Sunshine Act Meetings

Federal Register
Vol. 54, No. 90
Thursday, May 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

May 9, 1989.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.
DATE AND TIME: Friday, May 19, 1989, 1:00 p.m.–5:00 p.m.
STATUS OF MEETING: Open to the public.
MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of April Meeting
III. Announcements
IV. SAC Reports and Recharters
Selected Administration of Justice Issues Affecting Americans in Oklahoma
Nativism Rekindled: A Report on the Effort to Make English Colorado's Official Language
Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review
Nebraska SAC Recharter
V. Commission Subcommittee Reports
A. Asian Roundtable
B. Regional Forum
C. Set-aside Draft
D. Campus Tension
VI. Staff Director's Report
VII. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,
Solicitor.

[FR Doc. 89–11433 Filed 5–9–89; 10:05 am]
BILLING CODE 6335–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 16, 1989, 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 18, 1989, 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)
STATUS: This meeting will be open to the public.
MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989–04
Vigo G. Nielsen, Jr., on behalf of Californians for Pete Wilson
Pete du Pont for President, Inc.—Request for Oral Presentation
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89–11537 Filed 5–9–89; 3:47 p.m.]
BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 54, No. 90
Thursday, May 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-118]

Black Stem Rust

Correction

In proposed rule document 89-10208 beginning on page 18288 in the issue of Friday, April 28, 1989, make the following corrections:

On page 18289, in the second column, in the table, under "Proposed", the third entry should read "301.38-1".

On page 18292, in the third column, under **PART 301-DOMESTIC QUARANTINED NOTICES**, in the authority citation, in the third line, "351.2(c)" should read "371.2(c)".

§ 301.38-2 [Corrected]

On page 18293, in the third column, in § 301.38-2(b), in the list, the fifth entry should read "B. calliantha".

On the same page, in the same column, in § 301.38-2(b), in the list, the 33rd entry should read "B. linearifolia".

§ 301.38-3 [Corrected]

On page 18294, in the third column, in § 301.38-3, paragraph (b)(3) should read as follows:

(3)The state maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera **Berberis, Mahoberberis,** and **Mahonia**. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera **Berberis, Mahoberberis,** and **Mahonia**, and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery grows plants of **Berberis, Mahoberberis,** and **Mahonia** from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half mile of the nursery.[4]

§ 301.38-5 [Correctly designated]

On page 18295, in the second column, § 301.38-5 was incorrectly designated as § 301.385 and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 70470-9062]

Electronic Data Dissemination Policies and Guidelines

Correction

In notice document 89-10780 beginning on page 18920 in the issue of Wednesday, May 3, 1989, make the following correction:

On page 18922, in the first column, in the last full paragraph, in the third line, insert "that" after "and".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[DA 89-147]

Personal Radio Service; Amendment of Subpart C of Part 95 of the Commission's Rules Concerning Data Transmissions and Permissible Communications

Correction

In rule document 89-3973 beginning on page 8335 in the issue of Tuesday, February 28, 1989, make the following correction:

On page 8336, in the first column, in § 95.212(f), in the first line, "transmit" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Establishment of 1989 Aggregate Production Quota for Methaqualone

Correction

In notice document 89-9662 beginning on page 16419 in the issue of Monday, April 24, 1989, make the following correction:

On page 16420, in the first column, in the table, under "1988 Aggregate Production Quota (grams)", insert "2".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy

Correction

In proposed rule document 89-10190 beginning on page 18529 in the issue of Monday, May 1, 1989, make the following correction:

§ 120.501 [Corrected]

On page 18530, in the first column, in § 120.501(c), in the sixth line, "and" should read "the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 342, and 351

[Dept. of Treasury Circs. No. 653, Tenth Revision; Public Debt Series No. 3-67, 2nd Rev.; and No. 1-80, 2nd Rev.]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

Correction

In rule document 89-9459 beginning on page 15924 in the issue of Thursday, April 20, 1989, make the following corrections:

On page 15927, in the second table, in the entries for "Issue price", in the fifth column of figures, "$750.00" should read "$375.00"; in the sixth column of figures, "$75.00" should read "$750.00"; and in the seventh column of figures, "$75.00" should read "$7500.00".

BILLING CODE 1505-01-D

Federal Register

Thursday
May 11, 1989

Part II

Department of Education

34 CFR Part 250 et al.

Indian Education General Provisions and Discretionary Grants; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 250, 252, 253, 254, 255, 256, 257, and 258

RIN 1810-AA53

Indian Education General Provisions and Discretionary Grants

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Indian Education Act general provisions and the Indian Education discretionary grant programs to incorporate new provisions of the Indian Education Act of 1988. The regulations include amended definitions and requirements for grants under a new gifted and talented program. Regulations governing Indian-Controlled Schools—Establishment Grants have been deleted because the program is unfunded.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 255.31. Section 255.31 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Wright or Ms. Julia Lesceux, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177 (Mail Stop 6267), Washington, DC 20202. Telephone (202) 732-1938.

SUPPLEMENTARY INFORMATION: The Indian Education Act (The Act) was amended and reauthorized by Part C of Title V of Pub. L. 100-297 (Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988). The Act subsequently was amended by Pub. L. 100-427. These regulations incorporate technical amendments to the Act.

The discretionary grant programs include support to Indian-controlled schools for enrichment projects; planning, pilot, demonstration, and service projects to meet special educational needs of Indian students; educational personnel development projects; support for gifted and talented programs for Indian students; and projects for adult Indian education.

On November 16, 1988 the Secretary published a notice of proposed rulemaking for these programs in the **Federal Register** (53 FR 46404-46409).

The only differences between the NPRM and these final regulations are minor technical corrections.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, several commenters suggested changes to certain provisions of the Indian education regulations that were not the subject of the proposed rulemaking. The Department cannot issue final substantive changes to provisions that were not the subject of proposed rulemaking and, therefore, were not made open to the public for comment generally. For this reason, these comments are not addressed in the final regulations. However, the Department appreciates the suggestions and will consider them for future rulemaking on the provisions discussed.

Application Content Requirements

Comments: One commenter stated that former §§ 253.20, 254.20, 255.20, 256.20, 257.20 and 258.20 should be retained so that grantees and potential grantees can know the application content requirements prior to the availability of application packages. It was noted that application content requirements may not be limited to the requirements stipulated in the authorizing legislation and, therefore, potential applicants may not be able to anticipate the requirements. Potential applicants, however, often need to know, before application packages are available, what the applicant content requirements are in order to decide whether to apply for grants and to prepare for participation in the grant competition if application is to be made.

Discussion: The former §§ 253.20, 254.20, 255.20, 256.20, 257.20 and 258.20 were deleted in the NPRM because the information collection requirements in those sections are either statutory or based upon requirements contained in other applicable regulations which the Department has not proposed to delete. The application package does not contain requirements beyond those in the statute and other existing regulations. Therefore, the Secretary considers the inclusion of those requirements as separate sections in the regulations to be duplicative and unnecessary.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Other than the Indian-Controlled Schools—Enrichment Projects, the Gifted and Talented Program, and the Educational Personnel Development Program, the programs covered by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Exectuive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 250 and 252 Through 258

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers 84.061 Indian Education—Special Programs and Projects; 84.062 Indian Education—Adult Indian Education; and 84.072 Indian Education—Grants to Indian-Controlled Schools)

Dated: April 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary removes Part 252, adds a new Part 255 and amends Parts 250, 253, 254, 256, 257, and 258 of Title 34 of

the Code of Federal Regulations as follows:

PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

1. The authority citation for Part 250 is revised to read as follows:

Authority: 25 U.S.C. 2601–2651, unless otherwise noted.

2. Section 250.1 is revised to read as follows:

§ 250.1 What programs are governed by these regulations?

The regulations in this part apply to all programs conducted under the Indian Education Act except the Indian Fellowship Program (34 CFR Part 263). Programs governed by these regulations and their applicable program regulations are as follows:

(a) Formula Grants—Local Education Agencies (34 CFR Part 251).

(Authority: 25 U.S.C. 2601–2606)

(b) Indian-Controlled Schools—Enrichment Projects (34 CFR Part 252).

(Authority: 25 U.S.C. 2602(c))

(c) Educational Services for Indian Children (34 CFR Part 253).

(Authority: 25 U.S.C. 2621(a), (c))

(d) Planning, Pilot, and Demonstration Projects for Indian Children (34 CFR Part 254).

(Authority: 25 U.S.C. 2621(a), (b))

(e) Gifted and Talented Program (34 CFR Part 255).

(Authority: 25 U.S.C. 2624(c))

(f) Educational Personnel Development (34 CFR 256).

(Authority: 25 U.S.C. 2621(d), 2622)

(g) Educational Services for Indian Adults (34 CFR Part 257).

(Authority: 25 U.S.C. 2631(b))

(h) Planning, Pilot, and Demonstration Projects for Indian Adults (34 CFR Part 258).

