

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001-01; 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 agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-01. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via 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 2001-01 and specific FAR case number(s). Interested parties may also visit our Web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Application of the Davis-Bacon Act to Construction Contracts With Options to Extend the Term of the Contract.	1997-613	Nelson.
II	Acquisition of Commercial Items	2000-303	Moss.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services (Interim)	2000-308	Olson.
IV	Veterans' Employment	1998-614	Nelson.
V	Veterans Entrepreneurship and Small Business Development Act of 1999 (Interim)	2000-302	Cundiff.
VI	Very Small Business Pilot Program	2001-001	Cundiff.

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 2001-01 amends the FAR as specified below:

Item I—Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

[FAR Case 1997-613]

This final rule implements the Department of Labor's requirement to incorporate a current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction.

Item II—Acquisition of Commercial Items

[FAR Case 2000-303]

This final rule amends the FAR to clarify the definition of "commercial item." The revised language will help contracting officers make commerciality determinations. The rule also alerts contracting officers to be aware of customary commercial terms and conditions that may affect the contract price when pricing commercial items. The rule also clarifies that Subpart 46.8, Contractor Liability for Loss of or Damage to Property of the Government, does not apply to acquisitions of commercial items. Contracting officers should use standard commercial practices instead of the policies in

Subpart 46.8. Finally, the rule amends the clause at 52.212-4, Limitation of liability, to conform it to standard commercial practice.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services

[FAR Case 2000-308]

This interim rule implements changes in the Office of Management and Budget's (OMB) Prompt Payment Act regulations at 5 CFR 1315 that implemented Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Those changes were published by OMB as an interim final rule and became effective on December 15, 2000 (65 FR 78403) and were applicable to all covered contracts awarded on or after December 15, 2000. Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 requires agencies to pay an interest penalty, in accordance with regulations issued, whenever an interim payment under a cost-reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from a contractor. The Act does not permit payment of late payment penalty interest for any period prior to December 15, 2000.

This FAR amendment eliminates the prior policy and contract clause prohibitions on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It adds new policy and contract clause coverage to provide for those penalty payments.

Item IV—Veterans' Employment

[FAR Case 1998-614]

This final rule amends the FAR to implement statutory and regulatory changes relating to veterans' employment opportunities and reporting. Most significantly for contracting officers, the rule amends the FAR to prohibit contracting officers from obligating or expending appropriated funds to enter into a contract with a contractor that has not met its veterans' employment reporting requirements (VETS-100 Report). This prohibition does not apply to contracts for commercial items or contracts valued at or below the simplified acquisition threshold. The rule adds a new solicitation provision that requires each offeror to represent, by submission of its offer, that it is in compliance with the VETS-100 reporting requirements. The contracting officer may verify compliance by checking with the Department of Labor.

Item V—Veterans Entrepreneurship and Small Business Development Act of 1999

[FAR Case 2000-302]

This interim rule amends the FAR to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554) that was enacted on December 21, 2000.

This rule requires a contractor that is required to submit a subcontracting plan to report as a separate subcontracting plan goal requirement, subcontracting

activity pertaining to service-disabled veteran-owned small business concerns. The rule also changes the Standard Form (SF) 294, "Subcontracting Report for Individual Contracts," and the SF 295, "Summary Subcontract Report," to capture this category of information for the contracting officer.

Item VI—Very Small Business Pilot Program

[FAR Case 2001-001]

This final rule amends FAR Subpart 19.9 to implement Section 503(c) of the Small Business Reauthorization Act of 2000 (part of Public Law 106-554). Section 503(c) extends, for three additional years, the Very Small Business Pilot Program until September 30, 2003. The purpose of the program is to improve access to Government contract opportunities for concerns that are substantially below SBA's size standards by reserving certain acquisitions for competition among such concerns.

Dated: October 12, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001-01 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 2001-01 is effective December 21, 2001, except for Items III and V, which are effective October 22, 2001.

Dated: August 31, 2001.

Carolyn M. Balven,

Acting Director, Defense Procurement.

Dated: August 28, 2001.

David A. Drabkin,

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

Dated: August 27, 2001.

Anne Guenther,

Acting 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 1, 22, and 52

[FAC 2001-01; FAR Case 1997-613; Item I]

RIN 9000-AI47

Federal Acquisition Regulation; Application of the Davis-Bacon Act to Construction Contracts With Options To Extend the Term of the Contract

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the requirement of Department of Labor (DoL) All Agency Memorandum No. 157 (AAM 157), as clarified in the **Federal Register** on November 20, 1998, at 63 FR 64542. The rule requires incorporation of the current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts.

DATES: *Effective Date:* December 21, 2001.

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 Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 2001-01, FAR case 1997-613.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule provides for incorporation of the current Davis-Bacon Act wage determination at the exercise of each option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work. Unlike the Service Contract Act, the Davis-Bacon Act and its implementing regulations do not state that new or revised wage determinations must be incorporated at the exercise of each contract option period.

On December 9, 1992, DoL issued AAM 157, which required incorporation

of a current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts containing options to extend the term of the contract. Following several years of controversy regarding the authority of the DoL to issue AAM 157, DoL Administrative Review Board confirmed on July 17, 1997, the authority of the DoL Administrator's ruling that a current Davis-Bacon Act wage determination must be incorporated at the exercise of an option to extend the term of the contract. The Review Board also directed DoL to clarify the language of AAM 157 and to republish the memorandum in the **Federal Register** at 63 FR 64542, November 20, 1998.

On December 3, 1999, DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 64 FR 67986. Eight respondents submitted comments on the proposed rule. The comments were considered in the development of the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA). The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

The FRFA is summarized as follows:

The final rule amends FAR Parts 1, 22, and 52 to implement the requirement of Department of Labor (DoL) All Agency Memorandum No. 157 (AAM 157), as clarified in the **Federal Register** on November 20, 1998. The rule requires incorporation of the current Davis-Bacon Act wage determination at the exercise of each option period in construction contracts. The rule provides four alternative methods of adjusting the contract price when exercising the option to extend the term of the contract.

1. No adjustment in contract price (because the option prices may include an amount to cover estimated increases);

2. Price adjustment based on a separately specified pricing method, such as application of a coefficient to an annually published unit pricing book incorporated at option exercise;

3. A percentage price adjustment, based on a published economic indicator; and

4. A price adjustment based on a specific calculation to reflect the annual increase or decrease in wages and fringe benefits as a result of incorporation of the new wage determination.

The last method, applying calculations similar to the calculations of price