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GSA Office of Governmentwide Policy

MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES

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FROM:

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FOR OFFICE OF ACQUISITION POLICY

SUBJECT:

Construction as a Commercial Item

This policy memorandum discusses the applicability of Part 12, Acquisition of Commercial Items, Federal Acquisition Regulation (FAR), to the acquisition of construction services. Title VIII, Federal Acquisition Streamlining Act of 1994 (FASA), provides for a preference for commercial items and established acquisition policies for commercial items that are closer to commercial practices.

Since the implementation of FASA there has been some question as to whether construction could be properly determined by a contracting officer to be a commercial item. Despite the fact that there is no prohibition and FAR 1.102.1(d) states in part "In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority," many members of the acquisition community believe that construction cannot be determined to be a commercial item in accordance with FAR 10.002(d).

In GSA, construction may be determined to be a commercial item by contracting officers in accordance with FAR 10.002(d). Prior to making this determination, GSA contracting officers should conduct appropriate market research in accordance with FAR Part 10.

There are some notable benefits to determining that a particular construction project is a commercial item. Those benefits include: reduced time for synopsis and solicitation; use of advance payments of up to 15% where it is determined to be a commercial practice; more commercial-like terms and conditions that will attract new market entrants and in particular, small, disadvantaged, woman owned, veteran owned, disabled veteran owned and other small businesses; and, use of commercial practices for dispute resolution.

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