

**26.201 Policy.**

(a) When contracting under this subpart for major disaster or emergency assistance activities, such as debris clearance, distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(b) The authority to provide preference under this subpart applies only to those acquisitions, including those which do not exceed the simplified acquisition threshold, conducted during the term of a major disaster or emergency declaration made by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 9**

[FAC 90-40; FAR Case 95-007; Item V]

RIN 9000-AG66

**Federal Acquisition Regulation;  
Responsibility Determinations**

**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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to emphasize the use of commercial sources of information in determining the responsibility of prospective contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** September 24, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph DeStefano at (202) 501-1758 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 90-40, FAR case 95-007.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule amends FAR Subpart 9.1, Responsible Prospective Contractors, to state that contracting officers should use commercial sources of supplier information in making determinations of responsibility, and to clarify that preaward surveys should be requested only if sufficient relevant information is unavailable from other sources.

A proposed rule was published in the Federal Register at 60 FR 55960, November 3, 1995, and amended at 60 FR 62806, December 7, 1995. Three comments were received and were considered in the development of the final rule.

**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 merely emphasizes the use of commercial sources of information in determining the responsibility of prospective contractors.

**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 Part 9**

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 9 is amended as set forth below:

**PART 9—CONTRACTOR  
QUALIFICATIONS**

1. The authority citation for 48 CFR Part 9 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 9.105-1 is amended in the introductory text of paragraph (c) by removing from the parenthetical “48 CFR Part 42”; by redesignating paragraphs (c)(4) through (c)(6) as (c)(5) through (c)(7), and adding a new paragraph (c)(4) to read as follows:

**9.105-1 Obtaining information.**

\* \* \* \* \*

(c) \* \* \*

(4) Commercial sources of supplier information of a type offered to buyers in the private sector.

\* \* \* \* \*

3. Section 9.106-1 is amended by revising paragraph (a) to read as follows:

**9.106-1 Conditions for preaward surveys.**

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 16**

[FAC 90-40; FAR Case 94-711; Item VI]

RIN 9000-AG50

**Federal Acquisition Regulation; Task  
and Delivery Orders**

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

**ACTION:** Interim rule adopted as final with changes.

**SUMMARY:** This final rule 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) regarding the scope of a multiple award preference for