

amendatory instruction for section 252.215-7003 is January 30, 1990.

FOR FURTHER INFORMATION CONTACT:
Ms. Lucile Hughes, DAR Council,
ODASD(P)/DARS, c/o
OASD(P&L)(M&RS), room 3D139,
Pentagon, Washington, DC 20301-3062,
(703) 697-7266.
Claudia L. Naugle,

*Executive Editor, Defense Acquisition
Regulatory System.*

Therefore, 48 parts 219, 237, 247 and 252 are corrected as follows:

1. The authority citation for 48 CFR parts 219, 237, 247 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and FAR subpart 1.3.

2. In Federal Register document 90-10632 beginning on page 19070 in the issue of May 8, 1990 make the following corrections:

a. On page 19078, in the first column, amendatory instruction No. 34 is corrected, in the ninth line, by removing "of the second sentence."

b. On page 19080, in the first column, amendatory instruction No. 61 is corrected, in the second line, by adding "introductory text" after "paragraph (b)."

3. In Federal Register document 90-29807 beginning on page 53612 in the issue of December 29, 1989, an amendment to section 247.573-1 which appeared on page 53620, in columns 1 and 2, and in Federal Register document 90-10632 beginning on page 19070 in the issue of May 8, 1990, an amendment to section 247.573-1 which appeared on page 19080, in column 2, incorrectly amended this section. Section 247.573-1 is correctly revised to read as follows:

247.573-1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies to those acquisitions where ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing the following:

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) The contracting officer shall ascertain from each offeror whether the supplies will be transported by sea under the resulting contract (see 247.574(a)).

(1) When the successful offeror indicates in the response to the solicitation, that ocean transportation will be used, the contractor must comply with the requirements of the Cargo Preference Act of 1904.

(2) If the successful offeror's response to the solicitation provision is that the offeror does not anticipate that supplies will be transported by sea, there still remains the possibility that during contract performance the contractor will discover that ocean transportation must be used. In that event, the terms of the statute still apply to the contractor, requiring the contractor to use U.S.-flag vessels unless certain narrow conditions exist (see 247.572(b) above). The contractor must notify the Government of the changed circumstances, i.e., that it intends to use ocean transportation, and comply with the requirements of the Cargo Preference Act.

(d) When the contracting officer is notified in accordance with the clause at 252.247-7203, Transportation of Supplies by Sea, that the contractor or subcontractor considers that:

(1) No U.S.-flag vessels are available: the contracting officer shall request confirmation from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC), that no U.S.-flag vessels are available.

(2) The freight charges to the armed services, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons having no involvement in the contract: The contracting officer may waive or approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment. Prior to granting such a waiver, the contracting officer shall solicit oral or written advice from the Commander, MSC or designated representative, MSC. The Commander, MSC shall consider, as appropriate, evidence from published tariffs, industry publications, the Maritime Administration, and other available sources when advising the contracting officer whether the waiver should be granted.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable: The contracting officer shall forward a report to the Commander, MSC through the head of the contracting activity and the

Director, Office of Contracts and Business Management, MSC. The report shall take into consideration that the Cargo Preference Act of 1904 is, in part, a subsidy of the U.S.-flag commercial shipping industry which starts from the premise that lower prices can be obtained from foreign shippers. Accordingly, the report should consider not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the mandatory use of U.S.-flag vessels in extraordinarily inefficient circumstances. If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy, via ASN(S&L)(CBM), for a determination.

(i) The report shall be in D&F format and include, as appropriate, an analysis of whether the cost to the armed services is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of U.S.-flag rates charged on comparable routes; efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and any other relevant economic and financial considerations affecting the armed services.

(ii) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

4. In Federal Register document 90-29807 beginning on page 53612 in the issue of December 29, 1989, an amendment to section 252.215-7003 which appeared on page 53620, in the third column, in amendatory instruction No. 46, in the third and fourth lines, " '(JAN 1990)' in lieu of '(FEB 1989)' " is corrected to read " '(JAN 1990)' in lieu of '(MAR 1988)' ".

