

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

**Federal Acquisition Circular 97-01;
Introduction**

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

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-01. Each rule follows this document in the order listed below. A companion document, the Small Entity Compliance Guide follows this FAC and may be located on the Internet.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact Beverly Fayson, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 97-01 and specific FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 97-01 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Business Process Innovation	97-006	De Stefano.
II	FASA and the Walsh-Healey Public Contracts Act	96-601	O'Neill.
III	Irrevocable Letters of Credit and Alternatives to Miller Act Bonds	95-301	O'Neill.
IV	Automatic Data Processing Equipment Leasing Costs	96-010	Olson.
V	Environmentally Sound Products	92-054A	De Stefano.
VI	New FAR Certifications	96-329	De Stefano.
VII	Service Contracting	95-311	O'Neill.
VIII	ADP/Telecommunications Federal Supply Schedules	96-602	Nelson.
IX	Certificate of Competency (Interim)	96-002	Moss.
X	Economically Disadvantaged Individuals	97-008	Moss.
XI	Minority Small Business and Capital Ownership	95-028	Moss.
XII	Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (Interim)	94-610	O'Neill.
XIII	Designation of Hong Kong	97-019	Linfield.
XIV	Foreign Differential Pay	96-012	Olson.
XV	Local Government Lobbying Costs	96-003	Nelson.
XVI	Independent Government Estimates—Construction	97-005	O'Neill.
XVII	Year 2000 Compliance	96-607	Nelson.
XVIII	Modification of Existing Contracts under FASA and FARA	96-606	De Stefano.

**Item I—Business Process Innovation
(FAR Case 97-006)**

This final rule amends FAR 1.102-4(e) to encourage contracting officers, in their role as members of the Government acquisition team, to take the lead in encouraging business process innovations and ensuring that business decisions are sound.

**Item II—FASA and the Walsh-Healey
Public Contracts Act (FAR Case 96-601)**

The interim rule published as Item I of Federal Acquisition Circular 90-43 is converted to a final rule without change. The rule amends the FAR to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

**Item III—Irrevocable Letters of Credit
and Alternatives to Miller Act Bonds
(FAR Case 95-301)**

The interim rule published as Item XVII of FAC 90-39 is revised and finalized. The rule amends FAR Parts 28

and 52 to provide for use of Irrevocable Letters of Credit as substitutes for corporate or individual surety on Miller Act bonds, and to provide alternatives to Miller Act payment bonds for construction contracts valued at \$25,000 to \$100,000, which are no longer subject to the Miller Act, in accordance with Section 4104(b)(1) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355).

**Item IV—Automatic Data Processing
Equipment Leasing Costs (FAR Case 96-010)**

The interim rule published as Item I of FAC 90-44 is converted to a final rule without change. The rule amends FAR Part 31 to remove the automatic data processing equipment leasing cost principle.

**Item V—Environmentally Sound
Products (FAR Case 92-054A)**

The interim rule published as Item II of FAC 90-27 is revised and finalized. The rule amends FAR Parts 1, 7, 10, 11, 13, 15, 23, 36, 42, and 52 to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. The

final rule differs from the interim rule in that it clarifies the acceptability of used, reconditioned, or remanufactured supplies, or former Government surplus property, proposed for use under a contract; revises the clause at 52.211-5 regarding acceptability of such material and limits its use in solicitations and contracts for commercial items; eliminates the provisions at 52.211-6 and 52.223-8 and the clause at 52.211-7; revises the clause at 52.223-9 to streamline reporting requirements regarding the recovered material content of EPA-designated items; and eliminates references to agency designation of items requiring minimum recovered material content.

**Item VI—New FAR Certifications (FAR
Case 96-329)**

This final rule adds a new section at FAR 1.107 to reflect the provisions of Section 4301(b)(2) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). Section 4301(b)(2) prohibits the inclusion of a new certification requirement in the FAR for contractors or offerors unless the certification requirement is specifically imposed by statute, or unless a written justification for such

certification requirement is provided to the Administrator for Federal Procurement Policy by the FAR Council and the Administrator approves in writing the inclusion of the certification.

Item VII—Service Contracting (FAR Case 95-311)

This final rule amends FAR Parts 7, 16, 37, 42, 46, and 52 to implement Office of Federal Procurement Policy (OFPP) Policy Letter 91-2, Service Contracting. The OFPP policy letter prescribes policies and procedures for use of performance-based contracting methods.

