

# 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.

~~Detailed r~~Rules applicable to governing the conduct of DOE employees are set forth~~found~~ in 10 CFR part 1010.

#### 903.104-1 Definitions.

As used in this section, and for the ~~purposes of the post-employment restrictions at~~ in 48 CFR 3.104-2(b)(3)—

Deputy program manager means the ~~individual within DOE~~ official who normally ~~acts as~~ asserves in the program manager's place when the program manager in the absence of the program manager, and is absent. It does not ~~mean an individual~~ include someone who only occasionally acts for the program manager or ~~the~~ deputy program manager.

Program manager means the ~~individual within DOE~~ official who:

- (1) ~~Exercises authority on a~~ Has day-to-day ~~basis~~ authority to manage an acquisition program—
  - (i) For a system ~~attained~~ obtained through the acquisition process; and
  - (ii) With one or more contracts, at least one of which ~~has a value exceeding~~ valued at more than \$10,000,000; and

- (2) Is generally the ~~person at the lowest organizational level who has authority~~ official authorized to make technical and ~~budgetary~~ budget decisions on DOE's behalf ~~of DOE~~.

System means a ~~combination~~ set of elements that ~~function~~ work together to ~~produce the capabilities~~ deliver a required to fulfill a mission need, including, but not limited to capability.

Elements may include hardware, equipment, software, or any combination thereof ~~of these~~.

#### 903.104-7 Violations or possible violations.

(a) ~~Except for~~ For all DOE activities except Headquarters ~~activities~~, the ~~individual within DOE~~ official responsible for fulfilling the requirements of FAR 3.104-7(a)

~~(1) and (2), relative to~~ —which address contracting officer conclusions ~~on the impact of a violation~~ regarding violations or possible violation violations of subsections sections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act, shall be is the individual who

~~has official with procurement authority and is at one supervisory level above the Contracting Officer.~~

~~The Legal counsel is the assignments are as follows:~~

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

~~For Headquarters activities, the individual designated to perform the responsibilities in FAR 3.104-7(a)~~

~~(1) and (2) regarding questions of disclosure of proprietary or source selection information is:~~

~~• The Assistant General Counsel for Procurement and Financial Assistance. The designated individual for is responsible for matters involving disclosure of proprietary or source selection information under FAR 3.104-7(a)(1) and (2).~~

~~• For all other questions regarding matters under FAR 3.104-7(a)~~

~~(1) and (2) for Headquarters activities, or for any other office that does not have authority through 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.**

~~(a) Report suspected violations of the Gratuities clause shall be reported in writing to the Head of the Contracting Activity (HCA) in writing detailing the circumstances, including all relevant details. The HCA will evaluate review the report and, if the report appears to substantiate the allegations, will refer the matter will be referred to the Senior Procurement Executive for disposition action.~~

### **903.204 Treatment of violations.**

~~Process apparent violations will be processed in accordance with according to the debarment and suspension rules set forth at Title in 10, CFR part 1035, of the Code of Federal Regulations.~~

## **Subpart 903.3—Reports of Suspected Antitrust Violations**

903.303 Reporting suspected antitrust violations.

(a) Report potential anti-competitive practices, such as described in 48 CFR 3.301, and/or suspected antitrust law violations as described in 48 CFR 3.303, evidenced in bids or proposals, shall be reported to the Office of General Counsel 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 provide submit reports to the Attorney General, as when appropriate.

## Subpart 903.4—Contingent Fees

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

~~(b)~~(b) Legal Counsel must review the matter before the Chief of the Contracting Office initiates appropriate action, the action shall be reviewed by Legal Counsel.

## Subpart 903.5—Other Improper Business Practices

### 903.502 Subcontractor kickbacks.

~~Contracting officers shall report~~ 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) ~~When~~If the Government's needs of the Government cannot be reasonably supplied ~~be met~~ by sources other than Government employees of the Government or sources which are organizations substantially owned or controlled by Government employees, ~~the contracting officer, in accordance with 48 CFR 3.602, may submit, through the HCA, a request to the Senior Procurement Executive, with appropriate justification, for approval of an exception to the prohibitions contained 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 ~~the designee for determining~~ authorized to determine whether to void or rescind a contract. This authority is ~~nondelegable~~ 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 as set forth at 10 CFR part 708. Part 708 establishes the criteria and procedures for the

~~investigation~~ investigating, hearing, and ~~review of~~ reviewing allegations ~~from that~~ DOE contractor employees of ~~employer~~ faced reprisal ~~resulting from employee disclosure or for:~~

