907-6 Remedies and enforcement authority.

(a) *Burden of Proof.* (1) Disclosure as contributing factor in reprisal.

(i) An employee alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the employee