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2001-014-3

April 4, 2001

General Services Administration
FAR Secretariat (MVR)
Attention: Ms Laurie Duarte
Room 4035
1800 F Street, N W.
Washington, D C. 20405

Re: FAR Case 1999-010 (interim rule), and FAR Case 2001-014, Contractor Responsibility, Labor Relations Cost, and Costs Relating to Legal and Other Proceedings (proposed rule)

Dear Ms Duarte

I am writing to support the interim rule suspending the Clinton administration's "contractor responsibility"/blacklisting rule (FAR Case 1999-010) I also strongly support the proposed rule, which would permanently revoke the Clinton administration regulation (FAR Case 2001-014)

The blacklisting regulation imposed by the previous administration was politically motivated and would have caused great harm to the government's procurement system and to contractors doing business with the federal government There was no justification for including the added categories of covered laws in the responsibility rule, and the rule provided little or no guidelines to prevent arbitrary or abusive enforcement. The rule provided no benefit to either the government or federal contractors, while imposing extra costs and burdens on both

1. No justification

Under the suspended rule, any reasonable person, and even the agencies themselves, would be left to wonder about the most basic factors to be applied in complying with the suspended regulations "What is "relevant credible information"? Why should the "greatest weight" be given to adjudicatory decision, orders, or complaints issued by any federal agency, board, or commission," regardless of whether such decisions having any bearing on the offeror's ability and capacity to perform? Why should any weight be given to mere "complaints" issued by federal agencies, which are often prompted by unfounded allegations of competitors, labor organizations or the like? How will the due

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process rights of contractors to confront their accusers be protected before the punishment of "non-responsibility" is levied against them?

Even worse, it is clear that the suspended regulations would have operated in a manner, which directly contradicts, and in effect usurps, Congressional mandates, particularly in the field of labor law

Finally, the suspended regulations violate Congressional mandates to streamline and reform federal procurement The purpose of these laws was to make the government's acquisition of products simpler and easier. The regulations would clearly have had the opposite effect, slowing down even the simplest awards because it will take more time to address responsibility issues and investigate allegations of substantial noncompliance with the myriad listed laws

Unions in particular have developed and broadly promoted the use of so-called "corporate campaigns" which make use of the regulatory apparatus to target even small employers for legal challenges, all with the objective of increasing pressure on such employers either to sign a union agreement or leave the marketplace

2. The Suspended Regulations Are Arbitrary and Capricious

The suspended regulations would have incorporated a host of other laws that are not relevant to contract performance There is no rational basis for this change. According to one agency official, each agency responsible for the various new areas of law would have to establish a system whereby contracting officers "can obtain specific, detailed information on decided cases," including "the agency's position as to whether was 'substantial noncompliance' or a clear violation of law."

Of course, no such system presently exists, nor is there any budgetary authorization for such a cumbersome and expensive system to be established. Under such circumstances, the responsibility determinations issued by contracting officers can only have arbitrary and capricious results.

The suspended regulations contain no explanation of the need for the certification requirement, which, for many contractors, will be almost impossible to fulfill. Many contractors have dozens of locations within the United States run by different divisions or subsidiaries. Certifying compliance with every law specified by the suspended regulation would require internal tracking, recordkeeping and reporting far beyond current norms. No single official at any but the smallest companies is presently able to keep track of their contractors' compliance with all applicable laws and have no reason to do so. Incorrect submissions will raise the specter of liability under federal law

3. There was no benefit to counterbalance the costs associated with the regulation.

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In promulgating the regulation, the previous administration never formulated a cost/benefit analysis Indeed, there appear to be no measurable benefits, as the federal agencies agreed that the contractor responsibility regulations in place at the time the regulations were originally suspended were adequate to protect the government's interests The Clinton administration's blacklisting regulations would have raised the costs of doing business with the government, and raised the costs of procurement for every federal agency, without any corresponding benefit

Conclusion

I believe that the proposed rule will restore sanity to the process of contracting with the federal government The government's interests are more than adequately protected by the procurement system, the blacklisting regulation would have done harm to this system By permanently revoking the blacklisting rule, the federal government will avoid the easily foreseeable difficulties of delay, additional cost, favoritism and others.

It has been widely reported that the genesis of the suspended regulations was political in nature It remains vital, however, that the procurement process be free from politics and that there be no favoritism towards special interests In particular, the federal government has always maintained a position of absolute neutrality on labor issues in the award of government contracts. The contractor responsibility regulations would have destroyed that neutrality and would turn every procurement into a political football. Future offerors would be subject to potentially disqualifying charges under an inestimable number of laws, having no bearing on their ability to perform, and dependent entirely on the negative agendas of labor unions and competitors

The FAR Council has the power and the obligation to rise above political considerations in order to protect the procurement process from being undermined The suspended regulations are blatantly unlawful and will create unnecessary distractions from the government's long-term procurement objectives. I support the suspension of the blacklisting regulations, and I support the rule that permanently revokes them

Sincerely,

Rod Jara
President

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