

a copy of this Order to Congress or the Government Accountability Office.

*Regulatory Flexibility Act*

Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act<sup>8</sup> does not apply.

**List of Subjects in 47 CFR Part 76**

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 by making the following technical amendment:

**PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.66 is amended by revising paragraph (e)(3) to read as follows:

**§ 76.66 Satellite broadcast signal carriage.**

\* \* \* \* \*

(e) \* \* \*

(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024, and ending on December 31, 2026. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, 2027, and ending December 31, 2029, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (*i.e.*, October 2024, October 2027, etc.). A satellite carrier may

determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

\* \* \* \* \*

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**GENERAL SERVICES ADMINISTRATION**

**48 CFR Parts 515, 538, and 552**

**[GSAR Case 2019–G503; Docket No. 2022–0019; Sequence No. 1]**

**RIN 3090–AK09**

**General Services Administration Acquisition Regulation (GSAR); Streamline GSA Commercial Contract Clause Requirements**

**AGENCY:** Office of Acquisition Policy, General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is issuing this final rule amending the GSAR to clarify and streamline the clauses contracting officers should reference in acquisitions for commercial products and services.

**DATES:** *Effective:* October 12, 2023.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Nicholas Giles or Ms. Johnnie McDowell, Procurement Analysts at 202–718–6112 or [GSARPolicy@gsa.gov](mailto:GSARPolicy@gsa.gov). For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegsec@gsa.gov](mailto:GSARegsec@gsa.gov). Please cite GSAR Case 2019–G503.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

GSA published a proposed rule in the **Federal Register** at 87 FR 77783 on December 20, 2022, to amend the GSAR to streamline, reorganize, and delete duplicative and outdated clauses. These changes can be categorized into three areas: reorganization of commercial clauses and applicable parts; relocation of an FSS clause; and editorial changes.

This rule updates several clauses and other related parts by eliminating out of date references and any requirements that are not necessary by law. Specifically, GSA streamlined and reorganized the references in GSAR Clauses 552.212–71 and 552.212–72, and other related GSAR sections to reduce duplicative content and to ensure consistency within GSA’s

guidance as it relates to the acquisition of commercial products and commercial services.

In addition, GSA identified several duplicative and outdated clauses incorporated by reference at GSAR 552.212–71 *Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and Commercial Services*, GSAR 552.212–72 *Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services*, and other related GSAR sections.

**II. Discussion of the Final Rule**

*A. Analysis of Public Comments*

GSA provided the public a 60-day comment period (December 20, 2022, to February 21, 2023). GSA did not receive any comments from the public.

*B. Summary of Changes*

GSA did not make any significant changes, or changes of any kind, since publication of the proposed rule.

**III. Expected Impact of the Rule**

This final rule will assist GSA’s contracting officers in ensuring appropriate safeguards are followed when procuring commercial products and services. Contracting officers will be able to clearly identify which clauses to consider inserting in solicitations and contracts when procuring commercial products and services. In addition, the removal of duplicative and outdated clauses will reduce the amount of time contracting officers need in preparing solicitation packages and monitoring contracts.

**IV. Executive Orders 12866, 13563 and 14094**

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. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this

<sup>8</sup> 5 U.S.C. 601 *et seq.* See *id.* section 601(2).

is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

**V. 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. The GSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. OIRA in OMB has determined that this is not a major rule under 5 U.S.C. 804.

**VI. Regulatory Flexibility Act**

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.*, because the rule incorporates clauses that are currently in use in GSA commercial solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared. There were no comments submitted in response to the initial regulatory flexibility analysis provided in the proposed rule. The FRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

The GSA is issuing a final rule amending the GSAR at 552.212–71 and 552.212–72 and related parts to clarify and streamline the contract terms and conditions applicable to GSA acquisitions of commercial products and commercial services.

The objective of the final rule is to ensure contracting officers consider the appropriate clauses when procuring GSA acquisitions for commercial products and services.

There were no comments submitted and therefore no significant issues raised by the public in response to the initial regulatory flexibility analysis. However, GSA made three minor changes to GSAR clauses 552.212–71, 552.212–72 and 552.238–117. The clauses all required the date of the

clauses to be changed to reflect the modifications made in this GSAR case.

