

Regulation (FAR) in order to make needed editorial changes.

**DATES:** Effective November 6, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2023-06, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** This document makes editorial changes to 48 CFR part 52.

**List of Subjects in 48 CFR Part 52**

Government procurement.

**William F. Clark,**

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

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 52.212-3 by—

- a. Revising the date of the provision;
- b. Removing from paragraph (k)(1) introductory text “(1) □ Maintenance”

and adding “□ (1) Maintenance” in its place; and

■ c. Removing from paragraph (k)(2) introductory text “(2) □ Certain” and adding “□ (2) Certain” in its place.

The revision reads as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services.**

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**Offeror Representations and Certifications—Commercial Products and Commercial Services (NOV 2023)**

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[FR Doc. 2023-21323 Filed 10-4-23; 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-2023-0051, Sequence No. 5]

**Federal Acquisition Regulation; Federal Acquisition Circular 2023-06; 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 (SECG).

**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) 2023-06, which amends the Federal Acquisition Regulation (FAR).

Interested parties may obtain further information regarding these rules by referring to FAC 2023-06, which precedes this document.

**DATES:** October 5, 2023.

**ADDRESSES:** The FAC, including the SECG, is available at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2023-06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

**RULES LISTED IN FAC 2023-06**

Item	Subject	FAR case	Analyst
I *	Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.	2020-011	Ryba.
II *	Whistleblower Protection for Contractor Employees	2017-005	Jones.
III *	8(a) Program	2021-012	Bowman.
IV	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2023-06 amends the FAR as follows:

**Item I—Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders (FAR Case 2020-011)**

This interim rule amends the Federal Acquisition Regulation (FAR) to implement supply chain risk information sharing and exclusion or removal orders required by the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council (FASC).

The FAR is being amended to implement applicable exclusion or removal orders recommended by the FASC when they are issued by the Secretary of Homeland Security, the Secretary of Defense, or the Director of National Intelligence. Offerors will be required to check both the System for Award Management and individual solicitations for applicable exclusion orders.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

**Item II—Whistleblower Protection for Contractor Employees (FAR Case 2017-005)**

This final rule amends the FAR to implement Public Law 114-261 (41 U.S.C. 4712). The rule enhances whistleblower protection for contractor employees by making permanent the protection for disclosure of certain information. It also clarifies that the FAR 31.205-47 prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to subcontractors, as well as contractors.

DoD, NASA and the Coast Guard have a different whistleblower program for contractor employees.

This final rule will not have a significant economic impact on a substantial number of small entities.

**Item III—8(a) Program Changes (FAR Case 2021–012)**

This final rule amends the FAR to update and clarify requirements associated with the Small Business Administration's (SBA) 8(a) program. Specifically, this rule clarifies that the certificate of competency program is not applicable to 8(a) sole-source awards and requires that BPAs issued under part 13, including orders placed under part 13 BPAs under the 8(a) Program, must be offered to, and accepted by SBA. Additionally, this rule clarifies an 8(a) participant's eligibility for award for a two-step design procurement and clarifies that a concern must be a current participant in the 8(a) program at the time of an 8(a) sole-source award.

This rule also implements policy that allows the SBA to appeal a contracting officer's decision that an acquisition previously procured under the 8(a) program is a new requirement not subject to the release requirements set forth in 13 CFR. Furthermore, this rule requires the contracting officer to notify the SBA when the contracting officer decides that a requirement, previously procured under the 8(a) program, is a new requirement and not a follow-on requirement to an 8(a) contract; and when the procuring activity intends to procure a follow-on requirement using an existing limited contracting vehicle that is not available to all 8(a) participants and the current or previous 8(a) contract was available to all 8(a)

participants. Lastly, this rule encourages the contracting officer to notify the SBA Associate Administrator for Business Development at least 30 days prior to the end of the contract or order when a mandatory source will be used for a follow-on requirement to an 8(a) contract.

**Item IV—Technical Amendments**

An administrative change is made at FAR 52.212–3.

**William F. Clark,**

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

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