

# **GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL (GSAM)**

**U.S. GENERAL SERVICES ADMINISTRATION (GSA)  
OFFICE OF ACQUISITION POLICY (OAP)**



## **INTRODUCTION**

The General Services Administration Acquisition Manual (GSAM) consolidates the General Services Administration (GSA) agency acquisition rules and guidance.

### **Distinguishing Regulatory Material**

The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. GSAR material is shaded. The shading helps users to distinguish and identify those parts that are regulatory from those that apply internally to GSA.

The shaded parts are those subject to section 22 of the Office Federal Procurement Policy Act, as amended (41 U.S.C. 418b). GSA must publish these rules in the Federal Register and codify them in 48 CFR Chapter 5 in accordance with the Paperwork Reduction Act (44 U.S.C. 3051 et seq.) and the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rules that require publication fall into two major categories:

- (1) Those that affect GSA's business partners (e.g., prospective offerors, contractors).
- (2) Those that apply to acquisition of leasehold interests in real property. The Federal Acquisition Regulation (FAR) does not apply to leasing actions. GSA establishes regulations for lease of real property under the authority of 40 U.S.C. 490 note.

Separating regulatory material from internal directives decreases the number of rules subject to publication in the Federal Register. It also provides greater flexibility and responsiveness because an internal directive is easier and quicker to update or change.

### **Addressed to the Contracting Officer**

Both the GSAR and GSAM address the contracting officer, except where specifically indicated. "You" means the contracting officer.

### **Compliance with Internal Directives**

Non-shaded material is nonregulatory, but occasionally includes requirements that are mandatory for GSA personnel. These requirements are necessary to ensure uniformity or for other reasons.

### **Consolidation of Acquisition Directives**

To the extent practicable, acquisition directives have been integrated into one document to eliminate the burden of checking multiple sources for related acquisition guidance.

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## **SUBCHAPTER A—GENERAL**

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### PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

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## PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

### Subpart 501.1—Purpose, Authority, Issuance

#### 501.101 Purpose.

(a) The General Services Acquisition Regulation (GSAR) contains agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors and prospective contractors.

(b) The GSAR addresses rules directly to you, the contracting officer, unless otherwise indicated.

#### 501.103 Authority.

GSA's Senior Procurement Executive issues the GSAR under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

#### 501.104 Applicability.

(a) *General.* The GSAR applies to contracts for supplies or services, including construction.

(b) *Acquisition of leasehold interests in real property.* [Part 570](#) establishes rules for the acquisition of leasehold interests in real property. Other provisions of 48 CFR Chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-referenced in [Part 570](#).

(c) *Relationship to statute.* Some GSAR rules implement and interpret laws and other authorities affecting procurement. A GSAR rule specifically directed by statute has the force and effect of law.

(d) *GSAR/FAR Relationship.* The GSAR may deviate from the Federal Acquisition Regulation (FAR) if authorized. If the GSAR does not implement the FAR, the FAR alone governs.

#### 501.105 Issuance.

##### 501.105-1 Publication and code arrangement.

The GSAR is published in the following sources:

- (a) Daily issue of the Federal Register.
- (b) Annual Code of Federal Regulations (CFR), as Chapter 5 of Title 48.
- (c) GSA Acquisition Manual distributed within GSA.
- (d) GSA Home Page at <http://www.gsa.gov>. Click on either "Government Agencies" or on "Business and Industry," then click on "Acquisition."

#### 501.105-2 Arrangement of regulations.

(a) The GSAR numbers and captions policies and procedures to correspond to how they appear in the FAR, e.g., 1.104 in the FAR is 501.104 in the GSAR.

(b) GSAR rules not implementing the FAR have numbers beginning with 70, e.g., part 570, subsection 515.209-70.

(c) The GSAR may have gaps in its numbering scheme because a FAR rule may not require GSAR implementation.

#### 501.105-3 Copies.

The GSAR in CFR form may be purchased from: Superintendent of Documents, Government Printing Office, Washington, DC 20402.

#### 501.106 OMB Approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.	GSAR Reference	OMB Control No.
<a href="#">509.105-1(a)</a>	3090-0007	<a href="#">552.219-75</a>	3090-0286
<a href="#">511.204(b)</a>	3090-0246	<a href="#">552.219-76</a>	3090-0286
<a href="#">514.201-1</a>	3090-0163	<a href="#">552.232-72</a>	3090-0205
		<a href="#">552.232-72</a>	3090-0080
<a href="#">516.203-4(a)(1)</a>	3090-0243	<a href="#">552.237-71</a>	3090-0006
<a href="#">516.506</a>	3090-0248	<a href="#">552.238-70</a>	3090-0250
<a href="#">519.708(b)</a>	3090-0252	<a href="#">552.238-72</a>	3090-0262
<a href="#">519.70</a>	3090-0286	<a href="#">552.238-74</a>	3090-0121 3090-0250
<a href="#">522.406-6</a>	1215-0149	<a href="#">552.238-81</a>	3090-0302
<a href="#">523.370</a>	3090-0205	<a href="#">552.239-71</a>	3090-0294
<a href="#">532.111(c)</a>	3090-0080	<a href="#">552.242-70</a>	3090-0027
<a href="#">532.905-70</a>	9000-0102	<a href="#">552.246-70</a>	3090-0027
<a href="#">532.905-71</a>	3090-0080	<a href="#">552.246-71</a>	3090-0027
<a href="#">537.110(a)</a>	3090-0197	GSA-72-A	3090-0121
<a href="#">537.110(b)</a>	3090-0006	GSA-527	3090-0007
<a href="#">538.273(a)(1)</a>	3090-0250	GSA-618D	1215-0149
<a href="#">538.273(a)(3)</a>	3090-0262	GSA-1142	3090-0080
<a href="#">538.273(b)(1)</a>	3090-0121	GSA-1364	3090-0086
<a href="#">542.1107</a>	3090-0027	GSA-1678	3090-0027
<a href="#">546.302-70</a>	3090-0027	GSA-2419	9000-0102
<a href="#">546.302-71</a>	3090-0027	<a href="#">570.802(c)</a>	3090-0086
<a href="#">552.211-77</a>	3090-0246	<a href="#">570.802(d)</a>	3090-0086
<a href="#">552.216-70</a>	3090-0243		
<a href="#">552.216-72</a>	3090-0248		
<a href="#">552.216-73</a>	3090-0248		
<a href="#">552.219-72</a>	3090-0252		

### 501.170 General Services Administration Acquisition Management System.

(a) *Description.* The General Services Administration Acquisition Management System consists of the General Services Administration Acquisition Regulation (GSAR) and agency and Service non-regulatory acquisition guidance documents.

(b) *Format.* For users' convenience, the General Services Administration Acquisition Manual (GSAM) contains the GSAR and nonregulatory agency acquisition guidance. The GSAM adheres to GSAR numbering and drafting conventions. GSAR material is shaded. Non-shaded material is non-regulatory. The shading distinguishes regulatory material from material that applies internally to GSA.

(c) *Agency policy.* Although GSAM requirements are not all regulatory, occasionally the requirements are mandatory for GSA personnel. The mandatory requirements reflect agency policy which must be followed to ensure uniformity or for other reasons.

(d) *Applicability.* The GSAM applies to contracts for supplies or services, including construction.

(e) *Acquisition of leasehold interests in real property.* [Part 570](#) establishes requirements for the acquisition of leasehold interests in real property. Other provisions of the GSAM do not apply to leases of real property unless specifically cross-referenced in [Part 570](#).

(f) *Availability.* The GSAM is available on the GSA Home Page at <http://www.gsa.gov>. Click on either "Government Agencies" or on "Business and Industry," then click on "Acquisition." You may also link to the GSAM on Insite at <http://insite.gsa.private>. Click on "Business Hot Links," then on "Acquisition."

### 501.171 Other GSA publications.

#### 501.171-1 GSA orders and handbooks.

(a) Heads of contracting activities (HCA's) may issue internal agency guidance, as described in FAR 1.301(a)(2), in the form of a GSA order or handbook.

(b) GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR, GSAR, or GSAM.

(c) The handbook, Writing GSA Internal Directives (OAD P 1832.3B), prescribes policies and procedures for issuing GSA orders and handbooks.

#### 501.171-2 Acquisition letters.

(a) Acquisition letters provide interim policies and procedures pending incorporation in GSA orders or handbooks.

(b) Acquisition letters expire one year after issuance, unless the letter indicates an earlier expiration date.

(c) The Senior Procurement Executive and HCAs, or designees, may issue acquisition letters.

(d) The issuing official must coordinate each acquisition letter with appropriate offices including Acquisition Policy, Counsel, and the Inspector General. Any proposed policy or procedure that affects the operation of the small business program, must be coordinated with the Office of Small Business Utilization (E).

(e) The issuing activity must identify each acquisition letter with an assigned number. The number should begin with the issuing office correspondence symbol, followed by the last two digits of the calendar year when issued, then numbered consecutively beginning with 1. For example, FC-97-5 would be the fifth acquisition letter issued by FSS in fiscal year 1997).

(f) The body of an acquisition letter should contain the following paragraphs, as appropriate:

(1) Purpose.

(2) Background.

(3) Effective date.

(4) Termination date.

(5) Cancellation.

(6) Applicability (offices to which the acquisition letter applies)

(7) Reference to regulations (FAR or GSAR), handbooks, or orders.

(8) Instructions/procedures.

(g) The issuing office is responsible for distributing its acquisition letters to affected contracting activities and the Office of Acquisition Policy. In addition copies should be distributed to:

(1) For acquisition letters issued by the Office of Acquisition Policy or a Central Office Service:

(i) Associate General Counsel.

(ii) The Administrative Policy and Information Management Division (CAI).

(2) For acquisition letters issued by a Region:

(i) Regional Counsel.

(ii) The regional clearance office as defined in the handbook, Writing GSA Internal Directives (OAD P 1832.3B).

(iii) Central office contracting activities, if appropriate.

(h) If an acquisition letter is distributed only electronically, then the issuing office may issue a notice to affected contracting activities, the Office of Acquisition Policy, and Associate General Counsel or Region Counsel in lieu of distributing paper copies. The notice must identify the subject, number, and location of the letter.

(i) Each issuing office must report on acquisition letters issued and canceled on a quarterly basis to the Office of Acquisition Policy. The Office of Acquisition Policy will issue a consolidated index of all acquisition letters issued or cancelled.

### Subpart 501.4—Deviations from the FAR and GSAR

#### 501.402 Policy.

Uniformity is a goal of GSA's Acquisition Regulation System. Despite this desire for uniformity, a contracting activity may take any of the following actions:

- (a) Develop and test new procedures and techniques.
- (b) Adopt alternate procedures in the public interest for unique programmatic or managerial requirements.
- (c) Deviate from a regulatory provision implementing a statutory requirement provided the deviation does not violate the underlying statute. Deviations must not be used to defeat the FAR and GSAR approval requirements.

#### 501.403 Individual deviations.

(a) An individual deviation affects only one contract action.

(1) The Head of the Contracting Activity (HCA) must approve an individual deviation to the FAR. The authority to grant an individual deviation may not be re-delegated. A copy of the deviation must be provided to GSA's Senior Procurement Executive (SPE).

(2) An individual deviation to the GSAR must be approved by the HCA. The authority to grant an individual deviation may be re-delegated to the Contracting Director.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the Contracting Director in the agency receiving the delegation may approve individual deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) Send a copy of each deviation to GSA's SPE (V).

#### 501.404 Class deviations.

(a) A class deviation affects more than one contract action. A deviation for any solicitation that will result in multiple awards or any solicitation under the multiple award Federal Supply Schedule program is considered to be a class deviation. Each award under such a solicitation is considered an individual contract action.

(1) A class deviation to the FAR must be forwarded by the cognizant HCA to GSA's SPE for approval. Prior to approving a class deviation to the FAR, the SPE will consult with the Chairman of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a)(1).

(2) A class deviation to the GSAR must be forwarded by the cognizant HCA to GSA's SPE for approval.

(3) When an HCA knows that a proposed class deviation will be required on a permanent basis, the HCA should propose or recommend an appropriate FAR and/or GSAR revision.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the HCA in the agency receiving the delegation may approve class deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) Send a copy of each deviation to GSA's SPE (V).

(d) A request for class deviations must be supported by statements that fully describe the need for and the nature of the deviation.

(e) Class deviations from the GSAR:

(1) Expire in 12 months if not extended.

(2) May be rescinded earlier by GSA's SPE or by officials designated under paragraph (a) of this section without prejudice to any action taken previously.

#### 501.404-70 Contract action.

*Contract action.* A contract action, for the purpose of determining whether an individual or class deviation is appropriate, has the same meaning as that used for reporting contract actions to Federal Procurement Data System—Next Generation (FPDS-NG). A contract action includes, but is not limited to, any of the following:

(a) Initial letter contract.

(b) Definitive contract superseding letter contract.

(c) New definitive contract.

(d) Purchase order/BPA calls using simplified acquisition procedures.

(e) Orders under single award indefinite delivery contracts.

(f) Orders under BOA.

(g) Order/modification under Federal schedule contract.

(h) Modification.

(i) Termination for Default.

(j) Termination for Convenience.

(k) Order under multiple award contract.

(l) Initial load of Federal schedule contract.

#### 501.404-71 Deviations to the nonregulatory GSAM.

Handle individual and class deviations to the nonregulatory (unshaded) part of the GSAM as stated in [501.403](#) and [501.404](#).

### Subpart 501.6—Career Development, Contracting Authority, and Responsibilities

#### 501.601 General.

(a) *Definitions.*

“Acquisition Career Manager (ACM)” means the GSA Agency official located in the Office of Acquisition Policy, responsible for issuing and establishing GSA acquisition workforce certification policy, implementation procedures, internal controls and conducting periodic reviews. The ACM represents GSA on the Interagency Acquisition Career Management Committee to ensure that workforce development policies and opportunities meet the needs of the acquisition workforce.

“Bureau Certification Manager (BCM)”, means the GSA agency official, appointed by the respective HCA, who serves as a liaison between the contracting activity and the ACM, and ensures consistency in the federal certification and GSA warrant programs. The BCM provides guidance to the acquisition workforce on application preparation for the federal certification programs and contracting officer warrants. The BCM reviews and makes a recommendation on any Federal Acquisition Certification package submitted electronically in the Federal Acquisition Institute Training Application System (FAITAS) or warrant packages prior to submission to the Contracting Officer Warrant Board. This includes those applicants seeking to be certified under fulfillment or equivalencies.

“Contracting Officer Warrant Board (COWB)” means a group of senior-level acquisition employees within a contracting activity who receive, evaluate, and process requests for selection and nomination of contracting officers at the basic, simplified acquisition, intermediate, and senior levels.

“Contracting Officer Warrant Program (COWP)” establishes the criteria for the appointment and termination of GSA contracting officers. This ensures that GSA follows a standardized process for qualifying and appointing individuals as contracting officers based on the organization's needs for contracting authority.

(b) Heads of Contracting Activities (HCAs) as defined in GSAM 502.101 are contracting officers by virtue of their position. Other contracting officers are appointed under FAR 1.603 and GSA's contracting officer warrant program (See 501.603). The Administrator of GSA delegated Head of Contracting Activity (HCA) authority to the Senior Procurement Executive (SPE). The SPE is authorized to re-delegate the HCA authority and contracting authority to the Commissioners and Deputy Commissioners of the Federal Acquisition Service (FAS) and the Public Buildings Service (PBS), and to the Chief Administrative Services Officer (CASO). These officials serve within the limits of their delegated authority.

(i) The SPE must be consulted prior to any re-delegation of HCA authority.

(ii) Any delegation of HCA authority must be in writing with a copy forwarded to the SPE.

(c) *FAITAS*. The Clinger-Cohen Act (Public Law 104-106 §4307) mandated federal agencies to have a database containing education, experience, training and other data about their acquisition workforce. FAITAS is the official system of record for the federal civilian agency acquisition workforce ([www.fai.gov](http://www.fai.gov)) and is maintained by the Federal Acquisition Institute (FAI).

(1) The following members of GSA's acquisition workforce and their supervisors must be registered in FAITAS:

(i) All positions in the GS-1102 contracting series.

(ii) All contracting officers, regardless of series, with the authority to obligate funds.

(iii) Program and project managers.

(iv) Contracting Officer's Representatives (CORs).

(v) Any acquisition-related position identified by the Chief Acquisition Officer (CAO), the Senior Procurement Executive (SPE), the HCA, or equivalent.

(2) Individuals are responsible for maintaining records supporting certification or satisfaction of warrant requirements for quality assurance purposes

(3) Supervisors must ensure acquisition workforce members are registered in FAITAS and verify the accuracy of data entered.

(d) *Federal Acquisition Certification (FAC) program*. The FAC program is a government-wide, competency-based certification program for the acquisition workforce. The FAC program applies to contract specialists, program and project managers, and contracting officers' representatives. The Office of Federal Procurement Policy established the training, education and experience requirements for the FAC program across all civilian agencies to align with the Department of Defense Acquisition Workforce Improvement Act (DAWIA). The competencies, training, education and experience requirements may be found at [www.fai.gov](http://www.fai.gov).

(e) *Maintaining FAC and contracting officer warrants*. All FAC-certified members of the GSA acquisition workforce and those appointed as contracting officers are required to earn Continuous Learning Points (CLPs) every two years from the date of issuance of the certification and/or warrant. The requirements for CLP achievement can be found under the Career Management tab of GSA's Acquisition Portal (<https://insite.gsa.gov/portal/category/534186>). All CLPs must be in support of the competencies associated with the certification.

(1) Failure to complete the required CLPs and obtain an approved Continuous Learning Achievement Request prior to the ending date of the continuous learning period will result in the expiration of the FAC certification.

(i) Expired certifications may be reinstated when evidence of accumulation of sufficient CLPs demonstrated.

(ii) Expired certifications may result in the suspension or termination of COR delegations and Program/Project Manager assignments.

(2) Failure to complete the required CLPS and obtain an approved Continuous Learning Achievement Request prior to the ending date of the continuous learning period for a contracting officer warrant will result in the suspension or termination of the warrant.

## 501.602 Contracting officers.

### 501.602-2 Responsibilities.

(a) *Fund sufficiency*. A requisition or purchase request signed by an authorized individual is evidence that sufficient money for the purchase is available in the fund cited.

(b) *GSA revolving funds*. A requisition for indefinite delivery, indefinite quantity contracts requiring a guaranteed min-



imum quantity must specify enough funds to pay for the guaranteed minimum.

(c) *GSA funds, other than revolving funds.*

(1) The requisitioning activity must certify that additional funds are available before contract or purchase order award if the purchase exceeds the dollar amount on the requisition by 10 percent or \$50, whichever is greater.

(2) If a requisition is not used, e.g., lease of real property, the contracting officer must ensure funds are available before awarding the contract.

(d) *Other Federal agencies' funds.* A GSA buying activity must not exceed a fund limitation on a customer agency's purchase request unless authorized by supply support agreements. If a purchase request indicates insufficient funds to cover all costs, the customer agency must provide additional funds. Regardless of which Central Office or Regional buying activity will make the acquisition, the office initially receiving the requirement requests the additional funds.

### 501.602-3 Ratification of unauthorized commitments.

(a) *Authority to ratify.* Under FAR 1.602-3, the contracting officer may ratify unauthorized contractual commitments if the HCA approves the ratification action. An HCA may not redelegate approval authority.

(b) *Criminal investigation.* Generally, the Government is not bound by commitments made by persons with no contracting authority. Unauthorized commitments may violate laws or regulations. They constitute serious employee misconduct and may warrant disciplinary action. If unauthorized commitments involve any type of misconduct that might be punishable as a criminal offense, either the contracting officer or the employee's supervisor must report the matter immediately to the Office of the Inspector General with a request for a complete investigation.

(c) *Documentation required for ratification.* The individual who made the unauthorized commitment gives the contracting director all records and documents about the commitment and a complete written statement of facts, including all the following:

(1) Why normal acquisition procedures were not followed.

(2) Why the contractor was selected.

(3) Other sources considered.

(4) Description of work or products.

(5) Estimated or agreed-upon contract price.

(6) Appropriation citation.

(7) Status of contract performance.

(d) *Documentation waivers.* Under exceptional circumstances, a contracting director may waive the requirement that the individual who made the unauthorized commitment must initiate and document the request for ratification. In such a case, the individual who does initiate the request for ratification must provide a written determination stating that an

unauthorized commitment was made and identifying the individual who made it. For example, an exceptional circumstance may occur when the person who made the unauthorized commitment is no longer available to attest to the circumstances.

(e) *Processing a ratification.* (1) The contracting officer must process the request for ratification. Prepare a summary statement of facts addressing the limitations in FAR 1.602-3(c) and recommend whether or not the procurement should be ratified. Include a recommendation for other disposition if you advise against ratification.

(2) Submit to the HCA all the following:

(i) Request for ratification.

(ii) The contracting officer's statement of facts and recommendation(s).

(iii) Concurrence of assigned legal counsel (except when the contracting officer recommends payment based on quantum merit or quantum valebant).

(iv) If applicable, recommendation for payment on a quantum merit or quantum valebant basis (see [501.602-3\(f\)](#)).

(v) Recommendation for corrective action to prevent recurrence.

(f) *Payment based on quantum merit or quantum valebant.*

(1) If ratification is not permissible due to legal improprieties, the contracting officer may recommend that payment be made under either:

(i) Services rendered on a quantum merit basis (the reasonable value of work or labor).

(ii) Goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered).

(2) To base payment on either of these conditions, there must be a showing that the Government has received a benefit (See FAR 1.602-3(d)).

(3) The contracting officer must obtain the approval of assigned counsel before making any payment on a quantum merit or quantum valebant basis.

(g) *HCA action.* The HCA either:

(1) Approves the ratification request in writing and sends the approval to the contracting officer for issuance of the necessary contractual documents.

(2) Forwards a recommendation for payment on a quantum merit or quantum valebant basis to assigned counsel for approval.

(3) Returns an unjustified request or recommendation with a written explanation why the request or recommendation is denied.

(h) *Files.* The HCA maintains a separate file containing a copy of each request to ratify an unauthorized contractual commitment and the response. The HCA must make this file available for review by the Senior Procurement Executive and the Inspector General.

### 501.603 Selection, appointment, and termination of appointment for contracting officers.

#### 501.603-1 General.

##### (a) Definitions.

“Contracting experience” means personal and substantial involvement in purchasing, renting, leasing, or otherwise obtaining goods or services from federal and nonfederal sources and includes any of the following functions: preparing and issuing purchase orders, including issuing requests for quotations or solicitations, evaluating bids or proposals, selecting sources, price/cost analysis, participating in price negotiations, and contract award and administration.

(b) *Federal Acquisition Certification in Contracting (FAC-C)*. All employees in the GS-1102 series must be certified (FAC-C) at the appropriate level (Level I, II or III) in order to be considered for a contracting officer warrant. Effective October 1, 2014, contracting officers, regardless of their series, and other contracting professionals in the GS-1102 series must be certified at an appropriate level as of October 1, 2014. Any contracting professional issued a senior level warrant after October 1, 2014, must be Level III certified. (Refer to the Acquisition Workforce Community of Practice accessible through GSA’s Acquisition Portal (<https://insite.gsa.gov/portal/category/534186>).)

##### (1) FAC-C Application Process:

(i) Applicants are responsible for preparing and submitting their FAC-C certification request in FAITAS for supervisor approval. The electronic application must include all supporting documentation such as transcripts, training certificates, resume, and any other supporting documents (Refer to the Acquisition Workforce Community of Practice accessible through GSA’s Acquisition Portal (<https://insite.gsa.gov/portal/category/534186>).)

(ii) The supervisor is responsible for verifying the accuracy and completeness of the application in FAITAS. After supervisory review, the certification request is routed electronically to the BCM in FAITAS. If the BCM recommends approval, the application is forwarded to the ACM, unless delegated, for final approval.

(iii) After the ACM or designee approves, the FAC-C certificate is generated through FAITAS.

##### (2) FAC-C Certifications from other agencies.

(i) *Department of Defense (DoD)*. GSA will recognize Defense Acquisition Workforce Improvement Act (DAWIA) certification issued by DOD activities as long as there is demonstrated proof that the CLP requirement was completed and maintained. Personnel with current DAWIA certifications must submit a request for FAC-C in FAITAS.

(ii) *Other civilian agencies*. GSA will recognize FAC-C certification issued by another civilian agency, as long as the FAC-C is current in the FAITAS certification history

and there is demonstrated proof that the CLP requirement was maintained.

(3) *FAC-C Waivers*. The SPE may waive the requirement for obtaining FAC-C certifications prior to appointment as a contracting officer. Waivers will only be considered in compelling and well documented circumstances. This authority is non-delegable. FAC-C waivers are not transferable to other agencies.

(c) *Contracting Officer Warrant Program (COWP)*. GSA’s COWP is administered by the Office of Acquisition Policy.

(1) *Factors in determination of need for warranted contracting officers*. The COWP ensures that a GSA organization has qualified individuals as contracting officers who meet the organization’s needs for contracting authority. Factors considered in determining the number of contracting officers appropriate for a given organization include volume of actions, work complexity, and organizational structure.

(2) *Training, education and experience*. The COWP ensures warrant applicants meet all federal and agency requirements for training, education and experience.

##### (3) Responsibilities.

##### (i) GSA’s SPE:

(A) Establishes the policies, procedures, and requirements that govern COWP.

(B) Approves/disapproves in writing, any deviations, waivers or exemptions from any of the COWP requirements.

##### (ii) HCAs:

(A) Establish and budget for training plans for contracting officers.

(B) Monitor contracting officers’ performance.

(C) Establish controls to ensure compliance with laws, regulations, procedures, and good management practice with respect to warrant use by Contracting Officers.

(D) Determine the number of contracting officer warrants necessary for a particular work unit and the grade levels at which the warrant authority will be granted.

(E) Appoint a BCM to oversee the FAC and warrant programs.

(F) Appoint the contracting activity’s Contracting Officer Warrant Board (COWB) to process requests for contracting officer warrants.

