officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

Item IV—Utilization of Indian Organizations and Indian-Owned Economic Enterprises (FAR Case 1999–301) (99–301)

This final rule amends FAR Subpart 26.1 and the clause at 52.226–1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

Item V—Ocean Transportation by U.S.-Flag Vessels (FAR Case 1998–604) (98–604)

This final rule amends FAR 47.504 and the clauses at 52.212–5, 52.213–4, and 52.247–64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

The rule also adds Alternate I of 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

Item VI—Technical Amendments

These amendments update references and make editorial changes at sections 6.304, 31.101, 32.411, 32.502–4, 32.805, 42.1204, and 42–1205.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular (FAC) 97–17 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–17 are effective April 25, 2000, except for Items IV and V, which are effective June 26, 2000. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: April 5, 2000.

R.D. Kerrins, Jr.,

Acting Director, Defense Procurement.

Dated: April 11, 2000.

Sue McIver,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: April 3, 2000.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 00–10130 Filed 4–24–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 16, and 37

[FAC 97–17; FAR Case 1999–014; Item I]

RIN 9000–AI53

Federal Acquisition Regulation; Competition Under Multiple Award Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarify how orders should be placed against the resultant contracts.

DATES: *Effective Date:* April 25, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 97–17, FAR case 1999–014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule, FAR case 1999–014, amends FAR Part 16 to provide guidance on multiple award task and delivery order contracts and amends FAR Part 37 to delete a definition and amends FAR Part 2 to insert the definition that was deleted from Part 37. FAR case 1999–014 is one of two cases that implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). The other case, FAR Case 1999–303, Task Order and Delivery Order Contracts, has been developed and promulgation is awaiting final review and analysis of the Report Number GAO/NSIAD–00–56, B–281493, March 20, 2000, recently issued by the GAO regarding multiple award contracts. The Councils will evaluate the GAO report, in conjunction with the Office of Federal Procurement Policy, to determine what additional changes are needed.

FAR case 1999–014—

- Clarifies what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarifies how orders should be placed against the resultant contracts;
- Requires that all awardees be given a fair opportunity to compete on every task or delivery order placed under multiple-award contracts, unless a specific exception applies;
- Emphasizes key things the contracting officer should consider when placing orders, including streamlined procedures; and
- Reorganizes and revises the FAR text for ease of use.

The rule is written using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 70158, December 15, 1999. Fourteen respondents provided public comments. We considered twelve public comments in finalizing the rule. We received the other two public comments more than two weeks after the closing date for comments and after the ad hoc committee had analyzed public comments. We did not consider these comments in the finalization of the rule.

This rule was not subject to Office of Management and Budget 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

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify 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 only clarifies what the contracting officer should consider when planning for and placing orders under multiple award contracts.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR 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 in 48 CFR Parts 2, 16, and 37

Government procurement.

Dated: April 13, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 16, and 37 as set forth below:

1. The authority citation for 48 CFR parts 2, 16, and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition ''Advisory and assistance services'' to read as follows:

2.101 Definitions.

* * * * *

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: Organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.,* contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505–1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A–109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

* * * * *

PART 16—TYPES OF CONTRACTS

3. Revise section 16.500 to read as follows:

16.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by part 6.

(c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in subpart 8.4 and part 38 take precedence over this subpart.

(d) The statutory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in subpart 36.6. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with subpart 36.6.

16.501–1 [Amended]

4. Amend section 16.501–1 by removing the definition ''Advisory and assistance services''.

5. Revise section 16.504 to read as follows:

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope,

nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(5)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference*—(1) *Planning the acquisition.* (i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(*1*) The scope and complexity of the contract requirement.

(*2*) The expected duration and frequency of task or delivery orders.

(*3*) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(*4*) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(*1*) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(*2*) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(*3*) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(*4*) The projected orders are so integrally related that only a single contractor can reasonably perform the work;

(*5*) The total estimated value of the contract is less than the simplified acquisition threshold; or

(*6*) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see subpart 1.7).

(2) *Contracts for advisory and assistance services.* (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and $10 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

6. Revise section 16.505 to read as follows:

16.505 Ordering.

(a) *General.* (1) The contracting officer does not synopsize orders under indefinite-delivery contracts.

(2) Individual orders must clearly describe all services to be performed or supplies to be delivered. Orders must be within the scope, period, and maximum value of the contract.

(3) Performance-based work statements must be used to the maximum extent practicable, if the contract is for services (see 37.102(a)).

(4) Orders may be placed by using any medium specified in the contract.

(5) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

(6) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract (10 U.S.C. 2304c(d) and 41 U.S.C. 253j(d)).

(b) *Orders under multiple award contracts*—(1) *Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding $2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing

appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in part 6 and the policies in subpart 15.3 do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) The contracting officer should consider the following when developing the procedures:

(A)(*1*) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(*2*) Potential impact on other orders placed with the contractor.

(*3*) Minimum order requirements.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.* The only exceptions to the requirement to provide each awardee a fair opportunity to be considered for each order exceeding $2,500 are—

(i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.

(4) *Decision documentation for orders.* The contracting officer must document in the contract file the rationale for placement and price of each order.

(5) *Task and Delivery Order Ombudsman.* The head of the agency must designate a task-order contract and delivery-order contract ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

7. Amend section 16.506—

a. In paragraphs (a), (b), (c), (d)(1), and (e) by removing the words ''The contracting officer shall insert'' and adding, in their place, the word ''Insert'';

b. In paragraphs (d)(2), (d)(3), and (d)(4) by removing the words ''the contracting officer shall''; and

c. By revising paragraphs (d)(5), (f), and (g) to read as follows:

16.506 Solicitation provisions and contract clauses.

* * * * *

(d) * * *

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

* * * * *

(f) Insert the provision at 52.216–27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and $10 million (including all options).

(g) Insert the provision at 52.216–28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and $10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

PART 37—SERVICE CONTRACTING

37.201 Definition.

8. Amend section 37.201 by revising the section heading to read as set forth above, and by removing the definition ''Advisory and assistance services''.

[FR Doc. 00–10131 Filed 4–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, and 15

[FAC 97–17; FAR Case 1998–300 (98–300); Item II]

RIN 9000–AI45

Federal Acquisition Regulation; Determination of Price Reasonableness and Commerciality

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.