

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Part 16

[FAR Case 98-007]

RIN 9000-A108

Federal Acquisition Regulation;  
Competition Under Multiple Award  
Task and Delivery Order Contracts

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the procedures governing placement of orders under multiple award indefinite delivery 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:** Comments should be submitted on or before November 9, 1998 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Ms. Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98-007@gsa.gov.

Please cite FAR case 98-007 in all correspondence related to this case.

**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 Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAR case 98-007.

## SUPPLEMENTARY INFORMATION:

## A. Background

This proposed rule amends the procedures for placing orders under

multiple award contracts at FAR 16.505(b)(1) to emphasize that agencies shall not use any method of placing orders, such as allocation or designation of any preferred awardee(s), that would result in fair consideration not being given to all awardees prior to placing each order. The proposed rule also makes some editorial changes at FAR 16.505(b)(2).

## B. Regulatory Flexibility Act

This proposed rule is not expected to 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 amends the FAR to clarify the existing prohibition against allocation of orders placed under multiple award contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98-007), in correspondence.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 16

Government procurement.

Dated: September 2, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, it is proposed that 48 CFR Part 16 be amended as set forth below:

## PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 16 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 16.505 is amended by revising paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii) to read as follows:

## 16.505 Ordering.

\* \* \* \* \*

(b) *Orders under multiple award contracts.* (1) Except as provided in paragraph (b)(2) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of \$2,500. 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 on 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. In evaluating past performance on individual orders, the procedural requirements in subpart 42.15 are not mandatory. The procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order must be set forth in the solicitation and contract. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of part 6. However, methods such as allocation, or designation in any way of any preferred awardees, that would result in less than fair consideration being given to all awardees prior to placing each order is prohibited. Formal evaluation plans or scoring of quotes or offers are not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(2) \* \* \*

(i) The agency need for the supplies or services is so urgent that providing the opportunity would result in unacceptable delays;

(ii) Only one contractor is capable of providing the supplies or services at the level of quality required because the supplies or services are unique or highly specialized;

\* \* \* \* \*

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