

## Service of Protest (Aug. 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from \_\_\_\_\_. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

34. Section 52.233-3 is amended by revising the clause date and the first sentence of paragraph (f) to read as follows:

**52.233-3 Protest after Award.**

\* \* \* \* \*

## Protest After Award (Aug. 1996)

\* \* \* \* \*

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. \* \* \*

(End of clause)

\* \* \* \* \*

35. Section 52.239-1 is added to read as follows:

**52.239-1 Privacy or Security Safeguards.**

As prescribed in 39.106, insert a clause substantially the same as the following:

## Privacy or Security Safeguards (Aug. 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(End of clause)

**PART 53—FORMS**

36. Section 53.245(a) is amended by revising the last sentence to read as follows:

**53.245 Government property.**

\* \* \* \* \*

(a) \* \* \* (See 45.608-2(b)(2) and 45.608-8.)

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 9**

[FAC 90-41, FAR Case 96-320, Item II]

RIN 9000-AHXX

**Federal Acquisition Regulation;  
Compliance With Immigration and  
Nationality Act Provisions**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) Part 9 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**DATES:** Effective Date: August 8, 1996.

**Comment Date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-41, FAR case 96-320, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 96-320.

**SUPPLEMENTARY INFORMATION:****A. Background**

Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, was signed on February 13, 1996. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act (INA). This interim rule revises FAR 9.406-2, to specify that such a determination by the Attorney General is a basis for debarment, and 9.406-4, to stipulate the duration of the debarment mandated by the Executive order.

**B. Regulatory Flexibility Act**

This interim rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Only a small number of Federal contractors are likely to be the subject of a determination, by the Attorney General, that they are not in compliance with the employment provisions of the Immigration and Nationality Act. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 96-320), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling

reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, which was effective upon its execution (February 13, 1996). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Part 9

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 9 is amended as set forth below:

1. The authority citation for 48 CFR Part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.406-2 is amended in paragraph (a)(4) in the second parenthetical by removing "section" and inserting "Section" in its place, and by revising (b) to read as follows:

##### 9.406-2 Causes for debarment.

\* \* \* \* \*

(b)(1) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100-690), as indicated by—

(A) The offeror's submission of a false certification;

(B) The contractor's failure to comply with its certification; or

(C) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in

or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Public Law 102-558)).

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Public Law 102-558)).

(2) The debarring official may debar a contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

\* \* \* \* \*

3. Section 9.406-4 is amended by revising paragraphs (a) and (b) to read as follows:

##### 9.406-4 Period of debarment.

(a)(1) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—

(i) Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years; and

(ii) Debarments under 9.406-2(b)(2) shall be for one year unless extended pursuant to paragraph (b) of this subsection.

(2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based.

Debarments under 9.406-2(b)(2) may be extended for additional periods of one year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If debarment for an additional period is determined to be necessary, the procedures of 9.406-3 shall be followed to extend the debarment.

\* \* \* \* \*

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#### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 23 and 52

[FAC 90-41; FAR Case 95-305; Item III]

RIN 9000-AG68

#### Federal Acquisition Regulation; Federal Acquisition and Community Right-to-Know

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) Parts 23 and 52 to implement Executive Order 12969. The Executive order requires that Federal agency contractors report in a public manner on toxic chemicals released to the environment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** October 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 95-305.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

An interim rule with request for public comment was published on October 30, 1995 (60 FR 55306). Thirty-four comments were received from eight respondents. As a result of analyzing the public comments, the rule was revised to clarify that the owner or operator of a facility that is subject to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act (PPA) reporting requirements is required to file Toxic Chemical Release Inventory Forms with the Environmental Protection Agency, and that offerors will submit certifications regarding only those facilities that the offeror owns or operates that will be used in performing the contract. This final rule also