

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–05; 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) 2023–05. 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 2023–05

Item	Subject	FAR case	Analyst
I	Use of Acquisition 360 to Encourage Vendor Feedback	2017–014	Delgado.
II	Small Disadvantaged Business Threshold	2023–004	Moore.
III	Update to ASSIST Database References	2022–008	Moore.
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 2023–05 amends the FAR as follows:

Item I—Use of Acquisition 360 To Encourage Vendor Feedback (FAR Case 2017–014)

This final rule amends the FAR to implement the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner. Contracting officers may insert the provision into solicitations in accordance with agency procedures. However, because it is voluntary, the impact on offerors or contractors is expected to be minimal.

Item II—Small Disadvantaged Business Threshold (FAR Case 2023–004)

This final rule amends the FAR to update the net worth threshold for the owners of small disadvantaged business concerns to align with SBA’s regulations, and updates obsolete FAR citations to certain SBA regulations.

Item III—Update to ASSIST Database References (FAR Case 2022–008)

This final rule amends the FAR to update obsolete contact information, web addresses, and office titles necessary to obtain Federal and Defense specifications and standards from the

DoD Acquisition Streamlining and Standardization Information System (ASSIST) website or, for Defense documents not available in ASSIST, from the Defense Standardization Program Office. These updates will ensure offerors have the most current information with which to obtain both Federal and Defense specifications and standards that are referenced in an agency’s solicitation. The final rule will not have a significant economic impact on a substantial number of small entities because it simply updates contact information, web addresses and office titles in existing regulations.

Item IV—Technical Amendments

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) 2023–05 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 2023–05 is effective August 8, 2023 except for Item I, which is effective September 22, 2023, and Items II, III,

and IV, which are effective September 7, 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/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2023–16657 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 26, and 52

[FAC 2023–05, FAR Case 2017–014, Item I; Docket No. 2017–001, Sequence No. 1]

RIN 9000–AN43

Federal Acquisition Regulation: Use of Acquisition 360 To Encourage Vendor Feedback

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process.

DATES: Effective September 22, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207, or by email at Zenaida.delgado@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2023-05, FAR Case 2017-014.

SUPPLEMENTARY INFORMATION:

I. Background

Understanding how contractors experience the Federal marketplace is critical to the Government's ability to build and maintain a healthy, diverse, and resilient supplier base that can help Federal agencies use acquisition as a catalyst to address the needs of our Nation. While many agencies periodically seek feedback from their contractors, there are no Government-wide mechanisms for agencies to collect and consider this information in a consistent and organized manner. This final rule fills an important gap in Government-vendor communications by providing a standardized tool for voluntary vendor feedback.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 85 FR 57177 on September 15, 2020, to encourage use of voluntary feedback mechanisms, where appropriate, to support continual improvement of the acquisition process. These mechanisms were largely developed through pilot efforts conducted in accordance with the Office of Federal Procurement Policy (OFPP) memorandum "Acquisition 360—Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders." The memorandum established the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner.

An advance notice of proposed rulemaking (ANPR) was published at 83 FR 34820 on July 23, 2018, to obtain public input regarding matters related to contractor feedback, the overall cost of compliance and any specific regulatory requirements that are particularly

burdensome. The proposed Acquisition 360 Survey questions were also posted.

One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

There are no significant changes from the proposed rule. Minor corrections were made at FAR 1.102-3(a)(3) to the citation referencing performance standards, and to update a reference at FAR 26.206(a). The new FAR provision at FAR 52.201-1 was added to the list of provisions and clauses at FAR 12.301(e) to reflect the final rule's applicability to commercial solicitations.

B. Analysis of Public Comments

1. Support for the Rule

Comment: The respondent commends OFPP and the Federal Acquisition Regulatory Council for their initiative in advancing this rule, and states that both the information and the initiative to promote voluntary feedback has merit. The respondent also notes the Government estimate of 10 minutes to complete the survey, and finds this to be a worthy time investment to facilitate effective communication that could prevent delays or errors due to miscommunication.

Response: The Councils appreciate the support for the rule.

2. True 360-Degree Rollout

Comment: The respondent suggests that "Acquisition 360" techniques would be most effective by implementing a "true 360-degree rollout, including adding questions that would identify both contract type and non-bidders."

Response: OFPP will consider the respondent's comment during development of the final question set. The final question set will be available for public comment as part of the Paperwork Reduction Act common form information collection notice.

3. Acquisition 360 Should Be Made Mandatory

Comment: Rather than merely encouraging Contracting Officers to insert the provision at FAR 52.201-1, more should be provided to ensure the full accomplishment of the Acquisition 360 initiative and achieve the objective

to obtain actionable feedback on the acquisition process. The respondent also recommends more direct language to encourage participants' feedback.

