

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 97-09;
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, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97-09. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, may be located on 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 97-09 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Taxpayer Identification Numbers (Interim)	97-003	Olson.
II	Electronic Commerce in Federal Procurement (Interim)	97-304	Nelson.
III	Alternate Dispute Resolution—1996	97-015	O'Neill.
IV	Pay-As-You-Go Pension Costs	89-012	Olson.
V	Rehabilitation Act, Workers With Disabilities	96-610	O'Neill.
VI	Civil Defense Costs	97-036	Nelson.
VII	Costs Related to Legal/Other Proceedings	95-020	Nelson.
VIII	Service Contracts	97-302	Olson.
IX	Payment Due Dates	97-609	Olson.
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 97-09 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Taxpayer Identification
Numbers (FAR Case 97-003)**

This interim rule amends FAR Parts 1, 4, 13, 14, 15, and 52 to implement Subsection (i) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and Section 1022 of the Taxpayer Relief Act of 1997 (Pub. L. 105-32). The rule clarifies requirements for obtaining Taxpayer Identification Number (TIN) information from contractors and forwarding the information to payment offices; specifies that TIN information may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government; and clarifies and updates requirements for reporting contract information and payment information to the Internal Revenue Service.

(Orders under Federal Supply Schedule (FSS) contracts. Ordering officials are required to provide the FSS contractor's TIN (and other information) to the payment office for each order under an FSS contract. The General

Services Administration is planning to establish an Internet based system by early 1999 that can be used by ordering officials to obtain this information. In the meantime, the information can be obtained from most FSS contract price lists or by requesting it directly from the FSS contractor prior to placing an order.)

**Item II—Electronic Commerce in
Federal Procurement (FAR Case 97-
304)**

This interim rule revises FAR Subpart 4.5 and makes associated changes to FAR Parts 2, 5, 13, and 14, to implement Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) to eliminate the preference for electronic commerce within Federal agencies to be conducted on the Federal Acquisition Computer Network (FACNET) Architecture. In addition, this interim rule promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. In order to facilitate access to Federal procurements, Section 850 mandates that a single Governmentwide point of entry be used. Once the Administrator of the Office of Federal Procurement Policy (OFPP) designates the single Governmentwide point of entry, the FAR will be changed accordingly. FACNET qualifies as the single, Governmentwide point of entry

until the Administrator of OFPP designates the single, Governmentwide point of entry. Federal procurement systems that employ electronic commerce shall apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.

**Item III—Alternative Dispute
Resolution—1996 (FAR Case 97-015)**

This final rule amends FAR 6.302-3, 24.202, 33.2, and the clause at 52.233-1 to implement the Administrative Dispute Resolution Act of 1996 (Pub. L. 104-320) and Section 4321(a)(7) of the Clinger-Cohen Act of 1996 (Pub. L. 104-106). The rule makes clear the authority to contract with a neutral person as an exception to requirements for full and open competition; revises requirements for certification of a claim under the Administrative Dispute Resolution Act to conform to the requirements under the Contract Disputes Act; and specifies that certain dispute resolution communications are exempt from disclosure under the Freedom of Information Act.

**Item IV—Pay-As-You-Go Pension Costs
(FAR Case 89-012)**

The interim rule published as Item I of FAC 84-44 is converted to a final rule with amendments at FAR 15.408, 31.001, 31.205-6, and the clause at 52.215-15. The rule amends the FAR for

consistency with 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost (CAS 412), and 48 CFR 9904.413, Adjustment and allocation of pension cost (CAS 413). CAS 412 and CAS 413 relate to accounting for pension costs under negotiated Government contracts.

Item V—Rehabilitation Act, Workers With Disabilities (FAR Case 96-610)

The interim rule published as Item V of FAC 97-05 is converted to a final rule without change. The rule implements Department of Labor regulations at 41 CFR 60-741 regarding affirmative action to employ, and advance in employment, qualified individuals with disabilities.

Item VI—Civil Defense Costs (FAR Case 97-036)

This final rule deletes the civil defense cost principle at FAR 31.205-5, as this guidance is no longer deemed necessary. The acceptability of civil defense costs will remain governed by the allocability, allowability, and reasonableness criteria discussed in FAR Part 31.

Item VII—Costs Related to Legal/Other Proceedings (FAR Case 95-020)

This final rule amends FAR 31.205-47, Costs related to legal and other proceedings, to clarify the allowability of costs incurred for *qui tam* suits in which the Government does not intervene. This rule is consistent with audit guidance issued by the Defense Contract Audit Agency on August 24, 1995. Certain Government contracting personnel and contractors may have had common misinterpretations of the language at FAR 31.205-47 prior to August 24, 1995. For *qui tam* legal fees incurred prior to August 24, 1995, if the Government contracting personnel and the contractor shared a common misinterpretation of the language at FAR 31.205-47, the contracting officer, in consultation with his or her legal advisors, should determine the appropriate treatment of those costs on a case-by-case basis.

Item VIII—Service Contracts (FAR Case 97-302)

This final rule revises FAR 32.703-3 and amends 37.106 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 801 provides that the Secretary of Defense, the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a

period that begins in one fiscal year and ends in the next fiscal year. This authority remains the same for civilian agencies other than NASA.

Item IX—Payment Due Dates (FAR Case 97-609)

This final rule amends FAR Subpart 32.9 to clarify that agencies may amend the clauses at FAR 52.232-25, Prompt Payment, and 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, to specify a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

Item X—Technical Amendments

Amendments are being made at sections 1.106, 6.302-3, 14.205-1, 14.407-4, 15.404-1, 19.102, 19.1004, 32.705-1, 33.104, 36.601-4, 41.103, 52.212-5, 52.244-6, and 53.228 in order to update references and make editorial changes.

Dated: October 22, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

FAC 97-09

Federal Acquisition Circular (FAC) 97-09 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 97-09 are effective December 29, 1998, except for Items I, II, V, and X which are effective October 30, 1998.

Dated: October 23, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Ida M. Ustad,

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

Dated: October 16, 1998.

Tom Luedtke,

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 1, 4, 13, 14, 15, and 52

[FAC 97-09; FAR Case 97-003; Item I]

RIN 9000-A114

**Federal Acquisition Regulation;
Taxpayer Identification Numbers**

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Subsection (i) of the Debt Collection Improvement Act of 1996 and Section 1022 of the Taxpayer Relief Act of 1997, and to clarify the Government requirements for reporting of contract information and payment information to the Internal Revenue Service (IRS). 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.

EFFECTIVE DATE: October 30, 1998.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1998, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR), 800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: farcase.97-003@gsa.gov

Please cite FAC 97-09, FAR case 97-003 in all correspondence related to this case.

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. Jeremy Olson at (202) 501-0692. Please cite FAC 97-09, FAR case 97-003.

SUPPLEMENTARY INFORMATION: