

**U.S. Chemical Safety and  
Hazard Investigation Board**

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**Vanessa Allen Sutherland**  
Board Chairperson

**Manny Ehrlich, Jr.**  
Board Member

**Rick Engler**  
Board Member

**Kristen Kulinowski, Ph.D.**  
Board Member



August 26, 2015

General Services Administration, Regulatory Secretariat (MVCB)  
ATTN: Ms. Hada Flowers  
1800 F Street N.W.  
Washington DC 20405

**Docket ID: FAR 2014-0025; RIN: 9000-AM81**

Dear Ms. Flowers:

Please find attached the U.S. Chemical Safety and Hazard Investigation Board's (CSB's) comments on the joint Department of Defense/General Services Administration/National Aeronautics and Space Administration's "Federal Acquisition Regulations; Fair Pay and Safe Workplaces Proposed Rule" that was published in the *Federal Register* on May 28, 2015.

The CSB appreciates the opportunity to provide comments on this Proposed Rule. Please do not hesitate to contact us with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vanessa Allen Sutherland".

Vanessa Allen Sutherland  
Board Chairperson

A handwritten signature in blue ink, appearing to read "Rick Engler".

Rick Engler  
Board Member

A handwritten signature in blue ink, appearing to read "Manny Ehrlich, Jr.". There is a small mark to the left of the signature.

Manny Ehrlich, Jr.  
Board Member

A handwritten signature in blue ink, appearing to read "Kristen Kulinowski".

Kristen Kulinowski, Ph.D.  
Board Member

Attachment

## Comments on FAR Fair Pay & Safe Workplaces Proposed Rule

### The CSB and its Mission

The CSB is an independent federal agency charged with investigating industrial chemical accidents. Headquartered in Washington, DC, the agency's board members are appointed by the President and confirmed by the Senate.

The CSB conducts root cause investigations of chemical accidents at fixed industrial facilities. Root causes are usually deficiencies in safety management systems, but can be any factor that contributed to the occurrence of the accident. Other accident causes often involve equipment failures, human factors, unforeseen chemical reactions or other hazards. The CSB does not issue fines or citations, but does make recommendations to regulatory agencies, industry organizations, labor groups, and companies to prevent recurrence of similar accidents in the future. Congress designed the CSB to be non-regulatory and independent of other agencies so that its investigations might, where appropriate, review the effectiveness of regulations and regulatory enforcement. Consequently, the CSB is only providing comments pertaining to safety and health issues associated with responsibility determinations in the Proposed Rule.

### DEI Explosion and Fire

The CSB investigation of the April 8, 2011 explosion and fire in a storage magazine leased by Donaldson Enterprises, Inc. (DEI) at Waikele Self Storage located in Waipahu, Hawaii which resulted in five fatalities and one serious injury serves to illustrate the current safety and health gaps in the Federal Acquisition Regulations (FAR). The CSB released its final report<sup>1</sup> on this explosion on January 17, 2013. DEI is a small unexploded ordnance (UXO) remediation company based on Oahu that was awarded a subcontract by VSE Corporation (VSE) in 2010 to dispose of fireworks under a federal seized property management contract administered by the Treasury Executive Office of Asset Forfeiture (TEOAF). The FAR governed this contract and the process for awarding subcontracts under it. VSE procurement personnel selected DEI to conduct this work because DEI was already storing the seized fireworks at the time under a separate subcontract with VSE, and because DEI had submitted the lowest-cost and most time-efficient bid, which VSE determined to be the best overall value for the government. This determination was made despite the fact that DEI had no experience handling or disposing of fireworks.

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<sup>1</sup> Available at: <http://www.csb.gov/donaldson-enterprises-inc-fatal-fireworks-disassembly-explosion-and-fire/>

Federal contracting regulations did not require VSE procurement personnel to conduct a safety-related review of DEI prior to awarding the company the subcontract, nor did VSE procurement personnel involved in awarding this subcontract have training and experience related to fireworks disposal. In addition, VSE procurement personnel did not understand the technical differences between UXO disposal practices versus safe disassembly and disposal of fireworks. In addition, VSE procurement personnel were unaware that DEI had no prior fireworks disposal experience when it awarded the subcontract.

