

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97-05; 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, and technical amendments and corrections.

**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) 97-05. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on the Internet at <http://www.arnet.gov/far>.

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

**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 the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97-05 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Subcontract Consent	95-011	Klein.
II	Availability of Specifications	97-034	DeStefano.
III	Liquidated Damages	89-042/97-300	Moss.
IV	Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts	97-042	DeStefano.
V	Rehabilitation Act, Workers With Disabilities (Interim)	96-610	O'Neill.
VI	Trade Agreements Thresholds	97-044	Linfield.
VII	Restrictions on Purchases from Sudan	97-301	Linfield.
VIII	Software Copyrights	97-614	O'Neill.
IX	Travel Reimbursement	97-007	Nelson.
X	No-Cost Value Engineering Change Proposals (Interim)	96-011	Klein.
XI	Technical Amendments.		
XII	Availability of FAR via Internet.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. 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.

Federal Acquisition Circular 97-05 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Subcontract Consent (FAR Case 95-011)**

This final rule amends FAR Parts 4, 22, 35, 36, 44, and 52 to reduce requirements for consent to subcontract. The rule eliminates consent requirements for contractors that have an approved purchasing system, except when specific contracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts.

**Item II—Availability of Specifications (FAR Case 97-034)**

This final rule amends FAR Parts 9 and 11 and the provisions at 52.211-1, 52.211-2, and 52.212-1 to update addresses and other information regarding the availability of

specifications, standards, and item descriptions that may be cited in Government solicitations and contracts. In addition, the rule clarifies the pricing policy regarding specifications, standards, and commercial item descriptions issued by GSA.

**Item III—Liquidated Damages (FAR Cases 89-042 and 97-300)**

This final rule amends FAR Parts 11, 19, 52, and 53 to clarify policy on liquidated damages and commercial subcontracting plans pertaining to requirements for subcontracting with small, small disadvantaged, and women-owned small business concerns. The rule implements Section 304 of the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) and OFPP Policy Letter 95-1, Subcontracting Plans for Companies Supplying Commercial Items. The interim rule published in FAC 84-50, FAR case 89-042, 54 FR 30708, July 21, 1989, has been merged with this final rule.

**Item IV—Limits on Fee for Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee Contracts (FAR Case 97-042)**

This final rule amends FAR Part 16 to clarify fee limitations pertaining to cost-reimbursement contracts. The FAR Part 15 rewrite in FAC 97-02 eliminated non-statutory fee limitations for cost-

plus-incentive-fee and cost-plus-award-fee contracts. This final rule makes conforming changes to FAR Part 16.

**Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)**

This interim rule amends FAR Subpart 22.14 and the clauses at 52.212-5 and 52.222-36 to implement revised Department of Labor regulations regarding affirmative action to employ and advance in employment qualified individuals with disabilities. The dollar threshold for use of the clause at 52.222-36 has been increased from \$2,500 to \$10,000.

**Item VI—Trade Agreements Thresholds (FAR Case 97-044)**

This final rule amends FAR Part 25 to implement revised thresholds for application of the Trade Agreements Act and the North American Free Trade Agreement, as published by the Office of the United States Trade Representative in the **Federal Register** on January 14, 1998 (63 FR 2295).

**Item VII—Restrictions on Purchases from Sudan (FAR Case 97-301)**

This final rule amends FAR 25.701 and the clause at 52.225-11 to add Sudan to the list of countries whose products are banned from importation into the United States. This rule implements Executive Order 13067, dated November 3, 1997.

**Item VIII—Software Copyrights (FAR Case 97-614)**

This final rule amends FAR 27.405 to add contracts for certain computer software programs to the list of examples of contracts for special works to which the Government may obtain copyrights.

**Item IX—Travel Reimbursement (FAR Case 97-007)**

The interim rule published as Item IX of FAC 97-03 is converted to a final rule without change. The rule amends FAR 31.205-46 to increase from \$25.00 to \$75.00 the threshold at which contractor personnel must provide a receipt to support travel expenditures.

**Item X—No-Cost Value Engineering Change Proposals (FAR Case 96-011)**

This interim rule revises FAR 48.104-3 to clarify that no-cost value engineering change proposals (VECPs) may be used when, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government.

**Item XI—Technical Amendments**

Amendments are being made at FAR 5.201(b)(2), 8.404(a), 31.002, and 45.607-2(b) to update references and make editorial changes.

**Item XII—Availability of FAR via Internet**

The FAR, along with Federal Acquisition Circulars and other informational items, is available on the Internet at <http://www.arnet.gov/far>.

Dated: June 11, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division,*  
June 22, 1998.

Federal Acquisition Circular (FAC) 97-05 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 97-05 are effective August 21, 1998, except for Items V, X, and XI, which are effective June 22, 1998.

Dated: June 11, 1998.

**Eleanor R. Spector,**

*Director, Defense Procurement.*

Dated: June 11, 1998.

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: June 10, 1998.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 4, 22, 35, 36, 44, and 52**

[FAC 97-05; FAR Case 95-011; Item I]

RIN 9000-AH57

**Federal Acquisition Regulation; Subcontract Consent**

**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 reduce requirements for consent to subcontract. The rule eliminates the consent requirements for contractors that have an approved purchasing system, except when specific subcontracts requiring consent are identified by the contracting officer; eliminates consent requirements for fixed-price incentive contracts and fixed-price redeterminable contracts; and increases, to the simplified acquisition threshold, the dollar level at which consent requirements are included in time-and-materials, labor-hour, and letter contracts. 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.

**EFFECTIVE DATE:** August 21, 1998.

**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 Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAC 97-05, FAR case 95-011.

**SUPPLEMENTARY INFORMATION:****A. Background**

A proposed rule was published in the **Federal Register** on April 21, 1997 (62 FR 19465). Comments were received from nine respondents. All comments were considered in the development of this final rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the consent to subcontract requirement has a very small administrative cost that is passed along to the Government as part of the contract price, and this rule reduces the requirement for consent to subcontract.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of the information collection requirements was submitted to the Office of Management and Budget (OMB) and approved through June 30, 2000, under OMB Control Number 9000-0149. Public comments concerning this request were invited through **Federal Register** notice 62 FR 19465, April 21, 1997, and no comments were received.

**List of Subjects in 48 CFR Parts 4, 22, 35, 36, 44, and 52**

Government procurement.

Dated: June 11, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 4, 22, 35, 36, 44, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 22, 35, 6, 44, and 52 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).