

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 97-19;
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 (Councils) in this Federal Acquisition Circular (FAC) 97-19. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. 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 97-19 and specific FAR case numbers. Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Contract Bundling	1997-306 (97-306)	De Stefano.
II	North American Industry Classification System (NAICS) (Interim)	2000-604	Moss.
III	Liquidated Damages	1999-003	Moss.
IV	Service Contract Act, Commercial Item Subcontracts	1998-605	Klein.
V	Small Business Competitiveness Demonstration Program	1999-012	Moss.
VI	Construction Industry Payment Protection Act of 1999	1999-302	De Stefano.
VII	Deferred Research and Development (R&D) Costs	1999-013	Nelson.
VIII	Time-and-Materials or Labor Hours	1999-606	Klein.
IX	Repeal of Reporting Requirements under Public Law 85-804	2000-006	Klein.
X	Technical Amendments		

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 97-19 amends the FAR as specified below:

Item I—Contract Bundling (FAR Case 1997-306 (97-306))

This final rule converts the interim rule published as Item III of FAC 97-15 to a final rule with minor changes. The rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the United States Code to define “contract bundling,” and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

This rule affects all contracting officers that may combine requirements that were previously awarded to a small business or requirements for which a small business could have competed. In accordance with the statute and Small Business Administration regulations, agencies must establish procedures for processing bundled requirements to ensure maximum small business participation in bundled acquisitions.

Specifically, agencies and contracting officers must—

- Perform market research when bundled requirements are anticipated;
- Justify bundling in acquisition strategies;
- Meet specific estimated benefit thresholds before bundling requirements;
- Assess the impact of bundling on small businesses;
- Submit solicitations containing bundled requirements to the Small Business Administration (SBA) procurement center representatives for review; and
- Include, in negotiated competitions for bundled requirements, a source selection factor for the offerors’ proposed use of small businesses as subcontractors and their past performance in meeting subcontracting goals.

Item II—North American Industry Classification System (NAICS) (FAR Case 2000-604)

This interim rule revises the FAR to convert size standards and other programs in the FAR that are currently based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according

to how they conduct their economic activity. It is a significant improvement over the SIC because it more accurately identifies industries. Beginning October 1, 2000, NAICS will be used to establish the size standards for acquisitions. In addition, the interim rule converts the designated industry groups in FAR 19.1005 to NAICS and requires agencies to report contract actions using the NAICS code rather than the SIC code.

Item III—Liquidated Damages (FAR Case 1999-003)

This final rule clarifies coverage on liquidated damages. This rule will make it easier for contracting officers to understand the policy for administering liquidated damages. The only substantive change is at FAR 11.501(d). The authority to approve reductions in or waivers to liquidated damages was changed from the Comptroller General to the Commissioner, Financial Management Service.

Item IV—Service Contract Act, Commercial Item Subcontracts (FAR Case 1998-605)

This final rule deletes the Service Contract Act of 1965 from the list of laws inapplicable to subcontracts for commercial items. FAR 12.504(a) contains this list.

Item V—Small Business Competitiveness Demonstration Program (FAR Case 1999-012)

This final rule converts the interim rule published as Item I of FAC 97-16 to a final rule without change.

The rule amends FAR Part 19 to clarify language pertaining to the Competitiveness Demonstration Program, consistent with revisions to the Program that were required by the OFPP and SBA joint final policy directive dated May 25, 1999. The rule revises FAR Subpart 19.10 to—

1. Advise the contracting officer to consider the 8(a) Program and HUBZone Program when there is not a reasonable expectation that offers will be received from two or more emerging small businesses; and

2. Add a new section 19.1006, Exclusions, to reflect the exclusions of orders under the Federal Supply Schedule Program and contract awards to educational and nonprofit institutions or governmental entities.

Item VI—Construction Industry Payment Protection Act of 1999 (FAR Case 1999-302)

This final rule amends FAR 28.102-2 and the clauses at 52.228-13, 52.228-15, and 52.228-16 to implement the Construction Industry Payment Protection (CIPP) Act of 1999. The CIPP Act amends the Miller Act to provide that the amount of a payment bond must equal the total amount payable by the terms of the contract, unless the contracting officer determines that a payment bond in that amount is impractical. The final rule also provides enhanced payment protection for Government contracts not subject to the Miller Act. The contracting officer must determine the appropriate amount of payment protection in each construction contract that exceeds \$25,000, and in any other contract that requires a performance bond in accordance with FAR 28.103-2.

Item VII—Deferred Research and Development (R&D) Costs (FAR Case 1999-013)

This final rule amends the FAR by clarifying and simplifying the “deferred research and development costs” cost principle at FAR 31.205-48. The rule will only affect contracting officers that price contracts using cost analysis, or that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contractor costs.

Item VIII—Time-and-Materials or Labor Hours (FAR Case 1999-606)

This final rule clarifies the requirements regarding changes to time-and-materials and labor-hour contracts. The rule changes the clause at FAR 52.243-3, Changes—Time-and-Materials or Labor-Hours, to be consistent with Alternate II of the clause at FAR 52.243-1, Changes—Fixed-Price. Alternate II is used in service contracts and most of the work performed under time-and-materials or labor-hour contracts also involves services.

Item IX—Repeal of Reporting Requirements under Public Law 85-804 (FAR Case 2000-006)

This final rule amends the FAR to implement paragraph 901(r)(1) of the Federal Reports Elimination Act of 1998 (Pub. L. 105-362). Paragraph 901(r)(1) repealed section 4 of Public Law 85-804 (50 U.S.C. 1434). Section 4 required each department and agency to report annually to Congress any contract action in excess of \$50,000 issued under the authority of this law. The rule revises FAR 50.000 to update the reference to Public Law 85-804 and eliminates the reporting requirements at FAR Part 50.104. Agencies are no longer required to submit to Congress annually a report of actions taken on requests for relief under the authority of Public Law 85-804.

Item X—Technical Amendments

These amendments update references and make editorial changes at sections 3.104-5, 4.803 and 22.400.

Dated: July 19, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-19 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-19 are effective [insert date 60 days after publication in the Federal Register], except for the following items:

Items I, V, VI, and X are effective [insert date of publication in the Federal Register].

Item IV is effective [insert date 30 days after publication in the Federal Register].

Item II is effective October 1, 2000.

Each rule is applicable to solicitations issued on or after the rule's effective date.

Dated: July 19, 2000.

Deidre A. Lee,

Director, Defense Procurement.

Federal Acquisition Circular

Dated: July 19, 2000.

David A. Drabkin,

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

Federal Acquisition Circular

Dated: July 18, 2000.

R. Scott Thompson,

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 2, 5, 7, 10, 15, and 19**

[FAC 97-19; FAR Case 1997-306 (97-306); Item I]

RIN 9000-AI55

Federal Acquisition Regulation; Contract Bundling

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 Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the United States Code to define “contract bundling,” and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

DATES: *Effective Date:* July 26, 2000.

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 97-19, FAR case 1997-306.