Response: While actionable feedback is desired, it is equally important that participants understand the survey is completely voluntary and will not impact the outcome of a specific acquisition. Adding language to further encourage survey use may confuse participants or compel a response out of fear that not responding would preclude the opportunity to participate in an acquisition.

4. Rule Does Not Accomplish the Goals of the 2015 OFPP Memorandum

i. Public Reporting

Comment: The effort outlined in the proposed rule falls short of the goals outlined in the memorandum dated March 18, 2015, titled "Improving the Acquisition Process through Timely Feedback from External and Internal Stakeholders," by failing to publicly report information acquired from such evaluations.

Response: The Councils and OFPP agree that publicly reporting survey data would be beneficial; however, the open-comment fields present the possibility of personal or private information being disclosed, if entered voluntarily by a participant. Full transparency is not feasible, as review and redaction of comments would be necessary prior to publication to prevent the unintentional release of personal or private information. The Councils and OFPP intend to publicize efforts taken in response to the survey data so that all parties can understand the impact and efforts undertaken as a result.

ii. Postaward Goals

Comment: The proposed rule does not meet the goals of Acquisition 360 by not including postaward experiences or acquisition outcomes in the evaluation.

Response: The survey does include questions regarding the postaward debriefing process. Additionally, the proposed revisions at 1.102-3(a)(3) encourage agencies to seek feedback on "targeted aspects of an acquisition throughout its lifecycle".

5. Use of Pilot Program Version of the Survey Questions

Comment: The respondent recommends reviving the original intent by using the pilot program version of the survey questions in the Acquisition 360 portal and adding three options: "contractor", "program office", and "acquisition office" to route survey participants to the appropriate version of the survey.

Response: OFPP will consider the respondent's comment during development of the final question set. The final question set will be available for public comment as part of the Paperwork Reduction Act common form information collection notice.

6. OMB Centralized Survey Portal

Comment: The respondent suggests that survey data be collected through the Office of Management and Budget's (OMB) centralized survey portal, which should facilitate greater data submission, access, and analysis across the Government.

Response: The current iteration of the survey, though hyper-linked at [acquisition.gov/360](https://www.acquisition.gov/360) for ease, is hosted via the OMB MAX Survey tool so that agencies can be granted access to data. Ease of access and the ability of agencies to receive their response data will remain a priority when and if the survey tool is moved to other platforms.

7. Anonymization of the Data

Comment: Respondent recommends language that allows the survey to anonymously categorize the data for publication.

Response: Subject to the quality and reliability of the data, the Councils and OFPP may perform certain analyses and develop statistics, reports, or other items summarizing the results of the collection activity and may make public aggregate information discussing efforts taken in response to the survey data. Efforts will be made not to disclose personal or private information related to any particular survey participant.

8. Use of Other Mechanisms

Comment: Respondent recommends language to encourage the use of other mechanisms where Government and industry may also provide input through a freeform response on the OMB portal.

Response: The revisions at 1.102–3(a) encourage agencies to “utilize a variety of feedback mechanisms available to the public (e.g., surveys, in-person, and/or group exchanges)” and seek feedback on “targeted aspects of an acquisition throughout its lifecycle.” This may include freeform response. In addition, improving communication between Government and industry partners is an ongoing process and multi-dimensional effort that involves the coordination of various elements and networks. Besides regulatory actions, agency personnel such as the designated industry liaisons and acquisition innovation advocates, continue to promote effective and meaningful communication strategies. With the aid of a “crowd-sourcing” idea

management tool, OFPP will also solicit additional, targeted input to gather more ideas on modernizing and improving communication during the acquisition process. These efforts will continue in parallel with the rollout of this rulemaking and the voluntary use of a standardized feedback survey as part of broader efforts to improve Government-vendor communication and strengthen the diversity and resiliency of the Federal supplier base.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, or for Commercial Services

This rule adds a provision at FAR 52.201–1, Acquisition 360: Voluntary Survey. The provision is not prescribed for any particular procurement; agencies, in accordance with their procedures, may include it in solicitations at or below the SAT and in solicitations for commercial services and commercial products, including COTS items.

IV. Expected Impact of the Rule

This final rule amends the FAR to implement the Acquisition 360 Survey tool, a voluntary online survey to elicit industry feedback on the preaward and debriefing processes in a consistent and standardized manner. Contracting officers may insert the provision into solicitations per agency guidance. However, because it is voluntary, the impact on offerors or contractors is expected to be minimal.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. DoD, GSA, and NASA will send this rule to each

House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This final rule amends the Federal Acquisition Regulation to implement the voluntary use of the Acquisition 360 Survey to elicit feedback on preaward and debriefing processes in a consistent and standardized manner. The objective of the rule is to encourage agency use of the Acquisition 360 Survey tool to obtain feedback from offerors which may be used to improve their acquisition processes.

No public comments were received in response to the initial regulatory flexibility analysis.

