

dealing with the selection, appointment, and termination of contracting officers has been determined to be non-regulatory material and is being relocated to an internal GSA directive. In addition, GSA Forms 3409 and 3410 have been removed from the GSAR and relocated to an internal directive.

**EFFECTIVE DATE:** August 9, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Elbin, Office of GSA Acquisition Policy, (202) 501-4765.

**SUPPLEMENTARY INFORMATION:**

**A. Public Comments**

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501-1.

**B. Executive Order 12866**

This rule was not submitted to the Office of Management and Budget for review because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

**C. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501-1.

**D. Paperwork Reduction Act**

This rule does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501, et seq. Therefore, the requirements of the Paperwork Reduction Act do not apply.

**List of Subjects in 48 CFR Part 501**

Government procurement.

Accordingly, 48 CFR Part 501 is amended as follows:

1. The authority citation for 48 CFR Part 501 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

**Subpart 501.6—Contracting Authority and Responsibilities**

2. Section 501.601 is revised to read as follows:

**501.601 General.**

Heads of contracting activities (see 502.1) are contracting officers by virtue of their position. Other contracting officers are appointed under FAR 1.603 and GSA's contracting officer warrant program.

**501.602-1, 501.603, 501.603-3, 501.603-4, 501.603-70 [Removed]**

3. Sections 501.602-1, 501.603, 501.603-3, 501.603-4, and 501.603-70 are removed.

Dated: July 31, 1995.

**C. Allen Olson,**

*Acting Associate Administrator, Office of Acquisition Policy.*

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**BILLING CODE 6820-61-M**

**DEPARTMENT OF JUSTICE**

**48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 1816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870**

**[Justice Acquisition Circular 95-2]**

**Amendments to the Justice Acquisition Regulations (JAR) Regarding: Department of Justice (DOJ) Acquisition Regulation System, Administrative Matters, Publicizing Contract Actions, Contract Delivery or Performance, Contracting by Negotiation and Types of Contracts**

**AGENCY:** Justice Management Division, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the JAR by revising policies and procedures regarding: the Department's acquisition regulation system; administrative matters; publicizing contract actions; contract deliveries and performance; contracting by negotiation; and, types of contracts in response to a review of existing procurement regulations by the DOJ's Procurement Employee Innovation Team.

**EFFECTIVE DATE:** August 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Janis Sposato, Procurement Executive, Justice Management Division (202) 514-3103.

**SUPPLEMENTARY INFORMATION:** The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612) because the amendment sets forth, wholly, internal departmental procedures. No additional

time or cost burden will be placed on contractors by the promulgation of this regulation.

**List of Subjects in 48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 2816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870**

Government procurement.

Dated: July 19, 1995.

**Stephen R. Colgate,**  
*Assistant Attorney General for Administration.*

1. The authority citation for 48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 2816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870 continues to read as follows:

**PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**2801.000 [Removed]**

2. Section 2801.000 is removed.

**Subpart 2801.2—Administration**

**2801.270-2 [Removed]**

3. Section 2801.270-2 is removed.
4. Section 2801.270-4 is revised to read as follows:

**2801.270-4 Numbering.**

Justice Acquisition Circulars will be consecutively numbered beginning with the number 1, after each rewrite and publication of the Justice Acquisition Regulations.

**Subpart 2801.3—Agency Acquisition Regulations**

5. Section 2801.304 is amended by revising paragraph (b) to read as follows:

**2801.304 Agency control and compliance procedures.**

\* \* \* \* \*

(b) The Procurement Executive will review all bureau unpublished internal acquisition policies and provide comments prior to their implementation.

**Subpart 2801.4—Deviations From the Federal Acquisition Regulation and the Justice Acquisition Regulations**

6. Section 2801.403 is revised as follows:

**2801.403 Individual deviations.**

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A

copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the Procurement Executive.

7-8. Section 2801.470 is revised as follows:

**2801.470 Requests for class deviations.**

Requests for approval of class deviations to the FAR of the JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the bureau procurement chief. Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

**Subpart 2801.6—Contracting Authority and Responsibilities**

9. Section 2801.602-3 is revised as follows:

**2801.602-3 Ratification of unauthorized commitments.**

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the Procurement Executive.

