

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR–2023–0051, Sequence No. 1]

**Federal Acquisition Regulation;  
Federal Acquisition Circular 2023–02;  
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) 2023–02. A  
companion document, the *Small Entity  
Compliance Guide* (SECG), follows this  
FAC.

**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. 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).

**RULES LISTED IN FAC 2023–02**

Item	Subject	FAR case	Analyst
I .....	Accelerated Payments Applicable to Contracts with Certain Small Business Concerns .....	2020–007	Delgado.
II .....	Small Business Program Amendments .....	2019–008	Jones.
III .....	Technical Amendments.		

**ADDRESSES:** The FAC, including the  
SECG, is available at [https://  
www.regulations.gov](https://www.regulations.gov).

**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  
2023–02 amends the FAR as follows:

**Item I—Accelerated Payments  
Applicable to Contracts With Certain  
Small Business Concerns (FAR Case  
2020–007)**

This final rule provides for  
accelerated payments to contractors that  
are small businesses and to small  
business subcontractors by accelerating  
payments to their prime contractors.  
The rule implements section 873 of the  
National Defense Authorization Act  
(NDAA) for Fiscal Year (FY) 2020 (Pub.  
L. 116–92), which amends 31 U.S.C.  
3903(a). The rule also implements  
section 815 of the William M. (Mac)  
Thornberry NDAA for FY 2021, which  
amended 10 U.S.C. 2307(a) (now found  
at 10 U.S.C. 3801). This final rule may  
have a positive impact on small entities,  
but it will not have a significant  
economic impact on a substantial  
number of small entities.

**Item II—Small Business Program  
Amendments (FAR Case 2019–008)**

This final rule amends the FAR to  
align with SBA’s regulations related to  
several topic areas. This rule clarifies  
that SBA determines size status as of the

date of initial offer for a multiple-award  
contract, whether or not the offer  
includes price, or the price is evaluated.  
Additionally, in accordance with FAR  
19.301–2(b)(2), the “ostensible  
subcontractor rule” (a small business  
must not be unduly reliant on a  
nonsimilarly situated small business  
subcontractor or have such a  
subcontractor perform the primary and  
vital requirements of the contract) is  
implemented in this rule as a new  
ground for socioeconomic status protest.  
The rule also clarifies that contracting  
officers will not be able to exercise  
options past the fifth year of long-term  
8(a) contracts if the 8(a) contractor no  
longer qualifies for the 8(a) program.  
Lastly, the rule clarifies the size  
standard for the information technology  
value added resellers under North  
American Industry Classification  
System code 541519 is 150 employees,  
not 500 employees.

**Item III—Technical Amendments**

Administrative change is made at  
FAR 2.101.

**William F. Clark,**

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

Federal Acquisition Circular (FAC)  
2023–02 is issued under the authority of  
the Secretary of Defense, the  
Administrator of General Services, and  
the Administrator of National  
Aeronautics and Space Administration.

Unless otherwise specified, all  
Federal Acquisition Regulation (FAR)

and other directive material contained  
in FAC 2023–02 is effective February  
14, 2023 except for Items I through III,  
which are effective March 16, 2023.

**John M. Tenaglia,**

*Principal Director, Defense Pricing and  
Contracting, Department of Defense.*

**Jeffrey A. Koses,**

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

**Karla Smith Jackson,**

*Assistant Administrator for Procurement,  
Senior Procurement Executive, National  
Aeronautics and Space Administration.*

[FR Doc. 2023–02424 Filed 2–13–23; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 12, 32, and 52**

[FAC 2023–02; FAR Case 2020–007; Item  
I; Docket No. FAR–2020–0007, Sequence 1]

**RIN 9000–AO10**

**Federal Acquisition Regulation:  
Accelerated Payments Applicable to  
Contracts With Certain Small Business  
Concerns**

**AGENCY:** 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 section of the National Defense Authorization Act for Fiscal Year 2020 to provide for accelerated payments to small business contractors and subcontractors and a comparable statute applicable only to the Department of Defense.

**DATES:** Effective March 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or by email at [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov) for clarification of content. 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). Please cite FAC 2023–02, FAR Case 2020–007.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule at 86 FR 53923 on September 29, 2021, to implement a policy that provides for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. This change implements section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 873 amends 31 U.S.C. 3903(a).

Specifically, section 873 requires agencies to establish an accelerated payment date for small business prime contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. Section 873 also requires that, to the fullest extent permitted by law, the head of an agency establish an accelerated payment date for prime contractors that subcontract with small businesses, with a goal of 15 days after receipt of a proper invoice, if—

(1) A specific payment date is not established by contract; and

(2) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor. The final rule implements both aspects of section 873. For DoD, however, this case implements section 815 of the William M. (Mac) Thornberry NDAA for FY 2021, which amended 10 U.S.C. 2307(a)(2)(A) (now found at 10 U.S.C. 3801) by striking the language “if a specific payment date is

not established by contract.”

Accordingly, this case excludes from DoD contracts the condition reflected in the language “a specific payment date is not established by contract.”

Four 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 and the changes made to the rule as a result of those comments are provided as follows:

**A. Summary of Significant Changes**

There are no significant changes from the proposed rule.

**B. Analysis of Public Comments**

Of the four responses received, none provided negative comments on the rule, although they suggested changes as described below. No changes resulted from the public comments.

