

## 3.104-7 Violations or possible violations.

(a) A *contracting officer* who receives or obtains information of a violation or possible violation of 41 U.S.C. 2102, 2103, or 2104 (see 3.104-3) *must* determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the *contracting officer* concludes that there is no impact on the *procurement*, the *contracting officer must* forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the *procurement* to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the *contracting officer may* proceed with the *procurement*.

(ii) If that individual does not concur, the individual *must* promptly forward the information and documentation to the HCA and advise the *contracting officer* to withhold award.

(2) If the *contracting officer* concludes that the violation or possible violation impacts the *procurement*, the *contracting officer must* promptly forward the information to the HCA.

(b) The HCA *must* review all information available and, in accordance with agency procedures, take appropriate action, 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 41 U.S.C. 2105, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an *offeror*, contractor, or person has violated 41 U.S.C. chapter 21, the HCA *may* consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that 41 U.S.C. chapter 21 has been violated, the HCA *may* direct the *contracting officer* to-

(1) If a contract has not been awarded-

(i) Cancel the *procurement*;

(ii) Disqualify an *offeror*; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded-

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203-10,

Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which-

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of 41 U.S.C. 2102 for the purpose of either-

(1) Exchanging the information covered by the subsections for anything of value; or

(2) Obtaining or giving anyone a competitive advantage in the award of a *Federal agency procurement* contract; or

(B) The *agency head* has determined, based upon a *preponderance of the evidence*, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under 41 U.S.C. 2105(a); or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency *suspending and debarring official*.

(e) The HCA *should* recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(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, in accordance with agency procedures, *may* authorize the *contracting officer* to award the contract or execute the *contract modification* after notifying the *agency head*.

(g) The HCA *may* delegate his or her authority under this subsection to an individual at least one organizational level above the *contracting officer* and of General Officer, Flag, Senior Executive Service, or equivalent rank.

**Parent topic:** 3.104 Procurement integrity.