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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1

SOURCE: 56 FR 36288, July 31, 1991, unless otherwise noted.

203.070 Reporting of violations and suspected violations.

Report violations and suspected violations of the following requirements in accordance with 209.406–3 or 209.407–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

(a) Certificate of Independent Price Determination (FAR 3.103).

(b) Procurement integrity (FAR 3.104).

(c) Gratuities clause (FAR 3.203).

(d) Antitrust laws (FAR 3.303).

(e) Covenant Against Contingent Fees (FAR 3.405).

(f) Kickbacks (FAR 3.502).

(g) Prohibitions on persons convicted of defense-related contract felonies (203.570).

[69 FR 74990, Dec. 15, 2004, as amended at 77 FR 35879, June 15, 2012]

Subpart 203.1—Safeguards

203.104 Procurement integrity.

203.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(d)(3) For purposes of FAR 3.104–4(d)(3) only, DoD follows the notification procedures in FAR 27.404–5(a). However, FAR 27.404–5(a)(1) does not apply to DoD.

[74 FR 2409, Jan. 15, 2009]

203.170 Business practices.

To ensure the separation of functions for oversight, source selection, contract negotiation, and contract award, departments and agencies shall adhere to the following best practice policies:

(a) Senior leaders shall not perform multiple roles in source selection for a major weapon system or major service acquisition. Departments and agencies shall certify every 2 years that no senior leader has performed multiple roles in the acquisition of a major weapon system or major service. Completed certifications shall be forwarded to the Director, Defense Procurement, in accordance with the procedures at PGI 203.170.

(b) Vacant acquisition positions shall be filled on an “acting” basis from

below until a permanent appointment is made. To provide promising professionals an opportunity to gain experience by temporarily filling higher positions, these oversight duties shall not be accrued at the top.

(c) Acquisition process reviews of the military departments shall be conducted to assess and improve acquisition and management processes, roles, and structures. The scope of the reviews should include—

(1) Distribution of acquisition roles and responsibilities among personnel;

(2) Processes for reporting concerns about unusual or inappropriate actions; and

(3) Application of DoD Instruction 5000.2, Operation of the Defense Acquisition System, and the disciplines in the Defense Acquisition Guidebook.

(d) Source selection processes shall be—

(1) Reviewed and approved by cognizant organizations responsible for oversight;

(2) Documented by the head of the contracting activity or at the agency level; and

(3) Periodically reviewed by outside officials independent of that office or agency.

(e) Legal review of documentation of major acquisition system source selection shall be conducted prior to contract award, including the supporting documentation of the source selection evaluation board, source selection advisory council, and source selection authority.

(f) Procurement management reviews shall determine whether clearance threshold authorities are clear and that independent review is provided for acquisitions exceeding the simplified acquisition threshold.

[72 FR 20757, Apr. 26, 2007, as amended at 74 FR 2408, Jan. 15, 2009]

203.171 Senior DoD officials seeking employment with defense contractors.

203.171-1 Scope.

This section implements Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

[74 FR 2409, Jan. 15, 2009]

203.171-2 Definition.

Covered DoD official as used in this section, is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

[74 FR 2409, Jan. 15, 2009]

203.171-3 Policy.

(a) A DoD official covered by the requirements of Section 847 of Public Law 110-181 (a “covered DoD official”) who, within 2 years after leaving DoD service, expects to receive compensation from a DoD contractor, shall, prior to accepting such compensation, request a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to activities that the official may undertake on behalf of a contractor.

(b) A DoD contractor may not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service unless the contractor first determines that the official has received, or has requested at least 30 days prior to receiving compensation from the contractor, the post-employment ethics opinion described in paragraph (a) of this section.

(c) If a DoD contractor knowingly fails to comply with the requirements of the clause at 252.203-7000, administrative and contractual actions may be taken, including cancellation of a procurement, rescission of a contract, or initiation of suspension or debarment proceedings.

[74 FR 2409, Jan. 15, 2009]

203.171-4 Solicitation provision and contract clause.

(a) Use the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts.

(b) Use the provision at 252.203-7005, Representation Relating to Compensation of Former DoD Officials, in all solicitations, including solicitations for task and delivery orders.

[76 FR 71829, Nov. 18, 2011]

203.502-2

Subpart 203.5—Other Improper Business Practices

203.502-2 Subcontractor kickbacks.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under 41 U.S.C. chapter 87, Kickbacks:

- (i) U.S. Army Criminal Investigation Command.
- (ii) Naval Criminal Investigative Service.
- (iii) Air Force Office of Special Investigations.
- (iv) Defense Criminal Investigative Service.

[56 FR 36288, July 31, 1991, as amended at 60 FR 29497, June 5, 1995; 77 FR 35879, June 15, 2012]

203.570 Prohibition on persons convicted of frauds or other defense-contract-related felonies.

203.570-1 Scope.