(Authority: 25 U.S.C. 2631(a))

3. Section 250.3(e) is amended by removing "253" and adding, in its place, "255" and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2601–2651)

4. In § 250.4, paragraph (a) is amended by removing "Local educational agency (LEA) (except as used in 34 CFR Parts 257 and 258)"; by removing "(except as used in 34 CFR Parts 254, 255, and 256)" following "Secondary school"; and by removing "(except as used in 34 CFR Parts 251, 252, and 253)" following "State". Paragraph (b) is amended by revising the definitions of "Adult", "Adult education", "Indian" paragraph (1), "Local educational agency," and "Parent" paragraph (1), and adding new definitions of "Bureau school", "Bureau-funded school", "Gifted and talented students", and "Tribal school" in alphabetical order to read as follows:

§ 250.4 What definitions apply to these programs?

* * * * *

(b) * * *

"Adult" means any individual who is sixteen years old or older, or who is beyond the age of compulsory school attendance under State Law.

* * * * *

"Adult education" means instruction or services below college level for adults who are not enrolled in a secondary school and who do not have—

(1) The basic skills to enable them to function effectively in society; or

(2) A certificate of graduation from a school providing secondary education, and who have not achieved an equivalent level of education.

* * * * *

"Bureau school" means an elementary or secondary day or boarding school operated by the Bureau of Indian Affairs (BIA) of the Department of the Interior.

"Bureau-funded school" means a Bureau school or an elementary or secondary school that receives Pub. L. 93–638 (Indian Self-Determination and Education Assistance Act) contract funds or assistance under the Tribally Controlled Schools Act of 1988 from the Bureau of Indian Affairs.

* * * * *

"Gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic, or leadership capacity or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to develop such capabilities fully.

* * * * *

"Indian" * * *

(1) A member (as defined by an Indian tribe, band, or other organized group) of such Indian tribe, band, or other organized group of Indians, including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

* * * * *

"Local educational agency" (LEA) means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary of secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(2) As used in 34 CFR Part 251 the term also includes tribal schools and Bureau schools. "Parent"—

(1) Includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent) other than by virtue of being a school administrator or official. Examples of individuals who may stand *in loco parentis* with respect to a child are—

* * * * *

"Tribal school" means any school operated by an Indian tribe, or an organization controlled or sanctioned by an Indian tribal government for the children of that tribe if the school either—

(1) Provides its students an educational program that meets the standards established by the Secretary of the Interior in accordance with the Indian Self-Determination and Education Assistance Act; or

(2) Is operated by that tribe or organization under a contract with the Department of the Interior in accordance with the Indian Self-Determination and Education Assistance Act.

5. The authority citation for § 250.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2651)

§ 250.5 [Amended]

6. In § 250.5, the authority citation for paragraph (b) is revised to read as follows:

(Authority: 25 U.S.C. 450 (b), (d), (e))

§ 250.2 [Amended]

7. The authority citation for § 250.20 is revised to read as follow:

(Authority: 25 U.S.C. 2601–2651

PART 252—[REMOVED]

8. Part 252 is removed.

PART 253—[REDESIGNATED AS PART 252]

9. Part 253 is amended by redesignating it as Part 252 and revising the authority citation to read as follows:

Authority: 25 U.S.C. 2602(c), unless otherwise noted.

§ 252.1 [Amended]

10. The authority citation for § 252.1 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.2 [Amended]

11. The authority citation for § 252.2 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.3 [Amended]

12. In Section 252.3 paragraph (b)(1)(iii) is amended by removing "and Tribal Schools or a grant under 34 CFR Part 252 (Indian-Controlled Schools—Establishment)", inserting a closing parenthesis after "Agencies", removing paragraph (b)(3), redesignating paragraph (b)(4) or (b)(3), and by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.4 [Amended]

13. The authority citation for § 252.4 is revised to read as follows:

(Authority: 25 U.S.C. 2601–2606, 2651)

§ 252.10 [Amended]

14. The authority citation for § 252.10 is revised to read as follows:

(Authority: 25 U.S.C. 2602(c))

§ 252.20 [Amended]

15. Section 252.20 is removed and Subpart C is reserved.

§ 252.30 [Amended]

16. In § 252.30, paragraph (a) is amended by removing "253.31" and adding, in its place, "252.31", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2602(c), 2601)

§ 252.31 [Amended]

17. Section 252.31 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2602(c), 2604)

PART 254—[REDESIGNATED AS PART 253]

18. Part 254 is redesignated as Part 253.

19. The authority citation for redesignated Part 253 is revised to read as follows:

Authority: 25 U.S.C. 2621(a), (c), unless otherwise noted.

§ 253.1 [Amended]

20. The authority citation for § 253.1 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a), (c))

21. Section 253.2 is amended by adding a new paragraph (f) and revising the authority citation to read as follows:

§ 253.2 Who is eligible for assistance under this program?

* * * * *

(f) Consortia of Indian tribes or Indian organizations, local educational agencies, and institutions of higher education for projects described in § 253.10(c)

(Authority: 25 U.S.C. 2621(c))

22. Section 253.3 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 253.3 What regulations apply to the program?

* * * * *

(b) The regulations in this Part 253.

(Authority: 25 U.S.C. 2621(a), (c))

§ 253.4 [Amended]

23. The authority citation for § 253.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a), (c))

24. Section 253.10 is amended by adding a new paragraph (c) and revising the authority citation to read as follows:

§ 253.10 What types of projects may be funded?

* * * * *

(c) Consortia of eligible applicants described in § 253.2(f) may receive grants to develop, improve, and implement programs to—

(1) Encourage Indian students to acquire a higher education; and

(2) Reduce the incidence of dropouts among Indian elementary and secondary school students.

(Authority: 25 U.S.C. 2621(a)(2), (c))

§ 253.20 [Amended]

25. Section 253.20 is removed and Subpart C is reserved.

§ 253.30 [Amended]

26. In § 253.30, paragraph (a) is amended by removing "254.32" and adding, in its place, "253.32", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621 (a), (c), (f)(1), (2))

§ 253.31 [Amended]

27. Section 253.31 is amended by removing "254.32" and adding, in its place, "253.32", removing the period and adding ", or from a consortium that includes an Indian tribe, Indian organization, or Indian institution of higher education." after the word "institution" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(f)(2)(B))

§ 253.32 [Amended]

28. Section 253.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (c), (f)(1), (2))

PART 255—[REDESIGNATED AS PART 254]

29. Part 255 is redesignated as Part 254.

30. The authority citation for redesignated Part 254 is revised to read as follows:

Authority: 25 U.S.C. 2621(a)(1), (b), unless otherwise noted.

§ 254.1 [Amended]

31. The authority citation for § 254.1 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a)(1), (b))

§ 254.2 [Amended]

32. The authority citation for § 254.2 is revised to read as follows:

(Authority: 25 U.S.C. 2621(b))

33. Section 254.3 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 254.3 What regulations apply to this program?

* * * * *

(b) The regulations in this Part 254.

(Authority: 25 U.S.C. 2621(a), (b))

§ 254.4 [Amended]

34. The authority citation for § 254.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(a), (b))

§ 254.10 [Amended]

35. In § 254.10, paragraph (a)(2) is amended by removing "for one or more of the types of grants listed in 255.20(a)(2)" and adding, in its place, "separately for one or more planning grant, pilot grant, or demonstration grant." and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(a)(1), (b))

§ 254.20 [Removed]

36. Section 254.20 is removed and Subpart C is reserved.

§ 254.30 [Amended]

37. In § 254.30, paragraph (a) is amended by removing § 255.32, § 255.33, or § 255.34" and adding, in its place, "§§ 254.32, 254.33 or 254.34" and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b))

§ 254.31 [Amended]

38. Section 254.31 is amended by removing "§ 255.32, § 255.33, or § 255.34"

from the undesignated introductory text and adding, in its place, §§ 254.32, 254.33, or 254.34", removing "255.10(d)" in paragraph (b) and adding, in its place, "254.10(d)", and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(f)(2)(B))

§ 254.32 [Amended]

39. Section 254.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b), (f)(1), (2))

§ 254.33 [Amended]

40. Section 254.33 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b), (f)(1), (2))

§ 254.34 [Amended]

39. Section 254.34 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621(b), (f)(1), (2))

42. A new Part 255 is added to read as follows:

PART 255—GIFTED AND TALENTED PROGRAM

Subpart A—General

Sec.
255.1 What is the Gifted and Talented Program?
255.2 Who is eligible for an award?
255.3 What regulations apply?
255.4 What definitions apply?
255.10 What activities may the Secretary fund?
255.11 Must the applicant or grantee coordinate activities with other entities?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

255.30 How does the Secretary evaluate an application?
255.31 What selection criteria does the Secretary use?
255.32 What other factors does the Secretary consider in selecting grantees?

Authority: 25 U.S.C. 2624(c), unless otherwise noted.

Subpart A—General

§ 255.1 What is the Gifted and Talented Program?

This program provides five grants to Bureau-funded schools for gifted and talented program research, development and dissemination.

(Authority: 25 U.S.C. 2624(c))

§ 255.2 Who is eligible for an award?

Bureau-funded schools are eligible for grants under this program.

(Authority: 25 U.S.C. 2624(c), 2651)

§ 255.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 250.

(b) The regulations in this Part 255.

(Authority: 25 U.S.C. 2624(c))

§ 255.4 What definitions apply?

The definitions in 34 CFR 250.4 apply to this program.

(Authority: 25 U.S.C. 2624(c))

§ 255.10 What activities may the Secretary fund?

The Secretary may fund program research and development, the development and dissemination of curriculum materials, and the development and dissemination of teacher training materials regarding one or more of the following:

(a) Gifted and talented students.

(b) College preparatory studies (including programs for Indian students interested in teaching careers).

(c) Students with special culturally related academic needs, including social, lingual, and cultural needs.

(d) Mathematics and science education.

(Authority: 25 U.S.C. 2624(c))

§ 255.11 Must the applicant or grantee coordinate activities with other entities?

(a) The supervisor of a Bureau school shall undertake jointly its application for, or administration of, a grant under this part with the supervisor of the local school board.

(b) Each grantee will work cooperatively with other recipients of funds under section 5324 of the Indian Education Act as part of a national network.

(Authority: 25 U.S.C. 2624(c), (d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 255.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the applicable criteria in § 255.31.

(b) The Secretary awards up to 100 possible total points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 25 U.S.C. 2624(c))

§ 255.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points). The Secretary assesses the need for the proposed project, including—

(1) The soundness of the rationale for the project and the extent and severity among Indian children of the educational needs to be addressed;

(2) The extent to which the educational approach to be developed is likely to be successful in meeting the needs;

(3) The extent to which the applicant is knowledgeable about other projects that address similar needs or have tried similar approaches; and

(4) The likelihood that the project will serve as a model for communities with similar educational needs.

(b) *Plan of operation.* (20 points). The Secretary reviews the plan of operation to ensure that—

(1) The purpose of the project is consistent with the needs identified and the purpose of the funding program;

(2) The design of the project is of high quality;

(3) The objectives of the project—

(i) Relate to the purpose of the project;

(ii) Will provide clear and measurable indices of the project in progress in achieving its purpose; and

(iii) Are capable of being achieved within the project period;

(4) The activities are appropriate and should result in the accomplishment of the project objectives; and

(5) The plan of management is effective and ensures proper and efficient administration of the project.

(c) *Parental and community involvement.* (10 points). The Secretary determines whether parents of the children to be served and other members of the Indian community will be involved in the project, including the extent of their involvement in—

(1) Planning and developing the project; and

(2) Operating and evaluating the project.

(d) *Quality of key personnel.* (15 points). The Secretary reviews the key personnel the applicant plans to use on the project to ensure that—

(1) The project director has the experience and training needed for the position;

(2) Other key personnel have the experience and training needed for their positions in the project; and

(3) Sufficient time will be committed to the project by key personnel.

(e) *Budget and cost effectiveness.* (5 points). The Secretary reviews the budget to ensure that—

(1) The budget is adequate to support the project activities; and

(2) The costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews the evaluation plan to ensure that—

(1) The evaluation will measure the project's effectiveness in meeting each objective;

(2) The evaluation will measure the impact of the project on the children involved, if applicable;

(3) The instruments for collecting data and the methods for analyzing the data are appropriate;

(4) There is an appropriate timetable for collecting, analyzing, and reporting data;

(5) Procedures have been established for modification of the project, if necessary, as a result of periodic progress assessments; and

(6) Adequate provision has been made to cooperate with recipients of funds under section 5324 of the Indian Education Act in evaluating the project.

(g) *Dissemination.* (10 points). The Secretary reviews the plan for disseminating information about the project, including the results of the project and any materials developed by the project to ensure that—

(1) The dissemination plan is effective and and efficient;

(2) The materials disseminated are appropriate in terms of quality and utility;

(3) The method and techniques used by the project will be demonstrated;

(4) Schools interested in adapting or adopting the project's materials or methods will be assisted; and

(5) The findings of the project will be published at the local, State, or national level, and provision has been made to coordinate dissemination activities with recipients of funds under section 5324 of the Indian Education Act.

(h) *Adequacy of resources.* (5 points). The Secretary reviews the resources to be devoted to the project to ensure that—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 25 U.S.C. 2624(c), (d))

§ 255.32 What other factors does the Secretary consider in selecting grantees?

In addition to using the selection criteria in § 255.31, the Secretary selects projects that achieve a mixture of projects described in § 255.10 to ensure that students at all grade levels and students in all geographic areas of the country are able to participate in some projects funded under this program.

(Authority: 25 U.S.C. 2624(c), (d))

PART 256—EDUCATIONAL PERSONNEL DEVELOPMENT

43. The authority citation for Part 256 is revised to read as follows:

Authority: 25 U.S.C. 2621(d), 2622, unless otherwise noted.

44. Section 256.1 is amended by revising paragraphs (b)(1) and (b)(2) and the authority citation to read as follows:

§ 256.1 Educational Personnel Development.

* * * * *

(b) * * *

(1) The program authorized by section 5321(d) of the Indian Education Act and referred to in this part as the section 5321(d) Program; and

(2) The program authorized by section 5322 of the Indian Education Act and referred to in this part as the section 5322 Program.

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.2 [Amended]

45. In § 256.2, paragraph (a) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (b) is amended by removing "422" and adding, in its place, "5322", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.3 [Amended]

46. The authority citation for § 256.3 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.4 [Amended]

47. The authority citation for § 256.4 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.10 [Amended]

48. The authority citation for § 256.10 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

49. Section 256.20 is revised to read as follows:

§ 256.20 What provisions for participation must an applicant make?

Prior to the submission of an applicant under this Part, each applicant shall—

(a) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type that the program is intended to meet, make provision for the participation on an equitable basis of persons serving or preparing to serve these children as educational personnel or ancillary educational personnel; and

(b) Have provided for adequate participation by relevant tribal communities, including parents of Indian children, in planning and developing this project and have made provision for their participation in operating and evaluating the project.

(Authority: 25 U.S.C. 2621 (d), (f)(1), (2), 2622)

50. Section 256.30 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 256.30 How does the Secretary evaluate an application?

(a) The Secretary reviews and approves applications under the section 5321(d) Program separately from applications under the section 5322 Program.

* * * * *

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.31 [Amended]

51. In § 256.31, paragraph (b) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (c) is amended by removing "1005(d)" and adding, in its place, "5321(d)", paragraph (d) is amended by removing "422" and adding, in its place, "5322", and the authority citation is revised to read as follows:

(Authority: 25 U.S.C. 2621 (d) and (f)(2)(B), 2622)

§ 256.32 [Amended]

52. Section 256.32 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2621 (d), (f)(1), (2), 2622)

53. A new § 256.33 is added to read as follows:

§ 256.33 What other factors does the Secretary consider in selecting grantees under the section 5321(d) program?

In addition to using the selection criteria in § 256.32, the Secretary considers the prior performance of a grantee under the section 5321(d) program in selecting grantees for new awards under the section 5321(d) program.

(Authority: 25 U.S.C. 2621(d)(4))

§ 256.40 [Amended]

54. The authority citation for § 256.40 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

55. A new § 256.41 is added to read as follows:

§ 256.41 What other conditions must a grantee meet?

Each grantee shall provide adequate information to participants about the intent of the training program.

(Authority: 25 U.S.C. 2621(d), 2622)

§ 256.50 [Amended]

56. The authority citation for § 256.50 is revised to read as follows:

(Authority: 25 U.S.C. 2621(d), 2622)

PART 257—EDUCATIONAL SERVICES FOR INDIAN ADULTS

57. The authority citation for Part 257 is revised to read as follows:

Authority: 25 U.S.C. 2631, unless otherwise noted.

§ 257.1 [Amended]

58. The authority citation for § 257.1 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.2 [Amended]

59. The authority citation for § 257.2 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.3 [Amended]

60. The authority citation for § 257.3 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.4 [Amended]

61. The authority citation for § 257.4 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.10 [Amended]

62. The authority citation for § 257.10 is revised to read as follows:

(Authority: 25 U.S.C. 2631)

§ 257.20 [Removed]

63. Section 257.20 is removed and Subpart C is reserved.

§ 257.30 [Amended]

64. The authority citation for § 257.30 is revised to read as follows:

(Authority: 25 U.S.C. 2631(b))

§ 257.31 [Amended]

65. Section 257.31 is amended by revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631 (b), (d))

PART 258—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

66. The authority citation for Part 258 is revised to read as follows:

Authority: 25 U.S.C. 2631(a), unless otherwise noted.

§ 258.1 [Amended]

67. The authority citation for § 258.1 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.2 [Amended]

68. The authority citation for § 258.2 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.3 [Amended]

69. The authority citation for § 258.3 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.4 [Amended]

70. The authority citation for § 258.4 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.10 [Amended]

71. In § 258.10, paragraph (a)(2) is amended by removing "for one or more of the types of grants listed in § 258.20(a)(1)" and adding, in its place, "separately for one or more planning grants, pilot grants, or demonstration grants." and revising the authority citation to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.20 [Removed]

72. Section 258.20 is removed and Subpart C is reserved.

§ 258.30 [Amended]

73. The authority citation for § 258.30 is revised to read as follows:

(Authority: 25 U.S.C. 2631(a))

§ 258.31 [Amended]

74. The authority citation for § 258.31 is revised to read as follows:

(Authority: 25 U.S.C. 2631(d)(3))

§ 258.32 [Amended]

75. The authority citation for § 258.32 is revised to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

§ 258.33 [Amended]

76. The authority citation for § 258.33 is revised to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

§ 258.34 [Amended]

77. The authority citation for § 258.34 is revised to read as follows:

(Authority: 25 U.S.C. 2631 (a), (d))

[FR Doc. 89–11275 Filed 5–10–89; 8:45 am]
BILLING CODE 4000–01–M

Federal Register

Thursday
May 11, 1989

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.

