

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 22, 23, 25, 27, 28, 32, 33, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

[Federal Acquisition Circular 90-29]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

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

ACTION: Summary presentation of interim rules.

SUMMARY: This document serves to introduce the documents which follow and which comprise Federal Acquisition Circular (FAC) 90-29. The Federal Acquisition Regulatory Council is issuing FAC 90-29 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	Rule type	Team leader
I	FAR guiding principles	95-010	Final	O'Neill
II	Electronic contracting	91-104	Interim	Loeb
III	Simplified acquisition procedures/FACNET	94-770	Interim	Maykowskyj

DATES: Effective Date: July 3, 1995.

Comment Closing Date: September 1, 1995.

FOR FURTHER INFORMATION CONTACT:

The team leader whose name appears in relation to each FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501-4755. Please cite FAC 90-29 and FAR case numbers(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-29 amends the Federal Acquisition Regulation (FAR) as specified below:

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—FAR Guiding Principles (FAR Case 95-010)

This final rule amends the FAR at 1.102 to incorporate the Statement of Guiding Principles for the FAR as agreed to by the FAR Council.

Item II—Electronic Contracting (FAR Case 91-104)

This interim rule amends the FAR to address the use of electronic commerce/electronic data interchange in Government contracting. This rule is intended to remove any barriers that existed in the FAR to use of electronic contracting/electronic data interchange.

Item III—Simplified Acquisition Procedures/FACNET (FAR Case 94-770)

This interim rule implements the simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act (the Act). The Act defines the simplified acquisition threshold as \$100,000.

However, the FAR and the Act limit the use of simplified acquisition procedures by procurement activities not having certified interim FACNET to procurements not exceeding \$50,000.

FACNET is a universal electronic capability that will permit potential contractors to, as a minimum, obtain information on proposed procurements, submit responses, query the system, and receive awards on a Governmentwide basis.

The reader should note the key features represented in FAR case 94-770 which will change the acquisition process significantly upon implementation and continue to do so as contracting offices/activities and agencies begin to certify and implement the use of FACNET. These key features are: the small purchase limitation of \$25,000 becomes the simplified acquisition threshold of \$100,000 (see 13.101); use of the simplified acquisition procedures is tied to FACNET—simplified acquisition procedures may be used up to \$50,000 upon FAR implementation without FACNET and up to \$100,000 upon interim FACNET certification (see 13.103(b)); for non-FACNET acquisitions over \$25,000, a synopsis for 15 days is still required; solicitation response time must provide a reasonable amount of time to afford potential offerors a reasonable opportunity to respond; the regulation exempts simplified acquisition procedures from 15 statutes and from certain provisions and clauses; contracting officers need to add any necessary clauses to the back of the purchase order form; and all purchases between \$2,500 and \$100,000 are reserved for small business (see 19.502-2).

In addition to what the Act provided, the SAT/FACNET Team has incorporated coverage that provides flexibility and latitude that encourages the contracting officer to use innovative approaches in awarding contracts, seek the "best value" for the Government which includes past performance and quality; permits use of other than fixed price orders/contracts, when authorized by the agency; encourages the use of options; and increases the property clause threshold to be commensurate with the implementation and certification of FACNET.

The most significant change in this rule is the implementation of FACNET which is addressed primarily in Subpart 4.5. FACNET will provide the capability of existing computer hardware and software to perform certain functions in a standard manner in order to provide one face to industry for the entire Government. FACNET is the preferred means for conducting all purchases under the simplified acquisition threshold (\$100,000) and above the micro-purchase threshold (\$2,500). Contracting offices/activities may not conduct acquisitions using simplified acquisition procedures between \$50,000 and \$100,000, until they have certified and implemented interim FACNET.

However, it is also significant to highlight what requirements did not change with FASA, such as the compliance with Part 8, required sources of supply; the policy on not splitting orders; requirement for posting \$10,000 (\$5,000 DOD); the need to synopsise over \$25,000; the requirement for small business set-asides; and contracting reporting.

Dated: June 26, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Number 90-29

Federal Acquisition Circular (FAC) 90-29 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 90-29 is effective July 3, 1995.

Dated: June 23, 1995.

Roland A. Hassebrock,

Col., USAF Director, Defense Procurement (Acting).

Dated: June 16, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy General Services Administration.

Dated: June 9, 1995.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement NASA.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 90-29; FAR Case 95-10, Item I]

RIN 9000-AG55

Federal Acquisition Regulation; FAR Guiding Principles

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to incorporate the Statement of Guiding Principles. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: July 3, 1995.

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 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-29, FAR case 95-10.

SUPPLEMENTARY INFORMATION:

A. Background

On Friday, January 20, 1995, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, published in the **Federal Register** at 60 FR 4205, a Notice of Core Guiding Principles for the Federal Acquisition System. The OFPP, in accordance with a decision of the FAR Rewrite Board of Directors, then requested that the Core Guiding Principles be incorporated into the regulation. This final rule completes the action requested by the Board of Directors.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected 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 90-29, FAR case 95-10), 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: June 26, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

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

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).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.102-1.105 [Redesignated as 1.103-1.106]

2. Subpart 1.1 is amended by redesignating sections 1.102 through 1.105 as 1.103 through 1.106 and adding

new sections 1.102 through 1.102-4 to read as follows:

1.102 Statement of guiding principles for the federal acquisition system.

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Federal Acquisition System will—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example—

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

(c) The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. 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.

1.102-1 Discussion

(a) *Introduction.* The statement of Guiding Principles for the Federal Acquisition System (System) represents a concise statement designed to be user-friendly for all participants in Government acquisition. The following discussion of the principles is provided in order to illuminate the meaning of the terms and phrases used. The framework for the System includes the Guiding Principles for the System and