

automated formats) shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107.

(b) *SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract*. SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV. 10/83), Purchase Order Invoice Voucher*. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505(b).

(d) *SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher*. SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.404(e).

(e) *OF 336 (4/86 Ed.), Continuation Sheet*. OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.107(c).

(f) *SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items* prescribed in 53.212, *OF 347 (REV. 6/95), Order for Supplies or Services*, and *OF 348 (10/83 Ed.), Order for Supplies or Services-Schedule Continuation*. SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505.

(2) To establish blanket purchase agreements (BPA's), as specified in 13.202, and to make purchases under BPA's, as specified in 13.204(e).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see 5.503(a)(2), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

§ 53.216-1, 53.236-1, and 53.251
[Amended]

79. The following sections are amended by removing the reference "53.213(e)" and inserting "53.213(f)":

- a. 53.216-1;
- b. 53.236-1(f); and
- c. 53.251.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 3 and 52

[FAC 90-40; FAR Case 96-300; Item III]

RIN 9000-AH11

**Federal Acquisition Regulation;
Gratuities**

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), which amended 10 U.S.C. 2207, generally referred to as the Gratuities Act, to make it applicable only to contracts exceeding the simplified acquisition threshold. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: *Effective Date:* July 26, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 24, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAC 90-40, FAR case 96-300, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 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 90-40, FAR case 96-300.

SUPPLEMENTARY INFORMATION:

A. Background

Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), added a

subsection (b) to 10 U.S.C. 2207, Expenditure of appropriations: limitation. Prior to its amendment, 10 U.S.C. 2207 prohibited the spending of DoD appropriated money (other than under a contract for personal services) unless the Government had an express right to terminate the contract if the contractor offered or gave a gratuity to a Government employee to obtain the contract or to receive favorable treatment under the contract. Subsection (b) of 10 U.S.C. 2207 exempts contracts which do not exceed the simplified acquisition threshold from this prohibition.

FAR Subpart 3.2, Contractor Gratuities to Government Personnel, implements 10 U.S.C. 2207 and applies to all executive agencies except for that portion concerning exemplary damages, which applies only to DOD. FAR Subpart 3.2 prescribed the use of FAR clause 52.203-3, Gratuities, in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate DOD appropriated funds. This interim rule amends FAR Subpart 3.2 to exempt solicitations and contracts which do not exceed the simplified acquisition threshold from the prescribed use of the clause.

B. Regulatory Flexibility Act

This interim rule is not expected 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 only a small number of Federal contractors have been subject to action under the Gratuities clause. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAC 90-40, FAR case 96-300), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), which was effective upon enactment (February 10, 1996). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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 INTEREST

2. Section 3.202 is revised to read as follows:

3.202 Contract clause.

The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.203-3 is amended by revising the introductory text to read as follows:

52.203-3 Gratuities.

As prescribed in 3.202, insert the following clause:

* * * * *

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 26

[FAC 90-40; FAR Case 93-303; Item IV]

RIN 9000-AG77

Federal Acquisition Regulation; Disaster Relief Act

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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to provide a preference for local sources in the award of contracts for major disaster or emergency assistance activities. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 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 90-40, FAR case 93-303.

SUPPLEMENTARY INFORMATION:

A. Background

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) establishes a preference for local sources in the award of Federal contracts for major disaster or emergency assistance activities. This final rule amends FAR 6.302-5, and adds FAR Subpart 26.2 to implement the requirements of Section 5150.

A proposed rule was published in the Federal Register at 60 FR 63876, December 12, 1995. No comments were received in response to the proposed rule.

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 only applies to acquisitions conducted during the term of a Presidential declaration of major disaster or emergency.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 26

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 6 and 26 are amended as set forth below:

1. The authority citation for 48 CFR Parts 6 and 26 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 6—COMPETITION REQUIREMENTS

2. Section 6.302-5 is amended by removing "or" from the end of paragraph (b)(3); removing the period from the end of paragraph (b)(4) and inserting "; or"; and adding paragraph (b)(5) to read as follows:

6.302-5 Authorized or required by statute.

* * * * *

(b) * * *

(5) The Robert T. Stafford Disaster Relief and Emergency Assistance Act—42 U.S.C. 5150 (see subpart 26.2).

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

3. Subpart 26.2 is added to read as follows:

Subpart 26.2—Disaster or Emergency Assistance Activities

Sec.

26.200 Scope of subpart.

26.201 Policy.

26.200 Scope of subpart.

This subpart implements 42 U.S.C. 5150, which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities (see 6.302-5).