**Comment:** A respondent suggested adding the following language: “the term ‘other required documentation’ shall exclude documentation that is not commercially reasonable in the circumstances, unless such documentation is required by law.” This respondent stated that its suggested change is meant to prevent “the occasional agency or prime contractor [from evading] acceleration of payment under the proposed rules by establishing unreasonable requirements for documentation that a small business cannot meet.”

**Response:** The Councils cannot accept the suggestion because it is not consistent with the statute being implemented. Section 873 of the NDAA for FY 2020 did not create or modify a definition of “other required documentation.” The term “other required documentation” and other similar variations are used in many instances in the FAR and other agency regulations. Also, such “documentation” may be required by the contract or law, or both. The Councils concluded that “other required documentation” should be sufficient; and that adding the suggested language will not make the issue any clearer.

**Comment:** A respondent expressed the need for the rule to clarify the statement “with a goal of 15 days after receipt of proper invoice, if—(1) a specific payment date is not established by contract . . .” The respondent expressed concern that a contracting officer may insert “any type of specific

date—i.e., 30 days, 60 days or 90 days into their contracts.” This respondent suggested to remove the term “goal” and make the accelerated payment “a requirement and that there be oversight within contracts to make certain the requirement is being achieved.”

**Response:** Congress has directed DoD to “establish an accelerated payment date with a goal of 15 days after a proper invoice for the amount due is received.” See section II.C. of this preamble. For civilian agencies, the Councils cannot accept the suggestion because it is not consistent with the statute.

**Comment:** A respondent expressed that small business contractors having to flow down the accelerated payment to their small business subcontractors would “essentially eliminate any financial assistance by negating the benefit of the accelerated timeline.” This respondent expressed that the flowdown requirement “could put an undue burden onto many small business primes who do not track the size status of their subcontractors since they are not subject to the same reporting requirements of large businesses. Being required to implement a tracking system to comply with the flowdown of accelerated payments could prove to be an additional unintended expense on the small business that would once again negate the financial benefit of accelerated payment.”

**Response:** The Councils cannot accept the suggestions because they are not consistent with the statute being implemented. Section 873 of the NDAA for FY 2020 requires the flowdown. The statute and the final rule do not include additional reporting or recordkeeping requirements.

**Comment:** A respondent expressed strong support for the rule and urged the Councils “to include in the final rule an expansion of the provision to apply these accelerated payment requirements to large business subcontractors.” A respondent expressed support for the rule but believed that more analysis of the financial and administrative impact of accelerating payments to large subcontractors is required. This respondent provided three examples of questions that need to be answered: (1) How will it affect contractor ERP systems and reporting? (2) What administrative costs will be incurred and what is the overall financial impact? (3) How will the requirement be integrated with existing regulations that already dictate when payments must be made to subcontractors (i.e., FAR 52.232–16, FAR 52.216–7)?

**Response:** In the preamble to the proposed rule, the Councils noted their interest in understanding the

implications of applying the accelerated payment requirements to large business subcontractors and flowing them down to lower tier small business subcontractors. Interest in this issue remains, but additional research is needed to properly inform the process. The Councils, in coordination with the Office of Federal Procurement Policy, will consider whether further action through a new rulemaking should be pursued to address flowdown of accelerated payments, as well as other refinements that may be necessary to ensure the policy objective of accelerating payments to small business concerns has been achieved by the changes set forth in this rule.

### C. Other Changes

Other changes made to the final rule are as follows:

- To add a clarification at FAR 32.009–1(a) by creating paragraphs (a)(1) and (a)(2) to differentiate DoD from civilian agencies regarding the removal of the phrase “if a specific payment date is not established by contract” at 10 U.S.C. 3801 per section 815 of the William M. (Mac) Thornberry NDAA for FY 2021, Public Law 116–283; the statutory text was moved from 10 U.S.C. 2307(a) to 10 U.S.C. 3801.
- To make editorial corrections at: 52.213–4(a)(1)(x) to be consistent with the FAR 52.233–4 citation at FAR 52.212–5.

### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, or for Commercial Services

This rule does not add any new solicitation provisions or contract clauses. This rule amends the following FAR clauses: 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services); 52.232–40, Providing Accelerated Payments to Small Business Subcontractors; and 52.244–6, Subcontracts for Commercial Products and Commercial Services.

The FAR rule makes the 10 U.S.C. 2307(a) (now found at 10 U.S.C. 3801) and 31 U.S.C. 3903 statutory changes to a requirement already applicable to contracts at or below the SAT and to contracts for the acquisition of commercial products and commercial services, including COTS items.

The Federal Acquisition Regulatory Council (FAR Council) is applying the

rule to contracts at or below the SAT and acquisitions of commercial products and commercial services, including acquisitions for COTS items, in accordance with 41 U.S.C. 1905, 41 U.S.C. 1906, and 41 U.S.C. 1907. Discussion of the FAR Council determinations is set forth below.

