

1. The authority citation for 48 CFR parts 8 and 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).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.702 [Amended]

2. Section 8.702 is amended in paragraph (a) by removing the semicolon at the end of the sentence and inserting in its place "[see 9.107];"

PART 9—CONTRACTOR QUALIFICATIONS

3. Section 9.107 is added to read as follows:

9.107 Surveys of blind and other severely handicapped workshops.

(a) The Committee for Purchase from the Blind and Other Severely Handicapped (Committee), as authorized by 41 U.S.C. 46-48c, determines what supplies and services Federal agencies are required to purchase from workshops for the blind and other severely handicapped (see subpart 8.7). The Committee is required to find a workshop capable of producing the supplies or providing the services before the workshop can be designated as a mandatory source under the Committee's program. The Committee may request a contracting office to assist in assessing the capabilities of a workshop.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the workshop is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of blind and other severely handicapped organizations.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the workshop is capable and the survey is waived, to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

RIN 9000-AE-25

[FAC 90-9; FAR Case 90-56; Item IV]

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility

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 to add to FAR 9.406-1(a) a list of 10 examples of remedial measures or mitigating factors that debarring officials should consider when making a decision to debar a contractor. Additionally, new language at 9.407-1 suggests consideration of the remedial measures or mitigating factors in connection with suspension actions.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501-4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-9, FAR case 90-56.

SUPPLEMENTARY INFORMATION:

A. Background

This revision is part of an on-going effort to make suspension and debarment procedures uniform throughout the Federal Government. The change will add remedial measures or mitigating factors for use by debarring officials when making debarment decisions. The remedial measures and mitigating factors may be considered by suspension officials in reaching a decision concerning a suspension action.

B. Regulatory Flexibility Act

This change is not expected to have a significant cost or administrative impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely provides procedural and policy guidance to debarring and suspending officials and imposes no requirements of any kind upon small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection 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 Part 9

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. 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).

2. Section 9.406-1 is amended by revising paragraph (a) to read as follows:

9.406-1 General.

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during

the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarment official, its present responsibility and that debarment is not necessary.

3. Section 9.407-1 is amended by redesignating paragraph (b) as (b)(1) and by adding paragraph (b)(2) to read as follows:

9.407-1 General.

(b)(1) * * *

(b)(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in 9.406-1(a). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures

or mitigating factors is not necessarily determinative of a contractor's present responsibility.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 10

[FAC 90-9; FAR Case 91-48; Item V]

**Federal Acquisition Regulation;
Preference for Commercial Products**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend Federal Acquisition Regulation (FAR) sections 10.001, 10.002(d), and 10.006(a)(2) to provide an order of preference for the various types of item descriptions used in contracting. The rule also removes the requirement for mandatory use of military specifications by the Department of Defense. The intent of the rule is to increase the use of voluntary standards and commercial item descriptions, which in turn will facilitate the use of commercial and other nondevelopmental items.

DATES: *Effective Date:* December 27, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 25, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 90-9, FAR case 91-48 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-9, FAR case 91-48.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2325 of title 10, United States Code, requires, to the maximum extent practicable, that DOD requirements be stated in terms of (1) functions to be performed, (2) performance required, or (3) essential physical characteristics, and that such requirements are fulfilled through the acquisition of nondevelopmental items. Additionally, OMB Circular A-119 established the policy, in 1982, that the Federal Government should rely on the use of voluntary standards to the maximum extent feasible. In addition, section 824(c) of the DOD Fiscal Year 1990 Authorization Act further requires the Secretary of Defense to consider whether revisions to the regulations governing specifications, standards, and other purchase descriptions are necessary to implement the statutory requirement of 10 U.S.C. 2325. The FAR revisions in this interim rule are necessary to implement these statutory requirements.

Currently, FAR 10.006(a)(2) contains a requirement for mandatory use of military specifications by DOD. This interim rule removes this requirement and establishes a clear order of preference at 10.002(d) for choosing item descriptions giving preference to the use of voluntary standards, in general, and for use of commercial item descriptions for commercial products.

B. Regulatory Flexibility Act

This interim rule may 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 will impact any contractor that wants to do business with the Federal Government. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The interim change to the FAR is necessary to implement section 2325 of title 10, United States Code, and OMB Circular A-119. The changes direct preferential use of voluntary standards and commercial item descriptions over Federal and military specifications. The rule will affect all small businesses that want to contract with the Government. There are no burden requirements or duplicate rules, nor are other alternatives available. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the

affected FAR subparts are invited and will be considered in accordance with section 610. Such comments must be submitted separately and cite FAR case 91-48 in all correspondence.

C. Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations pertaining to preference for commercial products as an interim rule. Urgent and compelling reasons exist to publish an interim rule having a significant impact on the public, prior to affording the public an opportunity to comment. Section 824(c) of the DOD Fiscal Year 1990 Authorization Act required that regulations be prescribed by August 29, 1990, that ensure that requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics.

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 10 is amended as set forth below:

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1. The authority citation for 48 CFR part 10 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).

2. Section 10.001 is amended by adding the definitions "Commercial item description" and "Product description" in alphabetical order to read as follows:

10.001 Definitions.

Commercial item description (CID) means an indexed, simplified product description managed by the General Services Administration that describes, by functional or performance characteristics, the available, acceptable commercial products that will satisfy the Government's needs.

Product description, as used in this part, is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, commercial item descriptions, or purchase descriptions.

3. Section 10.002 is amended by redesignating paragraph (d) as paragraph (e); by inserting a comma after the word "specifications" in the first sentence of paragraph (e); and by adding a new paragraph (d) to read as follows:

10.002 Policy.

(d)(1) In fulfilling the requirements of OMB Circular A-119, Federal Participation in Development and Use of Voluntary Standards, and FAR part 11, agencies shall, to the maximum practicable extent, use—

(i) Voluntary standards in lieu of other product descriptions, or as part of other product descriptions;

(ii) Commercial item descriptions in the acquisition of commercial or commercial-type products whenever voluntary standards cannot be used;

(iii) Government specifications stated in terms of functions to be performed or performance required, when voluntary standards or commercial item descriptions cannot be used; or

(iv) Government specifications stated in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other design requirements only when no other form of product description can be used.

(2) The above order of preference shall apply unless it—

(i) Is inconsistent with requirements of law; or

(ii) Does not meet the Government's needs.

4. Section 10.006 is amended by revising paragraph (a) to read as follows:

10.006 Using specifications and standards.

(a) *Mandatory specifications and standards.* Unless otherwise authorized by law or approved under 10.007(a), specifications and standards listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions are mandatory for use by all agencies acquiring supplies or services covered by such specifications and standards, except when the acquisition is—

(1) Required under an unusual and compelling urgency, and using the

indexed product description would delay obtaining the requirement;

(2) Under the small purchase limitation at 13.000;

(3) For products acquired and used overseas;

(4) For items, excluding military clothing, acquired for authorized resale; or

(5) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90-9; FAR Case 91-49; Item VI]

Federal Acquisition Regulation; Bundling of Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 19.202-1 to require contracting officers to forward proposed acquisitions meeting specified criteria to Small Business Procurement Center Representatives for review, and 19.402 to specify review of proposed acquisition as a procurement center representative duty.

DATES: Effective Date: December 27, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 25, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, ATTN: Deloris Baker, Washington, DC 20405.

Please cite FAC 90-9, FAR case 91-49 in all correspondence related to this case.