

Offeror Representations and Certifications—Commercial Items (Jul 2016)

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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; 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 rules appearing in Federal Acquisition Circular (FAC) 2005–89, 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 these rules by referring to FAC 2005–89, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: July 14, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–89 and the 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.

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