



Construction Industry Round Table

Press Release

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Exclusive Poll of Top Design/Construction Firm CEOs Finds Proposed "Blacklisting" Rule Fatally Flawed

WASHINGTON, DC—November 9, 1999— A near unanimous 90 percent of respondents to an exclusive opinion poll released today by Construction Industry Round Table (CIRT) of its top design and construction firm CEOs indicate that "they had little or no level of confidence in the [federal] contracting officers' ability to handle the complexity and nuances expected of them" to administer and enforce the proposed changes to the Federal Acquisition Regulation (FAR) regarding contractor responsibility consideration and eligibility findings (otherwise known as the "blacklisting" rule).

Release of the stunning real-time poll came with the Round Table's [official comments to the FAR Council Secretariat](#), in which CIRT concluded that the proposal (FAR Case 99-010) was "clearly flawed beyond repair" and should be suspended indefinitely so as to "preserv[e] the FAR Council's impartiality and the integrity of the FAR rule already on the books" with respect to the "blacklisting" issue, namely, FAR Rule 9.104-1(d) and (e).

"The FAR Council was created to establish a respected body to review and finalize regulatory rulemakings," noted CIRT President, Mark A. Casso, Esq. "Part of that mandate requires the Council to safeguard the trust that is engendered between the private sector and federal agencies when it comes to creating the rules that will govern their relationship. Our opinion poll reveals how seriously the amendments are flawed and how little trust is present when it comes to potential enforcement of this new blacklisting proposal," said Mr. Casso. He urged "the FAR Council not to undercut the partnership between private sector firms and federal agencies by pushing the proposed amendments to finalization."

CIRT rejected the rulemaking's contention that it was promulgated merely to "clarify coverage and give examples," as well as the claims of its supporters that the proposal was a common sense extension of "if you violate the law, you can't do business with the federal government." The Round Table pointed out that the FAR already adequately establishes rules regarding disbarring contractors for violations of laws and regulations, whereas the proposed amendments will, in reality, "abrogate the delicate balance between the parties (on federal contracts) and [the] adjudicative process."

The Construction Industry Round Table conducted the opinion poll during the period October 15 – November 8, 1999 among its nearly 100 CEOs of leading architectural, engineering, and construction companies, in preparation for CIRT's comments on the rulemaking. In addition to the 90 percent finding noted above, the poll, which had a slightly over 20 percent response rate, also found that:

- 63 percent of the CIRT CEOs believed requiring contracting officers to base adverse pre-award responsibility determinations on claims of insufficient "workplace practices addressing matters such as training, worker retention, and legal compliance to assure a skilled, stable and productive workforce," both an inappropriate and not measurable standard.
- Not surprisingly, almost three-quarters (73.7%) of CIRT's CEOs did not believe mere allegations and/or claims of violations of complex laws, without the benefit of a final adjudication by a competent authority, should be sufficient for an adverse determination that would blacklist a firm doing business with the federal government.

The Round Table concludes that the proposed rule is fatally flawed and should be allowed to die. "No where in the proposal does it direct the contracting officers to consider the relevancy of any of the alleged claims to the ability of the contractor to perform the work in a safe, competent, and/or timely manner, nor are safeguards established for due

diligence and due process. Certainly, the government should have these concerns as high on its list as any suggested in the proposal," contends Mr. Casso.