(G) Establish written procedures for the COWB to ensure the requirements of Federal Acquisition Regulation (FAR) 1.603 and this section [501.603](#) are met when appointing contracting officers.

(H) Select and nominate through the COWB qualified candidates for appointment as contracting officers.

(I) Appoint contracting officers. The HCA may further limit warrant authorities at each warrant level.

##### (iii) ACM:

(A) Ensures consistent implementation of the COWP across GSA.

(B) Establishes minimum criteria for the contracting activity's COWB to use in the selection, appointment, and termination of appointment of GSA contracting officers.

(4) Applicability. COWP applies to all contracting officers except those appointed under the Inspector General Act (Pub. L. 95-452). Contracting authority is not required to:

(i) Sign training authorizations for public course offerings.

(ii) Sign travel documents.

(iii) Order printing and duplicating services from Government sources.

(iv) Order supplies from GSA stock through GSA Advantage! or other electronic means.

(v) Sign Government Bills of Lading.

(vi) Sign system-generated orders for motor vehicles or for requisitions under the Federal Acquisition Service Special Order Program.

(vii) Authorize interagency transfers of funds.

(viii) Use the Government telephone systems for commercial long distance and local service and/or approving payments for such services.

(ix) Use the Federal Acquisition Service (FAS) nationwide contract for express small package transportation services and/or approving payments for such services.

(x) Certify receipt and acceptance of goods or services. (This does not apply to certified invoices under [513.370](#).)

(xi) Submit a Standard Form 145, Telephone Service Request (TSR), to the FAS.

(5) *Warrant levels.*

(i) COWP warrant levels are based on the dollar value of individual transactions.

(ii) Individual transactions include the following:

(A) The dollar value of a contract award, including the dollar value of option periods.

(B) The dollar value of a modification award, and not the aggregate contract dollar value.

(C) The dollar value of a blanket purchase agreement award including the dollar value of option periods.

(D) The dollar value of a blanket purchase agreement modification award, and not the aggregate blanket purchase agreement dollar value.

(E) The dollar value of an order award against an indefinite delivery, indefinite quantity contract (e.g. Federal Supply Schedules, Governmentwide Acquisition Contracts, Multi-agency Contacts, agency- specific indefinite delivery, indefinite quantity contracts) including the dollar value of option periods, and not the aggregate contract dollar value.

(F) The dollar value of a modification award to an order against an indefinite delivery, indefinite quantity contract, and not the aggregate order dollar value.

(G) The dollar value of a purchase order.

(H) The dollar value of a modification to a purchase order and not the aggregate purchase order dollar value.

(iii) If an individual transaction includes both additions and deductions, the aggregate, absolute value of the changes determines the warrant level required for award (e.g., the value of an individual action that adds \$35,000 of work and deducts \$80,000 is \$115,000).

(iv) HCAs may further limit warrant authorities and dollar values..

Warrant Level	Threshold	Net Average Annual Rent for Leases
Basic	Up to \$25,000	Up to \$25,000
Simplified Acquisition	Up to the Simplified Acquisition Threshold	Up to the Simplified Lease Acquisition Threshold
Intermediate	Up to and including \$10,000,000	Up to and including \$10,000,000
Senior	Above \$10,000,000	Above \$10,000,000

Note: GSA use of the Government purchase card for micro-purchases shall follow the instructions under GSA Order 4200.1A CFO.

(d) *Change order authority.* Contracting officers may authorize COR change order authority in accordance with the limitations in GSAM [543.202](#), Authority to issue change orders.

(e) If the HCA determines that the considerations listed under GSAM [542.302](#)(c) warrant the establishment of a contract administration office, a contracting officer with an unlimited warrant may authorize contract administrative functions in accordance with GSAM [542.302](#)(d).

**501.603-2 Selection.**

(a) *Contracting Officer Warrant Board (COWB).*

(1) The COWB ensures that all of the applicable criteria have been met prior to granting any GSA contracting officer warrant.

(2) Composition of the COWB. The HCA appoints the Board members and the Chair.

(i) COWB Chair. The COWB Chair evaluates the contracting officer candidate's credentials prior to submission to the COWB.

(ii) Senior leadership representing each type of warrant issued by the contracting activity.

(iii) Other specialized representation, such as legal counsel assistance (as requested).

(iv) Any other designee with knowledge and experience in the warrant procedures.

(b) Nominations for appointment are submitted by the candidate's supervisor of record, in package form which must include the following:

(1) Completed and signed GSA Form 3410, Request for Appointment. The GSA Form 3410 must discuss the contracting activity's specific need for the warrant. Justify the need in block 1 of the GSA Form 3410.

(2) Completed and signed GSA Form 3409, Personal Qualifications Statement for Appointment as a Contracting Officer, or a resume detailing the candidate's experience, education, and training relevant to the position.

(3) Verification of candidate's training.

(4) Copies of candidate's training certificates, unofficial college transcripts and previous warrants (if previously warranted).

(5) A current warrant certificate from another HCA in GSA may be submitted instead of the items listed in paragraphs (b)(2) through (b)(4) of this section.

(c) *Evaluation of candidates for contracting officer warrants.* The COWB is responsible for evaluating a candidate's experience, training and education requirements prior to issuance of a Basic, Simplified Acquisition, Intermediate and Senior level warrant. Note: designated approving officials shall follow the instructions under GSA Order 4200.1A CFO in granting micro-purchase authority.

(1) *Experience requirements.* The COWB must consider the candidate's relevant experience in determining the candidate's capability to assume contracting officer responsibilities at the desired level.

Warrant Level	Experience Required
Basic	At least 1 year of current (within last 3 years) contracting experience with progressively broader assignments
Simplified Acquisition	At least 2 years of current (within the last 5 years) contracting experience with progressively broader assignments
Intermediate	At least 3 years of current (within the last 7 years) contracting experience with progressively broader assignments*
Senior	At least 4 years of current (within the last 10 years) contracting experience with progressively broader assignments*

\*The COWB will consider the quality of past contracts and leases and the results of any independent review conducted by the contracting activity to verify the nominee's contracting experience as defined in [501.603-1\(a\)](#) at the intermediate and senior level.

(2) *Training requirements.*

(i) Any contracting professional issued an unlimited warrant after October 1, 2014 must be Level III certified.

(ii) Contracting officer candidates must complete the minimum training requirements. GSA has adopted the FAC-C curriculum established by the Federal Acquisition Institute (FAI).

(iii) Refer to the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal

(<https://insite.gsa.gov/portal/category/534186>) for the minimum training requirements for warrants.

(iv) In addition to the warrant requirements, individuals may be required to complete additional training to strengthen the acquisition workforce.

(v) Contracting officers with multiple warrant authorities (e.g., with authority to dispose of and to acquire goods and services) must complete the mandatory training required for all warrant authorities at the applicable warrant level(s).

(3) *Educational requirements.*

(i) *Applicants at pay grades 5 through 12.* Applicants for permanent warrants above the simplified acquisition level, who are at grades 5 through 12, must have completed a four year course of study leading to a bachelor's degree or 24 semester hours in one of the designated fields as shown in paragraph (c)(3)(iii) of this section.

(ii) *Applicants at grades 13 and above.* Applicants for permanent warrants above the simplified acquisition level, who are at grade 13 or above, must have completed a four year course of study leading to a bachelor's degree that included or was supplemented by at least 24 semester hours in any combination of the designated fields as shown in paragraph (c)(3)(iii) of this section. The SPE may waive these requirements. The applicant must demonstrate significant analytical and decision-making capabilities, an acceptable job performance record, and qualifying experience.

(iii) The designated educational fields are:

- (A) Accounting.
- (B) Business.
- (C) Finance.
- (D) Law.
- (E) Contracts
- (F) Purchasing
- (G) Economics.
- (H) Industrial management.
- (I) Marketing.
- (J) Quantitative methods.
- (K) Organization and management.

(iv) Employees who were warranted prior to January 1, 2000, are considered to have met the educational standard for their existing warrant; however, warrant increases or new warrant applications are subject to applicable warrant requirements.

(v) To retain warrants, Contracting Officers must meet the 80 hour CLP requirement, every two years, as outlined in the FAC-C curriculum.

## 501.603-3 Appointment.

(a) *Certificate of Appointment.*

(1) The HCA appoints contracting officers at the Basic, Simplified Acquisition, Intermediate, or Senior level using Standard Form 1402, Certificate of Appointment.



(2) The HCA signs the original Certificate of Appointment before it is issued to the appointed contracting officer.

(3) Suggested language for the Certificate of Appointment may be found on the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal (<https://insite.gsa.gov/portal/category/534186>).

(b) *Types of appointments.* Candidates are nominated for either an interim or permanent appointment.

(1) *Interim appointments.* Interim appointments are for a specified period of time. Personnel who hold interim simplified acquisition warrants must complete all training required for a permanent warrant within 1 year of the interim appointment. Personnel who hold interim warrants above the simplified acquisition level must complete all training and formal education required for a permanent warrant within 3 years of the interim appointment.

(2) *Permanent appointments.* A permanent appointment may be made when a candidate who meets all requirements for experience, education, and training at the time the appointment is made.

(c) *Transferability of Warrants.* Warrants may not transfer across contracting activities. Contracting officers that transfer to a new contracting activity must re-apply for a warrant in FAITAS.

(d) *Authority to make purchases for domestic and national security emergencies.*

(1) A contracting officer, you may enter into contracts on behalf of a GSA organization different from the organization specified in their Certificate of Appointment in response to a contingency operation, defense or recovery from certain attacks, major disaster declarations as defined in FAR part 18 and other domestic or national security emergencies.

(2) The Office of the Chief Acquisition Officer (OCAO) or HCA may grant higher contracting authority during emergencies for Basic, Simplified and Intermediate warrants (See Office of Federal Procurement Policy Memorandum, Emergency Acquisition Guide, dated January 14, 2011 [http://www.whitehouse.gov/sites/default/files/omb/assets/procurement\\_guides/emergency\\_acquisitions\\_guide.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf)).

(3) The OCAO or HCA may appoint contracting officers with authority limited to entering into contracts required to respond to domestic or national security emergencies. This will provide GSA a cadre of emergency contracting officers who can instantly respond to emergencies if necessary. For warrants issued as a direct result of an emergency, the OCAO or HCA must have reasonable assurance that the employee is eligible to be warranted if the nature of the emergency precludes submission of otherwise necessary required documentation for the warrant (see 501.603-3(b)).

(e) *Record Maintenance and Disposal.*

(1) HCAs are required to keep and maintain comprehensive files containing relevant information on all appointed contracting officers until such time as all warrant data is fully maintained in FAITAS as determined by the ACM.

(2) HCAs are required to submit reports to the ACM with consistent and up to date information on the contracting officer warrants issued and terminated until such time as all warrant data is fully maintained in FAITAS as determined by the ACM.

(3) Acquisition professionals are responsible for maintaining a copy of their acquisition training history and source documents used for certification requests.

(4) In accordance with GSA Order OAS P 1820.1, GSA Records Management Program, dispose of expired contracting officer files and warrants by placing the contracting officer records in an inactive file following reassignment, termination of employment or revocation of designation. The inactive file cutoff date is the end of the fiscal year. The files are to be destroyed two years after the cutoff.

#### 501.603-4 Termination.

(a) The SPE has the authority to suspend or terminate any GSA contracting officer appointment in any organizational component of the agency. SPE suspensions or terminations of warrants may not be overridden by any other GSA appointing official.

(b) At any time, an HCA may terminate an appointment, change a permanent warrant to an interim warrant, reduce the warrant level, or refuse to accept a warrant from another contracting activity.

(c) The supervisor of record must notify the BCM within the organization when a contracting officer does any of the following:

- (1) Resigns.
- (2) Transfers to another agency.
- (3) Is reassigned to another office within GSA.
- (4) Is terminated, or otherwise disciplined, for malfeasance or incompetence.
- (5) Does not need the appointment.
- (6) Fails to comply with experience, education or training requirements.

(d) Managers within the supervisory chain-of-command may at any time, suspend a contracting officer's appointment for any of the following:

- (1) There is reason to believe that the contracting officer failed to exercise sound business judgment.
- (2) There is reason to believe that the contracting officer engaged in other improprieties in carrying out contracting officer responsibilities.
- (3) Failure of the contracting officer to comply with continuous learning requirements.

**501.603-70 Fulfillment of required FAC-C training.**

Information on fulfillment and equivalencies for required FAC-C training can be found at <https://insite.gsa.gov/portal/category/534186>.

**501.604 Contracting Officer's Representative (COR).**

The FAC-COR's role is to develop proper requirements and ensure during contract administration the contractors meet the commitments of their contracts, including the timeliness and delivery of quality goods and services as required by the contract. Information on the FAC-COR certification requirements can be found at <http://fai.gov/drupal/certification/fac-cor>.

(a) *Applicability.* Any GSA employee assigned to perform COR duties, regardless of series, must obtain FAC-COR certification, except as provided in paragraphs (b) and (c) of this section. CORs must be certified at the appropriate level no later than six months from the date of their appointment.

(b) *FAC-COR waivers.* The SPE may waive the requirement for obtaining the FAC-COR certifications prior to appointment as a COR. Waivers will only be considered in compelling and well documented circumstances. This authority is non-delegable. FAC-COR waivers are not transferable to other agencies.

(c) *Reciprocity of certifications.* As described in OMB memorandum, "Revisions to the Federal Acquisition Certification for Contracting Officers' Representatives," of September 6, 2011, (<http://www.fai.gov>), individuals certified as Federal Acquisition Certification in Contracting (FAC-C) Levels I or II or Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) Mid-Level/Journeyman are considered to have met the FAC-COR requirements for Level II. Individuals certified as FAC-C Level III or FAC-P/PM Senior/Expert are considered to have met the FAC-COR requirements for Level III. These individuals must submit their FAC certificates and continuous learning documents to their BCMs for FAC-COR certification in accordance with the procedures shown in the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal (<https://insite.gsa.gov/portal/category/534186>).

(d) HCAs or their designees, typically BCMs, must do all of the following:

- (1) Manage and monitor their FAC-COR programs.
- (2) Coordinate with the agency ACM to grant certifications.
- (3) Evaluate candidate proficiencies and determine course equivalencies for certification, in accordance with FAI's required COR competencies.
- (4) Resolve any certification-related disputes.

(e) *FAC-COR application process.* Applicants are responsible for preparing an application package for submission electronically through FAITAS ([www.fai.gov](http://www.fai.gov)) to his or her

supervisor. The application package must include the application form and copies of relevant training certificates. The supervisor is responsible for verifying the accuracy and completeness of the application package in FAITAS. After supervisory review, the certification request is routed electronically to the BCM. If the BCM recommends approval, the application is routed to the ACM for final approval. After the ACM approves, the FAC-COR certificate is generated through FAITAS.

(f) *Contracting officer's responsibilities.*

(1) In appointing CORs under GSAM 542.2, the contracting officer must take into consideration the appropriate FAC-COR Level needed to protect the government's interest. The contracting officer must consider the risk associated with the acquisition, including contract type, in order to determine the appropriate level of FAC-COR coverage.

(2) Contracting officers must provide appointment letters in writing to the contractor, outlining the COR's responsibilities under the contract and the limits of the COR's authority to the contractor. The contracting officer must also provide a copy to the COR and the COR supervisor, and maintain a copy in the official contract file, or a central file referenced in the contract file.

(3) The contracting officer is authorized to revoke a COR appointment. Any revoked COR appointment must be documented in writing, notifying the COR, the COR's supervisor, the contractor and the BCM.

(g) *Other executive agency FAC-COR.* GSA will recognize COR certifications issued by other executive agencies as long as they appear in the FAITAS certification record and are compliant with current FAC-COR requirements, including continuous learning.

(h) *FAITAS.* CORs must be registered in FAITAS, the official system of records for all civilian agency FAC programs ([www.fai.gov](http://www.fai.gov)). CORs are responsible for submitting all training and continuous learning activities into FAITAS.

## Subpart 501.7—Determinations and Findings

**501.707 Signatory authority.**

(a) The FAR frequently refers to determinations made by the agency head. Under section 309 of the Federal Property and Administrative Services Act, the Administrator authorized HCA's to act as agency head to facilitate procurement of property and services under Title III of the Act. (See GSA Delegation of Authority Manual, ADM P 5450.39C.)

(b) An HCA normally signs a class D&F.

(c) If a statute precludes an agency head redelegating authority, the Administrator must sign the D&F (See, for example, FAR 6.302-7).





# CHANGE 61 OCTOBER 23, 2014

Appendix 501A—[Reserved]

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Appendix 501A—[Reserved]

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## **PART 502—DEFINITIONS OF WORDS AND TERMS**

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Definitions.

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**PART 502—DEFINITIONS OF WORDS AND TERMS****Subpart 502.1—Definitions****502.101 Definitions.**

“Agency competition advocate” means the GSA Competition Advocate in the Office of the Chief Acquisition Officer.

“Agency labor advisor” means the Director of the General Services Acquisition Policy Division within the Office of Acquisition Policy.

“Assigned counsel” means the attorney in the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

“Procuring activity competition advocate” means the individual designated in writing by the Head of the Contracting Activity (HCA).

“Contracting director” means:

(a) Except in the Federal Acquisition Service (FAS), a director of a Central Office or Regional office Division responsible for performing contracting or contract administration functions.

(b) In FAS Central Office—

(1) The Assistant Commissioner for Assisted Acquisition Services or designee;

(2) The Assistant Commissioner for General Supplies and Services or designee;

(3) The Assistant Commissioner for Integrated Technology Services or designee;

(4) The Assistant Commissioner for Travel, Motor Vehicle and Card Services or designee; and

(5) The Assistant Commissioner for Acquisition Management or designee for support offices with contracting functions.

(c) In FAS Regions, the Assistant Regional Commissioner or designee.

“Debarring official” or “suspending official” means GSA’s Suspension & Debarment Official at <https://insite.gsa.gov/portal/category/534198>.

“Head of the contracting activity” means the Senior Procurement Executive (SPE); the Commissioners and Deputy Commissioners of the Federal Acquisition Service (FAS) and the Public Buildings Service (PBS); or their re-delegates. The Chief Administrative Services Officer serves as the HCA for the Internal Acquisition Division within the Office of Administrative Services. These officials serve within the limits of their delegated authority. The HCA delegations may be found on GSA’s Acquisition Portal (<https://insite.gsa.gov/portal/content/638514>).

“Senior procurement executive” means the Deputy Chief Acquisition Officer.

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## AMENDMENT 2009–12 OCTOBER 7, 2009

### PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

*Sec.*

#### **Subpart 503.1—Safeguards**

- 503.101 Standards of conduct.
- 503.101-3 Agency regulations.
- 503.104 Procurement integrity.
- 503.104-2 General.
- 503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
- 503.104-7 Violations or possible violations.

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- 503.203 Reporting suspected violations of the Gratuities clause.
- 503.204 Treatment of violations.

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- 503.570 Advertising.
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## PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 503.1—Safeguards

#### 503.101 Standards of conduct.

##### 503.101-3 Agency regulations.

GSA Supplemental Ethical Standards of Conduct appear at 5 CFR Part 6701.

#### 503.104 Procurement integrity.

##### 503.104-2 General.

“Acquisition official” as defined in FAR 3.104-3(a)(2), are responsible for knowing the post-employment restrictions in FAR 3.104-2(b)(3) and 3.104-3(d).

##### 503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) *Persons authorized access to information.* (1) The following persons may access contractor bid or proposal information and source selection information to accomplish their responsibilities in a procurement action:

- (i) Requirements generators, including client agency representatives, and program and technical experts who develop statements of work, specifications or similar documents;
- (ii) Contracting personnel supporting the contracting officer;
- (iii) Personnel serving on technical evaluation boards or source selection evaluation boards;
- (iv) Supervisors in the contracting officer’s chain of command;
- (v) Secretarial, clerical and administrative personnel of the contracting activity responsible for the procurement;
- (vi) Small Business Technical Advisors;
- (vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under FAR 19.302, process applications for Certificates of Competency under FAR 19.6, review subcontracting plans, or award contracts under the 8(a) program;
- (viii) Personnel in the Credit and Finance Section of Region 6 and other personnel who support the contracting officer in making contractor responsibility determinations;
- (ix) Contract auditors in the Office of Inspector General and Regional Inspector General’s offices;

(x) Department of Labor (DOL) personnel who process preaward EEO clearances under FAR 22.805;

(xi) Attorneys in the Office of General Counsel and Regional Counsel’s offices; and

(xii) Personnel involved in contract approval.

(2) The Senior Procurement Executive may authorize additional classes of persons access to contractor bid or proposal information or source selection information.

(3) The contracting officer may authorize access to contractor bid or proposal information or source selection information if necessary to conduct the procurement. This includes release of information to outside evaluators under [515.305-70](#) in accordance with [537.204](#) and FAR 9.505-5 and 37.204. Limit access to only that information the person needs to do his or her job.

(4) The contracting officer may use Conflict of Interest Acknowledgement and Nondisclosure Agreement referenced in [515.305\(b\)\(1\)](#) to maintain the identity of individuals authorized access to contractor bid or proposal information and source selection information.

(b) *Procedures for marking and protecting information.* Any individual who prepares, makes, or controls contractor bid or proposal information and source selection information must:

(1) Mark documents as prescribed in FAR 3.104-4(c). Contracting officers may use GSA Form 3611, Cover Page Source Selection Information as the cover page for a document that contains source selection information. In addition, each page of the document must be marked in accordance with FAR 3.104.

(2) Provide physical security for documents in the office environment during, and after, duty hours.

(3) Secure interoffice mailing of documents by using opaque envelopes, “double wrapping” with more than one envelope, and sealing envelopes securely.

(4) Maintain strict control over oral communications about the acquisition.

(c) *Requests for information from Congress.* For requests from a member of Congress, see [505.403](#).

##### 503.104-7 Violations or possible violations.

(a) The HCA is the individual designated under FAR 3.104-7 (a)(1) to receive information related to a conclusion that a reported or possible violation has no impact on a procurement.

(b) If the HCA receives information describing an actual or possible violation, the HCA must take all of the following actions:

**503.203**

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- (1) Refer the matter immediately to the Inspector General;
  - (2) Determine what action to take on the procurement under FAR 3.104-7 (b)–(g); and
  - (3) Notify the Administrator if he or she determines that urgent and compelling circumstances, or other Government interests, justify the award or modification.
- (c) If a contracting officer has not been appointed, the contracting director performs the contracting officer actions defined in FAR 3.104-7.

**Subpart 503.2—Contractor Gratuities to Government Personnel**

**503.203 Reporting suspected violations of the Gratuities clause.**

- (a) Employees must report immediately a suspected violation of the Gratuities clause to each of the following:
- (1) The contracting officer;
  - (2) Assistant Inspector General for Investigations or the Regional Special Agent in Charge; and
  - (3) Deputy Standards of Conduct Counselor.
- (b) The report must describe the circumstances under which the Gratuities clause has been violated and include all pertinent documents.
- (c) The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice, the Senior Procurement Executive, or the Office of General Counsel. See also 5 CFR 6701.107.

**503.204 Treatment of violations.**

- (a) The Senior Procurement Executive, or designee, makes determinations under FAR 3.204. The Senior Procurement Executive, or designee, takes all the following actions:
- (1) Coordinates with legal counsel;
  - (2) Initiates proceedings under FAR 3.204(a) by notifying the contractor that GSA is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner; and
  - (3) Presumes receipt if no return receipt is received within 10 calendar days after mailing the notice.
- (b) The contractor has 30 calendar days to exercise its rights under FAR 3.204(b), unless the Senior Procurement Executive, or designee, grants an extension.

(c) If there is a dispute of fact material to making a determination, the Senior Procurement Executive, or designee, may refer the matter to an agency fact-finding official, designated by the Suspension and Debarment Official, in accordance with GSAR [509.403](#). Referrals for fact-finding are not made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official takes all the following actions:

- (1) Gives the contractor an opportunity to dispute material facts relating to the determinations under FAR 3.204(a)(1) and (2);
  - (2) Conducts proceedings under rules consistent with FAR 3.204(b);
  - (3) Schedules a hearing within 20 calendar days of receipt of the referral. The contractor or GSA may request an extension for good cause; and
  - (4) Delivers to the Senior Procurement Executive, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.
- (d) The Senior Procurement Executive, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.
- (e) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Senior Procurement Executive, or designee, conducts the hearing required by FAR 3.204(b).

(f) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the Senior Procurement Executive, or designee, in accordance with FAR 3.204(b) either orally or in writing, consistent with a schedule the Senior Procurement Executive, or designee, establishes. The Senior Procurement Executive, or designee, exercises the Government's rights under FAR 3.204(c) only after considering mitigating factors.

**Subpart 503.3—Reports of Suspected Antitrust Violations**

**503.303 Reporting suspected antitrust violations.**

The contracting officer shall report evidence of suspected antitrust violations in acquisitions to the Assistant Inspector General for Investigations or the Regional Special Agent in Charge. When appropriate, the Office of Inspector General will investigate and prepare a report and recommendation to the Attorney General and to the Senior Procurement Executive for suspension or debarment consideration.

**Subpart 503.4—Contingent Fees****503.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

Employees who suspect or have evidence of violations of the Covenant Against Contingent Fees must report the matter to the contracting officer as well as to the Office of Inspector General. If appropriate, the Office of Inspector General will forward a report and recommendation to the Department of Justice.

**Subpart 503.5—Other Improper Business Practices****503.570 Advertising.****503.570-1 Policy.**

GSA policy precludes contractors from making references to GSA contracts in commercial advertising in a manner that states or implies the Government approves or endorses the product or service or considers it superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

**503.570-2 Contract clause.**

Insert the clause at [552.203-71](#), Restriction on Advertising, in solicitations and contracts, including acquisitions of leasehold interests in real property, if the contract amount is expected to exceed the simplified acquisition threshold.

**Subpart 503.7—Voiding and Rescinding Contracts****503.703 Authority.**

Pursuant to FAR 3.703 and 3.705(b), the authority to void or rescind contracts resides with the Senior Procurement Executive.

