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Office of Inspector General
United States Department of State

ESP-23-03

Office of Evaluations and Special Projects

September 2023

Evaluation of Whistleblower Protection Notification to Contractor and Grantee Employees at the Department of State and U.S. Agency for Global Media

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HIGHLIGHTS

Office of Inspector General
United States Department of State

ESP-23-03

What OIG Reviewed

Federal law provides statutory protections for employees of federal contractors and grantees who engage in whistleblowing. The law also requires agencies to ensure that contractors and grantees of the agency inform their employees in writing of the employees' whistleblower rights and remedies and to insert a clause communicating this duty in certain contracts. The Department of State, Office of Inspector General (OIG) initiated this evaluation to determine the extent to which the Department of State (Department) and the U.S. Agency for Global Media (USAGM) are communicating statutory whistleblower notification requirements to their contractors and grantees.

What OIG Recommends

OIG made six recommendations to both the Department and USAGM to amend contracts that OIG found were missing required whistleblower language. The recommendations also suggest use of a more explicit clause regarding notification of whistleblower protections in future contracts, and development of a mechanism to ensure that grantees know of their duty to inform employees of whistleblower protections.

September 2023

OFFICE OF EVALUATIONS AND SPECIAL PROJECTS

Evaluation of Whistleblower Protection Notification to Contractor and Grantee Employees at the Department of State and U.S. Agency for Global Media

What OIG Found

OIG drew a sample of both Department and USAGM contracts and reviewed them to determine whether they included the required clause regarding informing employees of whistleblower protection. OIG found that nearly 25 percent of the Department contracts lacked the required clause. USAGM included the required clause in 90 percent of contracts reviewed.

OIG also found that neither agency has a method of explicitly ensuring that grantees inform their employees of whistleblower protections. The Department relies on generic statements in grant documents that require compliance with all relevant laws and regulations, while USAGM includes some limited whistleblower material in its annual grantee training.

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OBJECTIVE

Federal contractor and grantee employees play an important role in supporting Inspectors General (IGs) in their mission to detect and prevent waste, fraud, abuse, and mismanagement. Contractor and grantee personnel, who carry out activities under federal awards, are particularly well-positioned to alert IGs of alleged wrongdoing, given the specific program and operational insight they possess.

In January 2013, Congress enacted, under the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, a pilot program providing whistleblower protections to employees of federal contractors, subcontractors, and grantees.¹ Congress then expanded the protected class of individuals to include both federal subgrantees and personal services contractors and made the pilot program permanent in December 2016.²

As part of this whistleblower protection law, Congress required that the head of each executive agency ensure that contractors and grantees of the agency inform their employees in writing of the employees' whistleblower rights and remedies.³ In March 2021, the Project On Government Oversight (POGO) expressed concern to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) regarding federal agencies' failure to comply with statutory whistleblower protections notification requirements and urged IGs to conduct reviews of their agencies' compliance with this mandatory provision.

Accordingly, in July 2022, the Department of State (Department), Office of Inspector General (OIG) began this evaluation to examine the extent to which the two agencies for which it has oversight responsibility, the Department and U.S. Agency for Global Media (USAGM), are complying with statutory whistleblower notification requirements to its contractors and grantees.

BACKGROUND

The Department and USAGM award thousands of contracts and grants to firms and individuals. For FY 2021, the Department issued nearly 54,000 initial contracts and contract modifications while USAGM issued about 1,500. Additionally, in FY 2021, the Department awarded more than 12,000 new grants and grant modifications. USAGM, for the same period, provided grant funding to four entities.⁴ Each agency relies on a significant number of contractor and grantee employees to fulfill these awards. These employees are legally protected from reprisal, such as demotion or firing, for whistleblowing. Both the Department and USAGM are responsible for

¹ Pub. L. No. 112-239, § 827 (Jan. 2, 2013) (codified at 41 U.S.C. § 4712).

² Pub. L. No. 114-261, § 1(a) (Dec. 14, 2016). The entire class of protected individuals will be known as contractor and/or grantee throughout the report.

³ 41 U.S.C. § 4712(d).

