

definition of advisory or assistance services:

(a) Routine Federal information processing services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

(b) Architectural and engineering services as defined in the Brooks Architect-Engineers Act (Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541).

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

### 37.203 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations; or

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.*

Contractors may not be paid for services to conduct evaluations or analyses of

any aspect of a proposal submitted for an initial contract award unless—

(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with 37.204;

(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in Section 23 of the Office of Federal Procurement Policy (OFPP) Act as amended (41 U.S.C. 419) and the work placed under the FFRDC's contract meets the criteria of 35.017-3; or

(3) Such functions are otherwise authorized by law.

### 37.204 Guidelines for determining availability of personnel.

(a) The head of an agency shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, is unable to identify such personnel, the head of the agency may make the determination required by 37.203.

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

### 37.205 Contracting officer responsibilities.

The contracting officer shall ensure that the determination required in

accordance with the guidelines at 37.204 has been made prior to issuing a solicitation.

## PART 49—TERMINATION OF CONTRACTS

### 49.603-1 through 49.603-4 [Amended]

7. Sections 49.603-1(b)(7)(i), 49.603-2(b)(8)(i), 49.603-3(b)(7)(i), and 49.603-4(b)(4)(i) are amended by removing the phrase “, and regulations made implementing 10 U.S.C. 2382, as amended, and any other” and inserting “any” in its place.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.209-7 is amended by revising the date of the clause and paragraph (a)(1)(i) to read as follows:

### 52.209-7 Organizational Conflicts of Interest Certificate—Marketing Consultants.

\* \* \* \* \*

Organizational Conflicts of Interest Certificate—Marketing Consultants (Oct 1995)

(a) \* \* \*

(1) \* \* \*

(i) Services excluded in subpart 37.2;

\* \* \* \* \*

[FR Doc. 95-23865 Filed 9-25-95; 8:45 am]

BILLING CODE 6820-EP-P

## 48 CFR Parts 5, 6, 16 and 52

[FAC 90-33; FAR Case 94-711; Item III]

RIN 9000-AG50

### Federal Acquisition Regulation; Task and Delivery Order Contracts

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

**ACTION:** Final and interim rules.

**SUMMARY:** This final rule along with an interim amendment is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement the statutory requirements of the Act with regard to task and delivery order contracts. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** *Effective Date:* October 1, 1995.

*Comment Date:* Comments on the interim rule addition of Section 16.500 should be submitted to the FAR Secretariat at the address shown below on or before November 27, 1995 to be

considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-33, FAR case 94-711, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ed McAndrew, Special Contracting Team Leader, at (202) 501-1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-33, FAR case 94-711.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This final rule implements Sections 1004 and 1054 of the Act. Sections 1004 and 1054 created statutory definitions for "task order contracts" and "delivery order contracts" and created a statutory preference for making multiple awards of tasks order contracts and delivery order contracts. Sections 1004 and 1054 also established certain limitations on task order contracts for advisory and assistance services.

The final rule creates a preference for making multiple awards of indefinite-quantity contracts. The rule also establishes when multiple awards should not be made.

The final rule contains no specific procedures for making awards of indefinite-quantity contracts in order to empower agencies to develop selection criteria that meet the unique needs of each acquisition. However, the final rule does include guidance with respect to the procedures that may be used for issuing orders under multiple award contracts.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final and interim rule and a Final Regulatory Flexibility Analysis (FRFA) has been prepared. A copy of the Analysis will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this final and interim rule does 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. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Federal Acquisition Streamlining Act of 1994 (the Act) requires implementation by October 1, 1995.

A proposed rule was published in the Federal Register on March 16, 1995, to implement Sections 1004 and 1054 of the Act. The rule established a preference scheme for multiple awards of task and delivery order contracts, and placed limitations on the use of contracts for advisory and assistance services. The scope of the proposed rule excluded contracts subject to the procedures of FAR Part 36 (Construction and Architect-Engineer Contracts); Part 38 (Federal Supply Schedule Contracting); Part 39 (Acquisition of Information Resources); and Part 41 (Acquisition of Utility Services).

