



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation

A Lawyer's View of FASA -An Overview

November 7, 1994



An Overview of FASA

by Jerry A. Walz

This issue of *A Lawyer's View* begins a new series by Contract Law Division attorneys to examine changes in civilian procurement law and regulation as a result of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355, signed by President Clinton on October 13, 1994. Readers may expect future issues on specific FASA provisions on a 2-3 week cycle.

Introduction

FASA, billed as a simplification and reform of overly burdensome procurement laws, is an outgrowth of the recommendations the Section 800 committee and goals of the Administration's National Performance Review. FASA provides the broadest and most significant changes to federal procurement law since the enactment of CICA in 1984. Although many FASA provisions are expected to simply the procurement process and reduce the burden on both the government and the private sector, other provisions will undoubtedly increase the complexity of the process. Although generally optimistic, the author believes that a year or two of operations under FASA will be necessary before a final assessment can be made.

Implementation Schedule

Several FASA provisions became effective on October 13, 1994, the date of enactment, however, the bulk of the changes depend upon publishing of final regulations which FASA requires to occur within 330 days of enactment. OFPP, however, has placed the implementing changes to the FAR on a fast track. Proposed regulations are scheduled to be published this month, with final changes in February, 1995, a very tight schedule.

The Major Changes

TITLE I—CONTRACT FORMATION

Sec. 1054. Task and delivery order contracts

Express recognition is provided for task and delivery order contracts. Included is authority for multiple awards. Separate provisions are made for advisory and assistance services contracts.

Sec. 1061. Solicitation, evaluation, and award

Adds requirement to disclose all factors and subfactors which will be used in evaluation.

Sec. 1064. Post-award debriefings

Provides new statutory requirements for post-award debriefings.

Sec. 1065. Protest file

If a protest is filed with the GAO, and an actual or potential offeror so requests, the agency must prepare a copy for viewing by such offeror. (A parallel provision is applicable to GSBCA protests.)

Sec. 1072. Multiyear contracting authority

Authority and limitations for multi-year contracts.

Sec. 1074. Economy Act purchases

Recognizes Economy Act transactions and limits "TVA" type of transactions.

Sec. 1091. Policy regarding consideration of contractor past performance

Provides a statutory basis for consideration of past performance in the evaluation of offerors.

Protests to the Comptroller General

Secs. 1401-1404 provide several new definitions and changes to statutes governing protests to the GAO. New fee caps for expert witnesses and attorney fees.

Protests in Procurements of ADPE

Secs. 1431-1438 revise the Brooks Act provisions governing protests to the GSBCA. The sections provide some relief from suspension in that the agency may be able to continue up to the time of award. Ties time for suspension to time

From the Editor Jerry A. Walz is the Chief of the Contract Law Division.

A Lawyer's View is a periodic publication of the Contract Law Division designed to give practical advice to the Department's procurement officers. Comments, criticisms, and suggestions for future topics are welcome.—Call Jerry Walz at 202-482-1122, or via e-mail to Jerry Walz@FinLit@OGC or jwalz@doc.gov.



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that a requested debriefing was given.

TITLE II--CONTRACT ADMINISTRATION

Sec. 2051. Contract financing

Adds considerable statutory language, and restrictions, on contract financing payments. Evidences a preference for performance based payments. Distinguishes payments for commercial items.

Sec. 2151. Allowable contract costs

Essentially codifies the FAR cost principles to be consistent with Title 10, DOD, provisions.

Sec. 2191. Travel expenses of Government contractors

Repeals provision that generally required cost contractors to limit travel costs to those allowed under Federal Travel Regulations.

Sec. 2192. Revision of cost principle relating to entertainment, gift, and recreation costs for contractor employees

Contract Disputes Act Changes

Secs. 2351-2354 amend the Contract Disputes Act providing a six year period for filing a claim, extending ADR procedures and several other matters.

Sec. 2455. Uniform suspension and debarment

Requires that suspension or debarment for either procurement or nonprocurement matters shall have government wide effect.

TITLE IV--SIMPLIFIED ACQUISITION THRESHOLD

Sec. 4001. Simplified acquisition threshold defined

Establishes the threshold as \$100,000.

Sec. 4004. Small business reservation

Generally reserves purchases between \$2500 and \$100,000 for small businesses.

Sec. 4101. List of inapplicable laws in Federal Acquisition Regulation

Provides authority for the Federal Acquisi-

tion Regulatory Council to establish a list of laws that are inapplicable to acquisitions not greater than the threshold.

Sec. 4104. Acquisitions generally

Raises the applicability threshold for several labor statutes to \$100,000.

Sec. 4201. Simplified acquisition procedures

Requires the FAR to provide simplified procedures. Establishes standard of competition to the maximum extent practicable. Limits use of simplified procedures for acquisitions over \$50,000 until agency has FACNET capability.

Sec. 4301. Procedures for purchases below micro-purchase threshold

Greatly simplifies procedures for acquisitions below \$2,500.



TITLE V--ACQUISITION MANAGEMENT

Sec. 5051. Performance based management

Establishes policy that each agency should achieve, on the average, 90% of the cost and schedule goals for acquisitions. Provides for Enhanced System of Performance Incentives.

Sec. 5061. OFPP Test Program for Executive Agencies

Authority for OFPP to enter into test programs for innovative acquisition methods. Total amount may not exceed \$600,000,000.

TITLE VI--OTHER PROCUREMENT-RELATED MATTERS

Sec. 6001. Post-employment rules

Sec. 6002. Contracting functions performed by Federal personnel

Generally prohibits payment of contractors to provide advisory and assistance services for the evaluation of proposals unless no Federal agency employees are available.



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TITLE VII--SMALL BUSINESS AND SOCIO-ECONOMIC LAWS

Sec. 7102. Contracting program for certain small business concerns

Allows an agency to restrict competitions to small firms that are socially and economically disadvantaged in order to meet goals.

Sec. 7104. Small Business Procurement Advisory Council

Membership includes the Director, MBDA.

Sec. 7106. Procurement goals for small business concerns owned by women

Statutory coverage for women owned small business concerns.

Sec. 7201. Acquisitions generally

Repeals Walsh-Healy Act requirement that firms certify their status as a manufacturer or regular dealer.

Sec. 7203. Merit-based award of contracts and grants

Limits ability of Congress to specify by legislation an award to a specified non-Federal Government entity. NAS is excluded from this policy.

Sec. 7303. Waiver for individuals who perform volunteer services for public entities

Sec. 7304. Waiver for individuals who perform volunteer services for nonprofit entities

Secs. 7203 and 7204 eliminate the requirement that volunteers under certain Acts be subject to the Davis-Bacon Act.



Network (FACNET) Architecture. Government-wide FACNET capabilities are to be implemented not later than January 1, 2000.

TITLE X--EFFECTIVE DATES AND IMPLEMENTATION

Sec. 10002. Implementing Regulations

Proposed revisions to the FAR and other regulations shall be published no later than 210 days after enactment. Proposed regulations shall be made available for public comment for at least 60 days. Final regulations shall be published no later than 330 days after enactment.

TITLE VIII--COMMERCIAL ITEMS

Major new statutory provision which requires preference for commercial items. Will be addressed in detail in a future issue.

TITLE IX--FEDERAL ACQUISITION COMPUTER NETWORK

Major new statutory provisions to establish and implement a Federal Acquisition Computer