DEI did not conduct a proper hazard review to identify key hazards of handling, disassembling, and storing these fireworks, and those hazards that were identified were not adequately controlled. Instead, DEI personnel began cutting open, or disassembling, individual firework tubes by hand on a loading dock outside the magazine entrance and then separating out the individual explosive fireworks components (the black powder and aerial shells), which are both susceptible to ignition from sparks, friction, and static electricity. DEI personnel stored the accumulated explosive powder in cardboard boxes lined with plastic garbage bags. DEI personnel then cut one-inch slits in the aerial shells, soaked those in diesel, and burned them at a nearby shooting range. DEI notified VSE personnel of this methodology via email in March 2011, but VSE did not question it.

At the time of the incident, DEI personnel had halted their disassembly work due to rain and taken the materials to just inside the magazine entrance. Boxes containing aerial shells, black powder, and partially disassembled firework tubes were stacked inside the magazine entrance along with tools, a metal hand truck, and chairs. Shortly after this activity there was a large explosion near the magazine entrance.

The CSB determined that DEI's actions resulted in the accumulation of a large quantity of explosive components just inside the magazine entrance, creating the essential elements for the large explosion.

### **Responsibility Determination in Federal Contracting Regulations**

The Federal Acquisition Regulation, or the FAR, is a broad set of regulations governing federal agencies' acquisitions of goods and services, and covers both the selection of contractors and subcontractors under federal contracts. FAR Subpart 9.104-4 requires prime contractors to determine the "responsibility" of their subcontractors before awarding a subcontract. To be deemed "responsible" under the FAR, a prospective contractor or subcontractor must "a) [h]ave adequate financial resources to perform the contract...[;] b) [b]e able to comply with the required or proposed delivery or performance schedule...[;] c) [h]ave a satisfactory performance record...[;] d) [h]ave a satisfactory record of integrity and business ethics...[;] e) [h]ave the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including...quality assurance and safety programs...)[;] f)

[h]ave the necessary production, construction, and technical equipment and facilities...[;] and g) [b]e otherwise qualified and eligible to receive an award under applicable laws and regulations.”<sup>2</sup>

The CSB found in its investigation of the DEI incident that the FAR does not specifically require a federal contracting officer to consider safety performance measures and qualifications when determining the “responsibility” of a potential government contractor or subcontractor to handle, store, and dispose of hazardous materials.

VSE procurement analysis found that DEI’s proposal was the lowest-cost and most time-efficient, and therefore determined it to be the best overall value for the government. According to VSE, this, along with the fact that DEI was a local company already storing the fireworks, led VSE procurement to select DEI as the subcontractor. The CSB found that VSE procurement personnel did not have the technical background or knowledge to properly select and oversee subcontractors performing work with hazardous materials such as fireworks, nor did it consult with or hire anyone with that expertise. As a result, VSE’s procurement office conducted a non-technical review of DEI and the competing offeror for the fireworks disposal subcontract that did not consider or address health and safety.

**CSB’s DEI Recommendation to the FAR Council on Responsibility and Public Hearing**

Based on the findings of the DEI investigation, the CSB Board voted on January 17, 2013, to recommend the following to the Federal Acquisition Regulatory (FAR) Council:

**CSB Recommendation No. 2011-06-I-HI-R1:**

*Establish an additional contractor responsibility determination requirement under Subpart 9.101-1 of the Federal Acquisition Regulation (FAR) addressing contractor safety performance. The analysis under this requirement should focus on incident prevention, and environmental and system safety. At a minimum, the language should specifically require the review of a prospective contractor’s:*

- *Environmental and safety programs;*
- *Safety record and incident history;*
- *Ability to use safety methods for any work involving hazardous materials (including explosives); and*
- *Suitable training and qualifications for the personnel involved in the work including prior relevant safety experience.*

In conjunction with the Board vote on recommendations, the CSB held a public hearing in Washington, DC, to discuss the findings and causes of the DEI investigation and to

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<sup>2</sup> 48 CFR §9.104-1(a)-(g)

announce the release of the final CSB investigation report. At the public meeting, the CSB received a number of comments on its report and recommendations. The following organizations voiced their support for the CSB Recommendation to the FAR Council: Project for Government Oversight, Change to Win Labor Federation, Center for American Progress, both the Safety & Health and Building Trades Departments at the AFL-CIO, Center for Effective Government, Center to Protect Workers Rights, and the Department of Defense Explosives Safety Board.<sup>3</sup>

### **Proposed FAR Subpart 22.20 “Fair Pay and Safe Workplaces”**

The proposed rule (FAR subpart 22.20, Fair Pay and Safe Workplace)<sup>4</sup> requires that:

- For contracts over \$500,000, prospective and existing contractors/subcontractors must disclose certain labor violations (including administrative merits determinations, civil judgments, or arbitral award or decision rendered against them) during the preceding three-year period for violations of any of 14 identified Federal labor laws and executive orders. These include OSHA citations and notices of imminent danger.
- Contracting officers must consider these disclosures during their determination of responsibility under the FAR.
- Contracting officers and contractors must consider semi-annual updates to disclosures and disclosures of any new violations to determine whether action (e.g., No Action; DOL referral for action; Do not exercise a contract option; Terminate the contract; or Notify agency Suspending and Debarring Official) needs to be taken during contract performance.

