SUPPLEMENTARY INFORMATION: Summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005–96 amends the FAR as specified below:

Removal of Fair Pay and Safe Workplaces Rule (FAR Case 2017–015)

This final rule rescinds the final rule at 81 FR 58562 (August 25, 2016). This was FAR Case 2014–025, Fair Pay and Safe Workplaces, which was a significant rule under Executive Order (E.O.) 13666 and a major rule under 5 U.S.C. 804. Because of a Federal court injunction, the only provision or clause that had gone into effect was FAR 52.222–60, Paycheck Transparency (Executive Order 13673), which was included in solicitations starting on January 1, 2017. On March 27, 2017, Public Law 115–11 disapproved the rule under the Congressional Review Act. Therefore, by law, the rule has no force or effect, including the FAR 52.222–60 clause. Also on March 27, 2017, E.O. 13782, Revocation of Federal Contracting Executive Orders, rescinded the E.O.s that originally authorized the rule. All steps should be taken to ensure that no sections, provisions, or clauses of the final rule are implemented.


William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 17, 22, 42, and 52
[FAC 2005–96; FAR Case 2017–015; Docket No. 2017–0002; Sequence No. 1]

RIN 9000–AN52

Federal Acquisition Regulation; Removal of Fair Pay and Safe Workplaces Rule

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a public law that disapproved the final rule, Fair Pay and Safe Workplaces (FAR Case 2014–025), and an Executive Order (E.O.) dated March 27, 2017, that rescinded the prior Executive orders authorizing that rule.

DATES:
Effective date: November 6, 2017.
Applicability date: See section I.F. of the SUPPLEMENTARY INFORMATION.


SUPPLEMENTARY INFORMATION:

I. Background

A. The FAR Rule Implementing E.O. 13673

The Court Order did not enjoin implementation of the coverage on paycheck transparency; therefore, the December 16, 2016, amendments did not impact this aspect of the rule. Starting January 1, 2017, this clause was prescribed for solicitations if the estimated value of the resultant contract was to exceed $500,000.


In March 2017, under the Congressional Review Act (5 U.S.C. chapter 8), Congress passed House Joint Resolution 37 (Pub. L. 115–11), which stated the following:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation (published at 81 FR 58562 (August 25, 2016)), and such rule shall have no force or effect.

On March 27, 2017, House Joint Resolution 37 was signed into law and became Public Law 115–11.

Under 5 U.S.C. 801(b)(1), a rule shall not take effect or continue if the Congress enacts a joint resolution of disapproval, described under 5 U.S.C. 802. Under 5 U.S.C. 801(f), any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

Congress disapproved the entire FAR rule that was published on August 25, 2016.

As a result, the rule being published today removes that entire rule including the amendments published on December 16, 2016.

By statute, the rule being published today removes that entire rule including the amendments published on December 16, 2016.

As a result, the rule being published today removes that entire rule including the amendments published on December 16, 2016.

C. FAR Rule Implementing the Injunction

As an additional step to ensure full awareness of, and compliance with, the Court Order, DoD, GSA, and NASA, on behalf of the FAR Council, took a more comprehensive administrative action to amend the August 25, 2016, final rule to include caveats throughout the rule for each section, provision, and clause that was enjoined by the terms of the Court Order. In December 2016, the rule implementing the injunction was published as a final rule (81 FR 91636).

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The rule being removed (FAR Case 2014–025) was a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. It was a major rule under 5 U.S.C. 804.
This rule being published today is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866; it has been determined to be a major rule under 5 U.S.C. 804. This rule removes a prior rule that had been considered a major rule. The Regulatory Impact Analysis (RIA) that included a detailed discussion and explanation about the assumptions and methodology used to estimate the cost of the final rule under FAR Case 2014–025 is available at https://www.regulations.gov as a supporting document under FAR–2014–0025–0933. Exhibit 8 of the RIA presented a summary of the first-year, second-year, and annualized quantifiable costs of implementing the disclosure and paycheck transparency requirements of the final rule to contractors and subcontractors, as well as the estimated Government costs. The chart below shows the total monetized cost in the first and second year, and annualized costs with a 3 and 7 percent discount to contractors and the Government.

