

security and law enforcement review and advance the shared goal of the Commission and industry, including small entities, to make the Executive Branch review process as efficient as possible. As discussed in the FRFA in the *Executive Branch Review Order*, timeframes for review of FCC applications referred to the Executive Branch have also been adopted, which will help prevent unnecessary delays and make the process more efficient and transparent, which ultimately benefits all applicants, including small entities.

#### G. Report to Congress

65. The Commission will send a copy of the Second Report and Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

#### Ordering Clauses

66. *It is ordered* that, pursuant to sections 4(i), 4(j), 214, 303, 309, 310 and 413 of the Communications Act as amended, 47 U.S.C. 154(i), 154(j), 214, 303, 309, 310 and 413, and the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and Executive Order No. 10530, Section 5(a) reprinted as amended in 3 U.S.C. 301, this Second Report and Order is adopted.

67. *It is further ordered* that as discussed herein, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.261, the Chief of the International Bureau is directed to administer and make available on a public website, a standardized set of national security and law enforcement questions for the Categories of Information set forth in Part 1, Subpart CC of the Commission's rules.

68. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

69. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Report and Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 502, 509, 511, 512, 514, 532, 536, 538, and 552

[GSAR Case 2021–G510; Docket No. GSA–GSAR 2021–0026; Sequence No. 1]

RIN 3090–AK37

#### General Services Administration Acquisition Regulation (GSAR); Updating References to Commercial Items

**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 conform to changes in the Federal Acquisition Regulation (FAR) that reflect an updated “commercial item” definition pursuant to a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

**DATES:** Effective January 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Carroll at 817–253–7858 or [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2021–G510.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This final rule amends the General Services Administration Acquisition Regulation (GSAR) to change instances of “commercial item(s)” with commercial product(s), commercial services(s), or both commercial product(s) and commercial service(s) to match similar actions taken in the Federal Acquisition Regulation (FAR).

FAR Case 2018–018 was published as a final rule at 86 FR 61017 on November 4, 2021, to implement section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to separate the definition of “commercial item” into the definitions of “commercial product” and “commercial service.”

It is important to note that the amendment to separate “commercial item” with “commercial product” and “commercial service” does not expand or shrink the universe of products or services that the Government may procure using GSAR part 512, nor does it change the terms and conditions vendors must comply with.

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term “commercial item(s)” with “commercial product(s),” “commercial service(s),” “commercial product(s) or commercial service(s),” or “commercial product(s) and commercial service(s)” in the GSAR including in part 552, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

##### II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

##### III. Discussion and Analysis

As changed by FAR Case 2018–018, and as required by section 836 of the NDAA for FY 2019, this final rule replaces instances of commercial item(s) with commercial product(s), commercial service(s), or both commercial product(s) and commercial service(s).

This final rule also replaces all instances of “non-commercial” and “noncommercial” with “other than commercial” as it relates to this rule. This is an editorial change and will provide consistent language to the FAR and throughout the GSAR.

Other minor editorial changes are made in this final rule to provide consistent language.

##### IV. 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 rule has been reviewed and determined by OMB not to be 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.

##### 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. 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).

## VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) 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 rule is not required to be published for public comment, because GSA is not issuing a new regulation; rather, this rule is merely an editorial change and will provide consistent language to the FAR (pursuant to section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019) throughout the GSAR. The rule does not expand or shrink the universe of products or services that the Government may procure using GSAR part 512, nor does it change the terms and conditions vendors must comply with.

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term “commercial item(s)” with “commercial product(s),” “commercial service(s),” “commercial product(s) or commercial service(s),” or “commercial product(s) and commercial service(s)” in the GSAR including in part 552, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

## VII. 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 VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

## VIII. 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 502, 509, 511, 512, 514, 532, 536, 538, and 552

Government procurement.