Item VIII—ADP/Telecommunications Federal Supply Schedules (FAR Case 96-602)

This final rule amends FAR Subpart 8.4 to clarify procedures for placing orders and obtaining price reductions under GSA Federal supply schedule contracts, and to add information regarding the "GSA Advantage!" on-line shopping service. Related amendments are made at FAR 13.202(a)(4) and 51.103.

Item IX—Certificate of Competency (FAR Case 96-002)

This interim rule amends FAR Parts 9 and 19 to implement revisions made to the Small Business Administration's (SBA) procurement assistance programs contained in 13 CFR Part 125. The rule notably (1) increases the threshold over which contracting officers may appeal the award of a Certificate of Competency (COC) from \$25,000 to \$100,000; (2) updates the names of SBA offices involved in processing COC's; and (3) implements the requirement that compliance with the limitations on subcontracting be considered an element of responsibility. In addition, this interim rule removes language implementing Section 15(c) of the Small Business Act (15 U.S.C. 644(c)) as amended by Section 305 of Public Law 103-403, Small Business Administration Reauthorization and Amendments Act of 1994. Section 305, which authorized public and private organizations for the handicapped to participate in acquisitions set aside for small businesses, has expired.

Item X—Economically Disadvantaged Individuals (FAR Case 97-008)

This final rule amends the definition of "small disadvantaged business concern" at FAR 19.001 to update the categories of individuals considered to be socially and economically disadvantaged. In accordance with the

Small Business Administration's regulations at 13 CFR 124.105, the Maldives Islands has been added to the category of "Subcontinent Asian Americans"; and Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, and Nauru have been added to the category of "Asian Pacific Americans."

Item XI—Minority Small Business and Capital Ownership (FAR Case 95-028)

The interim rule published as Item VII of FAC 90-43 is revised and finalized. The rule amends the FAR to reflect changes to the Small Business Administration's (SBA) regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) program. The final rule differs from the interim rule in that it amends FAR 19.804-2 to reflect changes that the SBA is making in its processing of 8(a) requirements.

Item XII—Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts (FAR Case 94-610)

This interim rule adds a new FAR Subpart 22.12 implementing Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, of October 20, 1994. The Executive Order and the interim rule require that workers on certain building service contracts be given the right of first refusal for employment with the successor contractor, if they would otherwise lose their jobs as a result of the award of the successor contract.

Item XIII—Designation of Hong Kong (FAR Case 97-019)

This final rule amends FAR 25.401 to add Hong Kong as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

Item XIV—Foreign Differential Pay (FAR Case 96-012)

The interim rule published as Item VI of FAC 90-44 is converted to a final rule without change. The rule amends FAR 31.205-6 to remove the prohibition on the calculation of foreign differential pay based directly on an employee's specific increase in income taxes resulting from assignment overseas.

Item XV—Local Government Lobbying Costs (FAR Case 96-003)

The interim rule published as Item XI of FAC 90-43 is converted to a final rule without change. The rule amends FAR

31.205-22 to make allowable the costs of any lobbying activities to influence local legislation in order to directly reduce contract costs, or to avoid material impairment of the contractor's authority to perform the contract.

Item XVI—Independent Government Estimates—Construction (FAR Case 97-005)

This final rule amends FAR 36.203(a) and 36.605(a) to raise the threshold for a mandatory independent Government estimate of construction costs and architect-engineer costs from \$25,000 to \$100,000.

Item XVII—Year 2000 Compliance (FAR Case 96-607)

The interim rule published as Item XIV of FAC 90-45 is revised and finalized. The rule provides guidance regarding the acquisition of information technology that is Year 2000 compliant. The final rule differs from the interim rule in that it makes clarifying revisions to the definition of "Year 2000 compliant" at FAR 39.002.

Item XVIII—Modification of Existing Contracts Under FASA and FARA (FAR Case 96-606)

The interim rule published as Item VIII of FAC 90-44 is converted to a final rule without change. The rule amends FAR 43.102 to implement subsection 10002(e) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) and subsections 4402 (d) and (e) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule authorizes, but does not require, contracting officers, if requested by the contractor, to modify existing contracts without requiring consideration, to incorporate changes authorized by the Act.

