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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: **April 4, 2022**

AAPD 18-01 **Revision 2**

WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES

Subject Category: Acquisition Management
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces CIB/AAPD **18-01 Revision 1**

Applicable to: Existing awards; Modification required

No later than

As noted in guidance below

All applicable RFPs and new awards issued after the effective date of this AAPD.

Other

Precedes change to:

AIDAR Part(s) Appendix

USAID Automated Directives System (ADS)

Code of Federal Regulations

Federal Acquisition Regulations

No change to regulations

New or Revised Provision/Clause Provided Herein:

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Acting Director, Office of Acquisition & Assistance

I. PURPOSE:

The purpose of this AAPD is to inform Acquisition and Assistance staff that the pilot whistleblower protection program will continue, without changes, until the FAR is revised to make the program permanent. The whistleblower protection requirements will continue to apply to commercial and non-commercial items other than Personal Services Contracts. AAPD 18-01 was originally issued on April 5, 2018 for a two-year period and renewed for another two-year period on April 5, 2020 (Revision 1). This Revision 2 again renews and extends the content of the original AAPD, with no changes in policy.

This revised AAPD and the class deviation (M-OAA-DEV-FAR-22-01c) from the FAR will remain in effect until the FAR is formally revised through rulemaking (FAR Case 2017-005) or this deviation is rescinded.

Required Action:

Solicitations and Resulting Contracts:

COs must include the clause at 52.203-17 in all new solicitations and resultant contracts for noncommercial items above the simplified acquisition threshold. For commercial item awards, COs must include the clauses 52.212-4 and 52.212-5 in Attachment 1 (FAR deviation text), which incorporates clause 52.203-17 by reference.

II. BACKGROUND:

This AAPD implements the requirements in 41 U.S.C. 4712 (as amended by Public Law 114-261) to make permanent the pilot program providing whistleblower protection to contractor employees. According to the current whistleblower protection coverage in the FAR, when the pilot expires, the previous whistleblower protections were to be back in effect. However, the CAAC has directed agencies to continue using the pilot program until the FAR is revised to make the program permanent under FAR case 2017-005.

III. POINT OF CONTACT:

COs may direct questions about this AAPD to the [“Ask M/OAA Policy”](#) Group.

Attachment 1 – FAR DEVIATION TEXT

FAR 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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3.900 Scope of subpart.

(Deviation M-OAA-DEV-FAR-22-01c)

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 2409, which is applicable only to DoD, NASA, and the Coast Guard.

(a) *41 U.S.C. 4705 (in effect on or after July 1, 2013)*. Sections 3.901 through 3.906 of this subpart implement 41 U.S.C. 4705, applicable to civilian agencies other than NASA and the Coast Guard.

(b) *41 U.S.C. 4712 (in effect on and after July 1, 2013)*. Section 3.908 of this subpart implements the pilot program, applicable to civilian agencies other than NASA and the Coast Guard, except as provided in paragraph (d) of this section.

(c) 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), implemented in 3.909, applicable to all agencies.

(d) *Contracts funded by the American Recovery and Reinvestment Act*. 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.

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3.908-9 Contract clause.

(Deviation M-OAA-DEV-FAR-22-01c)

The contracting officer shall insert the clause at 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold, both for commercial items and for other than commercial items.

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PART 52 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (JAN 2017) (Deviation M-OAA-DEV-FAR-22-01c)

(a) * * *

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(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

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52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (NOV 2017)

(Deviation M-OAA-DEV-FAR-22-01c)

(a) * * *

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

___(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006), with *Alternate I* (OCT 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

___(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

___(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

___(4) 52.203-17, Contractor Employee Whistleblower Rights and Requirements To Inform Employees of Whistleblower Rights. (April 2014 (DATE) (41 U.S.C. 4712) relating to Whistleblower Protections).

The paragraphs below are renumbered

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52.301 Solicitation provisions and contract clauses (Matrix).

(Deviation M-OAA-DEV-FAR-22-01c)

PROVISION OR CLAUSE	PRESCRIBED IN		CI
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52.203-17, Contractor Employee Whistleblower Rights and Requirements To Inform Employees of Whistleblower Rights.	3.908-9	(Columns not shown) * * *	A
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