

Federal Housing Finance Agency  
Office of Inspector General



**FHFA Incorporated the FAR's  
Whistleblower Protection Language  
for Contractor Employees in  
Selected Open Market Solicitations  
and Awards**

Compliance Review • COM-2024-003 • February 8, 2024



COM-2024-003

February 8,  
2024

## Executive Summary

Federal law provides whistleblower protections for contractor employees by prohibiting federal contractors from discharging, demoting, or otherwise discriminating against any of their workers as a reprisal for making certain disclosures that the worker reasonably believes is evidence of gross waste, gross mismanagement, abuse of authority, or a violation of law, rule, or regulation related to a federal contract. The Federal Acquisition Regulation (FAR), which generally governs federal agencies' purchases of goods and services, prescribes mandatory clauses implementing these statutory whistleblower protections for solicitations and awards.

The Federal Housing Finance Agency (FHFA or Agency) buys goods and services to facilitate its operations and maintains that it follows the FAR on a voluntary basis except for flexibilities set forth in Agency policies and procedures. However, our 2021 audit found that FHFA did not include a FAR whistleblower protection clause in 24 of 26 contracts (92%) that exceeded a threshold dollar amount (also known as the "simplified acquisition threshold," "SAT" or "Threshold"). We recommended that FHFA include this clause in all "open market" solicitations (i.e., those seeking items not in the Federal Supply Schedule) and awards that exceed the Threshold.

FHFA agreed with our recommendation. In response, during weekly meetings for several months in 2021, a standing agenda topic was added to remind its contracting officers of the requirement to include the applicable FAR whistleblower protection clause in all open market solicitations and in all awards that exceed the Threshold. Based on FHFA's corrective actions, we closed the recommendation in January 2022.

We initiated this compliance review to determine whether FHFA included the FAR whistleblower protection clause in its open market solicitations and in its awards above the Threshold. We requested that FHFA provide solicitations and contracts above the Threshold awarded from January 11, 2022, through July 11, 2023. We also requested that FHFA exclude solicitations and awards made using government-wide acquisition contracts that are administered by other agencies, and those where OIG received goods or services. FHFA provided 15 contracts to test, 12 of which were preceded by open market solicitations. We found that FHFA included the requisite clause in all 12 open market solicitations and in all 15 awards above the Threshold that were tested from the review period.

This report was prepared by Crystal Tsang, Senior Compliance Specialist, and Patrice Wilson, Senior Investigative Evaluator. We appreciate the



COM-2024-003

February 8,  
2024

cooperation of FHFA staff, as well as the assistance of all those who contributed to this report's preparation.

This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on our website, [www.fhfaog.gov](http://www.fhfaog.gov).

/s/

Brian W. Baker  
Deputy Inspector General,  
Office of Compliance

**TABLE OF CONTENTS** .....

EXECUTIVE SUMMARY .....2

ABBREVIATIONS .....5

BACKGROUND .....6

    Federal Statutes and Regulations Contain Protections for Whistleblowing by  
    Contractor Employees .....6

    Our 2021 Audit Found that FHFA Did Not Include the Requisite FAR Clause.....7

    FHFA Reported Having Taken Several Corrective Actions .....7

FINDINGS.....8

    FHFA Included FAR Clause 52.203-17 in Open Market Solicitations and Awards  
    that Exceeded the Threshold.....8

CONCLUSION.....8

OBJECTIVE, SCOPE, AND METHODOLOGY .....9

ADDITIONAL INFORMATION AND COPIES .....10

## ABBREVIATIONS .....

FAR	Federal Acquisition Regulation
FHFA or Agency	Federal Housing Finance Agency
OIG	FHFA Office of Inspector General
Review Period	January 11, 2022 – July 11, 2023
SAT or Threshold	Simplified Acquisition Threshold

## BACKGROUND .....

### Federal Statutes and Regulations Contain Protections for Whistleblowing by Contractor Employees

Federal law provides whistleblower protections for contractor employees.<sup>1</sup> Federal contractors are prohibited from discharging, demoting, or otherwise discriminating against any of their employees as a reprisal for disclosing certain information that the employee reasonably believes is evidence of gross waste, gross mismanagement, abuse of authority, or a violation of law, rule, or regulation related to a federal contract.

The FAR prescribes clauses implementing these statutory whistleblower protections for contractor employees to be included both in solicitations and in awards that exceed the Threshold.<sup>2</sup> One of these mandatory clauses is FAR clause 52.203-17, which references the statute prescribing whistleblower rights and remedies afforded to contractor employees, and among other things, requires federal contractors to inform their employees of those protections in writing.<sup>3</sup>

Like other agencies, FHFA buys goods and services to facilitate its operations. As an independent, non-appropriated agency, FHFA is not subject to the FAR;<sup>4</sup> nevertheless, FHFA states that it follows the FAR on a voluntary basis.<sup>5</sup>

FHFA's procurement activities generally involve several steps, including solicitation and award. In the solicitation phase, the Agency identifies potential vendors for the goods or services it requires, issues a solicitation to obtain proposals or quotes from such vendors, and then receives proposals or quotes. During the award phase, FHFA selects a vendor and signs the contract.

---

<sup>1</sup> 41 U.S.C. § 4712.

<sup>2</sup> FHFA previously adopted the Threshold of \$250,000 on August 31, 2020, subject to certain exceptions. In November 2023 the FAR was updated to implement the statutory whistleblower protections for contractor employees for all solicitations and awards, whether above or below the Threshold.

<sup>3</sup> We note that certain other Agencies, including elements of the intelligence community, are exempted from this FAR provision.

<sup>4</sup> FHFA has taken the position that it is exempt from the FAR because it receives its funding by assessments imposed on its regulated entities, rather than taxpayer funds obtained through the regular appropriations process.

<sup>5</sup> FHFA states that it follows the FAR except for certain flexibilities, not applicable here, set forth in Agency policies and procedures.

In November 2017, the Agency’s Senior Procurement Executive directed FHFA’s contracting officers to include FAR clause 52.203-17, and thereby to implement whistleblower protections for contractor employees, in all open market solicitations<sup>6</sup> and in all awards that exceeded the Threshold.

## **Our 2021 Audit Found that FHFA Did Not Include the Requisite FAR Clause**

In a 2021 audit, we reviewed 26 contracts awarded by FHFA from October 1, 2018, to April 30, 2021, to determine whether FHFA had included in each contract the FAR clause protecting whistleblowing by contractor employees (FAR clause 52.203-17).<sup>7</sup> We found that the Agency failed to include the requisite FAR clause in 24 of 26 contracts (92%).

We recommended that FHFA “[r]einforce to [contracting officers], through training and supervision, the requirement in the updated peer review<sup>8</sup> checklists and in the revised [Acquisition Policy Manual (APM)] to include FAR clause 52.203-17 in all open market solicitations and awards that exceed the [Threshold].” The Agency accepted the recommendation.

## **FHFA Reported Having Taken Several Corrective Actions**

The Agency committed to include the requisite FAR clause in its open market solicitations and awards that exceeded the Threshold. By memorandum dated December 10, 2021, FHFA’s Chief Financial Officer reported that the Agency had updated its peer review checklists and the Acquisition Policy Manual to reinforce that contracting officers shall include the FAR clause in all open market solicitations and awards that exceed the Threshold.

In addition, a standing agenda topic was added in the Contracting Operations’ weekly staff meetings between September 28 and December 7, 2021, to remind contracting officers of OIG’s recommendation and the requirement to include FAR clause 52.203-17 in all open market solicitations and awards that exceed the Threshold.

Based on FHFA’s corrective actions, we closed the recommendation on January 11, 2022.

