DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[FAR Case 94-790]

RIN 9000-AG38

Federal Acquisition Regulation; Acquisition of Commercial Items

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

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement the revised statutory authorities for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors at all levels. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before May 1, 1995 to be considered in the formulation of a final rule.

Public Meeting: March 17, 1995, 9:30 a.m. at the following location: General Services Administration, Auditorium, 18th & F Streets, NW., Washington, DC 20405.

Written and Oral Statements: Statements prepared for oral presentation must be sent to the FAR Secretariat at the address given below, not later than March 13, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAR case 94–790 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Colonel Laurence M. Trowel, Commercial Item Team Leader, at (703) 695–3858 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 FAR case 94–790.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides

authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Computer Network (FACNET).

This notice announces FAR revisions developed under FAR case 94-790, Acquisition of Commercial Items, which encourage the acquisition of commercial end items and components by Federal Government agencies as well as contractors and subcontractors at all levels. The Commercial Item Drafting Team was organized and tasked with reviewing Title VIII of the Act and preparing implementing language for the FAR. The proposed revisions make changes throughout the FAR to incorporate the provisions of Title VIII. The most significant proposed revisions are in the following FAR parts:

FAR Part 2 has been amended to incorporate the definitions of "commercial item," "component," "commercial component" and "nondevelopmental item" from the Act with only minor revisions for clarification. The clause at 52.202–1, Definitions, has been similarly revised to make the definitions available to prime and subcontractors.

FAR Part 10 has been completely revised to address market research. It contains some language taken from the current FAR Part 11. This new part establishes the requirement for market research as the first step in the acquisition process. Market research is an essential element in the later steps of describing the agency's need, developing the overall acquisition strategy and identifying terms and conditions unique to the item being acquired.

FAR Part 11 has been completely revised to address the process of describing agency needs. It contains some of the language on specifications and standards formerly found in FAR Part 10, but takes a more streamlined approach. In addition, the revised Part 11 establishes the Government's order of precedence for requirements documents and addresses the concept of market acceptance contained in the Act. The revised Part 11 also contains coverage on Delivery or Performance Schedules, Liquidated Damages, Priorities and Allocations, and Variations in Quantity taken from the current Part 12 with only minor editorial revisions. The current

FAR Part 12 coverage on Suspension of Work, Stop Work Orders, and Government Delay of Work has been moved to Subpart 42.13 with only minor editorial revisions.

FAR Part 12 has been revised to address the acquisition of commercial items. The Team created this entirely new coverage to address in one FAR part both the policies and procedures for the acquisition of commercial items. FAR Part 12 was chosen to reinforce the expected sequence of events in approaching a given acquisition * * * market research (FAR Part 10) description of agency need (FAR Part 11), acquisition of commercial items, if they meet the agency's needs (FAR Part 12); and acquisition of other than commercial items using current FAR procedures (FAR Parts 13, 14 and 15). The Team also believes that moving the policies and procedures for the acquisition of commercial items to FAR Part 12 creates a clean break with past policies and procedures such as the Acquisition and Distribution of Commercial Products (ADCOP) program initiated in 1978 and currently described in FAR Part 11, and the **DFARS 211 implementation of Section** 824(b) of the 1990–1991 DOD Authorization Act.

- -48 CFR Part 12, FAR Subpart 12.1 states that the policies and procedures in the revised FAR Part 12 are applicable to all acquisitions of commercial items above the micropurchase threshold. The requirements of other parts of the FAR apply to commercial items to the extent they are not inconsistent with FAR Part 12;
- -48 CFR Part 12, FAR Subpart 12.2 identifies special requirements for the acquisition of commercial items. These requirements generally reflect the requirements of Title VIII.
- -48 CFR Part 12, FAR Subpart 12.3 establishes standard provisions and clauses for use in the acquisition of commercial items. The Team believes this approach is essential to meet the requirements of the statute and offers contracting officers and industry an easy to use, simplified method for acquiring commercial items. However, the Team also recognizes that it is essential that contracting officers be allowed to tailor solicitations and contracts to meet the needs of the particular acquisition and the market place for that item. Subpart 12.3 gives contracting officers broad authority to tailor solicitations and contracts, a practice itself that is consistent with commercial practices. The Act requires that some constraints be placed on this authority