

Department of Veterans Affairs

803.570-2

raises a genuine dispute over facts material to the action, then the D&S Committee shall submit to the DSPE the information establishing the dispute of material facts. If the DSPE agrees that there is a genuine dispute of material facts, the DSPE shall refer the dispute to a designee for resolution under 809.470. The DSPE may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(g) If there are no disputes over material facts or if all disputes over material facts have been resolved under 809.470, the DSPE will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D & S Committee by the contractor. The DSPE should consider any mitigating factors, such as those listed at FAR 9.406-1 and 809.406-1, prior to making a final decision.

Subpart 803.3—Reports of Suspected Antitrust Violations

803.303 Reporting suspected antitrust violations.

(a) Any VA employee who suspects or has evidence of possible antitrust violations must report the suspected violations, in accordance with FAR 3.303, to the VA Office of the Inspector General and to the Assistant Secretary for Management for review and submission to OGC.

(b) Either the General Counsel or the Inspector General will determine whether to submit the case to the U.S. Attorney General.

Subpart 803.4—Contingent Fees

803.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A VA employee who suspects or has evidence of an attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or any other violation of the Covenant Against Contingent Fees

must report the matter to the contracting officer or to the VA Office of Inspector General.

(b) In addition to the requirement in paragraph (a) of this section, a contracting officer must report a suspected or actual misrepresentation or violation to the DSPE.

(c) Before taking any administrative action under FAR 3.405, a contracting officer must consult with his or her Regional Counsel. A contracting officer in the Central Office must consult with OGC.

(d) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under FAR 3.405(b)(4) through OGC or the VA Office of the Inspector General, with a copy to the Assistant Secretary for Management. The General Counsel or the Inspector General will determine whether to forward the referral to the Department of Justice.

Subpart 803.5—Other Improper Business Practices

803.502 Subcontractor kickbacks.

A VA employee who suspects a violation of the Anti-kickback Act must report the suspected violation to OGC for review.

803.570 Commercial advertising.

803.570-1 Policy.

It is VA policy that contractors will not advertise the award of contracts or refer to VA contracts in contractors' commercial advertising in such a manner as to state or imply that VA endorses a product, project, or commercial line of endeavor. The intent of this policy is to preclude the appearance of bias toward any product or service.

803.570-2 Contract clause.

The contracting officer shall insert the clause at 852.203-70, Commercial advertising, in solicitations and contracts expected to equal or exceed the micro-purchase threshold.