

to check off a box to indicate whether products offered to the Federal Government are predominantly manufactured in the United States or outside the United States. The offeror is not even required to identify the country of manufacture if the product is manufactured outside the United States. No comments were received with regard to impact on small entities.

### C. 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 9000-0161.

The FAR Secretariat obtained an emergency approval of the new information collection requirement, estimated at 38,146 hours, under OMB Control Number 9000-0161, FAR Case 2005-034, Reporting of Overseas Purchases, from OMB under 44 U.S.C. 3501, *et seq.* An estimated burden of 38,146 hours was granted temporary approval under OMB Control Number 9000-0161. We received no comments regarding the estimated burden hours.

### List of Subjects in 48 CFR Parts 1, 25 and 5

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

### Interim Rule Adopted as Final With Changes

■ Accordingly, the interim rule amending 48 CFR parts 25 and 52 which was published at 71 FR 57375, September 28, 2006, is adopted as a final rule with changes.

■ 1. The authority citation for 48 CFR parts 1, 25, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

#### 1.106 [Amended]

■ 2. Amend section 1.106 by removing from FAR Segment 52.225-2 “9000-0023 and” and by adding, in numerical order, new FAR Segment “52.225-18” with OMB Control Number “9000-0161.”

### PART 25—FOREIGN ACQUISITION

■ 3. Amend section 25.004 by revising paragraph (a) to read as follows:

### 25.004 Reporting of acquisition of end products manufactured outside the United States.

(a) In accordance with the requirements of 41 U.S.C. 10a, the head of each Federal agency must submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture end products outside the United States in that fiscal year.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 3, 12, and 52

[FAC 2005-19; FAR Case 2005-035; Item II; Docket 2006-0020; Sequence 8]

RIN 9000-AD76

### Federal Acquisition Regulation; FAR Case 2005-035, Changes to Lobbying Restrictions

**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 on a final rule amending the Federal Acquisition Regulation (FAR) in order to be consistent with the Lobbying Disclosure Act of 1995 and the Office of Management and Budget (OMB) Interim Final Guidance, and to improve clarity of the regulation through improved use of plain language and compliance with FAR drafting conventions.

**DATES:** Effective Date: September 17, 2007.

**FOR FURTHER INFORMATION CONTACT** Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-19, FAR case 2005-035.

#### SUPPLEMENTARY INFORMATION:

#### A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 54255 on September 14, 2006.

The final rule is not significantly different from the proposed rule. Among the various changes, this final rule—

- Includes the new concept of “lobbying contact” and brings in the concept of registrants under the Lobbying Act of 1995.

- Includes the OMB guidance that the term “appropriated funds” does not include profit or fee from a covered Federal action and that to the extent the contractor can demonstrate that the contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

- Formalizes in the regulations the changes that were already incorporated in the OMB Standard Form (SF) LLL, Disclosure of Lobbying Activities.

- Removes 31 U.S.C. 1352, Limitations on Payment to Influence Certain Federal Transactions, from the list of laws that are inapplicable to subcontracts for the acquisition of commercial items.

- Makes the text, provisions, and clauses, easier to understand, for both contracting officers and offerors/contractors.

The comment period closed on November 13, 2006. We received 3 public comments, each addressing a different aspect of the rule. The Councils addressed these comments in the formulation of the final rule as follows:

#### Commercial contracts

**Comment:** One respondent comments that the rule deletes in FAR 12.504(a), paragraph (3) “31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see FAR Subpart 3.8),” thereby making lobbying payments unacceptable under commercial subcontracts acquired under FAR Part 12. The respondent is concerned that although the rule requires a certification and disclosure, it does not include any means to enforce the prohibition on commercial contracts.

**Response:** The rule provides civil and criminal penalties for any person who makes an expenditure prohibited by the rule.