**503.705 Procedures.***(a) Contracting officer's actions:*

(1) If a contract is tainted by misconduct, the contracting officer shall consult with assigned counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation.

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201-224, the contracting officer shall

refer the matter to the Senior Procurement Executive under FAR 3.705 and shall—

(i) Identify in the referral the final conviction;  
(ii) Include the information required by FAR 3.705(d)(2) through (5); and

(iii) Coordinate the referral with the Office of Inspector General to determine whether to recommend debarment.

*(b) Senior Procurement Executive's actions:*

(1) Reviews the referral and coordinates with assigned counsel and the contracting activity.

(2) Takes both the following actions, if the official decides to declare void and rescind a contract and to recover the amounts expended and the property transferred:

(i) Issues the notice required by FAR 3.705; and  
(ii) Conducts the hearing contemplated by FAR 3.705(c)(3).

(3) Refers the matter to the agency fact-finding official, in case of a dispute of material fact about the agency decision. The Senior Procurement Executive makes this referral if the dispute of fact relates to any of the following:

(i) Contracts affected by the final conviction.  
(ii) Amounts expended and property transferred by the Government under the affected contracts.

(iii) Identity and value of any tangible benefits received by the Government under the affected contracts.

(4) Issues GSA's final decision under FAR 3.705(e) after receiving the fact-finding official's report, if a referral was made. The Senior Procurement Executive may reject the fact-finding official's findings only if they are clearly erroneous or arbitrary and capricious. The Senior Procurement Executive may explain any such rejection in writing.

(5) Coordinates the final decision with the contracting activity and provides the activity a copy of the decision.

*(c) Fact-finding official's actions:* The fact-finding official takes all the following actions:

(1) Gives the contractor an opportunity to dispute material facts.

(2) Conducts the proceedings under rules consistent with FAR 3.705(c)(3).

(3) Schedules a hearing within 20 calendar days after receiving the referral. The official may grant extensions for good cause at the request of the contractor or GSA.

(4) Delivers written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(5) Coordinates the final decision with the contracting activity and provides the activity a copy of the decision.

**Subpart 503.8—Limitation on the Payment of Funds to Influence Federal Transactions**

**503.806 Processing suspected violations.**

Evidence of suspected violations of 31 U.S.C. 1352, Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, should be submitted to the Assistant Inspector General for Investigation or the Regional Special Agent in Charge. When appropriate, the Office of Inspector General will investigate and prepare a report and recommendation to the Department of Justice.

**Subpart 503.10—Contractor Code of Business Ethics and Conduct**

**503.1004 Contract clauses.**

(a) The FAR threshold for the clause at 52.203-14, Display of Hotline Poster(s), is \$5,000,000. However, GSA has exercised the authority provided at FAR 3.1004(b)(1)(i) to establish a lower threshold, \$1,000,000, for inclusion of the clause when the contract or order is funded with disaster assistance funds.

(b) The information required to be inserted in the clause at FAR 52.203-14, Display of Hotline Poster(s), is as follows:

- (i) Poster: GSA Office of Inspector General “FRAUDNET HOTLINE”; and
- (ii) Obtain from: Contracting Officer.



**PART 504—ADMINISTRATIVE MATTERS***Sec.***Subpart 504.1—Contract Execution**

- 504.101 Contracting officer's signature.
- 504.103 [Reserved].

**Subpart 504.2—Contract Distribution**

- 504.201 Procedures.
- 504.203 Taxpayer identification information.

**Subpart 504.4—Safeguarding Classified Information Within Industry**

- 504.402 General.
- 504.470 Acquisitions involving classified information.
- 504.470-1 [Reserved].
- 504.470-2 [Reserved].
- 504.471 Processing security requirements checklist (DD Form 254).
- 504.472 Periodic review.
- 504.473 Recurring procurement.
- 504.474 Control of classified information.
- 504.475 Return of classified information.
- 504.476 Breaches of security.

**Subpart 504.5—Electronic Commerce in Contracting**

- 504.500 [Reserved].
- 504.502 Policy.
- 504.570 [Reserved].

**Subpart 504.6—Contract Reporting**

- 504.604 Responsibilities.
- 504.605 Procedures.
- 504.605-70 Federal Procurement Data System Public–Access to Data.
- 504.606 Reporting Data.

**Subpart 504.8—Government Contract Files**

- 504.800 Scope of subpart.
- 504.802 Contract files.
- 504.803 Contents of contract files.
- 504.804-5 Procedures for closing out contract files.
- 504.805 Storage, handling, and disposal of contract files.

**Subpart 504.9—Taxpayer Identification Number Information**

- 504.902 General.
- 504.904 Reporting contract information to the IRS.

**Subpart 504.11—Central Contractor Registration**

- 504.1103 Procedures.

**Subpart 504.13—Personal Identity Verification of Contractor Personnel**

- 504.1301 Policy.
- 504.1303 Contract clause.

**Subpart 504.70—[Reserved]**

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**PART 504—ADMINISTRATIVE MATTERS****Subpart 504.1—Contract Execution****504.101 Contracting officer's signature.**

Contract, contract modifications, blanket purchase agreements, and task and/or delivery orders may be executed manually or electronically using a digital signature. In the absence of the original contracting officer, another contracting officer with appropriate warrant authority may sign. Always type or stamp the name and title of the contracting officer signing the contract on the document, unless it is electronically signed. An electronic contract which includes the name of the contracting officer satisfies the typed, stamped or printed requirement found in FAR 4.101. GSA Order CIO 2162.1 (GSA Digital Signature Policy dated December 2, 2010) is the guidance for the use of digital signatures as the preferred means of providing signatures for GSA documents, forms, correspondence, and/or emails.

**504.103 [Reserved].****Subpart 504.2—Contract Distribution****504.201 Procedures.**

(a) The contracting officer must send documentation to the paying office on all contracts for which GSA generates a delivery or task order.

(1) For Federal Acquisition Service contracts entered into the FSS-19 system, the contracting officer must send a system generated contract listing.

(2) For all other contracts, the contracting officer must send a "Duplicate Original" of the entire contract or modification.

(b) The contracting officer must certify that the "Duplicate Original" is a true copy of the contract, modification, task and/or delivery order, if not electronically signed, by writing your signature, in ink, on the award or modification form (*i.e.*, SF 26, 33, 1442, etc.). The contracting officer must certify all contracts except:

- (1) Leases of real property.
- (2) Schedule contracts.
- (3) Standard or GSA multipage purchase/delivery/task order carbon forms.

**504.203 Taxpayer identification information.**

FAR 4.203(a) does not apply to leases of real property (see [504.904](#)) or FAR Part 38 Federal Supply Schedule Contracting.

**Subpart 504.4—Safeguarding Classified Information Within Industry****504.402 General.**

(a) This subpart prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of offers, and the award, performance, and termination of contracts.

(b) As used in this subpart, the term "Contractor(s)" means prospective contractors, subcontractors, vendors, and suppliers.

**504.470 Acquisitions involving classified information.**

HCA's must consider how adequate security will be established, maintained, and monitored before accepting a reimbursable agreement for a requirement involving classified information. Further, HCAs are responsible for ensuring that the contracting officers, other procurement personnel, and contracting officer representatives (CORs) assigned to the acquisition have the appropriate security clearances, prior to accepting a reimbursable agreement involving access to, or generation of, classified information.

**504.470-1 [Reserved].****504.470-2 [Reserved].****504.471 Processing security requirements checklist (DD Form 254).**

(a) The contracting officer must prepare DD Form 254, Contract Security Classification Specification (illustrated in FAR 53.303-DD-254), for contracts involving contractor access to classified information. This form identifies for contractors the areas of classified information involved. The contracting officer may use written notice of classification for research or service contracts.

(b) Obtain instructions or guidance on completing DD Form 254 from the Security and Emergency Management Division, Office of Mission Assurance (OMA).

**504.472 Periodic review.**

(a) The contracting officer in coordination with the appropriate program security officer must review DD Form 254 at least once a year, or whenever a change in the phase of performance occurs, to determine if the classified information can be downgraded or declassified.

(b) The contracting officer must inform the contractor of the results of the review by one of the following means:

- (1) Issuance of a revised specification.

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(2) Written instructions instead of DD Form 254, if authorized.

(3) Written notification if the review results in no change in the classification specifications.

(c) The contracting officer must prepare a final checklist upon termination or completion of the contract in accordance with FAR 4.805-5.

**504.473 Recurring procurement.**

The contracting officer must prepare a new DD Form 254 only if a change occurs in either of the following:

- (a) End item.
- (b) Previous security classification.

**504.474 Control of classified information.**

(a) The contracting officer must record, mark, handle, and transmit classified information in accordance with the requirements of the Security Branch Chief, Security and Emergency Management Division, Office of Mission Assurance (OMA).

(b) The contracting officer must obtain the consent of the originating agency before releasing classified information to a contractor.

**504.475 Return of classified information.**

(a) Contracting officers must recover classified information, unless it has been destroyed as provided in Section 7 of Chapter 5 of the National Industrial Security Program Operating Manual (NISPOM). Information on NISPOM can be found at <http://www.fas.org/sgp/library/nispom.htm>.

(b) Contracting officers must ensure that classified information provided by the government is returned immediately after any of the following events:

- (1) Bid opening or closing date for receipt of proposals by non-responding offerors.
- (2) Contract award by unsuccessful offerors.
- (3) Termination or completion of the contract.
- (4) Notification that authorization to release classified information has been withdrawn.
- (5) Notification that a facility:
  - (i) Does not have adequate means to safeguard classified information; or
  - (ii) Has had its security clearance revoked or inactivated.
- (6) Whenever otherwise instructed by the authority responsible for the security classification.

(c) The Government agency that provided classified information to a GSA contractor is responsible for the return of the information.

**504.476 Breaches of security.**

GSA employees responsible for the protection of classified information must refer the facts of an unauthorized disclosure

promptly to Security Branch Chief, Security and Emergency Management Division, Office of Mission Assurance (OMA).

### **Subpart 504.5—Electronic Commerce in Contracting**

**504.500 [Reserved].****504.502 Policy.**

Use of electronic signatures is encouraged and can be used to sign and route documents in GSA's IT systems to contractually obligate funds. The method of authentication used for electronic signatures shall be consistent with the level (1-4) determined from the e-authentication risk assessment in accordance with OMB M-04-04, E-authentication Guidance for Federal Agencies, and the respective technology safeguards applicable to that level or risk from National Institute of Standards and Technology 800-63, Electronic Authentication Guideline.

**504.570 [Reserved].**

### **Subpart 504.6—Contract Reporting**

**504.604 Responsibilities.**

(a) The Senior Procurement Executive (SPE), in coordination with the HCA, shall establish necessary policies to ensure the accurate and timely input of data into FPDS. At a minimum, the SPE and the HCA shall ensure that the following procedures are implemented.

(1) Contract writing systems capable of reporting directly into FPDS shall be configured to do so as a condition of making an award.

(2) To ensure the accuracy of data entered, reports of actions awarded shall be routinely generated from the contract writing system, examined and compared to data contained in FPDS to assure that those actions have been reported accurately to FPDS.

(3) Organizations without a contract writing system shall report the data using the FPDS web portal interface not later than 14 days after an award is made. To ensure data entry and accuracy, logs of contract actions shall be regularly reviewed and compared to data entries in FPDS.

(4) HCAs shall also verify and validate accuracy of the data and ensure contract awards have been entered into FPDS within the appropriate time frames.

(b) Contracting officers are the individuals primarily responsible for the accuracy of data submitted to FPDS as well as the submission and accuracy of the individual contract action report (CAR).

(c) The contracting officer shall, at a minimum, take the following steps necessary to verify the accuracy of the CAR:

(1) In the case of a contract writing system, review the CAR information for accuracy and completeness prior to submission to FPDS and prior to the release of the contract award.

(2) In the absence of a Contract Writing System, ensure that the CAR information is submitted to FPDS within 14 days after contract award.

(3) To further assure accurate contract data, consider including a copy of the CAR with award documents sent to the contractor for the contractor's knowledge review and information.

(d) The Chief Acquisition Officer (CAO) shall periodically statistically sample the GSA FPDS file and provide a list of transactions to the contracting activities for certification.

(1) The review process should include procedures, comparisons of contract file data to FPDS data entries, and comparisons of printouts of FPDS data to their contract writing system data for accuracy.

(2) The verification and validation shall be conducted by an organization or person that did not award the contracts being reviewed. HCAs may institute any appropriate process that complies with this requirement.

(3) HCAs shall provide certifications of the accuracy, timeliness and validity of their FPDS data on a quarterly basis to the CAO based on the list of transactions provided to HCAs under paragraph (d) of this section. Certifications to the CAO shall include a description of the means used to verify the accuracy and completeness of the data and a statement that all discrepancies found have been corrected.

(e) The CAO will provide the annual certification of GSA's FPDS data to OMB required by FAR 4.604(c). This certification will be based on the Regional and Heads of Services and Staff Offices' reviews and certifications and the CAO's review. Certifications are due not later than 15 working days after the end of the quarter.

#### 504.605 Procedures.

(a) *Uniform procurement instrument identification.* This subpart:

(1) Prescribes procedures for identifying contracts, orders, and other procurement instruments regardless of dollar threshold.

(2) Applies to all contracting activities, except:

(i) Federal Acquisition Services (FAS) Multiple Award Schedule (MAS) procurement activities, and FAS Office of General Supplies and services (QS).

(ii) Real property leasing.

(b) *Policy.* (1) Contracting officers shall use the uniform procurement instrument identification system for procurement instruments. Do not use it for:

(i) Purchases made through certified invoice procedures (see [513.370](#)).

(ii) Purchases made with the Governmentwide commercial purchase card.

(2) Complete the contract number block provided on the applicable forms. If a space is not reserved for the prescribed number, place the number in the upper right-hand corner of the form.

(3) Each contracting office must maintain records to ensure continuity and control of procurement instrument identification numbers.

(c) *Solicitations.* Contracting officers may use their discretion when numbering Invitations for Bid (IFB), Requests for Information (RFI), Requests for Quotations (RFQ), and Requests for Proposals (RFP). Contracting officers may use the basic procurement instrument identification numbering system, prescribed below in paragraph (d) of this section, applying the appropriate instrument code from paragraph (i) of this section, or may use an independently generated instrument code, provided that numbering within each procurement office follows a consistent numbering convention and each instrument identification number is unique.

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(d) *Awards.* The basic procurement instrument identification number normally is assigned at award. The contracting office may assign a number when it receives a procurement request to facilitate procurement tracking. The basic procurement instrument identification number stays the same throughout the life of the procurement instrument. It consists of 14 alphanumeric characters as follows:

Character(s)	Content	Content Description Location	Example
1–2	Agency Designation Code	Always “GS”	GS
3–4	Region/Central Office Identification Code	504.605(g)	02
5	Service/Office Code	504.605(h)	P
6–7	Last Two Digits of Fiscal Year of Number Assignment		99
8–9	Preparing Contracting Office Code	Located in FPDS-NG  GSA Detailed Contracting Office List	PF
10	Instrument Code	504.605(i)	L
11–14	Serial Number	504.605(j)	0001

(e) *Orders.* Delivery or task orders under indefinite delivery contracts and schedule contract orders are identified by placing a 13-character alphanumeric identification number in the order number block of the order form as shown in the table below. The basic indefinite delivery or schedule contract number is placed in the contract number block of the order form.

Character(s)	Content	Content Description Location	Example
1–2	Agency Designation Code	Always “GS”	GS
3	Service/Office Code	504.605(h)	P
4–5	Region/Central Office Identification Code	504.605(g)	01

Character(s)	Content	Content Description Location	Example
6–7	Last Two Digits of Fiscal Year of Number Assignment		98
8–9	Preparing Contracting Office Code	Located in FPDS-NG  GSA Detailed Contracting Office List	PB
10–13	Serial Number (in sequence as issued by the contracting office)	504.605(j)	B096

(f) *Supplemental procurements.* Modifications to the basic contract instrument and to calls/orders against contracts are numbered with a four character alphanumeric number. The supplemental identification numbering system applies to all modifications to contracts and to call/orders against contracts.

Character(s)	Content	Description	Example
1	Office Issuing Modification	A = Administrative Office P = Purchasing Office	A
2	Action Type	A = Administrative Change C = Change Order O = Other S = Supplemental Agreement (bilateral signatures)	S
3–4	Serial Number	01–99 A1–A9 to Z1–Z9 AA–AZ to ZA–ZZ	B2

(g) *Region/Central Office Codes.*

00	Central Office
01	Region 1
02	Region 2
03	Region 3
04	Region 4
05	Region 5
06	Region 6
07	Region 7
08	Region 8
09	Region 9
10	Region 10
11	National Capital Region

(h) *Preparing Service/Office Codes.*

H	Office of Administrative Services
B	Office of the Chief Financial Officer
Q	Federal Acquisition Service
G	Civilian Board of Contract Appeals
C	Office of the Chief People Officer
I	Office of Chief Information Officer
J	Office of Inspector General
L	Office of General Counsel
M	Office of Governmentwide Policy
P	Public Buildings Service
X	Office of Citizen Services and Innovative Technologies

(i) *Procurement Instrument Type Codes.*

A	Agreements, including basic agreements, basic ordering agreements, and blanket purchase agreements.
B	Invitation for Bid (IFB).
C	Contracts, including letter contracts, contracts referencing basic agreements, or basic ordering agreements, excluding indefinite delivery contracts.
D	Indefinite delivery contracts, including definite quantity, requirements, and indefinite quantity.
E	Sales contracts.
F–H	Reserved.
I	Standing Price Quotation (SPQ).
J–L	Reserved.
M	Purchase orders (open market simplified acquisition)—manual.
N	Request for Information (RFI).
P	Purchase orders (open market simplified acquisition)—automated.
Q	Request for Quotation (RFQ).
R	Request for Proposal (RFP).
S	Schedule contract.
T–Z	Reserved.

(j) *Serial Number Codes.* (1) A separate series of numbers may be used for each basic instrument type (see [504.605\(d\)](#) and [504.605\(j\)](#)).

(2) For delivery or task orders, each order issued by contracting office must receive a consecutive serial number. That is, orders are numbered in sequence as issued by the contracting office, but they are not in sequence under any individual contract.

(3) At the beginning of each fiscal year, the first number assigned is 0001.

(4) Alphanumeric characters are serially assigned after the numeric series is exhausted.

(5) The allowable numeric and alphanumeric sequences, excluding alpha I and O are:

(i) 0001 through 9999.

(ii) A001 through A999, B001 through B999.

(iii) and so on to Z001 through Z999.

(6) Each issuing office is responsible for controlling serial number assignments.

**504.605-70 Federal Procurement Data System Public—Access to Data.**

(a) *The FPDS database.* The General Services Administration awarded a contract for creation and operation of the Federal procurement Data System (FPDS) database. That database includes information reported by departments and agencies as required by FAR subpart 4.6. One of the primary purposes of the FPDS database is to provide information on Government procurement to the public.

(b) *Fee for direct hook-up.* To the extent that a member of the public requests establishment of real-time integration of reporting services to run reports from another application, a one-time charge of \$2,500 for the original integration must be paid by the requestor. This one-time charge covers the setup and certification required for an integrator to access the FPDS database and for technical assistance to help integrators use the web services. The fee will be paid to the FPDS contractor and credited to invoices submitted to GSA by the FPDS contractor.

**504.606 Reporting Data.**

*Reporting requirements.* Detailed specification of FPDS data reporting requirements is contained in the FPDS-NG FAQs document (available at [https://www.fpds.gov/wiki/index2.php/FPDS-NG\\_FAQ](https://www.fpds.gov/wiki/index2.php/FPDS-NG_FAQ)). Reporting offices are encouraged to use automated information systems for FPDS data reporting, provided that the systems contain all required FPDS data elements via the machine-to-machine process and the automated acquisition system has received the proper certification from the FPDS system manager.

**Subpart 504.8—Government Contract Files****504.800 Scope of subpart.**

This subpart prescribes a standard contract file format for all contracts that exceed the simplified acquisition threshold, except leases of real property. This subpart may be applied to purchases using simplified acquisition procedures.

**504.802 Contract files.**

(a) *File standardization.* The contracting officer must place all information and documentation required by FAR



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4.802 and 4.803 in the contract file and organize the file in the standard contract file format as set out in [504.803](#).

(b) *Responsibility for files.* (1) The contracting officer is responsible for the official file. Individuals creating documents relating to the contract must forward those documents to the contracting officer for inclusion in the file.

(2) The contracting officer is responsible for transferring official contract files to the National Archives and Records Administration and for maintaining appropriate records that will facilitate file retrieval.

(c) *Transfer of responsibility for contract files.* (1) When responsibility for a contract transfers from one contracting officer to another contracting officer, *e.g.*, transfer of assignments or redelegation of contract administration authority (intraoffice or interoffice), the original contracting officer must prepare a detailed listing by file number and name to identify the file(s) being transferred.

(2) Retain a copy of the listing and send a copy to the successor contracting officer as advance notice of the files being transferred.

(3) Retain duplicates of the files transferred until the successor contracting officer acknowledges receipt of the files.

(4) Send the files being transferred to the successor contracting officer by certified mail, return receipt requested, or by another method requiring the successor contracting officer's signature to acknowledge receipt. Send two copies of the listing with the transferred files.

(5) The successor contracting officer must sign one copy of the listing, certifying receipt of the files listed, and return the signed copy to the originating contracting officer.

### 504.803 Contents of contract files.

(a) *Arrangement.* (1) Tab the contract file.

(2) File items in reverse order starting with item (1) on the bottom of the file and item (27) on the top.

(3) File documents within a tab chronologically with the most recent document on top.

(4) Place documents too voluminous for an individual tab in a separate file. Annotate the tab with the location of the separate file.

(5) Omit any tab not required for the contract.

(b) *Tab contents.* The following instructions apply to contract actions up to award. Contracting activities may develop further guidance on tabbing postaward actions tailored to their requirements. Tab the contract file as specified below:

(1) Requisition or request for contractual action. Include the certification of the accuracy and completeness of data supporting a recommendation by technical or requirements personnel to use other than full and open competition. (See FAR 6.303-1(b).)

(2) Specifications, drawings, and other technical documents.

(3) Acquisition plan including, if applicable, the determination required by OMB Circular A-76 and concurrence of the cognizant competition advocate.

(4) Determination and findings required by FAR 1.7 and [501.7](#), or justification required by FAR 6.303, including the certification of accuracy and completeness of the justification.

(5) Department of Labor Wage Determination.

(6) Small business determinations.

(7) Source list.

(8) Statement as to synopsis of proposed procurement under FAR 5.2 or other required advertisements under [505.2](#).

(9) Presolicitation notice.

(10) IFB/RFP and amendments.

(11) Abstract of bids or proposals including identification of the low bidder or offeror, discounted price, etc.

(12) Cost or pricing data and information other than cost or pricing data. Include the waiver and documentation supporting the waiver if the requirement for submission of cost or pricing data is waived, as provided in FAR 15.403-1(b)(4).

(13) Field pricing report (see FAR 15.404-2).

(14) Price or cost analysis report prepared under FAR 15.404, including:

(i) Supporting technical analyses, other than those supporting an audit report.

(ii) Profit or fee analysis required by FAR 15.404-4 and [515.404-4](#).

(iii) An independent Government estimate, if required.

(15) Documentation required by FAR 15.406, written to permit reconstruction of the acquisition's major events.

(16) Certificate of current cost or pricing data, if applicable.

(17) Pre-award survey.

(18) EEO compliance review.

(19) "No bid" or "no proposal" correspondence.

(20) Unsuccessful bids or proposals. Include a copy of each rejected bid and unacceptable proposal.

(21) Mistakes in bids and protests. Include all correspondence and determinations relating to mistakes in bids disclosed before award or protests.

(22) Actions taken on late bids or proposals.

(23) Contract action. Include:

(i) Successful bid or proposal and all pertinent correspondence applicable to the contract action, including evidence of submission of contract award data to paying office (see [504.201](#)).

(ii) Subcontracting plans incorporated in and made a material part of a contract, as required by FAR 19.705-5(a)(5).

(24) Evidence of legal review, if required.

(25) Approvals. Include, as applicable:



- (i) GSA Form 1535, Recommendation for Award.
- (ii) Documentation of approval of subcontracting plan.
- (iii) Record of individuals authorized access to contractor bid or proposal information or source selection information (see [503.104-4\(a\)\(4\)](#)).
- (26) Notices of award.
- (27) FPDS Contract Action Report, or other system-generated equivalent.

(c) *Index.* (1) Place an index of the file tabs in the file, or simulate electronically an index of the tabs and include in the front of the electronic version of the contract file. Identify items that do not apply. If necessary, briefly explain why. The contracting officer may use the GSA Form 3420, Contract/Modification File Checklist File Format (Award), for the index, or an electronically created index inclusive of the items detailed under GSAR [504.803\(b\)](#).

(2) Include subheadings under a tab if required by the contracting officer's office.

#### **504.804-5 Procedures for closing out contract files.**

(a) HCAs are directed to take appropriate steps to ensure that physically completed contracts are formally closed in accordance with the procedures at FAR 4.804, GSAM 504.804-5, and guidelines provided below for simplified acquisitions and contracts with residual balances. HCAs are reminded that when closing out contract actions at FAR 4.804-1(a)(2), (3), and (4), the contracting officer shall use the closeout procedures at FAR 4.804-5. However, these closeout actions may be modified to reflect the extent of administration that has been performed. Contracting activities that have supplemented the FAR procedures with instructions pertinent to the specific contract types, business systems, and resources employed are encouraged to continue the use of such supplements.

(b) Contracting officers must be vigilant and proactive with respect to proper contract closeout procedures. They must not allow completed contracts to remain open indefinitely or allow a failure to conduct timely closeout to violate regulatory or statutory requirements, or negatively impact GSAs accurate and timely financial reporting.

(c) Under FAR 4.804-1(a)(1), the contracting officer only needs evidence of receipt of goods and services and final payment to closeout the contract files. For contracts awarded under the simplified acquisition procedures, contracting officers shall ensure that the contract award document and the statement of work includes the following statement:

“For payment purposes, the contractor shall mark its final invoice for payment as Final Invoice for Payment.”

