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SUBCHAPTER A—GENERAL

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart M803.1—Safeguards

**M803.101 Standards of conduct.**

**M803.101-1 General.**

Department of Veterans Affairs (VA) core values and characteristics serve as the foundation for the way VA employees should interact with each other, as well as with people outside the organization, articulate what VA stands for, and underscore its moral obligation to veterans, their families, and other beneficiaries. They are intended to establish one overarching set of guidelines that apply to all VA Administrations and staff offices, confirming the values already instilled in many VA employees and enforcing their commitment to provide the best service possible to veterans, their families, and their caretakers.

**M803.101-3 Agency regulations.**

Part 0 of 38 Code of Federal Regulations (CFR) states the standards of conduct for all VA employees, including contracting officials. Subpart C of 38 CFR part 0 contains the employee financial disclosure.

**M803.101-70 Department of Veterans Affairs Designated Agency Ethics Officials.**

(a) For VA Central Office (VACO) use email [GovernmentEthics@va.gov](mailto:GovernmentEthics@va.gov) VACO's Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official.

(b) Designated Deputy Agency Ethics Official Outside VACO:

Use email address [OGCNorthEastEthics@va.gov](mailto:OGCNorthEastEthics@va.gov) to contact Deputy Agency Ethics Official servicing Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Ohio, West Virginia, Michigan and Wisconsin.

Use email address [OGCSouthEastEthics@va.gov](mailto:OGCSouthEastEthics@va.gov) to contact Deputy Agency Ethics Official servicing Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, Southern Texas and Puerto Rico.

Use email address [OGCMidwestEthics@va.gov](mailto:OGCMidwestEthics@va.gov) to contact Deputy Agency Ethics Official servicing the District of Columbia, Maryland, Indiana, Kentucky, Tennessee, Arkansas, Missouri, Illinois, Iowa, Minnesota, North Dakota, South Dakota, Nebraska and Kansas.

Use email address [OGCWestEthics@va.gov](mailto:OGCWestEthics@va.gov) to contact Deputy Agency Ethics Official servicing Northern Texas, Oklahoma, New Mexico, Arizona, Colorado, Utah, Wyoming, Montana, Idaho, Nevada, California, Oregon, Washington, Hawaii, Alaska, Guam and Philippines.

In addition, Ethics team contact information can be obtained at this website: [http://www.va.gov/OGC/docs/Ethics/VA\\_Ethics\\_Officials\\_Contacts.pdf](http://www.va.gov/OGC/docs/Ethics/VA_Ethics_Officials_Contacts.pdf)

### **M803.104 Procurement Integrity.**

#### **M803.104-4 Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information.**

*(a) Authorized access to contractor bid or proposal information, and source selection information.*

(1) The following persons may access contractor bid or proposal information and source selection information to accomplish their responsibilities in a procurement action:

(i) Requirements generators, including client agency representatives, and program and technical experts who develop statements of work, specifications or similar documents;

(ii) Contracting personnel supporting the contracting officer;

(iii) Personnel serving on technical evaluation boards or source selection evaluation boards;

(iv) Supervisors in the contracting officer's chain of command;

(v) Secretarial, clerical and administrative personnel of the contracting activity responsible for the procurement;

(vi) Small Business Technical Advisors;

(vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under [FAR 19.302](#), process applications for Certificates of Competency under [FAR 19.6](#), review subcontracting plans, or award contracts under the 8(a) program;

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(viii) Credit and finance personnel who support the contracting officer in making contractor responsibility determinations;

(ix) Contract auditors in the Office of Inspector General.

(x) Department of Labor (DOL) personnel who process preaward EEO clearances under [FAR 22.805](#);

(xi) Attorneys in the Office of General Counsel (OGC) and supporting legal counsel's offices; and

(xii) Personnel involved in contract approval.

(2) The Senior Procurement Executive may authorize additional persons access to contractor bid or proposal information or source selection information.

(3) The contracting officer may authorize access to contractor bid or proposal information or source selection information if necessary to conduct the procurement. This includes release of information to outside evaluators under [FAR 9.505-4](#) and [37.204](#). Limit access to only that information the person needs to do their job.

(b) *Procedures for marking and protecting information.* Anyone who prepares, makes, or controls contractor bid or proposal information and source selection information shall:

(1) Mark each page of the documents as prescribed in [FAR 3.104-4\(c\)](#).

(2) Provide physical security for documents in the office environment during, and after, duty hours.

(3) Secure interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope, and sealing envelopes securely.

(4) Maintain strict control over oral communications about the acquisition.

**M803.104-7 Violations or possible violations.**

(a) (1) A contracting officer who receives or obtains information of a violation or possible violation of the Procurement Integrity Act shall forward the information and documentation supporting a determination whether or not there is an impact on the procurement to the head of the contracting activity (HCA). In consultation with OGC, the HCA may make the determination and concurrence to proceed with the award as specified in [FAR 3.104-7\(a\)\(1\)](#).