### **CSB Comments on Proposed Rule**

- For procurements that involve work with hazardous chemicals and/or hazardous work practices, the CSB strongly urges the FAR Council to add provisions to FAR Subpart 9.104-1 in the Final Rule to require contracting officers to review the content of prospective contractors’ safety and health programs before making a determination of responsibility. Based on the findings of our DEI investigation as previously explained above, the CSB recommended to the FAR Council in January 2013 that additional provisions need to be added to FAR Subpart 9.104-1 to ensure prospective contractors’ safety and health programs are appropriately evaluated for these types of procurements. This proposed regulation is a step in the right direction, in that it requires contracting officers and contractors to consider a potential/current contractor or subcontractor’s safety record and incident history as part of the responsibility determination under the FAR. However, the Proposed Rule only addresses FAR Subpart 9.104-1(d) [e.g., integrity and business ethics] which in

<sup>3</sup> Transcript available at: <http://www.csb.gov/assets/1/19/transcript4.pdf>.

<sup>4</sup> See 80 FR 30565

turn only partially<sup>5</sup> addresses the second bullet of the CSB's Recommendation to the FAR. Consequently, much more needs to be done before the Board can consider the full intent of the recommendation to be fulfilled.<sup>6</sup> The CSB bases this comment on lessons learned by our agency from nearly two decades of investigating incidents involving hazardous chemicals and/or hazardous work practices (e.g., servicing process equipment; confined space entry; opening process lines; emergency maintenance, etc.) that resulted in fires, explosions and/or releases of toxic chemicals that have seriously harmed or killed workers, contractors, emergency responders and in some cases even members of the general public.

- Best practices developed and published by industry in consensus standards and advocacy documents should be adapted by the FAR Council and placed in the Final Rule to aid contracting officers in evaluating prospective contractors' safety and health programs, especially when hazardous chemicals or hazardous work practices are involved. As discussed in the CSB's *Investigation Report: Xcel Energy Hydroelectric Plant Penstock Fire*,<sup>7</sup> issued in August 2010, several organizations and industry associations, including the Construction Users Roundtable (CURT), the American Petroleum Institute (API) and the American Industrial Hygiene Association (AIHA), have developed guidelines and recommended practices addressing the use of safety criteria for selecting and prequalifying contractors. The FAR Council should utilize these sources to develop appropriate measures for inclusion in FAR Subpart 9.104-1 in the Final Rule to ensure prospective contractors' safety and health programs are appropriately evaluated by contracting officers in their determination of responsibility.

CURT is an industry organization that promotes advocacy to users of construction services on national issues that includes "developing industry standards and owner expectations with respect to safety, training and worker qualifications."<sup>8</sup> CURT is comprised of 66 member companies, organizations and government entities that represent some of the largest industrial corporations and users of construction services in the U.S., including: DuPont, ExxonMobil, Dow Chemical, Intel, Proctor & Gamble, Duke Energy, General Motors, Shell, the U.S. General Services Administration and the U.S. Army Corp. of Engineers.<sup>9</sup> CURT has stated that demonstrated safety performance is a "critical criterion used in the [contractor] prequalification process."<sup>10</sup> CURT guidance lists staff qualifications, accident history,

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<sup>5</sup> The CSB Recommendation applies to all contracts issued under the FAR and does not contain a \$500,000 threshold regarding its applicability.

<sup>6</sup> The CSB's processes for issuing, evaluating, and designating status changes for safety recommendations can be found at the following link: <http://www.csb.gov/recommendations/faq/>

<sup>7</sup> Available at: <http://www.csb.gov/xcel-energy-company-hydroelectric-tunnel-fire/>

<sup>8</sup> See <http://www.curt.org/about-us.aspx?>, accessed 7/9/2015.

<sup>9</sup> CURT membership roster can be found at this link: <http://www.curt.org/Membership-Roster.aspx>, accessed 7-9-2015.

