

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 102, 105, 300, 301, 302, 303, and 304

48 CFR Chapter 5

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: We are publishing our fall 2017 regulatory agenda pursuant to Executive Order 12866 “Regulatory Planning and Review,” 58 FR 51735 (1993), with particular adherence to E.O. 13771, “Reducing Regulation and Controlling Costs,” 82 FR 9339 (2017), E.O. 13777, “Enforcing the Regulatory Reform Agenda,” 82 FR 12285, and the Regulatory Flexibility Act, 5 U.S.C. 601 to 612. The purpose of publishing this

agenda is to give notice of regulatory activity being undertaken by GSA in order to provide the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: Please direct all general comments and inquiries to Francis Poe, Acting Division Director, Regulatory Secretariat Division at 202–501–4755. For comments on specific regulatory actions, please contact the person identified as the point of contact for that action.

SUPPLEMENTARY INFORMATION: The information provided in the Unified Agenda (Agenda) previews the rulemaking activities that we expect to undertake in the immediate future. The Agenda focuses primarily on those actions expected to result in publication of Advanced Notices of Proposed Rulemaking, Notices of Proposed Rulemaking, or Final Rules within the next 12 months.

GSA is not a major regulatory agency outside of its work as a member of the Federal Acquisition Regulatory Council and does not have regulatory actions that are likely to have a significant economic impact on a substantial number of small entities.

A fully searchable e-Agenda is available for viewing in its entirety at www.reginfo.gov. Agenda information is also available at www.regulations.gov, the government-wide website for submission of comments on proposed regulations. Our fall 2017 agenda follows.

FOR FURTHER INFORMATION CONTACT: Francis Poe, Acting Division Director, Regulatory Secretariat Division at (202) 501–4755.

Dated: September 29, 2017.

Allison Fahrenkopf Brigati,
Associate Administrator, Office of Government-wide Policy.

GENERAL SERVICES ADMINISTRATION—PROPOSED RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|--------------|--|---------------------------|
| 326 | General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G506, Construction Manager as Constructor Contracting. | 3090–AJ64 |
| 327 | General Services Administration Acquisition Regulation (GSAR); GSAR Case 2016–G511, Information and Information Systems Security. | 3090–AJ84 |
| 328 | General Services Administration Acquisition Regulation (GSAR); GSAR Case 2016–G515, Cyber Incident Reporting. | 3090–AJ85 |

GENERAL SERVICES ADMINISTRATION—FINAL RULE STAGE

| Sequence No. | Title | Regulation Identifier No. |
|--------------|---|---------------------------|
| 329 | General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G503, Construction Contract Administration. | 3090–AJ63 |
| 330 | General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G512, Unenforceable Commercial Supplier Agreement Terms. | 3090–AJ67 |
| 331 | General Services Administration Acquisition Regulation (GSAR); GSAR 2016–G506, Federal Supply Schedule, Order-Level Materials. | 3090–AJ75 |
| 332 | General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013–G502, Federal Supply Schedule Contracting (Administrative Changes). | 3090–AJ41 |

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Proposed Rule Stage

326. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G506, Construction Manager as Constructor Contracting

E.O. 13771 Designation: Other.

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

Abstract: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add new sections to GSAR part 536, Construction and Architect-Engineer

Contracts, to incorporate contracting policies and procedures for different construction project delivery methods, focused on construction manager as constructor (CMc).

The current FAR and GSAR do not have detailed coverage differentiating for various construction project delivery methods, although there is some guidance regarding source selection. GSA unique policies on CMc have been previously issued through other means. By incorporating these policies into the GSAR and differentiating for various construction methods, the GSAR will provide centralized guidance to ensure consistent application of construction

project principles across the organization.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|---------|
| NPRM | 12/00/17 | |
| NPRM Comment Period End. | 02/00/18 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christina Mullins, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–4966, *Email:* christina.mullins@gsa.gov, *RIN:* 3090–AJ64

327. General Services Acquisition Regulation (GSAR); GSAR Case 2016–G511, Information and Information Systems Security

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c)

Abstract: GSA is proposing to update the General Services Administration Acquisition Regulation (GSAR) to update existing GSA cybersecurity requirements that did not previously go through the rulemaking process and integrate these updated requirements within the GSAR. Integrating these requirements into the GSAR will allow GSA to benefit from public comments received during the rulemaking process. The GSA cybersecurity requirements mandate contractors protect the confidentiality, integrity, and availability of unclassified GSA information and information systems from cybersecurity vulnerabilities, and threats in accordance with the Federal Information Security Modernization Act of 2014 and associated Federal cybersecurity requirements. This rule will require contracting officers to incorporate applicable GSA cybersecurity requirements within the statement of work to ensure compliance with Federal cybersecurity requirements and implement best practices for preventing cyber incidents. These GSA requirements mandate applicable controls and standards (e.g. U.S. National Institute of Standards and Technology, U.S. National Archive and Records Administration Controlled Unclassified Information standards).