#### A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

The FAR Council has made a determination to apply this statute to contracts and subcontracts at or below the SAT. These accelerated payments provide benefits to contractors that are small businesses, to contractors that subcontract with small businesses, and to small business subcontractors by accelerating payments to their prime contractors, without adding any reporting or recordkeeping requirements. Approximately 96 percent of Federal contracts are in amounts at or below the SAT. An exception for contracts and subcontracts at or below the SAT would exclude contracts and subcontracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

#### B. Applicability to Contracts for the Acquisition of Commercial Products, Including Commercially Available Off-The-Shelf (COTS) Items, or for Commercial Services

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to those contracts. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts and subcontracts for commercial products and commercial services the provision of law will apply to them.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement

Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council has made a determination to apply this statute to contracts and subcontracts for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items. These accelerated payments provide benefits to contractors that are small businesses, to contractors that subcontract with small businesses, and to small business subcontractors by accelerating payments to their prime contractors, without adding any reporting or recordkeeping requirements. Over 50 percent of Federal contracts are awarded using commercial procedures. An exception for commercial products and commercial services, including COTS items, contracts and subcontracts would exclude contracts and subcontracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

### IV. Expected Impact of the Rule

The final rule expands the FAR policy regarding accelerated payments to small business contractors by: (1) providing accelerated payments to prime contractors that are small businesses; (2) establishing a goal of payment within 15 days after receipt of a proper invoice; and (3) prohibiting prime contractors from requesting any further consideration from the subcontractor in exchange for the accelerated payments. The Government expects this rule to improve cash flow and access to the Federal marketplace for small businesses, which are likely to have lower cash reserves and less access to inexpensive credit when compared to other than small businesses, *i.e.*, large businesses.

### V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of

E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

## VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This final rule amends the FAR to provide for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors. Specifically, the statute requires agencies, to the fullest extent permitted by law, to establish an accelerated payment date for small business contractors, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. For contractors that subcontract with small businesses, the statute requires agencies, to the fullest extent permitted by law, to establish an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if—

(a) A specific payment date is not established by contract; and

(b) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

For DoD, however, this rule implements section 815 of the William M. (Mac) Thornberry NDAA for FY 2021, which amended 10 U.S.C. 2307(a)(2)(A) (now found at 10 U.S.C. 3801) by striking the language “if a specific payment date is not established by contract.” Accordingly, the final rule excludes from DoD contracts the condition reflected in the language “a specific payment date is not established by contract.”

The objective is to implement section 873 of the NDAA for FY 2020 (Pub. L. 116–92), which amends 31 U.S.C. 3903(a). The rule also implements a change made by section 815 of the William M. (Mac) Thornberry NDAA for FY 2021 to 10 U.S.C. 2307(a), now found at 10 U.S.C. 3801, which requires DoD to keep the 15 days rather than allow a different specific date to be established in the contract.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

The final rule applies to small businesses that are prime contractors, and to small

businesses that are subcontractors on Federal prime contracts. Based on data obtained from the Federal Procurement Data System, 120,907 unique entities (including 78,813 small businesses) were awarded contracts for FY 2021. There is no data source to know how many subcontracts are awarded to small businesses. With regard to the impact of the prohibition on fees or other consideration in return for accelerated payments, it is not possible to estimate how many of these small business subcontractors may have been required to provide consideration or pay fees to the prime contractor in order to receive accelerated payments.

The final rule does not include additional reporting or recordkeeping requirements. There are no available alternatives to the final rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

### List of Subjects in 48 CFR Parts 12, 32, and 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 parts 12, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 32, and 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.

## PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

### 12.301 [Amended]

■ 2. Amend section 12.301 by removing paragraph (d)(15).

## PART 32—CONTRACT FINANCING

■ 3. Revise sections 32.009 and 32.009–1 to read as follows:

### 32.009 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

#### 32.009–1 General.

(a)(1) Pursuant to 31 U.S.C. 3903(a), agencies other than the Department of Defense (DoD) shall provide accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation, if a specific payment date is not established by contract, to—

(i) Small business contractors; and

(ii) Prime contractors that subcontract with a small business concern, if the prime contractor agrees to make payments to the small business subcontractor within 15 days of receiving the accelerated payment from the Government, after receipt of a proper invoice and all other required documentation from the small business subcontractor, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(2) Pursuant to 10 U.S.C. 3801(b), DoD shall provide accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation, to—

(i) Small business contractors; and

(ii) Prime contractors that subcontract with a small business concern, if the prime contractor agrees to make payments to the small business subcontractor within 15 days of receiving the accelerated payment from the Government, after receipt of a proper invoice and all other required documentation from the small business subcontractor, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

(b) This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

(c) Agencies may use the Governmentwide commercial purchase card as a method of payment (see 32.1108) to facilitate accelerated payment, to earn refunds, and to reduce invoice processing costs.

### 32.903 [Amended]

■ 4. Amend section 32.903 by removing from paragraph (a)(5) “5 CFR 1315.5” and adding “5 CFR 1315.5, but see 32.009–1(a)” in its place.

