

Offeror Representations and
Certifications—Commercial Items (Jul
2016)

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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;
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.

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)
2005–89, which amends the Federal
Acquisition Regulation (FAR). An
asterisk (*) next to a rule indicates that
a regulatory flexibility analysis has been
prepared. Interested parties may obtain
further information regarding these
rules by referring to FAC 2005–89,
which precedes this document. These
documents are also available via the
Internet at <http://www.regulations.gov>.

DATES: July 14, 2016.

FOR FURTHER INFORMATION CONTACT: For
clarification of content, contact the
analyst whose name appears in the table
below. Please cite FAC 2005–89 and the
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

Item	Subject	FAR Case	Analyst
*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.

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