

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; 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) 2023-06. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

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

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 2023-06

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.

Federal Acquisition Circular (FAC) 2023–06 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 2023–06 is effective October 5, 2023 except for Item I, which is effective December 4, 2023, and Items II, III, and IV, which are effective November 6, 2023.

John M. Tenaglia,

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

William F. Clark,

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

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2023–21319 Filed 10–4–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 4, 9, 13, 39, and 52**

[FAC 2023–06; FAR Case 2020–011; Item I; Docket No. FAR–2020–0011, Sequence No. 1]

RIN 9000–AO13

Federal Acquisition Regulation: Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders

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

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement supply chain risk information sharing and exclusion or

removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council.

DATES:

Effective date: December 4, 2023.

Applicability: The FAR changes apply to solicitations issued on or after December 4, 2023 in accordance with FAR 1.108(d).

For existing indefinite delivery contracts only, contracting officers shall modify them, in accordance with FAR 1.108(d), to include the FAR clause at 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition (including any applicable alternate) within 6 months of December 4, 2023, to apply to future orders. However, for Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts, if the FASCSA orders are going to be applied at the order level, then FAR clause 52.204–28 should be included instead, within 6 months of December 4, 2023.

If exercising an option or modifying an existing contract or task or delivery order to extend the period of performance, contracting officers shall include the FAR clause at 52.204–30, Federal Acquisition Supply Chain Security Act Orders-Prohibition (including any applicable alternate). When exercising an option, agencies should consider modifying the existing contract to add the clause in a sufficient amount of time to both provide notice for exercising the option and to provide contractors with adequate time to comply with the clause.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before December 4, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAC 2023–06, FAR Case 2020–011 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2020–011”. Select the link “Comment Now” that corresponds with FAR Case 2020–011. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2020–011” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2020–011” in all correspondence related to this case.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Marissa Ryba, Procurement Analyst, at 314–586–1280 or by email at Marissa.Ryba@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2023–06, FAR Case 2020–011.

SUPPLEMENTARY INFORMATION:**I. Background**

This interim rule revises the FAR to implement section 202 of the Federal Acquisition Supply Chain Security Act of 2018 (Title II of the SECURE Technology Act, Pub. L. 115–390, Dec. 21, 2018), and a final rule issued by the Federal Acquisition Security Council (FASC) (August 26, 2021, 86 FR 47581, effective September 27, 2021).

Foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its citizens. Vulnerabilities may be introduced during any phase of the product or service life cycle, including: design, development and production, distribution, acquisition and deployment, maintenance, and disposal. These vulnerabilities can include the incorporation of malicious software, hardware, and counterfeit components; flawed product designs; and poor manufacturing processes and maintenance procedures.

The U.S. Government’s efforts to evaluate threats to and vulnerabilities in supply chains have historically been undertaken by individual or small groups of agencies to address specific supply chain security risks. Because of the scale of supply chain risks faced by Government agencies, and the need for better coordination among a broader group of agencies, there was an organized effort within the Executive