

14.304-1 General.

* * * * *

(a) * * *

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. Section 15.410 is amended by revising the second and third sentences of paragraph (b) to read as follows:

15.410 Amendment of solicitations before closing date.

* * * * *

(b) * * * If the time available before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, facsimile transmission, telegram, or telephone of an extension of the closing date. Telephonic, facsimile, and telegraphic notices shall be confirmed in the written amendment to the solicitation. * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.214-7 is amended by revising the provision date, and paragraph (a)(4) to read as follows:

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (May 1997)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids.

* * * * *

7. Section 52.214-23 is amended by revising the provision date, and paragraph (a)(4) to read as follows:

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (MAY 1997)

(a) * * *

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one

working day prior to the date specified for receipt of technical proposals; or

* * * * *

8. Section 52.214-32 is amended by revising the date of the provision, and paragraph (a)(2) to read as follows:

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Overseas) (May 1997)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays.

* * * * *

9. Section 52.214-33 is amended by revising the clause date, and paragraph (a)(2) to read as follows:

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (May 1997)

(a) * * *

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or

* * * * *

10. Section 52.215-10 is amended by revising the provision date and paragraph (a)(4) to read as follows:

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (May 1997)

(a) * * *

(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

* * * * *

11. Section 52.215-15 is revised to read as follows:

52.215-15 Failure to Submit Offer.

As prescribed in 15.407(d)(3), insert the following provision:

Failure to Submit Offer (May 1997)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, for paper transactions, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. Electronic solicitations do not require notification of desire to receive future solicitations, since these solicitations will be openly available to any interested party. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

12. Section 52.215-36 is amended by revising the provision date and paragraph (a)(2) to read as follows:

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

* * * * *

Late Submissions, Modifications, and Withdrawals of Proposals (OVERSEAS) (MAY 1997)

(a) * * *

(2) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals. The term "working day" excludes weekends and U.S. Federal holidays;

* * * * *

[FR Doc. 97-6311 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 9, 35, and 37**

[FAC 90-46; FAR Case 94-008; Item III]

RIN 9000-AG86

Federal Acquisition Regulation; Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting

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 provide agency guidance on the management of service contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Effective May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 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 90-46, FAR case 94-008.

SUPPLEMENTARY INFORMATION:

A. Background

On May 24, 1994, the Office of Federal Procurement Policy (OFPP) reissued, as a final policy letter, and published in the Federal Register at 59 FR 26818, Policy Letter 93-1, Management Oversight of Service Contracting. The policy letter provides Governmentwide guiding principles which are intended to improve the acquisition, management, and administration of service contracts.

A proposed rule was published in the Federal Register at 61 FR 14946, April 3, 1996, to address FAR implementation of OFPP Policy Letter 93-1. Two sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The analysis is summarized as follows:

There were no public comments in response to the Initial Regulatory Flexibility Analysis. There were approximately 16,662 small businesses with service contracts valued at \$25,000 or more in fiscal year 1996. The rule does not impose any reporting, recordkeeping, or other compliance requirements upon small entities. This rule is expected to have a beneficial impact on small and large entities because the rule emphasizes the need for good Government management practices. Although this rule does not specifically propose different procedures for small versus large entities, it should reduce the economic and administrative burden on small entities.

Consistent with the stated objectives of OFPP Policy Letter 93-1, routine services, frequently provided by small entities, will require less oversight than services that tend to affect Government decision-making, influence policy development, or affect program management, which are more susceptible to abuse and require a greater level of scrutiny.

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 9, 35, and 37

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 9, 35, and 37 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 35, 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 9—CONTRACTOR QUALIFICATIONS

2. Section 9.505-3 is revised to read as follows:

9.505-3 Providing evaluation services.

Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interests.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

3. Section 35.017-2 is amended by revising paragraph (i) to read as follows:

35.017-2 Establishing or changing an FFRC.

* * * * *

(i) Quantity production or manufacturing is not performed unless authorized by legislation.

