

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR Part 3 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).

2. Subpart 3.9, consisting of sections 3.900 through 3.906, is added to read as follows:

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.

3.901 Definitions.

3.902 Applicability.

3.903 Policy.

3.904 Procedures for filing complaints.

3.905 Procedures for investigating complaints.

3.906 Remedies.

3.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, *et seq.*, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

3.901 Definitions.

Authorized official of an agency means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

3.902 Applicability.

This subpart applies to all Government contracts.

3.903 Policy.

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

3.904 Procedures for filing complaints.

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(3) The substantial violation of law giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act; and

(5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 7, 11, 16, 19, 36, and 41**

[FAC 90-30, FAR Case 94-700; Item IV]

RIN 9000-AG25

**Federal Acquisition Regulation; Repeal
of Requirements for Secretarial/
Agency Head Determinations
Regarding Use of Cost Type or
Incentive Contracts**

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council has agreed to adopt the interim rule published in the **Federal Register** at 59 FR 64784, December 15, 1994, as a final rule and to make additional conforming amendments. This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to amend the Federal Acquisition Regulation (FAR) to delete the requirement for a "determination and findings" before using a cost type or incentive contract and to delete references to 10 U.S.C. 2301. 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: Ms. Melissa Rider, Contract Award Team Leader, at (703) 614-1634 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 94-700.

SUPPLEMENTARY INFORMATION:**A. Background**

The Federal Acquisition Streamlining Act (FASA) of 199, 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 FASA 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).

The interim rule announced FAR revisions developed under FAR case 94-700, Repeal of Requirements for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts. Sections 1021 and 1071 repealed the requirement for a determination regarding use of 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.

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 changes affect only internal Government procedures for processing determinations and findings related to cost type and incentive contracts.

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

Six public comments were received in response to the interim rule. These comments were considered in the formulation of this final rule.

**List of Subjects in 48 CFR Parts 7, 11,
16, 19, 36, and 41**

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.

Interim Rule Adopted as Final

Accordingly, the interim rule amending 48 CFR parts 7, 11, 16, and 19, which was published at 59 FR 64784 on December 15, 1994, is adopted as a

final rule and 48 CFR parts 16, 36, and 41 are amended as follows:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR parts 7, 11, 16, 19, 36, and 41 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).

2. Section 16.306 is amended by revising paragraph (c)(2) to read as follows:

16.306 Cost-plus-fixed-fee Contracts.

* * * * *

(c) * * *

(2) The contracting officer has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(d)).

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**PART 36—CONSTRUCTION AND
ARCHITECT-ENGINEERING
CONTRACTS**

3. Section 36.606 is amended in paragraph (a) by revising the last sentence to read as follows:

36.606 Negotiations.

(a) * * * Negotiations shall be conducted in accordance with part 15 of this chapter, beginning with the most preferred firm in the final selection (see 15.903(d)(1)(ii) on fee limitation and the determination and findings requirement at 16.306(c)(2) for a cost-plus-fixed-fee contract).

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**PART 41—ACQUISITION OF UTILITY
SERVICES****41.103 [Amended]**

4. Section 41.103 is amended in paragraph (a)(2) by removing "10 U.S.C. 2301, 2304," and inserting in its place "10 U.S.C. 2304".

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