

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 97-04;
Introduction**

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),

and National Aeronautics and Space
Administration (NASA).

ACTION: Summary presentation of final
rules, 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) 97-04. A companion
document, the Small Entity Compliance
Guide, follows this FAC and 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 97-04 and
specific FAR case number(s).

Item	Subject	FAR case	Analyst
I	Use of Data Universal Numbering System as the Primary Contractor Identification	95-307	Moss.
II	Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements	92-054B	Linfield.
III	Review of Procurement Integrity Clauses	97-601	Linfield.
IV	Certificate of Competency	96-002	Moss.
V	Applicability of Cost Accounting Standards (CAS) Coverage	97-020	Nelson.
VI	OMB Circular No. A-133	97-029	Olson.
VII	SIC Code and Size Standard Appeals	97-026	Moss.
VIII	Small Business Competitiveness Demonstration Program	97-305	Moss.
IX	Special Disabled and Vietnam Era Veterans	95-602	O'Neill.
X	Treatment of Caribbean Basin Country End Products	97-039	Linfield.
XI	Administrative Changes to Cost Accounting Standards (CAS) Applicability	97-025	Nelson.
XII	Changes in Contract Administration and Audit Cognizance	95-022	Klein.
XIII	Limitation on Allowability of Compensation for Certain Contractor Personnel (Interim)	97-303	Nelson.
XIV	Transfer of Assets Following a Business Combination	96-006	Nelson.
XV	Modular Contracting	96-605	Nelson.
XVI	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 97-04
amends the Federal Acquisition
Regulation (FAR) as specified below:

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

This final rule amends FAR Subpart
4.6, Contract Reporting, and 52.212-1,
Instructions to Offerors—Commercial
Items; and adds a new solicitation
provision at 52.204-6, Data Universal
Numbering System (DUNS) Number; to
replace the Contractor Establishment
Code (CEC) with the Data Universal
Numbering System (DUNS) number as
the means of identifying contractors in
the Federal Procurement Data System
(FPDS). It reflects Dun and Bradstreet
procedures for offerors located overseas.

**Item II—Federal Compliance With
Right-To-Know Laws and Pollution
Prevention Requirements (FAR Case
92-054B)**

The interim rule published as Item V
of FAC 90-46 is revised and finalized.
The rule implements Executive Order
12856 of August 3, 1993, "Federal
Compliance With Right-To-Know Laws
and Pollution Prevention
Requirements." The final rule differs
from the interim rule in that it amends
FAR 23.1004 and 52.223-5 to clarify the
obligations of Federal facilities to
comply with the reporting and
emergency planning requirements of the
Pollution Prevention Act of 1990 and
the Emergency Planning and
Community Right-to-Know Act of 1986.

**Item III—Review of Procurement
Integrity Clauses (FAR Case 97-601)**

This final rule amends FAR Parts 4
and 52 to revise the application of
procurement integrity requirements to
contracts for commercial items. The rule
amends (1) 4.803 to remove an obsolete
requirement for maintenance of a record
of persons having access to proprietary
or source selection information, (2) the
clause at 52.212-4 to add the
procurement integrity provisions of 41
U.S.C. 423 to the list of laws applicable

to contracts for commercial items, and
(3) the clause at 52.212-5 to remove
52.203-10, Price or Fee Adjustment for
Illegal or Improper Activity, from the
list of FAR clauses required to
implement provisions of law or
Executive orders. As amended by the
Clinger-Cohen Act of 1996, 41 U.S.C.
423 no longer requires that a contract
clause specify administrative remedies
for procurement integrity violations.

**Item IV—Certificate of Competency
(FAR Case 96-002)**

The interim rule published as Item IX
of FAC 97-01 is converted to a final rule
with a minor change at 19.302(d). The
rule implements revisions made to the
Small Business Administration's
procurement assistance programs
contained in 13 CFR Part 125.

**Item V—Applicability of Cost
Accounting Standards (CAS) Coverage
(FAR Case 97-020)**

This final rule amends FAR Parts 12
and 52 to exempt contracts and
subcontracts for the acquisition of
commercial items from Cost Accounting
Standards requirements when these
contracts and subcontracts are firm-
fixed-price or fixed-price with economic
price adjustment (provided that the

price adjustment is not based on actual costs incurred).