[FR Doc. 90-22836 Filed 9-28-90; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 504, 505, 515, and
552

[APD 2800.12A, CHGE 14]

Acquisition Regulation; Procurement Integrity

AGENCY: Office of GSA Acquisition
Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), chapter 5, is amended to add § 503.104 and related subsections to subpart 503.1 in order to implement and supplement the Federal Acquisition Regulation (FAR) requirements on procurement integrity; to revise § 504.803 to provide instructions to contracting officers on the placement of documents related to procurement integrity requirements in the contract file; to revise § 505.303-70 to provide for notification of certain contract awards to be made to the Office of Congressional Affairs on the same day the contract is awarded; to revise § 505.403 to provide for use of a caution notice on any proprietary or source selection information provided to members of Congress; to add § 515.612 to identify the releasing authority for proprietary or source selection information after source selection; to add §§ 552.203-71, 552.203-72 and 552.203-73 to provide the text of provisions and clauses related to procurement integrity to be included in solicitations and contracts for the acquisition of leasehold interests in real property; to revise the matrix at 552.370 to add references to the provisions at FAR 52.215-12, Restrictions on Disclosure and Use of Data; GSAR 552-203-71, Prohibited Conduct; GSAR 552.203-72, Requirement for Certificate of Procurement Integrity; to add references to the clauses at FAR 52.203-9, Requirement for Certificate of Procurement Integrity—Modification and GSAR 552.203-73, Price Adjustment for Illegal or Improper Activity. GSA is also adding to the GSAR looseleaf GSA Form 3608, Procurement Integrity Certification of Departing GSA Procurement Official, GSA Form 3611, Cover Page Source Selection Information, and GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information. The matrixes and GSA Forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th

and F Streets, N.W., Washington, DC 20405. The intended effect is to implement and supplement the FAR as amended by FAC 84-60 and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

GSA's initial implementation of the FAR procurement integrity provisions was published as a temporary rule with request for comments on July 14, 1989 (54 FR 29720). Comments submitted by the Electronic Industries Association, the Council of Defense and Space Industry Associations, the Office of Federal Procurement Policy and various GSA offices were considered in formulating this rule. Revisions made to the FAR by FAC 84-60 have also been considered.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it implements the FAR by providing agency procedures for implementing the procurement integrity provisions at FAR subpart 3.1. In addition, the rule supplements the FAR by codifying provisions and clauses for use in contracts for the acquisition of leasehold interests in real property. Therefore, a Regulatory Flexibility Analysis has not been prepared.

D. Paperwork Reduction Act

This rule contains information collection requirements which implement the provisions of Public Law 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 101-189. The referenced public laws require contractors to certify, prior to execution of each contract, modification or extension in excess of \$100,000, with respect to conduct prohibited by the Act in contracts for the acquisition of leasehold interests in real property. Because the FAR does not apply to acquisitions of leasehold interests in real property a

Certificate of Procurement Integrity substantially the same as the FAR Certificate of Procurement Integrity is provided for use in such acquisitions in this rule. The information collections have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned control number 3090-0247. The title of the collection is 48 CFR part 503—Procurement Integrity. The estimated annual burden for this collection is 1,668 hours. This is based on an estimated average burden hour per response of approximately 2 hours, 1 response per respondent, and an estimated 800 respondents per year. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 503, 504, 505, 515, and 552

Government procurement.

1. The authority citation for 48 CFR parts 503, 504, 505, 515, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—[AMENDED]

2. Sections 503.104, 503.104-4, 503.104-5, and 503.104-7 through 503.104-12 are added to read as follows:

503.104 Procurement integrity.

503.104-4 Definitions.

Property, as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

503.104-5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary and source selection information shall—

- (1) Ensure documents are marked as prescribed in FAR 3.104-5(c).
- (2) Provide physical security for documents in the office environment during and after duty hours.
- (3) Ensure security of interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope and sealing of envelopes.
- (4) Maintain strict control over oral communications regarding the acquisition.

(b) The GSA Form 3611, Cover Page Source Selection Information, may be used as the cover page for documents that contain source selection information. The use of the GSA Form

3611 does not eliminate the requirement to mark each page of the document that contains source selection information.

(c)(1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including client agency representatives, program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer's chain of command.

