

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAR Case 2002-010]

RIN: 9000-AJ48

Federal Acquisition Regulation; Debarment and Suspension—Order Placement and Option Exercise

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to address the placement of orders against existing contracts with contractors that have been debarred, suspended, or proposed for debarment.

DATES: Interested parties should submit comments in writing on or before January 3, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-010@gsa.gov.

Please submit comments only and cite FAR case 2002-010 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAR case 2002-010.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises FAR 9.405-1(b) to require that discretionary actions on the part of the agency meet the same standards as agencies would have to meet in awarding new contracts. Therefore, 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 place orders exceeding the guaranteed minimum under indefinite-quantity contracts; place orders against optional use Federal Supply Schedule contracts; or add new work, exercise options, or otherwise extend the duration of current contracts or orders.

In addition, minor editorial corrections are made in sections 9.405, 9.405-1, and 9.405-2. The various deletions of “or a designee” from the phrase “agency head or designee” does not signify a change in policy, but implements the FAR convention at FAR 1.108(b) that each authority is delegable unless specifically stated otherwise.

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 Councils do not expect this proposed rule to 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 indefinite quantity contracts with contractors debarred, suspended, or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAR case 2002-010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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: October 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 9 as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

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).

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.

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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 against optional use Federal Supply Schedule contracts; 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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