

contracts involved, that official shall issue a written decision which—

- (i) States that determination;
  - (ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and
  - (iii) States the amount due, and the property to be returned, to the agency.
- (d) *Notice of proposed action.* The notice of the proposed action, as a minimum shall—

(1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and recovering the amounts expended and property transferred therefor, under the provisions of 18 U.S.C. 218;

(2) Specifically identify the contracts affected by the action;

(3) Specifically identify the offense or final conviction on which the action is based;

(4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;

(5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;

(6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing shall be held at which witnesses may be presented and any witness the agency presents may be confronted; and

(7) Advise that action shall be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final agency decision.* The final agency decision shall be based on the information available to the agency head or designee, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of

contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601-613, or part 33. Therefore, the procedures required by the CDA and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

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

### Subpart 3.8—Limitations on the Payment of Funds to Influence Federal Transactions

SOURCE: 55 FR 3190, Jan. 30, 1990, unless otherwise noted.

#### 3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing section 319 of the Department of the Interior and Related Agencies Appropriations Act, Pub. L. 101-121, which added a new section 1352 to title 31 U.S.C., entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act).

#### 3.801 Definitions.

*Agency*, as used in this section, means an executive agency as defined in 2.101.

*Covered Federal action*, as used in this section, means any of the following Federal actions:

- (a) The awarding of any Federal contract.
- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

*Indian tribe and tribal organization*, as used in this section, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

*Influencing or attempting to influence*, as used in this section, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

*Local government*, as used in this section, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

*Officer or employee of an agency*, as used in this section, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code;
- (c) A special Government employee, as defined in section 202, title 18, United States Code; and
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

*Person*, as used in this section, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

*Reasonable compensation*, as used in this section, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not fund-

ed by, or not furnished in cooperation with the Federal Government.

*Reasonable payment*, as used in this section, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

*Recipient*, as used in this section, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

*Regularly employed*, as used in this section, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

*State*, as used in this section, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

### **3.802 Prohibitions.**

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any