

definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

(End of clause)

#### 52.213-4 [Amended]

■ 4. Amend section 52.213-4 by removing "(May 2004)" from the clause heading and from paragraph (a)(2)(vi) of the clause and adding "(Jul 2004)" in their place.

■ 5. In section 52.244-6, revise the date of the clause; and in paragraph (a) of the clause revise the definition "Commercial item" to read as follows:

#### 52.244-6 Subcontracts for Commercial Items.

\* \* \* \* \*

Subcontracts for Commercial Items (Jul 2004)

(a) \* \* \*

*Commercial item* has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

\* \* \* \* \*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 8 and 52

[FAC 2001-24; FAR Case 2003-013; Item III]

RIN 9000-AJ82

#### Federal Acquisition Regulation; Procurement Lists

**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) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the point that the Javits-Wagner-O'Day (JWOD) program becomes a mandatory source when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled. The rule also updates the address for the Committee for Purchase From People Who Are Blind or Severely Disabled.

**DATES:** *Effective Date:* July 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-24, FAR case 2003-013. The TTY Federal Relay Number for further information is 1-800-877-8973.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to clarify that the Javits-Wagner-O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee). A Web site for the "Procurement List" is added, and the address for the Committee has also been updated. These changes are necessary to correct confusion and avoid misuse of mandatory source authority.

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 68 FR 69262, December 11, 2003. One source, the International Safety Equipment Association (ISEA), submitted comments on the proposed rule. The Councils concluded that the proposed rule should be converted to a final rule, with only an editorial change at FAR 8.714 to update address information and a clarification at FAR clause 52.208-9. A summary of the comments and the disposition follows:

*Comment:* The respondent recommended that a new provision be added to FAR 8.002 exempting personal protective equipment from requirements of that part.

*Response:* The Councils do not concur. The proposed change is outside the scope of the FAR case. Further, the FAR does not provide for particular product exemptions. Decisions to add a product or service to the Procurement List are made on a case-by-case basis by the Committee for Purchase From People Who Are Blind or Severely Disabled, following the notice-and-comment rulemaking provisions of the Administrative Procedure Act in accordance with 41 U.S.C. 47(a)(2).

*Comment:* The respondent recommended that the JWOD program provide for exceptions similar to those provided at FAR 8.606 for purchases from Federal Prison Industries (FPI).

*Response:* The Councils do not concur. First, the proposed change is outside the scope of the FAR case. Secondly, 41 U.S.C. 47(d) identifies the Committee as the entity responsible for

rules and regulations necessary to carry out the JWOD program. The Committee's statute and regulations do not provide for FPI-like exceptions, but do provide for purchase exceptions appropriate for JWOD, which are implemented in the FAR.

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 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 the rule clarifies that the Javits-Wagner-O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services are added to the Procurement List. While we have made changes to clarify when a supply or service becomes a mandatory JWOD source, we have not substantively changed procedures for award and administration of contracts.

##### 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. 3501, *et seq.*

##### List of Subjects in 48 CFR Parts 8 and 52

Government procurement.

Dated: June 10, 2004.

**Ralph J. De Stefano,**

*Acting Director, Acquisition Policy Division.*

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.002 by revising paragraphs (a)(1)(iv) and (a)(2)(i) to read as follows:

**8.002 Priorities for use of Government supply sources.**

(a) \* \* \*

(1) \* \* \*

(iv) Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

\* \* \* \* \*

(2) *Services.* (i) Services which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

\* \* \* \* \*

**8.004 [Amended]**

■ 3. Amend section 8.004 by removing from the first sentence the words "available from" and adding "on the Procurement List maintained by" in its place.

■ 4. Amend section 8.703 by revising the first paragraph to read as follows:

**8.703 Procurement list.**

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. The Procurement List may be accessed at: <http://www.jwod.gov/procurementlist>. Questions concerning whether a supply item or service is on the Procurement List may be submitted at Internet e-mail address [info@jwod.gov](mailto:info@jwod.gov) or referred to the Committee offices at the following address and telephone number: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202-3259, (703) 603-7740.

\* \* \* \* \*

■ 5. Amend section 8.714 by revising paragraph (b) to read as follows:

**8.714 Communications with the central nonprofit agencies and the Committee.**

\* \* \* \* \*

(b) Any matter requiring referral to the Committee shall be addressed to the Executive Director of the Committee, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202-3259.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Amend section 52.208-9 by revising the date of the clause, by redesignating paragraph (c) as paragraph (a) and revising the first sentence of paragraph (a) to read as follows:

**52.208-9 Contractor Use of Mandatory Sources of Supply or Services.**

\* \* \* \* \*

Contractor Use of Mandatory Sources of Supply or Services (Jul 2004)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). \* \* \*

\* \* \* \* \*

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

[FAC 2001-24; FAR Case 2004-009; Item IV]

RIN 9000-AJ98

**Federal Acquisition Regulation; Determining Official for Employment Provision Compliance—Immigration and Nationality Act (INA)**

**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) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the responsibility for determining when a contractor is not in compliance with the Immigration and Nationality Act (INA) to include both the Attorney General and the Secretary of Homeland Security, pursuant to Executive Order 13286 published March 5, 2003.

**DATES:** *Effective Date:* June 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig Goral, Procurement Analyst, at (202) 501-3856. Please cite FAC 2001-24, FAR case 2004-009.

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

This final rule amends FAR 9.406-2(b)(2) by revising the responsibility for determining when a contractor is not in compliance with INA to include both the Attorney General and the Secretary of Homeland Security pursuant to Executive Order (E.O.) 13286 published March 5, 2003. E.O. 13286 amended Section 4 of E.O. 12989, published February 15, 1996, by adding, along with the Attorney General, the Secretary of Homeland Security as the responsible authority for determining when a contractor is not in compliance with the INA. Pursuant to this amendment, it is necessary to revise FAR 9.406-2(b)(2) to reflect this change.

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 2001-24, FAR case 2004-009), in 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. 3501, *et seq.*

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

Government procurement.

Dated: June 10, 2004.

**Ralph J. De Stefano,**

*Acting Director, Acquisition Policy Division.*

■ 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 is revised 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 9.406-2 by revising paragraph (b)(2) to read as follows: