

Government Contracts Blog

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Implementation Of CISADA: New FAR Requirements

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Effective September 29, 2010, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (“FAR Councils”) issued an interim rule amending the FAR to implement sections of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“CISADA”), signed into law on July 1, 2010. 75 Fed. Reg. 60254 (Sept. 29, 2010).

Certification

Section 102 of CISADA requires that offerors for a government contract certify that neither the offeror, nor any person owned or controlled by the offeror, engages in activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996, as amended. The sanctionable activity includes:

- *Investment in Iran’s petroleum production:* Knowingly making an investment of \$20 million or more (including by increments of at least \$5 million within twelve months) that directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources is prohibited.
- *Expansion of Iran’s refined petroleum industry:* Knowingly selling, leasing or providing to Iran goods, services, technology, information or support, that could facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, is prohibited. The restrictions apply to any individual transaction of at least \$1 million or a total of \$5 million over twelve months.
- *Exporting refined petroleum products to Iran:* Knowingly selling or providing to Iran refined petroleum products with a fair market value of \$1,000,000 or more in a single transaction, or \$5 million or more during a twelve-month period, is prohibited.
- *Assisting Iran’s ability to acquire or develop weapons:* Exporting, transferring, or otherwise providing to Iran any goods, services, technology or other items, knowing that it could contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons, or related technologies or acquire or develop

destabilizing number and types of advanced conventional weapons.

- *Assisting Iran's ability to import refined petroleum products*: Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support, that could enhance Iran's ability to import refined petroleum products, worth at least \$1 million in a single transaction, or \$5 million or more during a twelve-month period, is prohibited. CISADA specifically includes the following activities as indicia of supporting Iran's ability to import refined petroleum products:
 - Providing certain insurance or reinsurance, underwriting, financing, or brokering for the sale, lease, or provision of such items, or
 - Providing ships or shipping services to deliver refined petroleum products to Iran.

Section 5 of the Iran Sanctions Act of 1996 recently was amended by CISADA; for a full description of the sanctionable activity please refer to our [July](#) and [August](#) articles.

This certification requirement applies to all contracts, including commercial contracts, contracts for the acquisition of commercial-of-the-shelf items, and contracts below the simplified acquisition threshold. The certification will be part of the Online Representations and Certifications Application ("ORCA"). The lone exception to the certification is for procurements subject to the Trade Agreements Act ("TAA"). Offerors providing TAA compliant products from an eligible foreign country are not required to make this CISADA certification, an exception that obviously relieves foreign competitors of yet another burden laid on U.S. businesses.

The President may waive the certification requirement on a case-by-case basis if the President determines that it is in the national interest to do so and provides a written certification of the waiver to the appropriate congressional committees.

Apart from the customary False Claims Act liabilities that may accompany a false certification, penalties for submitting a false certification may include one or more of the following:

- The contracting officer may terminate the contract;
- The contractor may be suspended in accordance with the procedures in FAR subpart 9.4; and/or
- The contractor may be debarred for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

Procurement Prohibition

Section 106 of CISADA prohibits contracting with persons that export certain sensitive

technology to Iran. “Sensitive technology” includes any hardware, software, or other equipment, that restricts the free flow of information in Iran or which monitors, disrupts, or restricts free speech in Iran. Persons determined to be exporters of certain sensitive technology will be listed on the Excluded Parties List. Agencies may not enter into or extend contracts with such persons. This section of CISADA is subject to further implementation in FAR Case 2010-018.

Comments on this interim rule are due by November 29, 2010.

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