⁴ USAGM has four grantees: Middle East Broadcasting Networks (MBN), Open Technology Fund (OTF), Radio Free Asia (RFA), and Radio Free Europe/Radio Liberty (RFE/RL).

ensuring statutory whistleblower notification requirements are communicated to this protected workforce.

Specifically, the whistleblower protection statute safeguards employees of federal contractors and grantees from retaliation (reprisal) for disclosing information that they reasonably believe is evidence of any of the following:

- Gross mismanagement of a federal contract or grant.
- Gross waste of federal funds.
- Abuse of authority relating to a federal contract or grant.
- Substantial and specific danger to public health or safety.
- Violation of law, rule, or regulation related to a federal contract or grant.

It is illegal for a federal contractor or grantee employee to be discharged, demoted, or otherwise retaliated against for making a protected whistleblower disclosure.⁵ A covered individual can file a complaint with an IG that alleges he or she was subjected to reprisal for making a protected disclosure.

The whistleblower protection statute includes a provision requiring every agency to “ensure that contractors, subcontractors, grantees, and subgrantees of the agency inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.”⁶ The Federal Acquisition Regulation (FAR), which is the primary regulation for use by all executive agencies in their acquisition of supplies and services, provides additional implementing guidance as to this provision in relation to contracts. For federal grants management, governing principles related to the notification provision under the whistleblower protection statute are directed through the Office of Management and Budget’s (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).⁷

The FAR instructs contracting officers to insert a clause requiring the contractor to notify its employees in writing of their whistleblower protections for all contracts that exceed the simplified acquisition threshold (SAT).⁸ This clause, reprinted in 48 C.F.R. § 52.203-17 (FAR 52.203-17), states, “The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.” It also requires the contractor to insert a similar clause in any subcontracts over the

⁵ A protected disclosure constitutes the reporting of alleged wrongdoing by a contractor or grantee to a member of Congress, or a representative of a committee of Congress, an IG, the U.S. Government Accountability Office, a federal employee responsible for contract or grant oversight or management at the relevant agency, an authorized official of the Department of Justice 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.

⁶ 41 U.S.C. § 4712(d).

⁷ 2 C.F.R. § 200.

⁸ 48 C.F.R. § 3.908-9. The simplified acquisition threshold is currently \$250,000. 48 C.F.R. § 2.101.

SAT. Separately, for commercial items, the FAR requires the contracting officer to insert a less explicit clause that simply states, “The Contractor agrees to comply with . . . 41 U.S.C. § 4712.”⁹ In July 2017, the Civilian Agency Acquisition Council (CAAC) authorized agencies to use the more explicit clause in FAR 52.203-17 for both commercial and noncommercial items until such time as the FAR is updated to make the clause mandatory for both types of items.¹⁰

The Uniform Guidance, however, does not instruct grants officers to insert a whistleblower notification clause into a grant agreement like the FAR does for contracts. For grants, there are no prescribed means for notifying grantees of whistleblower protections; the Uniform Guidance simply states that grantees are “responsible for complying with all requirements of the Federal award [including] statutory requirements for whistleblower protections.”¹¹

In 2017, the U.S. Government Accountability Office (GAO) examined whether four federal agencies, including the Department, inserted the required FAR whistleblower notification clause into applicable contracts.¹² GAO found that each of the reviewed agencies lacked processes to ensure the mandated FAR clause was inserted into contracts and demonstrated how several contracts, including one from the Department, did not include the required notification clause.

In response to the report, the Department stated it would ensure the whistleblower protection language required under clause FAR 52.203-17 was inserted in new contracts. Furthermore, in support of CAAC’s 2017 guidance, the Department issued a Procurement Information Bulletin (PIB) to its contracting officers in 2018 that requires FAR 52.203-17 language be inserted into all solicitations and contracts that exceeded the SAT, for both commercial and noncommercial items.¹³

⁹ 48 C.F.R. § 52.212-4

¹⁰ U.S. General Services Administration (GSA), Memorandum for Civilian Agencies, Subject: Class Deviation from the Federal Acquisition Regulation (FAR) to Implement an Act to Enhance Whistleblower Protection for Contractor Employees (July 5, 2017).

