

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-17; Introduction**

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

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97-17. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including

the SECG, is available via the Internet at <http://www.arnet.gov/far>.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-17 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I .....	Competition under Multiple Award Contracts .....	1999-014	De Stefano.
II .....	Determination of Price Reasonableness and Commerciality .....	1998-300 (98-300)	Olson.
III .....	Caribbean Basin Trade Initiative .....	2000-003	Linfield.
IV .....	Utilization of Indian Organizations and Indian-Owned Economic Enterprises .....	1999-301 (99-301)	Moss.
V .....	Ocean Transportation by U.S.-Flag Vessels .....	1998-604 (98-604)	Klein.
VI .....	Technical Amendments..		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97-17 amends the FAR as specified below:

**Item I—Competition Under Multiple Award Contracts (FAR Case 1999-014)**

This rule amends FAR 2.101, Subpart 16.5, and 37.201 to clarify what the contracting officer should consider when planning for and placing orders under multiple award contracts. This rule affects all contracting officers that award multiple award contracts or place task or delivery orders under them. The rule—

- Requires the contracting officer to include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman in the solicitation and contracts if multiple awards will be made;
- Stresses key things the contracting officer must consider when deciding if a multiple award contract is appropriate, such as—
- Avoiding situations in which awardees specialize exclusively in one or a few areas within the statement of work;

- The scope and complexity of the contract requirement;
- The expected duration and frequency of task or delivery orders;
- The mix of resources a contractor must have to perform expected task or delivery order requirements; and
- The ability to maintain competition among the awardees throughout the contract's period of performance;
- Requires contracting officers to document their decision on whether or not to use multiple awards in the acquisition plan or contract file;
- Emphasizes the use of performance-based statements of work;
- Provides guidance on how to develop tailored order placement procedures;
- Requires contracting officers to consider cost or price as one of the factors in each selection decision for orders;
- Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4; and
- Requires contracting officers to document the order placement rationale and price in the contract file.

**Item II—Determination of Price Reasonableness and Commerciality (FAR Case 1998-300) (98-300)**

This final rule makes a minor editorial change to FAR 15.403-3 and

converts the interim rule, which was published in FAC 97-14 as Item VI, as final. The editorial change amends the cross reference at 15.403-3(c)(1). The remainder of the interim rule that has been in effect since September 24, 1999, remains the same. The primary amendments made in the interim rule that are made final in this rule—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items; and
- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award.

**Item III—Caribbean Basin Trade Initiative (FAR Case 2000-003)**

This final rule amends FAR Parts 25.003, 25.400, 25.404, and the clause at 52.225-5, Trade Agreements, to implement the determination of the United States Trade Representative to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras. This rule applies only if an acquisition is subject to the Trade Agreements Act (see FAR 25.403). Offers of end products from the Dominican Republic and Honduras are no longer acceptable under such acquisitions unless the contracting

officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

**Item IV—Utilization of Indian Organizations and Indian-Owned Economic Enterprises (FAR Case 1999-301) (99-301)**

This final rule amends FAR Subpart 26.1 and the clause at 52.226-1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

**Item V—Ocean Transportation by U.S.-Flag Vessels (FAR Case 1998-604) (98-604)**

This final rule amends FAR 47.504 and the clauses at 52.212-5, 52.213-4, and 52.247-64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.

The rule also adds Alternate I of 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

**Item VI—Technical Amendments**

These amendments update references and make editorial changes at sections 6.304, 31.101, 32.411, 32.502-4, 32.805, 42.1204, and 42-1205.

Dated: April 13, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Federal Acquisition Circular (FAC) 97-17 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-17 are effective April 25, 2000, except for Items IV and V, which are effective June 26, 2000. Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: April 5, 2000.

**R.D. Kerrins, Jr.,**

*Acting Director, Defense Procurement.*

Dated: April 11, 2000.

**Sue McIver,**

*Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: April 3, 2000.

**Tom Luedtke,**

*Associate Administrator for Procurement, National Aeronautics and Space Administration.*

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 16, and 37**

**[FAC 97-17; FAR Case 1999-014; Item I]**

**RIN 9000-AI53**

**Federal Acquisition Regulation; Competition Under Multiple Award 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 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.

**DATES:** *Effective Date:* April 25, 2000.

*Applicability Date:* The FAR, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

**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 De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-17, FAR case 1999-014.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule, FAR case 1999-014, amends FAR Part 16 to provide

guidance on multiple award task and delivery order contracts and amends FAR Part 37 to delete a definition and amends FAR Part 2 to insert the definition that was deleted from Part 37. FAR case 1999-014 is one of two cases that implement subsections 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). The other case, FAR Case 1999-303, Task Order and Delivery Order Contracts, has been developed and promulgation is awaiting final review and analysis of the Report Number GAO/NSIAD-00-56, B-281493, March 20, 2000, recently issued by the GAO regarding multiple award contracts. The Councils will evaluate the GAO report, in conjunction with the Office of Federal Procurement Policy, to determine what additional changes are needed.

FAR case 1999-014—

- Clarifies what contracting officers should consider when planning for multiple awards of indefinite-delivery contracts and clarifies how orders should be placed against the resultant contracts;

- Requires that all awardees be given a fair opportunity to compete on every task or delivery order placed under multiple-award contracts, unless a specific exception applies;

- Emphasizes key things the contracting officer should consider when placing orders, including streamlined procedures; and

- Reorganizes and revises the FAR text for ease of use.

The rule is written using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 70158, December 15, 1999. Fourteen respondents provided public comments. We considered twelve public comments in finalizing the rule. We received the other two public comments more than two weeks after the closing date for comments and after the ad hoc committee had analyzed public comments. We did not consider these comments in the finalization of the rule.

This rule was not subject to Office of Management and Budget 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