DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–45]

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 final and interim rules.

SUMMARY: This document serves to introduce and relate together the interim and final rule documents which follow and which comprise Federal Acquisition Circular (FAC) 90–45. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90–45 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	Analyst
I	Procurement Integrity	96–314	Linfield
II	Certification Requirements	96–312	O'Neill
III	Humanitarian Operations	96–323	Linfield
IV	Freedom of Information Act	96–326	O'Neill
V	Exceptions to Requirements for Certified Cost or Pricing Data	96–306	Olson
VI	Implementation of the North American Free Trade Agreement Implementation Act	93–310	Linfield
VII	Application of Special Simplified Procedures to Certain Commercial Items	96–307	Moss
VIII	Compliance with Immigration and Nationality Act Provisions	96–320	Linfield
IX	Caribbean Basin and Designated Countries	96–017	Linfield
X	Caribbean Basin Country End Products—Renewal of Treatment as Eligible	96–020	Linfield
XI	Compensation of Certain Contractor Personnel (Interim)	96–325	DeStefano
XII	Agency Procurement Protests	95–309	O'Neill
XIII	Two-Phase Design Build Selection Procedures	96–305	O'Neill
XIV	Year 2000 Compliance (Interim)	96–607	O'Neill
XV	Limitation on Indirect Cost Audits	96–324	Olson

DATES: For effective dates and comment dates, see individual documents which appear elsewhere in this separate part.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405 (202) 501–4755. Please cite FAC 90–45 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–45 amends the Federal Acquisition Regulation (FAR) as specified below:

Case Summaries

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—Procurement Integrity (FAR Case 96–314)

This final rule amends the FAR to implement the procurement integrity provisions of Section 27 of the Office of Federal Procurement Policy (OFPP) Act, as amended by Section 4304 of the 1996 National Defense Authorization Act. Section 4304 is part of the Clinger-Cohen Act of 1996. Section 3.104 is rewritten. Unlike the previous statute, some of the post-employment restrictions in the rewritten 3.104 apply to post-award activities. The final rule eliminates all of the procurement integrity certifications required by the previous statute.

The final rule makes other significant changes. The new post-employment restrictions apply to services provided or decisions made on or after January 1, 1997; the old restrictions apply for former officials whose employment ended before January 1, 1997. The clause at 52.203–10 is revised. The clauses at 52.203–9 and 52.203–13, and the Optional Form 333 at 53.202–1, are removed. The solicitation provision at 52.203–8 is replaced with a new clause to provide the means to void or rescind contracts where there has been a violation of the procurement integrity restrictions.

Item II—Certification Requirements (FAR Case 96–312)

This final rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 23, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52, and 53 to remove certain certification requirements for contractors and offerors that are not specifically required by statute. The rule implements Section 4301(b) of the Clinger-Cohen Act of 1996 (Public Law 104–106).

Item III—Humanitarian Operations (FAR Case 96–323)

This final rule amends the definition of ''simplified acquisition threshold'' at FAR 2.101 to increase the threshold to $200,000 for contracts to be awarded and performed, or purchases to be made, outside the United States in support of a humanitarian or peacekeeping operation. The rule implements 10 U.S.C. 2302(7) and 41 U.S.C. 259(d) as amended by Section 807 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201).

Item IV—Freedom of Information Act (FAR Case 96–326)

This final rule amends FAR Subpart 24.2 to implement Section 821 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 821 prohibits, with certain exceptions, Government release of competitive proposals under the Freedom of Information Act.

Item V—Exceptions to Requirements for Certified Cost or Pricing Data (FAR Case 96–306)

This final rule implements Section 4201 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4201: (1) Exempts suppliers of commercial items under Federal contracts from the requirement to submit costs or pricing data; (2) provides for the submission of information other than cost or pricing data to the extent necessary to determine price reasonableness; and (3) removes specific audit authorities pertaining to information provided by commercial suppliers. Accordingly, FAR 15.8, 52.215–26, 52.215–41, and 52.215–42 are amended to revise requirements pertaining to the submission of information relating to commercial items; FAR 52.215–43 is removed; and other associated changes are made in FAR Parts 4, 12, 15, 16, 25, 31, 46, and 52.