This subpart implements 10 U.S.C. 2408. For information on 10 U.S.C. 2408, see PGI 203.570-1.

[71 FR 14100, Mar. 21, 2006]

203.570-2 Prohibition period.

DoD has sole responsibility for determining the period of the prohibition described in paragraph (b) of the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies. The prohibition period—

- (a) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security. Follow the waiver procedures at PGI 203.570-2(a); and
- (b) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the address at PGI 203.570-2(b).

[69 FR 74990, Dec. 15, 2004]

203.570-3 Contract clause.

Use the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud

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or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[64 FR 14398, Mar. 25, 1999. Redesignated at 69 FR 74990, Dec. 15, 2004]

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition, Technology, and Logistics).

[56 FR 36288, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995; 65 FR 39704, June 27, 2000]

Subpart 203.8—Limitations on the Payment of Funds To Influence Federal Transactions

SOURCE: 77 FR 19128, Mar. 30, 2012, unless otherwise noted.

203.806 Processing suspected violations.

Report suspected violations to the address at PGI 203.8(a).

Subpart 203.9—Whistleblower Protections for Contractor Employees

203.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 as amended by Section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) and Section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

[74 FR 2410, Jan. 15, 2009]

203.903 Policy.

The following policy applies to DoD instead of the policy at FAR 3.903:

- (1) 10 U.S.C. 2409 prohibits contractors from discharging, demoting, or

otherwise discriminating against an employee as a reprisal for disclosing, to any of the following entities, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, a substantial and specific danger to public health or safety, or a violation of law related to a DoD contract (including the competition for or negotiation of a contract):

- (i) A Member of Congress.
 - (ii) A representative of a committee of Congress.
 - (iii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.
 - (iv) The Government Accountability Office.
 - (v) A DoD employee responsible for contract oversight or management.
 - (vi) An authorized official of an agency or the Department of Justice.
- (2) A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

[74 FR 2410, Jan. 15, 2009]

203.904 Procedures for filing complaints.

In addition to the procedures at FAR 3.904, any contractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a complaint with the DoD Inspector General.

[74 FR 2410, Jan. 15, 2009]

203.905 Procedures for investigating complaints.

The following procedures apply to DoD instead of the procedures at FAR 3.905:

- (1) The DoD Inspector General will make a determination as to whether a complaint is frivolous or merits further investigation.
- (2) If the DoD Inspector General determines that a complaint merits further investigation, the DoD Inspector General will—

- (i) Notify the complainant, the contractor alleged to have committed the violation, and the head of the agency;
- (ii) Conduct an investigation; and
- (iii) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the agency.

- (3) The DoD Inspector General—
 - (i) Will determine that the complaint is frivolous or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and
 - (ii) If unable to submit a report within 180 days, will submit the report within the additional time period to which the person submitting the complaint agrees.

[74 FR 2410, Jan. 15, 2009]

203.906 Remedies.

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905, the head of the agency—

- (i) Shall determine whether sufficient basis exists to conclude that the contractor has subjected one of its employees to a reprisal as prohibited by 203.903; and
- (ii) Shall issue an order denying relief or shall take one or more of the actions specified in FAR 3.906(a).

(2) If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 203.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

- (i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and
- (ii) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

203.970

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) of this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to 10 U.S.C. 2409(c).

[74 FR 2410, Jan. 15, 2009]

203.970 Contract clause.

Use the clause at 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

[74 FR 2410, Jan. 15, 2009]

Subpart 203.10—Contractor Code of Business Ethics and Conduct

203.1003 Requirements.

(b) *Notification of possible contractor violation.* Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office: DoD Inspector General, Investigative Policy and Oversight, Contractor Disclosure Program, 400 Army Navy Drive, Suite 1037, Arlington, VA 22202-4704; Toll-Free Telephone: 866-429-8011.

[74 FR 53412, October 19, 2009]

203.1004 Contract clauses.

(a) Use the clause at 252.203-7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

(b)(2)(ii) Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, if the contract exceeds \$5 million, use the clause at 252.203-7004, Display of Fraud Hotline Poster(s), in lieu of the clause at FAR 52.203-14, Display of Hotline Poster(s). If the Department of Homeland Security (DHS) provides disaster relief funds for the contract, DHS will provide information on how to obtain and display the DHS fraud hotline poster.

[73 FR 46815, Aug. 12, 2008, as amended at 74 FR 53413, October 19, 2009; 75 FR 59101, Sept. 27, 2010, as amended at 76 FR 32840, June 6, 2011; 76 FR 57674, Sept. 16, 2011]

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PART 204—ADMINISTRATIVE MATTERS

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