(v) Attorneys in the Office of General Counsel and Regional Counsel's Offices.

(vi) Contract auditors in the Office of Inspector General and Regional Inspector General's offices.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration (SBA) personnel responsible for reviewing determining not to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR subpart 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.

(x) Department of Labor (DOL) personnel responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for processing preaward EEO clearances under FAR 22.805.

(xi) Personnel in the Credit and Finance Branch, Region 6, and other personnel who provide support to the contracting officer in making contractor responsibility determinations.

(xii) Personnel serving on technical evaluation boards or source selection evaluation boards.

(xiii) Contract clearance personnel.

(2) The Associate Administrator for Acquisition Policy may authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or source selection information when such access is necessary to the conduct of the procurement and to the extent that the person has a "bona fide need to know." Access must be limited to only

that information needed by the person to perform his/her responsibilities.

(4) The GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information, may be used to maintain the list of individuals authorized access to proprietary or source selection information.

(5) Release of proprietary or source selection information under FAR 3.104-5(d)(3) must be made by letter citing obligation to maintain a list of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for inclusion in the contract file.

(6) In accordance with FAR 3.104-5(i), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

(7) For requests from an individual Member of Congress see 505.403.

§ 503.104-7 Postemployment restriction applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

(a) The supervisor of each departing GSA employee shall determine whether the departing employee is a procurement official within the meaning of the statute, that is, the employee has participated personally and substantially in the conduct of a GSA procurement or contract modification outside the scope of the contract in excess of \$100,000 that has not been completed at the time of the employee's departure. For purposes of this determination, a procurement is not considered complete until all actions associated with the award or modification of the procurement have been taken. If the supervisor determines the departing employee is a procurement official, even though the employee's duties may be completed, the supervisor shall have the departing employee read, sign, and date the GSA Form 3608, Procurement Integrity Certification of Departing GSA Procurement Official. The supervisor will forward the GSA Form 3608, or copy thereof, to the applicable contracting officer(s) for

inclusion in the applicable contract file(s). Copies of the GSA Form 3608 should be annotated to identify the contract file which contains the original certification so that it can be retrieved, if necessary.

(b) The contracting officer shall obtain the GSA Form 3608 from any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000. (See FAR 3.104-10(d) and 52.203-13).

503.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.

(a) If a contracting officer has not been appointed, the contracting director shall serve as the Administrator's designee and respond to inquires under FAR 3.104-8(d) and (e) regarding proprietary and source selection information.

(b) Requests for ethics advisory opinions under FAR 3.104-8(e) must be submitted to the appropriate ethics official.

503.104-9 Certification requirement.

Contracting Officer shall submit requests for waiver of certification requirements under FAR 3.104-9(f)(2) to the HCA for transmittal to the Senior Procurement Executive (see 502.101). The Senior Procurement Executive will recommend that the Administrator approve or disapprove the request.

503.104-10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203-71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property expected to exceed \$25,000.

(b) The contracting officer shall insert the provision at 552.203-72, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed \$100,000 unless pursuant to FAR 3.104-9(f) a certification is not required or a waiver has been granted.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.203-73, Price Adjustments for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed \$25,000 and all contracts and modifications to contracts exceeding \$25,000 which do not already contain the clause when the modification is expected to exceed \$25,000.

503.104-11 Processing violations or possible violations.

(a)(1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a source shall be submitted, along with supporting documentation, to the HCA or SES designee for review and concurrence before award of a contract. In addition, the nature and circumstances of the violation or possible violation, together with any supporting documentation, must be referred to the Inspector General in accordance with agency regulations.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the HCA, who will:

(i) Refer the matter immediately to the Inspector General.

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104-11 (b) and (d).

(b) If the HCA or SES designee determines under FAR 3.104-11(f) that there are urgent and compelling circumstances, or that it is otherwise in the Governments interest to award or modify a contract, the HCA or SES designee shall notify the Administrator.

503.104-12 Ethics program training requirements.

(a) Except as provided in paragraph (b) of this section, the contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with GSA personnel, has executed the Procurement Official's Procurement Integrity Certification pursuant to FAR 3.104-12. Such interaction may occur in the requirements determination process and the development of specifications or statements of work.