¹¹ 2 C.F.R. § 200.300(b).

¹² GAO, *Contractor Whistleblower Protections Pilot Program: Improvements Needed to Ensure Effective Implementation*, GAO-17-227 (March 2017).

¹³ Office of the Procurement Executive Procurement Information Bulletin (PIB) 2019-01 SUBJECT: Class Deviation – To Implement an Act to Enhance Whistleblower Protection for Contractor Employees.

FINDINGS

Department and USAGM Contracts Did Not Always Include Required Whistleblower Protection Clause

The Department Did Not Include Requisite Whistleblower Clauses in Nearly 25 Percent of Reviewed Contracts

In order to analyze whether the Department was properly inserting the required whistleblower notification clause into its contracts, OIG randomly selected 10 FY 2021 contracts for review from the top 5 Department bureaus by total number of contracts: the Bureau of Diplomatic Security (DS), the Bureau of International Narcotics and Law Enforcement Affairs (INL), the Bureau of Information Resource Management (IRM), the Bureau of Near Eastern Affairs (NEA), and the Bureau of Overseas Building Operations (OBO).¹⁴ The sampled contracts exceeded the SAT for which a notification clause would be required. The contracts reviewed ranged from a Fixed Price contract totaling \$251,150 to an Indefinite Delivery/Indefinite Quantity contract with a ceiling amount of \$250 million over the life of the agreement.

OIG found that of the 49 sampled contracts, 23 contained the more explicit clause requiring contractors to notify their employees of their whistleblower rights, while 14 contained only the less explicit clause for commercial items.¹⁵ Twelve contracts contained neither clause. Even though the 14 contracts for commercial items that contained only the less explicit clause complied with the FAR, they did not comply with the Department's internal guidance, which directs contracting officers to insert FAR 52.203-17 into all solicitations and contracts that exceed the SAT, for both commercial and noncommercial items.¹⁶ Table 1 illustrates OIG's analysis of the sampled contracts.

¹⁴ The Bureau of Information Resource Management (IRM) only had nine contracts that met the selection criteria.

¹⁵ In some cases, the clauses were included by reference. That is, the contract stated that the contractor was required to comply with the FAR section containing the clause.

¹⁶ Office of the Procurement Executive Procurement Information Bulletin (PIB) 2019-01 SUBJECT: Class Deviation – To Implement an Act to Enhance Whistleblower Protection for Contractor Employees.

Table 1: Presence of Whistleblower Clause in Reviewed Department Contracts

Bureau	Sample Size	Contracts with 52.203-17 Clause	Contracts with 52.212-4 Commercial Items Clause	Contracts with Both Clauses Included	Contracts with Neither Clause Included
DS	10	4 ^a	5	1	2
INL	10	3 ^a	5	1	3
IRM	9	0	5	0	4
NEA	10	8	2	1	1
OBO	10	8	0	0	2
Total	49	23	17	3	12

Source: OIG analysis of Department contracts.

^a The Department modified two contracts to include FAR 52.203-17 after OIG requested copies of the agreements.

OIG found that Department contracting officers do not use standardized contract writing software. Instead, contract templates are stored as Microsoft Word files and then filled in according to the needs and terms of contracts.

An important component of a fraud-reporting system is communicating to whistleblowers how to report wrongdoing and what protections exist. Failure by the Department to include the whistleblower protection clause in all contracts in accordance with the FAR and Department guidance may result in contractors not notifying employees of their whistleblower rights. Without this information, employees of federal contractors may be less likely to report any waste, fraud, abuse, or mismanagement that they witness.

USAGM Included a Whistleblower Clause in Ninety Percent of Reviewed Contracts

To determine whether USAGM properly inserted the mandatory whistleblower notification clause into its contracts, OIG selected 30 FY 2021 USAGM issued contracts valued above the SAT for which a notification clause would be required. Contract types and values ranged from a Firm Fixed Price contract, totaling \$250,600, to a Blanket Purchase Agreement with a maximum value of \$5 million. USAGM told OIG that the vast majority of USAGM contract actions were commercial.

