

**37.302 [Amended]**

■ 23. Amend section 37.302 in the introductory text by removing “(40 U.S.C. 270a–270f)” and adding “(40 U.S.C. 3131 *et seq.*)” in its place.

**PART 39—ACQUISITION OF INFORMATION TECHNOLOGY****39.001 [Amended]**

■ 24. Amend section 39.001 in the second sentence by removing “40 U.S.C. 1412” and adding “40 U.S.C. 11302” in its place.

**PART 41—ACQUISITION OF UTILITY SERVICES****41.103 [Amended]**

■ 25. Amend section 41.103 by—

a. Removing from paragraph (a)(1) in the first sentence “section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481),” and from the third sentence “section 201 of the Act” and adding “40 U.S.C. 501” in both places; and

b. Removing from paragraph (a)(2) “40 U.S.C. 474(d)(3)” and adding “40 U.S.C. 113(e)(3)” in its place.

**PART 47—TRANSPORTATION****47.102 [Amended]**

■ 26. Amend section 47.102 in paragraph (a)(2) by removing “(40 U.S.C. 726)” and adding “(40 U.S.C. 17307)” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****52.212–4 [Amended]**

■ 27. Amend section 52.212–4 by—

a. Revising the date of the clause to read “(SEP 2005)” and

b. Removing from paragraph (r) of the clause “40 U.S.C. 327” and adding “40 U.S.C. 3701” in its place.

**52.228–15 [Amended]**

■ 28. Amend section 52.228–15 by—

a. Revising the date of the clause to read “(SEP 2005)” and

b. Removing from the heading of paragraph (e) of the clause “(40 U.S.C. 270b(c))”; and adding “(40 U.S.C. 3133(c))” in its place.

**52.232–27 [Amended]**

■ 29. Amend section 52.232–27 by—

a. Revising the date of the clause to read “(SEP 2005)” and

b. Removing from the introductory text of paragraph (f)(1) of the clause “section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act),” and

adding “the Miller Act (40 U.S.C. 3133),” in its place.  
[FR Doc. 05–19470 Filed 9–29–05; 8:45 am]  
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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 3 and 52**

[FAC 2005–06; FAR Case 1989–093; Item IV]

RIN 9000–AD76

**Federal Acquisition Regulation; Implementation of the Anti-Lobbying Statute**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) have agreed to convert the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990, to a final rule with several minor changes. The interim rule amended the Federal Acquisition Regulation (FAR) to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.” Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement in excess of \$100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of \$150,000 must disclose lobbying with other than appropriated funds.

**DATES:** *Effective Date:* September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification

of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite FAC 2005–06, FAR case 1989–093.

**SUPPLEMENTARY INFORMATION:****A. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 55 FR 3190, January 30, 1990. The interim rule amended the Federal Acquisition Regulation to implement Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31 U.S.C. entitled “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.” Section 319 prohibits the recipients of Federal contracts, grants, loans and cooperative agreements from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan or cooperative agreement. It also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of \$100,000, or a loan, or Federal commitment to insure or guarantee a loan, in excess of \$150,000, must disclose lobbying with other than appropriated funds.

Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements, which OMB published on December 20, 1989 (54 FR 52306). After the interim FAR rule was published in the **Federal Register** at 55 FR 3190, January 30, 1990, OMB published a clarification notice to their earlier guidance on June 15, 1990 (55 FR 24540).

After consideration of the public comments that were received, DoD, GSA, and NASA have agreed to convert the interim rule to a final rule with minor changes as discussed in Section B.

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. Public Comments**

Ninety-four respondents submitted comments. Twenty of the respondents agreed or disagreed with the interim rule without offering suggested changes. The remaining respondents recommended revisions to clarify definitions and revise terminology; clarify or add to the list of exceptions to

the rule; clarify the cost principles; revise the civil penalty coverage; and revise the OMB guidance (outside the scope of the case). DoD, GSA, and NASA considered all comments and concluded that the interim rule should be converted to final with the minor changes described below. For the other recommended revisions in the public comments, DoD, GSA, and NASA have not experienced the issues during the rule's 15-year effective period that the recommended clarifications and revisions were intended to address. However, in taking the administrative action of converting the interim rule to final, DoD, GSA, and NASA recognize the need for additional analysis to determine if further FAR changes are required on the subject of Lobbying restrictions based on activities in this area subsequent to publication of the interim rule. DoD, GSA, and NASA believe that this end is best served by converting to final the 1990 interim rule to provide a stable regulatory baseline against which the new analysis will be conducted. Accordingly, the following changes are made to the interim rule:

1. FAR 3.802(c)(2)(v) is redesignated as FAR 3.802(d), and paragraph (b)(3)(ii)(E) of FAR clause 52.203-12 is redesignated as paragraph (b)(4) of the clause. These paragraphs specify when the reporting requirements of FAR 3.803 do not apply and were incorrectly numbered within the FAR section and clause.

2. In accordance with the OMB clarification of June 15, 1990, paragraph (b)(1) of FAR clause 52.203-11 is revised to indicate that the certification requirement applies only to the award of the instant contract and not "any" contract, grant, loan, or cooperative agreement (and any extensions, continuations, renewals, amendments or modifications thereof).

3. Paragraphs (b)(3)(i)(E) and (b)(3)(ii)(D) of FAR clause 52.203-12 are revised to clarify the activities that are permitted under the clause. The interim rule language did not correctly cite all the applicable cross references and was unintentionally restrictive and contradictory.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This rule finalizes the interim rule with minor corrections in order to implement 31

U.S.C. 1352 entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," also known as the Byrd Amendment. Section 1352 prohibits recipients of Federal contracts from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with that contract, and requires a bidder or offeror for a Federal contract to disclose certain lobbying activities. Section 1352 required the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with, its requirements. OMB published guidance on December 20, 1989 (54 FR 52306), and a clarification notice on June 15, 1990 (55 FR 24540). This final rule implements the requirements of 31 U.S.C. 1352 and the OMB guidance.

