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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1 and 7

[FAC 2005-67; FAR Case 2013-004; Item II; Docket 2013-0004, Sequence 1]

RIN 9000-AM52

Federal Acquisition Regulation; Contracting Officer's Representative

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to improve contract surveillance by clarifying the contracting officer's representative (COR) responsibilities.

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER

PUBLICATION IN THE FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-67, FAR Case 2013-004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule to improve contract surveillance by clarifying the COR responsibilities in FAR 1.602-2(d). In addition, a corresponding change is also made at FAR 7.104(e).

This case originated from a DoD Panel on Contracting Integrity recommendation. The DoD Panel on Contracting Integrity, an internal DoD panel, consists of senior-level DoD officials from across DoD working to review progress made by DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur, and recommend changes in law, regulations, and policy to eliminate the areas of vulnerability. In order to improve the contracting environment, this rule provides additional explanation in the FAR to ensure that CORs understand their duties and responsibilities to survey contractor performance.

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 has either a significant effect beyond the internal operation 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 only involves internal Government procedures regarding the appointment of CORs and the clarification of COR responsibilities. This rule does not have a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure, or form, and there is no significant cost or administrative impact on contractors or offerors.

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 FAR revision and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The final 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 1 and 7

Government procurement.

Dated: June 13, 2013

William Clark,
Acting Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1 and 7 as set forth below:

1. The authority citation for 48 CFR parts 1 and 7 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.602-2 by—

- a. Removing from the end of paragraph (b) "and";
- b. Removing from paragraph (c) "." and adding "; and" in its place; and
- c. Revising paragraph (d) to read as follows:

1.602-2 Responsibilities.

* * * * *

(d) Designate and authorize, in writing and in accordance with agency procedures, a contracting officer's representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate, unless the contracting officer retains and executes the COR duties. See 7.104(e).
A COR—

(1) Shall be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the current Office of Management and

Budget memorandum on the Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR) guidance, or for DoD, in accordance with the current applicable DoD policy guidance;

(3) Shall be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedures;

(4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions;

(6) Shall be nominated either by the requiring activity or in accordance with agency procedures; and

(7) Shall be designated in writing, with copies furnished to the contractor and the contract administration office—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

PART 7—ACQUISITION PLANNING

3. Amend section 7.104 by revising paragraph (e) to read as follows:

7.104 General procedures.

* * * * *

(e) The planner shall ensure that a COR is nominated as early as practicable in the acquisition process by the requirements official or in accordance with agency procedures. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. See 1.602-2(d).

[BILLING CODE 6820-EP]

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