* * * * *

PART 37—SERVICE CONTRACTING

4. Section 37.000 is revised to read as follows:

37.000 Scope of part.

This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. Additional guidance for research and development services is in part 35; architect-engineering services is in part 36; information technology is in part 39; and transportation services is in part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see subpart 22.10).

5. Section 37.102 is amended by adding paragraphs (d) through (g) to read as follows:

37.102 Policy.

* * * * *

(d) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed.

(e) Agencies shall establish effective management practices in accordance with Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in service contracting.

(f) Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

(g) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

6. Subpart 37.5 is added to read as follows:

Subpart 37.5—Management Oversight of Service Contracts

Sec.

37.500 Scope of subpart.
37.501 Definition.
37.502 Exclusions.
37.503 Agency-head responsibilities.
37.504 Contracting officials' responsibilities.

37.500 Scope of subpart.

This subpart establishes responsibilities for implementing Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting.

37.501 Definition.

Best practices, as used in this subpart, means techniques that agencies may use to help detect problems in the acquisition, management, and administration of service contracts. Best practices are practical techniques gained from experience that agencies may use to improve the procurement process.

37.502 Exclusions.

(a) This subpart does not apply to services that are

- (1) Obtained through personnel appointments and advisory committees;
- (2) Obtained through personal service contracts authorized by statute;
- (3) For construction as defined in 36.102; or
- (4) Obtained through interagency agreements where the work is being performed by in-house Federal employees.

(b) Services obtained under contracts below the simplified acquisition threshold and services incidental to supply contracts also are excluded from the requirements of this subpart. However, good management practices and contract administration techniques should be used regardless of the contracting method.

37.503 Agency-head responsibilities.

The agency head or designee should ensure that—

- (a) Requirements for services are clearly defined and appropriate performance standards are developed so that the agency's requirements can be understood by potential offerors and that performance in accordance with contract terms and conditions will meet the agency's requirements;
- (b) Service contracts are awarded and administered in a manner that will provide the customer its supplies and services within budget and in a timely manner;
- (c) Specific procedures are in place before contracting for services to ensure compliance with OFPP Policy Letters 92-1, Inherently Governmental Functions, 91-2, Service Contracting, and 89-1, Conflicts of Interest Policies Applicable to Consultants; and
- (d) Strategies are developed and necessary staff training is initiated to ensure effective implementation of the policies in 37.102.

37.504 Contracting officials' responsibilities.

Contracting officials should ensure that "best practices" techniques are used when contracting for services and in contract management and

administration (see OFPP Policy Letter 93-1).

[FR Doc. 97-6312 Filed 3-14-97; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 16 and 52**

[FAC 90-46; FAR Case 93-603; Item IV]

RIN 9000-AH07

**Federal Acquisition Regulation;
Performance Incentives for Fixed-Price
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 have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to permit the use of award-fee provisions as performance incentives in fixed-price contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Effective May 16, 1997.

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 90-46, FAR case 93-603.

SUPPLEMENTARY INFORMATION:**A. Background**

The FAR currently provides for the use of performance incentives when used with cost incentives. This FAR revision allows the use of performance incentives alone. This revision will allow agencies to recognize and reward contractors who exceed minimum standards in terms of quality, timeliness, technical ingenuity, and effective management.

A proposed rule was published in the Federal Register at 61 FR 31798, June 20, 1996. One comment was received from one respondent. The comment was considered in developing 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 authorizes the use of performance incentives for contractors under fixed-price contracts. The rule authorizes the Government to reward a contractor for exceeding minimum performance standards.

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 16 and 52

Government procurement.

Dated: March 7, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

1. The authority citation for 48 CFR Parts 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 16—TYPES OF CONTRACTS**16.204 [Amended]**

2. Section 16.204 is amended in the last sentence by removing the citation "16.405" and inserting "16.406".

16.304 [Amended]

3. Section 16.304 is amended by removing "16.404-1" and inserting "16.405-1".

16.305 [Amended]

4. Section 16.305 is amended by removing "16.404-2" and inserting "16.405-2" each time it appears.

5. Section 16.401 is amended in paragraph (c) by revising the first sentence; and adding paragraph (d) to read as follows:

16.401 General.

* * * * *

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see 16.403 and