The requirements of the law are generally conveyed to the contractor through clauses. Paragraph (e) of FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, already provides for offeror lobbying certification. The proposed rule also added language to paragraph (e) relating to the requirement to submit OMB SF

LLL, Disclosure of Lobbying Activities, if any registrants under the Lobbying Disclosure Act of 1995 have made lobbying contact on behalf of the offeror with respect to the contract. The rule provides that contractors may rely without penalty on the representation made by their subcontractors in the certification and representations. FAR 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, does not require inclusion of FAR 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, in commercial contracts awarded using Part 12 procedures. However, FAR 52.212–4, Contract Terms and Conditions—Commercial Items, does require compliance with 31 U.S.C. 1352, relating to limitations on the use of appropriated funds to influence certain Federal contracts in paragraph 52.212–4(r), Compliance with laws unique to Government contracts. Therefore, even without FAR 52.203–12 and the specific flow down in paragraph 52.203–12(g) of the requirement for the contractor to obtain from subcontractors a declaration, including the certification and disclosure in paragraphs (b) and (c) of the provision at FAR 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, the requirement to comply with the law is imposed on the prime contractor, including obtaining necessary documentation from subcontractors, to the extent required by law.

#### Due date for quarterly reports

*Comment:* One respondent believes that there is a practical problem in FAR 52.203–12(d)(2), requiring the prime contractor to report to the contracting officer by the end of the quarter in which the subcontractors have reported to the prime contractor. The respondent is concerned that if the subcontractor does not report until the last day of the quarter, it will be impossible for the prime contractor to meet the proposed reporting obligation. The respondent recommends changing the reporting paragraph to read “the Prime Contractors shall submit a copy of all disclosures to the Contracting Officer as soon as possible after the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.”

*Response:* To clarify this point, the Councils have revised the clause to require submission within 30 days after the end of the calendar quarter.

#### Grants, loans, and cooperative agreements

*Comment:* Another respondent strongly supports the rule, and the fact that “covered Federal Action” also includes grants and cooperative agreements. The respondent suggests that the presumption stated in the 1990 OMB Interim Guidance should be extended to OMB Circular A–122, *Cost Principles for Non-Profit Organizations*. This presumption was that to the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Government shall assume that these other monies were spent for any influencing activities unallowable with the Federal appropriated funds.

The respondent also suggests that the FAR rule should be revised to include the additional statement from OMB’s clarifying notice of June 15, 1990, that “Profits, and fees that constitute profits, earned under *Federal grants, loans, and cooperative agreements* are not considered appropriated funds.”

*Response:* The respondent’s first suggestion regarding OMB Circular A–122 is outside the scope of the rule. However, the respondent’s suggestion will be referred to OMB for its consideration.

Although, the definition of covered Federal action correctly includes actions other than contracts, the respondent’s request to include policies regarding grants, loans, and cooperative agreements in the FAR rule exceeds the appropriate scope of the FAR rule. The FAR only governs acquisition (acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease). The FAR does not govern Federal grants, loans, or cooperative agreements.

#### Editorial corrections

In addition to the changes made in response to public comment, the Councils agreed to various editorial corrections:

- Definition of “recipient” at 3.801 and 52.203–12(a)—insert “are” in last line between “and” and “permitted”.
- 3.802(a) and 52.203–12(b) introductory text—Insert “any” in the fifth line after “in connection with” and before “Federal actions”.
- 3.802(a)(2) and 52.203–12(b)(2)—Add at the end of sentence “\* \* \* that would be unallowable if paid for with Federal appropriated funds” and change “the Government shall” to “the Government will” in the clause.
- 3.803(a)(2)(iii) and 52.203–12(c)(2)(iii)—Revise “paragraph (a)(2) of

this section” to “this paragraph (a)(2)” and revise “paragraph (c)(2) of this clause” to “this paragraph (c)(2)”.

- 52.203–12(a) Definition of “Agency”—Add Acronym “FAR” after “Federal Acquisition Regulation”. The acronym is used several times subsequently in the clause.

- 52.203–12(c)(1)(v)—Add after the text “Making capability presentations” “prior to formal solicitation of any covered Federal action” for consistency with the exception in the text at 3.803(a)(1)(v).

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

DoD, GSA, and NASA 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 this rule mainly implements improvements in clarity and consistency. The number of small entities paying for lobbying with non-Federal funds is estimated to be near zero. The rule does not impose new requirements that impose a burden on contractors. No comments were received with regard to impact on small business.

