

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

January 31, 1991

FIRMR BULLETIN A-1

TO: Heads of Federal agencies

SUBJECT: Federal Information Resources Management Regulation
(FIRMR) applicability

1. Purpose. This bulletin discusses the FIRMR implementation of the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99-500) and provides examples of FIP resources and FIRMR applicability when such resources are being acquired by contracting.

2. Expiration date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Contents.

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4. Related material.

- a. FIRMR 201-1.002
- b. FIRMR 201-4
- c. FIRMR 201-20.305(b)(3)
- d. FIRMR 201-39.101-3
- e. FIRMR 201-39.2

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Attachments

FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION
APPENDIX B

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5. Information and assistance.

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6. General.

a. Pub. L. 99-500 made important changes to the Federal Property and Administrative Services Act. Three of these changes follow:

(1) Automatic data processing equipment (ADPE) was defined to encompass all ADP resources and most telecommunications resources. This change was made in recognition of the merging of telecommunications and ADP technologies. Only radar, sonar, radio, and television equipment were excluded from the definition of ADPE. To minimize confusion between the statutory definition of ADPE and the popular meaning of that term, GSA established the term "Federal information processing (FIP) resources" to replace the term ADPE, as defined in Pub. L. 99-500.

(2) GSA's exclusive procurement and management authorities were expanded to Federal contracts "making significant use" of ADPE.

(3) ADPE acquired and used by a contractor that are "incidental to the performance" of Federal contracts were excluded from GSA's authorities.

b. The FIRMR is not applicable to all FIP resources or to all Federal solicitations and contracts involving FIP resources. This bulletin provides guidelines for clarifying which Federal solicitations and contracts for FIP resources are subject to the FIRMR.

7. Applicability tests.

a. Agencies need to use a series of "tests" to determine FIRMR applicability to a solicitation or contract involving FIP resources. If the solicitation or contract involves both FIP

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resources and non-FIP resources, FIRMR applicability would encompass the FIP resources only. In this case, the agency should have considered severing the FIP resources and conducting separate contracting actions.

b. The FIRMR definition of FIP resources is repeated at Attachment A. This attachment also provides examples of the different categories of FIP resources to which the FIRMR may be applicable when conducting a contracting action. In addition, Attachment A provides examples of products to which the FIRMR does not apply even though the products contain embedded FIP equipment.

c. Attachment B contains a repeat of the policies and exceptions related to FIRMR applicability to FIP resources and Federal agency solicitations or contracts.

d. Attachment C provides some examples of contracting actions that include FIP resources and a discussion of whether or not the FIRMR is applicable in each cited case.

e. The diagram at Attachment D illustrates the process for determining FIRMR applicability to a solicitation or contract. When none of the exceptions to FIRMR applicability are relevant, there are six questions that must be answered to determine whether the FIRMR applies to an agency solicitation or contract. Those questions are --

(1) Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?

(i) If the question is answered "yes," the FIRMR applies to the solicitation or contract. It should be noted that "significant use" and "incidental to the performance" are not a consideration when the solicitation or contract requires the delivery of FIP resources for use by a Federal agency or its designated users.

(ii) If the question is answered "no," additional questions must be considered to determine whether the FIRMR applies to the agency solicitation or contract.

(2) Does a principal task of the solicitation or contract depend directly on the use of FIP resources?

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(i) If the question is answered "no," the FIRMR would not apply to the solicitation or contract.

(ii) If the question is answered "yes," additional questions must be considered to determine whether the FIRMR applies to the agency solicitation or contract.

(3) Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?

(i) If the question is answered "no," the FIRMR would not apply to the solicitation or contract.

(ii) If the question is answered "yes," additional questions must be considered to determine whether the FIRMR applies to the agency solicitation or contract.

(4) Does the solicitation or contract explicitly require the use by the contractor of FIP resources?

(i) If the question is answered "yes," the FIRMR applies to the solicitation or contract.

(ii) If the question is answered "no," additional questions must be considered to determine whether the FIRMR applies to the agency solicitation or contract.

(5) Could the service or product required by the solicitation or contract reasonably be performed or produced without the use of FIP resources?

(i) If the answer is "yes," the FIRMR does not apply to the solicitation or contract.

(ii) If the answer is "no," one additional question must be applied to determine FIRMR applicability to the agency solicitation or contract.

