

# 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.