

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-43]

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.

Reform Act of 1996 (FARA) also include the Clinger/Cohen Act which FARA was subsequently named.

SUMMARY: This document serves to introduce and relate together the interim and final rule documents which follow and which comprise Federal Acquisition Circular (FAC) 90-43. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90-43 to amend the Federal Acquisition Regulation (FAR) to implement changes in the areas listed below. All references, in this FAC, to the Federal Acquisition

Item	Subject	FAR case	Analyst
I	FASA and the Walsh-Healey Public Contracts Act (Interim)	96-601	O'Neill.
II	Individual and Class Deviations	96-004	O'Neill.
III	Use of Data Universal Numbering System as Primary Contractor Identification (Interim)	95-307	Klein.
IV	Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items	96-310	Olson.
V	Allowable Cost and Payment Clause	93-024	Olson.
VI	Mentor/Protégé Program	93-308	Klein.
VII	Minority Small Business and Capital Ownership (Interim)	95-028	Klein.
VIII	Extension of Small Business Competitiveness Demonstration Program	96-328	Moss.
IX	Morale, Health, Welfare Costs/Contractor Overhead Certification	92-613	Olson.
X	Impairment of Long-Lived Assets	95-003	Olson.
XI	Local Government Lobbying Costs (Interim)	96-003	Olson.
XII	Clause Flowdown	92-035	Olson.
XIII	Collection of FASA-Related Information within the Federal Procurement Data System	95-310	Klein.
XIV	Technical Amendments	N/A	N/A.

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 90-43 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-43 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—FASA and the Walsh-Healey Public Contracts Act (FAR Case 96-601)

This interim rule amends the Federal Acquisition Regulation (FAR) to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used

in the performance of the contract. Section 7201 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) amended the Walsh-Healey Public Contracts Act to repeal the “manufacturer” or “regular dealer” requirement.

Item II—Individual and Class Deviations (FAR Case 96-004)

This final rule amends the FAR to eliminate the requirements for all agencies to submit copies of approved individual deviations to the FAR Secretariat and for DOD and NASA to submit copies of approved class deviations to the FAR Secretariat.

Item III—Use of Data Universal Numbering System as Primary Contractor Identification (FAR Case 95-307)

This interim rule amends the FAR by adding a new solicitation provision at 52.204-6, and revising Standard Forms 294 and 295 to replace the Contractor Establishment Code with the Data Universal Numbering System number as the means of identifying contractors in the Federal Procurement Data System.

Item IV—Inapplicability of Cost Accounting Standards to Contracts and Subcontracts for Commercial Items (FAR Case 96-310)

This final rule amends FAR Part 12 to implement Section 4205 of the Clinger-Cohen Act of 1996 (Pub. L. 104-106) (formerly Federal Acquisition Reform Act (FARA)). Section 4205 amends 41 U.S.C. 422(f) to provide that the statutory requirement for mandatory use of Cost Accounting Standards (CAS) need not apply to contracts or subcontracts for the acquisition of commercial items. While CAS generally will not apply to acquisitions of commercial items, CAS requirements may be invoked as a matter of policy by the CAS Board, pursuant to the authority provided in 41 U.S.C. 422.

Item V—Allowable Cost and Payment Clause (FAR Case 93-024)

This final rule amends the FAR to clarify that reimbursement of subcontract costs under cost-type contracts generally will not be made to a large business contractor until the contractor has made payment to the subcontractor.

Item VI—Mentor/Protégé Program (FAR Case 93-308)

The interim rule published as Item X of FAC 90-37 is finalized with minor clarifying changes. The rule permits a mentor firm under the DOD Pilot Mentor/Protégé Program to be granted credit toward subcontracting goals for certain costs incurred in providing developmental assistance to its protégé firms, and to award subcontracts on a noncompetitive basis to its protégé firms.

Item VII—Minority Small Business and Capital Ownership (FAR Case 95-028)

This interim rule amends the FAR to reflect revisions to the Small Business Administration's regulations at 13 CFR Parts 121 and 124, which address the Minority Small Business and Capital Ownership Development Program. The rule clarifies eligibility and procedural requirements for procurements under the 8(a) Program.

Item VIII—Extension of Small Business Competitiveness Demonstration Program (FAR Case 96-328)

This final rule amends FAR Subpart 19.10 to implement Section 108, Title I (Amendments to Small Business Administration Act), of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-208). Section 108 extends the Small Business Competitiveness Demonstration Program (15 U.S.C. 644 note) until September 30, 1997.

Item IX—Morale, Health, Welfare Costs/Contractor Overhead Certification (FAR Case 92-613)

This final rule amends the cost principle at FAR 31.205-1, Public Relations and Advertising Costs, by removing from paragraph (f)(5) the parenthetical reference to other cost principles to eliminate any confusion as to which cost principle governs.

Item X—Impairment of Long-Lived Assets (FAR Case 95-003)

This final rule amends the FAR to clarify the cost allowability rules concerning the recognition of losses when carrying values of impaired assets are written down for financial reporting purposes.

Item XI—Local Government Lobbying Costs (FAR Case 96-003)

This interim rule amends the FAR to make allowable the costs of lobbying activities to influence local legislation in order to directly reduce contract costs or to avoid material impairment of the contractor's authority to perform the contract.

Item XII—Clause Flowdown (FAR Case 92-035)

This final rule amends the FAR by eliminating requirements for prime contractors to flow down clause provisions to their subcontractors or suppliers from FAR clauses 52.215-26, 52.216-5, 52.216-6, 52.216-16, 52.216-17, 52.222-1, 52.236-21, 52.244-2(i), 52.246-23, 52.246-24, and 52.246-25.

Item XIII—Collection of FASA-Related Information Within the Federal Procurement Data System (FAR Case 95-310)

This final rule amends the FAR to change the Standard Form 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and Standard Form 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less), to incorporate new information categories required by the Federal Acquisition Streamlining Act of 1994.

Item XIV—Technical Amendments

These technical amendments have been made to correct typographical errors, FAR citations, and clause dates.

Dated: December 11, 1996.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.

**Federal Acquisition Circular
Number 90-43**

Federal Acquisition Circular (FAC) 90-43 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.

FAR cases 96-601, 93-308, 95-307, 96-328, 95-310, 95-028 and 96-003 are effective December 20, 1996. FAR case 96-310 is effective January 1, 1997. FAR cases 96-004, 93-024, 92-613, 95-003 and 92-035 are effective February 18, 1997.

Dated: December 10, 1996.
Eleanor R. Spector,
Director, Defense Procurement.

Dated: December 10, 1996.
Ada M. Ustad,
Deputy Associate Administrator, Office of Acquisition Policy.

Dated: December 10, 1996.
Tom Luedtke,
Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 96-32000 Filed 12-19-96; 8:45 am]
BILLING CODE 6820-EP-P

48 CFR Parts 1, 9, 14, 19, 22, 33, and 52

[FAC 90-43, FAR Case 96-601, Item I]
RIN 9000-AH31

Federal Acquisition Regulation; FASA and the Walsh-Healey Public Contracts Act

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

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to eliminate the requirement that covered contractors under the Walsh-Healey Public Contracts Act must be either the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Section 7201 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) amended the Walsh-Healey Public Contracts Act to repeal the "manufacturer" or "regular dealer" requirement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.
DATES: *Effective Date:* December 20, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 18, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-43, FAR case 96-601, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-43, FAR case 96-601.

SUPPLEMENTARY INFORMATION:**A. Background**

On August 5, 1996 (61 FR 40714), the Department of Labor (DOL) published a final rule implementing the changes