

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-30]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).
ACTION: Summary presentation of final rules.

the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

SUMMARY: This document serves to introduce the final rules which follow and which comprise Federal Acquisition Circular (FAC) 90-30. The Federal Acquisition Regulatory Council has agreed to issue FAC 90-30 to amend

Item	Subject	FAR case	Team leader
I	Officials not to benefit	94-802	Rothlein, (703) 697-4349.
II	Procurement integrity	94-804	Rothlein, (703) 697-4349.
III	Whistleblower protection	94-803	Rothlein, (703) 697-4349.
IV	Repeal of requirements for secretarial/agency head determinations regarding use of cost type or incentive contracts.	94-700	Rider, (703) 614-1634.
V	Service contract funding	94-766	Galbraith, (703) 697-6710.

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The team leader whose name appears in relation to each FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-30 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-30 amends the Federal Acquisition Regulation (FAR) as specified below:

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Officials Not to Benefit (Ethics)
(FAR Case 94-802)

Section 6004 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) amended 41 U.S.C. 22 by repealing the requirement for every Government contract or agreement to express the condition that certain officials shall not benefit from the award of that contract or agreement. This final rule deletes the clause at FAR 52.203-1, since there is no longer a statutory requirement to include such a clause in Government contracts. The statements of policy at FAR 3.102 are also deleted. The criminal provisions found at 18 U.S.C. 431 and 432 remain in effect.

Item II—Procurement Integrity (Ethics)
(FAR Case 94-804)

Section 8301(e) of Public Law 103-355 excludes procurements of commercial items from the statutory requirement for contractor employees to certify that they are familiar with the Procurement Integrity Act and that they will report violations of the Act. This final rule amends FAR 3.104-9, 52.203-8, and 52.203-9 to implement Section 8301(e).

Item III—Whistleblower Protections for Contractor Employees (Ethics)
(FAR Case 94-803)

Sections 6005 and 6006 of Public Law 103-355 provide whistleblower protections for contractor employees. This final rule adds a new subpart at FAR 3.9 to implement Sections 6005 and 6006.

Item IV—Repeal of Requirements for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contractors
(FAR Case 94-700)

This rule finalizes the interim rule published as Item I of FAC 90-24. The rule implements Sections 1021, 1071, and 1501 of Public Law 103-355. Sections 1021 and 1071 repealed the statutory requirement for an agency head determination before using a cost type or incentive contract. Section 1501 repealed Section 2301 of Title 10, United States Code. Therefore, the

interim rule revised the FAR to delete the determination requirements which are no longer necessary and to delete references to 10 U.S.C. 2301. The final rule also amends FAR 16.306(c)(2) to permit contracting officers to sign determinations and findings that are still required to establish the basis for application of the statutory price or fee limitation in cost-plus-fixed-fee contracts.

Item V—Service Contract Funding
(FAR Case 94-766)

Section 1073 of Public Law 103-355 provides authority for executive branch agencies other than the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration to write service contracts that cross fiscal years, and to fund those contracts with one fiscal year's funds. This final rule amends FAR 32.703-3 and 37.106 to implement Section 1073.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,
Project Manager for the Implementation of the Federal Acquisition Streamline Act of 1994.

Federal Acquisition Circular
Number 90-30

Federal Acquisition Circular (FAC) 90-30 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-30 is effective September 19, 1995, except for Item V which is effective August 21, 1995.

Dated: July 13, 1995.

Eleanor R. Spector,
Director, Defense Procurement.

Dated: July 7, 1995.

Ida M. Ustad,
Associate Administrator for Acquisition
Policy General Services Administration.

Dated: July 13, 1995.

Thomas S. Luedtke,
Deputy Associate Administrator for
Procurement National Aeronautics and Space
Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 49, and 52

[FAC 90-30; FAR Case 94-802; Item I]

RIN 9000-AG15

Federal Acquisition Regulation; Officials Not to Benefit (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by Section 6004 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697-4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-30, FAR case 94-802.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103-355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

FAR Case 94-802 originated because Section 6004 of Public Law 103-355 amended 41 U.S.C. 22 by repealing the requirement that "every contract or agreement" shall express the condition that certain officials shall not benefit from the award of that contract or agreement. The Government has expressed that condition in the form of FAR clause 52.203-1. Since there is no longer a statutory requirement to include such a clause in Government contracts, the clause has been deleted. In addition, in response to a public comment, the statements of policy found at FAR 3.102 through 3.102-2 have been deleted. The criminal provisions found at 18 U.S.C. 431 and 432 remain in effect.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the underlying policy, that certain officials shall not benefit from the award of Government contracts, has not changed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Two substantive comments were received from six commenters in response to the proposed rule published in the **Federal Register** on December 1, 1994 (59 FR 61738). The Federal Acquisition Streamlining Act

Implementation Team fully considered these comments. The team's analysis and disposition of the comments may be obtained from the FAR Secretariat.

List of Subjects in 48 CFR Parts 3, 49, and 52

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,
Project Manager for the Implementation of
the Federal Acquisition Streamlining Act of
1994.

Therefore, 48 CFR Parts 3, 49, and 52 are amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR Parts 3, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

3.102 through 3.102-2 [Removed]

2. Section 3.102 is removed and reserved and sections 3.102-1 through 3.102-2 are removed.

PART 49—TERMINATION OF CONTRACTS

49.603-1, 49.603-2, 49.603-3, and 49.603-4 [Amended]

3. Sections 49.603-1(b)(7)(iii), 49.603-2(b)(8)(iii), 49.603-3(b)(7)(iii), and 49.603-4(b)(4)(ii) are amended by revising the phrase "employment of aliens, and "officials not to benefit." to read "and employment of aliens."

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203-1 [Reserved]

4. Section 52.203-1 is removed and reserved.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 90-30; FAR Case 94-804; Item II]

RIN 9000-AG17

Federal Acquisition Regulation; Procurement Integrity (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),