OIG found that of the 30 sampled contracts, 3 contained the more explicit clause requiring contractors to notify their employees of their whistleblower rights, while 24 contained the less explicit clause for commercial items. Three contracts contained neither clause. Table 2 illustrates OIG's analysis of the sampled contracts.

Table 2: Presence of Whistleblower Clause in Reviewed USAGM Contracts

Entity	Sample Size	Contracts with 52.203-17 Clause	Contracts with 52.212-4 Commercial Items Clause	Contracts with Neither Clause Included
International Broadcasting Bureau (IBB)	2	0	2	0
Office of Cuba Broadcasting (OCB)	1	1	0	0
Technology, Services & Innovation (TSI)	23	1	19	3
Voice of America (VOA)	4	1	3	0
Total	30	3	24	3

Source: OIG analysis of USAGM contracts.

While the FAR commercial clause used in the majority of reviewed USAGM contracts meets the baseline requirement for whistleblower provisions, the more explicit FAR 52.203-17 clause provides greater clarity in directing the contractor to inform its employees of their whistleblower rights and protections. Without this more explicit clause, employees of USAGM contractors may not learn of their whistleblower rights, thus reducing the likelihood that those who witness waste, fraud, abuse, or mismanagement will come forward.

Department and USAGM Lack Specific Mechanisms to Communicate Whistleblower Protections to Grantees

The Department Does Not Explicitly Require Its Grantees to Ensure That Their Employees Are Notified of Whistleblower Protections

With respect to grants, as noted above, the law requires agencies to ensure that grantees and subgrantees inform their employees in writing of whistleblower rights and remedies. Uniform Guidance, unlike the FAR, does not direct agencies to insert a whistleblower notification clause into grant agreements. Department officials told OIG its grant documentation did not include the whistleblower notification clause. OIG reviewed a sample of grants agreements from the Department and confirmed this assertion. Nevertheless, OIG found that all reviewed awards stated the grantee agreed to execute the work in accordance with 2 CFR § 200, which contains a more explicit provision that grantees are “responsible for complying with all requirements of the Federal award [including] statutory requirements for whistleblower protections.”

Department officials told OIG all grantees are obligated to comply with requirements of the Federal award. The Department noted that the grantee, by signing the Standard Form (SF) 424 (at the time of application) and DS-1909 form (at the time of award), agrees to comply with all terms and conditions and federal requirements. SF 424 simply states, “I also provide the

required assurances and agree to comply with any resulting terms if I accept an award.” DS-1909 states, “The recipient agrees to execute the work in accordance with the Notice of Award, the approved application incorporated herein by reference or as attached, and 2 CFR Parts 200 and 600 including any subsequent revisions.” It also requires a grantee to certify that it “acknowledges that it will comply with Federal regulations, the Terms and Conditions, and any Special Award Conditions associated with this award.”

The Department noted that grants officers and grants officer representatives are responsible for ensuring that all grantees are complying with the terms and conditions of the award, throughout the grant’s lifecycle, through in-person compliance site visits or desk reviews conducted virtually. However, the Department acknowledged that the grantee communication of whistleblower rights is usually not specifically reviewed.

USAGM Uses Annual Training to Ensure That Its Grantees Are Notified of Whistleblower Protections

USAGM has four grantees, three broadcast networks (Middle East Broadcasting, Radio Free Asia, and Radio Free Europe/Radio Liberty), and the Open Technology Fund. USAGM officials told OIG they do not insert a whistleblower notification clause into its grant agreements. OIG reviewed the grant agreements with these four entities and confirmed this assertion. The grant agreements do, however, contain a clause that states, “The Parties acknowledge and agree that the Parties are subject to all Federal rules and regulations pertaining to federal grants, including . . . 2 CFR § 200.”

USAGM has annual training programs for grantees, which include materials on whistleblower protections. USAGM provided a copy of the training module, which contains some limited material on whistleblower protections. The materials simply restate the Uniform Guidance provision: “The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, [including] statutory requirements for whistleblower protections at . . . 41 U.S.C. 4712.”