(6) Would the dollar value of FIP resources expended by the contractor to perform the service or furnish the product be expected to exceed the lower of \$500,000 or 20 percent of the estimated cost of the contract?

(i) If the answer is "no," the FIRMR does not apply to the solicitation or contract.

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(ii) If the answer is "yes," the FIRMR is applicable to the FIP resources portion of the solicitation or contract.

8. Cancellation. FIRMR Bulletin 67 is canceled.

Thomas J. Buckholtz
Commissioner
Information Resources
Management Service

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Attachment A

DEFINITION AND EXAMPLES

This attachment contains definitions (repeated from FIRMR Part 201-4) for FIP resources. In addition, where it makes sense to do so, examples are cited for the different categories of these resources.

FIRMR " Federal information processing (FIP) resources
Definition means automatic data processing equipment (ADPE) as
of FIP defined in Pub. L. 99-500 (40 U.S.C. 759(a)(2)), and
Resources set out in paragraphs (a) and (b) of this
definition.

- (a) Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information--
 - (1) by a Federal agency, or
 - (2) under a contract with a Federal agencywhich--
 - (i) requires the use of such equipment, or
 - (ii) requires the performance of a service or the furnishing of a product which is performed or produced making significant use of such equipment.
- (b) Such term includes--
 - (1) computers;
 - (2) ancillary equipment;
 - (3) software, firmware, and similar procedures;
 - (4) services, including support services; and
 - (5) related resources as defined by regulations issued by the Administrator of General Services.
- (c) The term, FIP resources, includes FIP equipment, software, services, support services, maintenance, related supplies and systems. These terms are limited by paragraphs (a) and (b) of the definition of FIP resources and are defined as follows:"

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FIRMR Definition of FIP Equipment "(d) FIP equipment means any equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information."

Examples of FIP Equipment to Which the FIRMR May be Applicable FIP equipment includes the following:

- a. Data processing and switching equipment, such as supercomputers, mainframes, minicomputers, microcomputers, analog and digital private branch exchanges (PBX);
- b. Ancillary equipment, such as disk drives, tape drives, plotters, printers, storage and backup devices cable connected to computers, digital imaging equipment, optical storage and/or retrieval equipment, source data automation/recording equipment (e.g., optical character recognition devices, computer-generated microfilm and other data acquisition devices), punched card accounting equipment, and office automation equipment that was designed for use in conjunction with or controlled by a computer system; and
- c. Telecommunications networks and related equipment, such as voice communications networks; data communications networks; local area networks; terminals; modems; data encryption devices; fiber optics and other communications networks; packet switching equipment; terrestrial carrier equipment (e.g., multiplexers and concentrators); lightwave, microwave or satellite transmission and receiving equipment; telephonic (including cellular) equipment; and facsimile equipment.

Examples of Products Containing Embedded FIP Equipment The Federal Government frequently acquires products containing embedded FIP equipment. Such products are designed and produced to function using the FIP equipment (most commonly microprocessors) as an integral part of the product. The FIRMR, at 201-1.002, describes the parameters to be applied when determining FIRMR

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applicability to products containing embedded FIP equipment. Some examples of products that often contain embedded FIP equipment are electronic clocks and watches, automobiles, elevators, blood analyzers, and drill presses using numerical control.

FIRMR Definition of FIP Maintenance "(e) FIP maintenance means those examination, testing, repair, or part replacement functions performed on FIP equipment or software."

Examples of FIP Maintenance Examples of FIP maintenance are preventive and remedial equipment diagnostic and repair services, a field engineering change or field modification to FIP equipment, and modifications and upgrades to FIP software.

Examples of Non-FIP Maintenance Examples of items that fall in this category include maintenance of such end-items as discussed in the category labelled "Examples of Products Containing Embedded FIP Equipment." A specific example is the maintenance of elevators.

FIRMR Definition of FIP Related Supplies "(f) FIP related supplies means any consumable item designed specifically for use with FIP equipment, software, services, or support services."

Examples of FIP Related Supplies Examples of FIP related supplies include telecommunications fuses and connectors; floppy diskettes; CD-ROM and laser optical disks; backup cartridges; cables and wires; print wheels; print ribbons; ink for ancillary equipment; printer paper; FIP equipment cleaning kits; magnetic tape; magnetic disks; and all other similar items designed specifically for use with FIP equipment in the creation, transmission, and maintenance of automated information, data, records, or files.

