



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

<i>Item</i>	<i>Subject</i>	<i>FAR Case</i>	<i>Analyst</i>
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.

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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 **[Insert date of publication in the *Federal Register*]** except for Item I, which is effective **[Insert date 60 days after date of publication in the *Federal Register*]**, and Items II, III, and IV, which are effective **[Insert date 30 days after date of publication in the *Federal Register*]**.

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