



Federal Register

**Tuesday,
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Part III

Department of Defense General Services Administration

National Aeronautics and Space Administration

**48 CFR Chapter 1 et al.
Federal Acquisition Circular 2001-02;
Introduction and Federal Acquisition
Regulation; Energy-Efficiency of Supplies
and Services and Prompt Payment and
the Recovery of Overpayment, et al.;
Final Rules**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Circular 2001-02;
Introduction**

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

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001-02. 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 2001-02 and specific FAR case number(s). Interested parties may also visit our web site at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Definitions of "Component" and "End Product"	2000-015	Davis
II	Energy Efficiency of Supplies and Services	1999-011	Smith
III	Prompt Payment and the Recovery of Overpayment	1999-023	Olson
IV	Javits-Wagner-O'Day Act Subcontract Preference Under Service Contracts	1999-017	Nelson
V	Discussion Requirements	1999-022	DeStefano
VI	Definition of Subcontract in FAR Subpart 15.4	2000-017	Olson
VII	North American Industry Classification System	2000-604	Cundiff
VIII	Iceland—Newly Designated Country under Trade Agreements Act	2001-025	Davis
IX	Contractor Personnel in the Procurement of Information Technology Services	2000-609	Nelson

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. FAC 2001-02 amends the FAR as specified below:

Item I—Definitions of "Component" and "End Product" (FAR Case 2000-015)

This final rule amends the FAR to restore the unique Part 25 definitions of "component" and "end product" for acquisition of supplies. In addition, the Councils have made minor revisions to the definitions of "component" and "cost of components" for acquisition of construction. These definitions are used by offerors to determine whether offered end products or construction material meet the requirements of the Buy American Act and Balance of Payments Program or trade agreements.

Item II—Energy Efficiency of Supplies and Services (FAR Case 1999-011)

This final rule amends the FAR to implement Executive Order 13123, Greening the Government through Efficient Energy Management. The rule—

- Requires contracting officers, when acquiring energy-using products, to buy energy-efficient products if life-cycle cost-effective and available;
- Directs contracting officers to Internet sources for more detailed

information on ENERGY STAR and other energy-efficient products; and

- Provides guidance on energy-savings performance contracts (ESPCs), including—
- An explanation of what they are and when they should be used; and
- Procedures for the solicitation and award of ESPCs, and the evaluation of unsolicited proposals for ESPCs.

The rule will only affect contracting officers that—

- Acquire energy-using products or services;
- Contract for design, construction, renovation, or maintenance of a public building that will include energy-using products; or
- Use an energy-savings performance contract to reduce energy use and cost in an agency's facilities or operations.

Item III—Prompt Payment and the Recovery of Overpayment (FAR Case 1999-023)

This final rule revises prompt payment policies at FAR part 32, Contract Financing, and related contract provisions at FAR part 52. The rule is applicable to—

- Government payment offices and contractors since it revises the information that must be on an invoice for the document to be considered a proper invoice with respect to the prompt payment provisions of the FAR;
- Contracting officers and contractors since it establishes the requirement in the prompt payment clauses for contractors to notify the contracting

officer if the contractor becomes aware of an overpayment of an invoice; and

- All Government contracts (including contracts at or below the simplified acquisition threshold) except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).

Item IV—Javits-Wagner-O'Day Act Subcontract Preference Under Service Contracts (FAR Case 1999-017)

This final rule amends the FAR to add a new preference for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The final rule applies to all service contracts. The rule—

- Requires that contractors that provide services for the Government's use and subcontract for those services must give preference in awarding subcontracts to nonprofit workshops, if the services are on the Committee for Purchase From People Who Are Blind or Severely Disabled procurement list;
- Requires that contracting officers must consider the preference for subcontracting with nonprofit workshops when reviewing a subcontract for services that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts; and
- Amends the clause at FAR 52.208-9, Contractor Use of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be

provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

Item V—Discussion Requirements (FAR Case 1999–022)

The rule amends FAR 15.306(d) to clarify that, although the contracting officer must discuss deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond and is encouraged to discuss other aspects of the offeror's proposal, the contracting officer is not required to discuss every area where the proposal could be improved. This clarifies the existing policy that any discussions beyond the minimum elements stated in the FAR are a matter of contracting officer judgment.

Item VI—Definition of Subcontract in FAR Subpart 15.4 (FAR Case 2000–017)

This final rule amends FAR 15.401 to exclude section 15.407–2, Make-or-buy programs, from application of the expanded definition of “subcontract” at FAR 15.401. This rule is a clarification and does not change any policy in Subpart 15.4, Contract Pricing.

Item VII—North American Industry Classification System (FAR Case 2000–604)

This rule finalizes, with minor changes, the interim rule which amended the FAR to convert size standards and other programs in the FAR that were based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS). NAICS is a new system that classifies establishments according to how they conduct their economic activity. It is a significant improvement over the SIC system because it more accurately identifies industries. Since October 1, 2000, NAICS is to be used to establish the size standards for acquisitions. In addition, the designated industry groups in FAR 19.1005 have been converted to NAICS and contract actions will be reported using the NAICS code rather than the SIC code.

Item VIII—Iceland Newly Designated Country under Trade Agreements Act (FAR Case 2001–025)

This final rule amends the definition of “Designated country” at FAR 25.003, and the clause at 52.225–5, Trade Agreements, and the clause at 52.225–11, Buy American Act—Balance of Payments Program—Construction Materials under Trade Agreements, to add Iceland to the list of designated

countries under the Trade Agreements Act (TAA). Contracting officers may now consider offers of end products or construction materials from Iceland in acquisitions subject to the TAA. The current TAA threshold for acquisition of supplies is \$177,000 and for acquisition of construction is \$6,806,000.

In addition, if the TAA applies, Executive Order 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, does not apply to contracts for the acquisition of products from foreign countries that are party to the Agreement on Government Procurement. Therefore, this final rule also adds Iceland to the list of excepted countries of origin at 22.1503(b)(4) and the associated clause at 52.222–19, Child Labor—Cooperation with Authorities and Remedies.

Item IX—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000–609)

This final rule converts the interim rule published in FAC 97–25, in the **Federal Register** at 66 FR 22084, May 2, 2001, to a final rule without change. The rule added a new section to subpart 39.1 to implement section 813 of the Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless (1) the contracting officer first determines that the needs of the agency cannot be met without such requirement; or (2) the needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: December 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–02 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 2001–02 is effective February 19, 2002, except for Items VII through IX, which are effective December 18, 2001.

Dated: December 5, 2001.

Carolyn M. Balven,

Deputy Director, Defense Procurement.

Patricia A. Brooks,

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

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 2, 25, and 52

[FAC 2001–02; FAR Case 2000–015;
Item I]

RIN 9000–AJ24

**Federal Acquisition Regulation;
Definitions of “Component” and “End
Product”**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to restore the unique (Part 25) definitions of “component” and “end product” for acquisition of supplies. In addition, the Councils have made minor revisions to the definitions of “component” and “cost of components” for acquisition of construction.

DATES: Effective Date: February 19, 2002.

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 Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–02, FAR case 2000–015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule restores unique definitions of “component” and “end