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Examples of Non-FIP Related Supplies	Examples of items that fall in this category include supplies associated with such end-items as discussed in the category labelled "Examples of Products Containing Embedded FIP Equipment." A specific example is the special paper used in a blood analyzer to record the results of the analysis.
FIRMR Definition of FIP Services	"(g) FIP services means any service, other than FIP support services, performed or furnished by using FIP equipment or software."
Examples of FIP Services	Examples of FIP services include teleprocessing, local batch processing, electronic mail, voice mail, centrex, cellular telephone, facsimile, and packet switching of data.
Examples of Non-FIP Services	An example of non-FIP services is transcription services (e.g., the services required to make a hardcopy of dictated or recorded matter).
FIRMR Definition of FIP Software	"(h) FIP software means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment."
Examples of FIP Software	FIP software examples include systems programs (e.g., control and library programs, assemblers, compilers, interpreters, utility programs, sort-merge programs, and maintenance-diagnostic programs); application programs; and commercially-available programs (e.g., word processing, communications, graphics, file-management and data base management system software). The term also encompasses independent subroutines; related groups of routines; sets or systems of programs; data bases; and software documentation.
Examples of Non-FIP Software	Examples of items that fall in this category include software associated with such end-items as discussed in the category labelled "Examples of Products Containing Embedded FIP Equipment." A specific example is any special software that may be required to perform the analysis process of the blood analyzer.

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FIRMR Definition of FIP Support Services	"(i) FIP support services means any commercial nonpersonal services, including FIP maintenance used in support of FIP equipment, software, or services."
Examples of FIP Support Services	Examples of FIP support services are source data entry; computer output microfilming; software conversion; training; planning for FIP resources; capability and performance validation; studies (e.g., requirements analyses, analyses of alternatives, and conversion studies); facilities management of Government-furnished FIP equipment; custom software development; systems analysis and design; equipment operation; network management; network analysis and design; site preparation; and computer performance evaluation and capacity management.
Examples of Non-FIP Support Services	Examples of services that fall in this category include support services associated with such end-items as discussed in the category labelled "Examples of Products Containing Embedded FIP Equipment." A specific example is the development of custom software for numerically-controlled drill presses.
FIRMR Definition of FIP System	"(j) FIP system means any organized combination of FIP equipment, software, services, support services, or related supplies."
Examples of FIP Systems	Examples of FIP systems are (1) a minicomputer with a printer, terminals, and a tape drive, the associated systems programs and application programs, and the magnetic tape and printer paper; (2) a PBX and its associated software, telephones and facsimile equipment and the wiring necessary to connect the equipment to the PBX.
Examples of Non-FIP Systems	Examples of systems that fall in this category include an organized combination of such end-items as discussed in the examples of embedded FIP equipment and non-FIP related supplies, services, software, and support services

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FIRMR APPLICABILITY
POLICY
AND
EXCEPTIONS

FIRMR applicability policies and exceptions are reprinted here as follows--

201-1.002 Applicability.
201-1.002-1 Policy.

The FIRMR applies to--

(a) The acquisition, management, and use of FIP resources by Federal agencies.

(b) Any Federal agency solicitation or contract when either paragraph (b)(1), (b)(2), or (b)(3) applies:

(1) The solicitation or contract requires the delivery of FIP resources for use by a Federal agency or users designated by the agency.

(2) The solicitation or contract explicitly requires the use by the contractor of FIP resources that are not incidental to the performance of the contract. FIP resources acquired by a contractor are incidental to the performance of a contract when:

(i) None of the principal tasks of the contract depend directly on the use of the FIP resources; or

(ii) The requirements of the contract do not have the effect of substantially restricting the contractor's discretion in the acquisition and management of FIP resources, whether the use of FIP resources is or is not specifically stated in the contract.

(3) The solicitation or contract requires the performance of a service or the furnishing of a product that is performed or produced making significant use of FIP resources that are not incidental to the performance of the contract. Significant use of FIP resources means:

(i) The service or product of the contract could not reasonably be produced or performed without the use of FIP resources; and

(ii) The dollar value of FIP resources expended by the contractor to perform the service or furnish the product is expected to exceed \$500,000 or 20 percent of the estimated cost of the contract, whichever amount is lower.

(c) The creation, maintenance, and use of records by Federal agencies."

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201-1.002-2 Exceptions.