<sup>10</sup> CURT, *Construction Safety: the Owner's Role*. Publication No. UP-802, pg. 6.

a contractor's safety program, and an owner's previous experience as potential criteria for safety prequalification of a contractor.

API Recommended Practice (RP) 2221 (2011), *Contractor and Owner Safety Program Implementation*, recommends contractor prequalification using a variety of safety criteria. This Recommended Practice states that "[t]he selection of a qualified contractor is the first step toward obtaining safe contractor performance."<sup>11</sup> API RP 2221 provides a comprehensive prequalification form that includes 48 questions and data requests. While this API publication applies only to refining and petrochemical industry facility owners, it provides persuasive guidance to improve contractor safety performance, particularly for those contractors that will be performing hazardous repair, maintenance and construction work.

The ANSI/AIHA/ASSE Standard Z10-2012, *Occupational Health and Safety Management Systems*, also recommends that the contractor prequalification process include review of safety criteria, such as OSHA injury and illness logs, OSHA citations and training certifications, for successful contractor safety performance management.<sup>12</sup>

- The CSB encourages the FAR Council to also use the DoD *Defense Federal Acquisition Regulation Supplement (DFARS)*<sup>13</sup> as a model to make more robust the responsibility determination requirements with additional health and safety considerations. The DFARS reflects the hazardous nature of the DoD's work and its commitment to protecting the public and workers by requiring more rigorous contractor and subcontractor selection and oversight practices.

The DoD's DFARS Section 223, "Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace," considers additional safety and contractor oversight for all DoD acquisitions involving the use of ammunition and explosives (AE), including handling or loading, assembling, transportation, storage, and disposal. Section 223 requires contracting officers to incorporate DoD Manual 4145.26M, *DoD Contractor's Safety Manual For Ammunition and Explosives* (DoD Safety Manual), into all contracts under which AE are handled. The DoD Safety Manual provides safety requirements, guidance, and information to minimize potential accidents that could cause injury or endanger the public. These include the performance of pre-award safety surveys to evaluate a potential contractor's ability to comply with contract safety requirements. A potential contractor must provide the contracting officer with any site plans, its safety and fire prevention programs; descriptions of proposed facilities; its safety history; and proposed operations and equipment. DoD safety personnel must then

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<sup>11</sup> See API RP 2221-2011, Section 6.1 (Qualifying a Contractor)

<sup>12</sup> See ANSI/AIHA/ASSE Standard Z10-2012. Section 5.1.5 (Contractor Safety & Health)

<sup>13</sup> 48 CFR Chapter 2 (Sections 200 to 299) (last updated May 29, 2012).

assess whether the prospective contractor has sufficient programs in place before awarding an AE contract.

- CSB urges the FAR Council to adopt more preventive requirements in the Final Rule which require contracting officers to further evaluate prospective contractors' safety and health programs beyond the Proposed Rule's labor violation disclosure requirements when making responsibility determinations, especially for procurements that involve work with hazardous chemicals or hazardous work practices. From a safety and health perspective, the Proposed Rule's labor violation disclosure requirement fails to identify those contractors or subcontractors with poorly developed safety and health programs that haven't been cited by regulatory agencies. For example, the Proposed Rule would not have prevented the DEI incident, because DEI did not have a previous history of OSHA violations. Although DEI had no negative safety record, it was at the same time unfit to conduct the contracted work of fireworks disposal because the company lacked any experience conducting that type of work. In that case, the contractor's (e.g., VSE's) evaluation of the company's experience, capabilities, qualifications, safety programs, training, and safety methods for the work would have aided in the responsibility determination. While these aspects are touched upon in existing FAR Subparts 9.104-1(e) and (f), more detailed requirements, such as the previously mentioned prequalification surveys, safety and health program reviews, and training certification reviews, are needed to assist contracting officers in properly evaluating these aspects in determining if a contractor is responsible.<sup>14</sup> The FAR Council should include these additional requirements in the Final Rule.

Additionally, for major chemical accidents based on CSB's experience, OSHA citations may be resolved in a settlement agreement that can result in a significant fine but where all or some of the citations have been reduced or withdrawn. Reviewing OSHA violations alone may not reflect actual serious violations of law or deficiencies in prospective contractors' safety and health programs.

