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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1880

14 CFR Parts 1260, 1265, and 1274

RIN 2700-AD32

NASA Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is issuing a new Part 1880 on nonprocurement debarment and suspension in Title 2 of the Code of Federal Regulations (CFR). This new part is NASA's implementation of the Office of Management and Budget's (OMB) guidance provided at 2 CFR Part 180. In light of the new Part 1880, NASA is removing 14 CFR Part 1265 which contains the current NASA implementation of the government-wide common rule on nonprocurement debarment and suspension. The new part in 2 CFR serves the same purpose as the common rule in a simpler way. This final rule is part of OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension. It is an administrative simplification that makes no substantive change in NASA policy or procedures for nonprocurement debarment and suspension.

EFFECTIVE DATE: This final rule is effective April 20, 2007.

FOR FURTHER INFORMATION CONTACT: Jamiel C. Commodore, NASA, Office of Procurement, Contract Management Division; (202) 358-0302; e-mail: Jamiel.C.Commodore@nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On May 11, 2004, OMB established Title 2 of the CFR with two subtitles (69 FR 26275). Subtitle A, "Government-wide Grants and Agreements," contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, "Federal Agency Regulations for Grants and Agreements," contains Federal agencies' regulations implementing the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions.

On August 31, 2005, OMB published interim final guidance for government-wide nonprocurement debarment and suspension in the *Federal Register* (70 FR 51863). The guidance is located in Title 2 of the CFR as new Subtitle A, Chapter 1, Part 180. The interim final guidance updated previous OMB guidance that was issued pursuant to Executive Order 12549 of February 18, 1996, Debarment and Suspension, which gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive Order authorized OMB to issue guidance to Executive agencies on nonprocurement debarment and suspension, including provisions prescribing government-wide criteria and minimum due process. Section 3 directed Executive agencies to issue regulations implementing the Executive Order that are consistent with the OMB guidelines. On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

In accordance with OMB's guidance, NASA is issuing this final rule to adopt and implement Title 2 CFR, Part 180. The rule includes the same NASA additions and clarifications to the common rule on nonprocurement debarment and suspension that were added to 14 CFR 1265 in November 2003 (68 FR 66573). As indicated, this latter coverage is now obsolete and is removed by this final rule.

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

NASA certifies that this final rule will not 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 involves an administrative adoption of a previously codified material in a new part of the CFR.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes 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

2 CFR Part 1880

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

14 CFR Part 1260

Grant programs—science and technology.

14 CFR Part 1265

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

14 CFR Part 1274

Grant programs—science and technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 2 CFR and 14 CFR Parts 1260, 1265 and 1274 are amended as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter XVIII, consisting of Part 1880 to Subtitle B, to read as follows:

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1880—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1880.10 What does this part do?

1880.20 Does this part apply to me?

1880.30 What policies and procedures must I follow?

Subpart A—General

1880.137 Who in NASA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1880.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1880.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J—[Reserved]

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

§ 1880.10 What does this part do?

This Part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the NASA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1880.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a NASA suspension or debarment action;

(c) NASA debarment or suspension official; or

(d) NASA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 1880.30 What policies and procedures must I follow?

The NASA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 1880.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, NASA policies and procedures are those in the OMB guidance.

Subpart A—General**§ 1880.137 Who in NASA may grant an exception to let an excluded person participate in a covered transaction?**

The Chief Acquisition Officer has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions**§ 1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), NASA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions**§ 1880.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**§ 1880.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR

180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant’s compliance with Subpart C of 2 CFR part 180, as supplemented by Subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J—[Reserved]**Title 14—Aeronautics and Space****Chapter V—National Aeronautics and Space Administration****PART 1260—GRANTS AND COOPERATIVE AGREEMENTS**

■ 2. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–110.

■ 3. Amend § 1260.10 by revising paragraph (c)(1)(i) to read as follows:

§ 1260.10 Proposals.

* * * * *

(c)(1) * * *

(i) A certification for debarment and suspension under the requirements of 2 CFR § 180.510.

* * * * *

■ 4. Amend § 1260.76 by revising paragraph (b) to read as follows:

§ 1260.76 Termination and enforcement.