■ 5. Amend section 32.906 by removing from paragraph (a)(2) “are necessary (see 32.903(a)(5))” and adding “is

necessary” in its place, and adding a sentence to the end of the paragraph. The addition reads as follows:

**32.906 Making payments.**

- (a) \* \* \*
- (2) \* \* \* See 32.903(a)(5), but see 32.009–1(a).
- \* \* \* \* \*

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

- 6. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7); and adding a new paragraph (a)(5);
- c. Redesignating paragraph (e)(1)(xxii) as paragraph (e)(1)(xxiii); and adding a new paragraph (e)(1)(xxii); and
- d. In Alternate II—
- i. Revising the date of the Alternate;
- ii. Redesignating paragraph (e)(1)(ii)(U) as paragraph (e)(1)(ii)(V); and adding a new paragraph (e)(1)(ii)(U);

The revisions and additions read as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (MAR 2023)**

- (a) \* \* \*
- (5) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).
- \* \* \* \* \*

- (e)(1) \* \* \*
- (xxii) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232–40.
- \* \* \* \* \*

Alternate II (MAR 2023). \* \* \*

- (e)(1) \* \* \*
- (ii) \* \* \*
- (U) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232–40.
- \* \* \* \* \*

- 7. Amend section 52.213–4 by—
- a. Revising the date of the clause;
- b. Redesignating paragraphs (a)(1)(viii) and (ix) as paragraphs

- (a)(1)(ix) and (x); and adding a new paragraph (a)(1)(viii);
- c. Revising the newly redesignated paragraph (a)(1)(x);
- d. Removing paragraph (a)(2)(vi);
- e. Redesignating paragraphs (a)(2)(vii) through (ix) as paragraphs (a)(2)(vi) through (viii); and
- f. Removing from the newly redesignated paragraph (a)(2)(vii) “(DEC 2022)” and adding “(MAR 2023)” in its place.

The revisions and addition read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).**

\* \* \* \* \*

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (MAR 2023)**

- (a) \* \* \*
- (1) \* \* \*
- (viii) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).
- \* \* \* \* \*

- (x) 52.233–4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108–77 and 108–78 (19 U.S.C. 3805 note)).
- \* \* \* \* \*

- 8. Amend section 52.232–40 by revising the date of the clause and paragraph (a) to read as follows:

**52.232–40 Providing Accelerated Payments to Small Business Subcontractors.**

\* \* \* \* \*

**Providing Accelerated Payments to Small Business Subcontractors (MAR 2023)**

- (a)(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 3801, within 15 days after receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

- (2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.
- \* \* \* \* \*

- 9. Amend section 52.244–6 by—

- a. Revising the date of the clause; and
- b. Removing from paragraph (c)(1)(xix) “(NOV 2021)” and adding “(MAR 2023)” in its place.

The revision reads as follows:

**52.244–6 Subcontracts for Commercial Products and Commercial Services.**

\* \* \* \* \*

**Subcontracts for Commercial Products and Commercial Services (MAR 2023)**

\* \* \* \* \*

[FR Doc. 2023–02425 Filed 2–13–23; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 19, 49, and 52**

[FAC 2023–02; FAR Case 2019–008; Item II; Docket No. 2019–0008; Sequence No. 1]

RIN 9000–AN91

**Federal Acquisition Regulation: Small Business Program Amendments**

**AGENCY:** 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 several changes made to the Small Business Administration (SBA) regulations.

**DATES:** Effective March 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Malissa Jones, Procurement Analyst, at 571–886–4687, or by email at [malissa.jones@gsa.gov](mailto:malissa.jones@gsa.gov), for clarification of content. 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). Please cite FAC 2023–02, FAR Case 2019–008.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule at 87 FR 10327 on February 24, 2022, to amend the FAR to implement several revisions that the Small Business Administration (SBA) made to its regulations in its final rule published on November 29, 2019, at 84 FR 65647. Five respondents submitted comments in response to 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 minor change was made to 19.307(d)(1)(iii) as a result of the public comments received. A discussion of the comments is provided as follows:

### A. Summary of Significant Changes

There are no significant changes from the proposed rule.

### B. Analysis of Public Comments

#### 1. Support for the Rule

*Comment:* One respondent expressed support for the rule.

*Response:* The Councils acknowledge the respondent's support for the rule.

#### 2. Negative Impacts of the Rule

*Comment:* One respondent expressed concern regarding potential negative impacts of the rule. The respondent believes that the new rule is unfair to 8(a) program participants who spend time and money in pursuit of long-term contracts with the Federal Government, specifically category management-type contracts. The respondent indicated that the proposed rule will shorten the lifespan of 8(a) contracts if an 8(a) participant graduates from the program before the contract ends. The respondent also indicated the proposed rule may result in a reduction in the number and value of long-term 8(a) contracts for the Government and small businesses.

*Response:* The Councils acknowledge the respondent's concerns regarding the impact this rule will have on 8(a) participants and the Government with regard to long-term 8(a) contracts. As a result of this rule, the Government will not be able to exercise a fifth-year option on a long-term contract if the contractor is no longer eligible under the 8(a) program. However, this rule implements several revisions SBA made to its regulations in its final rule published on November 29, 2019, at 84 FR 65647. SBA modified 13 CFR 124.521(e)(2) to require contracting officers to verify that a business concern continues to be an eligible 8(a) participant no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising an option, and where a concern no longer qualifies the rule precludes contracting officers from exercising the option. In its final rule, SBA pointed out that Congress intended that 8(a) program participation be limited to nine years, and for 8(a)

participants to leave the program and go on to participate successfully and independently in the Government contracting arena. Therefore, allowing contracting officers to continue to exercise options for 8(a) program participants under these circumstances would not meet Congress' intent.

#### 3. Clarifications

##### a. Clarify SBA Requirements for 8(a) Eligibility Prior To Exercising the Fifth (5th) Option Year

*Comment:* One respondent asked if an 8(a) participant is not eligible for the award of a fifth year option, can SBA authorize an extension to an 8(a) participant's program term to allow agencies time for re-procurement.

