**DFARS Case 2021-D018**

Prohibition on Award to Contractors That Require Certain

**Nondisclosure Agreements**

**Final Rule**

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

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**SUBPART 203.9—WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES**

**203.900 Scope of subpart.**

~~This subpart applies to DoD instead of FAR subpart 3.9.~~**[This subpart implements 10 U.S.C. 2409 and section 883 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).]**

(~~1~~**[a)(i]**) ~~This subpart implements~~ 10 U.S.C. 2409 **[provides DoD whistleblower protection policies and procedures for contractor employees. Use sections 203.901 through 203.906 of this subpart in lieu of FAR sections 3.901 through 3.906 to implement 10 U.S.C. 2409.]**~~as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239)~~.

(~~2~~**[ii]**) ~~This subpart~~ **[10 U.S.C. 2409 ]**does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). ~~This subpart~~ **[Sections 203.901 through 203.906 do]**~~does~~ 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~~**[A]**) Relates to an activity or an element of the intelligence community; or

(~~ii~~**[B]**) Was discovered during contract or subcontract services provided to an element of the intelligence community.

**[(c) Section 883 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) prohibits the award of a DoD contract to contractors that require their employees to sign internal confidentiality agreements or statements that would prohibit or otherwise restrict such employees from lawfully reporting waste, fraud, or abuse related to the performance of a DoD contract to a designated investigative or law enforcement representative within DoD authorized to receive such information.]**

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**[203.909 Prohibition on providing funds to an entity that requires certain internal confidentiality agreements or statements.**

**203.909-3 Solicitation provision and contract clause.**

**Use the provision at FAR 52.203-18, Prohibition on Contracting with Entities That Require Certain Internal Confidentiality Agreements or Statements—Representation, and the clause at FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements, prescribed at FAR 3.909-3 to implement section 883 of the National Defense Authorization Act for Fiscal Year 2021.]**

**203.970 Contract clause.**

Use the clause at [252.203-7002](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7002), Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts**[, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items]**.

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**PART 212-ACQUISITION OF COMMERCIAL ITEMS**

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**SUBPART 212.3--SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS**

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

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(f)\* \* \*

(i) *Part 203—Improper Business Practices and Personal Conflicts of Interest.*

(A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(B) Use the clause at [252.203-7000](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7000), Requirements Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4](https://www.acq.osd.mil/dpap/dars/dfars/html/current/203_1.htm#203.171-4)(a), to comply with section 847 of Pub. L. 110-181.

(C) **[Use the clause at 252.203-7002, Requirement to Inform Employees of Whistleblower Rights, as prescribed in 203.970, to comply with 10 U.S.C. 2409.]**

(~~C~~**[D]**) Use the clause at [252.203-7003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7003), Agency Office of the Inspector General, as prescribed in [203.1004](https://www.acq.osd.mil/dpap/dars/dfars/html/current/203_10.htm#203.1004)(a), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

(~~D~~**[E]**) Use the provision at [252.203-7005](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7005), Representation Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4](https://www.acq.osd.mil/dpap/dars/dfars/html/current/203_1.htm#203.171-4)(b).

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