Data generated from the Federal Procurement Data System (FPDS) and the System for Award Management (SAM) have been used as the basis for estimating the number of small entities affected by this rule. Currently, there are approximately 331,899 small entities registered in SAM that were small in at least one North American Industry Classification Systems (NAICS) code. The rule, therefore, will potentially impact all 331,899 small entities.

To estimate the likely number of small entities impacted by the rule, we used the average of FPDS data for fiscal years 2020, 2021, and 2022. Examination of the data reveals that the number of unique small entities that received contract awards was 79,264. DoD, GSA, and NASA estimate that each unique small entity would respond to approximately 3 solicitations, equating to 237,791 potential offers. It is anticipated that 33 percent of these potential offerors will submit a response to the survey based upon the outcome of a previous OFPP-conducted pilot. Based upon this data, it is anticipated that 78,471 small entities will likely be affected by the rule.

The final rule encourages potential offerors to provide feedback at <https://www.acquisition.gov/360> on agency acquisition processes.

There were other alternatives considered, to include the status quo, for Government acquisition officials to elicit feedback from their contractors, such as vendor outreach with industry days on the agency's performance of its contract administration responsibilities; however, these would not accomplish the stated objective of the rule, nor would they minimize the economic impact of the rule on small entities.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel

for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB Control Number 9000–0204, Acquisition 360 Voluntary Survey.

List of Subjects in 48 CFR Parts 1, 12, 26, and 52

Government procurement.

William F. Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 12, 26, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 12, 26, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.102–3 and 1.102–4 [Redesignated]

■ 2. Redesignate sections 1.102–3 and 1.102–4 as sections 1.102–4 and 1.102–5.

■ 3. Add new section 1.102–3 to read as follows:

1.102–3 Evaluating agency acquisition processes.

(a) Agencies are encouraged to develop internal procedures seeking voluntary feedback from interested parties in an acquisition to assess process strengths and weaknesses and improve effectiveness and efficiency of the acquisition process. Agencies may—

(1) Utilize a variety of feedback mechanisms available to the public (e.g., surveys, in-person, and/or group exchanges);

(2) Utilize the core preaward and debriefing survey questions at <https://www.acquisition.gov/360>; and

(3) Seek additional feedback on targeted aspects of an acquisition throughout its lifecycle (e.g., performance standards at 1.102–2 or postaward contract administration responsibilities at 42.302).

(b) Contracting officers are encouraged to insert the provision 52.201–1, Acquisition 360: Voluntary Survey, in accordance with agency procedures.

(c) Contracting officers shall not review information until after contract

award and shall not consider it in the award decision.

■ 4. In section 1.106, amend the table by adding an entry for “52.201–1” in numerical order to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB control No.
* * * * *	
52.201–1	9000–0204
* * * * *	

1.108 [Amended]

■ 5. Amend section 1.108 by removing from paragraph (b) “1.102–4(b)” and adding “1.102–5(b)” in its place.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 6. Amend section 12.301 by—
 ■ a. Redesignating paragraphs (e)(1) through (4) as paragraphs (e)(2) through (5); and

■ b. Adding a new paragraph (e)(1).
 The addition reads as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *
 (e) * * *

(1) The contracting officer may use the provision at 52.201–1, Acquisition 360: Voluntary Survey, as prescribed in 1.102–3(b).

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PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.206 [Amended]

■ 7. Amend section 26.206 by removing from paragraph (a) “12.301(e)(4)” and adding “12.301(e)(5)” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 52.201–1 to read as follows:

52.201–1 Acquisition 360: Voluntary Survey.

As prescribed in 1.102–3(b), insert the following provision:
 Acquisition 360: Voluntary Survey (Sep 2023)

(a) All actual and potential offerors are encouraged to provide feedback on the preaward and debriefing processes,

as applicable. Feedback may be provided to agencies up to 45 days after award. The feedback is anonymous, unless the participant self-identifies in the survey. Actual and potential offerors can participate in the survey by selecting the following link: <https://www.acquisition.gov/360>.

(b) The Contracting Officer will not review the information provided until after contract award and will not consider it in the award decision. The survey is voluntary and does not convey any protections, rights, or grounds for protest. It creates a way for actual and potential offerors to provide the Government constructive feedback about the preaward and debriefing processes, as applicable, used for a specific acquisition.

(End of provision)

[FR Doc. 2023–16658 Filed 8–7–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, and 52

[FAC 2023–05, FAR Case 2023–004, Item II; Docket No. 2023–0004; Sequence No. 1]

RIN 9000–AO52

Federal Acquisition Regulation: Small Disadvantaged Business Threshold

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to adjust the net worth threshold for owners of small disadvantaged business concerns.

DATES: Effective September 7, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at carrie.moore@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2023–05, FAR Case 2023–004.

SUPPLEMENTARY INFORMATION: