

concern, see 19.6 with respect to certificates of competency).

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PART 15—CONTRACTING BY NEGOTIATION

6. Amend section 15.503 by revising paragraph (a)(1) to read as follows:

15.503 Notification to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range*. The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

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PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–21 [Amended]

7. Amend section 31.205–21 by removing the paragraph designation “(a)”; and by removing paragraph (b) in its entirety.

8. Amend section 31.205–47 in paragraph (a) by adding, in alphabetical order, the definition “Fraud” (which was removed in the December 20, 2000, final rule (65 FR 80255) and stayed effective April 3, 2001); and by revising paragraph (b)(2) to read as follows:

31.205–47 Costs related to legal and other proceedings.

(a) * * *

Fraud, as used in this subsection, means—

(1) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents;

(2) Acts which constitute a cause for debarment or suspension under 9.406–2(a) and 9.407–2(a); and

(3) Acts which violate the False Claims Act, 31 U.S.C., sections 3729–3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

* * * * *

(b) * * *

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct or imposition of a monetary penalty where the proceeding does not involve an allegation of fraud or similar misconduct;

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209–5 [Amended]

9. In section 52.209–5—

a. Revise the date of the provision to read “(DEC 2001)”;

b. In paragraph (a)(1)(i)(B), remove “the three-year” and add “a three-year” in its place; and add “and” at the end of the paragraph;

c. In paragraph (a)(1)(i)(C), at the end of the paragraph, remove “; and” and add a period in its place; and

d. Remove paragraph (a)(1)(ii), and redesignate paragraph (a)(1)(iii) as (a)(1)(ii).

10. Amend section 52.212–3 by revising the date of the provision and paragraph (h) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (*Dec 2001*)

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549)*. The offeror certifies, to the best of its knowledge and belief, that—

(1) The offeror and/or any of its principals [] are, [] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) [] Have, [] have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offerors; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving

stolen property; and [] are, [] are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.
(End of provision)

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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 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–03 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–03 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–03

| Item | Subject | FAR case | Analyst |
|----------|---|-----------------|-------------|
| I | Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings. | 1999–010 (stay) | De Stefano. |
| II | Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings—Revocation. | 2001–014 | De Stefano. |

Item I—Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings (FAR Case 1999–010 (Stay))

The Federal Acquisition Regulatory Council (FAR Council) published in the **Federal Register** at 65 FR 80255, December 20, 2000, a final rule addressing contractor responsibility and costs incurred in legal and other proceedings. After further review, the FAR Council published an interim rule in the **Federal Register** at 66 FR 17754,

April 3, 2001, staying that rule. This final rule terminates the stay.

Item II—Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings—Revocation (FAR Case 2001–014)

The Federal Acquisition Regulatory Council (FAR Council) published in the **Federal Register** at 66 FR 17758, April 3, 2001, a proposed rule (April proposed rule) with a request for public comments. The April proposed rule

proposed revoking a final rule published in the **Federal Register** at 65 FR 80255, December 20, 2000 (December final rule). The December final rule addressed responsibility and costs incurred in legal and other proceedings. This rule finalizes the April 3, 2001, proposed rule.

Dated: December 14, 2001.

Gloria M. Sochon,

Acting Director, Acquisition Policy Division.

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