

**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 52**

[FAC 2024-07; FAR Case 2023-005, Item I; Docket No. FAR-2023-0005; Sequence No. 1]

RIN 9000-AO53**Federal Acquisition Regulation: Reference to Penalty Threshold**

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending a Federal Acquisition Regulation (FAR) provision to align the penalties language with the equivalent penalties language at an associated FAR clause.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Malissa Jones, Procurement Analyst, at 571-882-4687 or by email at malissa.jones@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2024-07, FAR Case 2023-005.

SUPPLEMENTARY INFORMATION:**I. Background.**

Lobbying coverage in the FAR is based on section 319 of Public Law 101-121, which added 31 U.S.C. 1352. Section 1352 prohibits the use of appropriated funds to influence certain persons in connection with awarding or modifying a contract and includes civil penalties. Office of Management and Budget (OMB) guidance was published December 20, 1989 (54 FR 52306), which directed a FAR rule and an OMB nonprocurement common rule be published with the same substance. A FAR rule was published on January 20, 1990 (55 FR 3190), which has been occasionally revised since then. The penalties section of the FAR provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, contains language citing the dollar figures at 31 U.S.C. 1352. The penalties section of the FAR clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, refers to 31 U.S.C. 1352 itself. These should be written the same way.

II. Publication of this final rule for public comment is not required by statute.

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant

cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offerors. The rule simply amends FAR provision 52.203-11(e) to match the language at FAR clause 52.203-12(e) which points back to the civil penalties provided in 31 U.S.C. 1352.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services.

This rule amends FAR provision 52.203-11(e) to match the language at FAR clause 52.203-12(e), which points back to the civil penalties provided in 31 U.S.C. 1352. This rule does not impose any new requirements on contracts at or below the SAT, or to acquisitions for commercial products and commercial services, including COTS items.

IV. Executive Orders 12866 and 13563.

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of

promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

Pursuant to the Congressional Review Act DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act.

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

List of Subjects in 48 CFR part 52

Government procurement.

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Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

2. Amend section 52.203-11 by revising the date of the provision and paragraph (e) to read as follows:

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

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CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL
TRANSACTIONS (SEP 2024)

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(e) *Penalties.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to civil penalties as provided in 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.

(End of provision)