

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

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

Subpart 903.1—Safeguards

903.101 Standards of conduct.

903.101-3 Agency regulations.

Rules governing the conduct of DOE employees are found in 10 CFR part 1010.

903.104-1 Definitions.

As used in this section, and for the post-employment restrictions in 48 CFR 3.104-2(b)(3)—Deputy program manager means the DOE official who normally serves in the program manager's place when the program manager is absent. It does not include someone who only occasionally acts for the program manager or deputy program manager.

Program manager means the DOE official who:

- (1) Has day-to-day authority to manage an acquisition program—
 - (i) For a system obtained through the acquisition process; and
 - (ii) With one or more contracts, at least one valued at more than \$10,000,000; and
- (2) Is generally the lowest-level official authorized to make technical and budget decisions on DOE's behalf.

System means a set of elements that work together to deliver a required mission capability. Elements may include hardware, equipment, software, or any combination of these.

903.104-7 Violations or possible violations.

For all DOE activities except Headquarters, the DOE official responsible for fulfilling the requirements of FAR 3.104-7(a)(1) and (2)—which address contracting officer conclusions regarding violations or possible violations of sections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act—is the official with procurement authority at one supervisory level above the Contracting Officer.

Legal counsel assignments are as follows:

- Chief Counsel for Operations Offices or the Federal Energy Technology Center
- Counsel or Chief Counsel for Support Offices or Naval Reactors Offices
- General Counsel for the National Nuclear Security Administration (NNSA)
- General Counsel for the Power Administrations

For Headquarters activities:

- The Assistant General Counsel for Procurement and Financial Assistance is responsible for matters involving disclosure of proprietary or source selection information under FAR 3.104-7(a)(1) and (2).
- For all other matters under FAR 3.104-7(a)(1) and (2), or for offices without procurement operations authority, the designated official is the Agency Ethics Official (Designated Agency Ethics Official).

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

Report suspected violations of the Gratuities clause in writing to the Head of the Contracting Activity (HCA), including all relevant details. The HCA will review the report and, if it appears to substantiate the allegations, will refer the matter to the Senior Procurement Executive for action.

903.204 Treatment of violations.

Process apparent violations according to the debarment and suspension rules in 10 CFR part 1035.

Subpart 903.3—Reports of Suspected Antitrust Violations

903.303 Reporting suspected antitrust violations.

(a) Report potential anti-competitive practices described in 48 CFR 3.301, or suspected antitrust violations described in 48 CFR 3.303, through the Head of the Contracting Activity to the Office of General Counsel, with a copy to the Senior Procurement Executive. The Office of General Counsel will submit reports to the Attorney General when appropriate.

Subpart 903.4—Contingent Fees

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Legal Counsel must review the matter before the Chief of the Contracting Office takes any action.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity, or the HCA's designee, to the Office of General Counsel.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

(a) If the Government's needs cannot reasonably be met by sources other than Government employees or organizations substantially owned or controlled by Government employees, may request an exception to the prohibitions in 48 CFR 3.601. Submit the request, with justification, through the HCA to the Senior Procurement Executive in accordance with 48 CFR 3.602.

Subpart 903.7—Voiding and Rescinding Contracts

903.700 Scope of subpart.

The HCA is authorized to determine whether to void or rescind a contract. This authority cannot be delegated.

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 in 10 CFR part 708. Part 708 establishes the criteria and procedures for investigating, hearing, and reviewing allegations that DOE contractor employees faced reprisal for:

- disclosing information to DOE, Congress, or the contractor;
- participating in related proceedings; or
- refusing to engage in illegal or dangerous activities.

These protections apply when the employee believes the employer's actions involve unsafe practices, violations of law or regulation, or fraud, waste, abuse, or mismanagement.

903.901 Definition.

Contractor has the meaning provided in 10 CFR 708.2.

903.902 Applicability.

10 CFR part 708 applies to retaliation complaints filed by contractor employees and subcontractors doing work for DOE at DOE-owned or leased facilities, when the complaint relates to actions described in 10 CFR 708.5.

903.970 Remedies.

(a) Contractors that retaliate against an employee must provide relief as required under decisions issued pursuant to 10 CFR part 708.

(b) Under 10 CFR part 708, a final decision issued under that part is not considered a Government claim or a contracting officer final decision under the Contract Disputes Act (41 U.S.C. 605 and 606). However, if a contractor disagrees with and refuses to comply with a final decision, the contracting officer may disallow related costs or terminate the contract for default. The contractor may then submit a claim under the contract's Disputes clause regarding the cost disallowance or termination.

903.971 Contract clause.

Insert the clause at 952.203-70, Whistleblower Protection for Contractor Employees, in all contracts involving work performed on behalf of DOE that directly relates to activities at DOE-owned or leased sites.

Subpart 903.10—Contractor Code of Business Ethics and Conduct

903.1003 Requirements.

Under FAR subpart 7.5, DOE does not contract for inherently governmental functions. DOE may, however, contract for services requiring regular interaction with DOE or the public in support of DOE's mission. To ensure clarity about employment status, contractors and their employees must clearly identify themselves as contractors in all DOE communications and meetings, both internal and external.

903.1004 Contract clauses.

(a) Include the DOE website link

<https://www.energy.gov/sites/prod/files/2017/05/f34/HotlinePoster.pdf> in paragraph (b)(3)(ii) of FAR 52.203-14, Display of Hotline Poster(s).

(b) Insert the clause at 952.203-1, Identification of Contractor Employees, in all service solicitations and contracts above the micro-purchase threshold.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.203-1 Identification of contractor employees.

As prescribed in 903.1004, insert the following clause:

Identification of Contractor Employees [DEVIATION MAY 2026]

Contractors and their employees must clearly identify themselves in all communications (such as emails, texts, video calls, and teleconferences) and during meetings so participants can distinguish Federal employees from contractor employees.

(End of clause)

952.203-70 Whistleblower protection for contractor employees.

As prescribed in 903.971, insert the following clause:

Whistleblower Protection for Contractor Employees (DEVIATION MAY 2026)

(a) The Contractor will comply with the requirements of the “DOE Contractor Employee Protection Program” at 10 CFR part 708 for work performed on behalf of DOE that directly relates to activities at DOE-owned or leased sites.

(b) The Contractor will insert, or ensure insertion of, this clause—including this paragraph (b)—in all subcontracts at any tier for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(End of clause)