

## 203.900

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 203.9—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

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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.

(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 in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.

(b)(2)(ii) Insert the following address in paragraph (b)(3) of the clause at FAR 52.203-14, Display of Hotline Poster(s): DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Arlington, VA 22202-4704.

[73 FR 46815, Aug. 12, 2008, as amended at 74 FR 53413, October 19, 2009; 75 FR 59101, Sept. 27, 2010]

**PART 204—ADMINISTRATIVE MATTERS**

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Sec.

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204.201 Procedures.

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**Subpart 204.6—Contract Reporting**

204.602 General.

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**Subpart 204.8—Contract Files**

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**Subpart 204.9—Taxpayer Identification Number Information**

204.902 General.