**§ 2801.602-70 [Amended]**

10. Section 2801.602-70 is amended by removing paragraph (f).

**Subpart 2801.7—Contracting Officer's Technical Representative (COTR's)**

11. Section 2801.7001-702 is amended by revising paragraphs (d)(1) and (g) as follows:

**2801.7001-702 Selection, appointment, limitation of authority.**

\* \* \* \* \*

(d) *Certification and appointment.* (1) In accordance with bureau procedures, the individual must provide the contracting activity with evidence of completion of the COTR course, procurement ethics training, and with the certification required by the Procurement Integrity Act. Upon determination that the required standards have been met, the chief of the contracting office will issue a one-time Certificate of COTR Appointment.

\* \* \* \* \*

(g) *Implementation schedule and waivers.* No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR

and the individual has not successfully completed the required training, the bureau procurement chief may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver may be granted in accordance with bureau procedures.

**PART 2802—DEFINITIONS OF WORDS AND TERMS**

**2802.000 [Removed]**

12. Section 2802.000 is removed.

**Subpart 2802.1—Definitions**

13. Section 2802.102 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n), adding a new paragraph (f) and revising the redesignated paragraph (g), as follows:

**2802.102 Definitions**

\* \* \* \* \*

(f) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(g) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing the contracting office.

\* \* \* \* \*

**PART 2804—ADMINISTRATIVE MATTERS**

**2804.000 [Removed]**

14. Section 2804.000 is removed.

**Subpart 2804.8—Contract Files [Removed]**

15. Subpart 2804.8 is removed.

**Subpart 2804.9—Information Reporting to the Internal Revenue Service**

**2804.900 [Removed]**

16. Section 2804.900 is removed.

**Subpart 2804.70—Procurement Requisitions [Removed]**

17. Subpart 2804.70 is removed.

**PART 2805—PUBLICIZING CONTRACT ACTIONS**

**Subpart 2805.1—Dissemination of Information [Removed]**

18. Subpart 2805.1 is removed.

**Subpart 2805.5—Paid Advertisements**

19. Section 2805.502 is amended by revising paragraph (a) as follows:

**2805.502 Authority.**

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.140, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

\* \* \* \* \*

**PART 2807—ACQUISITION PLANNING**

**Subpart 2807.70—End-of-Year Procurements**

**2807.700 [Removed]**

20. Section 2807.700 is removed.

**PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**2808.000 [Removed]**

21. Section 2808.000 is removed.

**Subpart 2808.1—Excess Personal Property [Removed]**

22. Subpart 2808.1 is removed.

**PART 2809—CONTRACTOR QUALIFICATIONS**

**Subpart 2809.4—Debarment, Suspension and Ineligibility**

**2809.400 [Removed]**

23. Section 2809.400 is removed.

**2809.403 [Removed]**

24. Section 2809.403 is removed.

**2809.405-2 [Removed]**

25. Section 2809.405-2 is removed.

**2809.471 [Removed]**

26. Section 2809.471 is removed.

**PART 2810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS**

**2810.000 [Removed]**

27. Section 2810.000 is removed.

**PART 2812—CONTRACT DELIVERY OR PERFORMANCE**

**2812.000 [Removed]**

28. Section 2812.000 is removed.

**Subpart 2812.1—Extension of Delivery or Performance Schedules**

29. Section 2812.170 is revised as follows:

**2812.170 Policy.**

It is the policy of DOJ to ensure that contract delivery schedules are reasonable, realistic and meet the requirements of the acquisition. However, in some instances when the contractor fails to deliver in a timely manner, it may be necessary for the

Government to allow the contractor to continue performance. Under these circumstances, if the delay is caused by conditions which would not be considered "excusable delays" (as defined in FAR clause 52.249-14, Excusable Delays) the contracting officer should secure consideration for the Government's forbearance in extending the delivery schedule.

## **PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES**

### **Subpart 2813.5—Purchase Orders**

#### **2813.570 [Removed]**

30. Section 2813.570 is removed.

### **Subpart 2813.70—Certified Invoice Procedure**

31. Section 2813.7002 is amended by revising paragraph (c) as follows:

#### **2813.7002 Procedure.**

\* \* \* \* \*

(c) The Chief of the Contracting Office, as defined in (JAR) 48 CFR 2802.102(g), shall delegate the authority to use the certified invoice procedure. Each delegation must specify any limitation placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

\* \* \* \* \*

## **PART 2814—SEALED BIDDING**

#### **2814.000 [Removed]**

32. Section 2814.000 is removed.

### **Subpart 2814.4—Opening of Bids and Award of Contract**

#### **2814.401 [Removed]**

33. Section 2814.401 is removed.

#### **2814.402 [Removed]**

34. Section 2814.402 is removed.

## **PART 2815—CONTRACTING BY NEGOTIATION**

### **Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations**

35. Section 2815.405 is revised as follows:

#### **2815.405 Solicitations for informational and planning purposes.**

When a solicitation for informational or planning purposes is to be issued, the contracting officer shall make a written determination that such solicitation is justified. This determination shall be approved at one level above the contracting officer.