Federal Acquisition Regulation (FAR); Procurement Integrity; Interim Rule With Request for Comments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

[Federal Acquisition Circular 84-47]

Federal Acquisition Regulation (FAR); Procurement Integrity

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

ACTION: Interim rule with request for comments.

SUMMARY: Federal Acquisition Circular (FAC) 84-47 amends the Federal Acquisition Regulation (FAR) to implement Procurement Integrity, section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100-679.

DATES: *Effective Date:* May 16, 1989.

Comment date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 10, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-47.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-47.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6 of the OFPP Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, which has been codified as section 423, Title 41 of the United States Code.

The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information.

The Act also contains certification and disclosure provisions for both contractors and Government officials, imposes post-employment restrictions on Government officials and employees, and provides for criminal, civil, administrative, and contractual penalties for violations of the Act.

B. Determination To Issue an Interim Regulation

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 84-47 as an interim rule. This action is necessary to implement in the FAR Pub. L. 100-679. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

C. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule published in the **Federal Register** on March 27, 1989 (54 FR 12556) and stated that the proposed change to the FAR 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. The impact is likely to occur because, in connection with contract awards and modifications in excess of $100,000, offerors will be required to gather and provide to the Government certain information regarding the activities of the offeror during the conduct of the procurement. A Final Regulatory Flexibility Analysis will be prepared for the final rule. Comments are invited on this interim rule. Comments from small entities concerning the affected FAR sections will be considered. Such comments must be submitted separately and cite 89-610 (FAC 84-47).

D. Paperwork Reduction Act

The information collection requirements in this interim rule have been approved for 1 year under OMB Control Number 9000-0103 pending review of the public comments by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. Any additional public comments concerning the information collection requirements should be submitted to OMB, Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

E. Public Comments

On March 27, 1989, a proposed rule was published in the **Federal Register** (54 FR 12556). In excess of 120 comments have been received in response to the proposed rule. Because of the time constraints to comply with the May 16, 1989, implementation date mandated by Pub. L. 100-679, we have taken into consideration as many comments as possible in the formulation of this interim rule. However, all comments will be fully considered in the formulation of the final rule.

Reconciliation of public comments: As a result of the public comments, significant revisions have been made to the implementing coverage. A discussion of some of the more significant issues and the rationale for the resultant coverage in this interim rule is provided below:

The proposed rule provided two methods to identify the beginning of the conduct of a Federal agency procurement. In the case of major systems, the rule provided that the program manager would publish in the Commerce Business Daily the date on which a procurement begins. For all other procurements, the contracting officer would identify in the solicitation, the date on which the procurement began. Commenters stated that the notification of when a procurement begins must be given prospectively for all procurements, regardless of dollar value. Other commenters questioned the need for and propriety of any notification, whether prospective or retroactive.

The prohibitions of the Act apply to every procurement conducted by Federal agencies regardless of dollar value. The types of procurements and the procedures for conducting procurements are as varied as the agencies that conduct them. Even within a particular agency, there is no single method of procurement and no single set of procedures for every procurement. Procurement consists of a myriad of activities and events that vary from agency to agency and even within an agency. Indeed, many events or activities occur at locations physically far away from and without the knowledge of the contracting officer who will ultimately be responsible for the procurement. From an administrative viewpoint, the burden, as some commenters noted, entailed in attempting to identify when a procurement begins is enormous. The vastly different types and nature of procurements conducted throughout the Federal Government make it impossible to identify one event that is common to all agencies, that constitutes the beginning of a procurement. Moreover, the arduous task of attempting to make this identification for every procurement inevitably will cause delays and

additional expenses because of those delays. The suggestion by some commenters that issuance of the solicitation constitutes the beginning of the conduct of a procurement satisfies neither the terms of the Act not its intent.

As at least one commenter noted, inherent in the authority to establish the date on which a procurement begins, whether prospectively or retroactively, is the opportunity for individuals who have knowingly violated the Act to absolve themselves from liability merely by establishing a date subsequent to that on which they engaged in prohibited conduct. Such a result is untenable, and undermines the very purpose of the statute.

These considerations must be weighed against the benefits, if any, to the public in receiving notification either prospectively or retroactively of the beginning of the conduct of a procurement. It is axiomatic that no person, at any time and regardless of whether a procurement has begun, should offer or solicit a gratuity or bribe, however couched. This conduct is illegal at any time.

Similarly, under existing regulations, it is improper to solicit or disclose information that a person knows or should know is proprietary or source selection information. To the extent that some commenters expressed concerns that the definition of "source selection information" in the proposed rule was overly broad and therefore may not have given sufficient notice as to the type of information that may not be solicited, obtained, or disclosed, the definition thereof has been changed substantially.

The interim rule limits what may constitute source selection information to two categories: that which is marked with the standard legend "SOURCE SELECTION INFORMATION—SEE 3.104" and a very narrow category of information, whether or not marked with the legend, that will jeopardize the integrity of successful completion of a procurement if it were disclosed. The interim rule provides further that notwithstanding that this later category of information shall constitute source selection information whether or not marked as such, all reasonable efforts must be made to so mark it. In addition, the interim rule also provides that if an individual has any doubt as to whether information is proprietary or source selection information, he should ask. Finally, in accordance with many of the comments, the interim rule provides that material that is subsequently marked as proprietary or source selection information that is properly in the possession of the Government or a competing contractor as a result of a prior disclosure that is not prohibited by the Act shall not be considered to have been solicited or obtained in violation of the Act.

With respect to the prohibition against offering or soliciting employment or business opportunities, the proposed rule established a duty to inquire, which remains unchanged in the interim rule. Thus, prior to engaging in a discussion of employment or business opportunities with a Government official or employee, contractor personnel should inquire as to whether that official or employee is a procurement official for a procurement for which the contractor is a competing contractor. The rule imposes a corresponding duty on Government officials and employees who wish to solicit employment from a potential competing contractor to ask whether that contractor is reasonably likely to become a competing contractor on any procurement for which that official or employee is a procurement official.

Given the nature of the conduct that is prohibited by the Act and the fact that the Act penalizes only knowing conduct, notification either prospective or after the fact, of the beginning of a procurement would not serve a particularly useful purpose and should not significantly affect the conduct of contractor or Government personnel.

Therefore, the requirement in the proposed rule to publish in the CBD a notice of when a procurement begins for a major system or elements thereof and the requirement to identify in the solicitation the date of which a procurement began for all other procurements has been deleted from the interim rule.

Many commenters expressed concern over the definition of source selection information, stating that it was overly broad and would result in a decrease in the amount of information that is made available to all competing contractors. Commenters also stated that much of the information contained in the listed documents, such as an acquisition plan, is not source selection information and should not be restricted. Other commenters took exception to labelling some documents by type and labelling other information or documents with a standard legend. Commenters believed that a standard legend for all source selection information would be more appropriate.

The definition of source selection information has been revised substantially in the interim rule. Source selection information is defined as information that is prepared or developed for use by the Government for a particular procurement. In addition, recognizing that marking some documents by type and others with a standard legend could cause confusion, as well as being overly burdensome, the interim rule requires that source selection information be marked with the standard legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104."

The interim rule also provides that certain specifically identified information is source selection information whether or not it is marked with the legend. This information, such as offerors' prices, relative rankings, and the results of technical evaluations, by its very nature, is clearly information that, if disclosed, will jeopardize the integrity or successful completion of a procurement. This is a very narrow category and is limited to only nine types of material. Although this information is source selection information whether or not it is marked as such, 3.104–5(b) provides that all reasonable efforts will be made by the Government to mark this information.

Most commenters also expressed concern over the provision in the proposed rule that included oral or written extracts in the definition of source selection information. The Act prohibits the knowing solicitation or receipt of source selection information. If an individual knows or should know that information is source selection information, the oral transmission or receipt of that information is no less prohibited than the written transmission or receipt of such information. Moreover, if an individual is uncertain as to whether information is source selection information, subsection 3.104–8 provides that the procurement official or competing contractor shall not be considered to have knowingly violated the Act if, before soliciting, obtaining, or disclosing the information the individual asks the appropriate party whether the information is proprietary or source selection information and is advised that it is not.

The majority of commenters stated that the penalties of the Act are so severe that the certification must include the "best knowledge and belief" standard. Use of this standard is consistent with the certifications in the Contract Disputes Act, the Truth in Negotiations Act, and the Department of Defense overhead cost certification. Accordingly, to address commenters' concerns, the interim rule includes the "best knowledge and belief" standard in the certificates.

Many commenters believed that the rule should include greater due process

procedures. The commenters stated that determinations to take action based upon receipt of information of a violation or possible violation should be made only by the head of the agency. Other commenters stated that procedures set out in the clause at 52.203–10, Remedies for Illegal or Improper Activity, should apply to subsection 3.104–11, Processing violations or possible violations.

The rule provides that any action that is taken must be pursuant to a determination by the head of the contracting activity, or his or her designee that there has been a violation of the Act. Moreover, the designee must be of flag, SES, or equivalent rank. Therefore, any action taken is taken only after careful review by senior level officials of the agency.