Dated: August 14, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 97-01 are effective October 21, 1997, except for Items IX, XII, and XIII, which are effective August 22, 1997.

Dated: August 7, 1997.
Eleanor R. Spector,
Director, Defense Procurement.

Dated: August 7, 1997.
Tom Luedtke,
*Deputy Associate Administrator for
Procurement National Aeronautics and Space
Administration.*

Dated: August 7, 1997.
Edward C. Loeb,
*Acting Deputy Associate Administrator,
Office of Acquisition Policy, General Services
Administration.*
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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 1

[FAC 97-01; FAR Case 97-006; Item I]

RIN 9000-AH64

**Federal Acquisition Regulation;
Business Process Innovation**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council have
agreed on a final rule amending the
Federal Acquisition Regulation (FAR) to
state that contracting officers, in their
role as members of the Government
acquisition team, should take the lead in
encouraging business process
innovations and ensuring that business
decisions are sound. This regulatory
action was not subject to Office of
Management and Budget review under
Executive Order 12866, dated
September 30, 1993, and is not a major
rule under 5 U.S.C. 804.

DATES: Effective October 21, 1997.

FOR FURTHER INFORMATION CONTACT: The
FAR Secretariat, Room 4035, GS
Building, Washington, DC 20405 (202)
501-4755 for information pertaining to
status or publication schedules. For
clarification of content, contact Mr.
Ralph De Stefano, Procurement Analyst,
at (202) 501-1758. Please cite FAC 97-
01, FAR case 97-006.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 1.102-
4(e) by adding a statement that
contracting officers, in their role as
members of the Government acquisition
team, should take the lead in
encouraging business process
innovations and ensuring that business
decisions are sound.

B. Regulatory Flexibility Act

The final rule does not constitute a
significant FAR revision within the
meaning of FAR 1.501 and Pub. L. 98-
577, and publication for public
comment is not required. However,
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 cite 5 U.S.C.
601, *et seq.* (FAC 97-01, FAR case 97-
006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does
not apply because the 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 1

Government procurement.

Dated: August 7, 1997.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 1 is amended
as set forth below:

**PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM**

1. The authority citation for 48 CFR
Part 1 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 1.102-4 is amended by
adding the following sentence at the end
of paragraph (e):

1.102-4 Role of the acquisition team.

* * * * *

(e) * * * Contracting officers should
take the lead in encouraging business
process innovations and ensuring that
business decisions are sound.

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DEPARTMENT OF DEFENSE

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**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

**48 CFR Parts 1, 9, 14, 19, 22, 33, and
52**

[FAC 97-01; FAR Case 96-601; Item II]

RIN 9000-AH31

**Federal Acquisition Regulation; FASA
and the Walsh-Healey Public Contracts
Act**

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

ACTION: Interim rule adopted as final.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council have
agreed to convert the interim rule
published as Item I of Federal
Acquisition Circular 90-43 on
December 20, 1996, to a final rule
without change. The rule amends the
Federal Acquisition Regulation (FAR) to
eliminate the requirement that covered
contractors under the Walsh-Healey
Public Contracts Act must be either the
manufacturer of or a regular dealer in
the materials, supplies, articles, or
equipment to be manufactured or used
in the performance of the contract. This
regulatory action was not subject to
Office of Management and Budget
review under Executive Order 12866,
dated September 30, 1993, and is not a
major rule under 5 U.S.C. 804.

DATES: Effective October 21, 1997.

FOR FURTHER INFORMATION CONTACT: The
FAR Secretariat, Room 4035, GS
Building, Washington, DC 20405 (202)
501-4755 for information pertaining to
status or publication schedules. For
clarification of content, contact Mr. Jack
O'Neill, Procurement Analyst, at (202)
501-3856. Please cite FAC 97-01, FAR
case 96-601.

SUPPLEMENTARY INFORMATION:

A. Background

On December 20, 1996 (61 FR 67409),
the DoD, GSA, and NASA published an
interim FAR rule implementing the
Federal Acquisition Streamlining Act of
1994 (Pub. L. 103-355) amendments to
the Walsh-Healey Public Contracts Act.
The interim rule deleted the
"manufacturer" or "regular dealer"
requirements and all related definitions
from the FAR, consistent with a
Department of Labor final rule issued on