

Federal Acquisition Regulation

3.704

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

[62 FR 232, Jan. 2, 1997]

3.702 Definition.

Final conviction means a conviction, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

3.703 Authority.

(a) Section 1(e) of Pub. L. 87-849, 18 U.S.C. 218 (*the Act*), empowers the President or the heads of executive agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201-224). Executive Order 12448, November 4, 1983, delegates the President's authority under the Act to the heads of the executive agencies and military departments.

(b) Subsection 27(e)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (*the OFPP Act*), as amended, requires a Federal agency, upon receiving information that a contractor or a person has engaged in conduct constituting a violation of subsection 27 (a) or (b) of the OFPP Act, to con-

sider rescission of a contract with respect to which—

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under subsection 27(e)(1) of the OFPP Act; or

(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

[51 FR 27116, July 29, 1986, as amended at 62 FR 232, Jan. 2, 1997]

3.704 Policy.

(a) In cases in which there is a final conviction for any violation of 18 U.S.C. 201-224 involving or relating to contracts awarded by an agency, the agency head or designee shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred by the agency in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under 18 U.S.C. 201-224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency should consider initiating debarment proceedings in accordance with subpart 9.4, Debarment, Suspension, and Ineligibility, if debarment has not been initiated or is not in effect at the time the final conviction is entered.

(c) If there is a final conviction for an offense punishable under subsection 27(e) of the OFPP Act, or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the head of the contracting activity shall consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at 3.705 (see 3.104-7); and