

(B) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer; and

\* \* \* \* \*

10. In section 52.212-3—

a. Revise the date of the clause;

b. Revise the introductory text of paragraph (h);

c. In paragraph (h)(1), remove “, and” and add “;” in its place; and

d. Revise paragraph (h)(2);

e. Add new paragraphs (h)(3) and (h)(4) to read as follows:

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

\* \* \* \* \*

Offeror Representations and Certifications—Commercial Items (Jan. 2001)

\* \* \* \* \*

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that—

\* \* \* \* \*

(2) [ ] Have, [ ] have not, within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(3) [ ] Are, [ ] are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses; and

(4)(i) The offeror, aside from the offenses enumerated in paragraphs (1), (2), and (3) of this paragraph (h), [ ] has [ ] has not within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws—

(A) Been convicted of a Federal or state felony (or has any Federal or state felony

indictments currently pending against them); or

(B) Had a Federal court judgment in a civil case brought by the United States rendered against them; or

(C) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.

(ii) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer.

\* \* \* \* \*

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Chapter 1**

#### **Federal Acquisition Regulation; Small Entity Compliance Guide**

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97-21 which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further

information regarding this rule by referring to FAC 97-21 which precedes this document. This document is also available via the Internet at <http://www.arnet.gov/far>.

#### **FOR FURTHER INFORMATION CONTACT:**

Laurie Duarte, FAR Secretariat, (202) 501-4225. For clarification of content, contact Ralph De Stefano, Procurement Analyst, General Services Administration, at (202) 501-1758.

#### **Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings (FAC 97-21, FAR Case 1999-010)**

This final rule amends—

- Part 9 to clarify that a satisfactory record of compliance with the law indicates that the prospective contractor possesses basic honesty and that the Government can trust or rely on the contractor to perform the contract in a timely manner. In making a determination of responsibility based upon integrity and business ethics, contracting officers must consider all relevant credible information. However, contracting officers should give the greatest weight to violations of laws that have been adjudicated within the last three years preceding the offer.

- FAR Parts 14 and 15 to provide notice to prospective contractors as quickly as possible when a nonresponsibility determination is made;

- FAR Part 31, to make unallowable certain costs related labor activities, and other legal proceedings unallowable; and

- FAR Part 52, to add a requirement for offerors to certify to violations of certain laws.

Dated: December 15, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

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