



GSA Chief FOIA Officer

October 25, 2022

Dr. Jacqueline Stevens
Deportation Research Clinic
601 University Place, Suite 224 - Mail Room
Evanston, IL 60208

Dear Dr. Stevens:

This letter is in response to your U.S. General Services Administration (GSA) Freedom of Information Act (FOIA) appeal number (GSA-2022-001571), submitted on September 3, 2022, in which you appealed GSA's decision in response to FOIA request GSA-2021-001463.

On July 20, 2022, GSA responded to your FOIA request by providing all the information we had available that was responsive to your request for:

"[A]ll public comments and respective agency responses to FAR 15.404-4 Profits (<https://www.acquisition.gov/far/15.404-4>) and the five Federal Acquisition Regulation (FAR) amendments relevant. The public comments and agency responses I am seeking are for the following:

1. FAR 15.404-4 Profits (<https://www.acquisition.gov/far/15.404-4>)
2. 62 FR 51230 (<https://www.federalregister.gov/documents/1997/09/30/97-25666/federal-acquisition-regulation-part-15-rewrite-contracting-by-negotiation-and-competitive-range>) from Sept. 30, 1997;
3. 67 FR 6120 (<https://www.federalregister.gov/documents/2002/02/08/02-2919/federal-acquisition-regulation-technical-amendments>) from Feb. 8, 2002;
4. 70 FR 14954 (<https://www.federalregister.gov/documents/2005/03/23/05-5656/federal-acquisition-regulation-procurement-program-for-service-disabled-veteran-owned-small-business>) from Mar. 23, 2005;
5. 75 FR 38679 (<https://www.federalregister.gov/documents/2010/07/02/2010-15918/federal-acquisition-regulation-far-case-2008-011-government-property>) from July 2, 2010; and,
6. 79 FR 24202 (<https://www.federalregister.gov/documents/2014/04/29/2014-08744/federal-acquisition-regulation-positive-law-codification-of-title-41>) from Apr. 29, 2014.

The public comments and agency responses for the two most recent amendments, 75 FR 38979 (07/02/2010) and 79 FR 24202 (04/29/2014) are available on federalregister.gov and regulations.gov. However, the public comments and agency responses for the other rules and regulation are not publically available online."

On September 3, 2022, you appealed stating the following:

U.S General Services Administration
1800 F. Street, NW
Washington, DC 20405
Toll Free: (855)-675-3642
Fax: (202) 501-2727

"[...]The agency claimed that it had no responsive documents for portions of my request, even though the records I requested must be maintained by the General Services Administration (GSA). I therefore appeal the adequacy of the search for records not located.

The public comment documents I requested must be maintained and in the custody of the GSA because they fall under the definition of "record" per 44 U.S.C 3301. The public comments and respective agency responses to the language for "FAR 15.404-4 Profits" were received by the GSA. In addition, per the Code of Federal Regulations, these records are further classified as "working files" and, as such, must be maintained; they contain comments, annotations, and recommendations that add to a proper understanding of the agency's execution of its decisions and actions relating to FAR 15.404-4 Profits."

Upon review of your appeal and a follow-up search for all existing records, GSA affirms we have no additional information responsive to your request. As previously stated, comments are not requested for final rules (70 FR 14954). Additionally, per GSA 269.6/030 Federal Agency Regulation Documents Case Files (DAA-0269-2016-0012-0004), case files related to changes in the FAR are permanent records and transferred to NARA after 15 years.

This letter constitutes GSA's final determination regarding this matter. You have the right to seek judicial review of this determination in the United States District Court in the District in which you reside, have your principal place of business, in the District of Columbia, or where the records are located.

As an alternative to litigation, the Office of Government Information Services (OGIS) was created under the 2007 FOIA amendments to offer mediation services to resolve disputes between FOIA requesters and Federal agencies. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS by mail at the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, Room 2501, College Park, MD 20740, via e-mail at ogis@nara.gov, or by phone at (877) 684-6448.

Sincerely,
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Daniel F. Hall
Associate General Counsel for General Law