### **Subpart 2815.8—Price Negotiation**

36. Section 2815.804-370 is revised as follows:

#### **2815.804-370 Waiver of submission of certified cost or pricing data.**

In exceptional cases, the requirement for submission of certified cost or pricing data may be waived. The authorization to waive the requirement shall be in writing and shall set forth the relevant circumstances, including the reasons for granting the waiver and the contracting officer's recommendation. The waiver shall be approved by the appropriate bureau official listed in 2801.601(a) or his/her designee in accordance with bureau procedures.

## **PART 2816—TYPES OF CONTRACTS**

#### **2816.000 [Removed]**

37. Section 2816.000 is removed.

### **Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

38. Section 2816.601 is added to read as follows:

#### **2816.601 Time-and-materials contracts.**

A time-and-materials type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

39. Section 2816.602 is added to read as follows:

#### **2816.602 Labor-hour contracts.**

A labor-hour type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a labor-hour type contract will be made at a level above the contracting officer.

40. Section 2816.603-370 is added to read as follows:

#### **2816.603-370 Limitations.**

Copies of all approved determinations authorizing the use of letter contracts shall be provided to the Procurement Executive.

## **PART 2817—SPECIAL CONTRACTING METHODS**

### **Subpart 2817.2—Options [Removed]**

41. Subpart 2817.2 is removed.

## **PART 2828—BONDS AND INSURANCE**

### **Subpart 2828.1—Bonds**

#### **2828.105 [Removed]**

42. Section 2828.105 is removed.

## **PART 2829—TAXES**

#### **2829.000 [Removed]**

43. Section 2829.000 is removed.

## **PART 2830—COST ACCOUNTING STANDARDS**

### **Subpart 2830.2—CAS Program Requirements**

44. Section 2830.201-270 is revised as follows:

#### **2830.201-270 Impracticality of submission.**

When the contracting officer has determined that it is impractical to secure a Disclosure Statement, as required by FAR 30.202, he/she will document the reasons and rationale for such impracticality and forward the determination, and an explanatory cover letter which sets forth the pertinent circumstances and details the solicitation contracting officer's attempts to secure the Disclosure Statement, to the Procurement Executive for review of the documentation prior to forwarding it to the AAG/A for approval.

## **PART 2832—CONTRACT FINANCING**

#### **2832.000 [Removed]**

45. Section 2832.000 is removed.

### **Subpart 2832.4—Advance Payments**

#### **2832.400 [Removed]**

46. Section 2832.400 is removed.

### **Subpart 2832.70—Prompt Payment**

#### **2832.7000 [Removed]**

47. Section 2832.7000 is removed.

## **PART 2833—PROTESTS, DISPUTES AND APPEALS**

#### **2833.000 [Removed]**

48. Section 2833.000 is removed.

## **PART 2835—RESEARCH AND DEVELOPMENT CONTRACTING**

#### **2835.000 [Removed]**

49. Section 2835.000 is removed.

## **PART 2845—GOVERNMENT PROPERTY**

#### **2845.000 [Removed]**

50. Section 2845.000 is removed.

**PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****2852.000 [Removed]**

51. Section 2852.000 is removed.

**Subpart 2852.1—Instructions for Using Provisions and Clauses****2852.100 [Removed]**

52. Section 2852.100 is removed.

**Subpart 2852.2—Texts and Provisions of Clauses****2852.200 [Removed]**

53. Section 2852.200 is removed.

**PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY****2870.000 [Removed]**

54. Section 2870.000 is removed.

[FR Doc. 95-19042 Filed 8-4-95; 8:45 am]

BILLING CODE 4410-01-M

**NATIONAL TRANSPORTATION SAFETY BOARD****49 CFR Parts 800, 830, and 831****Reporting of Public Aircraft Accidents**

**AGENCY:** National Transportation Safety Board.

**ACTION:** Final rules.

**SUMMARY:** Following review of the comments received, the NTSB is adopting revisions to its rules to implement Public Law 103-411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

**DATES:** The rules are effective September 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jane F. Mackall, (202) 382-6540.

**SUPPLEMENTARY INFORMATION:** On October 25, 1994, President Clinton signed H.R. 2440, the Independent Safety Board Act Amendments of 1994. Codified as Public Law 103-411 (the Act), it was effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. In addition to expanding the Federal Aviation Administration's (FAA) safety regulation to previously exempt "public" aircraft, the Act expanded the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board) to encompass the investigation of all public aircraft other than those operated by the Armed Forces or by a United States intelligence agency.

By notice of proposed rulemaking (NPR) published in the **Federal Register** March 15, 1995 (60 FR 13948), we proposed and sought comment on rules to implement this new authority. We received 14 comments.<sup>1</sup> The States welcome the Board's investigation, in the unfortunate event that a State aircraft is involved in an accident, and either support or have no comment on the proposed rules themselves. ALPA favors this expansion of the Board's authority, but urges that funding levels be adequate for the Board to continue to investigate thoroughly public and civil aircraft accidents.

The Forest Service and Helicopter Association International are concerned that the exception for aircraft operated by the Armed Forces and U.S. intelligence agency aircraft not be read too broadly. The Forest Service's letter notes:

The Forest Service supplements its aerial firefighting resources during times of extreme fire activity with aircraft and flight crews from the Armed Forces. These resources are furnished to us by active military, Reserve, and National Guard units. The Forest Service pays the Armed Forces an hourly rate for this service, has operational control over their movement, and uses them for the same missions as civil and other public aircraft which includes the transportation of passengers. In the case of Reserve and National Guard units, the flight crews are often pilots that normally fly commercial aircraft, including airliners, and fly the Armed Forces aircraft on a part-time basis.

The Forest Service considers these flights to be under its auspices and control and therefore "public" for investigation purposes. It objects to the proposal in the NPR to define "operated by the Armed Forces" only with reference to the actual, physical manipulation of the controls. The Forest Service requests that we reconsider this approach and interpret the Armed Forces exception narrowly and exclude aircraft from Reserve and National Guard units that are under the operational control of non-defense agencies (that is, to define control not in a physical sense but in a sense of directing the use to which the aircraft is put).

Mr. Kuchta argues that the Armed Forces/intelligence agency exception, as we have proposed to interpret it, is too narrow. He cites the Federal Aviation

<sup>1</sup> We received comments from 10 States (Alaska, Connecticut, Hawaii, Iowa, Maine, Maryland, Mississippi, Montana, Pennsylvania, and Wisconsin), three associations (the Air Line Pilots Association (ALPA), the Helicopter Association International, and the National Business Aircraft Association, Inc.), one government agency (the Department of Agriculture, Forest Service), and one individual (Joseph D. Kuchta).

Act's definition of "operation of aircraft,"

"operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—

- (A) the navigation of aircraft; and
- (B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.<sup>2</sup>

Thus, the definition includes both types of control we have discussed. Mr. Kuchta also notes that, in its adjudication of FAA-instituted certificate actions (the so-called enforcement docket), the Board interprets the term "operation" expansively to include other than actual physical manipulation of the controls.

The comments of the parties should demonstrate, and have convinced us, that defining our jurisdiction with regard to the exception is not as straightforward as we had hoped. At the same time, however, FA Act definitions, while they may inform the process, do not control the interpretation of language in our enabling statute, nor does Board precedent from other contexts. The critical consideration is to ensure that the exception is not so broad as to unduly limit our investigatory role, and not so narrow as to intrude improperly in military concerns that have little or no implication for civilian air safety.

On review of the comments, we will revise our future approach. We will consider both the physical manipulation of the controls and the broader operational control concept in determining whether an aircraft is operated by the Armed Forces or an intelligence agency so as to remove it from our investigatory responsibility. Using this approach, we would find, for example, that a cloud-seeding flight using a National Guard pilot and aircraft, but arranged and contracted for by the Forest Service, is not a flight "operated by" the Armed Forces. Indeed, such a flight, because cloud seeding is also conducted by civilian aircraft, has implications for civilian aircraft safety and, therefore, prompts exercise of our statutory role to promote air safety. On the other hand, investigations of accidents involving combat aircraft, combat maneuvers, or military surveillance or air navigational control are clearly on the other side of the equation and we believe that it is examples such as these that prompted Congress' exception.

There may be instances where analysis under the standards of (A) and (B) above produces opposite conclusions. For example, if the Army

<sup>2</sup> 49 U.S.C. 40102(a)(32), as recodified.