

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),

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 (FAR Council) is implementing Section 8301(e) of the Act by excluding procurement of commercial items from certain certification requirements. 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 94-804.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act 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 94-804 originated because Section 8301(e) excludes procurements of commercial items from the certification requirement of the Procurement Integrity Act which requires that contractor employees certify that they are familiar with the Act, and that they will report violations of the Act.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the elimination of the certification for commercial items will have a beneficial impact on small entities by reducing the paperwork burden. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The final changes do not impose increased record keeping or information collection requirements on members of the public under the Paperwork Reduction Act which would require the approval of OMB under 44 U.S.C. 3501, *et seq.* This final rule reduces paperwork burden by excluding commercial products from certain certification requirements of the Procurement Integrity Act. A correction reflecting the reduction in paperwork burden was approved by OMB on November 30, 1994, under Control No. 9000-0103.

D. Public Comments

Fourteen substantive comments were received from 11 commenters in response to the proposed rule published in the **Federal Register** on December 1, 1994 (59 FR 61740). The Federal Acquisition Streamlining Act Implementation Team fully considered all comments received. The team's analysis and disposition of the comments may be obtained from the FAR Secretariat.

List of Subjects in 48 CFR Parts 3 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 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 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).

3.104-9 [Amended]

2. Section 3.104-9 is amended in paragraph (b)(1)(iii) by removing the word "Certify" and inserting in its place "Except in the case of a contract for the procurement of commercial items, certify".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.203-8 is amended by revising the date of the provision to read "(SEPT 1995)"; at the end of the introductory text of paragraph (b) by removing the colon and inserting a period in its place and adding a new sentence to read as follows:

52.203-8 Requirement for Certificate of Procurement Integrity.

* * * * *

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (SEPT 1995)

* * * * *

(b) * * * The certification in paragraph (b)(2) of this provision is not required for a procurement of commercial items.

* * * * *

4. Section 52.203-9 is amended by revising the date of the clause to read "(SEPT 1995)"; at the end of the introductory text of paragraph (c) by removing the colon and inserting a period in its place and adding a new sentence to read as follows:

52.203-9 Requirement for Certificate of Procurement Integrity—Modification.

* * * * *

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (SEPT 1995)

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(c) * * * The certification in paragraph (c)(2) of this clause is not required for a modification which procures commercial items.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

[FAC 90-30; FAR Case 94-803; Item III]

RIN 9000-AG16

Federal Acquisition Regulation; Whistleblower Protections for Contractor Employees (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 the enactment of Sections 6005 and 6006 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.