

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.

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>.

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.

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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),