

practices" as the commission by a contractor of any of the following acts: (1) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as determined by the International Trade Commission (2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement, or (3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished. Section 201 mandates that this statement of public contract law policy be implemented by amending FAR subpart 9.4, not later than 270 days after the date of enactment of the Defense Production Act (October 28, 1992).

Section 202 of the Defense Production Act (Public Law 102-558) provides that any person determined to have intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when such product was not made in the United States, may be found to lack business integrity or business honesty to such a degree as to affect their responsibility to perform a Federal contract or subcontract. Section 202 mandates that this statement of policy be implemented by amending FAR Subpart 9.4 (Debarment, Suspension, and Ineligibility) not later than 270 days (July 28, 1993) after the date of enactment of the Defense Production Act (October 28, 1992).

A combined interim rule was published in the Federal Register at 59 FR 11368 on March 10, 1994. Two sources submitted public comments. No changes were made as a result of those comments.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to entities who engage in unfair trade practices or who intentionally affix fraudulent "Made in America" labels to products sold in or shipped to the United States.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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: January 11, 1996.

Edward C. Loeb,
Acting Director, Office of Federal Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 9, which was published at 59 FR 11371, March 10, 1994, (FAC 90-20, Item II) is adopted as a final rule without change.

The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAC 90-37; FAR Case 92-615; Item IV]

RIN 9000-AF57

Federal Acquisition Regulation; Debarment and Suspension Certificate

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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add tax evasion as a cause for consideration for suspension or debarment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph De Stefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-615.

SUPPLEMENTARY INFORMATION:

A. Background

The Twentieth Report by the Committee on Government Operations entitled "Coins, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate" dated May 27, 1992, among other things, stated that there was a very real possibility that the U.S. Government did business with a man indicted as being one of the biggest tax evaders in history. In order to prevent this from happening in the future, a revision to the FAR was proposed to address tax evasion.

A proposed rule was published in the Federal Register at 58 FR 63494 on December 1, 1993. Four sources submitted public comments. No changes were made as a result of those comments.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors already must certify whether they have been convicted of or had a civil judgment rendered against them for a list of offenses. This rule will add "tax evasion" to the existing certification, as well as to the list of offenses for which contractors may be suspended or debarred from Federal contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: January 11, 1996.
Edward C. Loeb,
Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 9 and 52 are amended 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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

9.406-2 [Amended]

2. Section 9.406-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

9.407-2 [Amended]

3. Section 9.407-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209-5 [Amended]

4. Section 52.209-5 is amended by revising the clause date to read "(MAR 1996)"; and in paragraph (a)(1)(i)(B) by inserting "tax evasion," after "false statements".

52.212-3 [Amended]

5. Section 52.212-3 is amended by revising the date of the provision to read "(MAR 1996)"; and in paragraph (h)(2) by adding "tax evasion," after "false statements,".

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAC 90-37; FAR Case 92-010; Item V]

RIN 9000-AF77

Federal Acquisition Regulation; Nonprofit Institutions Clause Prescription

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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR). These changes revise the prescriptions for use of the clauses, Termination of Defined Benefit Pension Plans and Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), and also clarifies the language of the clauses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-010.

SUPPLEMENTARY INFORMATION:

A. Background

The wording of the prescriptions at 15.804-8(e) and (f) currently implies that the clauses at 52.215-27, Termination of Defined Benefit Pension Plans, and 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions, should also be used in solicitations and contracts with noncommercial organizations. The clauses refer to the cost principles applicable to commercial organizations in FAR subpart 31.2, whereas OMB Circulars A-21, A-87 and A-122 contain the cost principles governing contracts with noncommercial organizations. In addition, the prescriptions currently contain dissimilar criteria concerning the use of the clauses in preaward or postaward cost situations. The revisions to the prescriptions at 15.804-8(e) and (f) correct these inconsistencies and clarify when the clauses at 52.215-27 and 52.215-39 should be used. Additional revisions to the clauses clarify the requirements specified in them. A proposed rule was published in the Federal Register at 59 FR 16389, April 6, 1994. Three public comments were received. No changes were made as a result of those comments.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded

to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply. It is estimated that the number of contract actions awarded to small businesses which require the submission of cost or pricing data average less than 1 percent of the total number of small business actions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 15 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,
Acting Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continue to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804-8 is amended by revising paragraphs (e) and (f); and in paragraph (g) by removing the word "certified". The revised text reads as follows:

15.804-8 Contract clauses and solicitation provisions.

* * * * *

(e) *Termination of defined benefit pension plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to part 31.

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