

current and proposed definitions of "in writing," "writing," and "written," because the latter definitions are too narrow. The Councils disagree with the recommended changes to the definitions.

The current FAR definition of "electronic commerce" is consistent with that set forth in section 30 of the Office of Federal Procurement Policy Act. The Councils believe the statutory definition should be reflected in the FAR. At the same time, the Councils recognize the value in evaluating the continued need for, and appropriateness of this definition as electronic commerce continues to become more institutionalized in the Government.

The commenter's proposed definition of electronic signature does not reflect intention to authenticate. This concept is important to contracting-related transactions, electronic or otherwise. As noted in a September 12, 1951, Comptroller General decision (B-104590), courts have held that "a signature consists of the writing of one's name and of the intention that it *authenticate* the instrument, and, therefore, any symbol adopted as one's signature when affixed with his knowledge and consent is a binding and legal signature \* \* \*". This was reiterated in a September 20, 1984, Comptroller General decision (B-216035). Consistent with this reasoning, FAR case 91-104 incorporated the concept of authentication into the definition of "signature." That case established the premise that either hand scribed or other format signatures indicate an intent to authenticate (or be bound).

Similarly, the Councils believe that the proposed definition for "electronic record" is insufficient. The Councils maintain that the definition of "in writing" should reflect the requirement to store because agencies ask for information in writing when they intend to keep it as a record. Therefore, storage, reproduction, and later retrieval are all salient characteristics of a record. After further deliberation and consideration of the public comments regarding the proposed changes to the definitions, the Councils have determined that the current FAR definitions are sufficient and appropriately capture the necessary salient characteristics required of a "writing" and a "signature." Likewise, the Councils concluded that there was no significant value achieved through the proposed change to the definition of "electronic commerce."

Therefore, this final rule makes no changes to the current FAR definitions.

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 Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not 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 the rule does not change the procedures for award or administration of contracts, but rather, clarifies that the use of electronic signatures and electronic methods are permitted in Government procurement.

#### 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 4

Government procurement.

Dated: May 13, 2003.

**Laura G. Smith,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

#### PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 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 4.502 by adding paragraph (d) to read as follows:

#### 4.502 Policy.

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(d) Agencies may accept electronic signatures and records in connection with Government contracts.

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 8

[FAC 2001-14; FAR Case 2003-001; Item V]

RIN 9000-AJ62

#### Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries (FPI) by Federal agencies. 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.

**DATES:** *Effective Date:* May 22, 2003.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before June 23, 2003 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—[farcase.2003-001@gsa.gov](mailto:farcase.2003-001@gsa.gov). Please submit comments only and cite FAC 2001-14, FAR case 2003-001, in all correspondence related to this case.

**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. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-14, FAR case 2003-001.

**SUPPLEMENTARY INFORMATION:**

## 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