



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815 and 1852

[Notice (23-118)]

RIN 2700-AE75

NASA Federal Acquisition Regulation Supplement: NASA FAR

Supplement - NASA Ombudsman Program

(NFS Case 2023 -N022)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: National Aeronautics and Space Administration (NASA) is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to update the policy concerning the NASA Ombudsman Program.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: James Becker, telephone 301-286-1296; facsimile 202-358-3082.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the NASA FAR Supplement (NFS) to update the policy concerning the NASA Ombudsman Program.

When awarding a multiple award indefinite-quantity contracts, 41 U.S.C. 4106(g) requires agencies to have a task- and delivery-order ombudsman who will be responsible for reviewing complaints from contractors and ensuring that they are

afforded a fair opportunity to be considered for the award of an order, consistent with the procedures in the contract. This requirement is implemented at Federal Acquisition Regulation (FAR) 16.505(b)(8). FAR 16.504(a)(4)(v) requires the solicitation and contract for an indefinite-quantity to include the name, address, telephone number, facsimile number, and e-mail address of the agency's task and delivery order ombudsman, if multiple awards may be made.

To implement the requirement at FAR 16.504(a)(4)(v), several agencies created a contract clause that provides contractors with the agency ombudsman's responsibilities and contact information. NFS clause 1852.215-84 Ombudsman, Alternate I, provides this information for task and delivery order contracts. As several agencies use a clause to provide this information to contractors, the Department of Defense (DOD), General Services Administration (GSA), and NASA processed a FAR case to implement a clause at the FAR level that would be available for all agencies to use.

DOD, GSA, and NASA have undertaken rulemaking to formally incorporate this change. These rulemaking changes were published in the Federal Register (84 FR 38836) on August 7, 2019, FAC 2019-04, and FAR Case 2017-020, Ombudsman for Indefinite Delivery Contracts, effective September 6, 2019.

This rule does not add any new solicitation provisions or contract clauses. This rule merely revises the policy concerning the NASA Ombudsman Program by deleting Alternate I and

references to the use of Alternate I of NFS clause 1852.215-84 Ombudsman. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and 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 NASA is not issuing a new regulation; rather, this rule is merely deleting Alternate I to NFS clause 1852.215-84 Ombudsman since the alternate to the clause is no longer needed.

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. requirements with which vendors must comply.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ``major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a ``major rule'' under 5 U.S.C. 804(2).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section II. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the 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 1815 and 1852

Government procurement.

Erica D. Jones,

NASA FAR Supplement Manager.

Accordingly, NASA amends 48 CFR parts 1815 and 1852 as follows:

1. The authority citation for parts 1815 and 1852 continue to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1815—CONTRACTING BY NEGOTIATION

2. Revise section 1815.7003 to read as follows:

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215-84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 1852.215-84 by:

- a. Revising the date of the clause and paragraph (b); and
- b. Removing ALTERNATE I.

The revisions read as follows:

1852.215-84 Ombudsman.

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(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at <https://www.hq.nasa.gov/office/procurement/regs/Procurement-Ombuds-Comp-Advocate-Listing.pdf>. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End Clause)