Jeffrey Koses,

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

Therefore, GSA amends 48 CFR parts 502, 509, 511, 512, 514, 532, 536, 538, and 552 as set forth below:

- 1. The authority citation for 48 CFR parts 502, 509, 511, 512, 514, 532, 536, 538, and 552 continues to read as follows:

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

### PART 502—DEFINITIONS OF WORDS AND TERMS

#### 502.101 [Amended]

- 2. Amend section 502.101 in the introductory text by—
  - a. Removing the words “that meet” and adding the words “that meets” in its place;
  - b. Removing the words “commercial item” and adding the words “commercial products and commercial services” in its place; and
  - c. Removing the word “supply” and adding the words “product” in its place.

### PART 509—CONTRACTOR QUALIFICATIONS

#### 509.405–1 [Amended]

- 3. Amend section 509.405–1 by removing from paragraph (b)(6) “commercial items.” and adding “commercial products and commercial services.” in its place.

### PART 511—DESCRIBING AGENCY NEEDS

#### 511.602 [Amended]

- 4. Amend section 511.602 by removing from introductory text of paragraph (d) “any items” and adding “any product or service” in its place.

### PART 512—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 5. Revise the heading for part 512 to read as set forth above.
- 6. Revise the heading of subpart 512.3 to read as follows:

### Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

#### 512.301 [Amended]

- 7. Amend section 512.301 by—
  - a. Removing from the section heading and paragraph (a) introductory text “commercial items” and adding “commercial products and commercial services” in its place;
  - b. Removing from paragraph (a)(1) “Acquisition of Commercial Items” and “commercial items” and adding “Acquisitions of Commercial Products and Commercial Services” and “commercial products and commercial services” in their places, respectively;
  - c. Removing from paragraph (a)(2) “Commercial Items” and “commercial item” and adding “Commercial Products and Commercial Services” and “commercial products and commercial services” in their places, respectively;
  - d. Removing from paragraph (b) “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and
  - e. Removing from paragraph (d)(1) “commercial items” and adding “commercial products and commercial services” in its place.

### PART 514—SEALED BIDDING

#### 514.201–2 [Amended]

- 8. Amend section 514.201–2 by removing from paragraph (b) “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

#### 514.270–1 [Amended]

- 9. Amend section 514.270–1 by removing “FAR 3.302” and adding “FAR 2.101” in its place.

#### 514.270–4 [Amended]

- 10. Amend section 514.270–4 in paragraph (d)(3)(ii) by removing “commercial items” and adding “commercial products” in its place and removing the word “etc.”.

#### 514.270–7 [Amended]

- 11. Amend section 514.270–7 by removing from paragraph (d) “item” everywhere it appears and adding “product” in its place.

### PART 532—CONTRACT FINANCING

- 12. Revise the heading of subpart 532.1 to read as follows:

**Subpart 532.1—Financing for Other Than a Commercial Purchase****532.908 [Amended]**

■ 13. Amend section 532.908 by removing from paragraph (b)(2) “not for commercial items” and adding “for other than commercial products or commercial services” in its place.

**PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS****536.7104 [Amended]**

■ 14. Amend section 536.7104 by removing “services or items” and adding “services or supplies” in its place.

**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING****538.271 [Amended]**

■ 15. Amend section 538.271 by removing from paragraph (a) “commercial items as defined in FAR 2.101” and adding “commercial products and commercial services” in its place.

**538.273 [Amended]**

■ 16. Amend section 538.273 by—

- a. Removing from paragraph (b) introductory text “Commercial Items” and adding “Commercial Products and Commercial Services” in its place;
- b. Removing from paragraph (c) introductory text “Evaluation—Commercial Items” and adding “Evaluation—Commercial Products and Commercial Services” in its place;
- c. Removing from paragraph (c)(1) “Commercial Items” and adding “Commercial Products and Commercial Services” in its place;
- d. Removing from paragraph (d) introductory text “Conditions—Commercial Items” and adding “Conditions—Commercial Products and Commercial Services” in its place;
- e. Removing from paragraph (d)(2) “contemplate items” and adding the word “contemplate products” in its place;
- f. Removing from paragraphs (d)(19) and (32) “for items” and adding “for products” in its place; and
- g. Removing from paragraph (d)(35) “when items” and adding “when products” in its place.

