

electronically, (2) by facsimile, or (3) by hard copy. All notices must identify the Agency name and docket number for this notice (Docket No. OSHA-2007-0021). Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of notices of intention to attend. For information about security procedures concerning the delivery of materials by hand, express mail, messenger or courier service, please contact Liset Navas at (202) 693-1950.

Notices of intention to attend a stakeholder meeting must include the following information:

- Name and contact information;
- Affiliation (e.g., organization, association), if any;
- The stakeholder meeting you plan to attend;
- Whether you wish to be an active participant or observer; and
- Whether you need any special accommodations in order to attend or participate in a stakeholder meeting.

For access to comments and materials received in response to the RFI, go to OSHA Docket No. H-016 on OSHA's Web page at <http://www.osha.gov>. Contact the OSHA Docket Office, Docket No. H-016, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627) for information about materials in the RFI docket that are not available through OSHA's Web page and for assistance in using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's Web page at <http://www.osha.gov>.

#### Authority

This notice was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657), and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Signed at Washington, DC on this 26th day of March, 2007.

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9 and 52

[FAR Case 2006-011; Docket 200-0001;  
Sequence 6]

RIN 9000-AK73

#### Federal Acquisition Regulation; FAR Case 2006-011, Representations and Certifications - Tax Delinquency

**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 change the provision regarding certification regarding debarment, suspension, proposed debarment, and other responsibility matters, and to make changes to the language regarding contractor qualifications, to add language regarding nonpayment of taxes. This proposed rule requires offerors to also certify whether or not they have, within a three-year period preceding the offer, been convicted of or had a civil judgment rendered against them for violating any tax law or failing to pay any tax, or been notified of any delinquent taxes for which the liability remains unsatisfied. In addition, the offeror will be required to certify whether or not they have received a notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before May 29, 2007 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2006-011 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the "Submit" button. Please include any personal and/or business information inside the document. You

may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2006-011 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Clark, Procurement Analyst, at (202) 219-1813 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2006-011.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Offerors are currently required to certify whether or not, within a three-year period preceding an offer, they have been convicted of or had a civil judgment rendered against them for tax evasion or are presently indicted for, or otherwise criminally or civilly charged with, the commission of tax evasion. This proposed rule requires offerors to also certify whether or not they have, within a three-year period preceding the offer, been convicted of or had a civil judgment rendered against them for violating any tax law or failing to pay any tax, or been notified of any delinquent taxes for which the liability remains unsatisfied. The offeror also will be required to certify whether or not they have received a notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released. The additional certifications are needed to identify prospective offerors that may have outstanding tax obligations that may be delinquent so that the Government can make an informed responsibility determination, as necessary. If an offeror certifies that any of these conditions exist, the contracting officer may ask the offeror for additional information related to the obligation to evaluate the offeror's ability to perform under the contract. In accordance with FAR 1.107,

the new certification must be approved by the Administrator for the Office of Federal Procurement Policy before a final rule can be issued.

In FAR 9.105-1 a cross reference is made to FAR 9.408 which describes additional actions contracting officers may take. In FAR 9.408 the language referring to the certifications at FAR 52.209-5 and 52.212-3 is simplified. In FAR 9.406-2 and 9.407-2, the following additional causes for debarment or suspension are added: delinquent taxes; unresolved tax liens; and a conviction of or civil judgment for violating tax laws or failing to pay taxes. The nonpayment of taxes is not restricted to Federal taxes, but may relate to any taxing entity. The focus of "delinquent taxes" is on taxes which are still unpaid: the affirmative certification is required after the taxpaying offeror is notified that the taxes are delinquent, for taxes which remain unpaid as of the date of certification.

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 most prospective offerors pay their tax liabilities.

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 9 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 2006-011), 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 9 and 52**

Government procurement.

Dated: March 26, 2007.

**Ralph De Stefano,**

*Director, Contract Policy Division.*

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

1. The authority citation for 48 CFR parts 9 and 52 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).

**PART 9—CONTRACTOR QUALIFICATIONS**

**9.105-1 [Amended]**

2. Amend section 9.105-1 in paragraph (c)(3) by adding "(including the certification at 52.209-5 or 52.212-3(h)—see 9.408)" after "proposal information,".

3. Amend section 9.406-2 in paragraph (a)(3) by adding "violating tax laws, failing to pay taxes," after "tax evasion," and by adding paragraph (b)(1)(v) to read as follows:

**9.406-2 Causes for debarment.**

\* \* \* \* \*

(b)(1) \* \* \*

(v) Delinquent taxes or unresolved tax liens.

\* \* \* \* \*

4. Amend section 9.407-2 paragraph (a)(3) by adding "violating tax laws, failing to pay taxes," after "tax evasion,"; redesignating paragraph (a)(7) as paragraph (a)(8) and by adding new paragraph (a)(7); to read as follows:

**9.407-2 [Amended]**

(a) \* \* \*

(7) Delinquent taxes or unresolved tax liens.

\* \* \* \* \*

5. Amend section 9.408 by revising the introductory text of paragraph (a) to read as follows:

**9.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.**

(a) When an offeror provides an affirmative response in paragraph (a)(1) of provision 52.209-5 or paragraph (h) of provision 52.212-3, (e.g., indictment, conviction, debarment), the contracting officer shall—

\* \* \* \* \*

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

6. Amend section 52.209-5 by—

a. Revising the date of the clause; b. Adding to paragraph (a)(1)(i)(B) "violating tax laws, failing to pay taxes," after "tax evasion,"; and by removing "and" from the end of the paragraph;

c. Removing the period from the end of paragraph (a)(1)(i)(C) and adding a semicolon in its place; and

d. Adding paragraphs (a)(1)(i)(D) and (a)(1)(i)(E).

The revised and added text read as follows:

**52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**

\* \* \* \* \*

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DATE)

(a)(1) \* \* \*

(i) \* \* \*

(D) Have  have not , within a three-year period preceding this offer, been notified of any delinquent taxes for which the liability remains unsatisfied; and

(E) Have  have not  received notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.

\* \* \* \* \*

7. Amend section 52.212-3 by—

a. Revising the date of the clause;

b. Adding to paragraph (h)(2)

"violating tax laws, failing to pay taxes", after "tax evasion"; and

c. Adding paragraphs (h)(4) and (h)(5).

The revised and added text read as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (DATE)

\* \* \* \* \*

(h) \* \* \*

(4)  Have  have not, within a three-year period preceding this offer, been notified of any delinquent taxes for which the liability remains unsatisfied; and

(5)  Have  have not received notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.

\* \* \* \* \*

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