CONCLUSION

Employees of Department and USAGM-awarded contracts and grants possess specific program and operational insight to alert OIG of alleged wrongdoing. Therefore, it is critical to ensure these employees are aware of protections afforded them to prevent adverse consequences when disclosing alleged waste, fraud, abuse, and mismanagement.

OIG’s review of a sample of Department contracts found that nearly 25 percent of those reviewed did not contain a required whistleblower clause. For USAGM, 10 percent of sampled contracts did not contain a required clause, even though the majority contained the less explicit clause used for commercial items.

For grants, both agencies lacked explicit mechanisms to ensure that grantees notified their employees of whistleblower protections. The Department requires grantees to certify that they will comply with relevant laws and places the burden on the grantee to identify and comply with such laws. USAGM utilizes annual grantee training to educate grantees about their duties regarding whistleblowers.

Oftentimes whistleblowers are the first to detect alleged wrongdoing. Without communication of the whistleblower rights and remedies by the Department and USAGM, both risk a potential whistleblower's willingness to come forward when witnessing alleged waste, fraud, abuse, and mismanagement. The Department and USAGM should encourage contract and grantee employees to disclose potential wrongdoing without a fear of reprisal through methods afforded to them by the whistleblower protection statute.

RECOMMENDATIONS

OIG issued the following recommendations to the Department of State, Bureau of Administration, Office of the Procurement Executive (A/OPE) and the U.S. Agency for Global Media (USAGM) to ensure that contractors and grantees are complying with the law by notifying their employees of their whistleblower rights and protections. Both A/OPE and USAGM agreed with the recommendations. Their complete responses are reprinted in Appendix B and Appendix C, respectively.

Recommendation 1: The Bureau of Administration, Office of the Procurement Executive, should coordinate with relevant bureaus to modify contracts identified by OIG to include the required whistleblower clause.

Management Response: In its September 28, 2023, response, A/OPE concurred with the recommendation and said the Office of Acquisitions Management (AQM) will coordinate with relevant bureaus to modify contracts identified by OIG to include the required whistleblower clause. AQM anticipates modifying the contracts with the required whistleblower clause by the second quarter of FY 2024.

OIG Reply: This recommendation can be closed when A/OPE provides to OIG the modified contracts that include the required whistleblower clause.

Recommendation 2: The Bureau of Administration, Office of the Procurement Executive, should issue an instruction to all contracting officers to insert the clause in FAR 52.203-17 into all future contracts above the simplified acquisition threshold in accordance with Department guidance.

Management Response: In its September 28, 2023, response, A/OPE concurred with the recommendation and said that the Office of Acquisitions Management (AQM) will send an email instruction to all AQM contracting officers to insert the clause in FAR 52.203-17 into all future contracts above the simplified acquisition threshold in accordance with Department guidance. A/OPE also noted that AQM will send an email reminder of this requirement to International Narcotics and Law Enforcement staff and Post staff with warrant authority. AQM anticipates issuing the instructions by the second quarter of FY 2024.

OIG Reply: This recommendation can be closed when A/OPE provides documentation of its instructions to relevant contract personnel regarding the requirement to include the whistleblower clause.

Recommendation 3: The Bureau of Administration, Office of the Procurement Executive, should develop a mechanism to regularly communicate to Department of State grantees their responsibility to inform their employees of whistleblower protections.

Management Response: In its September 28, 2023, response, A/OPE concurred with this recommendation. A/OPE said that to communicate to Department grantees their responsibility to inform their employees of whistleblower protections, the Office of Acquisition Policy (OAP) will issue a Federal Assistance Bulletin to highlight both the substance of the law and the need to communicate the protections to recipients. The Bulletin will be released by December 2023. Additionally, OAP will send a Federal Assistance Management Alert reminding the grants community of the Whistleblower Protection Act with a suggestion to perform outreach to grants recipients by October 2023.

OIG Reply: This recommendation can be closed when A/OPE provides copies of the bulletin and management alert, as well as documentation of plans to regularly communicate to grantees the responsibility to inform their employees of whistleblower protections.

