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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015-0051, Sequence No. 4]

**Federal Acquisition Regulation; Federal Acquisition Circular
2005-90; Introduction**

AGENCIES: 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) 2005-90. 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 dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005-90 and the specific FAR case number. For information pertaining to status or publication

schedules, contact the Regulatory Secretariat at 202-501-4755.

Rule Listed in FAC 2005-90

| <u>Subject</u> | <u>FAR Case</u> | <u>Analyst</u> |
|------------------------------|-----------------|----------------|
| Fair Pay and Safe Workplaces | 2014-025 | 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 2005-90 amends the FAR as specified below:

Fair Pay and Safe Workplaces (FAR Case 2014-025)

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement Executive Order (E.O.) 13673, Fair Pay and Safe Workplaces, amended by E.O. 13683, to correct a statutory citation, and further amended by an E.O. signed today to modify the handling of subcontractor disclosures and clarify the requirements for public disclosure of documents. E.O. 13673 is designed to improve contractor compliance with labor laws and increase efficiency and cost savings in Federal contracting. As E.O. 13673 explains, ensuring compliance with labor laws drives economy and efficiency by promoting "safe, healthy, fair, and effective workplaces. Contractors that consistently adhere to labor laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely,

predictable, and satisfactory delivery of goods and services to the Federal Government.” The E.O. was signed July 31, 2014. The Department of Labor is simultaneously issuing final Guidance to assist Federal agencies in implementation of the E.O. in conjunction with the FAR final rule.

The E.O. requires that prospective and existing contractors on covered contracts disclose decisions regarding violations of certain labor laws, and that contracting officers, in consultation with agency labor compliance advisors (ALCAs), a new position created by the E.O., consider the decisions, (including any mitigating factors and remedial measures), as part of the contracting officer’s decision to award or extend a contract. In addition, the E.O. creates new paycheck transparency protections, among other things, to ensure that workers on covered contracts are given the necessary information each pay period to verify the accuracy of what they are paid. Finally, the E.O. limits the use of predispute arbitration clauses in employment agreements on covered Federal contracts. Phase-ins: 1) From October 25, 2016 through April 24, 2017, the prime contractor disclosure requirements will apply to solicitations with an estimated value of \$50 million or more, and resultant contracts; after April 24, 2017, the requirements apply to solicitations estimated to exceed \$500,000, and resultant contracts. 2) The

requirements apply to subcontractors starting October 25, 2017. 3) The decision disclosure period covers labor law decisions rendered against the offeror during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the offer, whichever period is shorter. 4) The paycheck transparency clause applies to solicitations starting January 1, 2017. There is significant impact on small entities imposed by the FAR rule.

Dated: August 10, 2016.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Federal Acquisition Circular (FAC) 2005-90 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 2005-90 is effective [***insert date of publication in the Federal Register***] except for FAR Case 2014-025, which is effective October 25, 2016.

Dated: August 11, 2016.

Claire M. Grady,
Director, Defense Procurement
and Acquisition Policy

Dated: August 12, 2016.

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

Dated: August 10, 2016.

William G. Roets,
Acting Assistant Administrator, Office of Procurement
National Aeronautics and Space Administration.

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