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Federal Acquisition Regulation; Federal Acquisition Circular 2005–89; Introduction, Small Business Improvements, OMB Circular Citation Update, FPI Blanket Waiver, Revision to Standard Forms for Bonds, Technical Amendments, and Federal Acquisition Circular 2005–89; Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2016–0051, Sequence No. 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–89; Introduction

AGENCY: 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 (Councils) in this Federal Acquisition Circular (FAC) 2005–89. 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 the 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 2005–89 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULES LISTED IN FAC 2005–89

Item	Subject	FAR Case	Analyst
I	Small Business Subcontracting Improvements	2014–003	Uddowla.
II	OMB Circular Citation Update	2014–023	Hopkins.
III	FPI Blanket Waiver Threshold	2016–008	Uddowla.
IV	Revision to Standard Forms for Bonds	2015–025	Hopkins.
V	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–89 amends the FAR as follows:

Item I—Small Business Subcontracting Improvements (FAR Case 2014–003)

This final rule amends the FAR to implement SBA’s final rule published at 78 FR 42391 on July 16, 2013. The rule will implement the statutory requirements set forth in section 1321 and 1322 of the Small Business Jobs Act of 2010, (Pub. L. 111–240), as well as other requirements aimed at improving subcontracting regulations to increase small business opportunities. This rule accomplishes the following:

(1) Requires prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. To the extent a prime contractor is unable to make a good faith effort to utilize its small business subcontractors as described above, the prime contractor is required to explain, in writing, within 30 days of contract completion, to the contracting officer the reasons why it was unable to do so.

(2) Authorizes contracting officers to calculate subcontracting goals in terms

of total contract dollars in addition to the required goals in terms of total subcontracted dollars.

(3) Provides contracting officers with the discretion to require a subcontracting plan in instances where a small business rerepresents its size as an other than small business.

(4) Requires subcontracting plans even for modifications under the subcontracting plan threshold if said modifications would cause the contract to exceed the plan threshold.

(5) Requires prime contractors to assign (North American Industry Classification System (NAICS)) codes to subcontracts.

(6) Restricts prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.

(7) Requires prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer’s notice of report rejection.

(8) Requires prime contractors to provide the socioeconomic status of the subcontractor in the notification to unsuccessful offerors for subcontracts.

(9) Requires prime contracts with subcontracting plans on task and delivery order contracts to report order level subcontracting information after November 2017.

(10) Facilitates funding agencies receiving small business subcontracting credit.

(11) On indefinite-delivery, indefinite-quantity contracts, allows the

contracting officer to establish subcontracting goals at the order level (but not a new subcontracting plan).

This rule may have a positive economic impact on any small business entity that wishes to participate in the Federal procurement arena as a subcontractor.

Item II—OMB Circular Citation Update (FAR Case 2014–023)

This final rule amends the FAR to update outdated OMB Circular citation references. On December 26, 2013, the Office of Management and Budget (OMB) published new guidance at 2 CFR part 200 entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, adopted by Federal agencies as a set of binding regulations that became effective December 26, 2014. This new guidance supersedes and streamlines requirements from OMB Circulars A–21, A–87, A–89, A–102, A–110, A–122, and A–133, as well as the guidance in Circular A–50 on Audit Followup. As such, this final rule replaces OMB citations in the FAR to the circulars cited above that have been superseded. The replacement of these outdated OMB citations in the FAR will have no impact on small businesses since the intent of the OMB guidance remains unchanged.

Item III—FPI Blanket Waiver Threshold (FAR Case 2016–008)

This final rule amends the FAR to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries (FPI) by Federal agencies from \$3,000 to \$3,500. No waiver is required to buy from an alternative source below \$3,500. Customers may, however, still purchase from FPI at, or below, this threshold, if they so choose.

Item IV—Revision to Standard Forms for Bonds (FAR Case 2015–025)

This rule amends the FAR to revise five Standard Forms prescribed for contracts involving bonds and other financial protections. The revisions, aimed at clarifying liability limitations and expanding the options for organization types, are made to Standard Forms 24, 25, 25A, 34, and 35. These changes will minimize questions from industry to the contracting officer.

This final rule does not place any new requirements on small entities.

Item V—Technical Amendments

Editorial changes are made at FAR 4.1801, 4.1803, 52.204–16, 52.204–17, 52.204–18, 52.204–20, and 52.212–3.

Dated: June 30, 2016.

William Clark,

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

Federal Acquisition Circular (FAC) 2005–89 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 2005–89 is effective July 14, 2016 except for item I which is effective November 1, 2016, and items II, III, and IV, which are effective August 15, 2016.

Dated: July 1, 2016.

Claire M. Grady,

Director, Defense Procurement and Acquisition Policy

Dated: July 1, 2016.

Jeffrey A. Koses,

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

Dated: June 29, 2016.

William G. Roets,

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

[FR Doc. 2016–16244 Filed 7–13–16; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 15, 19, and 52

[FAC 2005–89; FAR Case 2014–003; Item I; Docket No. 2014–0003; Sequence No. 1]

RIN 9000–AM91

Federal Acquisition Regulation; Small Business Subcontracting Improvements

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the 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 regulatory changes made by the Small Business Administration, which provide for a Governmentwide policy on small business subcontracting.

DATES: *Effective:* November 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruha Uddowla, Procurement Analyst, at 703–605–2868 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–89, FAR Case 2014–003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 80 FR 32909 on June 10, 2015. The proposed rule discussed regulatory changes made by the Small Business Administration (SBA) in its final rule published at 78 FR 42391, on July 16, 2013, concerning small business subcontracting. SBA's final rule implements the statutory requirements in sections 1321 and 1322 of the Small Business Jobs Act of 2010 (Pub. L. 111–240), as well as other changes aimed at improving subcontracting regulations to increase small business opportunities. The changes being implemented in this final rule include the following:

(1) Requiring prime contractors to make good faith efforts to utilize their proposed small business subcontractors during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. To the extent a prime contractor is unable to

make a good faith effort to utilize its small business subcontractors as described above, the prime contractor is required to explain, in writing, within 30 days of contract completion, to the contracting officer the reasons why it is unable to do so.

(2) Authorizing contracting officers to calculate subcontracting goals in terms of total contract dollars in addition to the required goals in terms of total subcontracted dollars.

(3) Providing contracting officers with the discretion to require a subcontracting plan in instances where a small business rerepresents its size as an other than small business.

(4) Requiring subcontracting plans even for modifications under the subcontracting plan threshold if said modifications would cause the contract to exceed the plan threshold.

(5) Requiring prime contractors to assign North American Industry Classification System (NAICS) codes to subcontracts.

(6) Restricting prime contractors from prohibiting a subcontractor from discussing payment or utilization matters with the contracting officer.

(7) Requiring prime contractors to resubmit a corrected subcontracting report within 30 days of receiving the contracting officer's notice of report rejection.

(8) Requiring prime contractors to provide the socioeconomic status of the subcontractor in the notification to unsuccessful offerors for subcontracts.

(9) Requiring prime contracts with subcontracting plans on task and delivery order contracts to report order level subcontracting information after November 2017.

(10) Funding agencies receiving small business subcontracting credit.

(11) On indefinite-delivery, indefinite-quantity contracts, the contracting officer may establish subcontracting goals at the order level (but not a new subcontracting plan).

Twenty-seven respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments received and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

This final rule makes the following significant changes from the proposed rule: