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Part II

Department of Defense

**General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Parts 22 and 52

**Federal Acquisition Regulation;
Prohibition of Acquisition of Products
Produced by Forced or Indentured Child
Labor; Proposed Rule**

**Bureau of International Labor Affairs;
Preliminary List of Products Requiring
Federal Contractor Certification as to
Forced or Indentured Child Labor Under
Executive Order No. 13126; Request for
Comments; Notice**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 22 and 52****[FAR Case 1999–608]****RIN 9000–AI51****Federal Acquisition Regulation;
Prohibition of Acquisition of Products
Produced by Forced or Indentured
Child Labor**

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 implement the specific requirements of Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, as well as to prescribe further appropriate actions to comply with the broad policy of the Executive order (*i.e.*, to enforce laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part using forced or indentured child labor.)

DATES: Interested parties should submit comments in writing on or before November 6, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1999–608@gsa.gov. Please submit comments only and cite FAR case 1999–608 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 1999–608.

SUPPLEMENTARY INFORMATION:**A. Background**

On June 12, 1999, the President signed Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (the Order). The Order states a broad policy that executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured wholly or in part by forced or indentured child labor. The Department of Labor, in consultation with the Department of Treasury and the Department of State, must publish in the **Federal Register** a list of products (the List) identified by their country of origin that there is a reasonable basis to believe may have been mined, produced, or manufactured by forced or indentured child labor. The Order does not apply to any contract that does not exceed the micro-purchase threshold. The Order also does not apply to any contract for the procurement of any product mined, produced, or manufactured in a country that is party to the Agreement on Government Procurement or the North American Free Trade Agreement (NAFTA), if the contract amount is equal to or greater than the United States threshold specified in the Agreement on Government Procurement or NAFTA, whichever is applicable.

In accordance with the policy stated in the Order, the proposed rule creates a comprehensive scheme authorizing executive agencies to take appropriate actions to enforce laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part using forced or indentured child labor. In general, the proposed rule requires that an offeror furnishing end products that appear on the List certify that it has made a good-faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product and, on the basis of that effort, the offeror is unaware of any such use of child labor. The proposed rule empowers a contracting officer or the suspension and debarment official of an executive agency to impose on a contractor certain enumerated remedies, including contract termination, suspension, or debarment, if the Government later discovers that the contractor submitted a false certification or if the contractor fails to cooperate with an investigation of such certification. The contracting officer or the suspension and debarment official of an executive agency may also impose remedies on a contractor if it is later discovered that an end product

furnished under the contract, or a component thereof, was in fact manufactured wholly or in part using forced or indentured child labor, notwithstanding the contractor's good-faith certification to the contrary if it is a listed end product. In fact, these remedies may apply even if the end product or component is not on the List. However, the Government would not suspend or debar a contractor unless the contractor knew of the violation.

Authority for the proposed approach comes from both Executive Order 13126 and the Federal Acquisition Regulatory Council's statutory authority to promulgate, maintain, and amend the Federal Acquisition Regulation (see 41 U.S.C. 421, 40 U.S.C. 486(c), 10 U.S.C. Chapters 4 and 137, and 42 U.S.C. 2473(c)).

This rule was subject to Office of Management and Budget 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

This proposed rule is not expected 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 the List is expected to impact a small number of all contracts and therefore an even smaller number of small entities will be impacted by the rule. Furthermore, we expect that very few contractors are furnishing end products or components produced by forced or indentured child labor. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts 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 1999–608), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden: Public reporting burden for this collection of

information is estimated to average .30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 500.

Responses per respondent: 1.

Total annual responses: 500.

Preparation hours per response: .30.

Total response burden hours: 250.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than November 6, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control Number 9000-00XX, FAR Case 1999-608, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: August 28, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR Parts 22 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 22 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Add Subpart 22.15 to read as follows:

Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

Sec.

22.1500 Scope.

22.1501 Definitions.

22.1502 Policy.

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

22.1504 Violations and remedies.

22.1505 Solicitation provision and contract clause.

22.1500 Scope.

This subpart applies to acquisitions of supplies that exceed the micro-purchase threshold.

