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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;
Introduction

AGENCIES: 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) 2005-89. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

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. Please cite FAC 2005-89 and the specific 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

| <u>Item</u> | <u>Subject</u> | <u>FAR Case</u> | <u>Analyst</u> |
|-------------|--|-----------------|----------------|
| 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.

Federal Acquisition Circular (FAC) 2005-89 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-89 is effective [**insert date of publication in the Federal Register**] except for item I which is effective November 1, 2016, and items II, III, and IV, which are effective [**insert date 30 days after publication in the Federal Register**].

Dated: July 1, 2016.

Claire M. Grady,

<TITLE>Director, Defense Procurement and Acquisition Policy

Dated: July 1, 2016.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO,

Office of Acquisition Policy,

U.S. General Services Administration.

Dated: June 29, 2016.

William G. Roets,

Acting Assistant Administrator, Office of Procurement

National Aeronautics and Space Administration.

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