As a result of public comments on the proposed rule, the scope of the rule has been revised to include (1) construction and architect-engineer services, provided the selection of contractors and placement of orders for architect-engineer services is consistent with FAR Subpart 36.6; (2) Federal information processing resource requirements that are not satisfied under the Federal Supply Schedule Program, provided the selection of contractors and placement of orders is consistent with FAR Part 39; and (3) utility services. The language at FAR 16.500 is being promulgated as an interim rule, instead of a final rule, to reflect the change in scope.

This change is not considered a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, the FAR Council would like to obtain public comment before finalizing this revision to FAR 16.500. Public comments received in

response to the interim rule will be considered in formulating the final rule.

**E. Public Comments**

In response to the notice of proposed rulemaking published at 60 FR 14346, March 16, 1995, 35 comments were received. The more significant changes resulting from the public comments were:

- Modification to Section 16.500 with respect to the applicability of the multiple award preference to architect/engineering services, Federal information processing resource requirements, utility contracts, and GSA's Federal Supply Schedule program.
- Incorporation of greater guidance with respect to procedures to be used in issuing orders under multiple award contracts.

List of Subjects in 48 CFR Parts 5, 6, 16 and 52

Government procurement.

Dated: September 20, 1995.

Edward C. Loeb,

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

**Issuance of Interim Rule**

Therefore, 48 CFR Part 16 is amended as set forth below:

**PART 16—TYPES OF CONTRACTS**

1. The authority citation for 48 CFR Part 16 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 16.500 is added to read as follows:

**16.500 Scope of subpart.**

This subpart prescribes policies and procedures for making awards of indefinite delivery contracts and establishes a preference scheme for making multiple awards of delivery order contracts and task order contracts. This subpart does not limit the use of other than competitive procedures authorized by part 6. Nothing in this subpart shall be construed to limit, impair, or restrict 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 in subpart 8.4, part 38, or part 39 for the Federal Supply Schedule program (including contracts for Federal Information Processing resources), take precedence over this subpart. This subpart may be used to acquire

(1) Architect-engineer services, provided the selection of contractors and placement of orders is consistent with subpart 36.6, and

(2) Federal Information Processing resource requirements that are not satisfied under the Federal Supply Schedule Program, provided the selection of contractors and placement of orders is consistent with part 39.

**Issuance of Final Rule**

Therefore, 48 CFR Parts 5, 6, 16 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 16 and 52 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 5—PUBLICIZING CONTRACT ACTIONS**

**5.202 and 5.301 [Amended]**

2. Sections 5.202(a)(6) and 5.301(b)(4) are amended by removing the phrase "a requirements contract" and inserting "Subpart 16.5" in their place.

**PART 6—COMPETITION REQUIREMENTS**

3. Section 6.001 is amended by adding paragraph (f) to read as follows:

**6.001 Applicability.**

\* \* \* \* \*

(f) Orders placed against task order and delivery order contracts entered into pursuant to subpart 16.5.

**PART 16—TYPES OF CONTRACTS**

4. & 5. Section 16.501 is redesignated as 16.501-2 and is amended by revising paragraphs (a) and (c), and a new 16.501-1 is added to read as follows:

**16.501-1 Definitions.**

As used in this subpart—

*Advisory and assistance services* has the same meaning as set forth in 37.201.

*Delivery order contract* means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

*Task order contract* means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

**16.501-2 General.**

(a) There are three types of indefinite-delivery contracts: Definite-quantity

contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 2304d and section 303K of the Federal Property and Administrative Services Act of 1949, requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

\* \* \* \* \*

(c) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate procedures of this subpart.