(a) The FIRMR does not apply to the procurement of FIP resources--

(1) By the Central Intelligence Agency.

(2) By the Department of Defense when the function, operation or use of such resources--

(i) Involves intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(ii) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(b) The FIRMR does not apply to radar, sonar, radio or television equipment, except that the FIRMR is used by GSA to implement Federal Telecommunications Standards for radio equipment.

(c) When both FIP and other resources are being acquired under the same solicitation or contract and the FIRMR applies to the solicitation or contract, the FIRMR applies only to the FIP resources.

(d) While the FIRMR may require an agency to include in Federal solicitations and contracts provisions and clauses that control the contractor's acquisition of FIP resources, the FIRMR does not apply to FIP resources acquired by a Federal contractor that are incidental to the performance of a contract.

(e) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when:

(1) The embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product; or

(2) The dollar value of the embedded FIP equipment is less than \$500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information."

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EXAMPLES
OF
FIRMR APPLICABILITY
WHEN
CONTRACTING FOR FIP RESOURCES

Example One: A Department of Defense (DOD) agency initiates a contracting action in which the solicitation specifies the delivery of a mainframe computer to its Washington, DC headquarters location; minicomputers to several geographically dispersed subordinate military agency locations; and microcomputers to a few colleges and universities that are participating with the DOD in an effort involving logistics modeling.

Discussion: In this example, the agency would need to apply only the test of "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" Since the answer to this question is "yes," the FIRMR applies to the solicitation and contract.

Example Two: A Federal agency initiates a contracting action in which the solicitation requires the completion of a study of the agency's organization and personnel distribution and the delivery of a hardcopy report. The solicitation requires the vendor to develop software; gather information; and use a computer to process the information and produce the report. It should be noted that the agency has considered the guidance provided at FIRMR 201-20.305(b)(3) but has elected not to sever the FIP resources and acquire them under a separate contracting action from the non-FIP resources.

Discussion: In this example, the agency should apply the following tests/questions to determine FIRMR applicability to the solicitation or contract:

- a. "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" The answer is "no;" however, the following additional tests will be required before FIRMR applicability can be ascertained.
- b. "Does a principal task of the solicitation or contract depend directly on the use of FIP resources?" In this example, the solicitation requires the vendor to acquire, develop, and use FIP

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resources to process information and produce the report, which are the principal tasks of the contract. Because the answer to this question is "yes," the agency must continue with the following question to determine FIRMR applicability.

c. "Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?" In this example, the answer is "no" because the agency has stated a general requirement for the software and the use of a computer but has provided no specifications that would restrict the contractor where acquisition or management of the FIP resources is concerned. Thus, the FIP resources would be considered to be incidental to the performance of the contract and the FIRMR would not apply.

Example Three: A Federal agency initiates a contracting action in which the solicitation requires a contractor to identify and enroll more than a million American citizens in a benefit program. The solicitation also requires the contractor to provide a means of maintaining up-to-date and immediate entitlement verification for use when a citizen is obtaining the benefits. The solicitation does not require the use of FIP resources to accomplish the tasks. However, the magnitude of the tasks to be performed and the effort required to provide the services are so great that it is reasonable to expect that FIP resources must be used in order to perform the contract in an economic and efficient manner.

Discussion: In this example, the agency should apply the following tests/questions to determine FIRMR applicability to the solicitation or contract:

a. "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" The answer is "no" and additional tests will be required before FIRMR applicability can be ascertained.

b. "Does a principal task of the solicitation or contract depend directly on the use of FIP resources?" As stated in the example, the magnitude of the tasks to be performed and the effort required to provide the services are so great that it is reasonable to expect that FIP resources must be used to perform the principal tasks of the contract. Since the answer is "yes," additional tests will be required before FIRMR applicability is determined.

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c. "Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?" In this example, the agency has not stated its requirements in a manner that would affect the contractor's discretion in the acquisition and management of the FIP resources. Therefore, the answer to this question is "no;" the FIP resources are incidental to the performance of the contract; and the FIRMR is not applicable.