#### C. 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.

OMB claimed a reduction in the information collection requirement upon issuance of the interim final amendments to OMB’s Governmentwide guidance on lobbying in January 1996, due to the simplified SF LLL, Disclosure of Lobbying Activities.

#### List of Subjects in 48 CFR Parts 3, 12, and 52.

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 3, 12, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 12, 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**

■ 2. Revise section 3.800 to read as follows:

#### **3.800 Scope of subpart.**

This subpart prescribes policies and procedures implementing 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

■ 3. Revise section 3.801 to read as follows:

#### **3.801 Definitions.**

As used in this subpart—

*Agency* means *executive agency* as defined in 2.101.

*Covered Federal action* means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

*Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

*Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before 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 in connection with any covered Federal action.

*Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

*Officer or employee of an agency* includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

*Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph 3.802(a) and are permitted by other Federal law.

*Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

*Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

*Recipient* includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph 3.802(a) and are permitted by other Federal law.

*Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

*State* means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

■ 4. Revise section 3.802 to read as follows:

#### **3.802 Statutory prohibition and requirement.**

(a) 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay 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 in connection with any covered Federal actions.

(1) For purposes of this subpart the term "appropriated funds" does not include profit or fee from a covered Federal action.

(2) To the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Government shall assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(b) 31 U.S.C. 1352 also requires offerors to furnish a declaration consisting of both a certification and a disclosure, with periodic updates of the disclosure after contract award. These requirements are contained in the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions.

■ 5. Revise section 3.803 to read as follows:

#### **3.803 Exceptions.**

(a) The prohibition of paragraph 3.802(a) does not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.* (i) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action.

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission.

(v) Making capability presentations prior to formal solicitation of any covered Federal action when seeking an award from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.* (i) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (a)(2) of this section "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional or a technical person are

not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another, are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(b) Only those communications and services expressly authorized by paragraph (a) of this section are permitted.

(c) The disclosure requirements of paragraph 3.802(b) do not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

■ 6. Revise section 3.804 to read as follows:

#### **3.804 Policy.**

The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$100,000.

■ 7. Revise section 3.805 to read as follows:

#### **3.805 Exemption.**

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this subpart whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of the exemption to Congress immediately after making the determination.

■ 8. Revise section 3.806 to read as follows:

#### **3.806 Processing suspected violations.**

The contracting officer shall report suspected violations of the requirements of 31 U.S.C. 1352 in accordance with agency procedures.

■ 9. Revise section 3.808 to read as follows:

#### **3.808 Solicitation provision and contract clause.**

(a) Insert the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, in solicitations expected to exceed \$100,000.

(b) Insert the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, in solicitations and contracts expected to exceed \$100,000.

### **PART 12—ACQUISITION OF COMMERCIAL ITEMS**

#### **12.504 [Amended]**

■ 10. Amend section 12.504 by removing and reserving paragraph (a)(3).

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

■ 11. Revise section 52.203-11 to read as follows:

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

As prescribed in 3.808(a), insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

(a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that 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 its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

■ 12. Revise section 52.203–12 to read as follows:

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

As prescribed in 3.808(b), insert the following clause:

**LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)**

(a) *Definitions.* As used in this clause—

*Agency* means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

*Covered Federal action* means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.

- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

*Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

*Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before 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 in connection with any covered Federal action.

*Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

*Officer or employee of an agency* includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

- (3) A special Government employee, as defined in section 202, Title 18, United States Code.

- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

*Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

*Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

*Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

*Recipient* includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or

organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

*Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

*State* means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay 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 in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay 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 in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

- (1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

- (2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

- (1) *Agency and legislative liaison by Contractor employees.* (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly

related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(2) *Professional and technical services.* (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.* (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.* (1) The Contractor shall obtain a declaration, including the certification and disclosure in

paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

(End of clause)

■ 13. Amend section 52.212-3 by revising the date of the provision and paragraph (e) to read as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (SEP 2007)

\* \* \* \* \*

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that 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 award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

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