

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 8 and 42**

[FAR Case 2001-035]

RIN 9000-AJ45

**Federal Acquisition Regulation; Past
Performance Evaluation of Federal
Prison Industries Contracts**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to remove the prohibition on evaluating Federal Prison Industries (FPI) contract performance.

DATES: Interested parties should submit comments in writing on or before October 28, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2001-035@gsa.gov.

Please submit comments only and cite FAR case 2001-035 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Laura Smith, Procurement

Analyst, at (202) 208-7279. Please cite FAR case 2001-035.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule amends FAR Subparts 8.6 and 42.15 to remove the prohibition on evaluating Federal Prison Industries (FPI) contract performance. Past performance information is collected for use in future source selections regarding a contractor's actions under previously awarded contracts. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, prices, and quality, specifically.

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.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to 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 extending the collection of past performance data to include FPI contracts can be accomplished within our normal means of performing business and further serves to promote competition among offerors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR

Parts 8 and 42 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001-035), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 42

Government procurement.

Dated: August 20, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8 and 42 as set forth below:

1. The authority citation for 48 CFR parts 8 and 42 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).

**PART 8—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

2. Add section 8.607 to read as follows:

8.607 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with subpart 42.15.

**PART 42—CONTRACT
ADMINISTRATION AND AUDIT
SERVICES****42.1502 [Amended]**

3. Amend section 42.1502 in paragraph (b) by removing “Subparts 8.6 and” and adding “subpart” in its place.

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