Example Four: A Federal agency initiates a contracting action in which the solicitation requires the contractor to construct a 20-story building. The solicitation does not explicitly require the use of FIP resources during the construction process or delivery of FIP resources for the use of the Federal agency as a part of the completed building. However, it is reasonable to assume that the contractor will use FIP resources during the construction process (e.g., tracking building materials) and that many of the building's features (e.g., elevators and environmental systems) will be controlled by embedded FIP equipment. With respect to the embedded FIP equipment, it is important to note that the exceptions to FIRMR applicability, as set forth at 201-1.002-2, were considered by the agency. Since the dollar value of the embedded FIP equipment is expected to be less than \$500,000 and also less than 20 percent of the value of the building, an exception to FIRMR applicability exists for the embedded FIP equipment.

Discussion: In this example, the agency should apply the following tests/questions to determine FIRMR applicability to the solicitation or contract:

- a. "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" The answer is "no" and additional tests will be required before FIRMR applicability can be ascertained.
- b. "Does a principal task of the solicitation or contract depend directly on the use of FIP resources?" While the contractor may use FIP resources during the performance of the contract, the use of such resources would only be peripheral to, and not considered necessary for the accomplishment of, the primary purpose of the contract, i.e., construction of a building. Therefore, it is reasonable to assume that none of the principal tasks of the contract will depend directly on the use of FIP resources and the answer to this question is "no." Thus, the FIRMR is not applicable.

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Example Five: A Federal agency initiates an acquisition for the research, design, development, manufacture, and support functions associated with a highly-sophisticated, new product. The solicitation requires delivery of the new product in an extremely short period of time. The solicitation requires that the successful contractor collocate his operations in a Government-owned laboratory that is maintained and operated by another contractor. The solicitation also states that the successful contractor is to acquire all additional resources required to meet his contractual obligations. The complexity and timeliness constraints of this contract and its relationship to the existing contract make it imperative that any resources acquired be compatible with existing resources maintained and operated by the other contractor. Among the existing resources in the laboratory are several large-scale computer systems. The total dollar value of the contract is estimated to be \$30,000,000 and the value of the FIP resources that will be required is estimated to be \$700,000.

Discussion: In this example, the agency should apply the following tests/questions to determine FIRMR applicability to the solicitation or contract:

- a. "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" The answer is "no" so additional tests will be required before FIRMR applicability can be ascertained.
- b. "Does a principal task of the solicitation or contract depend directly on the use of FIP resources?" In this example, it is reasonable to assume that the principal tasks of research, design, and manufacture of the new product would depend directly on the use of FIP resources. Accordingly, the answer is "yes" and additional tests for FIRMR applicability are required.
- c. "Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?" In this situation, it is reasonable to assume that the constraints of timeliness and collocation would be so stringent as to significantly restrict the successful contractor from achieving competition in his acquisition of resources, including any additional FIP resources that may be required. Since the answer to this question is "yes," additional tests must be considered to determine if the FIRMR applies.

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d. "Does the solicitation or contract explicitly require the use by the contractor of FIP resources?" In this example, the Federal agency does not specifically require the use by the contractor of FIP resources. Because the answer to this question is "no," additional tests for FIRMR applicability are required.

e. "Could the service or product required by the solicitation or contract reasonably be performed or produced without the use of FIP resources?" The requirements described in this example are such that it would be unreasonable to expect that the contractor could meet those requirements without the use of FIP resources. Thus, the answer to this question is "no," and an additional test must be used to determine FIRMR applicability.

f. "Would the dollar value of FIP resources expended by the contractor to perform the service or furnish the product be expected to exceed the lower of \$500,000 or 20 percent of the estimated cost of the contract? In this example, the dollar value of the FIP resources is estimated to be more than \$700,000, which exceeds the \$500,000 threshold set forth for an exception to FIRMR applicability. Since the answer to this question is "yes," the FIRMR is applicable to the FIP resources portion of this solicitation and contract.

Example Six: A Federal agency issues a solicitation that requires the delivery of FIP equipment, as well as several items of radio and television equipment, for use by the agency.

Discussion: In this example, the agency must apply the test -- "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?". The answer is "yes." However, it should be noted that, in this example, the solicitation also requires the delivery of radio and television equipment to the Federal agency. The agency would also need to review the FIRMR policy concerning exceptions to FIRMR applicability (201-1.002-2) to make a determination that the FIRMR does not apply to radio or television equipment, except that GSA uses the FIRMR to implement Federal Telecommunications Standards for radio equipment. Accordingly, the FIRMR applies to the FIP resources portion of the solicitation or contract, as well as to the specifications for Federal Telecommunications Standards applicable to the radio and television equipment.

