



General Services Administration
Office of Acquisition Policy
Washington, DC 20405



APR 4 1990

CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC) LETTER NO. 90-04

TO: Civilian Agencies other than NASA

SUBJECT: Limitation on the Payment of Funds to Influence
Federal Transactions

This CAAC Letter provides interim guidance to Federal agencies in implementing section 319 of the Department of Interior and Related Agencies Appropriations Act (P.L. 101-121), which added a new section 1352 to title 31, United States Code entitled "Limitation on use of appropriated funds to influence Federal contracting and financial transactions" (Act).

The Office of Management and Budget (OMB) is statutorily responsible for promulgating guidance to agencies. The OMB guidance was promulgated on December 20, 1989, and Federal Acquisition Circular 84-55 implemented the guidance in the FAR. Effective March 23, 1990, OMB has clarified its guidance (Enclosure 1). The clarification provides that the certification and the disclosure statement required by the Act apply only to the instant contract and not to all transactions. Accordingly, a suggested revision to the certification is attached as Enclosure 2. Pending a change to the FAR, agencies are encouraged to immediately authorize a class deviation in accordance with FAR 1.404(a) to implement the above changes. A sample class deviation is attached as Enclosure 3. This letter will serve as evidence of consultation with the Chairman of the Civilian Agency Acquisition Council, as provided in FAR 1.404(a)(1).

OMB in its March 23, 1990, guidance also stated that contracts awarded before December 23, 1989, but modified after that date, need not comply with the certification and disclosure requirements. The current FAR policy is that a certification and disclosure, if required, should be submitted with each proposal for a modification beyond the scope of the original contract in excess of \$100,000, even where the original award was made prior to December 23, 1989. Since the OMB March 23rd guidance with respect to modifications is currently being reconsidered by OMB, we

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suggest that the FAR policy continue to be followed pending further guidance from OMB.

Albert A. Vicchiolla
ALBERT A. VICCHIOLLA
Chairman
Civilian Agency
Acquisition Council

Enclosures

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 28 1990

MEMORANDUM FOR ASSISTANT SECRETARIES FOR MANAGEMENT AND
AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM:

Allan V. Burman
Allan V. Burman, Administrator for Federal
Procurement Policy

C. Morgan Kinghorn
C. Morgan Kinghorn, Acting Assistant Director
for Financial Management

SUBJECT: Clarifications Regarding Lobbying Restrictions

On December 20, 1989, the Office of Management and Budget's (OMB's) interim final "Governmentwide Guidance for New Restrictions on Lobbying" was published in the Federal Register. The effective date of the guidance was December 23, 1989. Included in the guidance at Appendix A are the "Certification Regarding Lobbying" and the "Statement for Loan Guarantees and Loan Insurance." This memorandum provides clarifications concerning the guidance and the "Certification" and "Statement." Please alert your headquarters and field staffs to them.

First, the Certification and the Statement are intended to apply only to the instant Federal transaction for which a Certification or Statement is being obtained: the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, or the making of a Federal commitment for a loan guarantee or loan insurance.

Second, the final version of the Certification and Statement will reference OMB's guidance, including Subparts B and C, which specify certain "Agency and Legislative Liaison" and "Professional and Technical Services" activities which are allowable with appropriated funds and for which no disclosure is necessary.

Third, only bids, offers, applications and awards, submitted or made on or after the December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements.

Fourth, only Federal transactions over the \$100,000 (contracts, grants, cooperative agreements) or \$150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

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Lastly, contracts subject to the Federal Acquisition Regulation (FAR) are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 26, 1990 common rule. The February 26, 1990 rule applies only to contracts not subject to the FAR (generally non-procurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

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Enclosure 2

CERTIFICATION IF FAR DEVIATION IS APPROVED (Suggested changes underlined and marked in bold type below)

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

As prescribed in 3.808, insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)-(EACH AGENCY SHALL INSERT REGULATION NAME AND DEVIATION AS SPECIFIED IN FAR 52.107)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989, that-

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a **contract resulting from this solicitation;**

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this

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provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

Enclosure 3

TO: Agency Head or Designee

SUBJECT: Request for deviation to certain FAR sections

In accordance with the Federal Acquisition Regulation (FAR) 1.404(a), your approval to deviate from FAR sections 3.801, 3.802, and 52.203-11 is requested.

The deviation is requested so that (agency) as an agency may implement section 319 of the Department of the Interior and Related Agencies Appropriations Act (P.L. 101-121), which added a new section 1352 to title 31, United States Code, entitled "Limitation on use of appropriated funds to influence Federal contracting and financial transactions" (Act). The Office of Management and Budget (OMB) is statutorily responsible for promulgating guidance to agencies. The OMB guidance was promulgated on December 20, 1989. Federal Acquisition Circular 84-55 implemented the OMB guidance in the FAR. Effective March 23, 1990, OMB has clarified its guidance. The clarification provides that the certification and the disclosure statement required by the Act apply only to the instant contract and not to all transactions as the OMB guidance and the FAR implementation had required.

This request has been coordinated with the Chairman of the Civilian Agency Acquisition Council.

APPROVED: (Agency head or designee)

Name, title

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 12 1990

MEMORANDUM FOR ASSISTANT SECRETARIES FOR MANAGEMENT AND
AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM:

Allan V. Burman
Allan V. Burman, Administrator for Federal
Procurement Policy

Susan Gaffney
Susan Gaffney, Acting Assistant Director for
Financial Management

SUBJECT:

Clarifications Regarding "Governmentwide Guidance
for New Restrictions on Lobbying"

On December 20, 1989, the Office of Management and Budget's (OMB's) interim final "Governmentwide Guidance for New Restrictions on Lobbying" was published in the Federal Register. The effective date of the guidance was December 23, 1989. Included in the guidance at Appendix A are the "Certification Regarding Lobbying" and the "Statement for Loan Guarantees and Loan Insurance." This memorandum provides clarifications concerning the guidance and the "Certification" and "Statement." Please alert your headquarters and field staffs to them.

