## DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

# 48 CFR Chapter 1

[FAR Case 94-701]

### Federal Acquisition Regulation; Contract Award Implementation

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 expand the reasons for establishing or maintaining alternative sources of supplies or services, clarify approval authority for use of other than full and open competition, allow acquisition of expert services to support litigation by other than full and open competition and provide an exception to synopsis requirements, make procedures for award without discussion the same for Department of Defense and civilian agencies and clarify procedures for use of source selection evaluation factors in solicitations, require a determination that an option is likely to be exercised before providing for evaluation of options, clarify notice of award and debriefing procedures, allow nonprofit agencies for the blind or severely disabled to use Government supply sources in performing Javits-Wagner-O'Day contracts, clarify procedures for award to a source identified in a statute, and identify new Federal Procurement Data System reporting requirements.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. **DATES:** Comments should be submitted on or before March 10, 1995 to be considered in the formulation of a final rule.

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 94–701 in all correspondence related to this case. **FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, Contract Award Team Leader, at (703) 614–1634 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 94–701.

## 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.

This notice announces proposed FAR revisions developed under FAR Case 94–701, Contract Award Implementation, which implements the following sections of the Act:

- —Sections 1002 and 1052 amended 10 U.S.C. 2304(b) and 41 U.S.C. 253(b) to—(1) ensure the continuous availability of a reliable source of supply; (2) satisfy projected needs based on a history of high demand; and (3) satisfy a critical need for medical, safety, or emergency supplies, as reasons for establishing or maintaining alternative sources. (Implementation at FAR 6.202.)
- -Sections 1003 and 1053 amended 10 U.S.C. 2304(f)(1)(B)(i) and 41 U.S.C. 253(f)(1)(B)(i) to clarify the approval authority for use of other than full and open competition. (Implementation at FAR 6.304.)
- —Sections 1005 and 1055 amended 10 U.S.C. 2304(c)(3) and 41 U.S.C. 253(c) to add the acquisition of expert services for use in any litigation or dispute involving the Federal Government as an exception to use of full and open competition. (Implementation at FAR 6.302–5.) Section 1055 also amended 41 U.S.C. 416(c) and 15 U.S.C. 637(c) to provide an exception to the publication of notices in the Commerce Business Daily for acquisition of expert services. (Implementation at FAR 5 202 5 301 and 6 302–3.)
- 5.202, 5.301, and 6.302–3.) —Sections 1011 and 1061 amend 10 U.S.C. 2305(a) and 41 253a to (1) make procedures for award of contracts without discussion comparable in Department of Defense and civilian agencies, (2) require solicitations for competitive proposals to include all significant factors and subfactors and whether they are more important, of equal importance or less important than cost or price and (3) permit agencies to disclose numerical weights assigned to evaluation factors at their discretion. (Implementation at

FAR 15.407, 15.605, 15.610, and 52.215–16.)

- —Sections 1012 and 1062 amend 10 U.S.C. 2305(a) and 41 U.S.C. 253(a) to require a determination that it is likely that an option will be exercised before providing for evaluation of prices of options in solicitations for contracts awarded using sealed bid procedures. (Implementation at FAR 17.202 and 17.208.)
- -Sections 1013 and 1063 amend 10 U.S.C. 2305(b) and 41 U.S.C. 253b to require, within three days of contract award, notification to unsuccessful offerors that a contract has been awarded and to allow electronic transmission of the notice. (Implementation at FAR 14.407–1, 14.408–1, 15.1001, 15.1002 and 36.304.)
- -Sections 1014 and 1064 amend 10 U.S.C. 2305(b) and 41 U.S.C. 253b to (1) allow offerors to request a debriefing within three days of receipt of notice of award and requires agencies, to the maximum extent practicable, to conduct the debriefings within five days, and (2) specify minimum requirements for content of the debriefings. (Implementation at FAR 15.1003 and 36.607.)
- —Section 1555 amends 40 U.S.C. 481 to allow nonprofit agencies for the blind or severely disabled providing supplies or services under a Javits-Wagner-O'Day Act contract to use Government supply sources in performing the contract. (Implementation at FAR 51.101 and 51.102.)
- -Section 7203 amends 10 U.S.C. 2304 and 41 U.S.C. 253 to state Congressional policy regarding legislative requirements for award of a new contract to a specific non-Federal Government entity. (Implementation at FAR 6.302-5.) Section 1004 requires the Federal Procurement Data System to collect from contracts in excess of the simplified acquisition threshold data on awards to small and disadvantaged businesses using either set asides or full and open competition, awards to businesses owned and controlled by women, the number of offers received in response to a solicitation, task order contracts and contracts for the acquisition of commercial items. (Implementation at FAR 4.601.)

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 Council is conducting a series of public meetings. However, the Council has not scheduled a public