

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 9, 35, and 37**

[FAR Case 94-008]

RIN 9000-AG86

**Federal Acquisition Regulation; OFPP  
Policy Letter 93-1, Management  
Oversight of Service Contracting**

**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 amendments to the Federal Acquisition Regulation to provide agency guidance on the management of service contracts. 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 June 3, 1996 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 94-008 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter O'Such at (202) 501-1759 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 94-008.

**SUPPLEMENTARY INFORMATION:****A. Background**

On May 24, 1994, the Office of Federal Procurement Policy (OFPP) reissued, as a final policy letter, and published in the Federal Register (59 FR 26818), Policy Letter 93-1, entitled "Management Oversight of Service Contracting". The policy letter provides Governmentwide guiding principles which are intended to improve the acquisition, management, and administration of service contracts.

The proposed FAR rule removes references to advisory and assistance services at 9.505-3; removes the

reference to OMB Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services" from 35.017-2(i); clarifies 37.000; adds paragraphs (d) through (g) to 37.102 to address additional agency responsibilities concerning service contracts in general; and adds a new Subpart 37.5, Management Oversight of Service Contracts, to address FAR implementation of OFPP Policy Letter 93-1.

**B. Regulatory Flexibility Act**

The proposed changes may 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 it implements OFPP Policy Letter 93-1, Management Oversight of Service Contracting, which establishes Governmentwide policies concerning contracting for services. These changes will affect the manner in which Federal agencies will develop requirements for, award, manage, and administer contracts for services which, in turn, will affect each small entity which is awarded a contract for services. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 94-008), 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 Parts 9, 35, and 37

Government procurement.

Dated: March 26, 1996.

Edward C. Loeb,

Director, Federal Acquisition, Policy Division.

Therefore, it is proposed that 48 CFR Parts 9, 35, and 37 be amended as set forth below:

1. The authority citation for 48 CFR Parts 9, 35, and 37 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).

**PART 9—CONTRACTOR  
QUALIFICATIONS**

2. Section 9.505-3 is revised to read as follows:

**9.505-3 Providing evaluation services.**

Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interests.

**PART 35—RESEARCH AND  
DEVELOPMENT CONTRACTING**

3. Section 35.017-2 is amended by revising paragraph (i) to read as follows:

**35.017-2 Establishing or changing an  
FFRDC.**

\* \* \* \* \*

(i) Quantity production or manufacturing is not performed unless authorized by legislation.

\* \* \* \* \*

**PART 37—SERVICE CONTRACTING**

4. Section 37.000 is revised to read as follows:

**37.000 Scope of part.**

This part prescribes policy and procedures which are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. Additional guidance for research and development services is in part 35; architect-engineering services is in part 36; information resources is in part 39; and transportation services is in part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see subpart 22.10).

5. Section 37.102 is amended by adding paragraphs (d) through (g) to read as follows:

**37.102 Policy.**

\* \* \* \* \*

(d) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that assures full understanding and responsive performance by contractors and in so doing, should obtain assistance from contracting officials, as needed;

(e) Agencies shall establish effective management practices in accordance with the OFPP Policy Letter 93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in service contracting.

(f) Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

(g) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

6. Subpart 37.5 is added to read as follows:

**Subpart 37.5—Management Oversight of Service Contracts**

Sec.

37.500 Scope of subpart.

37.501 Definition.

37.502 Exclusions.

37.503 Agency-head responsibilities.

37.504 Contracting officials responsibilities.

**37.500 Scope of subpart.**

This subpart establishes responsibilities for implementing Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting.

**37.501 Definition.**

*Best practices*, as used in this subpart, means techniques that agencies may use to help detect problems in the acquisition, management and administration of service contracts. Best practices are practical techniques gained from experience that agencies may use to improve the procurement process.

**37.502 Exclusions.**

(a) This subpart does not apply to services that are (1) obtained through personnel appointments and advisory committees; (2) obtained through personal service contracts authorized by statute; (3) for construction as defined in FAR 36.102; or (4) obtained through interagency agreements where the work is being performed by in-house Federal employees.

(b) Services obtained under contracts below the simplified acquisition threshold and services incidental to supply contracts are excluded from coverage of this subpart. Good management practices and contract administration techniques should be used regardless of the contracting method.

**37.503 Agency-head responsibilities.**

The agency head or designee should ensure that—

(a) Requirements for services are clearly defined and appropriate

performance standards are developed so that the agency's requirements can be understood by potential offerors and that performance in accordance with contract terms and conditions will meet the agency's requirements.

(b) Service contracts are awarded and administered in a manner that will provide the customer its goods and services within budget and in a timely manner.

(c) Specific procedures are in place before contracting for services to assure compliance with OFPP Policy Letters 92-1, Inherently Governmental Functions, 91-2, Service Contracting, and 89-1, Conflicts of Interest Policies Applicable to Consultants.

(d) Strategies are developed and necessary staff training is initiated to assure effective implementation of the policies in FAR 37.102.

**37.504 Contracting officials responsibilities.**

Contracting officials should ensure that "best practices" techniques are used when contracting for services and in contract management and administration (see OFPP Policy Letter 93-1).

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