Cybersecurity requirements for internal contractor systems, external contractor systems, cloud systems, and mobile systems will be covered by this rule. It will also update existing GSAR provision 552.239–70, Information Technology Security Plan and Security Authorization and GSAR clause 552.239–71, Security Requirements for Unclassified Information Technology Resources to only require the provision and clause when the contract will involve information or information systems connected to a GSA network.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|---------|
| NPRM | 04/00/18 | |
| NPRM Comment Period End. | 06/00/18 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michelle Bohm, Contract Specialist, General Services Administration, 100 S Independence Mall W Room: 9th Floor, Philadelphia,

PA 19106–2320, *Phone:* 215 446–4705, *Email:* michelle.bohm@gsa.gov.
RIN: 3090–AJ84

328. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2016–G515, Cyber Incident Reporting

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c)

Abstract: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to update requirements for GSA contractors to report cyber incidents that could potentially affect GSA or its customer agencies. The rule updates the existing cyber incident reporting policy within GSA Order CIO 9297.2, GSA Information Breach Notification Policy that did not previously go through the rulemaking process and integrates these updated cyber incident reporting requirements into the GSAR. Integrating these requirements into the GSAR will allow GSA to benefit from public comments received during the rulemaking process. It instructs GSA contracting officers to include cyber incident reporting requirements within GSA contracts and orders placed against GSA multiple award contracts. The rule outlines the roles and responsibilities of the GSA contracting officer, contractors, and agencies ordering off of GSA’s contracts in the reporting of a cyber incident.

This rule establishes a contractor’s responsibility to report any cyber incident where the confidentiality, integrity, or availability of GSA information or information systems are potentially compromised or where the confidentiality, integrity, or availability of information or information systems owned or managed by or on behalf of the U.S. Government is potentially compromised. It establishes an explicit timeframe for reporting cyber incidents, details the required elements of a cyber incident report, and provides the required Government’s points of contact for submitting the cyber incident report.

The rule also outlines the additional contractor requirements that may apply for any cyber incidents involving personally identifiable information. In addition, the rule clarifies both GSA and ordering agencies’ authority to access contractor systems in the event of a cyber incident. It also establishes the role of GSA in the cyber incident reporting process and outlines how the primary response agency for a cyber incident is determined. In addition, it establishes the requirement for the contractor to preserve images of affected systems and ensure contractor employees receive appropriate training

for reporting cyber incidents. The rule also outlines how contractor attributional/proprietary information provided as part of the cyber incident reporting process will be protected and used.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|---------|
| NPRM | 08/00/18 | |
| NPRM Comment Period End. | 10/00/18 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kevin Funk, Sustainability Program Specialist, General Services Administration, 20 N 8th Street, Room 08S23G, Philadelphia, PA 19107–3101, *Phone:* 215 446–4860, *Email:* kevin.funk@gsa.gov.
RIN: 3090–AJ85

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Final Rule Stage

329. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G503, Construction Contract Administration

E.O. 13771 Designation: Other.
Legal Authority: 40 U.S.C. 121(c)

Abstract: GSA is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 536, Construction and Architect-Engineer Contracts, and related parts, to maintain consistency with the Federal Acquisition Regulation (FAR) and to incorporate updated construction contract administration policies and procedures.

The changes fall into five categories:

- (1) Incorporating existing Agency policy previously issued through other means,
- (2) reorganizing to better align with the FAR,
- (3) incorporating Agency unique clauses,
- (4) incorporating supplemental material, and
- (5) editing for clarity.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|-------------|
| NPRM | 09/09/16 | 81 FR 62434 |
| NPRM Comment Period End. | 11/08/16 | |
| Final Rule | 04/00/18 | |

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Christina Mullins, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–4966, *Email:* christina.mullins@gsa.gov.

RIN: 3090-AJ63

330. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015-G512, Unenforceable Commercial Supplier Agreement Terms

E.O. 13771 Designation: Deregulatory.

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

Abstract: GSA is amending the General Services Administration Acquisition Regulation (GSAR) to streamline the evaluation process to award contracts containing commercial supplier agreements. Government and industry often spend significant time negotiating elements common in almost every commercial supplier agreement where the terms conflict with Federal law. Past negotiations would always lead to deleting the terms from the contract, but only after several rounds of legal review by both parties. This case would explore methods for automatically nullifying these common terms out of contracts.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|-------------|
| NPRM | 05/31/16 | 81 FR 34302 |
| NPRM Comment Period End. | 08/01/16 | |
| Final Rule | 01/00/18 | |

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Janet Fry, Program Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 703 605-3167, Email: janet.fry@gsa.gov.

RIN: 3090-AJ67

331. General Services Administration Acquisition Regulation (GSAR); GSAR 2016-G506, Federal Supply Schedule, Order-Level Materials

E.O. 13771 Designation: Deregulatory.

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

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to clarify the authority to acquire order-level materials when placing a task order or establishing a Blanket Purchase Agreement (BPA) against a Federal Supply Schedule (FSS) contract. This proposed rule seeks to provide clear and comprehensive implementation of the ability to acquire order-level materials through the FSS program to create parity between FSS contracts and commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts, reduce the need to conduct less efficient procurement transactions, lower barriers of entry to the Federal marketplace, and make it easier to do business with the Federal Government.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|-------------|
| NPRM | 09/09/16 | 81 FR 62445 |
| NPRM Comment Period End. | 11/08/16 | |
| Final Rule | 01/00/18 | |

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Leah Price, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 703 605-2558, Email: leah.price@gsa.gov.

RIN: 3090-AJ75

OFFICE OF GOVERNMENTWIDE POLICY

332. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013-G502, Federal Supply Schedule Contracting (Administrative Changes)

E.O. 13771 Designation: Other.

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

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to clarify and update the contracting by negotiation GSAR section and incorporate existing Federal Supply Schedule Contracting policies and procedures, and corresponding provisions and clauses.

Timetable:

| Action | Date | FR Cite |
|--------------------------|----------|-------------|
| NPRM | 09/10/14 | 79 FR 54126 |
| NPRM Comment Period End. | 11/10/14 | |
| Final Rule | 03/00/18 | |

Regulatory Flexibility Analysis

Required: Yes.

Agency Contact: Dana L. Munson, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 202 357-9652, Email: dana.munson@gsa.gov.

RIN: 3090-AJ41

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