



Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Procedural Reform Recommendation for the U.S. Marshals Service

PROCEDURAL REFORM RECOMMENDATION FOR THE U.S. MARSHALS SERVICE

SYNOPSIS

During a recent investigation, the Department of Justice (DOJ) Office of the Inspector General (OIG) determined that a United States Marshals Service (USMS) contractor maintained an internal written policy that was inconsistent with statutory whistleblower protections for employees of Federal contractors found in 41 U.S.C. § 4712, and that the USMS contract itself also contained a term inconsistent with such protections. Accordingly, the OIG recommends that the USMS take steps to ensure that its contractors are aware of the whistleblower protections that federal law provides, and that those contractors take appropriate actions to conform their internal policies to comply with federal law. The OIG further recommends that the USMS examine its contracts to ensure that the contracts include no terms that are inconsistent with federal whistleblower protections.

DETAILS

The Issue

In the context of an investigation into a complaint of reprisal by former employees of a USMS contractor in which the claims of reprisal were not substantiated, the OIG concluded that the contractor's written policies on chain of command reporting were inconsistent with statutory whistleblower protections for employees of contractors found in 41 U.S.C. § 4712. Specifically, Section 4712 protects, among others, employees of a U.S. government contractor or subcontractor from reprisal for disclosures of wrongdoing to certain government officials. However, the contractor's internal policy, and the USMS contract itself, prohibited any discussions with government officials outside of the employee's chain of command without prior authorization. Management officials for the contractor and a USMS witness told the OIG during the course of our investigation that the former employees acted inappropriately and violated the contractor's policies and performance standards under the contract when they made disclosures outside their chain of command and directly to USMS management.

Although the OIG did not substantiate reprisal in this investigation because the OIG determined that the former employees were removed for misconduct unrelated to their disclosures, the OIG found that the contractor's policy prohibiting any discussions with government officials outside of the contractor's chain of command without prior authorization could chill whistleblowing, and violates the whistleblower protections in Section 4712. Any similar term in a USMS contract would have the same negative effect.

The Statute

Under Title 41, United States Code, Section 4712, it is illegal for an employee of a Federal contractor, subcontractor, grantee, or subgrantee or personal services contractor to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure.

The law protects an employee of a Federal contractor, subcontractor, grantee, or subgrantee or personal services contractor who discloses information that the individual reasonably believes is evidence of:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

To be protected under Section 4712, a disclosure must be made to one of the following:

- A Member of Congress, or a representative of a committee of Congress;
- The OIG;
- The Government Accountability Office (GAO);
- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- An authorized official of the DOJ or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

When a contractor implements internal policies, or a government contract includes contractual terms, that impose restrictions on the ability of a contractor employee to make a disclosure to any of these individuals or entities, such policies or terms violate Section 4712. The rights and remedies of Section 4712 may not be waived by any agreement, policy, form, or condition of employment. Moreover, Section 4712(d) requires that the head of each executive agency ensure that contractors, subcontractors, and grantees of the agency inform their employees in writing of the rights and remedies provided by Section 4712.

RECOMMENDATIONS

The OIG recommends that the USMS take steps to ensure that its contractors are aware of the whistleblower protections that federal law provides for employees for Federal contractors, and that its contractors take appropriate actions to conform their internal policies to comply with federal law. Specifically, the USMS should ensure that its contractors, subcontractors, and grantees inform their employees in writing of the rights and remedies provided by Section 4712, as required by the law. The OIG further recommends that the USMS examine its contracts to ensure that the contracts include no terms that are inconsistent with federal whistleblower protections. Further information about the applicable law and its requirements is available in a publicly available brochure prepared by the OIG, <https://oig.justice.gov/hotline/docs/NDAA-brochure.pdf>.



The Department of Justice Office of the Inspector General (DOJ OIG) is a statutorily created independent entity whose mission is to detect and deter waste, fraud, abuse, and misconduct in the Department of Justice, and to promote economy and efficiency in the Department's operations.

To report allegations of waste, fraud, abuse, or misconduct regarding DOJ programs, employees, contractors, grants, or contracts please visit or call the **DOJ OIG Hotline** at oig.justice.gov/hotline or (800) 869-4499.

U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL

950 Pennsylvania Avenue, Northwest
Suite 4760
Washington, DC 20530-0001

Website
oig.justice.gov

Twitter
[@JusticeOIG](https://twitter.com/JusticeOIG)

YouTube
[JusticeOIG](https://www.youtube.com/JusticeOIG)

Also at Oversight.gov