

**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: **[INSERT DATE OF PUBLICATION IN THE  
FEDERAL REGISTER].**

**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](mailto: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 ( [**INSERT ABBREVIATED MONTH AND YEAR OF DATE PUBLICATION IN THE FEDERAL REGISTER**] )

\* \* \* \* \*

(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 ( [**INSERT ABBREVIATED MONTH AND YEAR OF DATE PUBLICATION IN THE FEDERAL REGISTER**] )

(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)

**BILLING CODE 6820-61**

[FR Doc. 2016-31932 Filed: 1/6/2017 8:45 am; Publication Date: 1/9/2017]