

Subpart 3.9 - Whistleblower Protections for Contractor Employees (DHS-USCG Deviation 14-01, Revision 1)

3.900 Scope of subpart. (DEVIATION)

This subpart implements [10 U.S.C. 4701](#), which is applicable to the USCG.

(a) This subpart does not apply to-

(1) DoD and NASA; or

(2) Any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)). Sections 3.900 through [3.906](#) do not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure-

(i) Relates to an activity of an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

(b) Section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 ([Pub. L. 113–235](#)) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), is implemented in [3.909](#), which is applicable to all agencies.

(c) Section [3.907](#) of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 ([Pub. L. 111–5](#)), and applies to all contracts funded in whole or in part by that Act.

3.901 Definitions.

As used in this subpart -

"Abuse of authority" means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.

“Authorized official of the Department of Justice” means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

"Inspector General" means an Inspector General appointed under chapter 4 of title 5 of the United States Code and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned. This definition does not apply to 3.907.

“Subcontract” means any contract as defined in FAR [subpart 2.1](#) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm (including a consultant) that

furnishes supplies or services to or for a prime contractor or another subcontractor.

3.902 Classified information. (DEVIATION)

[10 U.S.C. 4701](#) does not provide any right to disclose classified information not otherwise provided by law.

3.903 Policy.

(a) (1) Contractors and subcontractors are prohibited 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—

- (i) Evidence of gross mismanagement of a Federal contract;
- (ii) A gross waste of Federal funds;
- (iii) An abuse of authority relating to a Federal contract;
- (iv) A substantial and specific danger to public health or safety; or

(v) A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract).

(2) A 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) Disclosure may be made to the following entities:

- (1) A Member of Congress or a representative of a committee of Congress.
- (2) An Inspector General.
- (3) The Government Accountability Office.
- (4) A Federal employee responsible for contract oversight or management at the relevant agency.
- (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) 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 Federal contract shall be deemed to have made a disclosure.

3.904 Complaints (DEVIATION)

3.904-1 Procedures for filing complaints. (DEVIATION)

A contractor or subcontractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector General Hotline or Whistleblower Internet sites or the complainant may directly contact the cognizant Office of the Inspector General for submission instructions. A complaint by the employee may not be brought under [10 U.S.C. 4701](#) more than three years after the date on which the alleged reprisal took place.

3.904-2 Procedures for investigating complaints. (DEVIATION)

(a) Investigation of complaints by the Inspector General will be in accordance with [10 U.S.C. 4701](#).

(b) Upon completion of the investigation, the head of the agency shall ensure that the report of findings has been provided by the Inspector General to the head of the agency and to—

(1) The complainant and any person acting on the complainant's behalf; and

(2) The contractor and/or subcontractor alleged to have committed the violation.

(c) The complainant, contractor, and/or subcontractor shall be afforded the opportunity to submit a written response to the report of findings to the head of the agency and the Office of Inspector General in a time and manner that permits the agency head to take action not later than 30 days after receiving the report, as required by 3.905–1(a).

3.905 Remedies and enforcement of orders. (DEVIATION)

3.905-1 Remedies. (DEVIATION)

(a) *Agency response to Inspector General report.* Not later than 30 days after receiving an Inspector General report in accordance with 3.904-2 (DEVIATION), the head of the agency shall-

(1) Determine whether sufficient basis exists to conclude that the contractor or subcontractor has subjected the employee who submitted the complaint to a reprisal as prohibited by [3.903](#); and

(2) Either issue an order denying relief or take one or more of the following actions:

(i) Order the contractor or subcontractor to take affirmative action to abate the reprisal.

(ii) Order the contractor or subcontractor to reinstate the complainant-employee 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.

(iii) Order the contractor or subcontractor to pay the complainant-employee 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.

(iv) Consider disciplinary or corrective action against any official of the executive agency, if appropriate.

Complainant's right to go to court

(b) *Complainant's right to go to court.* (1) Paragraph (b)(2) of this section applies if—

(i) The head of the agency issues an order denying relief; or

(ii) (A) The head of the agency has not issued an order—

(1) Within 210 days after the submission of the complaint; or

(2) Within 30 days after the expiration of an extension of time granted in accordance with [10 U.S.C. 4701](#) for the submission of the report to those stated in [3.904-2\(b\)](#) (DEVIATION); and

(B) There is no showing that such delay is due to the bad faith of the complainant.

(2) If the conditions in either paragraph (b)(1)(i) or (ii) of this section are met—

(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 or subcontractor to seek compensatory damages and other relief available under [10 U.S.C. 4701](#) in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(A) Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(B) An action under this authority may not be brought more than 2 years after the date on which remedies are deemed to have been exhausted.

(c) *Admissibility in evidence.* An Inspector General determination and an agency head order denying relief under this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to [10 U.S.C. 4701](#).

(d) *No waiver.* The rights and remedies provided for in [10 U.S.C. 4701](#) may not be waived by any agreement, policy, form, or condition of employment.

3.905-2- Enforcement of orders. (DEVIATION)

(a) Whenever a contractor or subcontractor fails to comply with an order issued under 3.905-1(a)(2)(DEVIATION), the head of the agency concerned shall file an action for

enforcement of the order in the U.S. district court for a district in which the reprisal was found to have occurred. In any action brought pursuant to this authority, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The complainant-employee 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.

(b) Any person adversely affected or aggrieved by an order issued under 3.905-1(a)(2)(DEVIATION) may obtain review of the order's conformance with [10 U.S.C. 4701](#) and its implementing regulations, in the U.S. 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. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

3.906 Contract clause. (DEVIATION)

The contracting officer shall insert the clause at [52.203-17](#), Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (DHS-USCG Class Deviation 14-01, Revision 1), in all solicitations and contracts except for applicable elements of the intelligence community (see 3.900) (DEVIATION).

* * * * *

52.203-17 Contractor Employee Whistleblower Rights (April 2024) (DHS-USCG DEVIATION 14-01, Revision 1)

As prescribed in 3.906 (DEVIATION), insert the following clause:

52.203-17 Contractor Employee Whistleblower Rights (April 2024) (DHS-USCG DEVIATION 14-01, Revision 1)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at [10 U.S.C. 4701](#) and Homeland Security Acquisition Regulation (HSAR) [3.900](#) (DEVIATION) through [3.905](#) (DEVIATION).

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [10 U.S.C. 4701](#), as described in HSAR [3.900](#) (DEVIATION) through [3.905](#) (DEVIATION).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.

(End of clause)