

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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## 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

Management and Budget (OMB) 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, 18th & F Streets, N.W., Washington, DC 20405 (202) 501-4755. Please cite FAC 90-40, FAR case 94-712.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The proposed rule covering implementation of sections 1022 and 1072 of Public Law 103-355 regarding Multiyear Contracting was published as part of FAR case 94-710, Special Contracting Methods, in the Federal Register at 60 FR 14340, March 16, 1995. The rule permitted agencies to enter into multiyear contracts under certain circumstances. After disposition of public comments, coverage on multiyear contracting was extracted from the 94-710 final rule because several issues remained unresolved at the time of publication (60 FR 49720, September 26, 1995). All remaining issues have now been resolved and this separate final rule represents completion of the Special Contracting Methods implementation.

**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**

The proposed rule was published in the Federal Register on March 16, 1995. Eight comments were received, the most significant of which raised the issue of "bundling" of requirements and its effect on small businesses. All comments were considered in the formulation of this final rule.

List of Subjects in 48 CFR Parts 17, 22 and 52

Government procurement.

Dated: July 16, 1996.

Edward C. Loeb,

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

Therefore, 48 CFR Parts 17, 22, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 17, 22, 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 17—SPECIAL CONTRACTING METHODS**

2. Subpart 17.1 is revised to read as follows:

**Subpart 17.1—Multiyear Contracting**

Sec.

17.101 Authority.

17.102 Applicability.

17.103 Definitions.

17.104 General.

17.105 Policy.

17.105-1 Uses.

17.105-2 Objectives.

17.106 Procedures.

17.106-1 General.

17.106-2 Solicitations.

17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

17.107 Options.

17.108 Congressional notification.

17.109 Contract clauses.

**17.101 Authority.**

This subpart implements Section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c) and 10 U.S.C. 2306b and provides policy and procedures for the use of multiyear contracting.

**17.102 Applicability.**

For DoD, NASA, and the Coast Guard, the authorities cited in 17.101 do not apply to contracts for the purchase of supplies to which 40 U.S.C. 759 applies (information resource management supply contracts).

**17.103 Definitions.**

As used in this subpart—

*Cancellation* means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer

(a) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year, or

(b) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

*Cancellation ceiling* means the maximum cancellation charge that the contractor can receive in the event of cancellation.

*Cancellation charge* means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.

*Multiyear contract* means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multiyear contracts, defined in the statutes cited at 17.101, buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

*Nonrecurring costs* means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

*Recurring costs* means costs that vary with the quantity being produced, such as labor and materials.

*Termination for convenience* means the procedure which may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or a partial quantity (whereas cancellation must be for all subsequent fiscal years' quantities).

**17.104 General.**

(a) Multiyear contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.

(b) Multiyear contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multiyear contracts will depend on the unique circumstances of each contracting action. Accordingly, for multiyear contracts, the agency head may authorize modification of the requirements of this subpart and the

clause at 52.217-2, Cancellation Under Multiyear Contracts.

(c) Agency funding of multiyear contracts shall conform to the policies in OMB Circulars A-11 (Preparation and Submission of Budget Estimates) and A-34 (Instructions on Budget Execution) and other applicable guidance regarding the funding of multiyear contracts. As provided by that guidance, the funds obligated for multiyear contracts must be sufficient to cover any potential cancellation and/or termination costs; and multiyear contracts for the acquisition of fixed assets should be fully funded or funded in stages that are economically or programmatically viable.

#### 17.105 Policy.

##### 17.105-1 Uses.

(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multiyear contract if the head of the contracting activity determines that—

(1) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and

(2) A multiyear contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency's programs.

(b) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a multiyear contract for supplies if—

(1) The use of such a contract will result in substantial savings of the total estimated costs of carrying out the program through annual contracts;

(2) The minimum need to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

(3) There is a stable design for the supplies to be acquired, and the technical risks associated with such supplies are not excessive;

(4) There is a reasonable expectation that, throughout the contemplated contract period, the head of the agency will request funding for the contract at a level to avoid contract cancellation; and

(5) The estimates of both the cost of the contract and the cost avoidance through the use of a multiyear contract are realistic.

(c) The multiyear contracting method may be used for the acquisition of supplies or services.

(d) If funds are not appropriated to support the succeeding years'

requirements, the agency must cancel the contract.

##### 17.105-2 Objectives.

Use of multiyear contracting is encouraged to take advantage of one or more of the following:

(a) Lower costs.

(b) Enhancement of standardization.

(c) Reduction of administrative burden in the placement and administration of contracts.

(d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.

(e) Stabilization of contractor work forces.

(f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.

(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

#### 17.106 Procedures.

##### 17.106-1 General.

(a) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multiyear procedure is compatible with sealed bidding, including two-step sealed bidding, and negotiation.

(b) *Type of contract.* Given the longer performance period associated with multiyear acquisition, consideration in pricing fixed-priced contracts should be given to the use of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

(c) *Cancellation procedures.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.804-6) are estimated at 10 percent of the total multiyear price, and the percentages for each of the program year

requirements for 5 years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multiyear requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and the effect of labor learning.

(3) The contracting officer shall establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(d) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in

cancellation ceilings and dates before final negotiation and contract award.

(e) *Payment of cancellation charges.* If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.

(f) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multiyear contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(g) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

#### 17.106-2 Solicitations.

Solicitations for multiyear contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item of supply or service, for the—

(1) First program year; and

(2) Multiyear contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multiyear requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government's evaluation of the price or estimated cost and fee shall consider only the first year.

(d) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.106-1 (c) and (d)).

(e) A statement that award will not be made on less than the first program year requirements.

(f) The Government's administrative costs of annual contracting may be used as a factor in the evaluation only if they can be reasonably established and are stated in the solicitation.

(g) The cancellation ceiling shall not be an evaluation factor.

#### 17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors, suppliers, and vendors.* In order to broaden the defense industrial base, to the maximum extent practicable—

(1) Multiyear contracting shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, suppliers, and vendors; and

(2) Upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, supplier, or vendor company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(b) *Protection of existing authority.* To the extent practicable, multiyear contracting shall not be carried out in a manner to preclude or curtail the existing ability of the Department or agency to provide for termination of a prime contract, the performance of which is deficient with respect to cost, quality, or schedule.

(c) *Cancellation or termination for insufficient funding.* In the event funds are not made available for the continuation of a multiyear contract awarded using the procedures in this section, the contract shall be canceled or terminated.

(d) Contracts awarded under the multiyear procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(e) *Recurring costs in cancellation ceiling.* The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head.

(f) *Annual and multiyear proposals.* Obtaining both annual and multiyear offers provides reduced lead time for making an annual award in the event that the multiyear award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity may authorize the use of a solicitation requesting only multiyear prices, *provided* it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives in 17.105-2.

(g) *Level unit prices.* Multiyear contract procedures provide for the

amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except when the economic price adjustment terms apply) for all items or services under the multiyear contract. If level unit pricing is not in the Government's interest, the head of a contracting activity may approve the use of variable unit prices, provided that for competitive proposals there is a valid method of evaluation.

#### 17.107 Options.

Benefits may accrue by including options in a multiyear contract. In that event, contracting officers must follow the requirements of subpart 17.2. Options should not include charges for plant and equipment already amortized, or other nonrecurring charges which were included in the basic contract.

#### 17.108 Congressional notification.

(a) Except for DoD, NASA, and the Coast Guard, a multiyear contract which includes a cancellation ceiling in excess of \$10 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees may not be readily available to contracting officers. Accordingly, agencies should provide such information through its internal regulations. The contract may not be awarded until the thirty-first day after the date of notification.

(b) For DoD, NASA, and the Coast Guard, a multiyear contract which includes a cancellation ceiling in excess of \$100 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and on appropriations of the House of Representative and Senate. The contract may not be awarded until the thirty-first day after the date of notification.

#### 17.109 Contract clauses.

(a) The contracting officer shall insert the clause at 52.217-2, Cancellation Under Multiyear Contracts, in solicitations and contracts when a multiyear contract is contemplated.

(b) *Economic price adjustment clauses.* Economic price adjustment clauses are adaptable to multiyear contracting needs. When the period of production is likely to warrant a labor

and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see 16.203). When contracting for services, the contracting officer—

(1) Shall add the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Act of 1965, as amended;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by 16.203, when potential fluctuations require coverage and are not included in cost contingencies provided for by the clause at 52.222-43.

## **PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

### **22.1001 [Amended]**

3. Section 22.1001 is amended in the second sentence of the definition of "Multiple year contracts," by removing the phrase "with a term of more than 1 year (see 17.101)" and inserting "(see 17.103)" in its place.

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

### **52.217-1 [Reserved]**

4. Section 52.217-1 is removed and reserved.

5. Section 52.217-2 is revised to read as follows:

### **52.217-2 Cancellation Under Multiyear Contracts.**

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTIYEAR CONTRACTS (JUL 1996)

(a) *Cancellation*, as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default

clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.8 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

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## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **48 CFR Parts 19 and 52**

[FAC 90-40; FAR Case 94-782; Item VIII]

RIN 9000-AH08

### **Federal Acquisition Regulation; Small Business/Simplified Acquisition Threshold**

**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). The Federal Acquisition Regulatory Council has agreed to amend the Federal Acquisition Regulation (FAR) to implement section 4004 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993,