(b) Where a non-Government person or another agency's employee(s) act on behalf of GSA (e.g., serves on a Source Selection Board) the contracting officer is responsible for obtaining the Procurement Officials' Procurement Integrity Certification from non-GSA or non-Government persons involved in the selection of a source in a GSA procurement.

PART 504—[AMENDED]

3. Section 504.803 is amended by revising paragraphs (a) (23) and (25) to read as follows:

504.803 Contents of contract files.

(a) * * *

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action. Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705-5(a)(5), and the successful competing contractor's certificate of procurement integrity required by FAR 3.104-9(b), should be filed under this tab.

* * *

(25) Any required approvals—GSA Form 1535, Recommendation for Award, or GSA Form 3584, Checklist for Review of Subcontracting Plan (as applicable). The contracting officer's and any departing procurement official's certificate of procurement integrity, required by FAR 3.104-7(a) and 503.104-7 and the record of individuals authorized access to proprietary or source selection information, required by FAR 3.104-5(d)(2) and 3.104-9(e)(iii) should be filed under this tab.

* * *

PART 505—[AMENDED]

4. Section 505.303-70 is amended by revising paragraph (b)(2) and adding paragraphs (b)(4) and (c) to read as follows:

505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

* * *

(b) Notification procedures. * * *

(2) Except for submittals hand delivered to S, the submittal must be made by facsimile transmission and, in the case of proposed 8(a) awards, on GSA Form 2677, Minority Contract Fact Sheet. Except for contracts awarded under urgent and compelling circumstances, notification to S of an award must be made on the same day that the award is made and 24 hours before telephonic notice (if applicable) is provided to the contractor. If the timeframe for notification to S cannot be met, the Contracting Director must notify S by telephone.

* * *

(4) The notification to S will contain sensitive preaward information and should be labeled accordingly. S and regional Congressional liaison offices will be responsible for the security of such information and will establish procedures governing the release of such information before official notification of award. Unless otherwise authorized by the contracting officer, the release of such information prior to award shall be

limited to Members of Congress and their staff.

(c) Release of awards. (1) Release of notifications which require priority processing as determined by the Associate Administrator for Congressional Affairs will be accomplished at the time and date specified.

(2) Unless notified to the contrary, contracting activities may release awards of the type described in (a) and (b) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of notification to S established either by the facsimile transmission or hand delivery.

5. Section 505.403 is added to read as follows:

505.403 Requests from Members of Congress.

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, proprietary or source selection information as defined in FAR 3.104-4 or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), include the caution notice prescribed in 503.104-5(d)(8) in the response, and inform the Office of Congressional Affairs of the action taken.

PART 515—[AMENDED]

8. Section 515.612 is added to read as follows:

515.612 Formal source selection.

After the source selection, the releasing authority under FAR 15.612(e)(1) shall be the Contracting Officer. The contracting officer shall obtain the advice and concurrence of assigned legal counsel before releasing proprietary or source selection information outside the agency.

PART 552—[AMENDED]

7. Sections 552.203-71, 552.203-72 and 552.203-73 are added to read as follows:

552.203-71 Prohibited conduct.

As prescribed in 503.104-10(a), insert the following provision:

Prohibited Conduct (SEP 1990)

(a) Prohibited conduct. The Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), provides that during the conduct of any Federal agency procurement of property or services, no competing contractor or 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 the agency, except as provided in FAR 3.104-6(b);

(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 the agency; or

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

(b) *Penalties.* Civil penalties for violation of these prohibitions are up to \$100,000 for an individual or \$1,000,000 for an offeror or prospective offeror other than an individual. Criminal penalties are up to 5 years imprisonment and/or a fine in accordance with Title 18, United States Code.

(End of Provision)

552.203-72 Requirement for Certificate of Procurement Integrity.

As prescribed in 503.104-10(b), insert the following provision:

Requirement for Certificate of Procurement Integrity (SEP 1990)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision, except that "property" also means acquisitions of leasehold interests in real property.

(b) *Certifications.* The officer or employee responsible for the offer submitted in response to this solicitation shall submit the following certification to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate. The Contracting Officer will request the successful offeror to submit the certificate before awarding a lease contract exceeding \$100,000.

