AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

the agency has authorized the official to resume participation in the procurement in accordance with 3.104–4(c)(2)(ii).

(2) Subsequent to a period of disqualification, if an agency wishes to reinstate the agency official to participation in the procurement, the HCA or designee may authorize immediate reinstatement or may authorize reinstatement following whatever additional period of disqualification the HCA determines is necessary to ensure the integrity of the procurement process. In determining that any additional period of disqualification is necessary, the HCA or designee shall consider any factors that might give rise to an appearance that the agency official acted without complete impartiality with respect to issues involved in the procurement. The HCA or designee shall consult with the agency ethics official in making a determination to reinstate an official. Decisions to reinstate an employee should be in writing. It is within the discretion of the HCA, or designee, to determine that the agency official shall not be reinstated to participation in the procurement.

(3) An employee must comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. An employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom he or she is seeking employment, unless he or she receives a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3) or an authorization in accordance with the requirements of 5 CFR part 2635, as appropriate.

[62 FR 230, Jan. 2, 1997]

3.104–7 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104–4(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official prior to accepting such compensation.

(b) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the official or former official that is relevant to the inquiry. As a minimum, the request shall include—

(1) Information about the procurement(s), or decision(s) on matters under 3.104–4(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Information about the individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Information about the contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue an opinion as to whether the proposed conduct is proper or would violate subsection 27(d) of the Act.

(d)(1) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to the requester. Additional information may also be requested from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory

opinion, then neither the requester nor the contractor shall be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

[62 FR 230, Jan. 2, 1997]

3.104–8 Calculating the period of compensation prohibition.

The 1-year prohibition on accepting compensation (see 3.104–4(d)(1)) begins to run as provided in this subsection:

(a) If the former official was serving in one of the positions specified in 3.104–4(d)(1)(i) on the date of the selection of the contractor, but not on the date of the award of the contract, the prohibition begins on the date of the selection of the contractor.

(b) If the former official was serving in one of the positions specified in 3.104–4(d)(1)(i) on the date of the award of the contract (whether or not they were serving on the date of the selection of the contractor), the prohibition begins on the date of the award of the contract.

(c) If the former official was serving in one of the positions specified in 3.104–4(d)(1)(ii), the prohibition begins on the last date the individual served in that position.

(d) If the former official personally made one of the decisions specified in 3.104–4(d)(1)(iii), the prohibition begins on the date the decision was made.

[62 FR 231, Jan. 2, 1997]

3.104–9 Contract clauses.

(a) The contracting officer shall insert the clause at 52.203–8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

[62 FR 231, Jan. 2, 197]

3.104–10 Violations or possible violations.

(a) If the contracting officer receives or obtains information of a violation or possible violation of subsections 27 (a), (b), (c), or (d) of the Act (see 3.104–4), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement.

(2) If the individual reviewing the contracting officer's conclusion does not agree with that conclusion, the individual shall advise the contracting officer to withhold award and shall promptly forward the information and documentation to the HCA or designee.

(3) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer shall promptly forward the information to the HCA or designee.

(b) The HCA or designee receiving any information describing an actual or possible violation of subsections 27 (a), (b), (c), or (d) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the contracting officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies;

(4) Concluding that a violation occurred; or

(5) Recommending an agency head determination that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e)