First, the Certification and the Statement are intended to apply only to the instant Federal transaction for which a Certification or Statement is being obtained: the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, or the making of a Federal commitment for a loan guarantee or loan insurance.

Second, the final version of the Certification and Statement will reference OMB's guidance, including Subparts B and C, which specify certain "Agency and Legislative Liaison" and "Professional and Technical Services" activities which are allowable with appropriated funds and for which no disclosure is necessary.

Third, only bids, offers, applications and awards, submitted or made on or after the December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements unless they are modified or amended beyond the scope of the award. An existing Federal grant, loan, or cooperative agreement with such a modification or amendment needs to contain a certification and disclosure form, if required. A bilateral modification to an existing Federal contract which requires justification and approval pursuant to Federal Acquisition Regulation (FAR) section 6.303, citing the authorities in FAR section 6.302, and which exceeds the

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\$100,000 threshold needs a certification and disclosure form, if required.

Fourth, only Federal transactions over the \$100,000 (contracts, grants, cooperative agreements) or \$150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

Fifth, contracts subject to the FAR are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 26, 1990 common rule. The February 26, 1990 rule applies only to contracts not subject to the FAR (generally non-procurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

Sixth, nothing contained in Subpart C of the guidance, Activities by Other Than Own Employees, applies to selling activities by independent sales representatives before an agency provided that the selling activities are prior to formal solicitation by an agency. Such selling activities are:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

Note that the activities in (1) and (2) above are specifically limited to the merits of the matter. An independent sales representative who engages in selling activities described above, prior to the issuance of a formal solicitation by an agency, is not deemed to be engaged in influencing with regard to a particular contract and will not need to disclose such activities.

Seventh, under subsections {____.205(b) and {____.300(c), the examples cited are not intended, in any way, to be all inclusive, to limit the application of the "Professional and technical services" exemption provided in the law, or to limit the exemption to licensed professionals. "Professional and technical services" shall be advice and analysis directly applying any professional or technical expertise. Note that the "Professional and technical services" exemption is specifically limited to the merits of the matter.

Lastly, the following clarify OMB's interim final guidance:

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

Federal appropriated funds. This assumption applies equally to persons who do and do not submit to the Federal Government cost or pricing data. Where no cost or pricing data are submitted, the Federal Government shall assume that monies spent are a reduction from profits otherwise available.

(2) Profits and fees earned under Federal contracts (see FAR subpart 15.9) are not considered appropriated funds. Profits, and fees that constitute profits, earned under Federal grants, loans, and cooperative agreements are not considered appropriated funds.

(3) Nothing in OMB's interim final guidance requires a person to make any changes to that person's existing accounting systems.

(4) The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action.

Enclosure 3

CLAUSE IF FAR DEVIATION IS APPROVED (Suggested changes underlined or marked in bold type below)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)-(EACH AGENCY SHALL INSERT REGULATION NAME AND DEVIATION AS SPECIFIED IN FAR 52. 107)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

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

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

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

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

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

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

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

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(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

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

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

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

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

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. **The following**

examples are not intended to be all inclusive, to limit the application of the professional or technical exemption provided in the law, or to limit the exemption to licensed professionals. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Selling activities by independent sales representatives.

The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

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

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty

does not prevent the Government from seeking any other remedy that may be applicable.

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

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

(End of clause)

Enclosure 4

TO: Agency Head or Designee

SUBJECT: Request for deviations to certain FAR sections

In accordance with the Federal Acquisition Regulation (FAR) 1.404(a), your approval to deviate from FAR sections 3.801, 3.802, and 52.203-12 is requested.

The deviation is requested so that (agency) as an agency may implement section 319 of the Department of the Interior and Related Agencies Appropriations Act (P.L. 101-121), which added a new section 1352 to title 31, United States Code entitled "Limitation on use of appropriated funds to influence Federal contracting and financial transactions" (Act). The Office of Management and Budget (OMB) is statutorily responsible for promulgating guidance to agencies. The OMB guidance was promulgated on December 20, 1989. Federal Acquisition Circular 84-55 implemented the OMB guidance in the FAR. Effective June 12, 1990, OMB has clarified its guidance. The clarification provides that:

- (1) The following selling activities before an agency by independent sales representatives are exempt from the restrictions of the Act provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
 - (a) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
 - (b) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

- (2) The professional and technical exemption in the OMB guidance and implemented in the FAR at 3.802(c)(2)(ii) which was limited to advice and analysis directly applying any professional or technical discipline was not intended to be all inclusive, to limit the application of the professional or technical exemption provided in the law, or to limit the exemption to licensed professionals.

- (3) To the extent a person has sufficient monies, other than Federal appropriated funds, the Government shall assume that these other monies were spent for any influencing activities unallowable with Federal appropriated funds. This assumption applies whether cost or pricing data is submitted to the Government. Where no cost or pricing data are submitted, the Federal Government shall assume that monies spent are a reduction from profits otherwise available.

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(4) Profits and fees under Federal contracts are not considered appropriated funds.

(5) The OMB guidance does not required a change to a person's accounting system.

(6) The prohibition on using Federal appropriated funds applies only to influencing activities in connection with a specific Federal contract. It does not apply to activities related to legislation and regulations for a program versus a specific Federal contract.

This request has been coordinated with the Chairman of the Civilian Agency Acquisition Council.

APPROVED: (Agency head or designee)

Name, title