Item VI—Implementation of the North American Free Trade Agreement Implementation Act (FAR Case 93–310)

The interim rule published as FAC 90–19 and amended by FAC 90–39 is converted to a final rule with changes. The final rule amends FAR Part 25. The final rule revisions result from public comments received on FAR Case 96–312 published as Item II in this FAC. Upon consideration of those public comments, certifications eliminated under the interim rule published in FAC 90–39 were reinstated.

Item VII—Application of Special Simplified Procedures to Certain Commercial Items (FAR Case 96–307)

This final rule amends FAR Parts 5, 6, 11, 12, and 13 to implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold ($100,000) but not greater than $5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

Item VIII—Compliance With Immigration and Nationality Act Provisions (FAR Case 96–320)

The interim rule published as Item II of FAC 90–41 is converted to a final rule without change. The final rule amends FAR 9.406 to specify that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. The rule implements Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions.

Item IX—Caribbean Basin and Designated Countries (FAR Case 96–017)

This final rule amends FAR 25.401 to update the lists of countries included in the definitions of ''Caribbean Basin country'' and ''Designated country''.

Item X—Caribbean Basin Country End Products—Renewal of Treatment as Eligible (FAR Case 96–020)

This final rule amends FAR 25.402(b) to implement the extension by the U.S. Trade Representative of the date of eligibility under the Trade Agreements Act for products of Caribbean Basin countries.

Item XI—Compensation of Certain Contractor Personnel (FAR Case 96–325)

This interim rule adds a new requirement at FAR 31.205–6(p) to implement Section 809 of the Fiscal Year (FY) 1997 National Defense Authorization Act (Public Law 104–201). Section 809 places a Governmentwide ceiling of $250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during FY 1997.

Item XII—Agency Procurement Protests (FAR Case 95–309)

The interim rule published as Item XIII of FAC 90–40 is revised and finalized. The rule amends FAR 33.103 to implement Executive Order 12979, Agency Procurement Protests. Executive Order 12979 provides for inexpensive, informal, procedurally simple, and expeditious resolution of agency protests, including the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel.

Item XIII—Two-Phase Design-Build Selection Procedures (FAR Case 96–305)

This final rule amends FAR Part 36 to implement Section 4105 of the Clinger-Cohen Act of 1996 (Public Law 104–106), which authorizes the use of two-phase design-build procedures for construction contracting. Two phase design-build construction contracting provides for the selection of a limited number of offerors (normally five or fewer), during Phase One of the solicitation process, to submit detailed proposals for Phase Two.

Item XIV—Year 2000 Compliance (FAR Case 96–607)

This interim rule amends FAR Part 39 to increase awareness of Year 2000 procurement issues and to ensure that solicitations and contracts address Year 2000 issues.

Item XV—Limitation on Indirect Cost Audits (FAR Case 96–324)

This final rule amends FAR Part 42 to implement Section 808 of the FY 97 National Defense Authorization Act (Public Law 104–201). Section 808 amends 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) to expand required audit reciprocity among Federal agencies to include post-award audits. 10 U.S.C. 2313(d) and 41 U.S.C. 254d(d) were added by the Federal Acquisition Streamlining Act of 1994, Sections 2201(a)(1) and 2251(a) of Public Law 103–355, to include reciprocity on pre-award audits.

Dated: December 24, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90–45 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 90–45 is effective January 1, 1997, except for Item XII, which is effective March 3, 1997.

Dated: December 24, 1996.

Charles A. Zuckerman,

Director, Defense Procurement (Acting).

Dated: December 23, 1996.

Ida M. Ustad,

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

Dated: December 23, 1996.

L.W. Bailets,

Associate Administrator for Procurement (Acting), National Aeronautics and Space Administration.

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