

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 4]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–90;
Small Entity Compliance Guide****AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).**ACTION:** Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–90, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–90, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: August 25, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–90 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE LISTED IN FAC 2005–90

| Subject | FAR Case | Analyst |
|-------------------------------------|----------|---------|
| *Fair Pay and Safe Workplaces | 2014–025 | Delgado |

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 2005–90 amends the FAR as specified below:

Fair Pay and Safe Workplaces (FAR Case 2014–025)

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement Executive Order (E.O.) 13673, Fair Pay and Safe Workplaces, amended by E.O. 13683, to correct a statutory citation, and further amended by an E.O. signed today to modify the handling of subcontractor disclosures and clarify the requirements for public disclosure of documents. E.O. 13673 is designed to improve contractor compliance with labor laws and increase efficiency and cost savings in Federal contracting. As E.O. 13673 explains, ensuring compliance with labor laws drives economy and efficiency by promoting “safe, healthy, fair, and effective workplaces. Contractors that consistently adhere to labor laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely, predictable, and satisfactory delivery of goods and services to the Federal Government.” The E.O. was signed July 31, 2014. The Department of Labor is simultaneously issuing final Guidance to assist Federal agencies in implementation of the E.O. in conjunction with the FAR final rule.

The E.O. requires that prospective and existing contractors on covered contracts disclose decisions regarding violations of certain labor laws, and that contracting officers, in consultation with agency labor compliance advisors (ALCAs), a new position created by the E.O., consider the decisions, (including any mitigating factors and remedial measures), as part of the contracting officer’s decision to award or extend a contract. In addition, the E.O. creates new paycheck transparency protections, among other things, to ensure that workers on covered contracts are given the necessary information each pay period to verify the accuracy of what they are paid. Finally, the E.O. limits the use of predispute arbitration clauses in employment agreements on covered Federal contracts. Phase-ins: (1) From October 25, 2016 through April 24, 2017, the prime contractor disclosure requirements will apply to solicitations with an estimated value of \$50 million or more, and resultant contracts; after April 24, 2017, the requirements apply to solicitations estimated to exceed \$500,000, and resultant contracts. (2) The requirements apply to subcontractors starting October 25, 2017. (3) The decision disclosure period covers labor law decisions rendered against the offeror during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the offer, whichever period is shorter. (4) The paycheck transparency clause applies to solicitations starting January 1, 2017. There is significant impact on small entities imposed by the FAR rule.

Dated: August 10, 2016.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

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