*Response:* An 8(a) participant's eligibility is determined in accordance with SBA's regulations and a participant's status is reflected in DSBS.

*Comment:* One respondent asked if current procurements are grandfathered from this rule.

*Response:* In accordance with FAR 1.108(d), FAR changes made by this rule apply to solicitations issued on or after the effective date of the change unless otherwise specified.

*Comment:* One respondent requested that eligibility verification be changed from "no more than 120 days prior" to "no less than 120 days prior".

*Response:* This rule is consistent with 13 CFR 124.521(e)(2) and implements SBA's final rule at 84 FR 65647 (see comment category 2).

##### b. Clarify SBA Protest Procedures and Applicability

*Comment:* One respondent asked if an 8(a) contractor that did not receive the award could protest the exercise of an option during the 6th, 7th, or 8th year of a contract if they suspect the contractor has graduated from the 8(a) program.

*Response:* Protests of small business representations and rerepresentations by an 8(a) contractor are made in accordance with FAR 19.813. Protesting a small business representation or rerepresentation. This rule does not make changes to FAR 19.302.

*Comment:* One respondent indicated that the addition of "sole source" at FAR 19.306(d)(1)(iv) and 19.308(d)(1)(iii) is inconsistent with SBA regulations regarding the new ostensible subcontractor protest grounds (e.g., HUBZone and WOSB/EDWOSB protests (13 CFR 126.601(d) and 13 CFR 127.504(g)).

*Response:* Although the ostensible subcontractor protest grounds in SBA's regulations at 13 CFR 126.601(d) and 13

CFR 127.504(g) do not include "or sole source", SBA did include "sole source" when describing the ostensible subcontractor rule in its final rule published on November 29, 2019 at 84 FR 65647, to make clear that the ostensible subcontractor rule applies to set-aside and sole source contracts.

*Comment:* One respondent recommended that "or order" be added to FAR 19.307(d)(1)(iii) following "sole-source service contract" to be consistent with SBA's regulations at 13 CFR 125.18(f).

*Response:* The Councils adopted the recommendation and conforming edits were made at FAR 19.306(d) and 19.308(d).

##### c. Clarify Date of Size Representation

*Comment:* One respondent indicated that the size determination for contractors under Federal Supply Schedule Multiple-Award Schedule contracts should be determined as of the date of each response to a request for quotation instead of the date of the initial offer for the multiple-award schedule contract.

*Response:* This rule implements SBA's final rule at 84 FR 65647 dated November 29, 2019, which clarified that SBA determines size as of the date of initial offer for the multiple-award contract, whether or not the offer includes price. Therefore, this rule is consistent with SBA's regulations at 13 CFR 121.404(a)(1)(iv), which specify the timing of SBA's size determination.

*Comment:* One respondent recommended that the words "or the price is evaluated" at FAR 19.102(a)(4), 19.301-1(b), and 19.301-1(e)(1) be deleted to be consistent with 13 CFR 121.404(a)(1)(iv).

*Response:* SBA's final rule published at 84 FR 65647 dated November 29, 2019, clarified that when an agency uses indefinite delivery, indefinite quantity (IDIQ), multiple-award contracts that do not require offerors to include price, size will be determined as of the date of the initial offer which may not include price. The phrase "may not" here means "might not." This rule adds the words "or the price is evaluated" at 19.102(a)(4), 19.301-1(b), and 19.301-1(e)(1) to clarify SBA's intent.

##### d. Clarify the Language in the Proposed FAR Rule to More Closely Align With SBA's Regulations

*Comment:* While recognizing that the proposed rule is likely sufficient, one respondent recommended that the rule be amended to include "which is found at section 121.201, footnote 18" from SBA's regulation regarding the size standard for Information Technology

Value-added Reseller under NAICS Code 541519.

*Response:* The proposed rule included the size standard for nonmanufacturers and the size standard for information technology value added resellers under NAICS code 541519. In addition, FAR 19.102(a) includes a reference to SBA's Small business size standards and corresponding (NAICS) codes at 13 CFR 121.201 and provides the website for NAICS codes at <https://www.sba.gov/document/support-table-size-standards>. The 150 employee size is easy to find in the SBA size standards; therefore, it is not necessary to include a reference to 13 CFR 121.201 and footnote 18 in the FAR text associated with this rule.

*Comment:* One respondent recommended including "IDIQ" in the proposed rule for consistency with SBA regulations in referencing multiple-award contracts.

*Response:* Although SBA's regulations reference IDIQ after multiple-award contract, FAR 19.504 provides guidance on placing orders under multiple-award contracts; therefore, it is not necessary to add IDIQ at FAR 19.504(b). In addition, the definition of *multiple-award contract* at FAR 2.101 indicates that this kind of contract is an IDIQ contract.

#### 4. Outside the Scope

*Comment:* One respondent asked what acquisition options agencies have if an 8(a) participant is not eligible for the award of an option under a long-term 8(a) contract.

*Response:* This is outside of the scope of this rule.

#### C. Other Changes

Minor editorial changes were made at FAR 19.306(d), 19.307(d), and 19.308(d)(2).

### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends several solicitation provisions and contract clauses at FAR 52.204–8, 52.212–1, 52.212–5, 52.219–1, 52.219–18, and 52.219–28. However, this rule does not impose any new requirements on contracts at or below the SAT or for commercial products, or for commercial services, including commercially available off-the-shelf (COTS) items. The clauses continue to apply to acquisitions at or below the SAT, to acquisitions for commercial products and commercial services including COTS items.

### IV. Expected Impact of the Rule

This rule will impact the operations of the Government and contractors as described in this section.

This rule will impact the Government with regard to long-term 8(a) contracts. Contracting officers will not be able to exercise options past the fifth year of long-term 8(a) contracts if the 8(a) contractor no longer qualifies for the 8(a) program. Contractors who are 8(a) participants with long-term contracts may find that the Government cannot exercise a fifth-year option on that contract if the contractor is no longer eligible for the 8(a) program.

Offerors who are information technology value-added resellers should be able to more easily understand the size standard that applies to them.

The "ostensible subcontractor rule" is implemented in this rule as a new ground for protest. Small business contractors must not be overly reliant on non-similarly situated small business subcontractors or have such a subcontractor perform primary and vital requirements of the contract. Therefore, a small business contractor must have the necessary expertise within its own organization.

This rule is not expected to result in any costs to contractors or offerors.

### V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

### VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and

Budget has determined that this is not a major rule under 5 U.S.C. 804.

### VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement several revisions made to the Small Business Administration (SBA) regulations in SBA's final rule published on November 29, 2019, at 84 FR 65647. The revisions address the point in the procurement process at which small business size status is determined for offers for multiple-award contracts. SBA generally determines size status at the time of initial offer including price. However, for a solicitation for a multiple-award contract that does not require offers to include price or where price is not evaluated, SBA will determine size as of the date of initial offer, whether or not the offer includes price or the price is evaluated. The revisions also address the eligibility requirements for 8(a) participants under long-term contracts (*i.e.*, with a duration of more than five years including option periods). For long-term 8(a) contracts, contracting officers will be required to verify in the Dynamic Small Business Search (DSBS) or the System for Award Management (SAM) that the contractor is still an SBA-certified 8(a) participant no more than 120 days prior to the end of the fifth year of the contract. If the contractor is no longer an SBA-certified 8(a) participant, the contracting officer shall not exercise the option. In addition, SBA's revisions specified that the size standard for information technology value added resellers under North American Industry Classification System (NAICS) code 541519 is 150 employees. The revisions also address SBA's new grounds for a socioeconomic status protest based on an allegation that a contractor is unduly reliant on a small, non-similarly situated entity subcontractor or if such subcontractor performs the primary and vital requirements of the contract (the "ostensible subcontractor rule").

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This rule will apply to small entities that do business with the Federal Government. According to the data in SAM, as of January 2022, 420,000 of the active entity registrations are for entities that are small business concerns for at least one NAICS code. This rule will impact 8(a) participants who are Federal contractors with contracts that have a duration of more than five years, including options. An analysis of the data in the Federal Procurement Data System (FPDS) indicates that, for fiscal years 2019 through 2021, an average of 326 long-term contracts (*i.e.*, greater than five years) were awarded to 279 unique entities each year under the 8(a) program. The rule may reduce the number of long-term contracts awarded to 8(a) participants by agencies that are concerned about having a contract in place beyond the

fifth year. Contracts outside the 8(a) program will not have such obstacles to continued performance. However, SBA pointed out that Congress intended that 8(a) program participation be limited to nine years, and for 8(a) participants to leave the program and go on to participate successfully and independently in the Government contracting arena. Therefore, allowing contracting officers to continue to exercise options for 8(a) program participants under these circumstances would not meet Congressional intent.

This rule will affect information technology value added resellers under NAICS code 54159. An analysis of the data in FPDS shows that, for fiscal years 2019 through 2021, an average of 699 unique large businesses and 1,129 unique small businesses were awarded contracts each year under NAICS code 541519.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches that would accomplish the stated objectives.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

### List of Subjects in 48 CFR Parts 19, 49, and 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 parts 19, 49, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19, 49, and 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.

## PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.102 by revising the last sentence of paragraph (a)(1) and adding paragraphs (a)(3) and (4) to read as follows:

### 19.102 Small business size standards and North American Industry Classification System codes.

(a) \* \* \*

(1) \* \* \* They are also available at <https://www.sba.gov/document/support-table-size-standards>.

\* \* \* \* \*

(3) SBA determines the size status of a concern, including its affiliates, as of the date the concern represents that it is small to the contracting officer as part of its initial offer, which includes price.

(4) When an agency uses a solicitation for a multiple-award contract that does not require offers for the contract to include price, SBA determines size as of the date of initial offer for the multiple-award contract, whether or not the offer includes price or the price is evaluated. (See 13 CFR 121.404(a)(1)(iv)).

\* \* \* \* \*

### 19.301–1 [Amended]

■ 3. Amend section 19.301–1 by—

■ a. Removing from paragraph (b) introductory text the phrase “initial offer” and adding “initial offer, (whether or not the offer includes price or the price is evaluated)” in its place; and

■ b. Removing from paragraph (e)(1) the phrase “for the contract” and adding “for the contract (whether or not the offer includes price or the price is evaluated (see 13 CFR 121.404(a)(1)(iv)),” in its place.

