

**DEPARTMENT OF DEFENSE
GENERAL SERVICES
ADMINISTRATION
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 22 and 52

[FAC 97-23; FAR Case 1999-608]

RIN 9000-AI51

**Federal Acquisition Regulation;
Prohibition of Acquisition of Products
Produced by Forced or Indentured
Child Labor**

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) are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement the specific requirements of Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, as well as to prescribe further appropriate actions to comply with the broad policy of the Executive Order (*i.e.*, to enforce laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part using forced or indentured child labor).

DATES: *Effective Date:* February 20, 2001.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after February 20, 2001 per FAR 1.108(d).

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-23, FAR case 1999-608.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR by adding a new FAR subpart on prohibition of acquisition of products produced by forced or indentured child labor (Subpart 22.15), adding a new certification regarding knowledge of child labor for listed end products (FAR 52.212-3 and 52.222-18), and adding a clause at 52.222-19, that requires cooperation with authorities if the

solicitation included the certification provision and provides remedies for violations relating to use of forced or indentured child labor.

On June 12, 1999, the President signed Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (the Executive Order). The Executive Order states a broad policy that executive agencies must take appropriate actions to enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured wholly or in part by forced or indentured child labor.

Section 2 of the Executive Order directed the Department of Labor (DoL), in consultation with the Department of Treasury and the Department of State, to publish in the **Federal Register** a list of products (the List, identified by their country of origin, for which there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor. DoL published the preliminary List in the **Federal Register** on September 6, 2000 (65 FR 54108-54112), and solicited public comment. After receipt and consideration of the public comments, DoL is publishing the final List in today's **Federal Register**.

Section 3 of the Executive Order required the Councils to issue a proposed rule, amending the FAR to implement the policy expressed in the Executive Order. Accordingly, the Councils published a proposed rule in the **Federal Register** on September 6, 2000 (65 FR 54104-54107). Public comments on the proposed rule were due by November 6, 2000.

Ten respondents submitted public comments. Most comments received did not object to the basic policy but were outside the scope of the case, because they request FAR revisions that go beyond the scope of the Executive Order or are inconsistent with the requirements of the Executive Order.

For example, some suggested expanding the scope of the mandate of the Executive Order in the regulation to address products made by convict labor and forced or indentured labor by persons 18 or older—clearly outside the purview of this rulemaking. Other respondents suggested using a different definition of “forced or indentured child labor,” a comment that has been addressed in the companion rule being issued simultaneously by the Department of Labor. The Councils carefully considered all comments in formulation of the final rule.

The Councils are issuing a final rule that is the same as the proposed rule,

except for minor editorial changes. This is a significant regulatory action, and therefore, was 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 only a small percentage of acquisitions are for products on the DoL List, there is minimal impact on offerors providing a listed product that originates in a country other than the corresponding countries identified on the DoL List, and not all offerors responding to solicitations for these acquisitions are small entities. With regard to the clause that requires cooperation with authorities and provides remedies for violations relating to use of forced or indentured child labor, we expect that very few contractors are furnishing end products or components produced by forced or indentured child labor. The rule does not apply to micro-purchases.

The Councils did not receive any comments regarding the Regulatory Flexibility Act as a result of publication of the proposed rule in the **Federal Register** at 65 FR 54104.

C. Nonstatutory Certification Approval

In accordance with Section 29 of the Office of Federal Procurement Policy Act, 41 U.S.C. Section 425, the FAR Council has requested approval from the Administrator for Federal Procurement Policy for inclusion of a nonstatutory certification in the Federal Acquisition Regulation. In the absence of an Administrator, that approval has been granted by the Director of the Office of Management and Budget in accordance with the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3348(b)(2).

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies. This final rule contains information collection requirements that have been submitted to the Office of Management and Budget (OMB) which will not take effect prior to OMB approval of these provisions. Two respondents commented on the estimated burden of the information collection requirements.

The Councils note that the average response time reflects the average

burden on all contractors, including those who must simply certify that they are not supplying products that were mined, produced, or manufactured in the corresponding country identified on the DoL List. We also anticipate that, given the need to comply with the Tariff Act of 1930, many offerors would already have taken steps that would enable them to make the necessary certification, before they sought to supply a product from a country identified on the DoL List.

The proposed rule erroneously stated the estimated hours per response as .30 hours rather than .5 hours (30 minutes). This does not change the total estimate of 250 response burden hours per year. The revised annual reporting burden is estimated as follows:

Respondents: 500.

Responses per respondent: 1.

Total annual responses: 500.

Preparation hours per response: .5.

Total response burden hours: 250.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: January 12, 2001.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-23 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-23 are effective February 20, 2001.

Dated: January 11, 2001.

