



United States Government Printing Office

December 13, 2002

General Services Administration
FAR Secretariat (MVA)
1800 F Street NW., Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

RE: Comments on proposed amendments in case 2002-011

Dear Ms. Duarte:

For more than 100 years, the United States Government Printing Office (GPO) has printed and provided public access to publications for all three branches of the Federal Government. GPO's statutory responsibility to discharge these essential functions has been challenged by the Office of Management and Budget (OMB). The November 13, 2002, proposed amendments contained in Federal Acquisition Regulation (FAR) case 2002-011, would strip GPO of its responsibility to print publications for the executive branch. They would implement the policy set forth in OMB Memorandum No. M-02-07, "Procurement of Printing and Duplicating through the GPO (May 3, 2002)." This proposed revision is without legal basis and in direct conflict with the laws governing Federal printing.

The FAR revision is based on a May 31, 1996, opinion written by former Assistant Attorney General Walter Dellinger, wherein he concluded that the current printing statutes are unconstitutional under the doctrine of separation of powers. Yet on two earlier occasions, September 13, 1993, and March 11, 1994, Mr. Dellinger opined that the current statutes requiring executive branch agencies to print through GPO *are not unconstitutional* and do not violate the separation of powers clause. The fact is that this issue has never been litigated and no constitutional process involving Congress or the courts has ever deemed the current printing statutes "unconstitutional."

Congress has specifically rejected similar proposals before, in 1987 and 1994. The reasons are clear: analysis shows that establishing duplicative printing capability among thousands of executive branch entities will raise taxpayer costs for Government printing, jeopardize the ability of small business printers to win Government printing contracts, and impair public access to Government information through Federal depository libraries and associated Superintendent of Documents distribution programs. GPO has testified on these impacts before Congress; more detailed information on these impacts is included in the enclosure.

Consistent with prior action, Congress has enacted legislation that specifically prohibits the implementation of OMB's May 3, 2002, memorandum. The President has signed this legislation into law. The General Accounting Office (GAO) has concluded that the legal effect of the new prohibition is clear: it precludes the use of appropriated funds to implement or comply with the OMB directive. The GAO has also concluded that the use of appropriated funds to print or procure Federal publications other than by or through the GPO would violate the Antideficiency Act, resulting in certifying and disbursing officer liability.

Any changes to the FAR that ignore existing statutes in favor of a mere agency opinion should be viewed with the utmost diligence and legal responsibility. As Federal employees, each of us has a solemn obligation to ensure that our Nation's laws are faithfully executed. As Walter Dellinger himself once said:

When the President's obligation to execute laws enacted by Congress is in tension with his responsibility to act in accordance with the Constitution, questions arise that really go to the very heart of the system. And the President can decline to comply with the law, in our view, only where there is a judgment that the Supreme Court has resolved the issue.

Newly-confirmed Public Printer Bruce R. James believes that the real issue facing the GPO, OMB, Congress, Federal agencies, and the public is the construction of a new framework for dealing with Federal information in the 21st century. Rather than making significant and potentially injurious changes to the established system of Government printing, a system rooted in a technological era that is passing by, he has suggested that the stakeholders in this system should instead work together to develop beneficial and lasting changes, not just to printing policy, but to a Government information policy in general that is designed to meet both our current and future needs.

The Public Printer's direction is one in which we can work cooperatively with OMB and the other communities of interest in Federal printing and information policy. We respectfully ask the FAR Council to reconsider and withdraw the changes proposed in case 2002-011.

Sincerely,

ANTHONY J. ZAGAMI
General Counsel

Enclosure

Impact of the Proposed FAR Revision

The proposed FAR revision will lead to significantly increased costs for Government printing.

- The claim that agencies will save \$50 - \$70 million if they are not required to use GPO has not been substantiated. In FY 2001, GPO generated total printing procurement surcharge revenues of only \$32.5 million.
- As the result of decentralizing Government printing, the proposed FAR revision would increase printing costs, based on the findings of previous studies.¹
- GPO paid \$415 million for procured printing in FY 2001. If agencies decide to procure work themselves from the private sector, annual executive branch printing costs could increase by 25%, or \$103.8 million. The increased costs would result from:

Duplication of effort – GPO serves Federal printing needs at approximately 6,300 billing address codes. For each one of these operations to devote just one-tenth of an FTE to printing procurement would require 630 FTE's. GPO has about 330 FTE's devoted to printing procurement nationwide.

Loss of specialization – It would cost the Government more for each agency to provide the same comprehensive range of procurement services that GPO offers in support of printing procurement (setting print specifications, administering printing contracts, ensuring competition, monitoring quality and resolving quality problems, ensuring fulfillment of statutory distribution requirements, providing voucher exam and payment services, providing legal advice, resolving contract disputes, etc.).

Reduced competition - More than 16,000 private sector printers are on GPO's Master Bid List, representing about 40% of the establishments in the printing industry. Agencies are not likely to maintain the same universe of competition, resulting in increased prices.

Greater burdens on contractors - Without one-stop shopping for all printing contracts through GPO (agencies will only be required to advertise for printing contracts worth more than \$2,500), printing contractors would have additional sales and paperwork costs, also driving up prices.

