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.*).

[FR Doc. 96–18501 Filed 7–25–96; 8:45 am]

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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.

* * * * *

[FR Doc. 96–18502 Filed 7–25–96; 8:45 am]

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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

indefinite-quantity contracts. This final rule provides that the multiple award preference established by the FAR does not apply to architect-engineer contracts subject to the procedures of the FAR. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, but is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McAndrew at (202) 501–1474 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 94–711.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule amending FAR Subpart 16.5 was published in the Federal Register at 60 FR 14346, March 16, 1995. The proposed rule reflected changes brought about by sections 1004 and 1054 of the Act. Sections 1004 and 1054 of the Act created a multiple award preference for indefinite-quantity contracts. The proposed rule published in the Federal Register excluded contracts subject to FAR Parts 36, 38, 39, and 41 from the multiple award preference. With respect to Parts 36 and 39, the exclusions were based upon the ''Provisions Not Affected'' subsection in sections 1004 and 1054 of the Act. The Special Contracting Team intended to give these provisions meaning by exempting acquisitions under the Brooks Architect-Engineers Act and the Brooks Automatic Data Processing Equipment Act from the multiple award preference. Contracts subject to Part 38 were exempted from the coverage because the Act specifically exempted GSA's Federal Supply Schedule program. Contracts subject to Part 41 were exempted because the Team believed that multiple awards were inconsistent with the monopolistic nature of some utility services.

A final rule implementing sections 1004 and 1054 of the Act was published in the Federal Register at 60 FR 49723, September 26, 1995. However, an interim rule was published along with the final rule which modified the scope of the multiple award preference. The interim rule added a new FAR section 16.500 to provide that the multiple award preference established by Subpart 16.5 could 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. The interim rule also extended the multiple award preference to Part 36 construction contracts and Part 41 utility services. Although the change was not considered a significant revision within the meaning of FAR 1.501 and Public Law 98–577, the FAR Council made a determination to solicit public comments before finalizing this amendment to FAR Subpart 16.5.

As a result of public comments on the interim rule, the FAR Council has revised the scope of the rule to clarify that the multiple award preference established by FAR Subpart 16.5 does not apply to architect-engineer contracts subject to the procedures of FAR Subpart 36.6. However, this revision to the rule does not prohibit agencies from making multiple awards for architect-engineer services, provided the selection of contractors and placement of orders is consistent with Subpart 36.6. This final rule also provides that the procedures contained in Subpart 16.5 may be used to acquire 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. The final rule retains the multiple award preference with respect to construction contracts subject to Part 36 and utility services subject to Part 41. However, the final rule recognizes that there may be circumstances when multiple awards would not be appropriate and, thus, provides contracting officers the discretion to determine whether multiple awards should be made.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. A copy of the FRFA may be obtained from the FAR Secretariat.

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

On September 26, 1995, an interim rule was published in the Federal Register at 60 FR 49723. In response to the interim rule, 22 comments were received. The comments of all respondents were considered in developing the final rule.

A significant number of comments recommended that certain types of fixed-price construction contracts, commonly known as ''Job Order Contracts'' and ''Simplified Acquisition of Base Engineer Requirements'' (SABER) contracts should be excluded from the scope of the multiple award preference. These types of contracts typically include Government-established unit prices for specific line items needed to complete the requirements of the delivery order. Award determinations are made by selecting the mix of line items to be used for a project and multiplying the mix of line items by the coefficient bid by the offeror. Several comments argued that the application of the multiple award preference to Job Order and SABER contracts could result in higher overall prices to the Government. These comments argued that if multiple Job Order or SABER contracts are made, offerors may be inclined to raise their bidding coefficient to take into consideration the fact that potential delivery order awards may be spread out among several firms rather than one firm receiving all the delivery orders. The comments further argue that multiple awards may cause a duplication of contract overhead costs (site managers, offices, equipment, etc.) and that any economies resulting from a single award would be lost, thus resulting in higher costs to the Government.

It is recognized that there may be circumstances when multiple awards under a Job Order or SABER contract may not be appropriate. In such cases, the rule recognizes that multiple awards should not be made. For example, the rule provides that multiple awards should not be made when the contracting officer determines, based on the contracting officer's knowledge of the market, that more favorable terms and conditions, including pricing, may be provided if a single award is made.

The rule has also been revised to clarify that agencies may make class determinations in accordance with FAR Subpart 1.7 to make single awards for any class of contracts (including Job Order or SABER contracts). However, such a class determination would not preclude the contracting officer from making a determination to solicit for

multiple awards if the contracting officer determines that multiple awards may be advantageous to the Government for a particular solicitation.

A significant number of comments were also received regarding the application of the multiple award preference to architect-engineer services subject to FAR Subpart 36.6. The Team believes that it is good public policy to use the multiple award preference to promote price competition in Government contracting. However, the Brooks Architect-Engineers Act precludes price competition by establishing qualification-based source selection procedures. Because price competition is not applicable to architect-engineer services, the rule has been revised to clarify that the multiple award preference does not apply to architect-engineer services subject to FAR Subpart 36.6.

Although the rule does not extend the multiple award preference to architect-engineer services subject to FAR Subpart 36.6, it is important to note that the rule does not prohibit an agency from making multiple awards (if an agency chooses to do so) provided the selection of contractors and placement of orders is consistent with FAR Subpart 36.6. Some Federal agencies have awarded multiple award contracts for architect-engineer services that are consistent with the Brooks Architect-Engineers Act qualification-based source selection procedures. For example, one agency utilized Brooks Architect-Engineers Act procedures to award multiple contracts for architect-engineer services to six firms from a single solicitation. As described in the solicitation, each task order is technically competed among the multiple awardees. Each firm's response to the task order is technically ranked based on the evaluation factors for that task. The most technically qualified firm is determined as a result of the responses received and a cost proposal is required from that firm. Negotiations take place and, in most cases, the task order is awarded.

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

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

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Part 16 and published at 60 FR 49723, September 26, 1995, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Part 16 continues to read as follows:

PART 16—TYPES OF CONTRACTS

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 revised 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 indefinite-quantity 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 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 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. The multiple award preference scheme established 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 is consistent with subpart 36.6.

3. Section 16.504 is amended in paragraph (c)(1) by revising the third and fourth sentences; and by revising paragraphs (c)(1)(iv) and (vi) to read as follows:

16.504 Indefinite-quantity contracts.

(c) * * *

(1) * * * No separate written determination to make a single award is necessary when the determination is contained in a written acquisition plan or when a class determination has been made in accordance with subpart 1.7. Multiple awards should not be made if the contracting officer determines that—

* * * * *

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

* * * * *

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

* * * * *

4. Section 16.505 is amended by removing the second sentence of paragraph (b) and inserting the following three sentences in its place to read as follows:

16.505 Ordering.

* * * * *

(b) * * * In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion. The contracting officer, in making decisions in the award of any individual task order, should consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, price, cost, or other factors that the contracting officer believes are relevant to the award of a task order to an awardee under the contract. In evaluating past performance on individual orders, the procedural requirements in subpart 42.15 are not mandatory. * * *

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[FR Doc. 96–18503 Filed 7–25–96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17, 22, and 52

[FAC 90–40; FAR Case 94–712; Item VII]

RIN 9000–AG72

Federal Acquisition Regulation; Multiyear Contracting

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

ACTION: Final rule.

SUMMARY: This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council has agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 1022 and 1072 of the Act regarding Multiyear Contracting. This regulatory action was subject to Office of