

Subchapter 3003.10 Contractor Code of Business Ethics and Conduct**3003.1003 Requirements.**

(a) Contractor requirements.

(3)(i) “Significant overpayment” is not limited to dollar value alone and depends on the circumstances of the overpayment as well as the amount. Because contractors are required by the Payment clauses to report and return overpayments of any amount, it is within the discretion of the suspending or debaring official to determine whether an overpayment is significant when determining whether suspension or debarment would be the appropriate outcome for failure to report such overpayment.

(ii) Upon notification or discovery of an overpayment in excess of \$10,000 or 10% of the total contract value, whichever is less and whether or not an account receivable is established for the overpayment; all overpayments involving a serious hazard to health, safety, or operational readiness; or in any other circumstances the contracting officer determines to be suspicious, the contracting officer shall:

- (A) Notify and coordinate with the Component HCA and Component legal counsel, and
- (B) Notify the Office of Inspector General.

(iii) The contracting officer’s notification must include the following information:

- (A) Contractor name;
- (B) Contractor DUNS;
- (C) Contract number;
- (D) Order number (if applicable);
- (E) Invoice number;
- (F) Invoice amount;
- (G) Amount of overpayment;
- (H) Whether there were previous overpayments on this contract;
- (I) Invoice date;
- (J) Invoice approval date;
- (K) Payment date;

- (L) COR or program point of contact;
- (M) Source of the notification (contractor, payment review, recovery audit, COR or other team member, etc.) and date;
- (N) Whether the overpayment will be recovered through offset to the existing contract or other available payments; and
- (O) Other relevant facts about the circumstances of the overpayment, including any discrepancies between the goods and services received and the invoice and corrective actions taken to prevent similar overpayments.

(b) Notification of possible contractor violation.

(2) *Agency procedures.*

(i) Upon receipt of a written notification received from the contractor under the clause at FAR 52.203-13, other notification provided by the contractor in compliance with FAR 3.1003, or notification from another Federal agency to which the contractor has made a disclosure, the contracting officer shall notify and coordinate with:

(A) The DHS Office of Inspector General, Office of Investigations;

(B) The Component HCA and Component legal counsel;

(C) If the violation applies to additional DHS contracts, the Component HCA responsible for those contracts; and

(D) If the violation applies to an order placed under another agency's contract, the contracting officer for the servicing agency contract.

(ii) Access to information obtained pursuant to the disclosure shall be limited to authorized persons and treated as For Official Use Only. In addition, any DHS employee with access to information obtained pursuant to a disclosure, to the extent permitted by law and regulation, shall safeguard and treat the information as confidential where the information has been marked "confidential" or "proprietary" by the contractor.

(iii) Actions taken pursuant to a disclosure of credible evidence of a violation will vary based on the circumstances of each case. After investigation or review, DHS may determine that the contractor has adequately addressed the violation and no further action is necessary, or consider the full range of contractual and administrative remedies available, up to and including debarment or suspension, as well as civil and criminal penalties. DHS officials should consider the severity of the violation and mitigating circumstances described in FAR 9.406-1(a) in assessing the contractor's present responsibility and, as merited, determining the appropriate remedy.

(iv) *Knowing failure to disclose.* If the contracting officer learns of a knowing failure by a contractor to disclose credible evidence of a covered violation or a significant overpayment, the contracting officer shall notify and coordinate with:

- (A) The DHS Office of Inspector General, Office of Investigations;
- (B) The Component HCA and Component legal counsel;
- (C) If the violation applies to additional DHS contracts, the Component HCA responsible for those contracts; and
- (D) If the violation applies to an order placed under another agency's contract, the contracting officer for the servicing agency contract.