Certificate of Procurement Integrity

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer 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), (d) or (f) of the Office of Federal Procurement Policy Act, as amended* (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(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, 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 or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet)).
ENTER "NONE" IF NONE EXISTS _____

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of officer or employee responsible for offer] Date _____

[Typed name of officer or employee responsible for 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.

(c) Pursuant to FAR 3.104-9(d), the offeror may be requested to execute additional certifications at the request of the Government. Failure of an offeror to submit the additional certification may cause its offer to be rejected.

(d) 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 the 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.

(e) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for 8 years from the date of a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(f) Certifications under paragraphs (b) and (c) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.

(End of Provision)

552.203-73 Price adjustment for illegal or improper activity.

As prescribed in 503.104-10(c), insert the following clause:

Price Adjustment for Illegal or Improper Activity (Sep 1990)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act,

as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not 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 designee, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) 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 lease.

(End of Clause)

Dated: September 20, 1990.

Richard H. Hopf III,
Associate Administrator for Acquisition Policy.

[FR Doc. 90-23088 Filed 9-28-90; 8:45 am]

BILLING CODE 4820-61-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 734, 737, and 752

[AIDAR Notice 90-3]

Major Systems Acquisition and Advisory and Assistance Services

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to reflect the most recent OMB control number and expiration date for the various AIDAR information collections, to lower the dollar threshold for application of major system acquisition procedures, based on consultations with the Office of Federal Procurement Policy, and to conform the current FAR coverage of advisory and assistance services.

* Section 27 became effective on December 1, 1990.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, MS/PPE, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523-1435. Telephone: (703) 875-1534.

SUPPLEMENTARY INFORMATION: The list of AIDAR information collection has been updated and the current OMB Control Number and expiration date are reflected, together with the current address to which comments directed to OMB may be sent. No new information collections have been added, nor have existing information collections been revised in any way which will increase recordkeeping or reporting burdens.

AID's regulations on major system acquisition have been revised based on consultations with the Office of Federal Procurement Policy. As revised, our coverage provides a lower dollar threshold, calls for a review of proposed major systems acquisitions against the criteria for such systems established by OMB Circular A-109 and FAR part 34, and requires advance approval of major systems designations by the Procurement Executive.

Our regulations on contracting for consulting services have been revised to conform to the requirements of the current FAR and OMB Circular governing advisory and assistance services.

The changes being made by this final rule are not considered significant rules under FAR 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this final rule, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this final rule or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

List of Subjects in 48 CFR Parts 701, 734, 737, and 752

Government procurement.

For the reasons set out in the Preamble, chapter 7 of title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in parts 701 and 752 continue to read as follows:

Authority: Section 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Section 701.105 is revised to read as follows:

701.105 OMB approval under the Paperwork Reduction Act.

(a) The following information collections established by the AIDAR have been approved by OMB and assigned OMB control number 0412-0520 (expiration date 12/31/90):

AIDAR segment	Burden hrs. per report
733.7003(c).....	40
752.209-70.....	4
752.219-8.....	1
752.245-70.....	1
752.245-71.....	1
752.7001(a).....	.5
752.7001(b).....	.5
752.7002(j).....	1
752.7003.....	8
752.7004(b)(4).....	.5
752.7032.....	2

(b) Public reporting burden for these collections of information is estimated as shown in paragraph (a) of this section. The estimated burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to: Agency for International Development, Office of Procurement Policy, Planning & Evaluation, MS/PPE, Washington, DC 20523-1435; and Office of Management and Budget, OMB Paperwork Reduction Project (0412-0520), Washington, DC 20503.

3. Part 734 is revised to read as follows:

PART 734—MAJOR SYSTEM ACQUISITION

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

734.002-70 AID policy.

In order for an AID acquisition to be considered a major system acquisition it must meet the criteria of OMB Circular

A-109 and FAR part 34, and must have an estimated value of \$15 million or more during the first year of the contract. All major systems acquisition must be approved in advance by the Procurement Executive.

4. Part 737 is revised to read as follows:

PART 737—SERVICE CONTRACTING

Subpart 737.2—Advisory and Assistance Services

Sec.