**16.502 [Amended]**

6. Section 16.502 is amended in paragraph (a) by adding after the word "deliveries" the phrase "or performance".

7. Section 16.503 is amended by revising paragraph (a) introductory text and (b); and adding paragraph (d) to read as follows:

**16.503 Requirements contracts.**

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

\* \* \* \* \*

(b) *Application.* A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

\* \* \* \* \*

(d) *Limitations on use of requirements contracts for advisory and assistance services.* (1) Except as provided in paragraph (d)(2) of this section, no solicitation for a requirements contract for advisory and assistance services in excess of three years and \$10,000,000 (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504.

(2) The limitation in paragraph (d)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

8. Section 16.504 is amended by revising the introductory text of paragraph (a), and adding paragraph (a)(4); in paragraph (a)(3) by inserting "task or" after the word "each"; by removing the last sentence of paragraph (b); and by adding paragraph (c) 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 to be furnished during a fixed period, with deliveries or performance to be scheduled by placing orders with the contractor.

\* \* \* \* \*

(4) In addition to other required provisions and clauses, a solicitation and contract for an indefinite quantity shall—

(i) Specify the period of the contract, including the number of options and the period for which the contract may be extended under each option, if any;

(ii) Specify the total minimum and maximum quantity or dollar value of supplies or services to be acquired 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 to be acquired under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

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

(v) If multiple awards may be made, include the provision at 52.216-27, Single or Multiple Awards, to notify offerors that more than one contract may be awarded; and

(vi) If an award of a task order contract for advisory and assistance services in excess of three years and \$10,000,000 (including all options) is anticipated, include the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, unless a determination to make a single

award is made under paragraph (c)(2)(i)(A) of this section.

\* \* \* \* \*

(c) *Multiple award preference*—(1) *General preference.* Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer shall, 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. In making a determination as to whether multiple awards are appropriate, the contracting officer shall exercise sound business judgment as part of acquisition planning. No separate written determination to make a single award is necessary when the determination is contained in a written acquisition plan. Multiple awards should not be made if—

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

(ii) 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;

(iii) The cost of administration of multiple contracts may outweigh any potential benefits from making multiple awards;

(iv) Tasks likely to be ordered are so integrally related that only a single contractor can reasonably perform the work;

(v) The total estimated value of the contract is less than the simplified acquisition threshold in part 13; or

(vi) The contracting officer determines that multiple awards would not be in the best interests of the Government.

(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 will not exceed three years and \$10,000,000, including all options, a contracting officer may, but is not required to, give preference to making multiple awards. If an indefinite-quantity contract for advisory and assistance services exceeds three years and \$10,000,000, including all options, multiple awards shall be made unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, prior to the issuance of the solicitation, that the services required under the task order

contract are so unique or highly specialized that it is not practicable to award more than one contract. This determination may also be appropriate when the tasks likely to be issued are so integrally related that only a single contractor can reasonably perform the work;

(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 are not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

9. Sections 16.505 and 16.506 are redesignated as 16.506 and 16.505, respectively, and the newly-redesignated 16.505 is revised. The newly-redesignated 16.506 is amended by revising the heading; in paragraph (b) by removing "Delivery-Order" and inserting "Order" in its place; in paragraph (d)(3) by revising the parenthetical to read "(but see paragraph (d)(5) of this section)."; and adding paragraphs (f) and (g). The added and revised text reads as follows:

#### 16.505 Ordering.

(a) *General.* (1) When placing orders under this subpart, a separate notice under 5.201 is not required.

(2) The contracting officer or duly appointed ordering officer shall ensure that individual orders clearly describe all services to be performed or supplies to be delivered. Such officer shall also ensure that orders are within the scope, period, and maximum value of the contract.

(3) The contracting officer shall include in the contract Schedule the names of the activity or activities authorized to issue orders.

(4) If appropriate, authorization for placing oral orders may be included in the contract Schedule; provided, that procedures have been established for obligating funds and that oral orders are confirmed in writing.

(5) Orders may be placed by facsimile or by electronic commerce methods, if provided for in the contract.

(6) Orders placed under indefinite-delivery contracts shall contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) Item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance date.

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

(vi) Packaging, packing, and shipping instructions, if any.

(vii) Accounting and appropriation data.

(viii) Any other pertinent information.

(7) 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.