This rule does not abrogate existing remedies and due process procedures. Thus, in the case of action taken in the pre-award situation, the competing contractor may pursue existing remedies administratively or judicially in a bid protest format. Similarly, a decision to terminate a contract for default or to reduce a contractor's profit pursuant to the clause at 52.203–10 may be appealed in accordance with the Contract Disputes Act.

The clause at 52.203–10 provides a due process procedure wherein the contractor may present information and argument in opposition to the proposed profit or fee reduction. Moreover, the determination to reduce a contractor's profit or fee must be made by the head of the contracting activity or his or her designee, who must be of flag, SES, or equivalent rank.

Finally, the rule requires use of the formal procedures in FAR 3.700, prior to making a final decision to void or rescind a contract. This decision, moreover, may be made only by the head of the agency or his or her designee. These procedures provide for notice and an opportunity for a hearing at which witnesses may be presented and agency witnesses confronted. Thus, the regulation does not abrogate existing pre and post award remedies available to competing contractors.

Considerable comment was made of the fact that there should be one consistent, uniform regulation for all Government and contractor personnel. We agree that individuals should not be required to certify that they have no information of violations of the Act as implemented by agency regulations that may not be published and thus of which they may not be aware. Therefore, the certifications have been revised to delete the reference to agency supplements. However, a flat proscription of any agency supplementation is also not appropriate. There will be instances where agencies must supplement the FAR to satisfy unique agency needs. Indeed, both the Office of Federal Procurement Policy Act and the FAR currently recognize this fact and authorize agency supplementation where it is necessary to satisfy unique needs of an agency. However, with respect to this Act, to ensure that supplementation is kept to a minimum, FAR 3.104–1 has been revised to state that any agency supplementation of FAR 3.104 and any clauses required by FAR 3.104 must be approved by the Senior Procurement Executive of that agency, unless a higher level of approval is required by law for that agency.

A provision has also been added to clarify the liability of offerors for prior authorized possession of source selection information. Commenters were concerned that the rule made no provision to protect offerors in cases where the nature of the information in their possession has changed. FAR 3.104–5(i) has been added which states that source selection information that is properly in the possession of the competing contractor as a result of a prior disclosure that is not prohibited by the Act, shall not be considered to have been solicited or obtained in violation of the Act.

Several commenters suggested that the Government provide offerors the names of individuals who are authorized to receive source selection information because the statute prohibits disclosure of such information to any person other than a person authorized by the head of the agency or the contracting officer. Specifically, it was suggested that such a list be included in a Commerce Business Daily notice announcing the beginning of the procurement. It was determined not to include this list as a requirement in the interim rule since any list of authorized individuals would be constantly changing during the conduct of a procurement. Consequently, a list published at the beginning of the procurement would not provide the information these commenters believe would protect offerors against improper disclosure. However, this rule does include a provision at 3.104–8(d) which states that an offeror shall not be considered to have knowingly violated the Act if the offeror has made an inquiry in good faith regarding whether the information was source selection, and had been advised that it was not.

It was also suggested that the application of the rule to subcontractors be clarified. The suggestion has been adopted and FAR 3.104–9(b)(6) has been added which states that subcontractors of competing contractors are not required to submit certificates to the Government, but that nothing in the rule precludes a competing contractor from requesting certificates from its subcontractors.

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52

Government procurement.

Dated: May 9, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

May 16, 1989.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–47 is effective May 16, 1989.

Pete A. Bryan,

Director of Cost Pricing and Finance, Office of Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–47 amends the Federal Acquisition Regulation (FAR) as specified below:

Item-Procurement Integrity

FAR 1.105 is revised, and 3.104 and 3.104–1 through 3.104–12, 4.802(e), 9.105–3(c), 9.106–3(b), 15.805–5(l) and (m), 37.207(f), 37.208, 43.106, and the provision and clauses at 52.203–8, 52.203–9, and 52.237–9 are added to implement the procurement integrity requirements of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). This rule prohibits the following activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement: (a) Soliciting or discussing post-Government employment; (b) offering or accepting a gratuity; and (c) soliciting or disclosing proprietary or source selection information. In addition, the rule provides for certification and disclosure provisions applicable to Government contractors and Government officials, imposes post employment restrictions on Government officials and employees, and provides for criminal, civil, contractual, and administrative penalties for violations of the Act.

Solicitations issued prior to May 16, 1989, for which award has not been made before May 16, 1989, shall be

amended to comply with 3.104. Modifications as defined in 3.104–4(e) that have not been executed by May 15, 1989, shall also be amended. Therefore, 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 3, 4, 9, 15, 37, 43, 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, a FAR segment and corresponding OMB Control Number to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control No.
* * * * *	
3.104–9	9000–0103
* * * * *	
52.203–8	9000–0103
52.203–9	9000–0103
* * * * *	
52.237–9	9000–0103
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.104 and sections 3.104–1 through 3.104–12 are added to read as follows:

Sec.

3.104 Procurement integrity.
3.104–1 General.
3.104–2 Applicability.
3.104–3 Statutory prohibitions.
3.104–4 Definitions.
3.104–5 Disclosure of proprietary and source selection information.
3.104–6 Restrictions on Government officials, employees, and consultants.
3.104–7 Identification of the beginning of the conduct of a Federal agency procurement.
3.104–8 Knowing violations—duty to inquire.
3.104–9 Certification requirements.
3.104–10 Solicitation provision and contract clauses.
3.104–11 Processing violations or possible violations.
3.104–12 Ethics programs training requirements.

3.104 Procurement integrity.

3.104–1 General.

Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (which hereinafter in this section of the FAR may be referred to as "the Act"). Agency supplementation of 3.104 and any clauses required by section 3.104 must be approved at a level not lower than the Senior Procurement Executive of the agency, unless a higher level of approval is required by law for that agency.

3.104–2 Applicability.

This section applies to certain activities and conduct occurring on or after May 16, 1989, related to the conduct of a Federal agency procurement for a contract or contract modification.

3.104–3 Statutory prohibitions.

As provided in subsections 27(a), (b), (c), and (e) of the Act, the following conduct is prohibited:

(a) *Prohibited conduct by competing contractors.* During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency;

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) *Prohibited conduct by procurement officials.* During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor;

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative agent, or consultant of any competing contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) *Disclosure to unauthorized persons.* During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(d) [Reserved]

(e) *Restrictions on government officials and employees.* No Government official or employee, civilian or military, who has participated personally and substantially in the conduct of any Federal agency procurement or who has personally reviewed and approved the award, modification, or extension of any contract for such procurement shall—

(1) Participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

(2) Participate personally and substantially on behalf of the competing contractor in the performance of such contract, during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

3.104–4 Definitions.

As used in this section—

(a)(1) "Competing contractor," with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.

(2) "Competing contractor" includes the incumbent contractor in the case of a modification.

(b) "Cost or pricing data" means that cost or pricing data, as defined in 15.801, which are submitted or made available by the competing contractor in support of the instant proposal.

(c)(1) "During the conduct of any Federal agency procurement of property or services" means the period beginning with the development, preparation, and issuance of a procurement solicitation, and concluding with the award, modification, or extension of a contract, and includes the evaluation of bids or proposals, selection of sources, and conduct of negotiations.

(2) Each contract award and each contract modification constitutes a separate procurement action, i.e., a separate period during which the prohibitions and the requirements of the Act apply.

(3) Activities and conduct that occurred before May 16, 1989, if any, are not violations of the Act.

(d) "Government official or employee" means the persons described in this paragraph (d) who are in such status on or after May 16, 1989—

(1) A member of the uniformed services as defined in section 101(3) of title 37, United States Code,

(2) A person who is appointed to a position in the Federal Government under title 5, United States Code, including a person under a temporary appointment; and

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

(e) "Modification" means the addition of new work to a contract, or the extension of a contract, which requires a justification and approval (see Subpart 6.3). It does not include: an option where all the terms of the option are set forth in the contract and all requirements for option exercise have been satisfied; change orders; administrative changes; or any other contract changes that are within the scope of the contract.

(f) "Money, gratuity, or other thing of value," except where expressly permitted by agency standards of conduct regulations, means any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits, including discounts, passes, and promotional vendor training, given or extended to or on behalf of Government personnel, their immediate families, or households, for which fair market value is not paid by the recipient or the Government.

(g) "Participated personally and substantially" means active and significant involvement of the individual in activities directly related to the procurement. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate "substantially" means that the employee's involvement must be of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. An employee whose responsibility is the review of a procurement solely for compliance with administrative procedures or budgetary considerations, and who reviews a document involved in the procurement for such a purpose, should not be regarded as having participated substantially in the procurement.

(h)(1) "Procurement official" means any civilian or military official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement.

(2) "Procurement official" includes any civilian or military official or employee of an agency who has participated personally and substantially in the following activities—

(i) Development of acquisition plans;

(ii) Development of specifications, statements of work, or purchase descriptions/requests;

(iii) Development of solicitation or contractual provisions;

(iv) Evaluation or selection of a contractor; or

(v) Negotiation or award of a contract or modification to a contract.

(3) For purposes of 3.104–4 (h)(1) and (h)(2), the term "employee of an agency" includes a contractor, subcontractor, consultant, expert, or advisor (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned.

(i) "Property" means supplies as defined at 2.101.