(1) For task and delivery orders awarded under these procedures, the orders shall also include the statement above.

(2) Contracting officers shall instruct contracting officer representatives or project managers receiving supplies and services under the simplified acquisition procedures to forward copies of the receiving report and final invoice to the contracting officer for contract close-out purposes.

(d) Cancellation of open items with residual balances.

(1) Open item balances (remaining) of \$100,000 and below should be canceled if deemed invalid following the procedures below. Service and Staff Office (SSO) funds managers (persons certifying the availability of funds) will have the authority and responsibility to cancel balances if deemed invalid. Only valid obligations should be retained in the financial accounting system.

(2) The following procedures should be followed to cancel invalid obligations:

(i) The SSO funds managers will generate a list of proposed deobligations and present it to the contracting officer and his/her director for review and approval.

(ii) The contracting officer or director shall respond to the SSO funds manager within 45 days, justifying in writing why any open item on the list should not be canceled.

(iii) If the funds manager receives no response from the contracting officer, the funds manager is authorized to take appropriate steps to deobligate the open items in the accounting and business systems.

(iv) When a contracting officer approves the cancellation of obligation under items b or c, above, the contracting officer shall prepare the appropriate documents necessary (e.g., contract modification) for the contract file.

(e) These actions by the SSO funds managers shall be considered an internal financial accounting action and shall have no bearing on the Government's rights and duties under the contracts until the contracting officer officially closes the contract.

(f) *Non-contracting officer acquisitions.* For newly created open items that did not require the signature of a contracting officer (GSAM [501.603-1\(f\)](#)) the funds manager has the authority to correct or cancel any open item not deemed valid. Examples of such document types include micropurchases using the governmentwide commercial purchase card, internal GSA orders and security clearances (e.g., IX, IY, GX). The funds managers should follow the financial systems procedures outlined in this memorandum for cancellation and should inform the originator of the open item of the cancellation.

#### **504.805 Storage, handling, and disposal of contract files.**

The contracting officer's accountability for contract files ends when the following three conditions exist:

(a) The files' retention period expires.

(b) The contracting officer receives the notice of disposal from the National Archives and Records Administration.

(c) The records liaison officer whose organization has functional responsibility for the files approves disposal.

### **Subpart 504.9—Taxpayer Identification Number Information**

#### **504.902 General.**

(a) *Debt collection.* The Debt Collection Improvement Act of 1996 requires each contractor doing business with GSA to furnish its Tax Identification Number (TIN). The Government is required to include with each certified voucher prepared and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Office of Financial Policy and Operations to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

(b) *Information reporting to the IRS.* The TIN is also required for Office of Financial Policy and Operations reporting of certain contract information (see FAR 4.903) and payment information (see GSAM [504.904](#)) to the IRS.

#### **504.904 Reporting contract information to the IRS.**

(a) The Office of Financial Policy and Operations reports to IRS on payments made to certain contractors for services performed and to lessors for providing space in buildings. This is required by 26 U.S.C. 6041 and 6041A and implemented in 26 CFR. To assist the Office of Financial Policy and Operations in reporting to the IRS, contracting officers must indicate on obligating documents sent to Finance (e.g., purchase, delivery, or task orders; contracts; the GSA Form R-620 for leases; or certified invoices) the contractor's organizational structure (e.g., corporation, partnership) and taxpayer identification number (TIN).

### **Subpart 504.11—Central Contractor Registration**

#### **504.1103 Procedures.**

In addition to the requirements found in FAR 4.1103, prior to awarding a contractual instrument the contracting officer must—

(1) Verify that the prospective contractor's legal business name, Doing-Business-As (DBA) name (if any), physical street address, and Data Universal Number System (DUNS) number or DUNS+4 number, as found in the CCR, match the information that will be included in the contract, order, or agreement resulting from the vendor's quote or proposal. Correct any mismatches by having the vendor amend the information in the CCR and/or the quote or proposal. The CCR information can be accessed through GSA's CCR repository (contact the GSA Systems Programming Branch for instructions, a user ID, and password).

(2) Ensure that the contractor's address code exists in Pegasys and that it is CCR enabled with the contractor's DUNS or DUNS+4 number. This can be done by searching Pegasys records using the contractor's Taxpayer Identification Number (TIN). If no code exists, request that a new address code be established by the Finance Center for CCR compliance.

(3) Ensure that the contractor's identifying information is correctly placed on the contractual instrument, using special care to ensure that the legal name and "remit to" name match exactly. (Note: Lockbox names or numbers should not be used to replace the contractor's name in the remittance block on the contractual instrument.)

(4) Unless one of the exceptions to registration in CCR applies (see FAR 4.1102(a)), the contracting officer must not award a contract to a prospective contractor who is not registered in CCR. If no exceptions are applicable, and the needs of the requiring activity allows for a delay in award, see FAR 4.1103(b)(1).

**Subpart 504.13—Personal Identity  
Verification of Contractor Personnel****Subpart 504.70—[Reserved]****504.1301 Policy.**

Contracting officers must follow the procedures contained in CIO P2181.1 - GSA HSPD-12 Personal Identity Verification and Credentialing Handbook, which may be obtained from the CIO Office of Enterprise Solutions, to ensure compliance with Homeland Security Presidential Directive-12 (HSPD-12) “Policy for a Common Identification Standard for Federal Employees and Contractors,” Office of Management and Budget Memorandum M-05-24, and Department of Commerce FIPS PUB 201.

**504.1303 Contract clause.**

Insert the clause at [552.204-9](#), Personal Identity Verification Requirements, in solicitations and contracts when it is determined that contractor employees will require access to federally controlled facilities or information systems to perform contract requirements.

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## **SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**

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**PART 505—[RESERVED]**

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**AMENDMENT 2010-02 JUNE 10, 2010**

PART 505—[RESERVED]

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**PART 505—[RESERVED]**

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## PART 506—COMPETITION REQUIREMENTS

*Sec.*

### **Subpart 506.2—Full and Open Competition After Exclusion of Sources**

506.202      Establishing or maintaining alternative  
sources.

### **Subpart 506.3—Other than Full and Open Competition**

506.303      Justifications.  
506.303-1      Requirements.

### **Subpart 506.5—Competition Advocates**

506.501      Requirement.

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**PART 506—COMPETITION REQUIREMENTS****Subpart 506.2—Full and Open Competition  
After Exclusion of Sources****506.202 Establishing or maintaining alternative sources.**

An HCA signs determinations and findings required by FAR 6.202.

**Subpart 506.3—Other than Full and Open  
Competition****506.303 Justifications.****506.303-1 Requirements.**

(a) *Proposing a class justification.* If you determine that the facts supporting other than full and open competition would be present in other GSA contracting activities, you should propose a class justification. Recommend through appropriate channels that the Senior Procurement Executive approve a class justification for all GSA contracting activities. This does not apply to justifications based on the authority of

[41 U.S.C. 253\(c\)\(7\)](#), which does not permit class justifications.

(b) *Justifications based on [41 U.S.C. 253\(c\)\(7\)](#).* For a justification based on the authority of [41 U.S.C. 253\(c\)\(7\)](#) (see FAR 6.302-7), submit the justification for the Administrator's approval through the Senior Procurement Executive.

(c) *Justifications for contract actions subject to the Agreement on Government Procurement.* When you acquire eligible products without full and open competition using the authority in FAR 6.302-3(a)(2)(i) or 6.302-7, furnish a copy of the approved justification to the Senior Procurement Executive. The Senior Procurement Executive will transmit the justification to the U.S. Trade Representative.

**Subpart 506.5—Competition Advocates****506.501 Requirement.**

The appointment of the procuring activity competition advocate by the HCA must be communicated to the procuring staff, the agency competition advocate and the Senior Procurement Executive.

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PART 507—ACQUISITION PLANNING

*Sec.*

**Subpart 507.1—Acquisition Plans**

- 507.101 Definitions.
- 507.103 Agency-head responsibilities.
- 507.104 General procedures.
- 507.105 Contents of acquisition plans

**Subpart 507.70—Additional Requirements for  
Purchases in Support of National Security  
Systems involving Weapons Systems**

- 507.7000 Scope of subpart.
- 507.7001 Policy.

**Subpart 507.5—Inherently Governmental  
Functions**

- 507.503 Policy.

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**PART 507—ACQUISITION PLANNING****Subpart 507.1—Acquisition Plans****507.101 Definitions.**

“Planner” means the person residing in the requirements office who initiates, coordinates and prepares written acquisition plans. The person may be in an individual program office or have responsibility for a number of such offices.

“Planning team” means a team of individuals formed to prepare individual elements of an acquisition plan. The team should be comprised of technical and professional representatives from the requirements customer, contracting, budget, counsel, small business technical advisors (SBTA), and other offices as warranted.

“Requirements office” means the internal GSA office that establishes and funds the agency need. If an organization outside of GSA establishes and funds the need, then the requirements office will be the GSA office that is managing the acquisition for that outside organization.

**507.103 Agency-head responsibilities.**

The HCA must ensure that the planning team adheres to the requirements of FAR Part 7, Acquisition Planning.

**507.104 General procedures.**

(a) The planner shall:

(1) Comply with the requirements of FAR Subpart 7.1, and coordinate with other members of the planning team as appropriate.

(2) Write the acquisition plan using all planning team members especially for complex or highly sensitive acquisitions.

(3) Review the acquisition history of the supplies and services.

(4) Review the description of the supplies, including (when necessary for adequate description) a picture, drawing, diagram, or other graphic representation.

(5) Coordinate with the Small Business Technical Advisor (SBTA) as necessary to fulfill the requirements of FAR 7.104(d)(1).

(6) Coordinate with local representatives of the Office of the Chief Information Officer (CIO) if the action involves IT services or supplies for use by GSA to ensure compliance with the requirements of GSA Order CIO 2135.1, GSA Information Technology (IT) Capital Planning and Investment Control (not required for establishing a Federal Supply Schedule program).

(7) Obtain concurrence of the contracting officer, and approvals as required in paragraph [507.105\(c\)\(1\)](#).

(8) Coordinate with the Office of General Counsel on an as needed basis, but definitely for plans over \$20 million.

(9) Ensure that an interagency agreement is in place in all agency specific clauses, terms and conditions are incorporated in the acquisition, when conducting purchases on behalf of other agencies.

(b) The contracting officer shall:

(1) Ensure that acquisition planning and market research are performed for all acquisitions.

(2) Ensure that the contract file contains a copy of the approved acquisition plan.

(c) *Applicability.* With the following exceptions, all acquisitions, including orders and BPAs, require written acquisition plans.

(1) When awarding a single IDIQ contract or a BPA for a specific requirement and agency, an acquisition plan will be developed for the base contract. The resulting orders should be covered by and reference the same acquisition plan.

(2) Oral plans.

(d) The planner is encouraged to use the Acquisition Planning Wizard (APW) (found at <http://apw.gsa.gov>), or any successor system, for all acquisitions exceeding the SAT. Not later than 7 calendar days after the acquisition plan is approved, if not completed in APW, an electronic copy shall be sent to [acquisitionplans@gsa.gov](mailto:acquisitionplans@gsa.gov).

**507.105 Contents of acquisition plans.**

(a) *Written.* (1) The APW contains the format prescribed in FAR 7.105 and shall be used in the preparation of acquisition plans. Where a particular element described in FAR 7.105 does not apply, the acquisition plan should read “not applicable.” The dollar value, complexity (e.g., commercial versus non-commercial item) and method of acquisition (e.g., full and open competition versus task/delivery order) of the supplies and services to be acquired will affect the scope and breadth of the acquisition plan.

(2) FAR 7.106 (*major systems*) and FAR 7.107 (*bundling*) shall be addressed in the plans, if applicable.

(3) For leasehold interests in real property, a modified version of the contents of acquisition plans for leases is provided in the APW.

(4) The requirement for a written plan may be waived by the appropriate level of an approving official listed in GSAM 507.105(c). When the requirement for a written plan is waived, an oral plan is still required. The planner must obtain approval for the oral plan from the approving official.

(b) *Oral plans.* Oral plans are only authorized by approval of the HCA and may be used in unusual and compelling situations. The planner shall document a summary of the oral plan, and shall also include: the name and signature of the approving official; the date the oral plan was approved; and the reason for waiving a written plan. The summary shall be included in the official contract file. In addition, the summary should be a part of, or attached to, any justification for other than full and open competition as required by FAR 6.302, or in the basis for using an exception to the fair opportunity process required by FAR 16.505(b)(2). The summary may be prepared after award if preparation before award would unreasonably delay the award, such as in the case of circumstances warranting the use of a letter contract.

(c) *Approval thresholds.* (1) The following are the dollar value thresholds and the level of the approving official for

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GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

approving acquisition plans or waiving written plans. For purposes of leasing, the Simplified Leasing Acquisition Threshold (SLAT) is defined in Part 570. The HCA may authorize higher level approving officials for the thresholds set out below.

<u>Threshold</u>	<u>Approving Official</u>
Below the SAT (SLAT for leases)	Contracting Officer
SAT (SLAT for leases) to, and including, \$5.5 million	One Level above the Contracting Officer
Over \$5.5 million to, and including, \$20 million	Contracting Director
Over \$20 million to, and including, \$50 million	Regional Commissioner or Deputy Regional Commissioner
Over \$50 million	HCA

Note: Thresholds shall include all options.

(2) If the acquisition meets one of the following criteria and is greater than the SAT, the planner must obtain HCA approval of the plan:

(a) Complex, critical to agency strategic objectives and mission, highly visible or politically sensitive.

(b) An acquisition with which GSA has little or no experience that may result in a need for greater oversight or risk management.

(c) Actions using significantly changed methods (e.g., methods of procurement such as lease versus purchase, or methods of performance such as contractor versus Government personnel).

(d) New construction or repair, lease prospectus and alteration prospectus budget line items.

(e) Any acquisition that requires contract bundling (FAR 7.107).

### Subpart 507.5—Inherently Governmental Functions

#### 507.503 Policy.

(a) Concurrent with the transmittal of each statement of work or any modification to a statement of work for a service contract, the requirements office must provide the contracting officer a written determination that none of the functions to be performed are inherently governmental as defined in FAR 7.5. The determination must include a statement that the requirement is not for functions similar to those listed under FAR 7.503(c).

(b) The requirements office must also review the examples of functions listed under paragraph (d) of FAR 7.503. While these functions are not inherently governmental, they may

restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using the contractor services or work products. If the services to be acquired may cause such restrictions, the acquisition plan must discuss the associated vulnerabilities, and address management controls to mitigate them.

(1) These measures may include requiring special controls and safeguards to prevent improper personal services relationships, contractor personnel access to privileged or sensitive information, and/or confusion regarding the mistaking of contractor employees for Federal employees.

(2) The requirements office is directed to use FAR 37.104 and 37.5 and OFPP Policy Letter 93-1 for guidance in addressing these considerations.

(3) The HCA resolves any disagreement regarding the requirements official's determination, following the guidelines in FAR 7.5. The HCA may delegate this authority to a level not lower than the contracting director.

### Subpart 507.70—Additional Requirements for Purchases in Support of National Security Systems Involving Weapons Systems

#### 507.7000 Scope of subpart.

This subpart prescribes acquisition policies and procedures for use in acquiring information technology supplies, services and systems in support of a weapon system as part of a national security system, as defined by FAR 39.002.

#### 507.7001 Policy.

(a) Although GSA's mission does not include the direct acquisition of weapon systems on behalf of the Department of Defense (DoD), GSA contracting activities may procure information technology supplies, services and systems in support of a weapon system, which is part of a national security system (e.g., components, services to install and maintain weapon systems, ancillary items and services) when responding to a bona-fide requirement received from a requiring agency or program office.

(b) Contracting Officers shall ensure that all requiring agency regulations and the policies and directives of The Committee on National Security Systems at [www.cnss.gov](http://www.cnss.gov) are incorporated during the acquisition planning stage and are met before acquiring information technology supplies, services and systems in support of a weapon system as part of a national security system.

(c) Employees responsible for or procuring information technology supplies, services and systems in support of a weapon system shall possess the appropriate security clearance associated with the level of security classification related to the acquisition. They include, but are not limited to contracting officers, contract specialists, project/program managers, and contracting officer representatives.

## **PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

*Sec.*

### **Subpart 508.6—Acquisition from Federal Prison Industries, Inc.**

508.604	Ordering procedures.
508.604-70	Delinquent delivery orders.
508.605	Clearances.

### **Subpart 508.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled**

508.705	Procedures.
508.705-4	Compliance with orders.
508.705-70	Adding items to the Procurement List.
508.705-71	Central non-profit agency performance capability.
508.706	Purchase exceptions.

### **Subpart 508.8—Acquisition of Printing and Related Supplies**

508.802	Policy.
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**PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

**Subpart 508.6—Acquisition from Federal Prison Industries, Inc.**

**508.604 Ordering procedures.**

**508.604-70 Delinquent delivery orders.**

(a) Establish delivery schedules based on the lead time required by Federal Prison Industries (FPI).

(b) You may use delinquent orders as the reason for requesting clearance to procure from other sources until FPI can make deliveries.

**508.605 Clearances.**

Cite FPI clearance numbers in solicitations and award documents.

**Subpart 508.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled**

**508.705 Procedures.**

**508.705-4 Compliance with orders.**

(a) Until all deliveries are made on a delinquent order, take one of the following actions:

(1) For an excusable delay, extend the contract delivery schedule without obtaining consideration.

(2) For an inexcusable delay, review and adjust contract prices following normal procedures.

(b) If the central non-profit agency (CNA) delays acting on a request for, or refuses to grant, a purchase exception, refer the matter to the contracting director for resolution.

**508.705-70 Adding items to the Procurement List.**

(a) If a CNA expresses interest in adding an item to the Procurement List, provide the CNA with both:

(1) The most recent solicitations issued for the commodity or service.

(2) The award price(s) for the commodity or service.

(b) The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), at the CNA's request may assign the supply or service to the CNA for development by a workshop.

(c) Before issuing a solicitation, ask the CNA about the status of any item in which the Committee has expressed interest.

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity must consult with the Office of Small Business Utilization (E) before rejecting such a request.

**508.705-71 Central non-profit agency performance capability.**

(a) Include on the purchase document both the annual requirement and the estimated monthly requirement.

(b) With the permission of the Committee, you may verify the workshop's ability to satisfy the Government's estimated monthly requirement by requesting a preaward survey. If the CNA cannot satisfy the Government's requirement, you may request a purchase exception only for those quantities the CNA cannot provide in a timely manner.

**508.706 Purchase exceptions.**

Cite CNA purchase exception numbers in solicitations and award documents.

**Subpart 508.8—Acquisition of Printing and Related Supplies**

**508.802 Policy.**

The Director of the Reproduction and Visual Arts Division in the Office of Communications (X) is both GSA's:

(a) Central printing authority.

(b) Liaison with the Joint Committee on Printing and the Public Printer on all matters related to printing.

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**AMENDMENT 2009-01 APRIL 24, 2009**

**PART 509—CONTRACTOR QUALIFICATIONS**

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**PART 509—CONTRACTOR QUALIFICATIONS**

**Subpart 509.1—Responsible Prospective Contractors**

**509.105 Procedures.**

**509.105-1 Obtaining information.**

(a) *From a prospective contractor.* FAR 9.105-1 lists a number of sources of information that a contracting officer may utilize before making a determination of responsibility. The contracting officer may request information directly from a prospective contractor using GSA Form 527, Contractor's Qualifications and Financial Information, but only after exhausting other available sources of information.

(b) *From Government personnel.* The contracting officer may solicit and consider information from any appropriate activities, *e.g.*, legal counsel, quality control, contract management, credit and finance, and auditors before determining that an offeror is responsible.

**509.105-2 Determinations and documentation.**

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible. Include the basis for the determination. Notification provides the prospective contractor with the opportunity to correct any problem for future solicitations.

(b) Due to the potential for de facto debarment, the contracting officer shall avoid making repeated determinations of nonresponsibility based on the same past performance information.

(c) To provide for timely consideration of the need to institute action to debar a contractor, the contracting officer shall submit a copy of each nonresponsibility determination, other than those based on capacity or financial capability, to the Suspension and Debarment Official in the Office of the Chief Acquisition Officer.

**Subpart 509.3—First Article Testing and Approval**

**509.302 General.**

(a) If first article testing and approval is required, GSA usually requires that the contractor perform testing and that the first article:

(1) Be produced at the same facility where production quantities will be produced; and

(2) Serve as the manufacturing standard.

(b) Coordinate the need for first article testing and approval with the Contract Operations Management Division (FXCC), which will provide the information to complete the clauses at FAR 52.209-3 or 52.209-4.

**509.306 Solicitation requirements.**

The clauses at FAR 52.209-3 and 52.209-4 do not cover all the solicitation requirements described in FAR 9.306. If a solicitation contains a testing and approval requirement, the contracting officer must address the requirements in FAR 9.306(d) and (f) through (j) in the solicitation's Section H, special contract requirements.

**Subpart 509.4—Debarment, Suspension, and Ineligibility**

**509.401 Applicability.**

This subpart applies to all the following:

(a) Acquisitions of personal property, nonpersonal services, construction, and space in buildings.

(b) Acquisition of transportation services (Federal Management Regulation (FMR) Parts 102-117 and 102-118 (41 CFR parts 102-117 and 102-118)).

(c) Contracts for disposal of personal property (FMR Parts 102-36 through 102-38 (41 CFR parts 102-36 through 102-38)).

(d) Covered transactions as defined by 41 CFR part 105-68.

## 509.403

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

**509.403 Definitions.**

“Debarring official” means the Suspension and Debarment Official within the Office of the Chief Acquisition Officer.

“Fact-finding official,” means the Suspension and Debarment Official or a designee.

“Notice” means a letter sent by certified mail, return receipt requested, to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

“Suspending official” means the Suspension and Debarment Official within the Office of the Chief Acquisition Officer.

**509.405 Effect of listing.****509.405-1 Continuation of current contracts.**

(a) When a contractor appears on the current EPLS, consider terminating a contract under any of the following circumstances:

(1) Any circumstances giving rise to the debarment or suspension also constitute a default in the contractor’s performance of the contract.

(2) The contractor presents a significant risk to the Government in completing the contract.

(3) The conduct that provides the cause of the suspension, proposed debarment, or debarment involved a GSA contract.

(b) Before terminating a contract when a contractor appears on the current EPLS, consider the following factors:

(1) Seriousness of the cause for debarment or suspension.

(2) Extent of contract performance.

(3) Potential costs of termination and reprocurement.

(4) Need for or urgency of the requirement, contract coverage, and the impact of delay for reprocurement.

(5) Availability of other safeguards to protect the Government’s interest until completion of the contract.

(6) Availability of alternate competitive sources to meet the requirement (e.g., other multiple award contracts, readily available commercial items.)

(c) The responsibilities of the agency head under FAR 9.405-1 are delegated to the GSA Suspension and Debarment Official.

**509.405-2 Restrictions on subcontracting.**

The responsibilities of the agency head under FAR 9.405-2(a) are delegated to the GSA Suspension and Debarment Official.

**509.406 Debarment.****509.406-1 General.**

The Suspension and Debarment Official is the designee under FAR 9.406-1(c).

**509.406-3 Procedures.**

(a) *Investigation and referral.* (1) Refer to the Suspension and Debarment Official matters involving serious contract improprieties or performance deficiencies. Performance deficiencies that continue over a period of time or apply to more than one contract may warrant debarment consideration.

(2) Refer possible criminal or fraudulent activities to the Office of the Inspector General (OIG). See 5 CFR 6701.107, Reporting Waste, Fraud, Abuse, and Corruption. If, after investigation, the OIG believes a cause for debarment exists, it will refer the matter to the Suspension and Debarment Official for consideration of debarment action.

(b) *Reports.* Include in referrals to the Suspension and Debarment Official a report that contains at least the following:

(1) The recommendation and supporting rationale.

(2) A list of parties to be considered for possible debarment, including the contractor, principals, and affiliates. Include last known home and business addresses, zip codes, and DUNS Numbers.

(3) A statement of facts.

(4) Copies of documentary evidence and a list of witnesses. Include addresses and telephone numbers. Determine their availability to appear at a fact-finding proceeding and identify the subject matter of their testimony.

(5) GSA’s acquisition history with the contractor. Include recent experience, copies of the pertinent contracts, and an explanation of impact debarment would have on GSA programs. OIG referrals do not require this explanation; the Suspension and Debarment Official will obtain the information directly from the contracting activity(s).

(6) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals.

(c) *Review.* The Suspension and Debarment Official will review the report, and after coordinating with assigned legal counsel—

(1) Initiate debarment action;

(2) Decline debarment action.;

(3) Request additional information; or

(4) Refer the matter to the OIG for further investigation and development of a case file.

(d) *Decisionmaking process.* (1) The Suspension and Debarment Official will provide:

(i) Notice of declinations, proposed debarments, and decisions to the referring activity.

(ii) Notice of proposed debarment to each party being considered for debarment.

(iii) Decision notices to each party after considering information in the administrative record and information and argument submitted by the affected party or parties.

(2) A party proposed for debarment:

(i) Has 30 calendar days after receipt of the notice to respond to the Suspension and Debarment Official or the debarment becomes final.

(ii) May request and receive a copy of the administrative record that was the basis for the proposed debarment. If information is withheld, the party will be notified and provided the reason.

(iii) May request the opportunity to present information and argument in person to the Suspension and Debarment Official. The Suspension and Debarment Official will schedule an oral presentation within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. An oral presentation is informal and a transcript usually is not made. The party may supplement the oral presentation with written information and arguments.

(iv) May identify to the Suspension and Debarment Official material facts in dispute and the bases. For an action other than one based on a conviction or civil judgment, a party may request review and a written finding by a fact-finding official.

