

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 2001–09;
Introduction**

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

ACTION: Summary presentation of final and interim rules and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–09. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–09 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Task-Order and Delivery-Order Contracts	1999–303	Wise.
II	Temporary Emergency Procurement Authority (Interim)	2002–003	Moss.
III	Veterans Entrepreneurship and Small Business Development Act of 1999	2000–302	Cundiff.
IV	Trade Agreements Thresholds	2002–009	Davis.
V	Payments Under Fixed-Price Construction Contracts	2001–012	Olson.
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–09 amends the FAR as specified below:

Item I—Task-Order and Delivery-Order Contracts (FAR Case 1999–303)

This final rule amends the Federal Acquisition Regulation (FAR) to further implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 concerning task-order and delivery-order contracts.

With respect to acquisition planning, the rule draws greater attention to the capital planning requirements of the Clinger-Cohen Act (40 U.S.C. 1422) and ensures more deliberation by agency acquisition planners before orders are placed under a Federal Supply Schedule contract, or task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

With respect to the structuring of orders and the consideration given to contract holders prior to order placement, the rule (1) increases attention to modular contracting principles to help agencies avoid unnecessarily large and inadequately defined orders, (2) facilitates information exchange during the fair opportunity process so that contractors may develop and propose solutions that enable the Government to award

performance-based orders, and (3) revises existing documentation requirements to address tradeoff decisions as well as the issuance of sole-source orders as logical follow-ons to orders already issued under the contract. This rule also adds a separate definition for the terms “Governmentwide acquisition contract (GWAC)” and “Multi-agency contract (MAC)” to the FAR to clarify the difference between the terms and the purpose of each contract vehicle.

Item II—Temporary Emergency Procurement Authority (FAR Case 2002–003)

This interim rule implements Section 836 of the Fiscal Year 2002 National Defense Authorization Act which increases the amount of the micro-purchase threshold and the simplified acquisition threshold for procurements of supplies or services by or for DoD during fiscal years 2002 and 2003, where those procurements are to facilitate the defense against terrorism or biological or chemical attack against the United States. Also, contracting officers acquiring biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological or chemical attack against the United States, may treat the supplies or services as commercial items.

Item III—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)

This final rule finalizes two interim rules published previously at 65 FR

60542, October 11, 2000 (FAC 97–20), and 66 FR 53492, October 22, 2001 (FAC 2001–01), respectively. The first interim rule implemented portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50), which added a subcontracting plan goal for veteran-owned small businesses and a 3 percent Governmentwide agency goal for service-disabled veteran-owned small businesses. The second interim rule implemented Section 803 of the Small Business Reauthorization Act of 2000 (part of the Consolidated Appropriations Act, 2001, Pub. L. 106–554), which added an additional subcontracting plan goal for service-disabled veteran-owned small business concerns. Both rules, and the correction published at 67 FR 1858, January 14, 2002 (FAC 2001–01 Correction), are adopted as final without change.

Item IV—Trade Agreements Thresholds (FAR Case 2002–009)

This final rule amends FAR Subparts 22.15, 25.2, 25.4, 25.6, 25.11, and the clauses at 52.213–4 and 52.222–19 to implement new dollar thresholds for application of the Trade Agreements Act and North American Free Trade Agreement as published by the U.S. Trade Representative in the **Federal Register** at 67 FR 14763, March 27, 2002. Contracting officers must review the new thresholds when acquiring supplies, services, or construction in order to select the appropriate clauses to implement the Buy American Act, trade agreements, and sanctions of European

Union country end products and services.

Item V—Payments Under Fixed-Price Construction Contracts (FAR Case 2001-012)

This final rule amends the FAR to clarify in the certification language of the clause entitled Payments Under Fixed-Price Construction Contracts that *all* payments due to subcontractors and suppliers have been made by the prime contractor from previous progress payments received from the Government. The rule is of special interest to contracting officers that administer construction contracts.

Item VI—Technical Amendments

These amendments update sections and make editorial changes at FAR 22.1503, 36.606, and 52.232-16.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-09 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001-09 are effective September 30, 2002, except for Items II and III which are effective August 30, 2002.

Dated: August 15, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: August 21, 2002.

Patricia A. Brooks,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 14, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 8, 16, 17, and 52

[FAC 2001-09; FAR Case 1999-303; Item I]

RIN 9000-A172

Federal Acquisition Regulation; Task-Order and Delivery-Order 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to further implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000. These subsections focus primarily on appropriate use of task-order and delivery-order contracts and specific steps agencies should take when placing orders under task-order and delivery-order contracts established by another agency. The rule also clarifies that written acquisition plans may be required for orders as determined by the agency head.

DATES: *Effective Date:* September 30, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208-1168. Please cite FAC 2001-09, FAR case 1999-303.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a final rule, FAR case 1999-014, Competition Under Multiple Award Contracts, in the **Federal Register** at 65 FR 24317, April 25, 2000, to clarify what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts, and clarify how orders should be placed against the resultant contracts. That rule implemented portions of subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000. This rule further strengthens that policy

and the implementation of subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 in several ways.

With respect to acquisition planning, the rule draws greater attention to the capital planning requirements of the Clinger-Cohen Act (40 U.S.C. 1422) and ensures more deliberation by agency acquisition planners before orders are placed under a Federal Supply Schedule contract; or task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract). The Councils are continuing to review the agency acquisition planning practices of customers of interagency contracts to determine if additional guidance is needed to ensure strategic use of these vehicles.

With respect to the structuring of orders and the consideration given to contract holders prior to order placement, the rule (1) increases attention to modular contracting principles to help agencies avoid unnecessarily large and inadequately defined orders, (2) facilitates information exchange during the fair opportunity process so that contractors may develop and propose solutions that enable the Government to award performance-based orders, and (3) revises existing documentation requirements to address tradeoff decisions as well as the issuance of sole-source orders as logical follow-ons to orders already issued under the contract.

This rule also adds to the FAR a separate definition for the terms "Governmentwide acquisition contract (GWAC)" and "Multi-agency contract (MAC)" to clarify the difference between the terms and the purpose of each contract vehicle.

A proposed rule was published in the **Federal Register** at 66 FR 44518, August 23, 2001. Four sources submitted comments in response to the proposed rule. This final rule includes a change based on some of the comments received. Substantive public comments addressed the need for additional clarification pertaining to the application of the Economy Act within the proposed definition of multi-agency contract. The definition states that supplies and services would be obtained "consistent with" the Economy Act. The Councils agreed that clarification was needed. Accordingly, the definition of multi-agency contract was amended by adding a reference to FAR 17.500(b), which expressly provides that the Economy Act is not applicable if an interagency acquisition is authorized under a more specific statutory