(b) *Orders under multiple award contracts.* (1) Except as provided for in paragraph (b)(2) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of \$2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion and may consider factors such as past performance, quality of deliverables, cost control, price, cost, or other factors that the contracting officer, in the exercise of sound business judgment, believes are relevant to the placement of orders. The procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order must be set forth in the solicitation and contract. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of part 6. However, agencies shall not use any method (such as allocation) that would not result in fair consideration being given to all awardees prior to placing each order. Formal evaluation plans or scoring of quotes or offers are not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. 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.

(2) Awardees need not be given an opportunity to be considered for a

particular order in excess of \$2,500 under multiple delivery order contracts or multiple task order contracts if the contracting officer determines that—

(i) The agency need for such supplies or services is of such urgency that providing such opportunity would result in unacceptable delays;

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

(iii) The order should 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) The competing independentlyO requirement of 15.804-1(b)(1) is satisfied for orders placed under multiple delivery order contracts or multiple task order contracts when—

(i) The price for the supplies or services is established in the contract at the time of contract award; or

(ii) The contracting officer solicits offers from two or more awardees for order placement when the price for the supplies or services is not established in the contract at the time of contract award.

(4) The head of the agency shall designate a task order contract and delivery order contract ombudsman who shall be responsible for reviewing complaints from contractors on task order contracts and delivery order contracts. The ombudsman shall review complaints from the contractors and ensure that all contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman shall 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 paragraph (c)(2) of this section, the ordering period of a task order contract for advisory and assistance services, including all options or modifications, may not exceed five years, unless a longer period is specifically authorized by a statute that is applicable to such a contract. Notwithstanding the five-year limitation or the requirements of Part 6, a task order contract for advisory and assistance services may be extended on

a sole-source basis only once for a period not to exceed six 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.

(2) The limitation on ordering period contained in paragraph (c)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

**16.506 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(f) The contracting officer shall insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite quantity contracts that may result in multiple contract awards. This provision shall not be used for advisory and assistance services contracts that exceed three years and \$10,000,000 (including all options). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

(g) In accordance with 16.504(a)(4)(vi), the contracting officer shall 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 three years and \$10,000,000 (including all options) unless a determination has been made under 16.504(c)(2)(i)(A). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

10. Section 52.216-18 is revised to read as follows:

**52.216-18 Ordering.**

As prescribed in 16.506(a), insert the following clause:

*Ordering (Oct 1995)*

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities

designated in the Schedule. Such orders may be issued from \_\_\_\_\_ through \_\_\_\_\_ [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

11. Section 52.216-19 is amended by revising the section heading, introductory text, and clause heading and date to read as follows:

**52.216-19 Order Limitations.**

As prescribed in 16.506(b), insert a clause substantially the same as follows:

*Order Limitations (Oct 1995)*

\* \* \* \* \*

12. Section 52.216-20 is amended by revising the introductory text; revising the clause date to read "(OCT 1995)", and in the first sentence of paragraph (c) by removing the word "Delivery-" to read as follows:

**52.216-20 Definite Quantity.**

As prescribed in 16.506(c), insert the following clause:

*Definite Quantity (Oct 1995)*

\* \* \* \* \*

13. Section 52.216-21 is amended by revising the introductory text and the second sentence of paragraph (b) by removing the word "Delivery-" to read as follows:

**52.216-21 Requirements.**

As prescribed in 16.506(d), insert the following clause:

\* \* \* \* \*

14. Section 52.216-22 is amended by revising the introductory text; in the clause heading by removing the date "(APR 1984)" and inserting "(OCT 1995)" in its place; and in the first sentence of paragraph (c) by removing the word "Delivery-" to read as follows:

**52.216-22 Indefinite Quantity.**

As prescribed in 16.506(e), insert the following clause:

*Indefinite Quantity (Oct 1995)*

\* \* \* \* \*

15. Section 52.216-27 is added to read as follows:

**52.216-27 Single or Multiple Awards.**

As prescribed in 16.506(f), insert the following provision:

