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**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Parts 2, 9, et al.

**Federal Acquisition Regulation; Excluded
Parties System Enhancement; Proposed
Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 9, 22, 28, 44, and 52**

[FAR Case 2002–023]

RIN 9000–AJ78

**Federal Acquisition Regulation;
Excluded Parties System
Enhancement**

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 curtail the publication and obviate the need to publish the hardcopy publication of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (List of Parties) produced by the Government Printing Office (GPO), and publish an electronic list of parties excluded from doing business with the Federal Government online identified as the Excluded Parties List System (EPLS). The new electronic list will enable agencies to input their data directly to the EPLS; improve the reliability of the content by allowing content owners to directly input entries; provide access to historical data that was previously provided through Freedom of Information Act (FOIA) procedures; enhance the ability to verify entries by permitting search by exact name and social security number, and shorten the lead time between exclusionary action taken by agencies and updating the list.

DATES: Interested parties should submit comments in writing on or before January 30, 2004 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.2002-023@gsa.gov.

Please submit comments only and cite FAR case 2002–023 in all correspondence related to this case.

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. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–023.

SUPPLEMENTARY INFORMATION:**A. Background**

The rule, if finalized, will enable agencies to directly input data to update the Excluded Parties List System (EPLS) on parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or excluded by agencies, Government corporations, or the General Accounting Office (GAO). The entry by the agencies will update the content in real time, improve system reliability, eliminate the need for a hard copy list, provide access to the archival data, and enhance the ability to verify entries by permitting a search by exact name and social security number.

The electronic updating of the list by agencies promotes the use of the Internet and emerging technologies within and across the Government agencies and provides citizen-centric Government information. The private sector and state and local governments who wish to avoid doing business with contractors that lack current responsibility, although not required, use the aforementioned list.

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 while we have made changes in the way GSA manages and maintains the List of Parties excluded from Federal Procurement and Nonprocurement Programs, the proposed rule does not substantively change procedures for award and administration of contracts. The rule primarily will curtail the publication and obviate the need to publish the hardcopy publication of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (List of Parties) produced by the Government Printing Office (GPO), and publishes an electronic list of parties excluded from doing business with the Federal Government online identified as the Excluded Parties List System (EPLS). The new electronic list will—

- Enable agencies to input their data directly to the EPLS;
- Improve the reliability of the content by allowing content owners to directly input entries;
- Provide access to historical data that was previously provided through Freedom of Information Act (FOIA) procedures;
- Enhance the ability to verify entries by permitting search by exact name and social security number, and
- Shorten the lead time between exclusionary action taken by agencies and updating the content.

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 Parts 2, 9, 22, 28, 44, and 52 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 2002–023), 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 Parts 2, 9, 22, 28, 44, and 52

Government procurement.

Dated: November 25, 2003.

Ralph J. De Stefano,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 9, 22, 28, 44, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 9, 22, 28, 44, 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 2—DEFINITIONS OF WORDS
AND TERMS**

2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition “Excluded Parties List System”; and removing the definition “List of Parties Excluded from Federal Procurement and Nonprocurement Programs”. The added text reads as follows:

2.101 Definitions.

* * * * *

(b) * * *

Excluded Parties List System means an electronic database maintained and

posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, disqualified or excluded by agencies, government corporations, or by the General Accounting Office.

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PART 9—CONTRACTOR QUALIFICATIONS

3. Amend section 9.105–1 by revising paragraph (c)(1) to read as follows:

9.105–1 Obtaining information.

* * * * *

(c) * * *

(1) Excluded Parties List System maintained in accordance with Subpart 9.4.

* * * * *

4. Amend section 9.207 by revising paragraph (a)(9) to read as follows:

9.207 Changes in status regarding qualification requirements.

* * * * *

(a) * * *

(9) The source is on the Excluded Parties List System (see Subpart 9.4); or

* * * * *

5. Amend section 9.403 by adding, in alphabetical order, the definitions “Disqualified”, and “Excluded or exclusion” to read as follows:

9.403 Definitions.

* * * * *

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(1) The Davis-Bacon Act (40 U.S.C. 3141 *et seq.*, formally 40 U.S.C. 276a);

(2) The Equal Employment Opportunity Acts and Executive orders; or

(3) The Clean Air Act (42 U.S.C. 306), Clean Water Act (33 U.S.C. 508) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

Excluded or exclusion means—

(1) That a person or commodity is prohibited from being a participant in

covered transactions, whether the person has been suspended, debarred, proposed for debarment under Subpart 9.4, voluntarily excluded; or

(2) The act of excluding a person.

* * * * *

6. Revise the section heading and text of section 9.404 to read as follows:

9.404 Excluded Parties List System.

(a) The General Services Administration (GSA)—

(1) Operates the web-based Excluded Parties List System (EPLS) database;

(2) Provides technical assistance to Federal agencies in the use of the EPLS; and

(3) Includes in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The Excluded Parties List System includes the—

(1) Names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406–2 and 9.407–2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) DUNS No.;

(7) SSN or TIN (if available and permitted by the laws or executive orders under which the action is undertaken, including the Computer Matching and Privacy Acts); and

(8) Name and telephone number of the agency point of contact for the action.

(c) Each agency must—

(1) Obtain a password(s) from GSA to access the EPLS for data entry;

(2) Notify GSA in the event a password needs to be rescinded (*e.g.*, when agency employee leaves or changes function);

(3) Enter the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(4) Agencies must give due consideration to whether they are

legally permitted to enter the SSN or TIN under the authority under which they suspend or debar.

(5) Update EPLS within 5 working days after modifying or rescinding an action;

(6) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(7) Establish procedures to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on whose names are in the Excluded Parties List System database, except as otherwise provided in this subpart;

(8) Direct inquiries concerning listed contractors to the agency or other authority that took the action; and

(9) Contact GSA for technical assistance with the Excluded Parties List System, via the support e-mail address or on the technical support phone line available at the EPLS Web site provided in paragraph (d) of this section.

(d) The Excluded Parties List System is available at <http://epls.gov>.

9.405, 9.405–2, 22.1025, 28.203–7, 44.202–2, 44.303, and 52.209–6 [Amended]

7. In 48 CFR parts 9, 22, 28, 44, and 52, remove the words “List of Parties Excluded from Federal Procurement and Nonprocurement Programs” and add, in their place, the words “Excluded Parties List System” in the following places:

- a. 9.405(b), (d)(1), and (d)(4);
- b. 9.405–2(b), second sentence, and (b)(2);
- c. 22.1025;
- d. 28.203–7(c) and (d);
- e. 44.202–2(a)(13);
- f. 44.303(c); and
- g. 52.209–6(c) introductory text, (c)(2), and (c)(3).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. In addition to the amendments set forth above, amend section 52.209–6 by revising the date of the clause to read “(Date)”.

[FR Doc. 03–29819 Filed 11–28–03; 8:45 am]

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