

8.002 Priorities for use of Government supply sources.

(a) * * *

(1) * * *

(iv) Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

* * * * *

(2) *Services.* (i) Services which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

* * * * *

8.004 [Amended]

■ 3. Amend section 8.004 by removing from the first sentence the words “available from” and adding “on the Procurement List maintained by” in its place.

■ 4. Amend section 8.703 by revising the first paragraph to read as follows:

8.703 Procurement list.

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. The Procurement List may be accessed at: <http://www.jwod.gov/procurementlist>. Questions concerning whether a supply item or service is on the Procurement List may be submitted at Internet e-mail address info@jwod.gov or referred to the Committee offices at the following address and telephone number: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202-3259, (703) 603-7740.

* * * * *

■ 5. Amend section 8.714 by revising paragraph (b) to read as follows:

8.714 Communications with the central nonprofit agencies and the Committee.

* * * * *

(b) Any matter requiring referral to the Committee shall be addressed to the Executive Director of the Committee, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202-3259.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.208-9 by revising the date of the clause, by redesignating paragraph (c) as paragraph (a) and revising the first sentence of paragraph (a) to read as follows:

52.208-9 Contractor Use of Mandatory Sources of Supply or Services.

* * * * *

Contractor Use of Mandatory Sources of Supply or Services (Jul 2004)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). * * *

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 9

[FAC 2001-24; FAR Case 2004-009; Item IV]

RIN 9000-AJ98

**Federal Acquisition Regulation;
Determining Official for Employment
Provision Compliance—Immigration
and Nationality Act (INA)**

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) by revising the responsibility for determining when a contractor is not in compliance with the Immigration and Nationality Act (INA) to include both the Attorney General and the Secretary of Homeland Security, pursuant to Executive Order 13286 published March 5, 2003.

DATES: Effective Date: June 18, 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 Goral, Procurement Analyst, at (202) 501-3856. Please cite FAC 2001-24, FAR case 2004-009.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 9.406-2(b)(2) by revising the responsibility for determining when a contractor is not in compliance with INA to include both the Attorney General and the Secretary of Homeland Security pursuant to Executive Order (E.O.) 13286 published March 5, 2003. E.O. 13286 amended Section 4 of E.O. 12989, published February 15, 1996, by adding, along with the Attorney General, the Secretary of Homeland Security as the responsible authority for determining when a contractor is not in compliance with the INA. Pursuant to this amendment, it is necessary to revise FAR 9.406-2(b)(2) to reflect this change.

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 9 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 2001-24, FAR case 2004-009), in correspondence.

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: June 10, 2004.

Ralph J. De Stefano,

Acting 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 9.406-2 by revising paragraph (b)(2) to read as follows:

9.406–2 Causes for debarment.

* * * *

(b) * * *
 (2) A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the debarment proceedings.

* * * *

■ 3. Amend section 9.406–4 by revising the third sentence of paragraph (b) to read as follows:

9.406–4 Period of debarment.

* * * *

(b) * * * Debarments under 9.406–2(b)(2) may be extended for additional periods of one year if the Secretary of Homeland Security or the Attorney General determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. * * *

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 8, 38, and 53**

[FAC 2001–24; FAR Case 1999–603; Item V]

RIN 9000–AJ63

**Federal Acquisition Regulation;
Federal Supply Schedules Services
and Blanket Purchase Agreements
(BPAs)**

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 incorporate policies for services and to strengthen the procedures for establishing Blanket Purchase Agreements under the Federal Supply Schedules.

DATES: Effective Date: July 19, 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 Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–24, FAR case 1999–603. The TTY Federal Relay Number for further information is 1–800–877–8973.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 19294, April 18, 2003, with request for comments. Thirty-four respondents submitted public comments. A discussion of the comments is provided below. The differences between the proposed rule and final rule are addressed in the Councils' response to comments 1 through 9. General changes made to FAR Subpart 8.4 by this rulemaking are provided in the list below. Of particular note, the rule—

- Adds language to make it clear that the contracting officer placing an order on another agency's behalf is responsible for applying that agency's regulatory and statutory requirements; and that the requiring activity is required to provide information on the applicable regulatory and statutory requirements to the contracting officer;
- Adds new coverage on use of statements of work when acquiring services from the schedules;
- Requires that when an agency awards a task order requiring a statement of work, that if the award is based on other than price (best value), the contracting officer shall provide a brief explanation of the basis for the award decision to any unsuccessful contractor that requests such information;
- Refines guidance regarding the use of Governmentwide BPAs;
- Adds language to require the ordering activity to document the results of its BPA review; and

• Reinforces documentation requirements generally and adds new guidance addressing the documentation of orders for services and sole source orders.

In addition, the rule also—

- Adds a definitions section;
- Adds information regarding the Department of Veterans Affairs delegated authority to establish medical supply schedules;
- Adds language to clarify the differences between an Authorized Federal Supply Schedules (FSS) Pricelist and a FSS publication;

- Adds additional information regarding e-Buy, GSA's electronic quote system for the schedules program;

- Clarifies that competition shall not be sought outside the Federal Supply Schedules;

- Adds language stating that the performance period of Blanket Purchase Agreements (BPA) established under the schedules program may cross option periods on the base contracts;

- Adds language that encourages or reminds agencies that they can seek a price reduction at any time, not just when an order exceeds the maximum order threshold;

- Adds additional language to allow for consideration of socio-economic status when identifying the potential competitors for an order;

- Adds new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;

- Reserves the ordering procedures for Mandatory Use Schedules section;

- Clarifies the procedures for termination for cause and convenience; and

- Reorganizes and revises the subpart text for ease of use.

B. Summary and Discussion of Significant Public Comments

1. **Comment: Ordering offices need not seek further competition.** Several respondents stated that the phrase “Ordering offices shall not seek further competition” is confusing or misleading. In addition, the requirement that agencies need not seek further competition, synopsize the requirement, or consider small business programs when placing orders or issuing Blanket Purchase Agreements under the schedule ordering procedures did not seem fair.

Councils' response: Partially concur. The Councils determined that although the language was clear, an additional explanation would be added. The Councils clarified the language at 8.404(a) to indicate that ordering activities need not seek competition outside of the Federal Supply Schedules. Agencies must follow the procedures of Subpart 8.4 to ensure compliance with the requirement for full and open competition as implemented under the Multiple Award Schedules program.

2. **Comment: Use of the term “appropriate number.”** Concern was raised regarding the use of the term “appropriate number” at FAR 8.404–1(d)(1) and FAR 8.404–2(c)(2)(ii) of the proposed rule. The term “appropriate number” pertains to the number of