(3) Following a review of the record and, if needed, a presentation by the contractor in opposition to the proposed action, the Suspension and Debarment Official will determine whether there is a genuine dispute of material fact. If so, the Suspension and Debarment Official will initiate the fact-finding process. The fact-finding official will:

(i) Establish a date for a fact-finding proceeding, normally to be held within 45 days of the determination of who will function as the fact-finding official.

(ii) Grant extensions for good cause.

(iii) Provide notice of the scheduled hearing.

(iv) Provide the parties with a schedule for exchange of documents and witness lists.

(v) Develop an official transcript of the fact-finding proceeding.

(vi) Provide the Government's representative and the contractor with an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative.

(vii) Conduct hearings under rules consistent with FAR 9.406-3 pertaining to fact finding. Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finding official.

(viii) Provide for witness testimony. Witnesses may testify in person. Witnesses are subject to cross examination.

(ix) Prepare written findings of fact based on a preponderance of the evidence and submit them to both the Suspension and Debarment Official and the contractor within 20 calendar days following the conclusion of the fact-finding proceeding.

#### **509.407 Suspension.**

##### **509.407-1 General.**

The Suspension and Debarment Official is the designee under FAR 9.407-1(d).

##### **509.407-3 Procedures.**

(a) *General.* The procedures in [509.406-3](#) apply to suspension actions except as noted in paragraph (b) of this section.

(b) *Fact-finding.* (1) Fact-finding will not be conducted in an action:

(i) Based on an indictment.

(ii) When the Suspension and Debarment Official finds no genuine dispute of material facts.

(2) If the action is not based on an indictment, the Suspension and Debarment Official must coordinate with the Department of Justice or state prosecutorial authority through OIG. Based on the advice received, the Suspension and Debarment Official will determine if fact-finding would impair substantial interests of the Federal or state Government. In an action not based on an indictment, a suspended party may:

(i) Identify to the Suspension and Debarment Official material facts in dispute and the bases.

(ii) Request review and a written finding by a fact-finding official to resolve genuine disputes of material fact. For procedures involving a genuine dispute of material fact, see [509.406-3\(d\)\(3\)](#).

### **Subpart 509.5—Organizational and Consultant Conflicts of Interest**

#### **509.503 Waiver.**

The Senior Procurement Executive is the designee under FAR 9.503.

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## **PART 510—MARKET RESEARCH**

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## CHANGE 50 JUNE 15, 2011

### PART 511—DESCRIBING AGENCY NEEDS

*Sec.*

511.002 Policy.

**Subpart 511.1—Selecting and Developing**

**Requirements Documents**

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**Subpart 511.2—Using and Maintaining**

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511.601 [Reserved]

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**PART 511—DESCRIBING AGENCY NEEDS****511.002 Policy.**

FAR 11.002(b) and GSA Order ADM 8000.1C, GSA Metric Program, establish policy for using the metric system in procurements.

**Subpart 511.1—Selecting and Developing Requirements Documents****511.102 Security of Information Technology Data**

For actions that pertain to information systems or contractor managed government data, use the guidance identified under GSA's office of the Senior Agency Information Security Officer publication CIO IT Security Procedural Guide 09-48. The guide can be accessed at <http://www.gsa.gov/portal/category/25690>. The contracting officer shall coordinate with program officials or requiring activities to ensure that the solicitation includes the appropriate information security requirements. The information security requirements must be sufficiently detailed to enable contractors to fully understand the information security regulations, mandates, and requirements under the contract or task order.

**511.104 Use of brand name or equal purchase descriptions.**

(a) A brand name or equal purchase description must avoid specifying characteristics that do not materially affect the intended end use and which unnecessarily restrict competition.

(b) When the contracting officer uses a brand name or equal purchase description, best practice is to cite the known acceptable brand name products in current manufacture, rather than only a single brand name product. For example, cite the acceptable brand name products identified during market research.

(c) The contracting officer may require samples for “or equal” offers, but not for “brand name” offers.

(d) The contracting officer shall provide for full consideration and evaluation of “or equal” offers against the salient characteristics specified in the purchase description and shall not reject offers for minor differences in design, construction, or features that do not affect the suitability of the product for its intended use.

**Subpart 511.2—Using and Maintaining Requirements Documents****511.204 Solicitation provisions and contract clauses.**

(a) *Federal specifications.* The contracting officer shall insert the clause at [552.211-72](#), Reference to Specifications in Drawings, in solicitations and contracts citing Federal or agency specifications that contain drawings.

(b) *Supply contracts that exceed the simplified acquisition threshold.* (1) The contracting officer shall include the clause at [552.211-73](#), Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(2) The contracting officer shall include the clause at [552.211-75](#), Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for—

(i) Federal Supply Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(ii) Federal Supply Schedules for recovery purchasing (see [538.7102](#)).

(3) The contracting officer shall insert a clause substantially the same as the clause at [552.211-76](#), Charges for Packaging, Packing, and Marking, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(4) The contracting officer shall include the clause [552.211-85](#), Consistent Pack and Package Requirements, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(5) The contracting officer shall include the clause [552.211-86](#), Maximum Weight Per Shipping Container, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(6) The contracting officer shall include the clause [552.211-87](#), Export Packing, in solicitations and contracts for

## 511.401

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(7) The contracting officer shall include the clause [552.211-88](#), Vehicle Export Preparation, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(8) The contracting officer shall include the clause at [552.211-89](#), Non-Manufactured Wood Packaging Material for Export, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities overseas and the contract amount is expected to exceed the simplified acquisition threshold.

(9) The contracting officer shall include the clause [552.211-90](#), Small Parts, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(10) The contracting officer shall include the clause [552.211-91](#), Vehicle Decals, Stickers, and Data Plates, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(11) The contracting officer shall include the clause [552.211-92](#), Radio Frequency Identification (RFID) using Passive Tags, in solicitations and contracts for supplies when deliveries may be made to military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(c) *Supply contracts.* The contracting officer shall include the clause at [552.211-77](#), Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(2) Federal Supply Schedules for recovery purchasing (see [538.7102](#)).

### Subpart 511.4—Delivery or Performance Schedules

#### 511.401 General.

(a) *Other than multiple award schedules.* Preferred practice is to state time of delivery in solicitations and contracts as

“required” time of delivery or shipment, expressed in specific periods from receipt by the contractor of a notice of award or an order.

(b) *Multiple award schedules.* (1) In multiple award schedule solicitations, preferred practice is to state delivery times as “desired.” Require offerors to indicate a definite number of days for delivery.

(2) In negotiations, the contracting officer should secure the best possible delivery time regardless of the “desired” delivery time(s) in the solicitation. For example, some offers comply with the Government’s desired delivery time, but others cite substantially shorter delivery times. In such cases, the contracting officer should negotiate with the former offerors to bring their offers in line with the latter. Contracting officers should negotiate variable delivery time offers (e.g., 30-90 days) to keep the timespan to a minimum. If the span applies to several items or several quantity breaks for one item, the contracting officer may segregate the items or item quantity breaks into smaller groups and assign more specific delivery times.

(c) *Unusually short delivery times.* A requisitioning office that requests an unusually short delivery time must provide satisfactory written justification. A sound justification is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of justifications include:

(1) Furniture is required to outfit quarters scheduled for occupancy on a specific date.

(2) Construction material is required to meet job progress schedules.

(3) Supplies are required at a port to meet scheduled ship departures.

(d) *Early delivery.* When the requisitioning office needs a portion of the total delivery early, the contracting officer should consider whether to—

(1) Require that portion by the early date and the balance later;

(2) Include the portion required early and the balance as separate items in the same solicitation; or

(3) Procure the two portions separately.

(e) *Multiple delivery time requirements.* If a solicitation contains a mix of items that require different delivery times, the contracting officer must specify the delivery periods separately. When practical, the contracting officer can group items with similar delivery time requirements according to delivery times in the solicitation.

**511.404 Contract clauses.**

In supply contracts, the contracting officer shall use the clauses as specified in this section.

(a) *Shelf-life items.* The contracting officer shall use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production:

(1) The contracting officer shall insert [552.211-79](#), Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the director of the portfolio concerned.

(2) The contracting officer shall insert [552.211-80](#), Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(b) *Stock replenishment contracts.* The contracting officer shall insert [552.211-81](#), Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing, and Shipment/Delivery clause at [552.211-83](#) and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, the contracting officer shall use Alternate I.

(c) *Indeterminate testing time.* The contracting officer shall insert [552.211-83](#), Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I.

(d) The contracting officer shall insert the clause at [552.211-94](#), Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither of the FAR delivery clauses (FAR 52.211-8 or 52.211-9) is suitable.

**Subpart 511.6—Priorities and Allocations****511.600 Scope of subpart.**

Pursuant to the Defense Priorities and Allocations System (DPAS) Delegation 3, the Department of Commerce (DOC) has delegated to GSA the authority to use the DPAS under certain conditions. DPAS Delegation 3 restricts use of DPAS authority to GSA supply system procurement in support of the Department of Defense (DoD), Department of Energy (DoE), and Federal Emergency Management Agency (FEMA) approved programs.

**511.601 [Reserved]****511.602 General.**

(a) The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate to the DOC authority to administer the DPAS. Within the DOC, the Office of Strategic Industries and Economic Security (SIES) is assigned responsibility for DPAS implementation, administration, and compliance.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are “rated orders.” Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either “DX” or “DO” followed by a program identification symbol. All “DO” rated orders have equal priority with each other and take preference over unrated orders. All “DX” rated orders have equal priority with each other and take preference over “DO” rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) The authority delegated to GSA shall not be used to support the procurement of any items that—

(1) Are commonly available in commercial markets for general consumption;

(2) Do not require major modification when purchased for approved program use;

(3) Are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(4) Are to be used primarily for administrative purposes (including Federal Supply Classification (FSC) classes, groups, or items), such as for personnel or financial management. The Commissioner, FAS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority.

**511.603 Procedures.**

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract. FAR 11.604 requires contracting officers to insert the provision at 52.211-14, Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use, in solicitations when the contract or order to be awarded will be a rated order and to insert the clause at 52.211-15, Defense Priority and Allocation Requirements, in contracts that are rated orders.

(b) In addition to the FAR provision and clause referenced in paragraph (a) of this section, the contract or order must include the following (see 15 CFR 700.12):

(1) The appropriate priority rating symbol (i.e., either “DO” or “DX”) along with the program identification symbol. When GSA contracting officers place DO rated orders, they must use program identification symbol “K1”. When placing a DX-rated order for other agencies, GSA contracting officers must use the requesting agency program identification symbol from the DoD Master Urgency List and may only do so when GSA is acting as the procuring agent for DoD or DoE and has received a “DX” rated contract or order from either department.

(2) A required delivery date. The words “as soon as possible” or “immediately” do not constitute a required delivery date. Use of either a specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4) A statement that reads substantially as follows: “This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)”.

(c) Multiple and Single Award Schedule contracts are not rated at time of award.

## PART 512—ACQUISITION OF COMMERCIAL ITEMS

*Sec.*

### **Subpart 512.2—Special Requirements for the Acquisition of Commercial Items**

512.203      Procedures for solicitation, evaluation, and award.

### **Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

512.301      Solicitation provisions and contract clauses for the acquisition of commercial items.

512.302      Tailoring of provisions and clauses for the acquisition of commercial items.

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## PART 512—ACQUISITION OF COMMERCIAL ITEMS

**Subpart 512.2—Special Requirements for the Acquisition of Commercial Items****512.203 Procedures for solicitation, evaluation, and award.**

(a) *Federal Supply Schedule contracts.* For Federal Supply Schedule contracts, the contracting officer shall use the policies in FAR Part 12 and this [Part 512](#) in conjunction with the policies and procedures in FAR Part 38 and [Part 538](#). See [Subpart 515.70](#), Use of Bid Samples, if applicable.

(b) *Deregulated/Competitive Acquisitions for Natural Gas and Electricity.* For deregulated/competitive acquisitions, the contracting officer shall use policies and procedures in FAR Part 12 and this [Part 512](#) in conjunction with the policies and procedures in FAR 41.202 (a) and (b), the review requirements of FAR Part 41, and GSAM [Part 541](#), as applicable.

(c) *Construction as a commercial item.* The provisions and clauses in FAR Part 36 and GSAM [Part 536](#) address the fundamental aspects of construction contracting. FAR Part 36 and GSAM [Part 536](#) apply well-established commercial principles that are designed to result in an equitable distribution of risk between the Government and its contractors. The contracting officer should consider the following when contemplating a construction acquisition as a commercial item—

(1) FAR Part 12, as currently promulgated, should rarely be used for new construction acquisitions or non-routine alteration and repair services.

(2) FAR Part 12 and GSAM [Part 512](#) may be used in limited circumstances involving construction contracting, primarily for routine alteration and repair services as well as for the acquisition of commercial construction materials and associated ancillary services. It may be appropriate to use FAR Part 12 and GSAM [Part 512](#) for routine projects such as painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services, as well as for purchases of commercial construction material and associated ancillary services.

(3) Whether a construction acquisition is conducted under FAR Part 36 or FAR Part 12, the contracting officer must adhere to the policies of FAR Subpart 22.4. This subpart addresses labor standards for contracts involving construction. Prior to making the determination that a construction acquisition can be conducted as a commercial item, the contracting officer should conduct appropriate market research in accordance with FAR Part 10 and GSAM [Part 510](#).

(4) Construction contracts in excess of \$2,000 must include an applicable Davis-Bacon wage determination found at <http://www.access.gpo.gov/davisbacon/>. If the construction contract is greater than \$30,000, then the SF 1442 should be used in lieu of the SF 1449 and the bonds or alternate pay-

ment protection provisions of FAR 28.102-1, 28.102-2 and 28.102-3 apply.

(5) Construction contracts awarded as commercial item acquisitions should not exceed the prospectus threshold. The prospectus threshold as referenced in section 102-73.35 of the Federal Management Regulation (FMR) is posted at <http://www.gsa.gov/annualprospectusthreshold>.

**Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items****512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(a) *Solicitation provisions and clauses.* Insert these provisions or clauses in solicitations or solicitations and contracts, respectively, in accordance with the instructions provided:

(1) [552.212-71](#), Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, when listed clauses apply. The clause provides for incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

(2) [552.212-72](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items, when listed clauses apply. The clause provides for the incorporation by reference of terms and conditions required to implement provisions of law or executive orders that apply to commercial item acquisitions.

(b) *Discretionary use of GSAR provisions and clauses.* Consistent with the limitations contained in FAR 12.302(c), include in solicitations and contracts by addendum other GSAR provisions and clauses.

(c) *Use of additional provisions and clauses.* The Senior Procurement Executive must approve the use of a provision or clause that is either not:

(1) Prescribed in the FAR or GSAR for use in contracts for commercial items.

(2) Consistent with customary commercial practice.



(d) In solicitations issued in conjunction with the policy and procedures in FAR Part 14, Sealed Bidding; or FAR Part 15, Contracting by Negotiation, include the two notices in paragraphs (d)(1) and (d)(2) of this section, except that acquisitions of leasehold interests in real property, must include only the notice in paragraph (d)(1) of this section.

(1) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

(2) The General Services Administration's hours of operation are 8 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

**512.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

FAR 12.302(c) severely limits tailoring of clauses or otherwise including additional terms or conditions in commercial item contracts in a manner that is inconsistent with customary commercial practice. Such tailoring requires a waiver approved as follows:

(a) *Individual contract.* The contracting officer's supervisor approves the request.

(b) *Class of contracts.* The contracting director approves the request.



## **SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

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# AMENDMENT 2009–07 MAY 28, 2009

## PART 513—SIMPLIFIED ACQUISITION PROCEDURES

*Sec.*

### **Subpart 513.1—Procedures**

- 513.106-1 Soliciting competition.
- 513.106-3 Award and documentation.

### **Subpart 513.3—Simplified Acquisition Methods**

- 513.301 Governmentwide commercial purchase card.
- 513.302 Purchase orders.
- 513.302-70 Purchase order and related forms.
- 513.303 Blanket purchase agreements (BPAs).
- 513.303-3 Preparation of BPAs.
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- 513.370 Certified invoice procedure.
- 513.370-1 Applicability.
- 513.370-2 Limitations.
- 513.370-3 Invoices.

### **Subpart 513.4—Fast Payment Procedure**

- 513.401 General.

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**PART 513—SIMPLIFIED ACQUISITION PROCEDURES****Subpart 513.1—Procedures****513.106-1 Soliciting competition.**

(a) “Urgency”, as used in FAR 13.106-1(a)(1)(iii) and 13.106-1(b), includes situations which, if not corrected immediately, will result in unnecessary expenditure of funds, property damage, personal injury, or interruption of agency functions.

(b) To avoid unnecessarily restricting competition for urgent requirements, consider the following actions:

- (1) Inviting prospective offerors to visit the site.
- (2) Informing them orally of the exact requirements.
- (3) Requesting them to prepare quotations.

**513.106-3 Award and documentation.**

*File documentation and retention.* Contracting officers may use GSA Form 2010, Small Purchase Tabulation Source List/Abstract, to document written and oral quotations. If a lower-priced offer was not evaluated, the contracting officer should document the basis for its rejection, e.g., offeror is debarred or suspended, offer is not responsive to the requirement, offer is a large business (and the acquisition is set aside).

**Subpart 513.3—Simplified Acquisition Methods****513.301 Governmentwide commercial purchase card.**

(a) GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1), establishes procedures for using the Governmentwide commercial purchase card to make purchases and payments.

(b) Holders of the Governmentwide commercial purchase card must comply with all procedures and documentation requirements that apply to the procurement action.

**513.302 Purchase orders.****513.302-70 Purchase order and related forms.**

(a) GSA Form 300, Order for Supplies and Services, is a multipurpose form used for purchases of supplies or services, orders under existing contracts or agreements, and orders from required sources of supplies and services. All clauses, terms and conditions applicable to the type of order, which are not included in the underlying contract, shall be incorporated in the order. Clauses can be incorporated by reference or in full text. See GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1), for forms required for purchase card actions.

(1) Use GSA Form 300, Order for Supplies or Services, when making purchases payable through PEGASYS.

(2) The GSA Form 300 may also be used to make other purchases when a specific form is not prescribed. It may be used as a delivery or task order instead of SF 1449, Solicitation/Contract/Order for Commercial Items. The contracting officer may require the signature of the contractor on the GSA Form 300, Order for Supplies and Services, when used as a purchase order or task order.

(3) Prepare and process GSA Form 300. Use GSA Form 300-A, Order for Supplies or Services—Continuation, if additional space is needed.

(b) Use GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, or the GSA Form 300 when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

(c) Use GSA Form 300, Order for Supplies or Services, or GSA Form 3186, Order for Supplies or Services, or GSA Form 3186-B, Order for Supplies or Services (EDI), when making simplified acquisitions or placing orders against established contracts through the FSS-19 system.

(1) Use GSA Form 3186 for mail orders placed against established contracts.

(2) Document the file for a delivery, task, or purchase order transmitted to contractors electronically using Electronic Data Interchange (EDI) procedures by generating a GSA Form 3186-B or GSA Form 300.

(d) Use GSA Form 8002B, Motor Vehicle Delivery Order, to order fleet management vehicles. Do not use this form as a purchase order for simplified acquisitions. Use GSA Form 8002A to notify the consignee of the status of motor vehicle requisitions.

**513.303 Blanket purchase agreements (BPAs).****513.303-3 Preparation of BPAs.**

(a) *Description of agreement.* Describe limitations, if any, on the geographic area to be served. The GSA Form 3521, Blanket Purchase Agreement, may be used to prepare a blanket purchase agreement.

(b) *Delivery tickets.* Instruct the contractor to include the name of the individual placing the order on the delivery ticket. The individual receiving the item or service must sign and date the delivery or service ticket. Both the supplier and the receiving office must retain a copy of the delivery ticket.

(c) *Invoices.* If the contracting officer has exhausted all efforts to get a supplier to accept one of the invoicing statements outlined in FAR 13.303-3(a)(6), the contracting officer may deviate in order to permit the submission and payment of invoices for each delivery under the BPA. The contracting officer shall document efforts and the contractor’s refusal.

(d) *Processing invoices.* The designated billing office must time-stamp invoices to indicate the date of receipt. The ordering office must forward an invoice to the appropriate Finance Division within 5 workdays of its receipt or acceptance of the

supplies or services. An exception applies if the BPA provides for the accumulation of invoices for a specified period. If this exception applies, the ordering office must forward the accumulated invoices within 5 workdays after the specified period for accumulation. Mark all invoices to indicate that purchases were made under a BPA.

**513.307 [Reserved]**

**513.370 Certified invoice procedure.**

**513.370-1 Applicability.**

If advantageous to the Government, the contracting officer may acquire supplies or services on the open market from suppliers using a vendor's invoice instead of a purchase order.

**513.370-2 Limitations.**

(a) Purchases are subject to FAR Part 13 and [Part 513](#) and these limitations:

- (1) The amount of any one purchase must not exceed the micro-purchase threshold.
- (2) Neither the supplier nor the Government require a purchase order.
- (3) The individual making the purchase does not have a Governmentwide commercial purchase card or the card is not accepted by the supplier.
- (4) Appropriate invoices can be obtained from the supplier.

(b) If the contracting officer uses certified invoice procedures, the contracting officer still must:

- (1) Verify price reasonableness using the conditions contained in FAR 13.202(a).
- (2) Certify that the quality and quantity of items/services furnished comply with the verbal agreement made with the supplier.

(c) Authorized individuals without warrants may solicit quotations. Although FAR 1.601(a) states that contracts may be entered into and signed on behalf of the Government only by contracting officers, a non-warranted Government employee may place a micro-purchase when a contracting officer approves in advance the placement of an order. Approval must be in writing on GSA Form 2010 or other documentation unless the geographic distance makes it impracticable. In those cases, the contracting officer may provide approval by telephone or e-mail. The authorized individual must document the file accordingly.

**513.370-3 Invoices.**

(a) If the contracting officer uses these procedures, s/he must require the suppliers to immediately submit properly prepared itemized invoices.

(b) Upon receipt of the invoice, the receiving office must take all the following actions:

- (1) Time-stamp the invoice to indicate the date the invoice is received.
- (2) Verify the accuracy of the invoiced amount.
- (3) Verify that the supplies or services have been received and accepted. Whenever possible, require that inspection and acceptance or rejection occur within 7 calendar days of delivery or completion.
- (c) Before certifying the invoice and forwarding it to the appropriate office, the contracting officer or a designated representative must obtain a certification of receipt and acceptance from the individual who actually inspected and accepted the supplies or services.

(d) Within 5 workdays after receipt of the invoice or acceptance of the supplies or services, whichever is later, forward the invoice stamped with the Certified Invoice Stamp.

(1) Complete the accounting information, received and accepted dates, taxpayer identification number (TIN), type of business (corporation, sole proprietorship/partnership, or other), and certification, and PEGASYS Document Number (PDN).

(2) If a Certified Invoice Stamp is not available, place the following statement on the invoice along with the PDN number, accounting information, TIN, and the type of business. (**Note:** In some organizations, the PDN number is determined by a budget or executive office within the service or staff office.)

"I certify that these goods and/or services were received on [Date] and accepted on [Date]. An oral purchase was authorized and no confirming order has been issued."

\_\_\_\_\_  
Signature of Contracting/Ordering Officer

\_\_\_\_\_  
Print name and telephone no.

\_\_\_\_\_  
Date invoice received

**Subpart 513.4—Fast Payment Procedure**

**513.401 General.**

GSA contracting activities are authorized to use fast payment procedures solely for utility service payments.

# CHANGE 60 OCTOBER 22, 2014

## PART 514—SEALED BIDDING

*Sec.*

### Subpart 514.2—Solicitation of Bids

514.201	Preparation of invitations for bids.
514.201-1	Uniform contract format.
514.201-2	Part I—The Schedule.
514.201-6	Solicitation provisions.
514.201-7	[Reserved]
514.201-70	GSA Form 1602.
514.202	General rules for solicitation of bids.
514.202-4	Bid samples.
514.202-5	Descriptive literature.
514.211	Release of acquisition information.
514.270	Aggregate awards.
514.270-1	Definition.
514.270-2	Justification for use.
514.270-3	Evaluation factors for award.
514.270-4	Grouping line items for aggregate award.
514.270-5	Evaluation methodologies for aggregate awards.
514.270-6	Guidelines for using the weight factors method.
514.270-7	Guidelines for using the price list method.

### Subpart 514.3—Submission of Bids

514.302	Bid Submission.
514.303	Modification or withdrawal of bids.
514.304	Late bids, late modifications of bids, or late withdrawal of bids.
514.370	Copies of bids required.

### Subpart 514.4—Opening of Bids and Award of Contract

514.401	Receipt and safeguarding of bids.
514.402	Opening of bids.
514.402-1	Unclassified bids.
514.402-70	Preferred practices for conducting bid openings.
514.403	Recording of bids.
514.404	Rejection of bids.
514.404-1	Cancellation of invitations after opening.
514.404-2	Rejection of individual bids.
514.407	Mistakes in bids.
514.407-3	Other mistakes disclosed before award.
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514.408	Award.
514.408-6	Equal low bids.
514.408-70	Forms for recommending award(s).

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**PART 514—SEALED BIDDING****Subpart 514.2—Solicitation of Bids****514.201 Preparation of invitations for bids.****514.201-1 Uniform contract format.**

Include the following notice in each solicitation:

“The information collection requirements contained in this solicitation/contract, are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.”

**514.201-2 Part I—The Schedule.**

(a) When using Standard Form 33, Solicitation, Offer and Award, include the following cautionary notice:

“Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this solicitation sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause (See FAR 52.232-25, 52.232-26, or 52.232-27, as applicable). EXAMPLE: If you insert “NET 20” in Item 13, GSA will reject your bid as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.”

(b) When using other authorized forms (e.g., Standard Form 1447, Solicitation/Contract; Standard Form 1449, Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this section. Change the reference to the form number, form title, and item number accordingly.

**514.201-6 Solicitation provisions.**

When considering all or none bids, insert the provision at [552.214-70](#), “All or None” Bids, in the solicitation.

**514.201-7 [Reserved]****514.201-70 GSA Form 1602.**

The contracting officer may use GSA Form 1602, Notice Concerning Solicitation, to do any of the following:

(a) Describe the type of contract, the duration of the contract, and the type of supplies or services being procured.

