

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Parts 3 and 52

[Federal Acquisition Circular 90-2]

RIN 9000-AD01

Federal Acquisition Regulation (FAR);  
Procurement Integrity

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

**ACTION:** Amendment to interim rule with request for comment.

**SUMMARY:** On November 5, 1990, section 27 of the OFPP Act was further amended by section 815 of the FY 1991 DoD Authorization Act, Pub. L. 101-510. The post-employment restrictions contained in subsection 27(f) of the Act are suspended during the period beginning December 1, 1990, and ending May 31, 1991. Section 815 also provides that contractors need only obtain one certification required by subsection 27(e)(1)(B) from individuals required to certify under the subsection and that this certification be obtained at the earliest possible date after the beginning of the individual's employment or association with that contractor. The Conference Report accompanying the amended Act states, "If a company decides to rely on certification executed prior to the suspension of section 27, it should take appropriate action to ensure that its employees are advised that section 27 has been reinstated." (See 136 CONG. REC. H 12199 (daily ed. October 23, 1990).) This amendment to the interim rule implements section 815.

**DATES:** *Effective Date:* December 30, 1990.

*Comment Date:* Comments on this amendment to the interim rule, published in FAC 84-60 (55 FR 36782) September 6, 1990, should be submitted to the FAR Secretariat at the address shown below on or before December 31, 1990, to be considered in the formulation of a final rule. The comment period for the interim rule published in 55 FR 36782 is hereby extended to that date. Please provide comments on both FAC 84-60 and FAC 90-2 in the same submission.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR

Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405  
Please cite FAC 90-2 and FAC 84-60 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501-3221. Please cite FAC 90-2.

**SUPPLEMENTARY INFORMATION:****A. Determination to Amend an Interim Rule**

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 90-2 as an amendment to the interim rule in FAC 84-60 (55 FR 36782). This action is necessary to implement revisions to section 27 of the OFPP Act. Pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this amendment and the interim rule will be considered in formulating a final rule.

**B. Regulatory Flexibility Act**

This amendment to the interim rule in FAC 84-60 is not expected to have a significant economic impact on a substantial number of small entities because only minor revisions to contractor responsibilities have been made. However, because the interim rule (FAC 84-60, 55 FR 36782) 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., an Initial Regulatory Flexibility Analysis (IRFA) was prepared and was sent to the Chief Counsel for Advocacy of the Small Business Administration upon issuance of that rule. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited on both the interim rule and this amendment. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 90-610 (FAC 90-2) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this amendment to the interim rule does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Parts 3 and 52**

Government procurement.

Dated: November 26, 1990.

Harry S. Rosinski,

*Acting Director, Office of Federal Acquisition Policy.***Federal Acquisition Circular**

[Number 90-2]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-2 is effective November 30, 1990.

Eleanor Spector,

*Deputy Assistant Secretary of Defense for Procurement, DoD.*

Richard H. Hopf, III,

*Associate Administrator for Acquisition Policy, GSA.*

S.J. Evans,

*Assistant Administrator for Procurement, NASA.*

The Administrator of the Office of Federal Procurement Policy, Office of Management and Budget, and the Director, Office of Government Ethics concur.

Allan V. Burman,

*Administrator, Office of Federal Procurement Policy.*

Stephen D. Potts,

*Director, Office of Government Ethics.*

Federal Acquisition Circular (FAC) 90-2 amends the Federal Acquisition Regulation as specified below:

**Item-Procurement Integrity**

On November 5, 1990, section 27 of the OFPP Act was further amended by section 815 of the FY 1991 DoD Authorization Act, Pub. L. 101-510. The post-employment restrictions contained in subsection 27(f) of the Act are suspended during the period beginning December 1, 1990 and ending May 31, 1991. Section 815 also provides that contractors need only obtain one certification required by subsection 27(e)(1)(B) from individuals required to certify under that subsection and that this certification be obtained at the earliest possible date after the beginning of the individual's employment or association with that contractor. The Conference Report accompanying the amended Act states, "If a company decides to rely on certification executed prior to the suspension of section 27, it should take appropriate action to ensure that its employees are advised that section 27 has been reinstated." (See 136 CONG. REC. H 12199 (daily ed. October 23, 1990).) This amendment to the interim rule implements section 815.