<table>
<thead>
<tr>
<th></th>
<th>Monetized year 1 costs</th>
<th>Monetized year 2 costs</th>
<th>Annualized costs, 3% discounting</th>
<th>Annualized costs, 7% discounting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total employer costs</td>
<td>$458,352,949</td>
<td>$413,733,272</td>
<td>$398,541,816</td>
<td>$400,939,861</td>
</tr>
<tr>
<td>Government costs</td>
<td>15,772,150</td>
<td>10,129,299</td>
<td>10,944,157</td>
<td>11,091,474</td>
</tr>
<tr>
<td>Total</td>
<td>474,075,099</td>
<td>423,862,572</td>
<td>409,535,973</td>
<td>412,031,335</td>
</tr>
</tbody>
</table>

Most of the 2016 final rule’s provisions were preliminarily enjoined before compliance would have been required. (In addition, on March 27, 2017, under E.O. 13782, the President rescinded E.O. 13673, the Order that served as the underpinning of the rule. On the same day, the President signed the Joint Resolution that Congress passed under the Congressional Review Act disapproving the final rule.) Therefore, if the impacts of this final rule are assessed relative to current (and anticipated future) practice, the resulting impacts are negligible. If, on the other hand, this final rule’s effects are assessed relative to a baseline in which regulated entities comply with the 2016 final rule, the costs summarized in the preceding table (minus the relatively small portion that may already have been incurred as entities prepared to comply with the regulatory provisions that were not enjoined) would be eliminated as a result of this rulemaking’s removal of the 2016 final rule.

III. Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), Reducing Regulation and Controlling Regulatory Costs, and the Office of Management and Budget (OMB) guidance on implementing E.O. 13771 (April 5, 2017), the annualized cost savings of $412 million (with a 7 percent discount rate) associated with this final rule have been estimated, as shown in section II, above. (Of particular relevance is the statement in OMB’s guidance that costs associated with “regulatory actions overturned by subsequently enacted laws . . . such as disapprovals of rules under the Congressional Review Act” qualify as cost savings under E.O. 13771.) This rulemaking constitutes a deregulatory action under E.O. 13771.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment. However, the rule reduces the burden on small entities as it rescinds the August 25, 2016, Fair Pay and Safe Workplaces (FAR Case 2014–025), major rule.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies to this rule, because this rule removes information collection requirements currently cleared by the Office of Management and Budget (OMB) under OMB clearance 9000–0195, Fair Pay and Safe Workplaces. The final rule, published August 25, 2016, contained the following summary table of the annual estimated cost to the public of the reporting burden:

| Number of respondents | 24,183 |
| Total annual responses | 417,808 |
| Hours per response | 5.19 |
| Total hours | 2,166,815 |
| Rate per hour (average) | $61.43 |
| Total annual cost to public | $133,109,793 |

The requirements that would impose these burden hours are now removed from the FAR and OMB clearance 9000–0195 has been discontinued.

List of Subjects in 48 CFR Parts 1, 4, 9, 17, 22, 42, and 52

Government procurement.
6. Amend section 9.104–6 by—
   a. Revising paragraph (b)(4), and removing Note to paragraph (b)(4); and
   b. Removing paragraph (b)(6), and Note to paragraph (b)(6).


9.105 [Amended]

9.105–1 [Amended]

9.105–3 [Amended]

PART 17—SPECIAL CONTRACTING METHODS

17.207 [AMENDED]

9. Amend section 17.207 by—
   a. Removing from paragraph (c)(6) “considered;” and adding “considered;” and
      “in” its place;
   b. Removing from paragraph (c)(7) “ratings; and” and adding “ratings,” in
      its place; and
   c. Removing paragraph (c)(8), and Note to paragraph (c)(8).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

10. Revise section 22.000 to read as follows:

22.000 Scope of Part.

This part—
   (a) Deals with general policies regarding contractor labor relations as
   they pertain to the acquisition process;
   (b) Prescribes contracting policy and procedures for implementing pertinent
      labor laws; and
   (c) Prescribes contract clauses with respect to each pertinent labor law.