(b) If the HCA, after reviewing the contracting officer's recommendation in (a)(1) of this subsection, determines that the violation or possible violation impacts the procurement, the HCA shall, take one of the following actions:

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation by reporting violations or possible violations to the VA Office of the Inspector General;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that a determination under [FAR 3.104-7\(b\)\(5\)](#) be made that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

The authority to make the determination in (b)(5) is delegated to the Senior Procurement Executive (SPE) and is further delegated to the Deputy Senior Procurement Executive (DSPE).

(c) Upon receipt of information describing a violation or possible violation of subsections 27(a), (b), (c), or (d) of the Office of Federal Procurement Policy Act of 1974 (see [FAR 3.104-3](#)), the HCA, in coordination with legal counsel, shall take appropriate action described in [FAR 3.104-7\(b\)\(1\), \(2\), \(3\), or \(4\)](#), such as:

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(d)(2)(ii)(B) The authority to make the determination in [3.104-7\(d\)\(2\)\(ii\)\(B\)](#) to void or rescind a contract for violation of the Procurement Integrity Act is delegated to the HCA.

(3) The agency Suspension and Debarment Official (SDO) is the DSPE (see 802.101).

(f) As provided in [FAR 3.104-7\(f\)](#), if the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA may authorize a contracting officer to award a contract after notifying the DSPE of the circumstances warranting such an award.

### **Subpart M803.2—Contractor Gratuities to Government Personnel**

#### **M803.203 Reporting suspected violations of the Gratuities clause.**

(a) VA employees shall report suspected violations of the [Gratuities clause, 52.203-3](#), through the contracting officer to the HCA.

(b) (1) The report shall identify the contractor and the personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation.

(2) The HCA, in coordination with the supporting legal counsel, shall confirm whether the violation is evident and, if confirmed, report the violations to the SDO.

#### **M803.204 Treatment of violations.**

The DSPE is the Suspending and Debarring Official (SDO) designated to make the determination under [FAR 3.204\(a\)](#). The SDO, with the review and concurrence of OGC, shall make the final determination of whether or not a violation has occurred and shall advise the HCA of the decision and the actions to take under [FAR 3.204\(c\)](#).

(b) The Suspension and Debarment Committee (S&D) and SDO shall follow procedures in VAAR 809.406-3 when debarment is being considered.

(c)(3) The authority to assess exemplary damages under a contract that uses money appropriated to the Department of Defense is delegated to the SDO.

**Subpart M803.3—Reports of Suspected Antitrust Violations**

**M803.303 Reporting suspected antitrust violations.**

(a) Any VA employee who suspects or has evidence of possible antitrust violations shall report the suspected violations, in accordance with [FAR 3.303](#), to the VA Office of the Inspector General and to the Deputy Senior Procurement Executive (DSPE) for review and submission to OGC. The OGC in coordination with the Office of Inspector General shall determine whether to refer suspected fraudulent or criminal matters to the U.S. Attorney General.

**Subpart M803.4—Contingent Fees**

**M803.405 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, shall report the matter to the contracting officer. The contracting officer, in accordance with HCA procedures, shall report a suspected or actual misrepresentation or violation to the Deputy Senior Procurement Executive (DSPE).

(b) Before taking any administrative action under [FAR 3.405](#), the contracting officer shall consult with OGC or supporting legal Counsel.

(4) Contracting officers shall route any referrals of suspected fraudulent or criminal matters to the Department of Justice under [FAR 3.405\(b\)\(4\)](#) through supporting legal Counsel or OGC, or the VA Office of the Inspector General, with a copy to the DSPE. Counsel or the Inspector General shall determine whether to forward the referral to the Department of Justice.

**Subpart M803.5—Other Improper Business Practices**

**M803.502 Subcontractor kickbacks.**

A VA employee who suspects a violation of the Anti-kickback Act shall report the suspected violation to the contracting officer and to OGC.

**Subpart M803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

**M803.602 Exceptions.**

The authority to authorize an exception to the policy in [FAR 3.601](#) is delegated to the Senior Procurement Executive (SPE)/Deputy Senior Procurement Executive (DSPE).

**Subpart M803.7—Voiding and Rescinding Contracts**

**M803.703 Authority.**

(a) The authority to void or rescind contracts is delegated to the HCA.

(b)(2) The authority to make the determination at FAR [3.703\(b\)\(2\)](#) is delegated to the HCA.

**M803.704 Policy.**

(a) The authority in [FAR 3.704\(c\)](#) to void and rescind contracts, and to initiate suspension or debarment proceedings is delegated to the HCA.

**M803.705 Procedures.**

(c) In making a determination required at M803.703(b), to void or rescind a contract, the HCA shall follow the procedures of [FAR 3.705](#).

**Subpart M803.8—Limitations on the Payment of Funds to Influence Federal Transactions**

**M803.804 Policy.**

A contracting officer shall forward a copy of all contractor disclosures furnished under the clause at [FAR 52.203-12](#), Limitations on Payments to Influence Certain Federal-Transactions, to the Senior Procurement Executive (SPE)/ Deputy Senior Procurement Executive (DSPE) for subsequent submission by the Secretary to Congress.

