

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2017–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–96; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–96. 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.regulations.gov>.

DATES: For effective date see separate document, which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–96, FAR Case 2017–015.

RULE LISTED IN FAC 2005–96

Subject	FAR case	Analyst
Removal of Fair Pay and Safe Workplaces Rule	2017–015	Delgado.

SUPPLEMENTARY INFORMATION: Summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005–96 amends the FAR as specified below:

Removal of Fair Pay and Safe Workplaces Rule (FAR Case 2017–015)

This final rule rescinds the final rule at 81 FR 58562 (August 25, 2016). This was FAR Case 2014–025, Fair Pay and Safe Workplaces, which was a significant rule under Executive Order (E.O.) 12866 and a major rule under 5 U.S.C. 804. Because of a Federal court injunction, the only provision or clause that had gone into effect was FAR 52.222–60, Paycheck Transparency (Executive Order 13673), which was included in solicitations starting on January 1, 2017. On March 27, 2017, Public Law 115–11 disapproved the rule under the Congressional Review Act. Therefore, by law, the rule has no force or effect, including the FAR 52.222–60 clause. Also on March 27, 2017, E.O. 13782, Revocation of Federal Contracting Executive Orders, rescinded the E.O.s that originally authorized the rule. All steps should be taken to ensure that no sections, provisions, or clauses of the final rule are implemented.

Dated: October 11, 2017.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005–96 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 2005–96 is effective November 6, 2017.

Dated: October 23, 2017.

Shay D. Assad,

Director, Defense Pricing/Defense, Procurement and Acquisition Policy.

Dated: October 11, 2017.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: October 3, 2017.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2017–23589 Filed 11–3–17; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2017–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–96; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–96, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–96, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: November 6, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 for clarification of

content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–

4755. Please cite FAC 2005–96, FAR Case 2017–015.

RULE LISTED IN FAC 2005–96

Subject	FAR case	Analyst
Removal of Fair Pay and Safe Workplaces Rule	2017–015	Delgado.

SUPPLEMENTARY INFORMATION: Summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific item number and subject set forth in the document following this item summary. FAC 2005–96 amends the FAR as specified below:

Removal of Fair Pay and Safe Workplaces Rule (FAR Case 2017–015)

This final rule rescinds the final rule at 81 FR 58562 (August 25, 2016). This was FAR Case 2014–025, Fair Pay and Safe Workplaces, which was a significant rule under Executive Order (E.O.) 12866 and a major rule under 5 U.S.C. 804. Because of a Federal court injunction, the only provision or clause that had gone into effect was FAR 52.222–60, Paycheck Transparency (Executive Order 13673), which was included in solicitations starting on January 1, 2017. On March 27, 2017, Public Law 115–11 disapproved the rule under the Congressional Review Act. Therefore, by law, the rule has no force or effect, including the FAR 52.222–60 clause. Also on March 27, 2017, E.O. 13782, Revocation of Federal Contracting Executive Orders, rescinded the E.O.s that originally authorized the rule. All steps should be taken to ensure that no sections, provisions, or clauses of the final rule are implemented.

Dated: October 11, 2017.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.
[FR Doc. 2017–23598 Filed 11–3–17; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 9, 17, 22, 42, and 52

[FAC 2005–96; FAR Case 2017–015; Docket No. 2017–0002; Sequence No. 1]

RIN 9000–AN52

Federal Acquisition Regulation; Removal of Fair Pay and Safe Workplaces Rule

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a public law that disapproved the final rule, Fair Pay and Safe Workplaces (FAR Case 2014–025), and an Executive Order (E.O.) dated March 27, 2017, that rescinded the prior Executive orders authorizing that rule.

DATES:

Effective date: November 6, 2017.

Applicability dates: See section I.F of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–96, FAR Case 2017–015.

SUPPLEMENTARY INFORMATION:

I. Background

A. The FAR Rule Implementing E.O. 13673

FAR Case 2014–025 implemented E.O. 13673, Fair Pay and Safe Workplaces, dated July 31, 2014 (79 FR 45309, August 5, 2014), amended by section 3 of E.O. 13683, dated December 11, 2014 (79 FR 75041, December 16, 2014) and E.O. 13738, dated August 23, 2016 (81 FR 58807, August 26, 2016).

The FAR Case final rule was published in the **Federal Register** on August 25, 2016, at 81 FR 58562. It was to be effective on October 25, 2016. Certain aspects of the rule were to be phased in. For example, the clause at FAR 52.222–60, Paycheck Transparency (Executive Order 13673), was to be inserted in solicitations starting January 1, 2017, if the estimated value of the resultant contract was to exceed \$500,000.

The Department of Labor (DOL) published “Guidance for Executive Order 13673, ‘Fair Pay and Safe Workplaces’” on the same day as the FAR final rule was published (81 FR 58653).

B. Injunction and Federal Acquisition Regulatory Council Memorandum

On October 7, 2016, the Associated Builders and Contractors of Southeast Texas, Inc., the Associated Builders and Contractors, Inc., and the National Association of Security Companies filed a lawsuit in the United States District Court for the Eastern District of Texas (Civil Action No. 1:16–CV–425) seeking to overturn the final rule. On October 13, 2016, the plaintiffs filed an “Emergency Motion for Temporary Restraining Order and Preliminary Injunction.”

On October 24, 2016, the District Court issued a “Memorandum and Order Granting Preliminary Injunction.” The Court Order (on page 31) stated: “Defendants are enjoined [from] implementing any portion of the FAR Rule or the DOL Guidance relating to the new reporting and disclosure requirements regarding labor law violations as described in E.O. 13673 and implemented in the FAR Rule and DOL Guidance. Further, Defendants are enjoined from enforcing the restriction on arbitration agreements.”

The Court Order did not enjoin the Paycheck Transparency clause, FAR 52.222–60. Starting January 1, 2017, this clause was prescribed for solicitations if the estimated value of the resultant contract would exceed \$500,000.

On October 25, 2016, the Federal Acquisition Regulatory Council issued a memorandum to the Chief Acquisition Officers, Senior Procurement