(b) Direct the attention of prospective bidders to review and carefully consider the information at FAR 14.404-2 that may result in rejection of the bid. In addition, cite any special requirements which, if overlooked, may result in rejection of the bid.

(c) Highlight significant changes from previous solicitations covering the same supplies or services.

(d) Include other special notices, as appropriate.

**514.202 General rules for solicitation of bids.****514.202-4 Bid samples.**

(a) *Requirements for samples in invitations for bids.*

(1) When bid samples are required, the contracting officer shall require bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(2) The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. The contracting officer may determine that there is a need to examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list “Subjective Characteristics” and “Objective Characteristics.”

(3) A provision appears at [552.214-72](#), Bid Sample Requirements. This provision may be modified to fit the circumstances of a procurement.

(b) *Handling bid samples.* (1) Samples from accepted bids must be retained for the period of contract performance. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term following the bidder’s instructions.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of following the bidder’s instructions.

**514.202-5 Descriptive literature.**

*Requirements for Invitations for bids.* When using brand name or equal purchase descriptions, the provision at FAR 52.211-6 satisfies the requirement for descriptive literature.

**514.211 Release of acquisition information.**

Before award, the contracting officer and all other members of the acquisition team must limit access to information concerning the Government cost estimate to Government personnel whose official duties require knowledge of the estimate and to *non-Government* personnel with a need to know and who have signed a non-disclosure agreement (contracting

officers may tailor the non-disclosure agreement at Figure 515.3-1 for these purposes). After award, the contracting officer may reveal the total amount of the Government estimate upon request. The contracting officer is not authorized to release the basis for calculating the estimate at any time.

#### **514.270 Aggregate awards.**

##### **514.270-1 Definition.**

“Aggregate award” means an arrangement whereby two or more separately priced line items are combined for award to that bidder whose bid will result in the lowest overall cost to the Government for the line items as a group. The individual price for each item does not have to be the lowest bid received. (See also the definition of a “line item” in FAR 3.302.)

##### **514.270-2 Justification for use.**

(a) GSA usually solicits prices and reserves the right to make award for individual line items. In some cases it serves GSA’s best interest to combine two or more line items for an aggregate award. Such cases include when:

(1) Users desire uniformity of design, style, and finish, (e.g., suites of household furniture).

(2) The articles will be assembled and used as a unit, and different manufacturers’ components may not be interchangeable.

(3) Users have high demand for certain articles, but demand for related articles is insufficient to attract competitive bids (e.g., various sizes of socket wrenches).

(4) Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

(5) One location (delivery point) has a large requirement, and another location has a requirement too small to individually attract competitive bids.

(6) Awarding and administering numerous small contracts for similar articles or services is impractical.

(b) Before deciding to combine items for aggregate award, the contracting officer should consider the following factors:

(1) The capability of bidders to furnish the types and quantities of supplies or services in the aggregate.

(2) How grouping delivery points will affect bidders.

(3) Which combinations will accurately project the lowest overall cost to the Government.

(c) The contracting officer should not use an aggregate award if it will significantly restrict the number of eligible bidders.

##### **514.270-3 Evaluation factors for award.**

The solicitation should clearly state the basis for evaluating bids for aggregate award, require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price, and advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

##### **514.270-4 Grouping line items for aggregate award.**

(a) *Supplies and services.* This subsection applies to acquisitions of supplies and services.

(b) *Effect on competition.* Provide for full and open competition when grouping items for award. Grouping items for award may preclude a significant number of firms from bidding. This occurs if firms are unable to provide all the types or quantities of supplies or services, or make deliveries to the various delivery points included in the prospective aggregate group.

(c) *Grouping different articles.* Include only related articles in an aggregate group. Related articles are those normally manufactured or produced by a majority of prospective bidders. Grouping unrelated articles often restricts competition unnecessarily.

(d) *Grouping geographic locations or delivery points.* Consider the following guidelines before deciding to group different geographic locations or delivery points:

(1) A delivery point may have sufficient requirements so that individual shipments involve economic production runs and carload or truckload quantities. In this case, list it as a separate line item.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) who responded to previous solicitations can provide important information. For example, if previous bidders are distributors with franchises in certain territories, grouping different territories could tend to restrict competition.

(3) Transportation costs can affect competition and pricing. They may constitute a significant portion of the total delivered cost. Obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce competition or result in higher prices. It can cause the loss of “area pricing” advantages provided by a supplier with a single production point.

(ii) Conversely, for many small commercial items (hand tools, locks, etc.), manufacturers may quote the same price for delivery anywhere in the U.S.

(iii) Tariff boundaries can also affect how manufacturers price deliveries to different areas.

**514.270-5 Evaluation methodologies for aggregate awards.**

(a) *Definite quantity contracts without options.* For definite quantity contracts without options, the evaluated bid price is the total bid price, as adjusted for any price-related factors identified in the solicitation. This reflects the actual cost to the Government and will identify the most advantageous bid.

(b) *Indefinite quantity contracts, requirements contracts, and options.* Indefinite quantity and requirements contracts use estimated quantities. Options involve the probability of whether and when the options will be exercised. These situations may result in unbalanced bids (see FAR 15.404-1(g)), leading to inaccurate evaluation of the projected cost and award to other than the most advantageous bid. To avoid unbalanced bids, GSA has two preferred methods for evaluating bids for aggregate awards: weight factors and price list.

(1) *Weight factors method.* Assign a weight to each item in a group. The weight is based on the portion of quantities that item represents. To evaluate bids, multiply each unit price by its weight factor, then total the results.

(2) *Price list method.* Establish prices for bidders to use as a base for preparing their bids. Prepare a list that identifies a base price for each item in a group. Bidders bid a percentage factor to add to or subtract from the base price.

**514.270-6 Guidelines for using the weight factors method.**

(a) Use the weight factors method when there are reliable estimates for the quantities needed in an acquisition. Reliable estimates of quantities form the foundation for:

(1) Accurate evaluation of the projected cost of each bid.

(2) An appropriate determination of which bid is most advantageous to the Government for the aggregate group.

(b) Assign a weight factor to each item in a group. Develop the weight factor by calculating the portion of the total quantity in a defined group that each item represents.

(c) To evaluate bid prices, first multiply the price bid for each item (unit price X quantity) by its weight factor. Then, add the subtotals together to project the cost for the aggregate group.

(d) Estimated quantities may be reduced to smaller numbers by a common denominator. This may help facilitate the computations involved in evaluating bids.

(e) Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder with the lowest evaluated overall cost to the Government for the aggregate group. This represents the most advantageous bid.

**514.270-7 Guidelines for using the price list method.**

(a) *General.* The price list method helps avoid unbalanced bidding when making aggregate awards, but lack accurate estimates of anticipated quantities. This method establishes base prices for bidders to use in preparing their bids.

(b) *Solicitation requirements.* When using the price list method, in the solicitation:

(1) Include the price list.

(2) Include an estimate of requirements.

(3) Require the bidder to express its price as “net” or as a percentage added to or subtracted from the list prices for each group. Require the bidder to quote only one percentage factor for each group. This means that the bidder provides one percentage factor that applies to every item in a group; not a separate percentage for each item. “Net” indicates the bidder chooses to submit the list prices as its bid.

(4) Identify the percentage factor in (3) above as a price-related evaluation factor.

(c) *Developing list prices.* Price lists may be developed using one or more of the following sources:

(1) Industry published prices.

(2) Industry surveys.

(3) Government cost estimates based on knowledge of the supplies or services and previous contract prices.

(d) *First time use for an item or service.* The first time the contracting officer uses list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. This information may be provided in a draft solicitation.

(e) *Balanced prices.* Ensure that the list prices for the grouped items bear a reasonable and balanced relationship to one another. Prices may be used from previous awards made using the weight factors method to develop price lists. Review those prices first to ensure they did not result from unbalanced bidding.

(f) *Evaluation and award.* Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder whose percentage factor produces the most favorable price to the Government. This represents the most advantageous bid.

(g) *Example.* The following illustrates a bidding schedule arrangement for a group of items for aggregate award under the price list method:

<b>Drills, Twist, High Speed, under Federal Specification (no. and date)_ and Amendment (no. and date), Wire gauge sizes, straight shank, short length, Type C</b>					
<b>Item No.</b>	<b>National Stock Number</b>	<b>Drill Size</b>	<b>Est. Quantity</b>	<b>Unit</b>	<b>List Price</b>
Group 1 (Items 1 through 5)					
1	5133-00-189-9246	1	2,800	Pkg	\$11.16
2	5133-00-189-9247	2	2,400	Pkg	\$11.16
3	5133-00-189-9248	3	2,800	Pkg	\$10.44
4	5133-00-189-9249	4	1,600	Pkg	\$10.80
5	5133-00-189-9250	5	2,000	Pkg	\$10.80
The bid on each item above is the list price shown minus/plus _____ percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)					

(h) *Special considerations for contracts for store stock items.* Show estimated quantities only if estimates of demand for each item within a group can be derived from Government records or verified contractor sales reports. Use only current estimates. If the Government's needs cannot be estimated, the solicitation may include past orders. (See CG Decision, B-209037, 82-2 CPD para 323 (1982).)

(i) *Special considerations for repair and alteration contracts.* In the solicitation:

(1) List the estimated quantities for work to be performed during both normal working hours and outside of normal working hours.

(2) State the percent of work anticipated to be performed during normal working hours.

(3) List the unit prices for work to be performed during both normal working hours and outside of normal working hours.

(4) Define "normal" in terms of hours and days of the week.

(5) Advise bidders of the previous year's total expenditures or portions of that total attributable to the listed items.

(6) If providing quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

(7) Solicit two percentage factors for the line item unit prices listed: one for the unit prices for work performed during normal working hours and the second for the unit prices for work performed outside of normal working hours.

(8) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

(9) For the evaluated bid price, add together (i) and (ii):

(i) The percentage of work performed during normal work hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work, plus

(ii) The percentage of work performed during other than normal working hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work.

(10) Consider other price-related factors identified in the solicitation. Make award to the responsible and responsive bidder submitting the lowest overall evaluated bid price for the aggregate group. This represents the most advantageous bid.

### Subpart 514.3—Submission of Bids

#### 514.302 Bid Submission.

GSA contracting officers shall not consider telegraphic bids communicated by telephone.

#### 514.303 Modification or withdrawal of bids.

(a) A telegraphic modification or withdrawal of a bid by telephone under the circumstances in FAR 14.303(a) shall not be considered.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person should read:

I am a bona fide agent for or representative of \_\_\_\_\_ (Bidder's name and address). I am authorized to withdraw the bid on IFB No. \_\_\_\_\_ scheduled for opening on \_\_\_\_\_, and acknowledge receipt of the unopened bid.

\_\_\_\_\_  
Name and telephone no.

\_\_\_\_\_  
Date

#### **514.304 Late bids, late modifications of bids, or late withdrawal of bids.**

Upon receiving a late bid, the bid custodian records it on the duplicate copy of the list of bidders. The bid custodian then immediately notifies the responsible contracting officer of the bid. The contracting officer must arrange for pick-up or delivery of the bid.

#### **514.370 Copies of bids required.**

Require each bidder to submit an original and at least one copy of its bid. This requirement does not apply to bids transmitted and received through an electronic commerce method authorized by the solicitation.

### **Subpart 514.4—Opening of Bids and Award of Contract**

#### **514.401 Receipt and safeguarding of bids.**

(a) The specific location for receipt and safeguarding of bids and modifications shall be identified in the solicitation. Handle bids as follows:

(1) Authorized personnel mark the envelope (or other covering) of each package identified as a bid or modification with a time-stamp or the place, date, and time of receipt. They then deliver the bid by special handling to the bid custodian.

(2) Deposit hand-carried bids into the designated locked bid box, safe, or secured, restricted-access electronic bid box. At least once daily and immediately preceding the time scheduled for bid opening, the bid custodian removes and time stamps the bids. If a bidder hands a bid to the bid custodian or other GSA employee, the custodian or employee time stamps the bid immediately.

(3) When the solicitation authorizes telegraphic or facsimile bids and modifications, the bid custodian seals each in an envelope immediately upon receipt. The custodian labels the envelope with appropriate identification.

(4) For each invitation, the bid custodian prepares a bidders' list using GSA Form 1378, Record of, and Receipt for, Bids and Responses, or the appropriate bid abstract form. The list includes the name and address of all responses, including any bid modifications, received before bid opening time. The list also indicates withdrawn bids.

(5) The bid custodian records each bid and modification delivered before bid opening on the bidders' list on the day of receipt. The custodian stores bids and modifications in a suitable secured cabinet.

(b) At the scheduled bid opening time, the bid custodian delivers all bids received in response to the invitation, with the original and one copy of the bidders' list, to the bid opening official or designee. The bid opening official or designee acknowledges receipt of the bids by signing the copy of the form and returning it to the bid custodian. The original list becomes part of the contract file.

(c) When a regional Small Business Utilization Center (SBUC) is designated to receive bids, the regional SBUC Director may designate an individual(s) working at a Field Office as a bid custodian, provided all the following conditions are met:

(1) The Field Office has adequate space and facilities.

(2) The individual(s) designated as a bid custodian has been trained.

(3) The Field Office has a Small Business Technical Advisor.

(4) The bid custodian(s) must submit monthly reports to the regional SBUC Director. The regional SBUC Director forwards these reports to the Office of Small Business Utilization (E).

#### **514.402 Opening of bids.**

##### **514.402-1 Unclassified bids.**

(a) *Location of bid openings.* Public bid openings take place in the regional SBUC if the bid custodian is in the regional SBUC. If the bid opening occurs elsewhere, inform the regional SBUC. Give the regional SBUC the invitation number and the location of the bid opening.

(b) *Bid opening officer.* (1) The contracting officer may appoint a qualified employee of the contracting office as assistant bid opening officer as provided in FAR 14.402-1(b).

(2) The distance between the regional SBUC and the contracting office may make it impracticable for the contracting officer to conduct bid opening. In this case, the contracting officer may request the HCA and the Associate Administrator for Small Business Utilization (E) in Central Office, or the SBUC Director in the Region, to authorize a qualified regional SBUC employee to open, read, and record bids.

(c) Bid openings are open to business representatives, members of the press, and the general public.

#### **514.402-70 Preferred practices for conducting bid openings.**

(a) To ensure that bid opening occurs at the exact time specified, verify the accuracy of the timepiece to be used.

(b) For the information of bidders present, provide an audible announcement approximately one minute prior to bid opening.

(c) Announce audibly when the exact time of opening arrives. In the announcement, identify the invitation(s) scheduled for opening.

(d) For construction contracts that provide for bid alternates, announce the amount of funds available for the award before opening bids.

(e) Open the bids in full view of the parties present.

(f) When practicable and feasible, announce the following information from each bid: the bidder's name, item and unit price bid, and other pertinent information, such as delivery and discount terms.

(g) For bids submitted in multiple copies, one copy remains in the bid opening room for public examination until the bid abstract is substituted. The contracting activity uses the original. For bids submitted in original only, see FAR 14.402-1(c). The contracting activity retains all supplemental financial forms or other information submitted with a bid. Do not provide supplemental information for public examination.

(h) Forward any negotiable instruments submitted as bid guarantees to the appropriate Finance Office following procedures established by the Chief Financial Officer. After award, cancellation of the solicitation, or rejection of all bids, direct the appropriate Finance Office to refund the amount of the bid guarantee to unsuccessful bidders. The contracting officer may authorize return of a bid guarantee before award when requested by a bidder who is not in contention for the award. Retain other forms of bid guarantees (e.g., bid bonds, letters of credit, corporate and individual sureties, etc.) in the contract file.

(i) Prepare a record of the opening for the contract file. Include the names of persons attending the bid opening and the firms or organizations they represent.

(j) Verify the entries on all copies of a bid. Resolve any suspected mistake(s) following the procedures in FAR 14.407.

(k) Retain the envelopes in which bids and bid modifications are received until all awards are made. After award, retain those with notations concerning abnormal receipt or opening for identification in the solicitation file. The contracting officer may destroy the remainder.

#### **514.403 Recording of bids.**

(a) As soon as practicable, make a copy of the abstract of bids and any amendments available for public examination at the location of the bid opening. Make the abstract available for public examination for at least 30 calendar days. Include

late bids determined eligible for consideration on the bid abstract or, if necessary, in an amendment.

(b) In abstracts for aggregate awards, record: unit prices, weight factors, totals for each aggregate group, and any other information required for bid evaluation.

(c) For building services, contracting activities in PBS may use GSA Form 3471, Abstract of Offers, instead of the Standard Form 1409, Abstract of Offers.

#### **514.404 Rejection of bids.**

##### **514.404-1 Cancellation of invitations after opening.**

The HCA, or designee, makes any determinations required by FAR 14.404-1.

##### **514.404-2 Rejection of individual bids.**

(a) The contracting officer may use the "Remarks" Item on GSA Form 1535, Recommendation for Award(s), or other appropriate documentation to record findings with respect to rejected bids.

(b) Document any bid rejected for nonresponsiveness, nonresponsibility, ineligibility, or because the bid after evaluation is no longer low. Examples of bids which may no longer be low after evaluation include aggregate bids, "all or none" bids, bids evaluated for freight costs, and bids evaluated using Buy American differentials.

(c) For sensitive or controversial bid rejections, include all supporting documentation to justify awards. This includes copies of the bid to be rejected and the proposed awardee, statements from or records of conversations with the requisitioning activity, plant facilities and financial responsibility reports, and other relevant correspondence or reports (Certificates of Competency, copies of Congressional correspondence or other high level interest, etc.).

#### **514.407 Mistakes in bids.**

##### **514.407-3 Other mistakes disclosed before award.**

Delegation of authority by head of the agency. Under FAR 14.407-3(e), contracting directors (see [502.101](#)) are authorized, without power of redelegation, to make:

(a) The determinations regarding corrections and withdrawals under FAR 14.407-3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407-3(d).

##### **514.407-4 Mistakes after award.**

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407-4(b) and (c).

**514.408 Award.****514.408-6 Equal low bids.**

To determine the status of bidders in a tie-bid situation, use the bidders' status as of the date the bids were signed.

mendation for Award(s), Continuation Sheet, to document proposed awards. One or more awards may be set forth on each form. Contracting activities have the discretion to use other means of documentation that meet their needs for information to support an award recommendation.

**514.408-70 Forms for recommending award(s).**

Contracting activities may use GSA Form 1535, Recommendation for Award(s), and GSA Form 1535-A, Recom-

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## **PART 515—CONTRACTING BY NEGOTIATION**

*Sec.*

### **Subpart 515.2—Solicitation and Receipt of Proposals and Information**

- 515.204 Contract format.
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- 515.205 Issuing solicitations.
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(10 U.S.C. 2306a and 41 U.S.C. 254b).
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### **Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

- 515.506 Postaward debriefing of offerors.
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### **Appendix 515A—Source Selection Procedures**

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## PART 515—CONTRACTING BY NEGOTIATION

### Subpart 515.2—Solicitation and Receipt of Proposals and Information

#### 515.204 Contract format.

##### 515.204-1 Uniform contract format.

(a) The uniform contract format is not required for leases of real property.

(b) Each solicitation and contract must include the two notices in paragraphs (b)(1) and (b)(2) of this subsection, except that acquisitions of leasehold interests in real property, must include only the notice in (b)(1):

(1) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.”

(2) GSA’s hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.”

#### 515.205 Issuing solicitations.

Potential sources, as used in FAR 15.205, include both of the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR Subpart 5.2 states a negative interest.

(b) Offerors that responded to recent solicitations for the same or similar items.

#### 515.207 Handling proposals and information.

(a) *Unclassified Proposals.* In most cases, the best practice is to require offerors to submit proposals and modifications to the issuing contracting office. You may choose to use the local Business Service Center (BSC) for receipt and safeguarding of proposals. If so, make appropriate arrangements with the BSC.

(b) *Classified Proposals.* Handle classified proposals and quotations according to [504.4](#), 41 CFR Part 105-60, and GSA Freedom of Information Act procedures at <http://www.gsa.gov/staff/c/ca/FOIA/FoiaProc/mainpage.html>.

(c) *Recording of offers.* Abstracts help to summarize key aspects of proposals when you receive multiple responses to a solicitation (see FAR 4.803(a)(10)).

(1) You may use GSA or Standard Forms prescribed for abstracting bids in sealed bidding to abstract proposals or

quotations in competitively negotiated procurements. You may modify the forms to include the information necessary for evaluation.

(2) Abstracts contain contractor bid or proposal information and source selection information. See FAR 15.201, 15.207, 15.306, 15.5, and 24.2 about disclosing information.

#### 515.209 Solicitation provisions and contract clauses.

##### 515.209-70 Examination of records by GSA clause.

###### Clause for other than multiple award schedules

(a) For other than multiple award schedule (MAS) contracts, insert the clause at [552.215-70](#), Examination of Records by GSA, in solicitations and contracts over \$100,000, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

(1) Involve the use or disposition of Government-furnished property.

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(3) Contain a price warranty or price reduction clause.

(4) Involve income to the Government where income is based on operations under the control of the contractor.

(5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR Part 16.

(7) Are subject to adjustment based on a negotiated cost escalation base.

(8) Contain the provision at FAR 52.223-4, Recovered Material Certification.

(b) You may modify the clause at [552.215-70](#) to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

###### Clause for multiple award schedules

(c) Insert the clause at [552.215-71](#), Examination of Records by GSA (Multiple Award Schedule), in solicitations and contracts for MAS contracts.

(d) With the Senior Procurement's Executive approval, you may modify the clause at [552.215-71](#) to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(1) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(2) Before modifying the clause, you must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(3) The determinations under paragraph (d)(2) must be made on a schedule-by-schedule basis.

## 515.210 Forms.

### 515.210-70 GSA Form 1602.

You may use GSA Form 1602, Notice Concerning Solicitation, to do any of the following:

(a) Describe the type of contract, the duration of the contract, and the type of supplies or services being procured.

(b) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer.

(c) Highlight significant changes from previous solicitations covering the same supplies or services.

(d) Include other special notices as appropriate.

## Subpart 515.3—Source Selection

### 515.300 Scope of subpart

In addition to the policies and procedures of FAR 15.3, [Appendix 515A](#), Source Selection Procedures, provides guidance and advice on various source selection techniques.

### 515.305 Proposal evaluation.

(a) *Restrictions placed on a proposal by the submitter.* If you receive a proposal with more restrictive conditions than those in the provision at FAR 52.215-1(e), ask whether the submitter is willing to accept the conditions of the paragraph at FAR 52.215-1(e). If the submitter refuses, consult with legal counsel on whether to accept the proposal as marked or return it.

(b) *Actions before releasing proposals.* Before releasing any proposal to an evaluator you must take all the following actions:

(1) Obtain the signed original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in [Figure 515.3-1](#).

(i) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgment/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(ii) For nongovernment evaluators, substitute paragraph (c) of the Acknowledgment/Agreement with the language below and delete paragraph (h):

"(c) I have read and understand the requirements of subsection 27(a) and 27(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 423)."

(2) Attach to each proposal a cover page bearing the following notice:

#### Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract:

- (1) This proposal must be used and disclosed for evaluation purposes only.
- (2) You must apply a copy of this Government notice to any reproduction or abstract of this proposal.
- (3) You must comply strictly with any authorized restrictive notices which the submitter places on this proposal.
- (4) You must **not** disclose this proposal outside the Government for evaluation purposes except to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305-71.

(c) *Cost or price evaluation—MAS.* When evaluating prices under MAS, compare an offeror's price to GSA with its price to other customers. In this comparison, consider discounts for early payment to the extent provided in [552.232-8](#), Discounts for Prompt Payment.

(d) *Past performance evaluation information:*

(1) You must use information from the Past Performance Information Retrieval System (PPIRS) at [www.ppirs.gov](#) when evaluating an offeror's past performance. In addition, you may also obtain information through:

(i) Questionnaires tailored to the circumstances of the acquisition,

(ii) Interviews with program managers and contracting officers, or

(iii) Other sources.

(2) You may obtain information to evaluate an offeror's past performance on subcontracting plan goals and small disadvantaged business participation, monetary targets, and notifications under FAR 19.1202-4(b) from the following sources:

**FIGURE 515.3-1. CONFLICT OF INTEREST ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT**

<b>Conflict of Interest Acknowledgment and Nondisclosure Agreement</b>	
For proposals submitted in response to GSA solicitation no. _____, I agree to the following:	
(a) To the best of my knowledge and belief, no conflict of interest exists that may either: (1) Diminish my capacity to impartially review the proposals submitted. (2) Or result in a biased opinion or unfair advantage.	
(b) In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings: (1) All my stocks, bonds, other outstanding financial interests or commitments. (2) All my employment arrangements (past, present, and under consideration). (3) As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.	
(c) I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR, part 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Services Administration (5 CFR, part 6701).	
(d) I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Contracting Officer. I will perform no more duties related to evaluating proposals until I receive instructions on the matter.	
(e) I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.	
(f) I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposals to anyone other than: (1) The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above. (2) Other individuals designated by the Contracting Officer.	
(g) After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.	
(h) GSA Appropriations Act restriction: These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Codes, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.	
(Enter name of evaluator and organization) _____	Date _____

- (i) The Small Business Administration.
- (ii) Information on prior contracts from contracting officers and administrative contracting officers.
- (iii) Offeror's references.
- (iv) Past performance information collected under FAR 42.15 and available through PPIRS.

**515.305-70 Use of outside evaluators.**

(a) *Conditions.* To use outside evaluators, you must meet the restrictions in FAR 37.203 and [537.2](#).

(b) *Limitations on disclosing proposal information.* You may disclose proposal information outside the Government before the Government's decision as to contract award only to the extent authorized in this section. Disclosure and handling must comply with FAR 3.1 and [503.1](#).

(c) *Solicitation notice.* Include in the solicitation a notice substantially as follows:

**Notice About Releasing Proposals**

- (1) The Government intends to disclose proposals received in response to this solicitation to nongovernment evaluators.
- (2) Each evaluator will sign and provide to GSA a "Conflict of Interest Acknowledgment and Nondisclosure Agreement."

