



General Services Administration
Office of Acquisition Policy
Washington, DC 20405



June 22, 1990

CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC) LETTER NO. 90-5

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 formally promulgated on December 20, 1989, and CAAC Letter 89-9 was issued on December 18, 1989, in order to provide agencies with advance notice regarding the contents of the OMB guidance in view of the effective date of December 23, 1989. Federal Acquisition Circular 84-55, formally implemented the guidance in the FAR.

By memorandum dated March 23, 1990, OMB clarified its guidance. These OMB clarifications were delineated in CAAC Letter 90-04 dated April 4, 1990 (Enclosure 1). On June 12, 1990, (Enclosure 2), OMB again clarified its guidance, incorporating the substance of its March 23, 1990, memorandum and also correcting an error in its March 23, 1990, memorandum regarding "out of scope" modifications. CAAC Letter 90-04, which advised agencies of the potential OMB error, is correct, consistent with the June 12, 1990, OMB clarification memorandum, and may still be followed.

CAAC Letter 90-05, supplements CAAC Letter 90-04, by reflecting the substance of the June 12, 1990, revision to the OMB guidance. The OMB clarification memorandum 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 services" exemption in the OMB guidance as implemented in FAR 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 and technical exemption provided in the law, or to limit the exemption to licensed professionals.

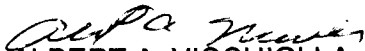
(3) To the extent a person has sufficient monies other than Federal appropriated funds, the Government shall assume that these other monies were spent first for any influencing activities unallowable with Federal appropriated funds. This assumption applies whether cost or pricing data is submitted to 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.

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

(5) The OMB guidance does not require 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.

As a result of the OMB clarification, a suggested revision to the clause, 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, is attached as Enclosure 3. Please note that the paragraph designations beginning with the disclosure requirements of the clause (paragraph (c)) are changed as a result of this CAAC Letter. 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 4. 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).


ALBERT A. VICCHIOLLA
Chairman
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Enclosures