

3.705 Procedures.

(a) *Reporting.* The facts concerning any *final conviction* for any violation of 18 U.S.C. 201-224 involving or relating to agency contracts *shall* be reported promptly to the *agency head* or designee for that official's consideration. The *agency head* or designee *shall* promptly notify the Civil Division, Department of Justice, that the action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the *agency head* or designee *may* declare void and rescind contracts with respect to which a *final conviction* has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-making process.* Agency procedures governing the voiding and rescinding decision-making process *shall* be as informal as practicable, consistent with the principles of fundamental fairness. As a minimum, however, agencies *shall* provide the following:

(1) A notice of proposed action to declare void and rescind the contract *shall* be made *in writing* and sent by certified mail, return receipt requested.

(2) A thirty calendar *day* period after receipt of the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity *shall* be afforded for a hearing at which witnesses *may* be presented, and any witness the agency presents *may* be confronted. However, no inquiry *shall* be made regarding the validity of a *conviction*.

(4) If the *agency head* or designee decides to declare void and rescind the 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 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 41 U.S.C. chapter 71, Contract Disputes, or part 33. Therefore, the procedures required by the statute 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.

Parent topic: Subpart 3.7 - Voiding and Rescinding Contracts