

**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 address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

**DATES:** *Effective Date:* January 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501-3856. Please cite FAC 2001-18, FAR case 2002-010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67282, November 4, 2002, to require that discretionary actions on the part of agencies meet the same standards as agencies would have to meet in awarding new contracts. The rule prohibited agencies from placing orders exceeding the guaranteed minimum against existing contracts, placing orders against optional Federal Supply Schedule contracts, adding new work, exercising options or otherwise extending the duration of contracts with contractors that are debarred, suspended or proposed for debarment unless the agency head makes a determination that there are compelling reasons for doing so.

Two comments from two commenters were received in response to the proposed rule. The first commenter strongly supported the rule. The second commenter suggested that the rule be clarified to indicate whether it applies to credit card purchases or blanket purchase agreements (BPAs), Memorandums of Agreement (MOAs), Military Interdepartmental Purchase Requests (MIPRs), or Governmentwide acquisition contracts (GWACs). A change was made to the rule to address BPAs and Basic Ordering Agreements (BOAs) based on this recommendation. It was not appropriate to address MOAs or MIPRs because they are not entered into under the FAR. GWACs are indefinite delivery contracts and are, therefore, already covered by the rule. BPAs and BOAs are agreements rather than contracts. However, they should contain the basic clauses that will apply to orders placed under them. Therefore, the Councils revised the rule to address BPAs and BOAs. The requirement that contractors must be responsible is

statutory. Contractors debarred, suspended, or proposed for debarment are excluded from doing business with the Government unless there is a compelling reason to conduct business with such a contractor.

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 it only affects orders placed by civilian agencies against existing contracts with contractors that are debarred, suspended or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders.

**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 9**

Government procurement.

Dated: December 4, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 9 as set forth below:

**PART 9—CONTRACTOR QUALIFICATIONS**

■ 1. The authority citation for 48 CFR part 9 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 9.405 by revising paragraph (a); and removing from paragraphs (d)(2) and (d)(3) the words “or a designee”. The revised text reads as follows:

**9.405 Effect of listing.**

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a

compelling reason for such action (*see* 9.405-1(b), 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

\* \* \* \* \*

■ 3. Amend section 9.405-1 by removing from the first sentence of paragraph (a) the words “or a designee”; revising paragraph (b); and removing paragraph (c). The revised text reads as follows:

**9.405-1 Continuation of current contracts.**

\* \* \* \* \*

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

**9.405-2 [Amended]**

■ 4. Amend section 9.405-2 by removing from the first sentence of paragraph (a) the words “or a designee”.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 31 and 52**

[FAC 2001-18; FAR Case 2001-037; Item VI]

RIN 9000-AJ57

**Federal Acquisition Regulation; Insurance and Pension Costs**

**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