## **DEPARTMENT OF DEFENSE**

GENERAL SERVICES ADMINISTRATION—

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION-

48 CFR Chapter 1 -

[FAR Case 94-721]-

RIN 9000-AG30-

Federal Acquisition Regulation; Truth in –Negotiations Act and Related Changes

**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 those portions of Pub. L. 103–355 that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** Comment Due Date: Comments should be submitted on or before March 7, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on February 9, 1995, at 9:30 a.m.–

Oral/Written Statements: Views to be presented at the public meeting should be sent, in writing, to the FAR Secretariat, at the address given below, not later than February 6, 1995.

ADDRESSES: Interested parties should submit written comments to: –General Services Administration, FAR Secretariat (VRS),– 18th & F Streets, NW, Room 4037, Washington, DC 20405, Telephone: (202) 501–4755.

The public meeting will be held at:— General Services Administration Auditorium, 18th & F Streets, NW, First Floor, –Washington, DC 20405.

Please cite FAR case 94–721 in all correspondence related to this case. – FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602–2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–721.

## SUPPLEMENTARY INFORMATION:

## A. Background -

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) 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 the Act's 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).

Public Meeting-

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. The public is encouraged to furnish its views; the FAR Council anticipates that public comments will be very helpful in formulating final rules. –

A public meeting will be held on February 9, 1995, to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR.—

Persons or organizations wishing to make presentations will be allowed 10 minutes each to present their views, provided they notify the FAR Secretariat at (202) 501–4755. Written statements for presentation should be submitted to the FAR Secretariat by February 6, 1995. Persons or organizations with similar positions are encouraged to select a common spokesperson for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

FAR case 94-721

FAR case 94–721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of the Act. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to \$500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. New exceptions are added to the requirement for the submission of "cost or pricing data" for

commercial items; approval levels for waivers are changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses: (1) "Information other than cost or pricing data", (2) exemptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies FAR Part 15, together with associated Part 52 clauses and Part 53 forms. However, some coverage is proposed to address contract clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 4, 12, 15, 16, 31, 33, 36, 45, 46, 49, and 53 have also been included.

Upon final implementation, the proposed FAR coverage will supersede the earlier FAR case 94-720 that was previously published as an interim rule in Federal Acquisition Circular (FAC) 90-22. FAR case 94-720 provided for an immediate increase to the threshold for "cost or pricing data" submission by contractors to civilian agencies to \$500,000. The Act provided that this requirement was effective on October 13, 1994, the date of enactment. FAC 90-22 (FAR case 94-720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

Policy for Determining Reasonableness of Price-

Two major changes are found in the proposed coverage. The first change shifts the policy of FAR Part 15 with respect to determining price reasonableness. A hierarchical policy preference for the types of information to be used in assessing reasonableness of price is established. The policy states that no additional information should be obtained from the contractor if there is adequate price competition. This is followed by allowing progressively more intrusive types of data requirements. Obtaining "cost or pricing data" is designated as the last choice. Use of "cost or pricing data" is coupled with a reminder that unnecessarily requiring that type of data is not desirable and can lead to additional