Item VI—OMB Circular No. A-133 (FAR Case 97-029)

This final rule amends FAR 15.209 and the associated clause at 52.215-2, Audits and Records—Negotiation, Alternate II, to implement revisions to OMB Circular No. A-133. The circular has a new title, "Audits of States, Local Governments, and Non-Profit Organizations," and now addresses audits of State and local governments as well as audits of institutions of higher learning and other nonprofit organizations.

Item VII—SIC Code and Size Standard Appeals (FAR Case 97-026)

This final rule amends FAR Subpart 19.3 to conform to the Small Business Administration regulations at 13 CFR 121 and 134 pertaining to protest of an offeror's small business representation, and appeal of a contracting officer's standard industrial classification code designation and related small business size standard.

Item VIII—Small Business Competitiveness Demonstration Program (FAR Case 97-305)

This final rule amends FAR Subpart 19.10 to eliminate the termination date of the Small Business Competitiveness Demonstration Program, in accordance with Section 401 of the Small Business Reauthorization Act of 1997 (Public Law 105-135).

Item IX—Special Disabled and Vietnam Era Veterans (FAR Case 95-602)

This final rule amends FAR Subpart 22.13 and the clauses at 52.212-5, 52.222-35, and 52.222-37 to implement revised Department of Labor regulations regarding affirmative action for disabled veterans and veterans of the Vietnam era.

Item X—Treatment of Caribbean Basin Country End Products (FAR Case 97-039)

This final rule revises FAR 25.402(b) to extend the time period for treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act. The United States Trade Representative has directed that such treatment continue through September 30, 1998.

Item XI—Administrative Changes to Cost Accounting Standards (CAS) Applicability (FAR Case 97-025)

This final rule amends FAR 30.101 and the clauses at 52.230-1 and 52.230-5 to conform to changes made to the

Cost Accounting Standards (CAS) Board rules and regulations (FAR Appendix), pertaining to the applicability of CAS to negotiated contracts and subcontracts.

Item XII—Changes in Contract Administration and Audit Cognizance (FAR Case 95-022)

This final rule amends FAR Parts 31, 32, 42, 46, 47, and 52 to add policies and procedures for assigning and performing contract audit services, and to clarify the policy for assigning or delegating responsibility for establishing forward pricing and billing rates and final indirect cost rates.

Item XIII—Limitation on Allowability of Compensation for Certain Contractor Personnel (FAR Case 97-303)

This interim rule revises FAR 31.205-6(p) to implement Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). Section 808 limits the allowable compensation costs for senior executives of contractors to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy.

Item XIV—Transfer of Assets Following a Business Combination (FAR Case 96-006)

This final rule revises FAR 31.205-10(a)(5) and 31.205-52 to conform to changes made to the Cost Accounting Standards regarding the treatment of gains and losses attributable to tangible capital assets subsequent to business mergers or combinations.

Item XV—Modular Contracting (FAR Case 96-605)

This final rule amends FAR Part 39 to implement Section 5202 of the Information Technology Management Reform Act of 1996 (Public Law 104-106). Section 5202 encourages maximum practicable use of modular contracting for acquisition of major systems of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

Item XVI—Technical Amendments

Amendments are being made at FAR 1.201-1(b)(2), 44.204(b), and 52.219-1(b)(2) and (b)(3) to update references and make editorial changes.

Dated: February 13, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

FAC 97-04

[Date]

Federal Acquisition Circular (FAC) 97-04 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 97-04 are effective April 24, 1998, except for Items VIII, X, XIII, and XVI, which are effective February 23, 1998.

Dated: February 11, 1998.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: February 12, 1998.

Ida M. Ustad,

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

Dated: February 12, 1998.

Deidre A. Lee,

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, 52, and 53

[FAC 97-04; FAR Case 95-307; Item I]

RIN 9000-AH33

**Federal Acquisition Regulation; Use of
Data Universal Numbering System as
the Primary Contractor Identification**

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

ACTION: Interim rule adopted as final with changes.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in the **Federal Register** at 61 FR 67412,