(d) *Relationship to the Freedom of Information Act.* Release of a proposal outside the Government for evaluation does not constitute the release of information under the Freedom of Information Act (5 U.S.C. 552).

**515.306 Exchanges with offerors after receipt of proposals.**

Limit access to Government cost estimates to Government personnel whose official duties require knowledge of the estimate. During negotiations, you may disclose part or all of the Government estimate under FAR 15.306(e) when necessary to arrive at a fair and reasonable price. After award, you may reveal the total amount of the independent Government estimate.

## Subpart 515.4—Contract Pricing

### 515.403 Obtaining cost or pricing data.

#### 515.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

To determine if a contract action meets the threshold at FAR 15.403-4 for requesting cost and pricing data, consider the value of the action plus any priced options. Exercise of a priced option is not a price adjustment and does not require submission of cost and pricing data.

#### 515.404-2 Information to support proposal analysis.

(a) “Field pricing assistance” is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) Follow the procedures in GSA Order, Audit resolution and follow-up system, Ch. 3 (ADM P 2030.2B) for handling contract audit reports.

#### 515.404-4 Profit.

(a) *Structured approach for determining profit or fee objectives.* Base the analysis of profit factors on information available to the Government before negotiations. Obtain such information from proposals, audit data, performance reports, preaward surveys and the like. The structured approach helps establish a profit objective. It also provides a basis for documenting the objective, including an explanation of any significant departure from this objective in reaching a final agreement. Prepare documentation commensurate with the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach.*

(1) The following types of procurements are exempt from the structured approach:

- (i) Management contracts for operation and/or maintenance of Government facilities.
- (ii) Contracts primarily requiring delivery of material supplied by subcontractors.
- (iii) Termination settlements.
- (iv) Cost-plus-award-fee contracts.
- (v) Contracts and contract modifications of \$100,000 or less in value.
- (vi) Architect-engineer and construction contracts.

(2) You may request exemptions for other contracts having unusual pricing situations where you determine the structured approach is unsuitable. Document your justification in writing. The HCA must approve all such exemptions.

(c) *Other methods for exempted procurements.* Under exempted procurements, you may use other methods for establishing profit objectives. In general, use methods supported in a manner similar to the structured approach (profit

factor breakdown and documentation of profit objective). Exclude factors within the structured approach that do not apply to the procurement.

(d) *Profit-analysis factors.* Consider the following factors when you negotiate profit. Use the weight ranges listed after each factor when you use the structured approach.

	Profit Factors	Weight Ranges in Percent
<b>Contractor Effort</b>	Material acquisition	1 to 4
	Conversion direct labor	4 to 12
	Conversion related indirect cost:	
	Other costs General management	1 to 3 2 to 5
<b>Other Factors</b>	Contract cost risk	0 to 7
	Capital investments	-2 to +2
	Federal socioeconomic programs	-.5 to +.5
	Cost-control and other past accomplishments	-2 to +2
	Independent development and additional factors	-2 to +2

(e) *GSA Form 1766.* You may use GSA Form 1766, Structured Approach Profit/Fee Objective, to help compute the profit objective. Measure the Contractor Effort by assigning a profit percentage within the designated weight ranges to each element of cost recognized.

(f) *Facilities capital cost of money.* If you allow facilities capital cost of money as an item of cost, either as a part of your price/cost objective in a firm fixed price type contract or as an allowable cost in a flexibly priced type contract, e.g., cost reimbursement or fixed price incentive type contract, reduce the profit/fee objective as follows. After you develop a dollar profit/fee amount for the requirement, subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder is the profit/fee objective.

(g) *Calculating profit dollars.* After computing a total dollar profit for Contractor Effort, calculate the specific profit dollars for the categories under Other Factors. Do this by multiplying the total Government cost objective, excluding any cost of money for facilities capital, by the specific weights assigned to the elements in Other Factors.

(h) *Common factors.* In determining the value of each factor, consider the definition, description, and purpose of the factors prescribed in FAR 15.404-4(d) and this subsection.

(1) *General management.* Management problems surface in various degrees. Consider the management expertise exercised to solve them as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may involve more problems and require more

managerial time and abilities of a higher order than a follow-on contract. If an initial contract creates more problems and merits a higher profit weight, then a follow-on should merit a downward adjustment, as many of the problems should have been solved. Evaluate the underlying managerial effort involved on a case-by-case basis.

(2) *Other costs.* Include all other direct costs of contractor performance under this item (e.g., travel and relocation, direct support, and consultants). When you analyze these costs, consider:

- (i) Their significance.
- (ii) Their nature.
- (iii) How much they contribute to contract performance.

(3) *Contract cost risk.* When you select the proper contract type, the reward for risk by contract type will usually fall into the ranges below.

(i) *Cost-reimbursement type contracts.* 0–3 percent. A cost-plus-a-fixed-fee contract does not normally justify a reward for risk in excess of 0 percent. Only a contract that contains cost risk features such as ceilings on overhead might merit a higher weight. Such cases may justify up to 1 percent. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range. For these, assign weightings based on such factors as confidence in target cost, share ratio of fee(s), etc.

(ii) *Fixed-price type contracts.* 3–7 percent. This weight range is wide enough to accommodate the many types of fixed-price arrangements. Assign weightings based on the cost risk assumed. Only firm fixed-price contracts should reach the top end of the range.

(iii) *Subcontracting program.* The contractor's subcontracting program may significantly impact the contractor's risk under a contract. It could affect risk in terms of both cost and performance. Consider this in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor. This merits a risk evaluation below the range that would otherwise apply for the contract type proposed. However, you should not evaluate risk lower when a substantial portion of the contract cost represents subcontracts, but without any substantial transfer of contractor's risk.

(iv) *Definitizing letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements.* Consider the effect on risk as a result of partial performance before definitization. Some circumstances may effectively reduce the contractor's total risk, while others may have no effect. Determine an equitable profit weight for all recognized costs, both those incurred and future costs. Consider all attendant circumstances, not just the portion of costs incurred or percentage of work completed before definitization.

(v) *Service contracts.* Apply a weight range of 0 to 4 percent for cost risk. A firm fixed-price contract, not priced on a labor-hour method, may warrant high consideration for contractor cost risk. It may merit a weight up to 4 percent. Conversely, a cost-plus-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investments.* In evaluating this factor for profit weights, consider the following:

(i) *Facilities.* (A) To evaluate how this factor contributes to the profit objective, you need to know the level of facilities use needed for contract performance, the source of financing for the facilities, and the overall cost effectiveness of the facilities offered.

(B) Contractors who furnish their own facilities that significantly contribute to lower total contract costs, warrant additional profit. Contractors who rely on the Government to provide or finance facilities warrant less profit. Evaluate situations between the above examples on their merits and make either a positive or negative profit weight adjustment, as appropriate.

(C) You do not need to adjust the profit when a contractor who owns a large quantity of facilities will perform a contract that does not benefit from these facilities, or when a contractor's use of its facilities has a minimum cost impact on the contract.

(ii) *Payments.* Consider the frequency of payments by the Government to the contractor. Assess the impact the contract will have on the contractor's cash flow. Generally, payments more frequent than monthly merit negative consideration, with maximum reduction as the contractor's working capital approaches zero. Payments less frequent than monthly merit positive consideration, with additional consideration for payments less frequent than the contractor's or the industry's normal practice.

#### 515.404-70 Nonprofit organizations.

(a) The structured approach for determining profit or fee objectives was designed for other than nonprofit organizations. However, if modified as below, you may use it to establish fee objectives for nonprofit organizations (See FAR 31.701). Do not apply the modifications as a deduction to historical fee levels. Instead apply them as a reduction in the fee objective calculated under the structured approach.

(b) For contracts with nonprofit organizations, subtract an adjustment of up to 3 percent from the total profit-fee objective. In developing this adjustment, consider each of the following factors:

- (1) Tax position benefits.
- (2) Granting of financing through letters of credit.
- (3) Facility requirements of the nonprofit organization.
- (4) Other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

**515.405 Price negotiation.**

If a contractor insists on a price or demands a profit or fee that you consider unreasonable as outlined in FAR 15.405(d), refer the matter to one level above the contracting officer for resolution.

**515.408 Solicitation provisions and contract clauses.****MAS Requests for Information Other Than Cost or Pricing Data**

(a) You should use Alternate IV of the FAR provision at 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, for MAS contracts to provide the format for submission of information other than cost or pricing data for MAS contracts. To provide uniformity in requests under the MAS program, you should insert the following in paragraph (b) of the provision:

(1) An offer prepared and submitted in accordance with the clause at [552.212-70](#), Preparation of Offer (Multiple Award Schedule).

(2) Commercial sales practices. The Offeror shall submit information in the format provided in this solicitation in accordance with the instructions at [Figure 515.4-2](#) of the GSA Acquisition Regulation (48 CFR 515.4-2), or submit information in the Offeror's own format.

(3) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation and resulting contract (see FAR 12.303).



<b>COMMERCIAL SALES PRACTICES FORMAT</b>																								
<b>Name of Offeror</b> _____		<b>SIN(s)</b> _____																						
<b>NOTE:</b> Please refer to Clause <a href="#">552.212-70</a> , Preparation of Offer (Multiple Award Schedule), for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or SubSIN for which information is the same).																								
(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: \$ _____. State beginning and ending of the 12 month period. Beginning _____ ending _____. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).																								
(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract. <table style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 40%;">SIN _____</td> <td style="width: 10%;">\$ _____</td> </tr> <tr> <td>SIN _____</td> <td>\$ _____</td> </tr> <tr> <td>SIN _____</td> <td>\$ _____</td> </tr> </table>					SIN _____	\$ _____	SIN _____	\$ _____	SIN _____	\$ _____														
SIN _____	\$ _____																							
SIN _____	\$ _____																							
SIN _____	\$ _____																							
(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES ___ NO ___ (See definition of “concession” and “discount” in <a href="#">552.212-70</a> .)																								
(4) (a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at <a href="#">Figure 515.4-2</a> , which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required. <table border="1" style="width: 100%; margin-top: 5px; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Column 1 Customer</th> <th style="width: 20%;">Column 2 Discount</th> <th style="width: 20%;">Column 3 Quantity/Volume</th> <th style="width: 20%;">Column 4 FOB Term</th> <th style="width: 20%;">Column 5 Concessions</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>					Column 1 Customer	Column 2 Discount	Column 3 Quantity/Volume	Column 4 FOB Term	Column 5 Concessions															
Column 1 Customer	Column 2 Discount	Column 3 Quantity/Volume	Column 4 FOB Term	Column 5 Concessions																				
(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? YES ___ NO _____. If YES, explain deviations in accordance with the instructions at <a href="#">Figure 515.4-2</a> , which is provided in this solicitation for your convenience.																								
(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers’ information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer’s sales under any resulting contract are expected to exceed \$500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer’s sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer’s item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer’s name, address, the manufacturer’s contact point, telephone number, and FAX number) for each model offered by SIN: <ul style="list-style-type: none"> <li>(a) Manufacturer’s Name.</li> <li>(b) Manufacturer’s Part Number.</li> <li>(c) Dealer’s/Reseller’s Part Number.</li> <li>(d) Product Description.</li> <li>(e) Manufacturer’s List Price.</li> <li>(f) Dealer’s/Reseller’s percentage discount from list price or net prices.</li> </ul>																								
<b>(End of Format)</b>																								

(c) Include the instructions for completing the commercial sales practices format in [Figure 515.4-2](#) in solicitations issued under the MAS program.

**FIGURE 515.4-2. INSTRUCTIONS FOR COMMERCIAL SALES PRACTICES FORMAT**

If you responded “YES” to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded “NO”, complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customer categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reductions clause at [552.238-75](#). The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

**Column 1—Identify the applicable customer or category of customer.**

A “customer” is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the Offeror’s discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

**Column 2—Identify the discount.**

The term “discount” is as defined in solicitation clause [552.212-70](#), Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list.

The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

**Column 3—Identify the quantity or volume of sales.**

Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. When purchases/orders must be placed within a specified period to earn a discount indicate the time period.

**Column 4—Indicate the FOB delivery term for each identified customer.**

See FAR 47.3 for an explanation of FOB delivery terms.

**Column 5—Indicate concessions regardless of quantity granted to the identified customer or category of customer.**

Concessions are defined in solicitation clause [552.212-70](#), Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond “YES” to question 4(b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes. If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practices Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

**(End of Figure)**

(d) Insert the clause at [552.215-72](#), Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts under the MAS program.

(e) You should use Alternate IV of FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost or pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, you should insert the following in paragraph (b) of the clause:

(1) Information required by the clause at [552.243-72](#), Modifications (Multiple Award Schedule).

(2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

### **Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

#### **515.506 Postaward debriefing of offerors.**

For purposes of determining the date of receipt of a request for a postaward debriefing, GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests received after 4:30 p.m. will be considered received the following business day.

#### **515.570 Release of information concerning unsuccessful offerors.**

Consult FAR 24.2, 41 CFR part 105-60, and GSA Freedom of Information Act procedures at <http://www.gsa.gov/staff/c/ca/FOIA/FoiaProc/mainpage.html>, to determine what information you may disclose.

### **Subpart 515.6—Unsolicited Proposals**

#### **515.601 Definitions.**

“Coordinating office,” as used in this subpart, means:

(a) The Senior Procurement Executive for all Central Office activities.

(b) The office designated in writing by the Regional Administrator in the Regions.

#### **515.606 Agency procedures.**

Coordinating offices serve as agency points of contact and establish procedures for controlling the receipt, evaluation, and timely disposition of proposals consistent with FAR 15.6.

#### **515.606-2 Evaluation.**

Complete the evaluation as soon as practicable, normally within 45 calendar days. Communicate the results of the evaluation to the submitter.

#### **515.609 Limited use of data.**

When you release an unsolicited proposal for evaluation, use the “Conflict of Interest Acknowledgment and Nondisclosure Agreement” in [Figure 515.3-1](#).

### **Subpart 515.70—Use of Bid Samples**

#### **515.7000 General.**

Except as provided in [515.7002](#) and 515.7003, the policy and procedures in FAR 14.202-4 and [514.202-4](#) apply to negotiated acquisitions. When referring to FAR 14.202-4 and [514.202-4](#), the term “bid” means “offer” or “proposal.” The terms “bidder” and “invitation” or “invitation for bids” are used synonymously with “offeror” and “solicitation” or “RFP”.

#### **515.7001 Policy.**

(a) The terms “responsiveness” and “nonresponsive” do not apply to negotiated acquisitions. FAR 14.202-4(b)(2) and (4) do not apply to the use of bid samples under this subpart.

(b) Instead of FAR 14.202-4(b)(2) and (4), apply the following:

(1) Use bid samples in the technical evaluation of proposals to both:

(i) Determine the acceptability of the samples to meet GSA's requirement.

(ii) Ensure compliance with all subjective and objective characteristics listed in the solicitation.

(2) If you conduct written or oral discussions, you may exclude a proposal from further consideration for award only if you meet all the following conditions:

(i) You discussed with the offeror any deficiencies found in the samples.

(ii) You gave the offeror an opportunity to correct those deficiencies.

(iii) The sample still fails to conform to each of the characteristics listed in the solicitation. (See FAR 15.609 and 15.610).

**515.7002 Procedures.**

(a) *Unsolicited samples.* The reference to FAR 14.404-2(d) in FAR 14.202-4(g) does not apply. Use the following when contracting by negotiation:

“However, qualifications in the proposal that are at variance with the Government’s requirements, constitute deficiencies. Resolve these as provided in FAR 15.306.”

(b) *Solicitation requirements.* (1) Use the clause at FAR 52.214-20. The second sentence in paragraph (c) of the clause does not apply. Substitute a sentence substantially as follows:

“Failure of the bid samples to conform to all the required characteristics listed in the solicitation constitutes a deficiency in the proposal (see FAR 15.306).”

(2) In addition to listing subjective characteristics that you cannot adequately describe in the specification, you may list and evaluate objective characteristics. To include objective characteristics, you must determine that examination of such characteristics is essential to the acquisition of an acceptable product. Base your determination on past experience or other valid considerations.

(c) FAR 52.215-1(c)(3) applies to samples received after the time set for receipt of offers.

**Appendix 515A—Source Selection Procedures**

[This Appendix will replace GSA Order, Source Selection Procedures (APD P 2800.2). The source selection procedures are being updated based on the FAR Part 15 rewrite.]

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### PART 516—TYPES OF CONTRACTS

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#### **Subpart 516.2—Fixed Price Contracts**

- 516.203 Fixed-price contracts with economic price adjustment (EPA).
- 516.203-2 Application.
- 516.203-3 Limitations.
- 516.203-4 Contract clauses.

#### **Subpart 516.4—Incentive Contracts**

- 516.403 [Reserved]
- 516.403-2 Fixed-price incentive contracts.
- 516.405 [Reserved]
- 516.405-1 Cost-reimbursement incentive contracts.

#### **Subpart 516.5—Indefinite-Delivery Contracts**

- 516.505 Task-order and delivery-order ombudsman.
- 516.506 Solicitation provisions and contract clauses.

#### **Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

- 516.603 Letter contracts.
- 516.603-70 Additional limitations on the use of letter contracts for architect-engineer (A-E) services under the PBS Design Excellence Program.

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## PART 516—TYPES OF CONTRACTS

## Subpart 516.2—Fixed Price Contracts

**516.203 Fixed-price contracts with economic price adjustment (EPA).****516.203-2 Application.**

(a) Changes to a Government contract price that result from a change in the actual cost of labor based on Department of Labor wage determinations are addressed in FAR Subparts 22.4 and 22.10.

(b) Changes to a Government contract price that result from a change in designated indicators should be processed as follows:

(1) The contracting officer shall evaluate the reasonableness of the proposed market indicator. The indicator should:

- (i) Be used only when general economic factors make the estimating of future costs unpredictable within a fixed-price contract;
- (ii) Be considered before using an EPA including volatile labor and/or material cost and contractual length;
- (iii) Be relevant to the service or product solicited;
- (iv) Have an established history;
- (v) Be published regularly;
- (vi) Be reasonably available in the future; and
- (vii) Should not provide for an adjustment beyond the original contract period of performance, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(2) Selection of the indicators to be used and determination of how they will be applied are negotiable and must be determined prior to award. For example, a broad-based market indicator, such as that issued by the Bureau of Labor Statistics, can be applied uniformly to all categories if the contractor routinely applies across the board wage increases. If a contractor's wage changes vary by skills, the economic price adjustment should be based on specific matched categories.

(3) The contracting officer and the contractor shall agree on the economic price adjustment prior to the completion of negotiations. The contracting officer shall document the file.

(c) If, during the course of the contract, the contractor proposes a change in price adjustment methods, the contracting officer should require appropriate consideration from the contractor for any lowering of the contractor's risk.

**516.203-3 Limitations.**

(a) When including an economic price adjustment clause, the contracting officer shall document, in the contract file, the determination required by FAR 16.203-3.

(b) The contracting director must approve any of the following actions:

(1) If an economic price adjustment clause provides for price increases during the first 12 months of a multiyear contract, a determination to include an economic price adjustment clause in a solicitation or contract of one year or less is needed.

(2) The use in a contract of any economic price adjustment clause that was not included in the initial solicitation. This includes any clause that provides for price adjustment during the first 12 months of a multiyear contract.

(c) The contracting director may raise the price ceiling (the aggregate of permitted price increases during a 12-month period) during the contract period when both of the following conditions are met:

- (1) A supplier requests that the ceiling be raised.
- (2) Analysis of current market conditions reveals that most suppliers of similar supplies or services are affected. If the price ceiling is raised, the contracting officer must modify the contract to reflect the revised ceiling.

**516.203-4 Contract clauses.**

(a) *Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203-3, use [552.216-71](#), Economic Price Adjustment—Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the same as [552.216-71](#) with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternate II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of [552.216-71](#) are not appropriate, use an alternate clause following established procedures.

(b) *Adjustments based on cost indexes of labor or material.*

(1) If the contracting officer decides to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

(i) The type of labor and/or material subject to adjustment;

(ii) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased;

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

### **Subpart 516.4—Incentive Contracts**

#### **516.403 [Reserved]**

##### **516.403-2 Fixed-price incentive contracts.**

The formula specified in FAR 16.403-2(a)(1)(iii) does not apply for the life of the contract. Instead, it is used to fix the firm target profit for the contract. In order to provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

#### **516.405 [Reserved]**

##### **516.405-1 Cost-reimbursement incentive contracts.**

Appropriate weight shall be given to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(a) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets; and

(b) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

### **Subpart 516.5—Indefinite-Delivery Contracts**

##### **516.505 Task-order and delivery-order ombudsman.**

(a) The GSA competition advocate serves as the Departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(6).

(b) The GSA Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions.

(c) If any corrective action is needed after reviewing complaints from contractors, the GSA Ombudsman shall provide a written determination of such action to the contracting officer.

(d) Contracting officers shall be notified via the contractor of any complaints submitted to the GSA Ombudsman (see clause [552.216-74](#)).

##### **516.506 Solicitation provisions and contract clauses.**

(a) In solicitations and contracts for Special Order Program items, when the contract authorizes FAS and other activities to issue delivery or task orders, insert the clause at 552.216-72, Placement of Orders. If only FAS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for GSA awarded IDIQ contracts, insert clause [552.216-74](#), Task-Order and Delivery-Order Ombudsman.

(c) If the clause at [552.216-72](#) is prescribed, insert the provision at [552.216-73](#), Ordering Information, in solicitations for Special Order Program items and in other FAS Program solicitations.

### **Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

#### **516.603 Letter contracts.**

##### **516.603-70 Additional limitations on the use of letter contracts for architect-engineer (A-E) services under the PBS Design Excellence Program.**

(a) *Requirement for a price proposal.* The proposed A-E must provide a price proposal for the non-design effort before the award of a letter contract. In accordance with FAR 52.216-25, a complete price proposal is required before definitization.

(b) *Contents of each letter contract.* The contracting officer must include the following information in the letter contract:

(1) The scope. The scope of the letter contract must authorize only the A-E to perform those services that are independent of the design effort (for example, feasibility studies, existing facility surveys or site investigation, etc.). The A-E shall not begin any design effort before the letter contract is definitized for the entire scope of the project.

(2) A definitization schedule. Include dates for each of the following:

(i) Submission of the design fee proposal.

(ii) Start of negotiations.

(iii) Definitization. This date must be no later than 120 days after the date of the letter contract.

(3) The letter contract must comply with FAR 16.6.

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PART 516—TYPES OF CONTRACTS

516.603-70

(c) *Unilateral price decision.* If the contracting officer issues a unilateral price decision, the maximum contract amount must not exceed a reasonable price for the excludable

items plus the six percent statutory fee limitatoin for the project.

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## **PART 517—SPECIAL CONTRACTING METHODS**

*Sec.*

### **Subpart 517.1—Multiyear Contracting**

- 517.101 Authority.
- 517.109 Contract clauses.

### **Subpart 517.2—Options**

- 517.200 Scope of subpart.
- 517.202 Use of options.
- 517.203 Solicitations.
- 517.204 Contracts.
- 517.207 Exercise of options.
- 517.208 Solicitation provisions and contract clauses.

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## PART 517—SPECIAL CONTRACTING METHODS

### Subpart 517.1—Multiyear Contracting

#### 517.101 Authority.

(a) In addition to the multiyear authority described in FAR 17.101, GSA is authorized to enter into contracts for periods not to exceed:

(1) Five years for the inspection, maintenance, and repair of fixed building equipment in federally owned buildings (40 U.S.C. 490(a)(14)).

(2) Ten years for public utility services (40 U.S.C. 481(a)(3)).

(3) Five years for contracts awarded under the Information Technology Fund (40 U.S.C. 757(c)).

(b) You may award contracts under the authority of paragraph (a)(1) or paragraph (a)(2) of this section without a cancellation clause.

#### 517.109 Contract clauses.

Use of FAR 52.217-2, Cancellation Under Multi-year Contracts, is optional in multiyear contracts authorized by 40 U.S.C. 490(a)(14) for maintenance and repair of fixed equipment in federally-owned buildings and services and 40 U.S.C. 481(a)(3) for public utility services.

### Subpart 517.2—Options

#### 517.200 Scope of subpart.

(a) This subpart applies to all GSA contracts for supplies and services, including:

(1) Services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

(2) Architect-engineer services.

(b) If a requirement in this subpart is inconsistent with FAR 17.2, this subpart takes precedence.

#### 517.202 Use of options.

(a) *Supplies or services.* (1) You should use options when they meet one or more of the following objectives:

(i) Reduce procurement lead time and associated costs.

(ii) Ensure continuity of contract support.

(iii) Improve overall contractor performance.

(iv) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(2) An option is normally in the Government's interest in the following circumstances:

(i) You anticipate a need for additional supplies or services during the contract term.

(ii) Multiyear contracting authority is not available or its use is inappropriate and you anticipate a need for additional supplies or services beyond the initial contract term.

(iii) There is a need for continuity of supply or service support.

(iv) Funds are not available for the entirety of the Government's needs, but are likely to become available during the contract term.

(v) The initial contract will be used to evaluate the performance of an emerging small business.

(3) Do not use an option if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

(b) *Construction.* For limitations on the use of options, see [536.213](#) and [536.270](#).

#### 517.203 Solicitations.

A solicitation that includes an option to extend should inform offerors that the contract could result in a long term contractual relationship subject to both of the following conditions:

(a) Continuing need by GSA.

(b) Level of contract performance that at least meets GSA's quality performance expectations.

#### 517.204 Contracts.

(a) *Information technology contracts.* Notwithstanding FAR 17.204(e), the 5 year limitations apply also to information technology contracts unless a longer period is authorized by statute.

(b) *Requests to exceed 5-year limitation.* A request to exceed the 5-year limitation specified in FAR 17.204(e) must provide all the following information:

(1) Clearly explain the contract(s) and organization(s) covered by the request.