**M803.806 Processing suspected violations.**

VA employees shall report suspected violations of [31 U.S.C. 1352](#), Limitation on Use of Appropriated Funds to Influence Certain Federal

Contracting and Financial Transactions, to the SPE/DSPE and the VA Office of the Inspector General.

**Subpart M803.9—Whistleblower Protections for Contractor Employees**

**M803.905 Procedures for Investigating Complaints.**

The Deputy Senior Procurement Executive (DSPE) is the agency's designee for actions required under [FAR 3.905](#) (b), (c), (d) and (e).

**M803.906 Remedies.**

The DSPE is the agency's designee for actions required under [FAR 3.906](#).

**M803.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).**

**M803.907-3 Procedures for filing complaints.**

(c) A contracting officer who receives a complaint of reprisal of the type described in [FAR 3.907-2](#) shall forward it to the Office of Inspector General in accordance with HCA procedures.

**M803.907-6 Remedies and Enforcement Authority.**

(d) The DSPE is the agency's designee for actions required under [FAR 3.907-6](#).

**M803.908 Pilot program for enhancement of contractor employee whistleblower protections. [Reserved]**

**Subpart M803.10—Contractor Code of Business Ethics and Conduct**

**M803.1003 Requirements.**

(b) *Notification of possible contractor violation.* Upon notification of a possible contractor violation of the type described in [FAR 3.1003](#)(b), the contracting officer shall, in accordance with HCA procedures, coordinate the matter with the supporting OGC and Office of Inspector General.

(c) When using FAR clause [52.203-14](#), Display of Hotline Poster(s), the contracting officer shall insert the following information in paragraph (b)(3):

Department of Veterans Affairs  
VA Inspector General Hotline (53E)  
810 Vermont Ave., NW  
Washington, DC 20420

E-mail [vaoighotline@va.gov](mailto:vaoighotline@va.gov)  
FAX (202) 495-5861

The Contractor may download the VA Inspector General Hotline Poster from the following website: <http://www.va.gov/oig/pubs/20130625-hotline-poster.pdf>.

**Subpart M803.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

**M803.1103 Procedures.**

(a) The contracting officer shall use the “VA Contractor Non-Disclosure Agreement” in Attachment 1 when a contractor’s employees, or employees of a subcontractor of any tier, are required to sign a non-disclosure agreement in accordance with [FAR 3.1103\(a\)\(2\)\(iii\)](#).

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APPENDIX M803-A

VA CONTRACTOR NON-DISCLOSURE AGREEMENT (“AGREEMENT”)

I, \_\_\_\_\_, am an employee of, or an employee of a subcontractor to, \_\_\_\_\_ (*Business Name*), a contractor to the Department of Veterans Affairs (VA) under Contract no. \_\_\_\_\_, through Delivery Order No. (*As applicable*) \_\_\_\_\_.

**General Provision**

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of the violation of any law, rule, or regulation; of mismanagement, a gross waste of funds, or abuse of authority; or of a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.

**Specific Provisions**

I understand that, in my performance under this contract, I may have access to, or otherwise receive, sensitive or proprietary business, technical, financial, and /or source selection information belonging to the Government or other contractors. This information includes, but is not limited to cost or pricing data, government spending plan data, contractor technical proposal data, contractor trade secrets, independent government cost estimates, proposal evaluation and source selection information, negotiation strategies and contractor data presented in negotiations, contracting plans, and statements of work. I agree not to discuss, divulge, or disclose any such information or data to any person or entity, except those persons directly concerned with the performance of this contract and/or delivery order. I acknowledge that the unauthorized disclosure, use, or negligent handling of the information by me could cause irreparable injury to the owner of the information.

As used in this Agreement, sensitive information is an overarching term that also includes, but is not limited to, sensitive but unclassified information/data, protected health information, information or data marked “For Official Use Only,” and privacy information. This includes information in routine VA payroll, finance, logistics, inventory, and personnel management systems. The loss of, misuse of, unauthorized access to, or modification of this information could adversely affect the national interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a, as amended, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

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I attest that I am aware of, and will comply with, the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access as cited in the Agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand that the United States Government may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. Court costs and reasonable attorney fees incurred by the United States Government may be assessed against me if I lose such action. I understand that another business entity might file a separate claim against me if I lose such action.

Proprietary information/data and sensitive information and data will be handled in accordance with Government regulations. The Statute of Limitation is indefinite for the unauthorized release of sensitive information.

This Agreement shall continue in force for a term of one (1) year from the date upon which I last have access to the information therefrom.

In the event that I seek other employment, I will reveal to any prospective employer the continuing obligation under this Agreement prior to accepting any employment offer.

The obligations herein do not extend to information/data which:

- (a) Is in the public domain at the time of receipt or came into public domain through no act of mine;
- (b) Is disclosed with the prior written approval of the DVA designated contracting officer;
- (c) Is demonstrated to have been developed by \_\_\_\_\_  
(*Business Name*) or me independently of disclosures made hereunder; and
- (d) Is disclosed pursuant to court order, after notification to the VA designated contracting officer.

I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction.

\_\_\_\_\_  
Printed Name of Employee or Subcontractor Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Employee or Subcontractor Employee

\_\_\_\_\_  
Business Entity

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date