---

<sup>6</sup> Open market solicitations are offers to purchase goods and services not included in the Federal Supply Schedule, which is a government-wide contract providing access to millions of products and services.

<sup>7</sup> Excluded from the 2021 audit’s scope was any of FHFA’s solicitations and awards over the Threshold that used government-wide acquisition contracts, which are administered by agencies other than FHFA. The 2021 audit also excluded solicitations and awards where OIG received goods or services.

<sup>8</sup> Peer reviews are conducted by FHFA contracting officers for solicitations and awards meeting certain criteria (e.g., open market solicitation and awards estimated to have a total contract value greater than \$500,000) and are intended to improve the completeness and quality of contract files.

## FINDINGS .....

We initiated this compliance review to determine whether FHFA included the requisite FAR clause in its open market solicitations and in awards that exceeded the Threshold. We requested that FHFA provide solicitations and contracts above the Threshold awarded from January 11, 2022, through July 11, 2023.<sup>9</sup> FHFA provided 15 above-Threshold contracts to test, 12 of which were preceded by open market solicitations.<sup>10</sup>

### **FHFA Included FAR Clause 52.203-17 in Open Market Solicitations and Awards that Exceeded the Threshold**

We found that 12 of the 15 above-Threshold contracts we reviewed had been preceded by open market solicitations, and that all 12 of those solicitations included the requisite FAR clause implementing statutory protections for contractor employees who engage in whistleblowing. We also found that all 15 awards included the requisite FAR clause in the contract.

## CONCLUSION .....

For the period under review, FHFA complied with our 2021 recommendation to include in all open market solicitations and awards above the Threshold the requisite FAR clause implementing statutory protections for contractor employees who engage in whistleblowing.

---

<sup>9</sup> We requested FHFA exclude solicitations and awards over the Threshold that used government-wide acquisition contracts and those where OIG received goods or services.

<sup>10</sup> When asked to explain why it had not issued solicitations for 3 of the 15 above-Threshold contracts issued during the review period, FHFA stated that for two of them, it did not issue solicitations because both of those procurements were sole source actions (i.e., only one available vendor was considered). For the third, FHFA stated that a solicitation was not issued and the contract was for a service provided to the Agency at no additional cost. OIG takes no position on the validity of FHFA's representations as to why it did not issue solicitations in these three instances.



## OBJECTIVE, SCOPE, AND METHODOLOGY .....

We initiated this compliance review in September 2023 to determine whether FHFA included FAR clause 52.203-17 related to whistleblower rights and protections for contractor employees in its open market solicitations and awards that exceeded the Threshold from January 11, 2022, to July 11, 2023.

We requested that FHFA exclude solicitations and awards made by FHFA using government-wide acquisition contracts, which are administered by other agencies. We also requested that FHFA exclude solicitations and awards where OIG received goods or services. We were provided open market solicitations and awards that exceeded the Threshold, which we reviewed to determine whether FAR clause 52.203.17 was included.

We conducted our compliance review from September 2023 through November 2023 under the authority of the Inspector General Act of 1978, as amended and in accordance with the *Quality Standards for Inspection and Evaluation* (December 2020), which were promulgated by the Council of the Inspectors General on Integrity and Efficiency.

We provided a draft of this report to FHFA for its review and comment.

## ADDITIONAL INFORMATION AND COPIES.....

For additional copies of this report:

- Call: 202-730-0880
- Fax: 202-318-0239
- Visit: [www.fhfaoig.gov](http://www.fhfaoig.gov)

To report potential fraud, waste, abuse, mismanagement, or any other kind of criminal or noncriminal misconduct relative to FHFA's programs or operations:

- Call: 1-800-793-7724
- Fax: 202-318-0358
- Visit: [www.fhfaoig.gov/ReportFraud](http://www.fhfaoig.gov/ReportFraud)
- Write:

FHFA Office of Inspector General  
Attn: Office of Investigations – Hotline  
400 Seventh Street SW  
Washington, DC 20219