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Example Seven: The Department of the Army initiates a contracting action for the acquisition of food services facilities for their basic training centers. The contract will provide for cooking and serving three meals per day to each of several thousand soldiers for a one-year period. The meals must offer a wide variety of low-cost foods that can be prepared in large quantities and provide a variety of colors and textures in each meal. In addition, each day's menu must provide for the minimum daily requirements of all vitamins and minerals, as established by the Department of Agriculture. The solicitation does not explicitly require the use of FIP resources; however, it is reasonable to expect that the contractor must use FIP resources (e.g., word processing, spread-sheet capability and other forms of automation) in meeting his requirements for recruiting, union and personnel communications, contract administration, payroll, the development of recipes and the construction of the daily menus.

Discussion: In this example, the agency should apply the following tests/questions to determine FIRMR applicability to the solicitation or contract:

- a. "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" The answer is "no," so additional tests for FIRMR applicability are required.
- b. "Does a principal task of the solicitation or contract depend directly on the use of FIP resources?" The main task of this contracting action is the acquisition of food services facilities for the Army's basic training centers. While the contractor will most likely use FIP resources to support fulfillment of his contractual obligations, it is reasonable to expect that the main task can be accomplished without direct dependence on the use of FIP resources. However, production of the menus and the recipes is also a principal task in meeting requirements of this contract. Thus, the answer to this question is "yes" and additional tests for FIRMR applicability are required.
- c. "Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?" In this example, the agency has placed no restrictive requirements in the solicitation or contract that would affect the contractor's acquisition and management of the FIP resources. Since the answer to this question is "no," the FIRMR does not apply.

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Example Eight: A Federal agency issues a solicitation to provide the agency's supply stock delivery function. The services to be provided by the contractor include FIP services to execute a software system developed and certified by the Government to support the accounting function of the agency's supply area. The system can only be executed using a specific make and model of FIP equipment and also requires a number of specific proprietary software packages. It should be noted that in this case, the agency considered guidance provided at FIRMR 201-20.305(b)(3) and elected (1) to provide Government-furnished software; and (2) not to sever the remaining FIP resources required under this solicitation.

Discussion: In this example, the agency should apply the following tests/questions to determine FIRMR applicability to the solicitation or contract:

- a. "Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?" The answer is "no," so additional tests for FIRMR applicability are required.
- b. "Does a principal task of the solicitation or contract depend directly on the use of FIP resources?" One of the principal services to be provided by the contractor is the execution of Government-furnished FIP software on a contractor-furnished FIP system. Because the answer to this question is "yes," additional tests are required to determine FIRMR applicability in this example.
- c. "Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?" In this example, the contractor must use a specific make and model of FIP equipment and specific proprietary software packages in order to execute the Government-developed FIP software system. Thus, the contractor's discretion in the acquisition of the FIP resources is substantially restricted and a "yes" answer is the result of this question. However, an additional test is required to determine FIRMR applicability.
- d. "Does the solicitation or contract explicitly require the use by the contractor of FIP resources?" In this example, the Federal agency is specifically requiring the use by the contractor of FIP services. Because the answer to this question is "yes," the FIRMR is applicable to the FIP resources portion of the solicitation and contract.

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DETERMINING FIRMR APPLICABILITY TO A CONTRACT ACTION

Question 1: Does the solicitation or contract require the delivery of FIP resources for use by a Federal agency or by any non-Federal agency users designated by the agency?	-> Yes
Question 2: Does a principal task of the solicitation or contract depend directly on the use of FIP resources?	No*
Question 3: Do the requirements of the solicitation or contract have the effect of substantially restricting the contractor's discretion in the acquisition and management of the FIP resources?	No*
*(FIP Resources are incidental to contract performance)	Yes
Question 4: Does the solicitation or contract explicitly require the use by the contractor of FIP resources?	-> Yes
Question 5: Could the service or product required by the solicitation or contract reasonably be performed or produced without the use of FIP resources?	No
Question 6: Would the dollar value of FIP resources expended by the contractor to perform the service or furnish the product be expected to exceed the lower of \$500,000 or 20 percent of the estimated cost of the contract?	-> Yes

(There is NO significant use of FIP resources.)
FIRMR is NOT applicable to contract action.

(There is significant use of FIP resources.)
FIRMR is applicable to contract action.

NOTE: Exceptions for intelligence and related activities and radar, sonar, radio, television and embedded equipment do not appear on this chart.

