

requester to appeal to the Chairman no less than 90 days after the date of such adverse determination, and the right of such requester to seek dispute resolution services from the agency's FOIA Public Liaison or the Office of Government Information Services.

(2) Upon granting a request, the Secretary shall promptly make records available to the requestor. Upon denial of such a request the Secretary shall promptly notify the requestor of the determination, explain the reason for denial, give an estimate of the volume of matter denied, and set forth the names and titles or positions of each person responsible for the denial of the request.

(3)(i) * * *

(B) Be filed not later than 90 days following receipt of notification of full or partial denial of records requested.

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(b) * * *

(3) If the time limit is extended as prescribed under this section, and the request cannot be processed within the extended time limit, the Secretary shall notify the requestor, and either provide the requestor with an opportunity to limit the scope of the request so that it may be processed within the time limit, or provide the requestor an opportunity to arrange with the Secretary an alternative time frame for processing the request or a modified request. To aid the requester, the Commission will make available its FOIA Public Liaison, who shall assist in the resolution of any dispute between the requester and the Commission, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services.

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■ 4. Amend § 503.33 by revising paragraph (a)(5) and adding paragraphs (a)(8) and (9) to read as follows:

§ 503.33 Exceptions to availability of records.

(a) * * *

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Commission, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

* * * * *

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

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■ 5. Amend § 503.34 by revising paragraph (b) to read as follows:

§ 503.34 Annual report of public information request activity.

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(b) Each such report shall be made available to the public in electronic format.

By the Commission.

Rachel E. Dickon,

Assistant Secretary.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 516 and 552

[Change 81; GSAR Case 2015-G513; Docket No. 2016-0021; Sequence No. 1]

RIN 3090-AJ79

General Services Administration Acquisition Regulation (GSAR); Fair Opportunity Complaints on GSA Contracts

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to clarify that the ordering-agency task and delivery order Ombudsman has jurisdiction and responsibility to review and resolve fair opportunity complaints on tasks and delivery orders placed against GSA multiple-award contracts.

DATES: *Effective:* January 9, 2017.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Dana Davis, General Services Acquisition Policy Division, GSA, by telephone at 202-357-9652 or by email at dana.munson@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR case 2015-G513.

SUPPLEMENTARY INFORMATION:

I. Discussion of Changes

The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) part 552, Solicitation Provisions and Contract

Clauses at 552.216-74 Task and Delivery Orders. The final rule clarifies that the jurisdiction and responsibility to review and resolve fair opportunity complaints placed against GSA multiple-award contracts lies with the ordering-agency task and delivery order Ombudsman. Also, the final rule requires the ordering agency to include contact information for their task and delivery order Ombudsman when placing task or delivery orders against GSA multiple-award contracts. Finally, so that GSA can maintain insight into fair opportunity complaints that arise on orders other agencies place against these contracts, the final rule requires the contractor to provide a copy of its complaint to the GSA Procurement Ombudsman for informational purposes, at the same time the contractor files its complaint to the ordering agency for action.

II. Public Comments Not Required

41 U.S.C. 1707, Publication of proposed regulations, applies to the publication of the General Services Administration Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including amendment or modification thereof) must be published for public comment if it has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it does not have a significant impact on the public, contractors or offerors. This rule brings internal GSAR policy up-to-date with FAR policy. The change clarifies internal operating procedures by the Government by clarifying GSA's jurisdiction regarding fair opportunity complaints. The proposed rule comment period is impracticable as the FAR has already directed specific regulatory action.

III. 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. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant GSAR revision and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This final rule does not contain any information collection that requires additional approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 516 and 552

Government procurement.

Dated: December 29, 2016.

Nicholas West,

Acting Senior Procurement Executive, Acting Director, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, GSA amends 48 CFR parts 516 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 516 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 516—TYPES OF CONTRACTS

■ 2. Amend section 516.506 by—

- a. Revising paragraph (b);
- b. Redesignate paragraph (d) as paragraph (e); and
- c. Adding a new paragraph (d).

The revision and addition reads as follows:

516.506 Solicitation provisions and contract clauses.

* * * * *

(b) In solicitations and contracts for multiple-award contracts where GSA is the only ordering activity, or for GSA orders placed against a GSA multiple-award contract, insert clause 552.216–74, GSA Task-Order and Delivery-Order Ombudsman. This clause shall not be included in GSA-awarded contracts available for multiple agency use (*i.e.*, Governmentwide Acquisition Contracts, Multi-Agency Contracts); instead, see paragraph (d) of this section.

* * * * *

(d) Insert clause 552.216–76, Ordering Agency Task-Order and Delivery-Order Ombudsman in all GSA-awarded contracts available for multiple agency use (*i.e.*, Governmentwide Acquisition Contracts, Multi-Agency Contracts).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 552.216–74 by revising the date of the clause and paragraph (c) to read as follows:

552.216–74 GSA Task-Order and Delivery-Order Ombudsman.

* * * * *

GSA Task-Order and Delivery-Order Ombudsman JAN 2017)

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(c) The GSA Task-Order and Delivery-Order Ombudsman is located at the General Services Administration (GSA), Office of Government-wide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Task-Order and Delivery-Order Ombudsman can be found at: <http://www.gsa.gov/ombudsman>.

(End of Clause)

■ 4. Add section 552.216–76 to read as follows:

552.216–76 Ordering Agency Task-Order and Delivery-Order Ombudsman.

As prescribed in 516.506(d), insert the following provision:

Ordering Agency Task-Order and Delivery-Order Ombudsman (JAN 2017)

(a) *Ordering Agency Task-Order and Delivery-Order Ombudsman.* The Ordering Agency shall designate a Task-Order and Delivery-Order Ombudsman to review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders placed against GSA Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. The contact information for the Ordering Agency Task-Order and Delivery-Order Ombudsman shall be made available to contractors.

(b) *Submission of Complaints.* When a contractor submits a complaint to the Ordering Agency’s designated Task-Order and Delivery-Order Ombudsman, the contractor shall also send a copy of the complaint to the GSA Procurement Ombudsman, for informational purposes. The GSA Procurement Ombudsman is located at the General Services Administration, Office of Governmentwide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Procurement Ombudsman can be found at: <http://www.gsa.gov/ombudsman>.

(c) If the contractor is not satisfied with the resolution of its complaint by the Ordering Agency Task-Order and Delivery-Order Ombudsman, the contractor may follow the procedures outlined in FAR subpart 33.1, as applicable (*e.g.*, FAR 16.505(a)(10)).
(End of Clause)

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