

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 44**

[FAR Case 97-016]

RIN 9000-AH82

**Federal Acquisition Regulation;
Contractor Purchasing System Review
Exclusions**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to eliminate unnecessary contractor purchasing system reviews (CPSRs). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before March 9, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97-016@gsa.gov.

Please cite FAR case 97-016 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. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 97-016.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule amends (1) FAR 44.302 to exclude competitively awarded firm-fixed-price and

competitively awarded fixed-price with economic price adjustment contracts for the dollar amount used to determine if a contractor's level of sales to the Government warrants the conduct of a CPSR; and (2) FAR 44.303 to exclude subcontracts awarded by a contractor exclusively in support of competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts from evaluation during a CPSR.

B. Regulatory Flexibility Act

This proposed rule is not expected to 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 only applies to a contractor if its sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjusted contracts) are expected to exceed \$25 million during the next year, and no small entities meet this criteria. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 44

Government procurement.

Dated: December 30, 1997.

Linda Klein,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 44 be amended as set forth below:

**PART 44—SUBCONTRACTING
POLICIES AND PROCEDURES**

1. The authority citation for 48 CFR Part 44 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).

2. Section 44.302 is revised to read as follows:

44.302 Requirements.

(a) The ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. If a contractor's sales to the Government (excluding competitively awarded firm-fixed price and competitively awarded fixed-price with economic price adjustment contracts) are expected to exceed \$25 million during the next year, perform a review to determine if a CPSR is needed. Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if it is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every 3 years the ACO shall determine whether a purchasing system review is necessary. If necessary, the cognizant contract administration office will conduct a purchasing system review.

3. Section 44.303 is amended by revising the introductory paragraph to read as follows:

44.303 Extent of review.

A CPSR requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation shall not include subcontracts awarded by the contractor exclusively in support of competitively awarded firm-fixed price or competitively awarded fixed-price with economic price adjustment Government contracts. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

* * * * *

[FR Doc. 98-250 Filed 1-5-98; 8:45 am]

BILLING CODE 6820-EP-U