

# NASA FAR Sup 1803

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PART 1803

**IMPROPER BUSINESS PRACTICES  
AND PERSONAL CONFLICTS OF INTEREST**

(September 2015)

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## **PART 1803**

### **IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

#### **Subpart 1803.1—Safeguards**

##### **1803.101 Standards of conduct.**

###### **1803.101-1 General.**

The statutory Federal conflict of interest prohibitions codified at 18 U.S.C. section 208 and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, [5 CFR Parts 2635](#), Subpart D, and 2540. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. section 218). The regulatory impartiality restrictions issued by the U.S. Office of Government Ethics (OGE) are provided in 5 CFR Part 2635, Subpart E. All NASA personnel involved in acquisitions shall become familiar with these regulatory restrictions.

###### **1803.101-2 Solicitation and acceptance of gratuities by Government personnel.**

Any suspected violations shall be reported promptly to the Center's Office of Inspector General.

##### **1803.104 Procurement integrity.**

###### **1803.104-1 Definitions.**

"*Agency ethics official*" means for Headquarters, the General Counsel and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

###### **1803.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

- (a) Government employees serving in the following positions are authorized access to proprietary

or source selection information, but only to the extent necessary to perform their official duties.

- (i) Personnel participating in source evaluation board (SEB) procedures (see [1815.370](#)) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.
- (ii) Personnel assigned to the contracting office.
- (iii) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).
- (iv) Small business specialists.
- (v) Personnel assigned to counsel's office.
- (vi) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.
- (vii) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in [Subpart 1807.71](#).
- (viii) Other Government employees authorized by the contracting officer.
- (ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104-4(a)(i) through (viii).
- (x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in [FAR 2.101](#) shall assure that the material is marked with the legend in [FAR 3.104-4\(c\)](#) at the time the material is prepared.

(ii) Unless marked with the legend "SOURCE SELECTION INFORMATION — SEE FAR 2.101 and 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see [FAR Subpart 7.1](#)). All documents, once released, must remain available to the public until the conclusion of the acquisition.

#### **1803.104-7 Violations or possible violations.**

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Assistant Administrator for Procurement.

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Assistant Administrator for Procurement simultaneous with transmittal to the Administrator.

#### **1803.104-70 Restrictions on NASA personnel participating in proposal evaluations or selection decisions.**

For acquisitions of any dollar value, an employee may not participate in a proposal evaluation or selection decision if the employee would not be in compliance with statutory U.S. Government ethics

requirements, the impartiality regulations issued by U.S. Office of Government Ethics (OGE) at 5 CFR 2635, Subpart E, or any other applicable U.S. Government ethics requirements. Participants should contact a NASA ethics official in their local Chief Counsel's office, or in the case of NASA Headquarters an ethics official in the Office of General Counsel, for advice on the application of these provisions.

### **Subpart 1803.2--Contract or Gratuities to Government Personnel**

#### **1803.203 Reporting suspected violations of the Gratuities clause.**

Any suspected violations of the clause at [FAR 52.203-3](#), Gratuities, shall be reported to the installation's Office of Inspector General.

### **Subpart 1803.3--Reports of Suspected Antitrust Violations**

#### **1803.303 Reporting suspected antitrust violations.**

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement Program Operations Division. Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

- (A) The noncompetitive pattern or situation under consideration;
- (B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;
- (C) Community of financial interest among offerors, insofar as it is known;
- (D) The extent, if any, to which specification requirements or patents restrict competition;
- (E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and
- (F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see [FAR 3.303](#)).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement Program Operations Division. The report shall include the reasons for suspecting collusion. Program Operations Division shall forward a copy to the NASA Office of the Inspector General.

### **Subpart 1803.5--Other Improper Business Practices**

#### **1803.502 Subcontractor kickbacks.**

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with [1809.470](#).

### **Subpart 1803.6--Contracts with Government Employees or Organizations Owned or Controlled by Them**

#### **1803.602 Exceptions.**

The Assistant Administrator for Procurement has been delegated the authority to authorize an

exception to the policy in [FAR 3.601](#). The Assistant Administrator for Procurement has redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of \$100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Assistant Administrator for Procurement for approval.

### **Subpart 1803.7--Voiding and Rescinding Contracts**

#### **1803.704 Policy.**

(a) The Assistant Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

#### **1803.705 Procedures.**

(a) Procurement officers shall make reports to the Assistant Administrator for Procurement. The Assistant Administrator for Procurement is responsible for the actions, notices, and decisions required by [FAR 3.705](#)(c), (d), and (e).