**538.7003 [Amended]**

■ 17. Removing from paragraph (a) “Conditions—Commercial Items” and adding “Conditions—Commercial Products and Commercial Services” in its place.

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

■ 18. Amend section 552.212–4 by revising the section heading, clause heading, and the date of the clause to read as follows:

**552.212–4 Contract Terms and Conditions—Commercial Products and Commercial Services (FAR DEVIATION).**  
\* \* \* \*

**Contract Terms and Conditions—Commercial Products and Commercial Services (FAR DEVIATION) (JAN, 2022).**  
\* \* \* \*

■ 19. Amend section 552.212–71 by—

- a. Revising the section heading, clause heading, and date of the clause; and
- b. In paragraph (a) introductory text:
  - i. Removing “items or components” and adding “products, including commercial components, and commercial services” in its place; and
  - ii. Removing from the last sentence “The clauses” and adding “The GSAR clauses” in its place.

The revisions read as follows:

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

**Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and Commercial Services (JAN, 2022).**  
\* \* \* \*

■ 20. Amend section 552.212–72 by—

- a. Revising the section heading, clause heading, and date of the clause; and
- b. Removing from the introductory text of the clause “commercial items or components” and adding “commercial products, including commercial components, and commercial services” in its place.

The revisions 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.**  
\* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services (JAN, 2022)**  
\* \* \* \*

■ 21. Amend section 552.232–25 by:

- a. Revising the date of the clause; and
- b. Removing from paragraph (a)(5) introductory text “Commercial Items”

and adding “Commercial Products and Commercial Services” in its place.

The revision reads as follows:

**552.232–25 Prompt Payment.**

\* \* \* \*

**Prompt Payment (JAN, 2022)**

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■ 22. Amend section 552.238–75 by—

- a. Revising the section heading, clause heading, and date of the clause; and
- b. In paragraph (a):
  - i. Revising the first sentence;
  - ii. Removing from the second sentence “complexity of items” and adding “complexity of products or services” in its place; and
  - iii. Removing from the last sentence “the item(s)” and adding “the products or services” in its place.

The revisions read as follows:

**552.238–75 Evaluation—Commercial Products and Commercial Services (Federal Supply Schedule).**  
\* \* \* \*

**Evaluation—Commercial Products and Commercial Services (Federal Supply Schedule) (JAN, 2022)**

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the commercial product or commercial service definition in FAR clause 52.202–1.

\* \* \*

\* \* \* \*

■ 23. Amend section 552.238–78 by:

- a. Revising the date of the clause; and
- b. Removing from paragraph (d) introductory text “an item’s” and adding “an product’s” in its place.

The revision reads as follows:

**552.238–78 Identification of Products That Have Environmental Attributes.**  
\* \* \* \*

**Identification of Products That Have Environmental Attributes (JAN, 2022)**

\* \* \* \*

■ 24. Amend section 552.238–82 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (b)(1)(vii) “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and
- c. Removing from Alternate II, paragraph (b)(1)(v), “Commercial Items” and adding “Commercial Products or Services” in its place.

The revision reads as follows:

**552.238–82 Modifications (Federal Supply Schedules).**  
\* \* \* \*

**Modifications (Federal Supply Schedules) (JAN, 2022)**

\* \* \* \* \*

■ 25. Amend section 552.238–111 by—

■ a. Revising the date of the clause; and

■ b. Removing form paragraph (c) “Commercial Items” and adding “Commercial Products and Commercial Services” in its place.

The revision reads as follows:

**552.238–111 Environmental Protection Agency Registration Requirement.**

\* \* \* \* \*

**Environmental Protection Agency Registration Requirement (JAN, 2022)**

\* \* \* \* \*

■ 26. Amend section 552.238–114 by—

■ a. Revising the date of the clause; and

■ b. Removing form paragraph (a)(1) “Commercial Item” and adding “Commercial Products and Commercial Services” in its place.

The revision reads as follows:

**552.238–114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.**

\* \* \* \* \*

**Use of Federal Supply Schedule Contracts by Non-Federal Entities (JAN, 2022)**

\* \* \* \* \*

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**BILLING CODE 6820–61–P**