¹ GAO, Agency Printing Plants--Choosing the Least Costly Option, PLRD-81-31 (June 19, 1981); OTA, Informing the Nation: Federal Information Dissemination in an Electronic Age, (October 1988); JCP, Oversight Hearing on Consolidation of Department of Defense Printing Services, S. Hrg. 102-907 (August 4, 1992); JCP, Review of the Defense Printing Service, S. Hrg. 103-266 (July 15, 1993); various reports of the GPO Contractors Coalition, 1993-94; letter from Neil J. Stillman, Deputy Assistant Secretary for Information Resources Management, HHS, to Sally Katzen, Administrator, Office of Information and Regulatory Affairs, OMB, August 12, 1997; letter from Thomas J. Muldoon, Acting Inspector General, GPO, to Joseph J. Green, Assistant IG for Public Health Service Audits, HHS, September 24, 1997; Harold C. Relyea, "Public Printing Reform: Issues and Actions," Congressional Research Service, Report for Congress, 98-687 GOV (updated May 10, 2002), p. 19.

- If agencies take the printing they are currently procuring through GPO and produce it in their own printing and duplicating plants, annual executive branch printing costs could increase by as much as 50%, or \$207.5 million. Federal in-plant operations are generally far less efficient than private sector plants. The proposed FAR revision establishes no effective mechanism for monitoring the “full cost comparisons” required to justify in-plant printing and duplicating by agencies.
- Other impacts from the proposed FAR revision would include the loss of central responsibility for applying uniform standards of print quality and for monitoring application of statutory requirements for the use of recycled paper, alkaline and permanent papers, and vegetable oil-based printing inks. GPO’s in-plant production capability supporting congressional printing requirements would also be impacted.

The proposed FAR revision will injure small business printers.

- The printing industry is predominately made up of small businesses, and GPO deals extensively with small business printers in buying printing. More than 70% of the 16,000 printers on GPO’s List are small businesses. In FY 2001, GPO procured about 148,000 printing jobs. Small businesses received 77% of the contracts awarded. This compares with a 22.7% small business share of Federal prime contracts during the same period, as shown in the Small Business Administration’s Performance and Accountability Report for FY 2001.
- Small business printers will be injured under the proposed FAR revision as the result of:

Loss of access to jobs under \$2,500 – The proposed FAR revision will require public posting and competitive sourcing for all jobs valued at more than \$2,500. More than 80% of all printing orders procured by GPO are valued at \$2,500 or less. As a result, much of this work would simply be lost to small business printers as the result of non-competitive credit card purchases.

New competition from NAFTA trade partners -- Under executive branch procurement rules, printing jobs valued at more than \$25,000 would be subjected to competition from NAFTA trading partners. Contracts made available under GPO’s Printing Procurement Regulation are subject to the provisions of the Buy America Act.

Increased paperwork burdens - GPO’s one-stop-shopping also features standardized forms and procedures, and ensures the uniform application of Federal rules requiring the use of vegetable oil-based inks, recycled paper, and alkaline and permanent papers. With the dissolution of standardized procedures under the proposed FAR revision, small printers would be burdened with more paperwork and the disparate application of rules and regulations.

Decreased contracting opportunities resulting from in-plant production – Agencies that hold work for production in their own printing and duplicating facilities will reduce competitive contracting opportunities for small printers.

- With reduced opportunities for winning contracts and the resultant loss of businesses and jobs among small business printers, there would also be a loss of tax revenues and increased costs for unemployment and related services.

The proposed FAR revision will impair public access to Government information.

- The link between the production and distribution of Government documents in GPO is the source of publications for GPO's Federal Depository Library Program (FDLP), as well as GPO's cataloging and indexing program, statutory distribution program, sales, and international exchange program. Even *GPO Access* uses the system to monitor for new publications.
- Publications that belong in the FDLP and related programs but are not included are called "fugitive documents." Previous estimates have placed the rate of fugitive documents in the neighborhood of 50%, which corresponds roughly to the amount of Federal printing that GPO estimates does not come through GPO. *A primary cause of "fugitive documents" is agencies that do not print through GPO.*
- There is still a substantial amount of Government information for which no reliable online alternative exists, and problems with ensuring permanence and other issues are still present for many online products. In FY 2001, GPO distributed a total of 5.9 million copies of approximately 14,700 tangible (print, microfiche, CD-ROM) titles from all three branches of the Government to depository libraries.
- To supply GPO's distribution programs, the proposed FAR revision would require that GPO either purchase additional copies from the originating agency or printing contractor, go "back to press" using a single copy supplied by the agency, or use a copy supplied by "electronic means" as the basis for producing an additional print run. This proposal is defective for the following reasons:

It violates current law -- 44 U.S. Code 1903 states that "[t]he cost of printing and binding those publications distributed to depository libraries obtained elsewhere than from the Government Printing Office, shall be borne by the components of Government responsible for their issuance..."

It will generate increased costs – Going back to press for distribution copies is more expensive to the Government than obtaining the necessary number of copies prior to printing.

Agencies historically are unreliable in their cooperation with distribution requirements – In a 1998 review of the National Institutes of Health printing program by the Department of Health and Human Services Inspector General, 77 percent of

the publications which were produced outside GPO, but which should have been sent to GPO for the FDLP, were not provided to GPO for depository library distribution.

There is no assurance of standardization in print files – Files could be in proprietary page description languages. They may not be in formats that could be readily disseminated via the Internet for search and retrieval in lieu of printing. These factors could lead to delays in making information accessible, and raise additional issues regarding authentication, exact replication, and the official nature of the reproduced versions.

- Breaking the production/distribution link in GPO would also cost the public the convenience of buying their own copies of Government publications, which they currently enjoy through GPO's sales program.