*Single or Multiple Awards (Oct 1995)*

The Government may elect to award a single delivery order contract or task order

contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

16. Section 52.216-28 is added to read as follows:

**52.216-28 Multiple Awards for Advisory and Assistance Services.**

As prescribed in 16.506(g), insert the following provision:

Multiple Awards for Advisory and Assistance Services (Oct 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

[FR Doc. 95-23868 Filed 9-25-95; 8:45 am]

BILLING CODE 6820-EP-P

**48 CFR Part 32**

[FAC 90-33; FAR Case 94-765; Item IV]

RIN 9000-AG54

**Federal Acquisition Regulation; Fraud Remedies**

**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, Public Law 103-355 (the Act) to implement requirements for fraud remedies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Galbraith, Finance/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 90-33, FAR case 94-765.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This notice announces amendments developed under FAR case 94-765. 10 U.S.C. 2307 has contained a statutory requirement titled "Action in Case of Fraud" applicable to only the Department of Defense. Section 2051(e) of the Act added this statutory requirement to the Federal Property and Administrative Services Act (41 U.S.C. 255) applicable to civilian agencies.

The statutes at 10 U.S.C. 2307 and 41 U.S.C. 255 provide that if the Government official concerned with coordinating the Government's remedies for a particular case of fraud finds that an advance, partial, or progress payment is based on fraud, that official must recommend the head of the agency reduce or suspend further payments to that contractor. The statutes further provide due process requirements, standards for the amount of suspension or reduction, and other policy and procedural requirements. It should be noted that the authority of the head of the agency to act and the rights of the accused are statutory and are not based on contractual agreement. However, in any situation in which the contractor bases a request for payment in fraud, the Government has contractual and legal rights which the contracting officer may exercise to stop or recover payments. The authority provided by these statutes is in addition to those contractual and legal rights and remedies.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this 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 this rule will impact only upon the small percentage of small businesses whose request for an advance, partial, or progress payment is based upon fraud.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule falls within the exception provided under 5 CFR 1320.3(c), *i.e.*, matters pertaining to the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter.

**D. Public Comments**

The proposed rule was published in the Federal Register on May 12, 1995, at 60 FR 25794. Six comments were received. The most important point noted was the inapplicability of the coverage to the National Aeronautics and Space Administration and the

United States Coast Guard. These agencies are normally subject to Title 10 of the United States Code; however, this statutory language specifically applied these statutory provisions to just the Department of Defense. The changes made to the Federal Property and Administrative Services Act (41 U.S.C. 225) apply to all agencies subject to that Act. This coverage has been appropriately modified.

One commentor proposed the addition of the following language to the coverage: "If payments are suspended and it ultimately is determined that no fraud existed, the contractor shall be entitled to any damages that resulted from such suspension of payment." This recommendation was not accepted. Under these statutes, the Government is acting in its role as sovereign, not under its contractual authority. The statutes do not provide the accused with a remedy for incorrect or unproved accusations. Any remedy would be determined by the Constitution and other law and statutes.

**List of Subjects in 48 CFR Part 32**

Government procurement.

Dated: September 20, 1995.

Edward C. Loeb,

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

Therefore, 48 CFR Part 32 is amended as set forth below:

**PART 32—CONTRACT FINANCING**

1. The authority citation for 48 CFR Part 32 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. Sections 32.006 through 32.006-5 are added to read as follows:

Sec.

32.006 Reduction or suspension of contract payments upon finding of fraud.

32.006-1 General.

32.006-2 Definitions.

32.006-3 Responsibilities.

32.006-4 Procedures.

32.006-5 Reporting.

**32.006 Reduction or suspension of contract payments upon finding of fraud.**

**32.006-1 General.**

(a) Under Title 10 of the United States Code, the statutory authority implemented by this section is available only to the Department of Defense; this statutory authority is not available to the National Aeronautics and Space Administration or the United States Coast Guard. Under the Federal Property and Administrative Services Act (41 U.S.C. 255), this statutory