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#### 48 CFR Part 3

[FAC 90-32; FAR Case 94-803; Item IV]

RIN 9000-AG16

#### Federal Acquisition Regulation; Whistleblower Protections for Contractor Employees (Ethics)

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

**ACTION:** Technical amendment to final rule.

**SUMMARY:** At 60 FR 37774, July 21, 1995, a final rule was issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is now issuing an *Applicability Date*, in addition to the *Effective Date*, of the regulation.

**DATES:** Effective Date: September 19, 1995.

*Applicability Date:* This regulation will apply to contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date. The remedy provided by this regulation does not apply to contracts otherwise covered by provisions of 10 U.S.C. 2409a.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julius Rothlein, Ethics Team Leader, at (703) 697-4349 in reference to this FAR case.

#### SUPPLEMENTARY INFORMATION:

##### Background:

FAC 90-30, FAR case 94-803, implemented Sections 6005 and 6006 of the Act, Whistleblower Protections for Contractor Employees. These protections are now virtually identical for contractors employed by both DOD and civilian agencies.

The rule as originally published did not specifically discuss the extent of retroactivity. The rule did not require a contract clause. To clarify this, the FAR Council is establishing the extent of the rule's retroactivity.

Some existing Department of Defense contracts contain a contractor employee whistleblower clause, based on prior statute (10 U.S.C. 2409a). That law was narrower in scope and only applied to certain DoD contracts.

Dated: September 7, 1995.

Edward C. Loeb,

*Deputy Project Manager for the  
Implementation of the Federal Acquisition  
Streamlining Act of 1994.*

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#### 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53

[FAC 90-32; FAR Case 94-780; Item V]

RIN 9000-AG37

#### Federal Acquisition Regulation; Small Business

**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 on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 7101(a) and 7106 and to augment regulation implementation of Section 10004 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355), dated October 13, 1994. Section 7101(a) of FASA deletes sections 15(e) and (f) from the Small Business Act. Those sections established the priority for award of set-asides and provided the statutory basis for a procurement preference for concerns located in Labor Surplus Areas (LSA). Based on this deletion, this rule removes the LSA set-aside program and LSA subcontracting program from the FAR.

Section 7106 of FASA revises sections 8 and 15 of the Small Business Act to accommodate a Governmentwide goal of 5 percent for women-owned small businesses. This rule deletes existing, separate coverage relating to women-owned businesses and revises existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. In connection with this revision, the Standard Forms 294 and 295 are revised and streamlined.

Section 10004 of FASA, which requires the collection of specified data through the Federal Procurement Data System, is being implemented by FAR case 94-701. This rule augments that coverage by providing a solicitation provision to collect the information on women-owned businesses as required by that FAR case.

This regulatory action was subject to Office of Management and Budget

review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Victoria Moss, Small Business Team Leader, at (202) 501-4764 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 90-32, FAR case 94-780.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103-355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. The following sections of the Federal Acquisition Streamlining Act are implemented by this final rule:

Section 7101, Repeal of Certain Requirements, paragraph (a), deletes sections 15(e) and (f) from the Small Business Act. These sections established the priority for the award of contracts and subcontracts in carrying out the set-aside programs.

Section 7106, Procurement Goals for Small Business Concerns Owned by Women, establishes a Governmentwide goal for participation by women-owned small business concerns in prime and subcontracts and revises sections 8 and 15 of the Small Business Act to accommodate the goal.

Section 10004, Data Collection through the Federal Procurement Data System, has been implemented in FAR case 94-701. This rule augments that implementation.

These sections are implemented in this final rule by way of the following substantial changes:

Elimination of the Labor Surplus Area (LSA) set-aside program;

Development of coverage giving women-owned small businesses equal standing with small and small disadvantaged business in subcontracting plans;

Issuance of an abbreviated provision to allow firms to represent their status as small, small disadvantaged and/or women-owned small business in one place;

Simplification and streamlining of the Standard Form (SF) 294, Subcontract for Individual Contracts, and SF 295, Summary Subcontract Report;

Inclusion of a solicitation provision collecting information on women-owned businesses.