



U.S. Department
of Veterans Affairs

Office of the General Counsel
Washington DC 20420

In Reply Refer To:

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September 22, 2014

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for your letter regarding the Department of Veterans Affairs (VA) compliance with section 115(a) of the Whistleblower Protection Enhancement Act (WPEA) of 2012, Public Law 112-199. I am responding on behalf of the Department, and regret the delay.

VA recognizes the importance of the WPEA in protecting whistleblowers against intimidation and retaliation. Whistleblower disclosures can save lives as well as taxpayer dollars. Additionally, whistleblowers play a critical role in keeping our Federal government honest, efficient, and accountable. In recognition of VA's commitment to whistleblower rights and protections, VA created a new whistleblower Webpage, www.diversity.va.gov/whistleblower.aspx, which can be easily accessed from VA's home Webpage at www.va.gov. VA has also registered for and published an implementation plan to receive certification from the U. S. Office of Special Counsel's (OSC) Section 2302(c) Certification Program. OSC's Section 2302(c) Certification Program will assist VA in meeting its statutory obligation to inform employees about the rights and remedies available to them under the law.

In general, VA utilizes two types of non-disclosure agreements (NDA): (1) NDAs related to the acquisition process, and (2) NDAs for employees with access to classified information. Both types of NDAs include the language required by section 115(a) of the WPEA.

VA recently posted the language in section 115(a) on its whistleblower Webpage at the link above. Section 115(a) language can also be found on VA's notices Webpage, www.va.gov/about_va/va_notices.asp. The language on the notices Webpage was posted around September 6, 2013, and focuses on employees with access to classified information. Around January 29, 2014, VA's Office of Acquisition, Logistics, and Construction posted section 115(a) language on its internal Intranet Webpage. Paragraph four of the Certificate of Personnel Participating in an Acquisition Concerning Non-Disclosure of Conflicts of Interest, enclosed, includes the language in section 115(a).

Page 2.

The Honorable Charles E. Grassley

Should you have additional questions, please contact Ms. [REDACTED]
Congressional Relations Officer, at (202) [REDACTED] or by email at
[REDACTED]

Thank you for your continued support of our mission.

Sincerely,

A handwritten signature in black ink that reads "Tammy L. Kennedy". The signature is written in a cursive style with a large, sweeping initial "T".

Tammy L. Kennedy
Acting General Counsel

Enclosure

CERTIFICATE FOR PERSONNEL PARTICIPATING IN AN ACQUISITION CONCERNING
NON-DISCLOSURE AND DISCLOSURE OF CONFLICTS OF INTEREST

[Title of Acquisition]

Name: _____ Organization: _____

Title: _____

NON-DISCLOSURE AGREEMENT

1. I acknowledge that I have been selected to participate in the acquisition identified above. In the course of participating in this acquisition, I may be or have been given access to or entrusted with Source Selection Information (as defined in Federal Acquisition Regulation (FAR) 3.104), other sensitive Government data such as data identified as "Business Sensitive," and/or data belonging to or marked or considered as "proprietary" (e.g., restrictive legend per FAR 52.215-1) that I cannot release to others nor can I use for the financial benefit of others or myself.

Data includes all data, information and software, regardless of the medium (e.g., electronic or paper) and/or format in which the data exists, and includes data which is derived from, based on, incorporates, includes or refers to such Source Selection, Business Sensitive and/or proprietary data (collectively referred to herein as "the data"). Any data which are derived from, based on, incorporates, includes or refers to data shall be treated as Source Selection, Business Sensitive or proprietary data and shall be subject to the terms of this Non-Disclosure Agreement.

2. I understand that the release of proprietary and source selection information is governed by 41 U.S.C. § 423, and the provisions of FAR 3.104. I certify that I will not disclose any contractor bid, proposal, proprietary, or source selection information directly or indirectly to any person other than a person authorized by the head of agency or the contracting officer to receive such information. I understand that unauthorized disclosure of such information may subject me to substantial administrative, civil and criminal penalties, including fines, imprisonment, and loss of employment under the Procurement Integrity Law or other applicable laws and regulations.
3. I certify that I will not discuss evaluation of source selection matters with any unauthorized individuals (including Government personnel), even after contract award, without specific prior approval from proper authority.
4. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by:
 - Executive Order No. 12958;
 - the Privacy Act (5 U.S.C. § 552a);
 - the Trade Secrets Act (18 U.S.C. § 1905);
 - section 7211 of title 5, United States Code (governing disclosures to Congress);
 - section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military);
 - section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Action (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
 - the Intelligence Identities Protection Act of 1982 (50 U.S.C. § 421 *et seq.*) (governing disclosures that could expose confidential Government agents); and
 - the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. § 783(b)).

The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling. In addition, these restrictions do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a potential violation of law.

I agree to immediately notify the Contracting Officer in writing, in the event that I determine or have a reason to suspect a breach of this agreement, its' requirements, or similar agreements with others.

I understand that making a false, fictitious, or fraudulent certification may subject me to prosecution under 18 U.S.C. § 1001.

Printed Name: _____

Signature: _____ Date: _____