Recommendation 4: The U.S. Agency for Global Media should modify the contracts identified by OIG to include the required whistleblower clause.

Management Response: In its September 20, 2023, response, USAGM concurred with this recommendation but noted that all contracts reviewed by OIG for this evaluation have expired and are being closed out.

OIG Reply: Given that all identified contracts have expired, OIG considers this recommendation closed.

Recommendation 5: The U.S. Agency for Global Media should insert the clause in FAR 52.203-17 into all future contracts above the simplified acquisition threshold in accordance with Civilian Agency Acquisition Council guidance.

Management Response: In its September 20, 2023, response, USAGM concurred with this recommendation and said the recommendation would be implemented within 60 days.

OIG Reply: This recommendation can be closed when USAGM provides evidence of implementation.

Recommendation 6: The U.S. Agency for Global Media should develop a mechanism to regularly communicate to USAGM grantees their responsibility to inform their employees of whistleblower protections and consider adding an explicit requirement to its four grantee agreements.

Management Response: In its September 20, 2023, response, USAGM concurred with this recommendation and said it would continue to notify grantees of the requirement. Additionally, the agency said it would explore adding language regarding the whistleblower protection clause to grant agreements.

OIG Reply: This recommendation can be closed when USAGM provides documentation of its mechanism to regularly communicate whistleblower responsibilities with grantees.

APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

OIG initiated this evaluation to determine the extent to which applicable FY 2021 Department and USAGM contracts contained the required whistleblower notification clause, as prescribed by the FAR and the extent to which the Department and USAGM require grantees to notify their employees of whistleblower rights, as prescribed by statute. The evaluation was conducted in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation.

OIG interviewed Department officials from the Office of the Procurement Executive (OPE) and USAGM officials from the Office of Contracts and the Office of Grants to learn how whistleblower notification regulations are incorporated into contract and grant documentation. OIG reviewed written communications such as the Department's contract policy "Procurement Information Bulletin (PIB) 2019-01," issued on October 30, 2018, that updated all domestic and overseas contracting offices and regional procurement support offices on new whistleblower clause requirements, the Department's "Standard Terms and Conditions for Federal Awards, effective October 20, 2020," and USAGM's grantee training material "Module 4 Financial and Program Management Standards (2 CFR 200, Subpart D)." OIG also received a demonstration of USAGM's Momentum System¹ on how to generate a new contract with the FAR 52.203-17 whistleblower notification clause added.

To obtain an FY 2021 contract sample selection for testing, OIG assembled an initial list of Department FY 2021 contract transactions from USAspending.gov.² For USAGM contracts, OIG provided the agency with a set of criteria to produce a list of FY 2021 contracts from the Momentum software application. A sample selection was generated from both these datasets by filtering for contracts that met the following criteria: issued solely by the Department or USAGM, valued over \$250,000, and contracts in which a modification or addendum number were omitted. The Department's contract dataset was additionally ranked by the number of contracts per agency. OIG randomly selected 10 contracts for review from the top 5 Department bureaus by total number of contracts. The goal was to test a sample of 50 contracts. However, OIG was only able to create a sample size of 49. IRM had only nine contracts that met the selection criteria. For Department contracts, OIG extended the review to parent contracts if the FY 2021 contract selected was a task order or procurement action from an existing parent contract. For USAGM, the resulting contract dataset contained 30 awards, some also linked to parent contracts, in which all were selected for review.

For FY 2021 grants testing, OIG decided to obtain a limited number of grants because the Uniform Guidance does not prescribe that the grant agreement must contain a whistleblower notification clause. OIG only needed to verify the clause was absent in sampled grants. The Department provided OIG a dataset of all FY 2021 financial assistance awards. For USAGM, OIG

¹ USAGM uses Momentum Financials and Acquisitions as its financial system of record.

