

ACTION: Final rule.

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 implement Section 873(a)(1) and (2) of the National Defense Authorization Act for Fiscal Year 2009. Section 873(a)(1) and (2) clarifies the role of the Interagency Committee on Debarment and Suspension when more than one agency has an interest in the debarment or suspension of a contractor.

DATES: *Effective Date:* July 31, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Loeb, Director, at (202) 501-0650. The TTY Federal Relay Number for further information is 1-800-877-8973. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-34, FAR case 2008-028.

SUPPLEMENTARY INFORMATION:

A. Background

This case amends FAR 9.402 to implement Section 873(a)(1) and (2) of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417), which was enacted on October 14, 2008. Section 873 of the Act defines the role of the Interagency Committee on Debarment and Suspension. Among other responsibilities, the Interagency Committee on Debarment and Suspension is authorized to resolve issues regarding the agency that will have lead responsibility in initiating a suspension or debarment proceeding. The Committee will also coordinate actions among interested agencies with respect to such action.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 9 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.* (FAC 2005-34, FAR case 2008-028), in all correspondence.

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. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: June 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ 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 continues 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 9.402 by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

9.402 Policy.

* * * * *

(c) Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) When more than one agency has an interest in the debarment or suspension of a contractor, the Interagency Committee on Debarment and Suspension, established under Executive Order 12549, and authorized by Section 873 of the National Defense

Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension, debarment, or related administrative action by any agency.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009-0002, Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005-32; 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 of 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. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-34 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005-34 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208-7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005-34

Item	Subject	FAR case	Analyst
I	Contractor Performance Information	2006-022	Parnell.
II	Prohibition on Contracting with Inverted Domestic Corporations (Interim)	2008-009	Murphy.
III	Role of Interagency Committee on Debarment and Suspension	2008-028	Loeb.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-34 amends the FAR as specified below:

Item I—Contractor Performance Information (FAR Case 2006-022)

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR Parts 2, 8, 9, 13, 17, 36, 42, and 53. The purpose of this final rule is to ensure that the FAR clearly reflects the use of the Governmentwide performance information repository, Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov>; requires the evaluation of past performance for orders exceeding the simplified acquisition threshold placed against Federal Supply Schedule contracts, or under a task order or delivery order against a contract

awarded by another Federal agency (*i.e.* Governmentwide acquisition contract or multi-agency contract); recommends past performance information for orders under single agency contracts; consolidates the collection of past performance guidance in Part 42; and, clarifies that the Agency shall identify those responsible for preparing interim and final evaluations.

Item II—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009) (Interim)

This interim rule implements Section 743 of Division D of the Omnibus Appropriations Act, 2009 (Public Law 111-8), which prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one. The interim rule addresses solicitations issued after the date of publication using funds appropriated in Fiscal Years 2006, 2007, and 2008, as well.

Item III—Role of Interagency Committee on Debarment and Suspension (FAR Case 2008-028)

This final rule amends Federal Acquisition Regulation Subpart 9.4 to clarify the role of the Interagency Committee on Debarment and Suspension when more than one agency has an interest in the debarment or suspension of a contractor. Among other responsibilities, the Interagency Committee on Debarment and Suspension is authorized to resolve issues regarding the agency that will have lead responsibility in initiating a suspension or debarment proceeding. The Committee will also coordinate actions among interested agencies with respect to such action. This rule implements the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Section 873(a)(1) and (2).

Dated: June 25, 2009.

Al Matera,

Director, Office of Acquisition Policy.

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