The final rule applies to large and small business entities, which are responding to solicitations or are awarded contracts for commercial products or services. This final rule will not have a significant economic impact on a substantial number of small entities because the changes to the GSAR do not add any new requirements but rather will streamline the procurement process by reorganizing clauses, removing duplicative or outdated clauses, transferring, re-titling and renumbering referenced clauses and make technical and editorial changes to ensure contracting officers incorporate the correct clauses when procuring commercial products and commercial services.

GSA does not expect this final rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601.

The final rule does not impose any new reporting or recordkeeping requirements on any small entities.

The final rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives.

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.

**VII. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 515, 538 and 552.**

Government procurement.

**Jeffrey A. Koses,**

*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

Therefore, GSA amends 48 CFR parts 515, 538 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 515, 538, and 552 continues to read as follows:

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

**PART 515—CONTRACTING BY NEGOTIATION**

**515.408 [Amended]**

- 2. Amend section 515.408 by—
- a. Removing paragraph (a)(1);
- b. Redesignating paragraphs (a)(2), (3) and (4) as paragraphs (a)(1), (2) and (3);
- c. Removing the first sentence in the note in paragraph (b) introductory text;
- d. Removing the parenthetical last sentence in paragraph (b)(3);
- e. Removing the first sentence in the “Column 2” under paragraph (c);
- f. Removing paragraph (d); and
- g. Redesignating paragraph (e) as paragraph (d).

**PART 538—Federal Supply Schedule Contracting**

- 3. Amend section 538.273 by revising paragraph (d)(22) introductory text and adding paragraph (d)(37) to read as follows:

**538.273 FSS solicitation provisions and contract clauses.**

\* \* \* \* \*

(d) \* \* \*

(22) 552.238–98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The GSAR clauses and GSAR provisions in paragraphs (d)(22)(i) through (xi) of this section shall also be inserted in full text, when applicable.

\* \* \* \* \*

(37) 552.238–117, Price Adjustment—Failure to Provide Accurate Information. Use only in FSS solicitations and contracts under the MAS program. This clause is used when the contract contains the basic clause 552.238–80 Industrial Funding Fee and Sales Reporting.

\* \* \* \* \*

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 4. Revise section 552.212–71 to read as follows:

**552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Products and Commercial Services.**

As prescribed in 512.301(a)(1), insert the following clause:

**Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and Commercial Services (Oct 2023)**

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement

agency policy applicable to acquisition of commercial products, including commercial components, and commercial services. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The Contracting Officer should check the clauses in paragraph (b) that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity. The GSAR clauses in paragraph (b) of this section are incorporated by reference.

(b) Clauses.

- 552.203-71 Restriction on Advertising
- 552.211-73 Marking
- 552.219-70 Allocation of Orders—Partially Set-Aside Items
- 552.229-70 Federal, State, and Local Taxes
- 552.232-72 Final Payment Under Building Services Contracts
- 552.237-71 Qualifications of Employees
- 552.242-70 Status Report of Orders and Shipments

■ 5. Revise section 552.212-72 to read as follows:

**552.212-72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services.**

As prescribed in 512.301(a)(2), insert the following clause:

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services (Oct 2023)**

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in

effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the lists in paragraphs (a) and (b). The contracting officer may add the date of the provision or clause if desired for clarity. The GSAR provisions in paragraph (a) and GSAR clauses in paragraph (b) are incorporated by reference.

(a) Provisions.

552.223-72 Hazardous Material Information.

(b) Clauses.

552.215-70 Examination of Records by GSA.

552.223-70 Hazardous Substances.

552.223-71 Nonconforming Hazardous Material.

552.223-73 Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) for Shipments.

552.232-23 Assignment of Claims.

**552.215-72 [Removed and Reserved]**

■ 6. Remove and reserve section 552.215-72.

■ 7. Add section 552.238-117 to read as follows:

**552.238-117 Price Adjustment—Failure to Provide Accurate Information.**

As prescribed in 538.273(d)(37), insert the following clause:

**Price Adjustment—Failure To Provide Accurate Information (Oct 2023)**

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) Submit information that was current, accurate, and complete; or

(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

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