

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 97-14;
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.

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) 97-14. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.arnet.gov/far>.

DATES: For effective dates and comment dates, see separate documents that 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 97-14 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	Very Small Business Concerns	98-013	Moss.
II	Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program	97-307	Moss.
III	Use of Competitive Proposals	99-001	DeStefano.
IV	Javits-Wagner-O'Day Proposed Revisions	98-602	DeStefano.
V	OMB Circular A-119	98-004	Moss.
VI	Determination of Price Reasonableness and Commerciality (Interim)	98-300	Olson.
VII	Conforming Late Offer Treatment	97-030	DeStefano.
VIII	Evaluation of Proposals for Professional Services	97-038	Olson.
IX	Option Clause Consistency	98-606	DeStefano.
X	Compensation for Senior Executives	98-301	Nelson.
XI	Interest and Other Financial Costs	98-006	Nelson.
XII	Cost-Reimbursement Architect-Engineer Contracts	97-043	O'Neill.
XIII	Conditionally Accepted Items	98-002	Klein.
XIV	Value Engineering Change Proposals/PAT	97-031	Klein.
XV	Cost Accounting Standards Post-Award Notification	98-003	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 97-14 amends the FAR as specified below:

**Item I—Very Small Business Concerns
(FAR Case 98-013)**

This final rule converts the interim rule published as Item II of FAC 97-11 to a final rule with changes. The interim rule amended FAR 5.207, 8.404, 12.303, 19.000, 19.001, 19.102, 19.502-2, 19.901 through 19.904, 52.212-5, and 52.219-5, to implement the Small Business Administration's Very Small Business Pilot Program (13 CFR Parts 121 and 125). This program became effective on January 4, 1999.

**Item II—Historically Underutilized
Business Zone (HUBZone)
Empowerment Contracting Program
(FAR Case 97-307)**

This final rule converts the interim rule published as Item I of FAC 97-10 to a final rule with amendments at FAR 6.201, 19.306, 19.307, 19.800, 19.1303, and the provision at 52.219-1. This final

rule amends the FAR to implement the Small Business Administration's Historically Underutilized Business (HUBZone) Program. The purpose of the program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in these areas. The program provides for set-asides, sole source awards, and price evaluation preferences for HUBZone small business concerns and establishes goals for awards to such concerns.

**Item III—Use of Competitive Proposals
(FAR Case 99-001)**

This final rule amends FAR 6.401 to delete the requirement for contracting officers to explain in writing their rationale for choosing to use competitive proposals rather than sealed bidding.

**Item IV—Javits-Wagner-O'Day
Proposed Revisions (FAR Case 98-602)**

This final rule adds a new section, FAR 8.716, and amends paragraph (a) of FAR 42.1203 to provide procedures for recognizing a name change or a successor in interest for a Javits-Wagner-

O'Day Act participating nonprofit agency providing supplies or services on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled.

**Item V—OMB Circular A-119 (FAR
Case 98-004)**

This final rule amends FAR 11.101, 11.107, 11.201, and adds a provision at 52.211-7 to address the use of voluntary consensus standards in accordance with the requirements of Office of Management and Budget (OMB) Circular A-119.

**Item VI—Determination of Price
Reasonableness and Commerciality
(FAR Case 98-300)**

This interim rule revises FAR 12.209, 13.106-3(a)(2), and amends Subpart 15.4 to implement Section 803 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 803 requires amending the FAR to provide specific guidance concerning—

- The appropriate application and precedence of various price analysis tools;
- The circumstances under which contracting officers should require

offerors of exempt commercial items to provide information other than cost or pricing data; and

- The role and responsibility of support organizations in determining price reasonableness.

This interim rule also revises FAR 15.403-3(a) to implement Section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 808 requires amending the FAR to—

- Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items;

- Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award; and

- Establish exceptions, as appropriate.

Item VII—Conforming Late Offer Treatment (FAR Case 97-030)

This final rule amends FAR 14.201-6, 14.304, and 15.208, the provisions at 52.212-1, 52.214-7, 52.214-23, and 52.215-1, and removes 52.214-32 and 52.214-33 to provide uniform guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

Item VIII—Evaluation of Proposals for Professional Services (FAR Case 97-038)

This final rule amends FAR 15.305(a)(1) and 37.115-2(c) to provide guidance on the evaluation of proposals that include uncompensated overtime hours.

Item IX—Option Clause Consistency (FAR Case 98-606)

This final rule amends FAR 17.208(g) to clarify that the time period for providing a preliminary notice of the Government's intent to exercise a contract option in the clause at FAR 52.217-9 may be tailored and amends the clause at FAR 52.217-8 to make the format of the Option to Extend Services clause consistent with the format of other option clauses in the FAR.

Item X—Compensation for Senior Executives (FAR Case 98-301)

This final rule covers the interim rule published as Item VIII of FAC 97-11 to a final rule without change. The rule amends FAR Part 31 to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2) to be "the five most highly compensated

employees in management positions at each home office and each segment of the contractor" even though the home office or segment might not report directly to the contractor's headquarters.

Item XI—Interest and Other Financial Costs (FAR Case 98-006)

This final rule amends FAR 31.205-20 to make minor changes to the cost principle concerning "interest and other financial costs."

Item XII—Cost-Reimbursement Architect-Engineer Contracts (FAR Case 97-043)

This final rule amends the clause prescriptions at FAR 36.609, 44.204, 49.503, and the clause preface at 52.236-25, Requirements for Registration of Designers, to include application of certain clauses to cost-reimbursement architect-engineer contracts.

Item XIII—Conditionally Accepted Items (FAR Case 98-002)

This final rule amends FAR 46.101 to add a definition of conditional acceptance; and FAR 46.407 to require that, when conditionally accepting nonconforming items, amounts withheld from payments should be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work. FAR 46.407 has also been revised to require that the basis for the amounts withheld be documented in the contract file.

Item XIV—Value Engineering Change Proposals/PAT (FAR Case 97-031)

This final rule amends the value engineering change proposal (VECP) guidance in FAR 48.001, 48.102, 48.104, 48.201, and the FAR clause at 52.248-1 to allow the contracting officer to increase the sharing period from 36 to a range of 36 to 60 months; increase the contractor's share of instant, concurrent and future savings under the incentive/voluntary sharing arrangement from 50 to a range of 50 to 75 percent; and increase the contractor's share of collateral savings from 20 to a range of 20 to 100 percent on a case-by-case basis for each VECP.

Item XV—Cost Accounting Standards Post-Award Notification (FAR Case 98-003)

This final rule revises paragraph (e) of the clause at FAR 52.230-6, Administration of Cost Accounting Standards, to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform

administration for Cost Accounting Standards matters.

Item XVI—Technical Amendments

Amendments are being made at 1.106, 15.305, 19.102, 52.211-6, and 52.219-18 in order to update references and make editorial changes.

Dated: September 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97-14 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 97-14 are effective November 23, 1999, except for Items VI and XVI, which are effective September 24, 1999. Sections 19.102 and 52.219-18, which are included in Item XVI, are effective November 23, 1999.

Dated: September 10, 1999.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: September 13, 1999.

J. Les Davison,

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

Dated: September 13, 1999.

Tom Luedtke,

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 5, 8, 12, 19, and 52

[FAC 97-14; FAR Case 98-013; Item I]

RIN 9000-AI29

Federal Acquisition Regulation; Very Small Business Concerns

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

ACTION: Final rule.