

authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Issued in Renton, Washington, on March 19, 2008.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 3, 9, and 52

[FAR Case 2007-017; Docket 2008-0002; Sequence 2]

RIN: 9000-AK97

#### Federal Acquisition Regulation; FAR Case 2007-017; Service Contractor Employee Personal Conflicts of Interest

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are interested in determining if, when, and how service contractor employees' personal conflicts of interest (PCI) need to be addressed and whether greater disclosure of contractor practices, specific prohibitions, or reliance on specified principles would be most effective and efficient in promoting ethical behavior.

**DATES:** *Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before May 27, 2008 to be considered in the formulation of any proposed or interim rule.

**ADDRESSES:** Submit comments identified by FAR case 2007-017, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2007-017" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2007-017. Follow the instructions provided to complete the "Public

Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2007-017" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR case 2007-017, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>. Please include your name and company name (if any) inside the document.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 2007-017.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

1. The Councils are considering the need for standard PCI clauses or a set of standard PCI clauses, if appropriate, for inclusion in solicitations and contracts as recommended by the Acquisition Advisory Panel's Final Report. The Councils are publishing a related advance notice of proposed rulemaking on the subject of Organizational Conflicts of Interest.

2. The Federal Government is increasingly turning to private contractors to perform a wide array of its work. As a result, contractor employees are increasingly working side-by-side with Federal employees, but are not subject to the same ethical safeguards that have been put in place for Federal employees to ensure the integrity of Government operations. Issues such as financial conflicts of interest, impartiality concerns, misuse of information, misuse of apparent or actual authority, and misuse of property are all areas of potential personal conflicts of interest for contractor employees that could result in harm to the public fisc and loss of public confidence in Government. For an introduction to the potential problems resulting from contractor employees' personal conflicts of interest, see the speech given by the Director of the Office of Government Ethics to the Defense Industry Initiative entitled "Who Are Government Workers and How Can Management Improve Worker Ethical Sensitivity?" at: [http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/reports\\_plans/cusick\\_speech061407.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reports_plans/cusick_speech061407.pdf).

[www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/reports\\_plans/cusick\\_speech061407.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reports_plans/cusick_speech061407.pdf).

3. The Government Accountability Office (GAO) released, on March 7, 2008, GAO-08-169, Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DOD Contractor Employees. GAO's reporting objectives, in part, were to assess (1) what safeguards exist to prevent personal conflicts of interest for contractor employees when performing DOD's tasks and (2) whether Government and defense contractor officials believe additional safeguards are necessary. To conduct this review, GAO reviewed conflicts-of-interest laws and policies and interviewed ethics officials and senior DoD leaders regarding applicability to DOD Federal and contractor employees. The public may wish to consider GAO's findings, conclusions, and recommendations regarding additional safeguards for personal conflicts of interest pertaining to contractor employees in providing comments in response to this Notice.

4. The Acquisition Advisory Panel (AAP) was chartered by the Congress at Section 1423 of the Services Acquisition Reform Act (SARA). Relevant portions of the final report of the AAP are located on the Web at <http://acquisition.gov/comp/aap/documents/Chapter6.pdf>. The Panel found that "(t)here is a need to assure that the increase in contractor involvement in agency activities does not undermine the integrity of the Government's decision-making processes" (AAP Final Report, Chapter 6, Finding 7, page 417). The AAP also found that "(m)ost of the statutory and regulatory provisions [addressing PCI] that apply to Federal employees do not apply to contractor employees, even where contractor employees are co-located and work side-by-side with Federal employees and are performing similar functions" (AAP Final Report, Chapter 6, Finding 7, page 418).

5. The AAP concluded that, "in view of the tremendous amount of Federal contracting for services, and particularly in the context of the multisector workforce, additional measures to protect against PCIs by contractor personnel [are] needed" (AAP Final Report, Chapter 6, Recommendation 5-2, page 423). While it concluded that it is not necessary to adopt any new Federal statutes, the AAP was concerned that certain types of contracts, primarily service contracts, might present greater problems than others, and it recommended that the FAR Council should identify those types of contracts where the potential

for PCIs raises a concern. However, the AAP also expressed concern that a blanket application of Government ethics provisions to contractor employees might result in over-regulation with its attendant costs to industry, particularly small businesses.

6. Two recent FAR cases, 2006–007 and 2007–006, have expanded, or propose to expand, general business ethics coverage and requirements in the FAR with respect to contractor entities. The former case was published as a final rule at 72 FR 65873, November 23, 2007, with an effective date of December 24, 2007. It requires employers to post Inspector General (IG) Hotline posters in their places of business, to have a written code of business ethics, and, with the exception of small businesses, to have a formal business ethics training program and internal control system. The latter case was published as a proposed rule at 72 FR 64019, November 14, 2007. The comment period closed on January 14, 2008. The Councils are now reviewing the comments received. FAR Case 2007–006 proposes more mandatory requirements for the business ethics programs. For example, contractors that do not timely report violations of law in connection with a Government contract or subcontract may be subject to suspension or debarment. Neither of these FAR cases specifically addressed personal conflicts of interest for contractor employees working in the Federal workplace.

7. Some Government agencies' approaches are located at the following Web sites:

**AGENCY FOR INTERNATIONAL DEVELOPMENT — Conduct of employees:** Sections 752.7013 and 752.7027 located at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/48cfr752\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr752_07.html).

**DEPARTMENT OF ENERGY — Personal conflicts of interest of management and operating contractors:** Sections 970.0371–1 through 970.0371–9, and 970.5203–3 located at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/48cfr970\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr970_07.html).

**ENVIRONMENTAL PROTECTION AGENCY — Personal Conflicts of interest—contracts involving current or former EPA employees:** Subpart 1503.6 located at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/48cfr1503\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1503_07.html); and section 1552.203–70 located at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/48cfr1552\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr1552_07.html).

**NUCLEAR REGULATORY COMMISSION — Personal conflicts of interest — current or former agency employee involvement:** Section

2052.209–70 located at [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/48cfr2052\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/48cfr2052_07.html).

## B. Solicitation of Public Comment

The Councils are seeking comments and recommendations regarding whether additional regulatory coverage is needed, the suitability of applying other agencies' approaches, or another alternative. The Councils are also interested in industry initiatives in this area, particularly standardized or model non-disclosure agreements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Dated: March 19, 2008.

**Al Matera,**

*Director, Acquisition Policy Division.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9 and 52

[FAR Case 2007–018; Docket 2008–0002; Sequence 1]

**RIN: 9000–AK98**

#### Federal Acquisition Regulation; FAR Case 2007–018; Organizational Conflicts of Interest

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are seeking information that will assist in determining whether the Federal Acquisition Regulation System's current guidance on organizational conflicts of interest (OCIs) adequately addresses the current needs of the acquisition community or whether providing standard provisions and/or clauses, or a set of such standard provisions and clauses, might be beneficial.

**DATES:** *Comment Date:* Interested parties should submit written comments to the

FAR Secretariat on or before May 27, 2008 to be considered in the formulation of any proposed or interim rule.

**ADDRESSES:** Submit comments identified by FAR case 2007–018, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2007–018” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2007–018. Follow the instructions provided to complete the “Public Comment and Submission Form”.

Please include your name, company name (if any), and “FAR Case 2007–018” on your attached document.

- Fax: 202–501–4067.

- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2007–018, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>. Please include your name and company name (if any) inside the document.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 2007–018.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

1. The Councils are considering the need for standard OCI clauses, or a set of standard OCI clauses, if appropriate, for inclusion in solicitations and contracts. The Councils are publishing a related advance notice of proposed rulemaking on the subject of Service Contractor Employee Personal Conflicts of Interest.

2. Organizational and Consultant Conflicts of Interest are addressed in Subpart 9.5, as well as in some agencies' supplements.

3. With the recent increase in the use of contractor employees to perform functions previously performed by Government employees (blended workforce) and the increased consolidation in many sectors of the contractor community, the Councils are seeking to determine if the FAR's current guidance on OCIs adequately