

Federal Acquisition Regulation

3.1003

(e) Any person adversely affected or aggrieved by an order issued under paragraph (b) of this subsection may obtain review of the order's conformance with the law, and this section, 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.

[74 FR 14634, Mar. 31, 2009]

3.907-7 Contract Clause.

Use the clause at 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 in all solicitations and contracts funded in whole or in part with Recovery Act funds.

[74 FR 14634, Mar. 31, 2009]

Subpart 3.10—Contractor Code of Business Ethics and Conduct

SOURCE: 72 FR 65881, Nov. 23, 2007, unless otherwise noted.

3.1000 Scope of subpart.

This subpart prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct, and display of agency Office of Inspector General (OIG) fraud hotline posters.

3.1001 Definitions.

As used in this subpart—

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

[73 FR 67090, Nov. 12, 2008]

3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

(b) Contractors should have a written code of business ethics and conduct. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program and an internal control system that—

(1) Are suitable to the size of the company and extent of its involvement in Government contracting;

(2) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts; and

(3) Ensure corrective measures are promptly instituted and carried out.

3.1003 Requirements.

(a) *Contractor requirements.* (1) Although the policy at 3.1002 applies as guidance to all Government contractors, the contractual requirements set forth in the clauses at 52.203-13, Contractor Code of Business Ethics and Conduct, and 52.203-14, Display of Hotline Poster(s), are mandatory if the contracts meet the conditions specified in the clause prescriptions at 3.1004.

(2) Whether or not the clause at 52.203-13 is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with the award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until 3 years after final payment on a contract (see 9.406-2(b)(1)(vi) and 9.407-2(a)(8)).

(3) The Payment clauses at FAR 52.212-4(i)(5), 52.232-25(d), 52.232-26(c), and 52.232-27(1) require that, if the contractor becomes aware that the Government has overpaid on a contract financing or invoice payment, the contractor shall remit the overpayment amount to the Government. A contractor may be suspended and/or

3.1004

debarred for knowing failure by a principal to timely disclose credible evidence of a significant overpayment, other than overpayments resulting from contract financing payments as defined in 32.001 (see 9.406-2(b)(1)(vi) and 9.407-2(a)(8)).

(b) *Notification of possible contractor violation.* If the contracting officer is notified of possible contractor violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C.; or a violation of the civil False Claims Act, the contracting officer shall—

(1) Coordinate the matter with the agency Office of the Inspector General; or

(2) Take action in accordance with agency procedures.

(c) *Fraud Hotline Poster.* (1) Agency OIGs are responsible for determining the need for, and content of, their respective agency OIG fraud hotline poster(s).

(2) When requested by the Department of Homeland Security, agencies shall ensure that contracts funded with disaster assistance funds require display of any fraud hotline poster applicable to the specific contract. As established by the agency OIG, such posters may be displayed in lieu of, or in addition to, the agency's standard poster.

[72 FR 65881, Nov. 23, 2007, as amended at 73 FR 67090, Nov. 12, 2008]

3.1004 Contract clauses.

(a) Insert the clause at FAR 52.203-13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more.

(b)(1) Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, insert the clause at FAR 52.203-14, Display of Hotline Poster(s), if—

(i) The contract exceeds \$5,000,000 or a lesser amount established by the agency; and

(ii)(A) The agency has a fraud hotline poster; or

(B) The contract is funded with disaster assistance funds.

48 CFR Ch. 1 (10-1-12 Edition)

(2) In paragraph (b)(3) of the clause, the contracting officer shall—

(i) Identify the applicable posters; and

(ii) Insert the website link(s) or other contact information for obtaining the agency and/or Department of Homeland Security poster.

(3) In paragraph (d) of the clause, if the agency has established policies and procedures for display of the OIG fraud hotline poster at a lesser amount, the contracting officer shall replace “\$5,000,000” with the lesser amount that the agency has established.

[72 FR 65881, Nov. 23, 2007, as amended at 73 FR 67090, Nov. 12, 2008]

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

SOURCE: 76 FR 68024, Nov. 2, 2011, unless otherwise noted.

3.1100 Scope of subpart.

This subpart implements the policy on personal conflicts of interest by employees of Government contractors as required by section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) (41 U.S.C. 2303).

3.1101 Definitions.

As used in this subpart—

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance