

Subpart 3.2 - Contractor Gratuities to Government Personnel

Parent topic: [Part 3 - Improper Business Practices and Personal Conflicts of Interest](#)

3.201 Applicability.

This subpart applies to all *executive agencies*, except that coverage concerning exemplary damages applies only to the Department of Defense ([10 U.S.C. 4651](#)).

3.202 Contract clause.

The *contracting officer* shall insert the clause at [52.203-3](#), Gratuities, in *solicitations* and contracts with a value exceeding the *simplified acquisition threshold*, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

3.203 Reporting suspected violations of the Gratuities clause.

Agency personnel *shall* report suspected violations of the Gratuities clause to the *contracting officer* or other designated official in accordance with agency procedures. The agency reporting procedures *shall* be published as an implementation of this section [3.203](#) and *shall* clearly specify-

- (a) What to report and how to report it; and
- (b) The channels through which reports *must* pass, including the function and authority of each official designated to review them.

3.204 Treatment of violations.

- (a) Before taking any action against a contractor, the *agency head* or a designee *shall* determine, after notice and hearing under agency procedures, whether the contractor, its agent, or another representative, under a contract containing the Gratuities clause-
 - (1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended by the gratuity to obtain a contract or favorable treatment under a contract (intent generally *must* be inferred).
- (b) Agency procedures *shall* afford the contractor an opportunity to appear with counsel, submit

documentary evidence, present witnesses, and confront any person the agency presents. The procedures *should* be as informal as practicable, consistent with principles of fundamental fairness.

(c) When the *agency head* or designee determines that a violation has occurred, the Government *may*-

(1) Terminate the contractor's right to proceed;

(2) Initiate *debarment* or *suspension* measures as set forth in [subpart 9.4](#); and

(3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.