- CSB suggests that the \$500,000 contract threshold value for disclosure of labor violations be re-examined by the FAR Council to determine if it is sufficiently protective. The FAR Council should closely examine the GAO, Congressional and non-Government sponsored reports mentioned in the Proposed Rule where labor compliance gaps were noted and ascertain their contract values to determine if the \$500,000 contract value for disclosure would have triggered reporting these violations. The contract value contained in the Final Rule should be set at a value that ensures that these labor compliance gaps will be reported in the future to a

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<sup>14</sup> When "lack of safety" has been used by contracting officers in finding a bidder non-responsible, it has typically been only one of several other valid factors relied upon in making this decision; whether it can be used as the sole basis for determining a bidder non-responsible is open to question. See e.g., GSE Dynamics, Inc., Comp. Gen. B-175545 (August 17, 1972).



high target confidence level (e.g., 80% or higher). In reviewing the Proposed Rule and Executive Order 13673, the CSB found little discussion on how this contract value was determined. The only justification for this requirement that the CSB could find in the Proposed Rule is that in accordance with Executive Order Section 4(e) to “minimize to the extent practicable, the burden of complying with the E.O. for Federal contractors and subcontractors and in particular small entities, including small businesses,” the FAR Council established this contract value at \$500,000.<sup>15</sup> From the CSB’s perspective this dollar value may be set too high to be sufficiently protective, particularly when the procurement involves selecting contractors who will work with hazardous chemicals or employ hazardous work practices. For example, the DEI subcontract fell under the \$500,000 contract threshold for reporting labor law violations to contracting officers in the Proposed Rule, although DEI had no prior history of OSHA violations.

CSB also asks, if this Proposed Rule requirement had been in effect, would it have made a difference in the contracting officer’s responsibility determination for firms like RPI Coating, Inc. This firm, also known as Robinson - Prezioso, Inc., is a California-based painting company that works as a contractor on heavy construction, often on publicly financed projects. In 2007, it was one of the largest specialty painting companies in the United States, with 275 employees and \$13.5 million in annual sales.<sup>16</sup> In 2001 and 2002, RPI Coating experienced worker fatalities and serious injuries involving falls from heights while doing contracted lead paint removal on the San Francisco to Oakland Bay Bridge. The bridge project was a five-year venture costing \$170 million and financed by the California Department of Transportation<sup>17</sup>. By 2002, OSHA had cited RPI Coating multiple times for its work on that bridge. Despite this firm’s history of safety and health violations, RPI Coating continued winning contracts, and even performed work for the U.S. Air Force in Arizona in 2005.<sup>18</sup> The work that RPI conducted for the Air Force also most likely fell under the \$500,000 contract threshold for reporting labor violations in the Proposed Rule. On October 2, 2007, five RPI Coating workers died from smoke inhalation inside penstock at the Xcel Energy hydroelectric plant in Georgetown, Colorado when a fire erupted while using a flammable solvent to clean equipment. CSB’s investigation found that RPI failed to implement basic worker safety measures.<sup>19</sup> OSHA issued willful civil citations with penalties<sup>20</sup> and the federal government initiated a criminal case against RPI Coating.<sup>21</sup> RPI pleaded guilty to criminal charges

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<sup>15</sup> See Proposed Rule, Section III.B. Burden Reduction for Small Businesses (80 FR 30554, third column).

<sup>16</sup> See CSB Xcel Report, Section 3.1.

<sup>17</sup> Herel S., “Death Delays Bridge Work”, *San Francisco Chronicle* (Jan. 5, 2002)

<sup>18</sup> See CSB Xcel Report, Appendix B.

<sup>19</sup> See CSB Xcel Report, Section 6

<sup>20</sup> DOL, “U.S. Department of Labor’s OSHA issues \$1 million in penalties to RPI Coating Inc. and Xcel Energy,” News Release 08-406-NAT (March 24, 2008).

<sup>21</sup> *U.S. v. RPI Coating*, Criminal Case No. 09-cr-00389-WYD. (D. Colo. Aug 17, 2011).

in 2011; it was put on probation for five years and agreed to pay workers and their families a total of \$1.5 million.<sup>22</sup>

Both of these contractors were performing work with hazardous chemicals (i.e., DEI – fireworks, RPI – flammable solvent) and were also engaged in hazardous work practices (i.e., DEI employees were disassembling fireworks; RPI employees were working inside a confined space) when fatal workplace accidents occurred. Neither would have been “caught” by the labor violation disclosure requirements in the Proposed Rule because the contracts were below the \$500,000 threshold. The FAR Council should evaluate whether or not a lower threshold amount needs to be set in the Final Rule, especially for procurements that involve hazardous chemicals and/or hazardous work practices.