Therefore, 48 CFR parts 3 and 52 are amended as set forth below:

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).

**PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTERESTS**

2. Section 3.104-1 is amended by revising the first sentence of paragraph (a) to read as follows:

**3.104-1 General.**

(a) Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Pub. L. 101-189, and section 815 of the 1991 National Defense Authorization Act, Pub. L. 101-510 (hereinafter, section 27 is referred to as "the Act" or "the law as amended."). \* \* \*

3. Section 3.104-2 is revised to read as follows:

**3.104-2 Applicability.**

(a) *Conduct and procurement activities during the period July 16, 1989, through November 30, 1989—(1) Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) Participation in a procurement during the period July 16, 1989, through November 30, 1989, whether as a procurement official, competing contractor or through access to information, subjects the participant, during that period, to the prohibitions contained in section 27 as originally enacted.

(ii) If a particular procurement which was begun during the period July 16, 1989, through November 30, 1989, has not been completed by November 30, 1990, then on or after December 1, 1990:

(A) Any person who was subject to the prohibitions on disclosing proprietary or source selection information contained in subsection 27(c) of the law as originally enacted is subject to the disclosure prohibitions of subsection 27(d) of the law as amended;

(B) Except as provided in subdivision (a)(1)(ii)(A) of this subsection, a procurement official who was subject to the prohibitions on gratuities, employment discussions, and disclosing proprietary or source selection information contained in subsection 27(b) of the law as originally enacted is subject to the prohibitions under subsection 27(b) of the law as amended,

if the activities performed by the procurement official prior to December 1, 1989, would also make him or her a procurement official under subsection 27(b) of the law as amended; and

(C) Except as provided in subdivision (a)(1)(ii)(A) of this subsection, a competing contractor who was subject to the prohibitions on gratuities, employment discussions, and soliciting or obtaining proprietary or source selection information contained in subsection 27(a) of the law as originally enacted is subject to the prohibitions under subsection 27(a) of the law as amended if it is still a competing contractor for that procurement on or after December 1, 1990.

(2) *Post-employment restrictions.* (i) Current and former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989, are subject, during that period, to the post-employment restrictions contained in section 27 as originally enacted. (ii) On or after June 1, 1991, current and former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989, become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended, if:

(A) The activities performed by the procurement official during the period July 16, 1989, through November 30, 1989, would also make him or her a procurement official under section 27, of the law as amended; and

(B) The 2-year period of any post-employment restriction that attached during the period July 16, 1989, through November 30, 1989, has not expired.

(b) *Conduct and procurement activities during the period December 1, 1989, through November 30, 1990—(1) Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) The prohibitions on gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information contained in section 27 were suspended during the period December 1, 1989, through November 30, 1990. Neither the prohibitions contained in section 27 as originally enacted nor as amended apply during the suspension period. Participation in a procurement solely during the suspension period does not subject any person to any of these prohibitions on or after December 1, 1990.

(2) *Post-employment restrictions.* (i) The post-employment restrictions contained in section 27 were suspended during the period December 1, 1989,

through November 30, 1990. Neither the post-employment restrictions contained in section 27 as originally enacted nor as amended apply to any person during the suspension period. In addition, these post-employment restrictions do not apply on or after December 1, 1990, to any current or former Government employee whose only participation in a procurement occurred during the period from December 1, 1989, through November 30, 1990.

(ii) The suspension of the post-employment restrictions during the period December 1, 1989, through November 30, 1990, does not interrupt the running of the 2-year period of any post-employment restriction that attached to a Government employee who was a procurement official during the period July 16, 1989, through November 30, 1989.

(c) *Conduct and procurement activities on or after December 1, 1990.—(1) Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) The prohibitions contained in section 27, of the law as amended, apply on or after December 1, 1990, to persons who participate in a procurement on or after that date, whether as a procurement official, a competing contractor, or through access to information.

