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.

[FR Doc. 02–21866 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

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–AI72

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

authority. In other words, use of more specific authority, if it exists, would still be ''consistent with'' the Economy Act.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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 makes various changes to improve the use of task-order contracts and delivery-order contracts. The primary focus is on usage of these contracts where multiple awards are made and where the contracts are being used to support inter-agency transactions. Some aspects of the final rule (*e.g.*, planning, documentation) largely address the internal operating procedures of Government agencies. The changes that affect small entities should have a slight positive effect by, among other things, strengthening use of the fair opportunity process to ensure small entities are appropriately being given opportunities to pursue business opportunities under multiple award task-order and delivery-order contracts. The rule further acknowledges that access to small business concerns is an appropriate factor for an agency to consider as part of its acquisition planning prior to placing an order under a contract awarded by another agency.

We did not receive any comments regarding this determination as a result of publication of the proposed rule in the **Federal Register** at 66 FR 44518, August 23, 2001.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that 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 2, 7, 8, 16, 17, and 52

Government procurement.

Dated: August 21, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 8, 16, 17, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 8, 16, 17, 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 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Governmentwide acquisition contract (GWAC)'' and ''Multi-agency contract (MAC)'' to read as follows:

2.101 Definitions.

* * * * *

Governmentwide acquisition contract (GWAC) means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

(1) By an executive agent designated by the Office of Management and Budget pursuant to section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. 1412(e); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by the Brooks Act, 40 U.S.C. 759 (repealed by Public Law 104–106). The Economy Act does not apply to orders under a Governmentwide acquisition contract.

* * * * *

Multi-agency contract (MAC) means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see 17.500(b)). Multi-agency contracts include contracts for information technology established pursuant to section 5124(a)(2) of the Clinger-Cohen Act, 40 U.S.C. 1424(a)(2).

* * * * *

PART 7—ACQUISITION PLANNING

3. Amend section 7.101 by adding, in alphabetical order, the definition ''Order'' to read as follows:

7.101 Definitions.

* * * * *

Order means an order placed under a—

(1) Federal Supply Schedule contract; or

(2) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

* * * * *

4. Amend section 7.103 by revising paragraphs (e) and (q); and adding paragraph (t) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(e) Writing plans either on a systems basis, on an individual contract basis, or on an individual order basis, depending upon the acquisition.

* * * * *

(q) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts or orders are adequately managed so as to ensure effective official control over contract or order performance.

* * * * *

(t) Ensuring that agency planners on information technology acquisitions comply with the capital planning and investment control requirements in 40 U.S.C. 1422 and OMB Circular A–130.

5. Amend section 7.104 by revising the first sentence of paragraph (a); in the second sentence of paragraph (b) by adding ''with'' after the word ''consult''; and by revising the second sentence of paragraph (c) to read as follows:

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. * * *

* * * * *

(c) * * * If the plan proposes using other than full and open competition when awarding a contract, the plan shall also be coordinated with the cognizant competition advocate.

6. Amend section 7.105 in the first sentence of the introductory paragraph by removing ''subparagraph'' and adding ''paragraph'' in its place, and in the last sentence by adding ''or orders'' after the word ''contracts''; and by revising paragraph (b)(4) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) *Acquisition considerations.* (i) For each contract contemplated, discuss contract type selection (*see* part 16); use of multiyear contracting, options, or other special contracting methods (*see* part 17); any special clauses, special solicitation provisions, or FAR

deviations required (*see* subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (*see* subpart 7.4) and why; and any other contracting considerations.

(ii) For each order contemplated, discuss—

(A) For information technology acquisitions, how the capital planning and investment control requirements of 40 U.S.C. 1422 and OMB Circular A–130 will be met (*see* 7.103(t) and part 39); and

(B) Why this action benefits the Government, such as when—

(*1*) The agency can accomplish its mission more efficiently and effectively (*e.g.*, take advantage of the servicing agency's specialized expertise; or gain access to contractors with needed expertise); or

(*2*) Ordering through an indefinite delivery contract facilitates access to small business concerns, including small disadvantaged business concerns, 8(a) contractors, women-owned small business concerns, HUBZone small business concerns, veteran-owned small business concerns, or service-disabled veteran-owned small business concerns.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.001 through 8.003 [Redesignated as 8.002 through 8.004]

7. Redesignate sections 8.001 through 8.003 as 8.002 through 8.004, respectively; and add a new section 8.001;

7a. In the newly designated section 8.002 remove from the introductory text of paragraph (a) ''8.002'' and add ''8.003'' in its place; and in the second sentence of the newly designated section 8.004, remove ''must'' and add ''shall'' (twice) in its place.

The added text reads as follows:

8.001 General.

Regardless of the source of supplies or services to be acquired, information technology acquisitions shall comply with capital planning and investment control requirements in 40 U.S.C. 1422 and OMB Circular A–130.

* * * * *

8.401 [Amended]

8. Amend section 8.401 in the first sentence of paragraph (a) by removing ''8.001'' and adding ''8.002'' in its place.

9. Amend section 8.404 by revising paragraph (a) to read as follows:

8.404 Using schedules.

(a) *General.* (1) Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303–2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)).

(i) Ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs.

(ii) GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(2) Orders placed under a Federal Supply Schedule contract are not exempt from the development of acquisition plans (see subpart 7.1), and an information technology acquisition strategy (see part 39).

* * * * *

8.602 [Amended]

10. Amend section 8.602 in the introductory text of paragraph (b) by removing ''8.001'' and adding ''8.002'' in its place.

PART 16—TYPES OF CONTRACTS

11. Amend section 16.505 as follows:

a. Revise paragraph (a)(2);

b. In paragraph (a)(3) by adding ''or order'' after the word ''contract'';

c. Redesignate paragraphs (a)(4), (a)(5), and (a)(6) as (a)(5), (a)(6), and (a)(8), respectively, and add new paragraphs (a)(4) and (a)(7);

d. Add paragraphs (b)(1)(iii)(A)(*4*) and (b)(1)(iii)(A)(*5*);

e. Revise the introductory text of paragraph (b)(2);

f. Amend paragraphs (b)(2)(i) and (b)(2)(ii) by removing the semicolons and adding periods in their places;

g. Revise paragraph (b)(2)(iii);

h. Revise paragraph (b)(4); and

i. Revise the heading and the first sentence of paragraph (b)(5).

The revised and added text reads as follows:

16.505 Ordering.

(a) * * *

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

* * * * *

(4) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see 39.103(a)).

* * * * *

(7) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a Governmentwide acquisition contract, or multi-agency contract)—

(i) Are not exempt from the development of acquisition plans (see subpart 7.1), and an information technology acquisition strategy (see part 39); and

(ii) May not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.*, 31 U.S.C. 1501(a)(1)).

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(*5*) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(*i*) Seeking comments from two or more contractors on draft statements of work;

(*ii*) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

* * * * *

(2) *Exceptions to the fair opportunity process.* The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding $2,500 unless one

of the following statutory exceptions applies:

* * * * *

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

* * * * *

(4) *Decision documentation for orders.* The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(5) *Task-order and delivery-order ombudsman.* The head of the agency shall designate a task-order and delivery-order ombudsman. * * *

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

12. Revise paragraph (b) of section 17.500 to read as follows:

17.500 Scope of subpart.

* * * * *

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include—

(1) Acquisitions from required or optional sources of supplies prescribed in Part 8, which have separate statutory authority (*e.g.*, Federal Supply Schedule contracts); and

(2) Acquisitions using Governmentwide acquisition contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–9 [Amended]

13. Amend section 52.208–9 by removing from the prescription ''8.003'' and adding ''8.004'' in its place.

[FR Doc. 02–21867 Filed 8–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 12, 13, 19, and 25

[FAC 2001–09; FAR Case 2002–003; Item II]

RIN 9000–AJ40

Federal Acquisition Regulation; Temporary Emergency Procurement Authority

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 836 of the Fiscal Year 2002 National Defense Authorization Act. Section 836 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.

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

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before October 29, 2002, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–003@gsa.gov*

Please submit comments only and cite FAC 2001–09, FAR case 2002–003, 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 Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–09, FAR case 2002–003.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 836 of the Fiscal Year 2002 National Defense Authorization Act (Pub. L. 107–107, 10 U.S.C. 2302 Note). Section 836 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.

For acquisitions of supplies and services to facilitate the defense against terrorism or biological or chemical attack against the United States, by or for the Department of Defense, the micro-purchase threshold is raised to $15,000 (except for construction subject to the Davis-Bacon Act). The simplified acquisition threshold for such acquisitions in support of a contingency operation is raised to $250,000 inside the United States and $500,000 outside the United States.

Any acquisition by or for the Department of Defense of biotechnology supplies or biotechnology services to facilitate the defense against terrorism or biological or chemical attack against the United States shall be treated as being a procurement of commercial items.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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.* However, the increased thresholds are limited to procurements that are to facilitate the defense against terrorism or biological or chemical attack against the United States. There are no data available on the number of procurements that will be eligible. We expect the increased thresholds to this limited class of procurements will apply to a very small number of small entities.

This interim rule does not impose any data collection requirements on small business concerns. The rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the proposed rule that would accomplish the stated beneficial objective.

The FAR Secretariat has submitted a copy of the Initial Regulatory Flexibility