737.205-70 Management controls.
737.208 Requesting activity responsibilities.
737.207 Contracting Officer responsibilities.
737.270 AID advisory and assistance executive.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Subpart 737.2—Advisory and Assistance Services

737.205-70 Management controls.

At the conclusion of each contract for advisory and assistance services, the Contracting Officer will require a written evaluation assessing the utility of deliverables and the performance of the Contractor from the cognizant project office. One copy of the evaluation will be retained in the contract file, and one copy will be sent to the AID Advisory and Assistance Executive (see 737.270). Failure to submit the required written evaluation may, at the discretion of the AID Advisory and Assistance Executive, result in refusal to process further requests for contracts for advisory and assistance services from the delinquent project office pending submission of the missing evaluation.

737.206 Requesting activity responsibilities.

(a)-(b) [Reserved]

(c) AID's written approval procedures for advisory and assistance services are as follows:

(1) A signed justification and approval, as specified in paragraph (c)(2) of this section, must accompany each request for a contract for advisory and assistance services. If the Contracting Officer determines that a requested contract is for advisory and assistance services and the required justification and approval has not been prepared, the request will be returned to the cognizant project office together with a Memorandum stating that the requested contract has been determined to be for advisory and assistance services, that justification and approval

is required, and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(2) The justification and approval must be clearly identified as a justification for advisory and assistance services, and must provide the following information:

(i) *Need and utilization:* State concisely the specific need for procuring the advisory and assistance service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(ii) *Review of prior work:* Briefly describe efforts made to ensure that the proposed advisory and assistance service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank search. (The AID Data Bank is located in the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI).

(iii) *In-house capability:* Describe the expertise needed for the service and state whether such expertise exists in AID. If it is found that the expertise does exist in AID, and is available for assignment to the work, state why AID personnel are not being assigned to the task.

(3) The justification must be approved by an officer one level above the organizational unit requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need be no higher than the principal AID Officer at the post. Over and above these requirements, any advisory and assistance services contract of \$1,000,000 or more must be approved by the AID Advisory and Assistance Executive (see 737.270).

737.207 Contracting Officer responsibilities.

(a)-(f) [Reserved]

(g) In cases where a single contract finances activities included within the definition of advisory and assistance services and activities excluded from the definition, the Contracting Officer is responsible for determining whether the primary purpose of the contract is advisory and assistance services, in which case the contract will be classed

as a contract for advisory and assistance services.

737.270 AID advisory and assistance executive.

(a) As required by OMB Circular A-120, the Administrator has designated the Assistant to the Administrator for Management Services as the AID Advisory and Assistance Executive, responsible for assuring that advisory and assistance acquisitions comply with the terms of OMB Circular A-120.

(b) The AID Advisory and Assistance Executive is designated as the official who shall review and approve each request for acquisition of advisory and assistance services with a total estimated obligation of \$1,000,000 or more.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

752.7020 [Removed and Reserved]

5. Section 752.7020 is removed and reserved.

Dated: August 3, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 90-23074 Filed 9-28-90; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 175, 177, 178, and 179

[Docket No. HM-1891, Amdt. Nos. 106-7, 107-22, 171-109, 172-121, 173-223, 175-46, 177-77, 178-96, and 179-44]

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects editorial errors and makes minor regulatory changes to the Hazardous Materials Regulations (HMR). This action is necessary to reduce misunderstandings of the HMR. The intended effect is to promote accuracy of the HMR. These amendments are minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATES: October 1, 1990. The correction to § 173.247(a)(12)(iii) is effective December 31, 1990.

FOR FURTHER INFORMATION CONTACT:

Beth L. Romo, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, RSPA performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in title 49, Code of Federal Regulations (49 CFR), parts 100 through 199, revised as of October 1, 1989, include typographical errors, incorrect references to the other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Additionally, in response to inquiries which RSPA received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, these amendments are effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

RSPA has determined that this rule, are promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment were not prepared, as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The following is a section-by-section summary of the amendments:

Section 107.315. In paragraph (c), the room number "2228" is removed and replaced with the room number "9112".