Moreover, if the Final Rule had a lower contract threshold, then the Air Force contracting official would have been made aware of RPI’s previous fall-related fatalities and subsequent OSHA violations in conjunction with their San Francisco to Oakland Bay Bridge job, and that information would then have to be factored into that officer’s responsibility determination when selecting the appropriate contractor to do work for the Air Force. As it turns out, although RPI was awarded the Air Force contract, OSHA just happened to conduct a planned safety inspection at the Air Force base where RFI was working and cited RPI again for not having proper fall protection, this time while working on a rotating vehicle-mounted elevated work platform (i.e., OSHA considers working unprotected at heights to be “hazardous work” as well as a violation of their construction fall protection standards).

- CSB suggests that the three-year period for reporting labor law violations be re-examined by the FAR Council to determine if it is sufficiently protective. The FAR Council should consult with the Department of Labor to determine an appropriate statistical basis for the reporting of labor law violations and then include that time period for reporting in the Final Rule. The Final Rule also needs to address criminal violations of OSHA regulations and OSHA violations that are older than three years, but have not yet been resolved. The CSB found no discussion in the Proposed Rule as to why three years was selected for reporting labor law violations. The Proposed Rule is also silent on how to deal with situations where a proposed contractor has been successfully criminally prosecuted for violations of OSHA regulations, or OSHA has issued violations more than three years ago, but those violations either haven’t been successfully resolved or the potential contractor has been placed in a probationary status. Below are two illustrative examples:

- 1) Had the Final Rule been in effect and DEI was bidding today on a government contract that exceeded the \$500,000 threshold for reporting labor law violations,

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<sup>22</sup> Ingold J., “RPI Coating Inc. to pay \$1.55 million in Georgetown power plant deaths”, *Denver Post* (Dec. 19, 2011).

DEI would not be required to report the OSHA violations that it received in September of 2011 as they occurred more than three years ago. However, DEI has contested these violations and the final resolution of these violations is not yet known.<sup>23</sup> Moreover, if DEI was awarded the contract and then these violations were to be finally resolved during the course of the contract, DEI would then have an obligation to report the resolution within a year<sup>24</sup> and only then would the contracting officer be required to take action.<sup>25</sup>

- 2) As previously discussed above, RPI Coating, Inc. pleaded guilty to criminal charges for the deaths of five workers and was put on probation for five years in December 2011. RPI also negotiated a formal settlement with OSHA for its civil violations in April 2008.<sup>26</sup> Had the Final Rule been in effect and RPI was bidding today on a government contract that exceeded the \$500,000 threshold for reporting labor law violations, it would not be required to report the OSHA civil violations that were settled in April 2008 as they occurred more than three years ago. Moreover, to CSB's knowledge there is also no requirement in the Proposed Rule or the under current FAR regulations<sup>27</sup> that would require RPI to report the criminal charges to which it pleaded guilty in 2011. RPI would also not have to report that its probationary period does not end until December of 2016 because this criminal judgment does not appear to meet the definition of either administrative merits determinations, civil judgments, or arbitral awards or decisions as published in the *Guidance for Executive Order 13673, "Fair Pay and Safe Workplaces,"* by the Secretary of Labor in the *Federal Register* on May 28, 2015.

Consequently, it is not clear that a prescriptive time period will work for all situations. There should be an evaluation of a company's safety performance over a much longer period of time, a determination of real change or safety improvement, and there should be extended sanctions for criminal or repeat offenders.

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<sup>23</sup> See OSHA inspection database at the following link:

[https://www.osha.gov/pls/imis/establishment.inspection\\_detail?id=313082299](https://www.osha.gov/pls/imis/establishment.inspection_detail?id=313082299), last accessed 7-16-2015.

<sup>24</sup> See proposed Section 22.2004-3(a) [80 FR 30567, column 1]

<sup>25</sup> See proposed section 22-2004-3(b)(4) [80 FR 30567, column 2]

<sup>26</sup> See OSHA inspection database at the following link:

[https://www.osha.gov/pls/imis/establishment.inspection\\_detail?id=310470034](https://www.osha.gov/pls/imis/establishment.inspection_detail?id=310470034), last accessed 7-16-2015.

<sup>27</sup> Currently the FAR at 48 CFR 9.104-1 only requires contractors on certain contracts to disclose to contracting officers any "credible evidence" that the agents of the contractor or any of its subcontractors have committed violations of federal criminal laws involving fraud, conflict of interest, bribery, or gratuities or of the civil False Claims Act in connection with the contract.