22.1501 Definitions.

As used in this subpart—

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor means the list published by the Department of Labor in accordance with E.O. 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The list identifies products, by their country of origin, that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.

22.1502 Policy.

Agencies must take appropriate action to enforce the laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor (19 U.S.C. 1307, 29 U.S.C. 201, *et seq.*, and 41 U.S.C. 35, *et seq.*). Agencies should make every effort to avoid acquiring such products.

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(a) When issuing a solicitation for supplies expected to exceed the micro-

purchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) (URL address to be determined) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more (see 25.405);

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);

(3) Mexico, and the anticipated value of the acquisition is \$54,372 or more (see 25.405); or

(4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$177,000 or more (see 25.403(b)).

(c) Except as provided in paragraph (b) of this section, before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—

(1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or

(2)(i) It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.

(d) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

(f) Proper certification will not prevent the head of an agency from imposing remedies in accordance with section 22.1504(a)(4) if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.

22.1504 Violations and remedies.

(a) *Violations.* The Government may impose remedies set forth in paragraph (b) of this section for the following violations (note that the violations in paragraphs (a)(3) and (a)(4) of this section go beyond violations of the requirements relating to certification of end products) (see 22.1503):

(1) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.

(2) The contractor has failed to cooperate as required in accordance with the clause at 52.222-YY, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.

(3) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(b) *Remedies.* (1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

22.1505 Solicitation provision and contract clause.

(a) Except as provided in paragraph (b) of 22.1503, insert the provision at 52.222-XX, Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, except solicitations for commercial items that include the provision at 52.212-3, Offeror Representations and Certifications—Commercial Items. The contracting officer must identify in paragraph (b) of the provision at 52.222-XX, Certification Regarding Knowledge of Child Labor for Listed End Products, or paragraph (i)(1) of the provision at 52.212-3 any applicable end products and countries of origin from the List. For solicitations estimated to equal or exceed \$25,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified at 22.1503(b), in accordance with the specified thresholds.

(b) Insert the clause at 52.222-YY, Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase threshold.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.212-3, revise the date of the provision; add in alphabetical order in paragraph (a) the definition "Forced or indentured child labor"; and add paragraph (i) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Date)

(a) * * *

* * * * *

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

* * * * *

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).* [The Contracting

Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.]

(1) *Listed end products.*

Listed End Product _____

Listed Countries of Origin _____

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

4. In section 52.212-5, revise the date of the clause and the introductory text of paragraph (b); redesignate paragraphs (b)(16) through (b)(27) as (b)(17) through (b)(28), respectively, and add new paragraph (b)(16) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

[*Contracting Officer must check as appropriate.*]

* * * * *

____ (16) 52.222-YY, Child Labor—Cooperation with Authorities and Remedies (E.O. 13126).

* * * * *

5. In section 52.213-4, revise the date of the clause; redesignate paragraphs (b)(1)(vii) through (x) as (b)(1)(viii) through (xi), respectively, and add new paragraph (b)(1)(vii) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items) (Date)

* * * * *

(vii) 52.222-YY, Child Labor—Cooperation with Authorities and Remedies (DATE) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

6. Add new sections 52.222-XX and 52.222-YY to read as follows:

52.222-XX Certification Regarding Knowledge of Child Labor for Listed End Products.

As prescribed in 22.1505(a), insert the following provision:

Certification Regarding Knowledge of Child Labor for Listed End Products (Date)

(a) *Definition.*

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product _____

Listed Countries of Origin _____

(c) *Certification.* The Government will not make award to an offeror unless the offeror, by checking the appropriate block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

(1) The offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

(2) The offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor. (End of provision)

52.222-YY Child Labor—Cooperation with Authorities and Remedies.

As prescribed in 22.1505(b), insert the following clause:

Child Labor—Cooperation with Authorities and Remedies (Date)

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more;

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is \$54,372 or more; or

(4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$177,000 or more.

(b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product

furnished under this contract. If the solicitation includes the provision 52.222-XX, Certification Regarding Knowledge of Child Labor for Listed End Products, the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations.* The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) *Remedies.* (1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

(End of clause)

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