(j)(1) "Proprietary information" means—

(i) Information contained in a bid or proposal;

(ii) Cost or pricing data; or

(iii) Any other information submitted to the Government by a contractor and designated as proprietary, in accordance with law or regulation, by the contractor, the head of the agency, or the contracting officer.

(2) Proprietary information is information identified in 3.104–4(j)(1) (i) and (ii) that is submitted to the Government by a competing contractor, and is marked as proprietary in accordance with applicable law or regulation. Information described in 3.104–4(j)(1) is proprietary only if the cover page and each page, or portion thereof, that contains proprietary information is marked as proprietary.

(3) It does not include information—

(i) That is otherwise available without restrictions to the Government, a competing contractor, or the public;

(ii) Contained in bid documents following bid opening (also see 14.404–4); or

(iii) That the contracting officer determines to release in accordance with 3.104–5(e);

(k)(1) "Source selection information" means information determined by the head of the agency or the contracting officer to be information—

(i) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and

(ii) Which is required by statute, regulation, or order to be secured in a source selection file or other restricted facility to prevent such disclosure;

(2) "Source selection information" is information, including information stored in electronic, magnetic, audio or video formats, which is prepared or developed for use by the Government to conduct a particular procurement. It is limited to—

(i) Material marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104," including copies or extracts so marked, and any copies or extracts that the recipient knows or should know were made from material that was so marked; and

(ii) The following material, including copies or extracts thereof, whether or not marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104":

(A) Listings of offerors and prices.

(B) Listings of bidders prior to bid opening.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of competing proposals;

(F) Competitive range determinations.

(G) Rankings (not applicable to sealed bidding).

(H) Source selection board reports and evaluations.

(I) Source selection advisory board recommendations.

3.104-5 Disclosure of proprietary and source selection information.

(a) Proprietary and source selection information shall be protected from unauthorized disclosure in accordance with 14.401 and 15.411.

(b) Individuals responsible for preparing material that may include source selection information shall mark the cover page and each page that contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104". Although the material described in 3.104–4(k)(2)(ii) is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with this legend. In determining whether the information is source selection information, the originator shall consult with agency officials as appropriate.

(c) The head of the agency, or his or her designee, or the contracting officer, has the authority, in accordance with applicable agency regulations or procedures, to authorize persons or classes of persons, access to proprietary or source selection information when access is necessary to the conduct of the procurement. For release to other than Government employees, see 15.413–2. Persons or classes of persons granted access to proprietary or source selection information shall be listed in the contract file (see 3.104–9(f)).

(d) When propietary or source selection information is authorized to be released to Government activities outside the contracting activity responsible for the conduct of the procurement, when access is necessary to the conduct of the procurement, the head of the office receiving the information, or his or her designee, shall maintain a list of persons or classes of persons, who have been authorized access to the proprietary or source selection information. The list shall be forwarded to the contracting office responsible for the conduct of the procurement to be included in the contract file.

(e)(1) Except for subparagraph (e)(4) of this subsection, if the contracting officer believes that information marked as proprietary (see 3.104–4(j)) is not proprietary, the competing contractor affixing the marking shall be notified in writing and given a reasonable opportunity to justify the proprietary marking. If the competing contractor agrees that the material is not proprietary information, or does not respond in a reasonable time to the notice, the contracting officer may remove the propietary marking and the information may be released.

(2) After reviewing any justification submitted by the competing contractor, if the contracting officer determines that the proprietary marking is not justified, the contracting officer shall so notify the competing contractor in writing.

(3) Information marked by the competing contractor as proprietary shall not be released for a period of 10 business days from the issuance of the notice in 3.104–5(e)(1). Thereafter, the contracting officer may release the information.

(4) With respect ot technical data that are marked proprietary by a competing contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(f) Nothing in 3.104 prohibits competing contractors from disclosing or authorizing the Government to disclose their company specific proprietary information to any other persons where not otherwise prohibited by law.

(g) Nothing in 3.104 shall limit the Government's use, in accordance with any preexisting rights, of technical data that is marked proprietary by a competing contractor.

(h) A person who discloses proprietary or source selection information shall not be considered to have violated the disclosure prohibitions set forth herein unless that person knows, or should have known, such information is proprietary or source selection information, even though the information has not been marked as such.

(i) Source selection or proprietary information that is properly in the possession of the Government or a competing contractor as a result of a prior disclosure that is not prohibited by the Act shall not be considered to have been solicited or obtained, directly or indirectly, in violation of the Act.

(j) Nothing in 3.104 shall be construed to authorize the withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an Inspector General of a Federal agency except as otherwise authorized by law or regulation. Any such release which contains proprietary or source selection information shall clearly notify the recipient that the information or portions thereof are proprietary or source selection information, related to the conduct of a Federal agency procurement whose disclosure is restricted by section 27 of the Office of Federal Procurement Policy Act.

3.104-6 Restrictions on Government officials, employees, and consultants.

(a) During the conduct of a Federal agency procurement, subsection 27(b)(1) of the Act prohibits any individual who has become a procurement official from soliciting, discussing, or accepting, directly or indirectly, any promise of future employment or business opportunity with any officer, employee, representative, agent or consultant of a competing contractor. A Government official or employee who has become a procurement official cannot have his or her status as a procurement official changed for purposes of seeking employment with a competing contractor. The prohibition in subsection 27(b)(1) of the Act does not apply after a Government official or employee leaves Government service. Subsection 27(b)(1) of the Act also applies to consultants who have become procurement officials until such individual ceases to act on behalf of, or provide advice to, the procuring agency.

(b) Subsection 27(d)(4) of the Act provides that if a procurement official leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of $100,000, such official shall certify to the contracting officer that he or she understands the continuing obligation, during the conduct of the procurement, not to disclose proprietary or source selection information related to such agency procurement.

(c) Subsection 27(e)(1) of the Act prohibits a former Government official or employee who has participated personally and substantially in the conduct of a Federal agency procurement or has personally reviewed and approved the award or modification of any contract for such procurement from participating in any manner in negotiations as an officer, employee, representative, agent or consultant of a competing contractor leading to the award or modification of the contract for such procurement. This restriction not only includes representing the competing contractor in negotiations but also includes providing advice or information on negotiation strategies. For purposes of the restriction, negotiation strategy is the contractor's approach to the preparation and presentation of its offer and conduct of negotiations with the Government. The restriction does not apply to providing scientific, technical, or other advice that is unrelated to negotiation strategies. The restriction only applies when, the advice or information is provided to the competing contractor for the specific purpose of influencing negotiations

leading to the award or modification of the contract. This restriction lasts for 2 years from the date of the individual's last personal and substantial participation in the Federal agency procurement.

(d) Subsection 27(e)(2) of the Act prohibits a former Government official or employee who has participated personally and substantially in the conduct of a Federal agency procurement or who has personally reviewed and approved the award or modification of any contract for such procurement from participating personally and substantially on behalf of the competing contractor in performance of the contract. Generally, what constitutes personal and substantial participation on behalf of the competing contractor must be determined on a case-by-case basis. To participate "personally and substantially" requires the presence of both direct and significant involvement in performance of the specific contract. This restriction lasts for 2 years from the date of the last personal and substantial participation in the Federal agency procurement.

3.104-7 Identification of the beginning of the conduct of a Federal agency procurement.

The conduct of a Federal agency procurement begins when an authorized agency official determines that a specific agency need or requirement shall be satisfied by procurement. This shall be the earliest of identifiable specific action such as—

(a) Requirements computation at inventory control points;

(b) Publication of an advance synopsis of an R&D procurement;

(c) Convening of a formal acquisition strategy meeting;

(d) Development of an acquisition plan;

(e) Development of a purchase request;

(f) Development of a statement of work;

(g) Development of specifications specifically for the instant procurement; or

(h) Publication of the agency's intent to develop or acquire systems, subsystems, supplies, or services.

3.104-8 Knowing violations—duty to inquire.

(a) For some procurements, neither competing contractors nor all procurement officials will have notice as to when the conduct of a particular procurement has begun. However, certain conduct and activities that are prohibited by the Act would be inappropriate at any time. It is generally recognized that potential contractors should not offer, and agency officials should not solicit gratuities at any time. Similarly, potential contractors should not solicit, and agency personnel should not offer, proprietary or source selection information at any time. However, potential contractors may offer, and Government employees may solicit, employment except as prohibited by law. Contractors who wish to discuss employment opportunities with a possible procurement official should ask if that party is a procurement official for a procurement for which the contractor is a competing contractor before conducting any discussion related to employment. Similarly, procurement officials who wish to solicit employment from a potential competing contractor should ask whether the contractor is reasonably likely to become a competing contractor on any procurement for which the procurement official is responsible.

(b) Agency personnel shall be presumed to know the procurements for which they are procurement officials. Contractor personnel are presumed to know the procurement for which the organization they represent is reasonably likely to be competing. Individuals who do not, in fact, know whether they are procurement officials, or whether the organization they represent is a competing contractor, should defer any discussions regarding employment until these questions can be resolved by consulting appropriate parties within their respective organizations.

(c) A competing contractor shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(a)(1) of the Act (see 3.104-3(a)(1)) if the contractor has made an inquiry in good faith of the possible procurement official and has been advised that the individual is not a procurement official for any procurement for which the contractor is a competing contractor. Similarly, a procurement official shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(b)(1) of the Act (see 3.104-3(b)(1)) if the procurement official made inquiry in good faith of the potential contractor, and had been advised that the contractor would not be a competing contractor on a procurement under the responsibility of the procurement official.

(d) A competing contractor or procurement official shall not be considered to have knowingly violated the prohibitions in subsection 27(a)(3) or 27(b)(3) of the Act (see 3.104-3 (a)(3) and (b)(3)) if, before proprietary or source selection information was solicited, obtained, or disclosed, the contractor or procurement official—

(1) Had made an inquiry in good faith of the appropriate competing contractor or procurement official regarding whether information was proprietary or source selection information; and

(2) Had been advised by such official that the information was not proprietary or source selection information.

3.104-9 Certification requirements.

(a) *Applicability.* In accordance with subsection 27(d)(7)(A) of the Act, certification requirements set forth herein apply to contracts in excess of $100,000 awarded by a Federal agency on or after May 16, 1989, and to any contract modification in excess of $100,000 executed by a Federal agency on or after May 16, 1989, except as provided in 3.104-9(e).

(b) *Competing contractor certification.* (1) In accordance with subsection 27(d)(1) of the Act, an agency shall not award a contract for the procurement of property or services to any competing contractor, or agree to any modification of a contract, unless the officer or employee of such contractor responsible for the offer or bid for such contract, or the modification of such contract—

(i) Certifies in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (c), or (e) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Discloses to such contracting officer any and all such information and certifies in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certifies in writing to such contracting officer that each officer, employee, agent, representative, and consultant of such competing contractor who, on or after May 16, 1989, has participated personally and substantially in the preparation or submission of such bid or offer, or in such modification of such contract, as the case may be, has certified to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or

bid for any contract or the modification of such contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (c), or (e) of the Act (see 3.104–3), occurring on or after the effective date of the Act, as implemented in the FAR.

(2) The signed certification prescribed in 3.104–10 shall be submitted as follows:

(i) For sealed bids, by each bidder with bid submission.

(ii) For procurements using the two-step sealed bidding procedure (see Subpart 14.5), with submission to the Government of step two sealed bids.

(iii) For indefinite delivery-type contracts, if the estimated value of all orders to be placed under the contract is expected to exceed $100,000, from all bidders with bid submission.

(iv) For requests for proposals (RFP) or quotations (RFQ), by the successful offeror as close as practicable to, but in no event later than, contract award.

(v) For contract modifications in excess of $100,000, prior to execution.

(vi) For indefinite delivery-type contracts, if the estimated value of all orders to be placed under the contract is expected to exceed $100,000 from the successful offeror for other than sealed bids as close as practicable, but in no event later than, the date of contract award.

(vii) For letter contracts prior to award of the letter contract and prior to definitization of the letter contract.

(viii) For all other procurement actions, prior to award or execution.

(ix) The certificate required in 3.104–9(b)(2) (iv) through (viii) shall be submitted to the contracting officer within the time period specified by the contracting officer when requesting the certificate.

(3) In the absence of a solicitation, the signed certification shall be obtained prior to award of a contract or execution of a modification.

(4) The offeror may rely upon periodic certifications that must be obtained at least annually, supplemented by periodic training programs. These certifications shall be maintained by the contractor for 6 years from the date of each certification.

(5) Failure of an offeror to submit the required certificate shall render the offeror ineligible for award (see 9.104–1(g)).

(6) Subcontractors of the competing contractor are not required to submit the certificate required by subsection 27(d)(1) of the Act. However, nothing in 3.104 precludes a competing contractor from requesting certification from its subcontractors.

(c) *Contracting officer certifications.* (1) In accordance with subsection 27(d)(2) of the Act, a Federal agency may not award a contract for the procurement of property or services, or agree to any modification of any such contract, unless the contracting officer responsible for such procurement—

(i) Certifies in writing to the head of such agency that, to the best of his or her knowledge and belief, the contracting officer has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104–3) as implemented in the FAR; or

(ii) Discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(2) Immediately prior to contract award or execution of a contract modification, the contracting officer shall certify as follows and maintain the completed certificate in the contract file:

Contracting Officer Certificate of Procurement Integrity

(i) I, [Name of contracting officer], hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of paragraphs (a), (b), (c), or (e) of section 27 of the Office of Federal Procurement Policy Act * (41 U.S.C. 423), as implemented in the FAR, occurring during the conduct of this procurement (*contract/modification number*).

(ii) Violations or possible violations: *Continue on plain bond paper if necessary, and label Contracting Officer Certificate of Procurement Integrity (Continuation Sheet), ENTER "NONE" IF NONE EXISTS.)*

_____

_____

_____

(Signature of contracting officer and date)

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.

(End of Certification)

(d) *Additional certifications.* (1) In accordance with subsection 27(d)(3) of the Act, any procurement official or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services, may be required—

(i) To certify in writing that, to the best of his or her knowledge and belief, such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for such contract or the modification of such contract has no information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104–3) as implemented in the FAR occurring during the procurement; or

(ii) To disclose any and all such information and to certify in writing that any and all such information has been disclosed.

(2) Additional certifications may be required only after receiving the approval of the Head of the Contracting Activity (HCA) or designee, so long as the designee is at least one level above the contracting officer and is of flag, SES, or equivalent rank.

(3) The procurement official or competing contractor shall be afforded a reasonable time to comply with the additional certification requirements.

(4) Failure to submit any additional certifications that may be required shall render the competing contractor ineligible for award (see 9.104–1(g)).

(e) *Exceptions.* Pursuant to subsection 27(d)(7)(B) of the Act, certification requirements set forth in 3.104–9 do not apply—

(1) When contracting with a foreign government or an international organization that is not required to be awarded using competitive procedures pursuant to section 303(c)(4) of the Federal Property and Administrative Services Act of 1949 or section 2304(c)(4) of Title 10, United States Code (see 6.302–4); or

(2) In an exceptional case, when the head of the agency concerned determines in writing that the certification requirement should be waived. This authority may not be delegated. The contracting officer shall submit the request for waiver in accordance with agency procedures. The request shall clearly identify the procurement or class of procurements and provide the rationale for the requested waiver. The decision of the agency head shall state the reasons for approving or disapproving the waiver. The agency head shall promptly notify Congress in writing of each waiver approved.

(f) *Recordkeeping requirements.* In accordance with subsection 27(d)(5) (A) and (B) of the Act, the contracting officer responsible for the award or modification of a contract shall maintain, as part of the contract file—

(1) All certifications made by procurement officials and competing contractors with regard to the action, as required by this subsection and 3.104–6(b); and

* Section 27 became effective on May 16, 1989.

(2) A record of all persons who have been authorized by the head of the agency or the contracting officer to have access to proprietary or source selection information regarding the procurement. When classes of persons have been authorized, this record shall identify the class of persons so authorized.

3.104-10 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.203-8, Requirement for Certificate of Procurement Integrity, in all solicitations where the resultant contract award is expected to exceed $100,000, unless a determination of inapplicability has been made pursuant to 3.104-9(e).

(b) The contracting officer shall insert the clause at 52.203-9, Requirement for Certificate of Procurement Integrity-Modification, in all solicitations and contracts in excess of $100,000, and modifications to contracts which do not already contain the clause when the modification is expected to exceed $100,000, unless a determination of inapplicability has been made pursuant to 3.104-9(e).

(c) The contracting officer shall insert the clause at 52.203-10, Remedies for Illegal or Improper Activity, in all solicitations and contracts expected to exceed the threshold in Part 13 (see 13.000), or modifications to contracts which do not already contain the clause when the modification is expected to exceed the threshold in 13.000.

3.104-11 Processing violations or possible violations.

(a) If any certification received by or signed by the contracting officer contains any information of a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act (see 3.104-3), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor. If the contracting officer concludes that there is no impact, the contracting officer shall report the violation accompanied by appropriate documentation supporting that conclusion to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer may immediately proceed with award, and the individual concurring with the award decision shall notify the HCA, or his or her designee, of a violation or possible violation. If the contracting officer determines that the violation or possible violation impacts the pending award, the contracting officer shall withhold award and promptly forward the certification and related information to the HCA or designee, so long as the designee is at least one level above the contracting officer and is of flag, SES, or equivalent rank.

(b) The HCA or his or her designee receiving a certification describing an actual or possible violation of subsections 27 (a), (b), (c), or (e) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as:

(1) Cause an investigation to be conducted.

(2) Refer the information disclosed to appropriate criminal investigative agencies.

(c) If the HCA or his or her designee receiving a certification determines that the prohibitions of section 27 of the Act have been violated, then the HCA or his or her designee may direct or recommend the contracting officer—

(1) If a contract has not been awarded, to—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or;

(iii) Take any other appropriate actions in the interest of the Government.

(2) If a contract or modification has been awarded, to—

(i) Seek applicable contractual remedies, including profit recapture as provided for at 52.203-10, Remedies for Illegal or Improper Activity;

(ii) Void or rescind the contract, in accordance with the procedures in 3.705; or

(3) Refer the matter to the agency suspension and debarment official.

(d) If the HCA or his or her designee receiving the certification of a violation or possible violation determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then he or she may authorize the contracting officer to award the contract after notification of the head of the agency in accordance with agency procedures.

§ 3.104-12 Ethics programs training requirements.