### **Subpart 1803.8--Limitation on the Payment of Funds to Influence Federal Transactions**

#### **1803.804 Policy.**

(b) Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF-LLL) furnished pursuant to [FAR 3.803](#) to the Office of Procurement Program Operations Division. The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

#### **1803.806 Processing suspected violations.**

The Assistant Administrator for Procurement is the designated official to whom suspected violations of the Act shall be referred. The suspected violations should be reported through the cognizant Program Operations Division analyst.

### **Subpart 1803.9 - Contractor Employee Whistleblower Protections**

#### **1803.900 Scope of subpart.**

This subpart applies to NASA instead of FAR subpart 3.9.

(a) 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), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(b) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor

or subcontractor of an element of the intelligence community if such disclosure—

- (1) Relates to an activity or an element of the intelligence community; or
- (2) Was discovered during contract or subcontract services provided to an element of the intelligence community.

### **1803.901 Definition.**

Abuse of authority, as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of NASA or the successful performance of a NASA contract.

### **1803.903 Policy.**

(a) Policy. 10 U.S.C. 2409 prohibits contractors or subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a NASA contract, a gross waste of NASA funds, an abuse of authority relating to a NASA contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a NASA contract (including the competition for or negotiation of a contract). Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Entities to whom disclosure may be made:

- (1) A Member of Congress or a representative of a committee of Congress.
- (2) The NASA Inspector General or any other Inspector General that has oversight over contracts awarded by or on behalf of NASA.
- (3) The Government Accountability Office.
- (4) A NASA employee responsible for contract oversight or management.
- (5) An authorized official of the Department of Justice or other law enforcement agency.
- (6) A court or grand jury.
- (7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) Disclosure clarified. An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a NASA contract shall be deemed to have made a disclosure.

(d) Contracting officer actions. A contracting officer who receives a complaint of reprisal of the type described in paragraph (a) of this section shall forward it to legal counsel and to the NASA Inspector General.

### **1803.904 Procedures for filing complaints.**

(a) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 1803.903 may file a complaint with the Inspector General of NASA.

(b) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(c) The complaint shall be signed and shall contain--

- (1) The name of the contractor;
- (2) The contract number, if known; if not known, a description reasonably sufficient to identify the contract(s) involved;
- (3) The violation of law, rule, or regulation giving rise to the disclosure;
- (4) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and
- (5) The specific nature and date of the reprisal.

### **1803.905 Procedures for investigating complaints.**

(a) Unless the NASA Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 1803.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the NASA Inspector General will investigate the complaint.

(b) If the NASA Inspector General determines that a complaint merits further investigation, the NASA Inspector General will—

- (1) Notify the complainant, the contractor alleged to have committed the violation, and the head of the Agency;
- (2) Conduct an investigation; and
- (3) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the Agency.

(c) The NASA Inspector General -

- (1) Will determine that the complaint is frivolous or will submit the report addressed in paragraph (b) of this section within 180 days after receiving the complaint; and
- (2) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, to which the person submitting the complaint agrees.

(d) The NASA Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

- (1) Made with the consent of the person alleging reprisal;
- (2) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or
- (3) Necessary to conduct an investigation of the alleged reprisal.

(e) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of



Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the NASA Inspector General, decision by the head of the Agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

### **1803.906 Remedies.**

(a) Not later than 30 days after receiving a NASA Inspector General report in accordance with 1803.905, the head of the Agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 1803.903 and shall either issue an order denying relief or shall take one or more of the following actions:

- (1) Order the contractor to take affirmative action to abate the reprisal.
- (2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- (3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the Agency.

(b) 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 1803.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

- (1) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and
- (2) 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. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(c) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the Agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(d) Any person adversely affected or aggrieved by an order issued by the head of the Agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a

circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to chapter 7 of title 5, United States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(e) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

**1803.907 Classified information.**

Nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

**1803.970 Contract clause.**

Use the clause at 1852.203-71, Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

**Subpart 1803.70--IG Hotline Posters**

**1803.7000 Policy.**

NASA requires contractors to display NASA hotline posters prepared by the NASA Office of Inspector General on those contracts specified in 1803.7001, so that employees of the contractor having knowledge of waste, fraud, or abuse, can readily identify a means to contact NASA's IG.

**1803.7001 Contract clause.**

Contracting officers must insert the clause at 1852.203-70, Display of Inspector General Hotline Posters, in solicitations and contracts expected to exceed \$5,000,000 and performed at contractor facilities in the United States.