- ~~disclosing~~ disclosure information to DOE, to Members of Congress, or to the contractor; ~~employee participation~~
- ~~participating in related proceedings before Congress; or pursuant to this subpart; or employee refusal~~
- ~~refusing to engage in illegal or dangerous activities;~~

~~These protections apply when such disclosure, participation, or refusal pertains to employer practices which the employee believes to be unsafe; to violate laws, rules, or regulations; or to the employer's actions involve unsafe practices, violations of law or regulation, or fraud, waste, abuse, or mismanagement, waste, or abuse.~~

:

## 903.901 Definition.

~~Contractor, as used in this subpart,~~ has the meaning ~~contained~~ provided in 10 CFR 708.2.

## 903.902 Applicability.

10 CFR part 708 ~~is applicable~~ applies to ~~complaints of retaliation~~ complaints filed by ~~contractor employees of contractors, and subcontractors, performing doing work on behalf of or~~ DOE ~~directly related to at~~ DOE-owned or leased facilities, ~~if when~~ the complaint stems from a ~~disclosure, participation, or refusal~~ relates to actions described in 10 CFR 708.5.

## 903.970 Remedies.

(a) ~~Contractors found to have retaliated that retaliate~~ that retaliate against an employee ~~in reprisal for such disclosure, participation or refusal are required to~~ must provide relief ~~in accordance with as required under decisions issued under 10 CFR part 708.~~

(b) ~~10 CFR part 708 provides that for the purposes of the Contract Disputes Act (41 U.S.C. 605 and 606), a final decision issued pursuant to 10 CFR part 708 shall.~~

(b) ~~Under 10 CFR part 708, a final decision issued under that part is not be considered to be a claim by the Government against a contractor or a decision by the claim or a contracting officer subject to appeal.~~ final decision under the Contract Disputes Act (41 U.S.C. 605 and 606).

~~However, a contractor's disagreement if a contractor disagrees with and refusal refuses to comply with a final decision could result in a, the contracting officer's decision to officer may disallow certain related costs or to terminate the contract for default. In such case, The contractor could file may then submit a claim under the contract's Disputes clause of the contract regarding the cost disallowance of cost or the termination of the contract.~~

:

### **903.971 Contract clause.**

~~The contracting officer shall~~ Insert the clause at 952.203-70, Whistleblower Protection for Contractor Employees, in all contracts that involve ~~involving work to be done~~ performed on behalf of DOE that directly related ~~relates~~ to activities at DOE-owned or leased sites.

## **Subpart 903.10—Contractor Code of Business Ethics and Conduct**

### **903.1003 Requirements.**

~~In accordance with~~ Under FAR subpart 7.5, DOE does not contract for inherently governmental functions. ~~However, DOE may, however,~~ contract for services ~~that can require contractors to perform duties that require~~ requiring regular contact interaction with DOE and the public related to DOE's in support of DOE's mission. To ensure ~~that all parties know the~~ clarity about employment status of individuals as contractor personnel, contractors and their employees must properly clearly identify themselves as contractors in all DOE ~~internal and external~~ communications and meetings: , both internal and external.

### **903.1004 Contract clauses.**

(a) ~~The Contracting Officer shall insert~~ Include the DOE website address link <https://www.energy.gov/sites/prod/files/2017/05/f34/HotlinePoster.pdf> in paragraph (b)(3)(ii) of ~~the clause at FAR 52.203-14, Display of Hotline Poster(s).~~

(b) ~~The Contracting Officer shall insert~~ Insert the clause at 952.203-1, Identification of Contractor Employees, in all service solicitations and contracts ~~for services over~~ above the micro-purchase threshold.

## **PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **952.203-1 Identification of contractor employees.**

As prescribed ~~at~~ in 903.1004, insert the following clause:

Identification of Contractor Employees [~~December 2024~~ DEVIATION MAY 2026]  
Contractors and their employees ~~shall be properly identified~~ must clearly identify themselves in all communications (e.g., email communications such as emails, texts, video ~~and teleconference calls, etc.)~~ and teleconferences) and in during meetings so ~~that all participants can differentiate between~~ distinguish Federal employees ~~and~~ 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 (~~DEC 2000~~ DEVIATION MAY 2026)

(a) The Contractor ~~shall~~ 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 ~~related~~ relates to activities at DOE-owned or -leased sites.

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

(End of clause)