

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Part 39

[FAR Case 96-605]

RIN 9000-AH55

Federal Acquisition Regulation;  
Modular Contracting

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

**ACTION:** Proposed rule with request for comment and notice of public meeting.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a proposed amendment to the Federal Acquisition Regulation (FAR) to address the requirements of Public Law 104-106, the Information Technology Management Reform Act (ITMRA) of 1996, regarding acquisition of information technology (IT) using modular contracting techniques. 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:** *Public Meeting:* April 28, 1997, 9:00 a.m. until 12:00 p.m.

*Written Statements Due:* April 22, 1997.

*Comments Due:* Comments should be submitted on or before May 27, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** *Comments:* Interested parties should submit written comments and copies of their oral presentations to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

*Internet:* E-mail comments should be addressed to: 96-605@www.arnet.gov.

*Public Meeting:* GSA Auditorium, 1800 F Street, NW (First Floor), Washington, DC 20405.

Please cite FAR case 96-605 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 96-605.

## SUPPLEMENTARY INFORMATION:

## A. Background

Division E of Public Law 104-106, ITMRA, at Section 5202, enacted new policies and procedures for the acquisition of IT and directed that they be implemented in the FAR. Specifically, ITMRA requires that coverage for modular contracting be included in the FAR.

The following coverage addresses that ITMRA requirement by proposing to provide guidance to Federal agencies about using modular contracting, to the maximum extent practicable, when acquiring major systems of information technology. When using a modular contracting approach, agencies acquire major IT acquisitions by dividing them into smaller, more manageable increments. ITMRA indicates that agencies should complete the award of each successive module in a shorter time frame, preferably within 180 days from the date when a solicitation is issued. In addition to more rapid acquisition of modules, other potential benefits that may be realized as a result of modular contracting include delivery and testing of systems in discrete increments that are not dependent on other increments, and the opportunity in subsequent increments to take advantage of any evolution in technology.

The FAR Council, the Chief Information Officers (CIO) Council, and the Interagency FAR Information Technology Committee are interested in an exchange of ideas and opinions with respect to this rule and, accordingly, have scheduled a public meeting at the GSA Auditorium, Washington, DC, on April 28, 1997, at 9:00 a.m. The public is encouraged to furnish its views. Written statements for presentation should be submitted to the FAR Secretariat by April 22, 1997. Persons or organizations with similar positions are encouraged to select a common spokesperson for presentation of their views.

## B. Regulatory Flexibility Act

The 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.* The rule would not impose any specific cost burden on small entities, over and above what burden the marketplace demands for modular contracting compliance. The modular contracting approach should slightly benefit small entities because use of modular contracting techniques should increase the number of business opportunities available to

them. When a modular contracting approach is used, large complex IT systems will be divided into smaller, discrete increments that may subsequently be made available to small business entities to bid and manage. The proposed rule would provide needed coverage to ensure that ITMRA is implemented regarding use of modular contracting for the acquisition of IT systems. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR part 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 96-605), 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 39

Government procurement.

Dated: March 20, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, it is proposed that 48 CFR Part 39 be amended as set forth below:

PART 39—ACQUISITION OF  
INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR Part 39 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 39.002 is amended by adding in alphabetical order the definition of "Modular contracting" to read as follows:

## 39.002 Definitions.

*Modular contracting*, as used in this part, means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

\* \* \* \* \*

3. Section 39.103 is added to read as follows:

## 39.103 Modular contracting.

(a) This section implements Section 5202, Incremental Acquisition of Information Technology, of the Clinger-Cohen Act of 1996 (Public Law 104-106). Modular contracting is intended to reduce program risk and to incentivize

contractor performance while meeting the Government's need for timely access to rapidly changing technology. Consistent with the agency's information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see FAR 2.101) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

(1) Are easier to manage individually than would be possible in one comprehensive acquisition;

(2) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and

(4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments.

(5) Reduce risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and shall conform to the agency's master information technology architecture.

(2) The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to parts 16 and 17, contracting officers shall select the contract type and method appropriate to the circumstances (*e.g.*, indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with FAR 14.209 or 15.606(b)(4). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

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