No comments were received in response to the Initial Regulatory Flexibility Analysis.

The certification requirements of the final rule will apply to all small entities which seek contracts over \$100,000 with the Federal Government. The Federal Government awards approximately 90,000 contracts per year to approximately 18,000 small entities. The disclosure requirements of the rule will only apply to small entities on whose behalf a registered lobbyist has made lobbying contacts with respect to a particular Federal contract. Based on OMB Control No. 0348-0046, Disclosure of Lobbying Activities for SF LLL, which is the standard disclosure form for lobbying paid for with non-Federal funds as required by the Byrd Amendment, 300 responses were received annually from states, local governments, non-profit organizations, individuals, and businesses. The number of such small entities is estimated to be near zero, based on the small number of lobbyists reported to have registered under the Byrd Amendment and the improbability that such lobbyist represent small entities.

To the extent that the statute required that OMB issue guidance regarding compliance with the Byrd Amendment, the reporting and recordkeeping requirements implemented in this rule are considered requirements of the OMB guidance. In this light, there are not additional reporting, recordkeeping, or other compliance requirements imposed by this final rule.

Some alternatives were suggested in public comments on this rule which, the commenters thought would mitigate the economic impact of the rule on small entities. These alternatives are: To exempt procurements of commercial items from the reporting requirements of the rule; to exempt subcontractors from the reporting requirements of the rule; or to permit use of appropriated funds for lobbying contacts by bona fide agents and marketing representatives of an entity. These three alternatives were rejected as inconsistent with the statute. Thus, the final rule, as written, minimizes the economic impact on small entities consistent with the stated objectives of applicable statutes and OMB guidance.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a

copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0348-0046. The requirements of this Act were addressed by the Office of Management and Budget (OMB) in the development of its interim final guidance, published in the **Federal Register** on December 20, 1989 (54 FR 52306), implementing Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

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

Government procurement.

Dated: September 22, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

### Interim Rule Adopted as Final with Changes

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 3 and 52, which was published at 55 FR 3190, January 30, 1990 (as amended by other final FAR rules subsequent to its publication), as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

#### 3.802 [Amended]

■ 2. Amend section 3.802 by redesignating paragraph (c)(2)(v) as paragraph (d).

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.203-11 by revising the date of the clause and paragraph (b)(1) of the clause to read as follows:

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.**

\* \* \* \* \*

**CERTIFICATION AND DISCLOSURE  
REGARDING PAYMENTS TO INFLUENCE  
CERTAIN FEDERAL TRANSACTIONS (SEP  
2005)**

\* \* \* \* \*

(b) \* \* \*

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this contract;

\* \* \* \* \*

■ 4. Amend section 52.203–12 by revising the date of the clause and paragraphs (b)(3)(i)(E) and (b)(3)(ii)(D) of the clause, and redesignating paragraph (b)(3)(ii)(E) as paragraph (b)(4). The revised text reads as follows:

**52.203–12 Limitation on Payments to Influence Certain Federal Transactions.**

\* \* \* \* \*

**LIMITATION ON PAYMENTS TO  
INFLUENCE CERTAIN FEDERAL  
TRANSACTIONS (SEP 2005)**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) Only those agency and legislative liaison activities expressly authorized by paragraph (b)(3)(i) of this clause are permitted under this clause.

(ii) \* \* \*

(D) Only those professional and technical services expressly authorized by paragraph (b)(3)(ii) of this clause are permitted under this clause.

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 6 and 13**

[FAC 2005–06; FAR Case 2004–037; Item V]

RIN 9000–AK12

**Federal Acquisition Regulation;  
Increased Justification and Approval  
Threshold for DOD, NASA, and Coast  
Guard**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 70 FR 11739, March 9, 2005, to a final rule with minor changes. The rule amended the Federal Acquisition Regulation (FAR) to increase the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard. The FAR revision implemented Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 which amended 10 U.S.C. 2304(f)(1)(B) by striking \$50,000,000 both places it appears and inserting \$75,000,000. In addition, corresponding language in the FAR is also changed to reflect these higher thresholds for DoD, NASA, and the Coast Guard.

**DATES:** Effective Date: September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–06, FAR case 2004–037.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This rule implemented Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amended 10 U.S.C. 2304(f)(1)(B) by striking \$50,000,000 and inserting \$75,000,000.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 70 FR 11739, March 9, 2005, with a request for comments by May 9, 2005. No comments were received. This final rule converts the interim rule with a minor change, making corresponding changes to FAR 13.501.

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 the rule does not impose any costs on either small or large businesses.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the 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 6 and 13**

Government procurement.

Dated: September 22, 2005.

**Julia B. Wise,**

*Director, Contract Policy Division.*

**Interim Rule Adopted as Final with Changes**

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 6, which was published in the **Federal Register** at 70 FR 11739, March 9, 2005, as a final rule with the following changes:

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

■ 1. The authority citation for 48 CFR part 13 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 13.501 by revising the first sentences of paragraphs (a)(2)(iii) and (a)(2)(iv) to read as follows:

**13.501 Special documentation requirements.**

(a) \* \* \*

(2) \* \* \*

(iii) For a proposed contract exceeding \$10,000,000 but not exceeding \$50,000,000 or, for DoD, NASA, and the Coast Guard, not exceeding \$75,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval.

(iv) For a proposed contract exceeding \$50,000,000 or, for DoD, NASA, and the Coast Guard, \$75,000,000, the official described in 6.304(a)(4) must approve the justification and approval.

\* \* \* \* \*

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