11. Amend section 22.102–2 by—
   a. Revising the section heading and paragraph (c)(1); and
   b. Removing paragraph (c)(3), and Note to paragraph (c)(3).

22.102–2 Administration.

   (c)(1) The U.S. Department of Labor is responsible for the administration
      and enforcement of the Occupational Safety and Health Act. The Department
      of Labor’s Wage and Hour Division is responsible for administration and
      enforcement of numerous wage and hour statutes including:
      (i) 40 U.S.C. chapter 31, subchapter
      (Construction);
      (ii) 40 U.S.C. chapter 37, Contract
      Work Hours and Safety Standards;
      (iii) The Copeland Act (18 U.S.C. 874
      and 40 U.S.C. 3145);
      (iv) 41 U.S.C. chapter 65, Contracts for
      Materials, Supplies, Articles, and
      Equipment Exceeding $15,000;
      (v) 41 U.S.C. chapter 67, Service
      Contract Labor Standards.

22.104 [Removed]

12. Remove section 22.104.

Subpart 22.20—[Removed and Reserved]

13. Remove and reserve Subpart 22.20.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1502 [Amended]

14. Amend section 42.1502 by removing paragraph (j), and Note to paragraph (j).

42.1503 [Amended]

15. Amend section 42.1503 by—
   a. Removing from paragraph (a)(1)(i) “agency labor compliance advisor
      (ALCA) office (see subpart 22.20),” and removing Note to paragraph (a)(1)(i);
   b. Removing from paragraph (a)(1)(ii)
      “ALCA,” and removing Note to paragraph (a)(1)(ii); and
   c. Removing paragraph (b)(5), and Note to paragraph (b)(5) introductory
      text.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Amend section 52.204–8 by—
   a. Revising the date of the provision;
   b. Removing paragraph (c)(1)(xvi), and Note to Paragraph (c)(1)(xvi); and
   c. Redesignating paragraphs (c)(1)(xvii) through (xxv) as (c)(1)(xvi)
      through (xxiv), respectively.

52.204–8 Annual Representations and Certifications.

17. Amend section 52.212–3 by—
   a. Revising the date of the provision;
   b. Removing from paragraph (a), the following definitions “Administrative
      merits determination”, “Arbitral award or decision”, “Civil judgment”, “DOL
      Guidance”, “Enforcement agency”, “Labor compliance agreement”, “Labor
      laws”, and “Labor law decision”;
   c. Removing Note to paragraph (a); and
   d. Removing and resolving paragraph (s), and removing the Note to paragraph (s).

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

18. Amend section 52.212–5 by—
   a. Revising the date of the clause;
   b. Removing paragraphs (b)(35), Note to paragraph (b)(35), and (b)(36), and
      redesignating paragraphs (b)(37) through (61) as (b)(35) through (59), respectively;
   c. Removing paragraphs (e)(1)(xvii), Note to paragraph (e)(1)(xvii), and
      (e)(1)(xviii), and redesignating paragraphs (e)(1)(xix) through (xxii) as
      (e)(1)(xxvii) through (xxi), respectively; and
   d. Amending Alternate II by—
      i. Revising the date of the Alternate; and
      ii. Removing paragraphs (e)(1)(ii)(P), Note to paragraph (e)(1)(ii)(P), and
         (e)(1)(ii)(Q) of Alternate II, and redesignating paragraphs (e)(1)(ii)(R)
         through (U) as (e)(1)(ii)(P) through (S), respectively.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

19. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(viii) to read as follows:
52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (NOV 2017)

(a) *

(2) *

(viii) 52.244–6, Subcontracts for Commercial Items (NOV 2017)

52.222–57 through 52.222–61 [Removed and Reserved]

20. Remove and reserve sections 52.222–57 through 52.222–61.

21. Amend section 52.244–6 by—

a. Revising the date of the clause; and

b. Removing paragraphs (c)(1)(xiv), Note to paragraph (c)(1)(xiv), and (c)(1)(xv), and redesignating paragraphs (c)(1)(xvi) through (xx) as (c)(1)(xv) through (xviii), respectively.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Items.

Subcontracts for Commercial Items (NOV 2017)

[FR Doc. 2017–23590 Filed 11–3–17; 8:45 am]

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