

# Summary of the Revised Procurement Integrity Act

April 17, 2002

## Background

Section 27 of the Office of Federal Procurement Policy Act (OFPPA) (41 USC 423) is commonly referred to the "Procurement Integrity Act" (PIA). Section 3.104 of the Federal Acquisition Regulation (FAR) implements the prohibitions, restrictions, and other requirements of the PIA applicable to certain agency officials who participate in Federal procurement actions. These requirements are in addition to other statutes and regulations which govern the conduct of Federal employees, e.g., the conflict of interest statutes (18 USC §§ 201-209) and the regulations promulgated by the Office of Government Ethics (5 CFR §§ 2634-2641). In particular, the OGE regulations provide interpretive guidance on the prohibitions in 18 USC §§ 207 (post-employment) and 208 (acts affecting personal finances). These statutes and regulations apply to all Federal employees, and are in addition to those contained in the FAR. It is important for Federal employees to be aware that they are covered by both the FAR and the other statutes and regulations.

Section 3.104 of the FAR was revised by reorganizing and simplifying the text, and to clarify 3.104 to ensure that agency officials understood that even if their procurement responsibilities did not meet the FAR definition of 'personal and substantial participation,' they may still be considered to have 'personal and substantial participation' under 18 USC § 208 or other statutes. The new guidance was added to alert these procurement officials that they should seek advice from agency ethics officials before engaging in certain activities to avoid potential serious consequences, including criminal prosecution. For additional details, see the "Background" information in the Federal Register notice (Vol. 67, No. 54; March 20, 2002; pages 13057-13063).

## Revisions

The revisions do not significantly change either the requirements of the PIA or change who and what is covered by the OGE regulations which interpret the conflict of interest statutes. The revisions were added to alert agency acquisition officials that they must be aware of and comply with the applicable conflict of interest statutes and implementing regulations, while also being covered by the PIA while engaged in procurement actions. The following specific changes were made. Section numbers refer to the revised language.

- *General Issues.* Section 3.104-2(b) reminds Federal officials that they are subject to other statutes and regulations which cover their conduct, such as the prohibitions on accepting bribes or gifts, use of public office for private gain, and post-employment regulations, including reference to the additional restrictions which apply to senior employees and matters under an employee's official responsibility. This is applicable to all employees, not just those engaged in acquisition.
- *Employment Contacts.* Section 3.104-3(c) requires an agency official who is participating personally and substantially in an acquisition in excess of the simplified acquisition threshold (\$100,000) to report any contacts with the potential vendor/contractor regarding potential employment with that vendor/contractor. These contacts may be initiated by either the Federal official or the contractor. In either case, the Federal official must report the contact to his/her supervisor and to the agency ethics official (DEC or Coordinator). In addition, if the potential employment discussions are not terminated immediately and the Federal official is required to disqualify him/herself, section 3.104-5(b) requires the Federal official to promptly submit a written recusal to the contracting officer, the source selection authority, and the official's immediate supervisor. Requirements of the recusal statement are provided in the subsections of 3.104-5(b).

All employee contacts for seeking or negotiating employment trigger the recusal requirement under the conflict of interest statute (18 USC 208), which requires the employee to notify his/her

immediate supervisor. The PIA requires the procurement official involved in an acquisition over \$100,000 to also give a copy of the recusal to the ethics official. Thus, all employees are subject at all times to the conflict of interest laws (18 USC 201-209) which has criminal penalties for violations, and acquisition employees are also subject to the OFPPA, which carries criminal, civil, and administrative penalties.

- Section 3.104-6 regarding ethics advisory opinions remains approximately the same, though has a new number. This is relevant because the delegation of authority memos to Deputy Ethics Counselors mention the old section number (3.104-7).

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