■ 4. Amend section 19.306 by adding paragraph (d)(3) to read as follows:

### 19.306 Protesting a firm’s status as a HUBZone small business concern.

\* \* \* \* \*

(d) \* \* \*

(3) SBA will consider protests for HUBZone set-aside or sole-source service contracts or orders, if a HUBZone prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or if such subcontractor performs the primary and vital requirements of the contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and 13 CFR 121.103(h)(2), which treats the pair as joint venturers for size determination purposes (the “ostensible subcontractor rule”).

\* \* \* \* \*

■ 5. Amend section 19.307 by—

■ a. Removing from paragraph (d)(1) introductory text the phrase “service disabled” and adding “service-disabled” in its place;

■ b. Removing from paragraph (d)(1)(i) the phrases “service disabled” and

“125.8; or” and adding “service-disabled” and “125.12;” in their places, respectively;

■ c. Removing from paragraph (d)(1)(ii) the phrase “such veteran.” and adding “such veteran; or” in its place; and

■ d. Adding paragraph (d)(1)(iii).

The addition reads as follows:

### 19.307 Protesting a firm’s status as a service-disabled veteran-owned small business concern.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) For set-aside or sole-source service contract or order ostensible subcontractor protests, the protester presents credible evidence of the alleged undue reliance on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or credible evidence that the small non-similarly situated entity is performing the primary and vital requirements of the contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and 13 CFR 121.103(h)(2), which treats the pair as joint venturers for size determination purposes (the “ostensible subcontractor rule”).

\* \* \* \* \*

■ 6. Amend section 19.308 by—

■ a. Removing from the end of paragraph (d)(1)(i) the word “or”;

■ b. Removing from the end of paragraph (d)(1)(ii) the phrase “EDWOSB contract.” and adding “EDWOSB contract; or” in its place; and

■ c. Adding paragraph (d)(1)(iii).

The addition reads as follows:

### 19.308 Protesting a firm’s status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the Women-Owned Small Business Program.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) For WOSB or EDWOSB set-aside or sole-source service contracts or orders, the protest presents evidence that the prime contractor is unduly reliant on a small entity subcontractor that is not a similarly-situated entity as defined in 13 CFR 125.1, or a protest alleging that such subcontractor is performing the primary and vital requirements of a set-aside or sole-source WOSB or EDWOSB contract. For allegations that the prime contractor is unduly reliant on an other-than-small subcontractor, see size protests at 19.302, and 13 CFR 121.103(h)(2), which treats the pair as joint venturers



for size determination purposes (the “ostensible subcontractor rule”).

\* \* \* \* \*

■ 7. Amend section 19.504 by—

- a. Removing from the paragraph (b) heading the phrase “partial set-aside contracts.”, and adding the phrase “set-aside contracts-” in its place;
- b. Redesignating paragraphs (b)(1) and (2) as paragraphs (b)(2)(i) and (ii), respectively;
- c. Adding a new paragraph (b)(1); and
- d. Adding a paragraph heading to the newly redesignated paragraph (b)(2).

The addition and revision read as follows:

**19.504 Orders under multiple-award contracts.**

\* \* \* \* \*

(b) \* \* \*

(1) *Orders under total set-aside contracts.* Under a total small business set-aside, contracting officers may at their discretion set aside orders for any of the small business socioeconomic concerns identified in 19.000(a)(3) provided that the requirements at paragraph (a) of this section, 19.502–2(b), and the specific program eligibility requirements are met.

(2) *Orders under partial set-aside contracts.*

\* \* \* \* \*

**19.505 [Amended]**

■ 8. Amend section 19.505 by removing from paragraphs (c)(1)(ii) and (c)(2)(i) the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519” in its place.

■ 9. Amend section 19.802 by adding two sentences at the end to read as follows:

**19.802 Determining eligibility for the 8(a) program.**

\* \* \* SBA designates the concern as an 8(a) participant in the Dynamic Small Business Search (DSBS) at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). SBA’s designation also appears in the System for Award Management (SAM).

■ 10. Amend section 19.804–1 by—

- a. Removing from the end of paragraph (a)(1) the word “and”;
- b. Redesignating paragraph (a)(2) as paragraph (a)(3); and
- c. Adding a new paragraph (a)(2).

The addition reads as follows:

**19.804–1 Agency evaluation.**

(a) \* \* \*

(2) Length of contract, including option periods (see 19.812(d)); and

\* \* \* \* \*

■ 11. Amend section 19.812 by—

- a. Redesignating paragraph (d) as paragraph (e); and
- b. Adding a new paragraph (d).

The addition reads as follows:

**19.812 Contract administration.**

\* \* \* \* \*

(d) For 8(a) contracts exceeding 5 years including options, the contracting officer shall verify in DSBS or SAM that the concern is an SBA-certified 8(a) participant no more than 120 days prior to the end of the fifth year of the contract. If the concern is not an SBA-certified 8(a) participant, the contracting officer shall not exercise the option (see 13 CFR 124.521(e)(2)).

\* \* \* \* \*

**PART 49—TERMINATION OF CONTRACTS**

**49.402–3 [Amended]**

■ 12. Amend section 49.402–3 by removing from paragraph (e)(4) the phrase “Small Business Administration Regional” and adding “Small Business Administration Area” in its place.