² USAspending.gov is the official open data source of federal spending information, including information about federal awards such as contracts, grants, and loans.

assembled a universe of USAGM FY 2021 grants data from USAspending.gov. The Department's financial assistance dataset was divided into the following assistance types that OPE treats as grants: Grants, Grants to Individuals, Cooperative Agreements, Property Grants, Fixed Amount Awards, and Letter Grants. The resulting dataset was ranked by the number of grants per bureau. From this Department dataset, OIG selected the top five grant producing bureaus by number of issued grants. The largest dollar grant from each of the five bureaus was chosen to test the lack of a whistleblower notification clause. For USAGM, the sample selection generated a dataset of four grants, and all were reviewed for the same.

OIG searched the Department's Integrated Logistics Management System (ILMS)³ and USAGM's Momentum System for selected contract and grant documents. OIG was unable to acquire all sampled contract and grant records from these award management systems. OIG discovered many instances of contracts and grant awards that were either incomplete or missing entirely. OIG determined that there is no single source or repository from which to obtain selected Department contract or grant documents. Department officials from OPE referred OIG to other bureaus and program offices for requested contract and grant documentation. USAGM was able to provide OIG with missing records to complete the sample selection.

Once all records were secured, OIG searched sampled contracts and grants for abbreviated terms such as "Whistle," "Reprisal," "4712," "52.212," and "52.203" to determine if the award referenced whistleblower notification language. For contracts, OIG calculated the number of awards that contained and did not contain whistleblower notification clauses. For grant awards, OIG only verified that the award agreement did not contain any whistleblower protection language.

³ The Department's Integrated Logistics Management System (ILMS) is a supply chain management system that tracks documentation for procurement and grant awards.

APPENDIX B: DEPARTMENT OF STATE RESPONSE



United States Department of State

Washington, D.C. 20520

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September 28, 2023

MEMORANDUM

TO: OIG/ESP

**Ramona E Watts-
Sutton**

FROM: A/OPE/AQM – Ramona Watts-Sutton

Digitally signed by Ramona E
Watts-Sutton
Date: 2023.09.28 17:20:27 -04'00'

SUBJECT: Draft Report - Evaluation of Whistleblower Protection Notification to Contractor and Grantee Employees at the Department of State and U.S. Agency for Global Media (ESP-23-XX)

Thank you for the opportunity to provide a response to the subject report. The point of contact for this report is the A/OPE Front Office [REDACTED]

Recommendation 1: The Bureau of Administration, Office of the Procurement Executive, should coordinate with relevant bureaus to modify contracts identified by OIG to include the required whistleblower clause.

Management Response to Draft Report (09/28/23): The Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (A/OPE/AQM) concurs with the recommendation and will coordinate with relevant bureaus to modify contracts identified by OIG to include the required whistleblower clause. A/OPE/AQM anticipates modifying the contracts with the required whistleblower clause by Quarter 2 of FY 24.

Recommendation 2: The Bureau of Administration, Office of the Procurement Executive, should issue an instruction to all contracting officers to insert the clause in FAR 52.203-17 into all future contracts above the simplified acquisition threshold in accordance with Department guidance.

Management Response to Draft Report (09/28/23): The Bureau of Administration, Office of the Procurement Executive, Office of Acquisitions Management (A/OPE/AQM) concurs with the recommendation. A/OPE/AQM will send an email instruction to all AQM contracting officers to insert the clause in FAR 52.203-17 into all future contracts above the simplified acquisition threshold in accordance with Department guidance. A/OPE/AQM will also send an email reminder to INL staff and Post staff with warrant authority of the need to include the clause and when to do it. A/OPE/AQM anticipates issuing the instructions by Quarter 2 of FY 24.

Recommendation 3: The Bureau of Administration, Office of the Procurement Executive, should develop a mechanism to regularly communicate to Department of State grantees their responsibility to inform their employees of whistleblower protections.

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Management Response to Draft Report (09/28/23): The Bureau of Administration, Office of the Procurement Executive, Office of Acquisition Policy (A/OPE/OAP) concurs with the recommendation. In an effort to communicate to Department of State grantees their responsibility to inform their employees of whistleblower protections, A/OPE/OAP will issue a Federal Assistance Bulletin to highlight not just the Whistleblower protection act but also the need to communicate its substance to recipients in its next release scheduled by December 2023. Additionally, a Federal Assistance Management Alert reminding the grants community of the Whistleblower Protection Act with a suggestion to perform outreach to grants recipients to do the same by the end of October 2023.

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APPENDIX C: USAGM RESPONSE



U.S. AGENCY FOR
GLOBAL MEDIA

330 Independence Avenue SW | Washington, DC 20237 | usagm.gov

September 20, 2023

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TO: OIG – Jeffrey McDermott, Assistant Inspector General
Evaluations & Special Projects

FROM: USAGM – Amanda Bennett, Chief Executive Officer

SUBJECT: Response to Draft OIG Report – *Evaluation of Whistleblower Protection Notification to Contractor and Grantee Employees at the Department of State and U.S. Agency for Global Media*

Thank you for the opportunity to respond to the Office of Inspector General’s (OIG) draft report titled, *Evaluation of Whistleblower Protection Notification to Contractor and Grantee Employees at the Department of State and U.S. Agency for Global Media*.

The U.S. Agency for Global Media (USAGM) appreciates the thoroughness of the report and the highly professional work of OIG staff during this evaluation. The agency values the OIG’s acknowledgement of USAGM’s effort to include the required clause regarding informing employees of whistleblower protection.

USAGM has reviewed the draft OIG report and is providing the following comments in response to the recommendations provided by OIG:

Recommendation 4: The U.S. Agency for Global Media should modify the contracts identified by OIG to include the required whistleblower clause.

Management Response (9/20/23): USAGM concurs with Recommendation 4. However, the recommendation cannot be implemented as all of the referenced contracts are expired and in the process of being closed out.

Recommendation 5: The U.S. Agency for Global Media should insert the clause in FAR 52.203-17 into all future contracts above the simplified acquisition threshold in accordance with Civilian Agency Acquisition Council guidance.



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Management Response (9/20/23): USAGM concurs with Recommendation 5. This can be accomplished within 60 days.

Recommendation 6: The U.S. Agency for Global Media should develop a mechanism to regularly communicate to USAGM grantees their responsibility to inform their employees of whistleblower protections and consider adding an explicit requirement to its four grantee agreements.

Management Response (9/20/23): USAGM concurs with Recommendation 6. The agency will continue to notify grantees of the requirement. In addition, the agency will work to explore adding language to the grant agreement. Such language could be something along the following lines:

“The grantee’s agreement to execute work in accordance with 2 CFR 200 includes the specific requirement under 2 CFR 200.300(b) to comply with whistleblower rights and protections under 41 U.S.C. 4712. The grantee is expected to inform all of its employees of whistleblower rights and protections in writing.”

The point of contact for this memorandum is Executive Director Oanh Tran [REDACTED].

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ABBREVIATIONS AND ACRONYMS

CAAC	Civilian Agency Acquisition Council
CIGIE	Council of Inspectors General on Integrity and Efficiency
Department	Department of State
DS	Bureau of Diplomatic Security
FAR	Federal Acquisition Regulation
GAO	U.S. Government Accountability Office
GSA	U.S. General Services Administration
IBB	International Broadcasting Bureau
IGs	Inspectors General
ILMS	Integrated Logistics Management System
INL	International Narcotics and Law Enforcement
IRM	Bureau of Information Resource Management
MBN	Middle East Broadcasting Networks
NDAA	National Defense Authorization Act
NEA	Bureau of Near Eastern Affairs
OBO	Bureau of Overseas Buildings Operations
OCB	Office of Cuba Broadcasting
OIG	Department of State, Office of Inspector General
OMB	Office of Management and Budget
OPE	Office of the Procurement Executive
OTF	Open Technology Fund
PIB	Procurement Information Bulletin
POGO	Project On Government Oversight
RFA	Radio Free Asia
RFE/RL	Radio Free Europe/Radio Liberty
SAT	Simplified Acquisition Threshold
TSI	Technology, Services & Innovation
Uniform Guidance	2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
USAGM	U.S. Agency for Global Media
VOA	Voice of America

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OIG Whistleblower Coordinator to learn more about your rights.

WPEAOmbuds@stateoig.gov

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