

**DATES:** *Effective Date:* December 11, 2003.

**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 2001-18, FAR case 2003-001.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Councils have agreed to a final rule increasing the FPI clearance exception threshold at FAR 8.606(e) from \$25 to \$2,500 and eliminating the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to \$2,500, Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below \$2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies are still required to purchase products on FPI's Schedule from FPI above the \$2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 68 FR 28094, May 22, 2003. Three respondents submitted public comments. These comments are discussed below. The Councils concluded that the interim rule should be converted to a final rule without change.

*Comment 1:* Respondent concurred with the rule.

*Comment 2:* Respondent wanted assurance that there are no other conflicts with existing wording of the FAR (e.g., FAR 8.603) as a result of the increase in the blanket waiver threshold to \$2,500. The respondent believes that the FAR should explicitly state that agencies are not required to make purchases from FPI that are at or below \$2,500, if that is the intent. In addition, the Defense FAR Supplement (DFARS) should state that the requirement for a comparability determination does not apply to purchases at or below \$2,500.

*Councils' response:* This rule has created no conflicts with other wording of the FAR. The rule merely increased the dollar threshold for an existing exception to FPI clearance requirements. As was previously the case, Federal agencies are not required (but are permitted) to purchase products

from FPI if the dollar value of the purchase is at or below the threshold specified in FAR 8.606(e). The purchase priorities specified in FAR 8.603 have not changed, and apply only in situations where FPI and JWOD agencies produce identical supplies or services.

The recommended DFARS change is outside the scope of this case. DoD published a final DFARS rule on November 14, 2003 (68 FR 64559), to address DoD-unique requirements for purchase of products from FPI.

*Comment 3:* Respondent stated that language should be included in the rule to make it clear that DoD activities are now governed by the changes legislated in Section 811 of Public Law 107-107 and Section 819 of Public Law 107-314, the National Defense Authorization Acts for Fiscal Years 2002 and 2003, respectively. Under these laws, the UNICOR waiver process has been effectively eliminated for DoD activities. If a DoD contracting officer determines that UNICOR products are not comparable in terms of quality, price, and delivery time, the activity is not required to seek a UNICOR waiver, regardless of the dollar amount of the acquisition. The concern is that DoD contracting officers and UNICOR private sector commissioned sales representatives may interpret this FAR change to mean that DoD must request a UNICOR waiver when the acquisition is over \$2,500. To prevent such a misunderstanding, it is vital that references to the above public laws and/or the ensuring DFARS regulations be included in the language that announces this change to the waiver limit of FAR 8.606(e).

*Councils' response:* The Councils recognize that DoD is governed by separate statutory requirements with regard to purchase of products from FPI (UNICOR), but do not believe additional clarification is required for the FAR. Existing DoD policy on this subject can be found in DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6). As stated in the response to Comment 2 above, DoD published revisions to DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6) on November 14, 2003 (68 FR 64559).

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 8, 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 2001-18, FAR case 2003-001), in correspondence. No comments were received on the Regulatory Flexibility Act Statement in the interim rule.

**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 8**

Government procurement.

Dated: December 4, 2003.

**Laura Auletta,**

*Director, Acquisition Policy Division.*

**Interim Rule Adopted as Final Without Change**

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 8 which was published in the **Federal Register** at 68 FR 28094, May 22, 2003, as a final rule without change.

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

[FR Doc. 03-30475 Filed 12-10-03; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 9**

[FAC 2001-18; FAR Case 2002-010; Item V]

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:** 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 address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

**DATES:** *Effective Date:* January 12, 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 R. Goral, Procurement Analyst, at (202) 501-3856. Please cite FAC 2001-18, FAR case 2002-010.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67282, November 4, 2002, to require that discretionary actions on the part of agencies meet the same standards as agencies would have to meet in awarding new contracts. The rule prohibited agencies from placing orders exceeding the guaranteed minimum against existing contracts, placing orders against optional Federal Supply Schedule contracts, adding new work, exercising options or otherwise extending the duration of contracts with contractors that are debarred, suspended or proposed for debarment unless the agency head makes a determination that there are compelling reasons for doing so.

Two comments from two commenters were received in response to the proposed rule. The first commenter strongly supported the rule. The second commenter suggested that the rule be clarified to indicate whether it applies to credit card purchases or blanket purchase agreements (BPAs), Memorandums of Agreement (MOAs), Military Interdepartmental Purchase Requests (MIPRs), or Governmentwide acquisition contracts (GWACs). A change was made to the rule to address BPAs and Basic Ordering Agreements (BOAs) based on this recommendation. It was not appropriate to address MOAs or MIPRs because they are not entered into under the FAR. GWACs are indefinite delivery contracts and are, therefore, already covered by the rule. BPAs and BOAs are agreements rather than contracts. However, they should contain the basic clauses that will apply to orders placed under them. Therefore, the Councils revised the rule to address BPAs and BOAs. The requirement that contractors must be responsible is

statutory. Contractors debarred, suspended, or proposed for debarment are excluded from doing business with the Government unless there is a compelling reason to conduct business with such a contractor.

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 it only affects orders placed by civilian agencies against existing contracts with contractors that are debarred, suspended or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders.

**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: December 4, 2003.

**Laura Auletta,**

*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 9.405 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.

\* \* \* \* \*

■ 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 under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; 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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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 31 and 52**

[FAC 2001-18; FAR Case 2001-037; Item VI]

RIN 9000-AJ57

**Federal Acquisition Regulation; Insurance and Pension Costs**

**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