



Office of the General Counsel

B-238333

April 6, 1990

Margaret A. Willis
FAR Secretariat
General Services Administration

Dear Ms. Willis:

This is in response to your letter of December 21, 1989, requesting our comments on Federal Acquisition Regulation (FAR) case No. 89-82.

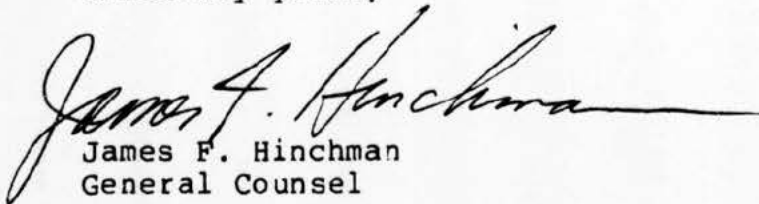
FAR case 89-82 is a proposal to revise FAR section 3.601 to exempt some special government employees (SGE) from that section's general prohibition on awarding government contracts to government employees or firms substantially owned or controlled by them. The revised section would provide that the prohibition does not apply with respect to SGEs appointed as advisors, consultants, or members of advisory committees, unless the contract arises out of the employee's activity as a SGE or the employee is in a position to influence the award of the contract.

Because awarding contracts to government employees or their firms may give rise to suspicions of favoritism or unfair competitive advantage, we have said that such awards generally should not be made. See 41 Comp. Gen. 569 (1962). We understand, however, that the current blanket prohibition on contracting with government employees or their firms may be having the unintended effect of discouraging some individuals with valued expertise from accepting SGE appointments. As indicated in the explanatory material accompanying the proposed change, the FAR councils believe that the prohibition should apply to SGEs--who, unlike regular government employees, serve terms of limited duration--only in those circumstances in which the potential for favoritism or unfair advantage exists.

We would not object to limiting the reach of FAR section 3.601 as proposed. It is our view, however, that aside from this regulatory prohibition, contracting agencies have the inherent discretion to decide in appropriate cases that a particular contract would not be in the government's best

interests because of the existence or the appearance of a conflict. Thus, we have held that in some circumstances an agency may deny a contract to a firm on conflict-of-interest grounds even though FAR section 3.601 would not require that result. Defense Forecasts, Inc., 65 Comp. Gen. 87 (1985). We suggest that consideration be given to adding a sentence to the revised section 3.601 to make clear that the section is not intended to limit an agency's discretion in appropriate cases to decline to contract with SGEs or firms they might own or control if the agency determines that such action is necessary to preserve the integrity of the procurement process.

Sincerely yours,



James F. Hinchman
General Counsel