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

■ 13. Amend section 52.204–8 by—

- a. Revising the date of the provision;
- b. Removing from paragraph (a)(3) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place;
- c. In Alternate I:
  - i. Revising the date of Alternate I; and
  - ii. Removing from paragraph (a)(2) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revisions read as follows:

**52.204–8 Annual Representations and Certifications.**

\* \* \* \* \*

**Annual Representations and Certifications (Mar 2023)**

\* \* \* \* \*

Alternate I ([MAR 2023 \* \* \*

\* \* \* \* \*

■ 14. Amend section 52.212–1 by—

- a. Revising the date of the provision; and
- b. Removing from paragraph (a) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for

information technology value-added resellers under NAICS code 541519,” in its place.

The revision reads as follows:

**52.212–1 Instructions to Offerors—Commercial Products and Commercial Services.**

\* \* \* \* \*

**Instructions to Offerors—Commercial Products and Commercial Services (MAR 2023)**

\* \* \* \* \*

■ 15. Amend section 52.212–5 by—

- a. Revising the date of the clause; and
- b. Removing from paragraph (b)(22)(i) the date “(OCT 2022)” and adding “(MAR 2023)” in its place.

The revision reads as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (MAR 2023)**

\* \* \* \* \*

■ 16. Amend section 52.219–1 by—

- a. Revising the date of the provision;
- b. Removing from paragraph (b)(3) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place;
- c. In Alternate II:
  - i. Revising the date of Alternate II; and
  - ii. Removing from paragraph (b)(2) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revisions read as follows:

**52.219–1 Small Business Program Representations.**

\* \* \* \* \*

**Small Business Program Representations (MAR 2023)**

\* \* \* \* \*

Alternate II (MAR 2023) \* \* \*

\* \* \* \* \*

■ 17. Amend section 52.219–18 by—

- a. Revising the date of Alternate I; and
- b. Removing from paragraph (iii) in Alternate I the phrase “Regional Office(s)” and adding “Area Office(s)” in its place.

The revision reads as follows:

**52.219–18 Notification of Competition Limited to Eligible 8(a) Participants.**

\* \* \* \* \*

*Alternate I (MAR 2023)*

\* \* \* \* \*

- 18. Amend section 52.219–28 by—
- a. Revising the date of the clause; and
- b. Removing from paragraph (e) introductory text the phrase “500 employees” and adding “500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519,” in its place.

The revision reads as follows:

**52.219–28 Post-Award Small Business Program Rerepresentation.**

\* \* \* \* \*

**Post-Award Small Business Program Rerepresentation (MAR 2023)**

\* \* \* \* \*

[FR Doc. 2023–02426 Filed 2–13–23; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 2**

[FAC 2023–02; Item III; Docket No. FAR–2023–0052; Sequence No. 1]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This document makes an amendment to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

**DATES:** Effective: February 14, 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 2023–02, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** This document makes an editorial change to 48 CFR part 2.

**List of Subjects in 48 CFR Part 2**

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 2 as set forth below:

- 1. The authority citation for 48 CFR part 2 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.

**PART 2—DEFINITIONS OF WORDS AND TERMS****2.101 [Amended]**

- 2. Amend section 2.101, in paragraph (b), in the definition of “Contingency operation” by removing from paragraph (2) the phrase “Chapter 15 of title 10 of the United States Code,” and adding the phrase “Chapter 13 of title 10 of the United States Code, and section 3713 of title 14 of the United States Code,” in its place.

[FR Doc. 2023–02427 Filed 2–13–23; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket No. FAR–2023–0051, Sequence No. 1]

**Federal Acquisition Regulation; Federal Acquisition Circular 2023–02; 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) 2023–02, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2023–02, which precedes this document.

**DATES:** February 14, 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 2023–02 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 2023–02**

Item	Subject	FAR case	Analyst
I *	Accelerated Payments Applicable to Contracts with Certain Small Business Concerns .....	2020–007	Delgado.
II *	Small Business Program Amendments .....	2019–008	Jones.
III	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 2023–02 amends the FAR as follows:

**Item I—Accelerated Payments Applicable to Contracts With Certain Small Business Concerns (FAR Case 2020–007)**

This final rule provides for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. The rule implements section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92), which amends 31 U.S.C. 3903(a). The rule also implements section 815 of the William M. (Mac)

Thornberry NDAA for FY 2021, which amended 10 U.S.C. 2307(a) (now found at 10 U.S.C. 3801). This final rule may have a positive impact on small entities, but it will not have a significant economic impact on a substantial number of small entities.

**Item II—Small Business Program Amendments (FAR Case 2019–008)**

This final rule amends the FAR to align with SBA's regulations related to several topic areas. This rule clarifies that SBA determines size status as of the date of initial offer for a multiple-award contract, whether or not the offer includes price, or the price is evaluated. Additionally, in accordance with FAR 19.301–2(b)(2), the “ostensible subcontractor rule” (a small business must not be unduly reliant on a nonsimilarly situated small business subcontractor or have such a subcontractor perform the primary and

vital requirements of the contract) is implemented in this rule as a new ground for socioeconomic status protest. The rule also clarifies that contracting officers will not be able to exercise options past the fifth year of long-term 8(a) contracts if the 8(a) contractor no longer qualifies for the 8(a) program. Lastly, the rule clarifies the size standard for the information technology value added resellers under North American Industry Classification System code 541519 is 150 employees, not 500 employees.

**Item III—Technical Amendments**

Administrative change is made at FAR 2.101.

**William F. Clark,**

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

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