(ii) As provided in subdivision (a)(1)(ii) of this subsection, the prohibitions contained in section 27, of the law as amended, may also apply to procurement officials, competing contractors, and other persons who, during the period July 16, 1989, through November 30, 1989, were subject to the prohibitions of section 27 as originally enacted.

(2) *Post-employment restrictions.* (i) Public Law 101-510 continues the suspension of the post-employment restrictions contained in subsection 27(f) of the law as amended through May 31, 1991. Government employees who perform procurement official activities solely during the period December 1, 1990, through May 31, 1991, do not become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended either during or after the suspension period.

(ii) The post-employment restrictions of subsection 27(f) of the law as amended are effective June 1, 1991. Government employees who perform procurement official activities on or after June 1, 1991, are subject to those restrictions.

(iii) As provided in subdivision (a)(2)(ii) of this subsection, the post-employment restrictions contained in

subsection 27(f) of the law as amended may also apply, on or after June 1, 1991, to current or former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989.

(iv) The continued suspension of the post-employment restrictions does not interrupt the running of the 2-year period of any post-employment restriction that attached to a procurement official during the period July 16, 1989, through November 30, 1989.

4. Section 3.104-3 is amended by revising the introductory text of paragraph (d) to read as follows:

(d) *Post-employment Restrictions resulting from procurement activities of Government officers or employees who are or were procurement officials (subsection 27(f) of the Act; not effective until June 1, 1991).*

**3.104-4 [Amended]**

5. Section 3.104-4 is amended in paragraph (a) by removing the reference "5 CFR 2638.201" the second time it appears and inserting in its place "5 CFR 2638.204".

6. Section 3.104-7 is amended in paragraphs (b) and (c) by removing in the first sentences the word "prohibits" and inserting in their place the word "restricts"; by adding a sentence at the end of both paragraphs (b) and (c); by revising paragraph (d)(5); and in paragraph (d)(6) by removing the date "November 30, 1990" and inserting in its place "May 31, 1991" to read as follows:

**3.104-7 Post-employment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.**

(b) \* \* \* This restriction is not effective until June 1, 1991.

(c) \* \* \* This restriction is not effective until June 1, 1991.

(d) \* \* \*  
 (5) An individual who has been granted a waiver by the President in accordance with subsection 27(f)(3) of the Act. Waivers under that subsection may be granted only to a civilian officer or employee of the Executive branch other than an officer and employee in the Executive Office of the President who, after his or her Federal Government employment is terminated, is or will be engaged in activities at a

Government-owned, contractor-operated entity at which he or she served as an officer or employee immediately before his or her Federal Government employment began. Subsection 27(f)(3) is not effective until June 1, 1991.

7. Section 3.104-9 is amended in paragraph (c)(2) by revising the asterisked paragraph of the **CERTIFICATE OF PROCUREMENT INTEGRITY** to read as follows:

**3.104-9 Certification requirements.**

(c) \* \* \*  
 (2) \* \* \*

\* Subsections 27 (a), (b), and (d), are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991. THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

8. Section 52.203-8 is amended by removing in the title of the provision the date "(SEP 1990)" and inserting in its place "(NOV 1990)"; by adding in paragraph (b)(2) of the provision in the **CERTIFICATE OF PROCUREMENT INTEGRITY** following the words "possible violation of" the words "subsections 27 (a), (b), (d), or (f) of"; by revising in paragraph (b) of the provision in the **CERTIFICATE OF PROCUREMENT INTEGRITY** the asterisked paragraph; and by revising paragraph (f) of the provision to read as follows:

**52.203-8 Requirement for Certificate of Procurement Integrity.**

(b) \* \* \*

\* Subsections 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

(f) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic

training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

9. Section 52.203-9 is amended by removing in the title of the clause the date "(SEP 1990)" and inserting in its place "(NOV 1990)"; by removing in paragraph (c) of the clause in the **CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION** the date "(SEP 1990)" and inserting in its place "(NOV 1990)"; by revising in paragraph (c)(3) of the clause in the **CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION** the asterisked paragraph; and by revising paragraph (d) of the clause to read as follows:

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

(c) \* \* \*  
 (3) \* \* \*

\* Subsections 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.