* * * * *

(b) The Director, Contract Management Division, shall provide to the General Services Administration information concerning all NASA debarments, suspensions, determinations of ineligibility, and voluntary exclusions of persons in accordance with 2 CFR 180.505.

* * * * *

■ 5. Amend § 1260.113 to read as follows:

§ 1260.113 Debarment and suspension.

NASA and recipients shall comply with the nonprocurement debarment and suspension rule, 2 CFR 180 implementing Executive Orders 12549 and 12689, “Debarment and Suspension”. This rule restricts contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

■ 6. Amend § 1260.144 by revising paragraph (d) to read as follows:

§ 1260.144 Procurement procedures.

* * * * *

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 2 CFR part 180, the implementation of Executive Orders 12549 and 12689, "Debarment and Suspension."

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■ 7. Amend § 1260.162 by revising paragraph (d) to read as follows:

§ 1260.162 Enforcement.

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(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and 2 CFR part 180 (see § 1260.113).

PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 8. The authority citation for 14 CFR part 1265 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

PART 1265—[REMOVED]

■ 9. Remove Part 1265.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 10. The authority citation for 14 CFR part 1274 continues to read as follows:

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451, *et seq.*

■ 11. Amend § 1274.211 by revising paragraph (d)(2) to read as follows:

§ 1274.211 Award procedures.

* * * * *

(d) * * *

(2) Each new proposal shall include a certification for debarment and suspension under the requirements of 2 CFR 180.510 and 1260.117.

* * * * *

■ 12. Amend § 1274.505 by revising paragraph (d) to read as follows:

§ 1274.505 Procurement procedures.

* * * * *

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 2 CFR part 180, the implementation of Executive Orders 12549 and 12689, "Debarment and Suspension."

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■ 13. Revise § 1274.927 to read as follows:

§ 1274.927 Debarment and Suspension and Drug-Free Workplace.

Debarment and Suspension and Drug-Free Workplace (APR 2007)

NASA cooperative agreements are subject to the provisions of 2 CFR part 180, Government-wide Debarment and Suspension (Nonprocurement) and 14 CFR part 1267, Government-wide requirements for Drug-Free Workplace, unless excepted by 2 CFR 180.110 or 180.610.

[End of Provision]

[FR Doc. 07–1949 Filed 4–19–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26075; Directorate Identifier 2006–CE–55–AD; Amendment 39–15025; AD 2007–08–08]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (The Beech Aircraft Company and BEECH previously held Type Certificate Nos. 3A15, 3A16, 5A3, and A–777) Models 35–33, 35–A33, 35–B33, 35–C33, E33, F33, G33, 35–C33A, E33A, F33A, E33C, F33C, 35, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A45 (T–34A, B45), D45 (T–34B), 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A, D55, D55A, E55, E55A, 56TC, A56TC, 58, 95, B95, B95A, D95A, and E95 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) that

supersedes AD 72–22–01, which applies to certain Raytheon Aircraft Company (RAC) (The Beech Aircraft Company and BEECH previously held Type Certificate Nos. 3A15, 3A16, 5A3, and A–777) Models 33, 35, 36, 45, and 95 series airplanes. AD 72–22–01 currently requires you to determine if each uplock roller is of the greasable type (one having a drilled and grooved inner race), replace any nongreasable uplock roller (one having a solid inner race) with the greasable type before further flight, install hollow zerk-ended mounting bolts on the uplock rollers, and repetitively lubricate the uplock mechanism. Since we issued AD 72–22–01, there was a recent incident involving a RAC Model 95–B55B (T–42A) airplane where a seizure of the uplock rollers occurred. This malfunction of the uplock rollers is addressed in AD 72–22–01. Thus, the FAA has determined that the actions of AD 72–22–01 should also apply to certain serial numbers of the Model 95–B55B (T–42A) airplanes. Consequently, this AD retains all the actions of AD 72–22–01, adds those Model 95–B55B (T–42A) airplanes to the applicability of this AD, and lists the specific serial numbers. We are issuing this AD to decrease the possibility of gear-up landings caused by seizure of the uplock rollers.

DATES: This AD becomes effective on May 25, 2007.

On May 25, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA–2006–26075; Directorate Identifier 2006–CE–55–AD.

FOR FURTHER INFORMATION CONTACT: Anthony Flores, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4174; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On December 4, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to