

A. Background

The Federal Prison Industries (FPI) Board of Directors recently adopted a resolution increasing the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies. The resolution adopted by the FPI Board increases the FPI clearance exception threshold at 8.606(e) from \$25 to \$2,500 and eliminates the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to \$2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies would still be required to purchase products on FPI's Schedule from FPI above the \$2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This interim rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 8, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (FAC 2001-14, FAR case 2003-001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

There is no requirement to publish this rule for public comment, as it is not a significant FAR revision. This rule only covers very-small-dollar supply purchases now being made from Federal

Prison Industries, part of the Department of Justice, another Federal executive agency. FPI will continue to be a source, but optional rather than mandatory, for these very-small-dollar purchases. This change does not originate from the FAR regulation, but is only an update to show a change in policy made by the Federal Prison Industries itself. No public comments are required under 41 U.S.C. 418b(a), and under (a) and (d) therefore no determination either for compelling circumstances, or for urgent and compelling circumstances needs to be made in order for the case to go into effect immediately. Even though not required to do so, the Councils would, nevertheless, like to obtain public comments. No determination of urgent and compelling circumstances is necessary under the statute to obtain optional public comments.

However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 is revised to read as follows:

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

■ 2. Amend section 8.606 by revising paragraph (e) to read as follows:

8.606 Exceptions.

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(e) Orders are for listed items totaling \$2,500 or less.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 42

[FAC 2001-14; FAR Case 2001-035; Item VI]

RIN 9000-AJ45

Federal Acquisition Regulation; Past Performance Evaluation of Federal Prison Industries Contracts

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require evaluation of Federal Prison Industries (FPI) contract performance.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 208-7279. Please cite FAC 2001-14, FAR case 2001-035.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subparts 8.6 and 42.15 to require agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically. While the change does not negate the requirements of FAR 8.602 or 8.605, it will allow the information to be used to support a clearance request per FAR 8.605.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55680, August 29, 2002. Ten respondents submitted public comments. The Councils considered the