(a) Subsection 27(j) of the Act provides that the head of each Federal agency shall establish a procurement ethics program for its procurement officials. The program shall, at a minimum—

(1) Provide for the distribution of written explanations of subsection 27(b) of the Act to such procurement officials; and

(2) Require each such procurement official, as a condition of serving as a procurement official, to certify that he or she is familiar with the provisions of subsection 27(b) of the Act and will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act as implemented in the FAR.

(b) Consultants serving as procurement officials must also comply with the training requirements specified in 3.104-12(a) (see also 37.208).

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.802 is amended by adding paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are proprietary or source selection information identified in 3.104-4 shall be protected from disclosure to unauthorized persons (see 3.104-5).

PART 9—CONTRACTOR QUALIFICATIONS

5. Section 9.105-3 is amended by adding paragraph (c) to read as follows:

9.105-3 Disclosure of preaward information.

* * * * *

(c) Preaward survey information may contain proprietary and/or source selection information and should be marked with the appropriate legend and protected accordingly (see 3.104-4 (j) and (k)).

6. Section 9.106-3 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

9.106-3 Interagency preaward surveys.

* * * * *

(b) The surveying activity shall furnish with its report a list of all persons, or classes of persons, who have been provided access to the proprietary or source selection information (see 3.104-5(d)) at or by the surveying activity.

PART 15—CONTRACTING BY NEGOTIATION

* * * * *

7. Section 15.805-5 is amended by adding paragraphs (l) and (m) to read as follows:

15.805-5 Field pricing support.

* * * * *

(l) Field pricing reports, including audit and technical reports, may contain proprietary and/or source selection

information (see 3.104–4 (j) and (k)), and the cover page and all pages containing such information should be marked with the appropriate legend and protected accordingly.

(m) Activities submitting field pricing reports, including audit and technical reports, shall furnish with each report a list of all persons, or classes or persons, who have been provided access to the proprietary or source selection information (see 3.104–5(d)) at or by the activity.

PART 37—SERVICE CONTRACTING

8. Section 37.207 is amended by removing at the end of paragraph (d) the word "and"; by removing the period at the end of paragraph (e) and inserting in its place "; and"; and by adding paragraph (f) to read as follows:

37.207 Contracting officer responsibilities.

* * * * *

(f) Maintain the certifications required of contractor employees serving as Government procurement officials.

9. Section 37.208 is added to read as follows:

37.208 Contract clause.

The contracting officer shall insert the clause at 52.237–9, Procurement Integrity—Advisory and Assistance Services, in all solicitations and contracts for advisory and assistance services to be used in support of the conduct of a Federal agency procurement.

PART 43—CONTRACT MODIFICATIONS

43.107 [Redesignated from 43.106]

10. Section 43.106 is redesignated as 43.107 and a new section 43.106 is added to read as follows:

43.106 Procurement integrity—modifications.

No modification over $100,000 as defined at 3.104–4(e) may be executed without complying with the requirements of 3.104.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 52.203–8 is added to read as follows:

52.203–8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104–10(a), insert the following provision:

Requirement for Certificate of Procurement Integrity (May 1989)

(a) *Definitions.* The definitions at FAR 3.104–4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer or bid and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (*solicitation number*).

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations of possible violations:
(*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXISTS)*

_____

_____

_____

[Signature of the Officer or Employee Responsible for the Offer and date]

[Typed Name of the Officer or Employee Responsible for the Offer]

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.

(End of certification)

(c) The signed certification in paragraph (b) of this provision shall be executed and submitted as follows:

(1) If this is an invitation for bids (IFB), with bid submissions exceeding $100,000.

(2) If this is a procurement using the two-step sealed bidding procedure (see FAR Subpart 14.5), with bids exceeding $100,000, with submission to the Government of step-two sealed bids.

(3) If this is a request for proposal (RFP) or quotation (RFQ), by the successful offeror as close as practicable to, but in no event later than, the date of award of a contract exceeding $100,000.

(4) If this is an invitation for bids for an indefinite delivery-type contract, and if the estimated value of orders to be placed under the contract is expected to exceed $100,000, with the bid submission.

(5) If this is an RFQ or RFP for an indefinite delivery-type contract, and if the estimated value of orders expected to be placed under the contract is expected to exceed $100,000, by the successful offeror as close as practicable to, but in no event later than, the date of contract award.

(6) For letter contracts, prior to award of the letter contract and prior to definitization of the letter contracts.

(7) For other procurement actions in excess of $100,000, prior to award or execution as specified by the Contracting Officer.

(8) The certificate required by subparagraphs (c)(3) and (c)(5) through (c)(7) of this provision shall be submitted to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate.

(d) Pursuant to FAR 3.104–9(d), the offeror may be requested to execute additional certifications at the request of the Government.

(e) Failure of an offeror to submit the certification required by FAR 3.104–9(b) or any additional certifications pursuant to FAR 3.104–9(d) will render the offeror ineligible for contract award (see FAR 9.104–1(g)).

(f) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(g) In making the certification in subparagraph (b)(2) of this provision, the offeror may rely upon the certification by an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR, unless the offeror knows, or should have known, of reasons to the contrary. The offeror may rely upon periodic certifications that must be obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained by the contractor for 6 years from the date of execution.

(h) The certifications in paragraph (b) and (d) of this provision are a material representation of fact upon which reliance will be placed in awarding a contract.

(End of provision)

12. Section 52.203–9 is added to read as follows:

§ 52.203–9 Requirement for Certificate of Procurement Integrity—Modification.

As prescribed in 3.104–10(b), insert the following clause:

*Section 27 became effective on May 16, 1989.

Requirement for Certificate or Procurement Integrity—Modification (May 1989)

(a) *Definitions.* The definitions set forth in FAR 3.104–4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause, when requested by the contracting officer in connection with the execution of any modification of this contract. A contract modification may not be executed without the certification.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

Certificate of Procurement Integrity—Modification (May 1989)

(1) I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (c), or (e) of the Office of Federal Procurement Policy Act * (41 U.S.C. 423), (hereinafter referred to as the Act), as implemented in the FAR, occurring during the conduct of this procurement (*contract and modification number*).

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity—Modification (Continuation Sheet), ENTER NONE IF NONE EXISTS*

_____

_____

_____

[Signature of the Officer or Employee Responsible for the Modification Proposal and date]

[Typed Name of the Officer or Employee Responsible for the Modification Proposal]

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.

* Section 27 became effective on May 16, 1989.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the Contractor may rely upon the certification by an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR, unless the Contractor knows, or should have known, of reasons to the contrary. The Contractor may rely upon periodic certifications that must be obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained by the Contractor for a period of 6 years from the date of execution.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

13. Section 52.203–10 is added to read as follows:

52.203–10 Remedies for illegal or improper activity.

As prescribed in 3.104–10(c) insert the following clause:

Remedies for Illegal or Improper Activity (May 1989)

(a) The Government, at its election, may reduce the price of a fixed-price-type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (c) of this clause if the head of the agency or his or her designee, determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the FAR. In the case of a contract modification the fee subject to reduction is the fee associated with the particular contract modification.

(b) Prior to making such a fee or profit reduction, the agency head or his or her designee shall provide to the Contractor a written notice of the action being considered and the basis therefor. The Contractor shall have a period determined by the agency head or his or her designee, but in no event less than 30 calendar days after receipt of such notice to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or his or her designee may, upon good cause shown, determine to reduce the contract or contract modification price or fee by an amount which is less than the amount determined under paragraph (c) of this clause.

(c) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) *For cost-plus-fixed-fee contracts,* the amount of the fee specified in the contract at the time of award;

(2) *For cost-plus-incentive-fee contracts,* the target fee specified in the contract at the time of award notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) *For cost-plus-award-fee contracts—*

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 10 percent of the amount of each award fee otherwise payable to the contractor for each incentive period or at each award fee determination point.

(4) *For fixed-price-incentive contracts,* the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award;

(ii) When the contract provides for multiple deliverables, reduce the amount otherwise payable to the contractor upon each delivery and acceptance by an amount determined by the Contracting Officer to be the profit portion of each payable amount until the cumulative total of such reductions is equal to the initial target profit amount specified in the contract at the time of contract award;

(iii) In addition to any other withholdings, retentions or reserves, reduce the amount of progress payments otherwise payable in connection with each invoice or voucher properly submitted by the contractor for payment until the aggregate progress payments amounts so withheld equal the initial target profit established at the time of contract award; or

(iv) If the Government elects either (c)(4)(ii) or (iii) of this clause, at the time of total final price establishment, the price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the amount of initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price. Any progress payments amounts retained by the Government in (c)(4)(iii) of this clause shall be returned to the contractor, if appropriate.

(5) *For firm-fixed-price contract or contract modifications,* by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(d) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraphs (b) and (c) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract or modification for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

14. Section 52.237–9 is added to read as follows:

52.237-9 Procurement Integrity—Advisory and Assistance Services.

As prescribed in 37.208, insert the following clause:

Procurement Integrity—Advisory and Assistance Services (May 1989)

(a) *Definitions.* The definitions in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, at a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the FAR to such employees; and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsections 27 (a), (b), (c), or (e) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to FAR 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modification in excess of $100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

(End of clause)

[FR Doc. 89-11472 Filed 5-10-89; 8:45 am]

BILLING CODE 6820-JC-M