

**DATES:** *Effective Date:* December 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-18, FAR case 2003-001.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils have agreed to a final rule increasing the FPI clearance exception threshold at FAR 8.606(e) from \$25 to \$2,500 and eliminating 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 are not 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 are still 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.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 68 FR 28094, May 22, 2003. Three respondents submitted public comments. These comments are discussed below. The Councils concluded that the interim rule should be converted to a final rule without change.

*Comment 1:* Respondent concurred with the rule.

*Comment 2:* Respondent wanted assurance that there are no other conflicts with existing wording of the FAR (e.g., FAR 8.603) as a result of the increase in the blanket waiver threshold to \$2,500. The respondent believes that the FAR should explicitly state that agencies are not required to make purchases from FPI that are at or below \$2,500, if that is the intent. In addition, the Defense FAR Supplement (DFARS) should state that the requirement for a comparability determination does not apply to purchases at or below \$2,500.

*Councils' response:* This rule has created no conflicts with other wording of the FAR. The rule merely increased the dollar threshold for an existing exception to FPI clearance requirements. As was previously the case, Federal agencies are not required (but are permitted) to purchase products

from FPI if the dollar value of the purchase is at or below the threshold specified in FAR 8.606(e). The purchase priorities specified in FAR 8.603 have not changed, and apply only in situations where FPI and JWOD agencies produce identical supplies or services.

The recommended DFARS change is outside the scope of this case. DoD published a final DFARS rule on November 14, 2003 (68 FR 64559), to address DoD-unique requirements for purchase of products from FPI.

*Comment 3:* Respondent stated that language should be included in the rule to make it clear that DoD activities are now governed by the changes legislated in Section 811 of Public Law 107-107 and Section 819 of Public Law 107-314, the National Defense Authorization Acts for Fiscal Years 2002 and 2003, respectively. Under these laws, the UNICOR waiver process has been effectively eliminated for DoD activities. If a DoD contracting officer determines that UNICOR products are not comparable in terms of quality, price, and delivery time, the activity is not required to seek a UNICOR waiver, regardless of the dollar amount of the acquisition. The concern is that DoD contracting officers and UNICOR private sector commissioned sales representatives may interpret this FAR change to mean that DoD must request a UNICOR waiver when the acquisition is over \$2,500. To prevent such a misunderstanding, it is vital that references to the above public laws and/or the ensuring DFARS regulations be included in the language that announces this change to the waiver limit of FAR 8.606(e).

*Councils' response:* The Councils recognize that DoD is governed by separate statutory requirements with regard to purchase of products from FPI (UNICOR), but do not believe additional clarification is required for the FAR. Existing DoD policy on this subject can be found in DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6). As stated in the response to Comment 2 above, DoD published revisions to DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6) on November 14, 2003 (68 FR 64559).

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 final 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 2001-18, FAR case 2003-001), in correspondence. No comments were received on the Regulatory Flexibility Act Statement in the interim rule.

**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.*

**List of Subjects in 48 CFR Part 8**

Government procurement.

Dated: December 4, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

**Interim Rule Adopted as Final Without Change**

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 8 which was published in the **Federal Register** at 68 FR 28094, May 22, 2003, as a final rule without change.

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

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 9**

[FAC 2001-18; FAR Case 2002-010; Item V]

**RIN 9000-AJ48**

**Federal Acquisition Regulation;  
Debarment and Suspension—Order  
Placement and Option Exercise**

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

**ACTION:** Final rule.