R.D. Kerrins, Jr.,

Acting Director, Defense Procurement, Department of Defense.

Dated: January 11, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: January 12, 2001.

Anne Guenther,

Acting Associate Administrator for Procurement, National Aeronautics and Space Administration.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 22 and 52 as set forth below:

1. The authority citation for 48 CFR Parts 22 and 52 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Add Subpart 22.15 to read as follows:

Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

Sec.

22.1500 Scope.

22.1501 Definitions.

22.1502 Policy.

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

22.1504 Violations and remedies.

22.1505 Solicitation provision and contract clause.

22.1500 Scope.

This subpart applies to acquisitions of supplies that exceed the micro-purchase threshold.

22.1501 Definitions.

As used in this subpart—
Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor means the list published by the Department of Labor in accordance with Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The list identifies products, by their country of origin, that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.

22.1502 Policy.

Agencies must take appropriate action to enforce the laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor (19 U.S.C. 1307, 29 U.S.C. 201, *et seq.*, and 41 U.S.C. 35, *et seq.*). Agencies should

make every effort to avoid acquiring such products.

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(a) When issuing a solicitation for supplies expected to exceed the micro-purchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) (www.dol.gov/dol/ilab) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more (see 25.405);

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);

(3) Mexico, and the anticipated value of the acquisition is \$54,372 or more (see 25.405); or

(4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$177,000 or more (see 25.403(b)).

(c) Except as provided in paragraph (b) of this section, before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—

(1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or

(2)(i) It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.

(d) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

(f) Proper certification will not prevent the head of an agency from imposing remedies in accordance with section 22.1504(a)(4) if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.

22.1504 Violations and remedies.

(a) *Violations.* The Government may impose remedies set forth in paragraph (b) of this section for the following violations (note that the violations in paragraphs (a)(3) and (a)(4) of this section go beyond violations of the requirements relating to certification of end products) (see 22.1503):

(1) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.

(2) The contractor has failed to cooperate as required in accordance with the clause at 52.222-19, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.

(3) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(b) *Remedies.* (1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

22.1505 Solicitation provision and contract clause.

(a) Except as provided in paragraph (b) of 22.1503, insert the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, except solicitations for commercial items that include the provision at 52.212-3, Offeror Representations and Certifications—Commercial Items. The contracting officer must identify in paragraph (b) of the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or paragraph (i)(1) of the provision at 52.212-3, any applicable end products and countries of origin from the List. For solicitations estimated to equal or exceed \$25,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified at 22.1503(b), in accordance with the specified thresholds.

(b) Insert the clause at 52.222-19, Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase threshold.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.212-3, revise the date of the provision; add, in alphabetical order, in paragraph (a) the definition "Forced or indentured child labor"; and add paragraph (i) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (February 2001)

(a) * * * * *

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its

nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

* * * * *

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).* [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) *Listed end products.*

Listed End Product

Listed Countries of Origin

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

3a. Effective March 12, 2001, the date of the clause at 52.212-3 is amended by removing "(February 2001)" and adding (MAR 2001) in its place.

4. In section 52.212-5, revise the date of the clause and the introductory text of paragraph (b); redesignate paragraphs (b)(16) through (b)(27) as (b)(17) through (b)(28), respectively, and add new paragraph (b)(16) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (February 2001)

* * * * *

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement

provisions of law or Executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer must check as appropriate.]

* * * * *

____(16) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (E.O. 13126).

* * * * *

5. In section 52.213-4, revise the date of the clause; redesignate paragraphs (b)(1)(vii) through (xi) as (b)(1)(viii) through (xii), respectively, and add new paragraph (vii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

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Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (February 2001)

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(vii) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2001) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

5a. Effective March 12, 2001, the date of the clause at 52.213-4 is amended by removing “February 2001” and adding “(MAR 2001)” in its place.)

6. Add new sections 52.222-18 and 52.222-19 to read as follows:

52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

As prescribed in 22.1505(a), insert the following provision:

Certification Regarding Knowledge of Child Labor for Listed End Products (February 2001)

(a) *Definition.*

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed endproducts from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product

Listed Countries of Origin

(c) *Certification.* The Government will not make award to an offeror unless the offeror, by checking the appropriate block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

(1) The offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

(2) The offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor. (End of provision)

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

As prescribed in 22.1505(b), insert the following clause:

Child Labor—Cooperation With Authorities and Remedies (February 2001)

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more;

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is \$54,372 or more; or

(4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$177,000 or more.

(b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations.* The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) *Remedies.* (1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR Subpart 9.4.

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR Subpart 9.4. (End of clause)

[FR Doc. 01-1503 Filed 1-17-01; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE
GENERAL SERVICES
ADMINISTRATION
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small entity compliance guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97-23 which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by