DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 16, 19, 36, and 41

[FAC 90–30, FAR Case 94–700; Item IV]

RIN 9000–AG25

Federal Acquisition Regulation; Repeal of Requirements for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council has agreed to adopt the interim rule published in the **Federal Register** at 59 FR 64784, December 15, 1994, as a final rule and to make additional conforming amendments. This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to amend the Federal Acquisition Regulation (FAR) to delete the requirement for a ''determination and findings'' before using a cost type or incentive contract and to delete references to 10 U.S.C. 2301. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Contract Award Team Leader, at (703) 614–1634 in reference to this FAR case. For general information, contract the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–700.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 199, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of FASA implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

The interim rule announced FAR revisions developed under FAR case 94–700, Repeal of Requirements for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts. Sections 1021 and 1071 repealed the requirement for a determination regarding use of a cost type or incentive contract. Section 1501 repealed Section 2301 of Title 10, United States Code. Therefore, the interim rule revised the FAR to delete the determination requirements which are no longer necessary and to delete references to 10 U.S.C. 2301. The final rule also amends FAR 16.306(c)(2) to permit contracting officers to sign determinations and findings that are still required to establish the basis for application of the statutory price or fee limitation in cost-plus-fixed-fee contracts.

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 under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes affect only internal Government procedures for processing determinations and findings related to cost type and incentive contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Six public comments were received in response to the interim rule. These comments were considered in the formulation of this final rule.

List of Subjects in 48 CFR Parts 7, 11, 16, 19, 36, and 41

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Interim Rule Adopted as Final

Accordingly, the interim rule amending 48 CFR parts 7, 11, 16, and 19, which was published at 59 FR 64784 on December 15, 1994, is adopted as a final rule and 48 CFR parts 16, 36, and 41 are amended as follows:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR parts 7, 11, 16, 19, 36, and 41 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).

2. Section 16.306 is amended by revising paragraph (c)(2) to read as follows:

16.306 Cost-plus-fixed-fee Contracts.

* * * * *

(c) * * *

(2) The contracting officer has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(d)).

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PART 36—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

3. Section 36.606 is amended in paragraph (a) by revising the last sentence to read as follows:

36.606 Negotiations.

(a) * * * Negotiations shall be conducted in accordance with part 15 of this chapter, beginning with the most preferred firm in the final selection (see 15.903(d)(1)(ii) on fee limitation and the determination and findings requirement at 16.306(c)(2) for a cost-plus-fixed-fee contract).

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PART 41—ACQUISITION OF UTILITY SERVICES

41.103 [Amended]

4. Section 41.103 is amended in paragraph (a)(2) by removing ''10 U.S.C. 2301, 2304,'' and inserting in its place ''10 U.S.C. 2304''.

[FR Doc. 95-17937 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 37

[FAC 90–30; FAR Case 94–766; Item V]

RIN 9000–AG56

Federal Acquisition Regulation; Service Contract Funding

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement a new authority for funding of service contracts of certain executive branch agencies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance and Payment Team Leader, at (703) 697–6710, in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–766.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) provided new authority for executive branch agencies other than the Department of Defense, United States Coast Guard, and National Aeronautics and Space Administration to write service contracts that cross fiscal years, and to fund those contracts with one fiscal year's funds. Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration. This new authority will allow most agencies to simplify the contracting for, and administration of, service contracts by allowing single, fully funded contract actions, in lieu of multiple contracts or complex obligation arrangements. This new authority significantly simplifies and streamlines the contracting process in this area. To implement this authority, the FAR Council is amending FAR sections 32.703–3 and 37.106.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577 and public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–30, FAR case 94–766), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 32 and 37

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 32 and 37 are amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Parts 32 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).

2. Section 32.703–3 is revised to read as follows:

32.703–3 Contracts crossing fiscal years.

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a and 41 U.S.C. 253*l* (see paragraph (b) of this section)), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (*e.g.*, contracts for expert or consultant services).

(b) 41 U.S.C. 253*l*, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), authorizes heads of executive agencies other than the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 37.106(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, or the National Aeronautics and Space Administration.

PART 37—SERVICE CONTRACTING

3. Section 37.106 is revised to read as follows:

37.106 Funding and term of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see paragraph (b) of this section for certain service contracts, 32.703–2 for contracts conditioned upon availability of funds, and 32.703–3 for contracts crossing fiscal years).

(b) 41 U.S.C. 253*l*, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), authorizes the head of any executive agency except the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 32.703–3(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States

Coast Guard, or the National Aeronautics and Space Administration.

[FR Doc. 95–17938 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M