(2) Support the need for and reasonableness of the extension. Consider factors such as the following:

(i) The results of market research.

(ii) Stability of the requirement(s).

(iii) Benefits to the Government.

(iv) Use of a performance-based contracting approach.

(v) Availability of funds to cover estimated cancellation costs as well as costs for the first contract period.

(vi) Customary commercial practice.

(vii) Mechanisms to adjust for economic fluctuations.

(c) *Approval authority.* Requests to exceed the 5-year limitations specified in FAR 17.204(e) must be approved by:

(1) The head of the contracting activity for individual contracts.

(2) GSA's Senior Procurement Executive for classes of contracts.

#### **517.207 Exercise of options.**

Before exercising an option, you must:

(a) Synopsise it unless you meet of the following conditions:

(1) The option was evaluated as part of the original competition.

(2) The contract action meets an exception in FAR 5.202.

(b) Conclude that the contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.

(c) Determine that the option price is fair and reasonable.

#### **517.208 Solicitation provisions and contract clauses.**

(a) For solicitations under FSS's Stock or Special Order Program, insert a provision substantially the same as the provision at [552.217-70](#), Evaluation of Options, if both of the following conditions apply:

(1) The solicitation contains an option to extend the term of the contract.

(2) The contract will be fixed price and contain an economic price adjustment clause.

(b) Insert the provision at [552.217-71](#), Notice Regarding Option(s), or a similar provision, in solicitations that include an option for increased quantities of supplies or services or an option to extend.



**PART 518—[RESERVED]**

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## **SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**

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**PART 519—SMALL BUSINESS PROGRAMS***Sec.*

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**Appendix 519A—Small Business Subcontracting  
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## PART 519—SMALL BUSINESS PROGRAMS

**519.001 Definitions.**

“Office of Small Business Utilization staff” as used in this subpart means the staff with responsibility for supporting small business activities. In Central Office, this is the Office of Small Business Utilization, (OSBU) and the Small Business Technical Advisors (SBTAs). In the Regions, this staff is a separate office (*e.g.*, Small Business Utilization Centers (SBUCs)).

**Subpart 519.2—Policies****519.201 General policy.**

(a) The Associate Administrator, Office of Small Business Utilization (AAOSBU) is the Director of Small and Disadvantaged Business Utilization in GSA.

(b) The Office of Small Business Utilization, (OSBU) appoints Small Business Technical Advisors (SBTAs), in writing. Each Central Office Service and each Region has at least one SBTA. All references to SBTA in this part refer to the SBTA designated to support his/her service or region, whichever is applicable.

**519.202 Specific policies.****519.202-1 Encouraging small business participation in acquisitions.**

(a) The acquisition planner is required to obtain signature of the SBTA or Small Business Specialist (SBS) assigned to the specific region, service or central office staff office on any acquisition plans that:

(1) Requires submission of a GSA Form 2689, Small Business Analysis Record, under GSAM [519.502-70](#).

(2) Involves contract bundling (see FAR 19.202-1(e) and paragraph (b)(2) of this section); or

(3) Is at or above the dollar threshold identified in FAR 7.104(d)(2).

(b) Bundled acquisitions.

(1) If the planner and contracting officer have failed to recognize that the acquisition is bundled, the SBTA or SBS shall notify the AAOSBU.

(2) When bundling is contemplated (see FAR 7.107), coordination with the SBTA and the AAOSBU is required.

(i) Use the GSA Form 2689 to obtain signature of the SBTA and the Small Business Administration (SBA) Procurement Center Representative (PCR). The SBTA will coordinate with the AAOSBU (see FAR 19.202-1(e)).

(ii) When substantial bundling is contemplated the acquisition planner shall use the GSA Form 2689 to also coordinate with the AAOSBU (see FAR 7.107(e) and 19.202-1(e)).

(c) Consolidated acquisitions.

(1) All consolidated acquisitions require review and approval from the Head of Contracting Activity (HCA),

SBTA, and then Senior Procurement Executive. The SBTA will coordinate for review by the SBA PCR as necessary, and required concurrence of the AAOSBU.

(2) Consolidated acquisitions require special attention. The contracting officer shall consult with the appropriate Office of Acquisition Management.

(3) For all consolidated acquisitions, GSA shall conduct market research; identify potential alternative contracting approaches that involve lesser degrees of consolidation; issue a written determination in support of the consolidation; identify negative impacts on small businesses; and ensure that steps will be taken to include small business concerns in the acquisition strategy.

**519.202-2 Locating small business sources.**

(a) The contracting officer shall confer with the appropriate SBTA when he or she needs help to identify additional small business, veteran-owned small business, service-disabled veteran-owned small business, Historically Underutilized Business Zone (HUBZone) small business, small disadvantaged business, and women-owned small business concern sources to solicit for a requirement. The SBTA will coordinate with the SBA PCR.

(b) The SBTA should query “Dynamic Small Business Search,” at <http://dsbs.sba.gov>.

**Subpart 519.3—Determination of Small Business Status for Small Business Programs****519.302 Protesting a small business representation.**

If SBA determines that an offeror is not a small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

**519.305 Protesting a representation of disadvantaged business status.**

If SBA determines that an offeror is not a disadvantaged small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

**519.306 Protesting a firm’s status as a HUBZone small business concern.**

If SBA determines that an offeror is not a HUBZone small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must

refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

**519.307 Protesting a firm's status as a Service-Disabled Veteran-Owned small business concern.**

If SBA determines that an offeror is not a service-disabled veteran-owned small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

**519.308 Protesting a firm's status as an Economically Disadvantaged Women-Owned Small Business (EDWOSB) concern or Women-Owned Small Business (WOSB) concern eligible under the WOSB Program.**

If SBA determines that an offeror is not a women-owned small business or economically disadvantaged women-owned small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

**Subpart 519.4—Cooperation With the Small Business Administration**

The AAOSBU is the focal point for interfacing with SBA. Refer issues relating to small business programs through the designated SBTA.

**Subpart 519.5—Set-asides for Small Business**

**519.502 Setting aside acquisitions.**

**519.502-1 Requirements for setting aside acquisitions.**

(a) The contracting officer may make awards under the 8(a) Business Development Program (see FAR 19.8), or set aside for the Historically Underutilized Business Zone (HUBZone) Program (see FAR 19.13, Women-Owned Small Business (WOSB) Program (see FAR 19.15), or Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (see FAR 19.14).

(b) Once a contracting activity acquires a product or service successfully on the basis of a set-aside, the activity must acquire all future requirements for that product or service using set-aside procedures. If the contracting officer determines that he or she no longer can reasonably expect to receive offers from at least two responsible small business concerns and make awards at fair market prices, use the procedures in FAR 19.506 to withdraw or modify a set-aside. When market research reveals that any supplies or services from mandatory sources, such as Federal Prison Industries, Inc. and AbilityOne, that were not available at the time of the

original requirement have become available, a contracting officer may discontinue setting aside a continuing requirement (see FAR 8.002 and 8.003). The contracting officer shall document the determination to discontinue setting aside a continuing requirement (see 519.502-70).

**519.502-70 Review of non-set-aside determinations.**

(a) GSA Form 2689, Small Business Analysis Record. The GSA Form 2689 is used to record evidence that consideration has been given to small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business; to document that small businesses received maximum practicable opportunity to participate in a proposed acquisition; and, for instances of contract bundling (including substantial bundling).

(b) The GSA Form 2689 may be used in place of a "Memo to File" when documenting the requirement for market research and as a tool to assure maximum practicable small business opportunity.

(c) The GSA Form 2689 is not required for acquisitions with mandatory sources such as Federal Prison Industries, Inc. and AbilityOne.

**Acquisition at or below the Simplified Acquisition Threshold**

(d) The GSA Form 2689 may also be used in place of a "Memo to File" for unrestricted acquisitions with a dollar value expected to exceed the micro-purchase threshold, but not over the simplified acquisition threshold (SAT), if a determination is made that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that have competitive market price, quality, and delivery. The GSA Form 2689 does not require SBTA or SBA PCR review or signature for these acquisitions.

(e) The GSA Form 2689 is not required for acquisitions at or below the Simplified Acquisition Threshold.

**Acquisition expected to exceed the Simplified Acquisition Threshold**

(f) The GSA Form 2689 is required for acquisitions expected to exceed the Simplified Acquisition Threshold (SAT) when:

(1) A determination is made to set-aside for small business but not one of the small business programs specified in FAR 19.203 (8(a), HUBZone, WOSB, or SDVOSB) (SBA PCR may review; however, signature is not required);

(2) A determination is made to utilize full and open competition; or

(3) Contract Bundling is contemplated (see FAR 2.101).

(g) The GSA Form 2689 is required for orders against Multiple Award Schedule contracts (see FAR 38.101(e)), orders placed under Indefinite-Delivery Contracts (see FAR 16.5), or Blanket Purchase Agreements under Multiple Award Schedule contracts (see FAR 8.404) when:



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519.502-70

(1) The acquisition is expected to equal or exceed the dollar threshold identified in FAR 7.104(d)(2) and is not set-aside for small business; or

(2) Contract Bundling is contemplated (see FAR 2.101).

(h) Include all pertinent documents with the GSA Form 2689 to support the proposed acquisition strategy (i.e., Dynamic Small Business Search results, responses to a

sources sought Federal Business Opportunity notice, PWS, SOW, J&A etc).

(i) Contracting officer shall record his or her decision on GSA Form 2689. Submit the form to the SBTA for review.

(j) GSA Form 2689 Requirement Conditions. The following chart is a reference to determine when the GSA Form 2689 is required for completion and submission.

Threshold/Contract Vehicle	GSA Form 2689 and Submission to the SBTA/SBA		Rationale
(1) Under the simplified acquisition threshold (SAT)		Not Required	<u>GSAM 519.502-70(d)</u> The GSA Form 2689 may be used in place of a “Memo to File” for unrestricted acquisitions to exceed the micro-purchase threshold, but not over SAT. The GSA Form 2689 does not require SBTA or SBA PCR review or signature for these acquisitions.
(2) Acquisitions from mandatory sources such as AbilityOne		Not Required	<u>FAR 8.002(a)(1)(iv) (Supplies) and FAR 8.002(a)(2)(i) (Services)</u> FAR 19 set-aside procedures are not applicable.
(3) Order/BPA against Multiple Award Schedule	Required When Applicable (see 8 and 9 of this chart)		<u>GSAM 519.502-70(g)</u> <u>FAR 8.405-5(a)(1)(i) and FAR 8.405-5(a)(1)(ii)</u> Set-aside is discretionary
(4) Order against Indefinite-Delivery Contract	Required When Applicable (see 8 and 9 of this chart)		<u>FAR 16.505(b)(2)(i)(F)</u> Set-aside is discretionary
(5) Over SAT and set-aside for 8(a), HUBZone, WOSB, or SDVOSB		Not Required	<u>GSAM 519.502-70(f) and FAR 19.203(a)</u> The GSA Form 2689 not required when an acquisition is set aside for 8(a), HUBZone, WOSB, or SDVOSB. There is no order of precedence among these programs.
(6) Over SAT and set aside for small business, but NOT set-aside for 8(a), HUBZone, WOSB, or SDVOSB	Required (SBA PCR may review; however, signature is not required)		<u>FAR 19.501(e) and FAR 19.203(c)</u> For acquisitions above the simplified acquisition threshold, the contracting officer shall first consider an acquisition for the small business socioeconomic contracting programs before considering a small business set-aside.
(7) Over SAT and not set-aside (full and open competition)	Required		<u>GSAM 519.502-70(f)</u> If not to set-aside for small business, socioeconomic programs; or if contract bundling is contemplated.
(8) Acquisition meets established threshold for coordination with the SBS/SBTA and is not set-aside.	Required		<u>GSAM 519.202-1 and FAR 7.104</u> Coordinate with SBTA and SBA for acquisitions expected to equal or exceed the established dollar threshold referenced in FAR 7.104(d)(2).
(9) When contract bundling is contemplated.	Required		<u>GSAM 519.202-1 and FAR 19.202-1</u>

(k) *Reviews and timeframes.*

If...	Then...
(1) The acquisition meets any one of the following conditions: (i) It will be a Multiple Award Schedule solicitation (see FAR 38.1) or an Indefinite Delivery solicitation (see FAR 16.5). (ii) The estimated value does not exceed \$50 million, including options. (iii) The contract will cover only one region or designated locations in one region (at any dollar value).	The SBTA provides a copy of the GSA Form 2689 to the SBA representative for review. The SBTA and the SBA representative must complete their review within 5 workdays after the SBTA receives the Form, or request an extension from the contracting officer.
(2) The acquisition, excluding Multiple Award Schedule contracts, meets one of the following conditions: (i) The estimated value exceeds \$50 million (including options) and contract performance will occur in two or more regions. (ii) Based on political sensitivity or importance to GSA, the Associate Administrator for the Office of Small Business Utilization designates the acquisition for review. (iii) The acquisition meets the definition of a Bundled Contract FAR 7.107 and FAR 2.101.	The SBTA provides a copy of the GSA Form 2689 to the AAOSBU for review and comment on the decision. After the AAOSBU review, the SBTA submits the GSA Form 2689 to the SBA representative for review. All reviews and comments must be completed within 10 workdays after the SBTA receives the Form, or the SBTA must request a time extension from the contracting officer.

(l) *Disagreements.* If a reviewing official disagrees with the contracting officer's decision not to set-aside an acquisition, the SBTA must provide the contracting officer the rationale for the disagreement or provide the contracting officer with additional small business sources that are interested in and capable of fulfilling the requirement. Review and consider any information provided by the SBTA before making a decision.

(m) *Resolving disagreements.* The HCA, as delegated, in the applicable Central Office and/or Regional Service resolves disagreements between the contracting officer and the SBTA. To resolve disagreements with the SBA representative, see FAR 19.505.

**519.503 Setting aside a class of acquisitions for small business.**

(a) *Definition.* A class set-aside is an item (or service), a group of related items under a Federal Supply Class (FSC), or

a whole FSC set aside for exclusive small business participation on more than a one-time basis. If the item or group of items constitute only a small portion of an FSC, this definition still applies.

(b) *Determinations.* If the contracting officer has procurement responsibility for the class of items or services involved, prepare the determination required by FAR 19.503. The determination can apply to either a total or partial set-aside.

**519.506 Withdrawing or modifying small business set-asides.**

If the contracting officer and the SBTA disagree over the withdrawal or modification of a set-aside, the SBTA must notify the AAOSBU at the same time the matter is referred to the SBA PCR.

**519.508 Solicitation provisions and contract clauses.**

Insert [552.219-70](#), Allocation of Orders—Partially Set-Aside Items, in solicitations and requirements type supply contracts that are partially set aside for small business.

**Subpart 519.6—Certificates of Competency and Determinations of Responsibility**

**519.602 Procedures.**

**519.602-3 Resolving differences between the agency and the Small Business Administration.**

(a) Within 5 business days after requesting the SBA Area Office to refer an intention to issue a Certificate of Competency to SBA Headquarters for review, the contracting officer shall forward the information in paragraphs (a)(1) and (a)(2) of this subsection to the AAOSBU through your designated SBTA. This period may be extended by mutual agreement.

(1) Copies of all correspondence between GSA and SBA concerning the case. Include the initial referral notice of nonresponsibility.

(2) Copies of all technical documents sent to SBA (for example, the solicitation, preaward surveys, or any abstract of offers). Include any new information and a justification of the contracting officer's decision to continue the appeal.

(b) After considering all the facts and conferring with the contracting officer, the AAOSBU will decide whether or not to file a formal appeal. Before deciding whether or not to appeal, the AAOSBU must notify the contracting officer.

(c) For decisions on cases over \$25,000,000, the AAOSBU shall confer with the contracting activity before responding to SBA regarding either of the options in FAR 19.602-3(b)(1)(i) and (ii).

**Subpart 519.7—The Small Business Subcontracting Program**

**519.700-70 Additional responsibilities.**

In addition to FAR 19.705 responsibilities, the contracting officer's preaward responsibilities include:

- (a) Developing target goals for sealed bid solicitations when practicable.
- (b) Following FAR 15.306, conducting discussions with individual offerors, as appropriate, concerning the subcontracting plans submitted for a negotiated solicitation.

**519.702 [Reserved]****519.705 Responsibilities of the contracting officer under the subcontracting assistance program.****519.705-2 Determining the need for a subcontracting plan.**

- (a) When the contracting officer calculates the applicable threshold, consider the actual or estimated value of the contract for the entire term of the contract, including any option period(s). This also applies to schedule contracts and other indefinite delivery type contracts. Consider the estimated value of all orders expected to be placed during the term plus all options.
- (b) FAR 19.705-2(d) permits the contracting officer to require submission of subcontracting plans with initial offers under a negotiated acquisition. The contracting officer must require all offerors (other than small business concerns) to submit subcontracting plans with their initial offers when a negotiated acquisition meets all conditions:
  - (1) The contracting officer anticipates receiving individual subcontracting plans (not commercial plans).
  - (2) The contracting officer will award on the basis of trade-offs among cost or price and technical and/or management factors under FAR 15.101-1.
  - (3) The acquisition is not a commercial item acquisition.
  - (4) The acquisition offers more than minimal subcontracting opportunities.
  - (5) An offeror's subcontracting plan is identified as an evaluation factor in the solicitation.
- (c) Nothing in paragraph (b) above limits the contracting officer's ability to request subcontracting plans with initial offers under other negotiated acquisitions when he or she decides such action is appropriate under FAR 19.705-2(d). For example, such action may be appropriate for multiple award schedules where GSA may have responsibility for negotiating commercial plans.
- (d) Notify the AAOSBU after receipt of offers if the contracting officer determines that an apparent successful offeror's proposal has no subcontracting opportunities.
  - (1) Coordinate the notice through the contracting officer's SBTA.

(2) Include justification documenting the rationale behind a determination of no subcontracting opportunities. The contracting officer may use the justification provided by the apparent successful offeror

(3) Obtain AAOSBU concurrence on the determination prior to contract award.

**519.705-3 Preparing the solicitation.**

(a) If an acquisition, excluding any multiple award schedule contract, will cover two or more Regions and is estimated to exceed \$50 million (including options):

(1) In addition to the SBA PCR, the contracting officer shall provide the SBTA and OSBU a reasonable period of time (approximately 10 days) to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before issuing the solicitation. The contracting officer shall ensure that evaluation criteria contained in the solicitation do not unnecessarily limit subcontracting opportunities for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns.

(2) For a negotiated acquisition, if the contracting officer believes that the acquisition provides substantial subcontracting opportunities, consider including the offeror's subcontracting plan as an evaluation factor for award. This may be most appropriate in acquisitions when the contracting officer expects individual plans or master plans. The contracting officer should consult with his or her SBTA or regional SBUC to obtain any needed assistance with developing subcontracting plan evaluation criteria before incorporating the plan into the solicitation as an evaluation factor.

**Target goals in sealed bidding**

(b) Unrealistic target goals tend to inhibit competition or increase acquisition costs if goals are too high. Target goals that offer no challenge to potential contractors reflect poorly on GSA's commitment to ensure maximum practicable use of small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns as subcontractors.

(c) In establishing target goals for sealed bid solicitations, the contracting officer should avoid using mechanical formulas or similar approaches that may be considered arbitrary. Reviewing historical performance by contractors performing similar work is valid, but the contracting officer should consider each solicitation independently in terms of the potential for subcontracting. Use as many information sources as practical, including the contracting officer's own knowledge of the supplies or services. Factors to consider in setting targets include:

- (1) Manufacturing processes involved.
- (2) Availability and location of potential subcontractors.

(3) The basis for establishing subcontracting relationships.

(4) The diversity in prevailing economic conditions in the place of contract performance.

(d) If the contracting officer cannot establish realistic target goals, do not state specific targets in the solicitation.

(1) Establishing realistic target goals is likely to be a problem in contracting for supplies because the place of contract performance may not be known prior to contract award.

(2) Even if the contracting officer can predict the area of contract performance because a particular industry is concentrated there, the diversity of manufacturing processes may affect the amount of subcontracting and how subcontracting relationships are established. For example, some manufacturers may use formal teaming arrangements or long term relationships versus nonrepetitive purchase orders.

#### 519.705-4 Reviewing the subcontracting plan.

(a) The contracting officer should provide offerors a model subcontracting plan when determined appropriate, *e.g.*, when it may facilitate evaluation or negotiation. The contracting officer may use the model plan developed by the Office of Small Business Utilization (E) in [Appendix 519A](#). Include the following notice on the transmittal, if providing a model in response to a single request, or in the solicitation, if including it as an attachment:

Notice to Offerors: "GSA provides this model plan as a tool. The contracting officer must adapt this model plan to fit the subcontracting situation. The plan is NOT a fill-in-the-blank form and the contracting officer must remove instructional language. This model does not establish minimum requirements for an acceptable plan. The model reflects objectives GSA encourages contractors to adopt. GSA expects offerors to thoroughly review the requirements set forth in FAR 19.704, Subcontracting Plan Requirements and FAR Clause 52.219-9, Small Business Subcontracting Plan before submitting their subcontracting plans."

(b) Performance under other contracts is an indicator of an offeror's understanding of the reasons for the law and benefits of the program.

(1) If an offeror prepared a subcontracting plan for another contract, the contracting officer should contact the contracting officer responsible for administering the earlier plan to determine if the offeror met the plan's objectives and submitted required reports in a timely manner.

(2) The contracting officer shall consider overall compliance in the evaluation, not just whether or not the offeror met the goals established in the plan.

(3) Submission of timely reports is an indication the offeror takes its responsibilities seriously.

(c) The contracting officer shall use the Subcontracting Plan Evaluation Checklist at [Appendix 519B](#) and GSAM 519.7 to evaluate an offeror's subcontracting plan.

(1) Remember that a positive goal is required to establish a gauge for measuring results and to provide an incentive for continuing efforts to increase the dollar value of subcontracts placed with small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns. Carefully scrutinize any subcontracting category (*e.g.*, small business, HUBZone small business, etc.) where the offeror does not specify a goal and accept it only after assuring that no subcontracting opportunities exist. If any category with no goal is accepted, the contracting officer must:

(i) Document the file explaining why the goal was accepted; and

(ii) Ensure the subcontracting plan includes an assurance that the contractor will make every effort to continue seeking subcontracting opportunities in the category that lacks a goal.

(2) One measure of the adequacy of a subcontracting plan is that it provides a challenge to the offeror and then builds upon previous achievements in subsequent contracts.

(3) Include in the contract file a basis for determining the subcontracting plan's acceptability.

(d) A contracting officer cannot tell the offeror what its goals must be. The contracting officer may tell the offeror what GSA's national goals are. Ensure that an offeror's subcontracting plan reflects realistic goals and provides the maximum opportunity practicable to small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns to participate as subcontractors. If necessary, obtain information from the offeror to substantiate the offeror's proposed goals, past performance with respect to subcontracting, and the proposed good faith effort. This information may include the names of proposed subcontractors and other such data.

(e) When a contracting officer receives a subcontracting plan with initial offers, provide an opportunity for the SBTA to review the subcontracting plans of those offers in the competitive range. Allow the SBTA 5 workdays for review. Consider the SBTA's comments in developing a negotiation strategy.

#### Negotiating Goals and Other Aspects of Plans

(f) For complex or large dollar value procurements, when an offeror proposes miniscule or minimally acceptable goals for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns, the contracting officer shall ensure that the offeror has included all subcontracts that contribute to contract performance (see FAR 52.219-9(d)(1)).

(g) The contracting officer shall develop a strategy for negotiating the subcontracting plan and goals just as you would for negotiating a contract. Be forceful in negotiating

the subcontracting plan and, whenever possible, offer recommendations for subcontracting potential with small, HUB-Zone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns. The contracting officer should suggest organizations the offeror may contact to identify potential sources. For example, offerors may contact any of the following:

(1) Local SBA offices. These can provide an offeror assistance in accessing the System for Award Management (SAM) ([www.sam.gov](http://www.sam.gov)) database to conduct market research and confirm the eligibility for SBA's procurement preference programs.

(2) Department of Commerce, Minority Business Development Agencies (MBDAs) at <http://www.mbda.gov>.

(3) GSA SBUCs and SBTAs, as well as OSBU.

(4) State, county, and city government minority business offices.

(5) Small, minority, women-owned, and veteran business associations at [www.gsa.gov/smallbusiness](http://www.gsa.gov/smallbusiness).

(6) Local chambers of commerce.

(7) Trade associations, professional organizations, and Procurement Technical Assistance Centers.

(8) Department of Veterans Affairs for assistance in identifying Service Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) at [www.vetbiz.gov](http://www.vetbiz.gov).

(9) Dynamic Small Business Search (DSBS) at <http://dsbs.sba.gov>.

(h) In developing a negotiation strategy, the contracting officer shall consider whether the offeror's plan is realistic and does more than merely restate the elements required by FAR clause 52.219-9 and shall question aspects of the plan that do not appear to be realistic or do not demonstrate a serious attempt to address requirements.

#### Commercial plans

(i) Contracting officers shall obtain from the contractor copies of any commercial plan for the company's current fiscal year and approval document from another GSA contracting activity or another Federal agency. Incorporate these documents into the contract.

(j) If GSA is the first agency to enter into a contract with a company during the company's fiscal year, the contracting officer must approve the commercial plan on behalf of the Federal Government, acknowledge receipt of the Summary Subcontract Report (SSR), accept or reject the SSR in the Electronic Subcontracting Reporting System (eSRS), and evaluate compliance with the approved commercial plan. If contract administration is delegated, the Administrative Contracting Officer (ACO) generally is assigned responsibility for accepting or rejecting the SSR and evaluating compliance with the approved commercial plan. Subsequent GSA con-

tracts awarded during the company's same fiscal year and incorporating the previously approved commercial plan will only require the submission of the Summary Subcontract Report submitted at the end of the Government's fiscal year.

(k) If the commercial plan was approved by another agency, the first GSA contracting officer entering into a contract with the company during the company's same fiscal year in which the plan was approved, requires the contractor to submit the SSR report and monitors receipt of the report. GSA requires no other monitoring or evaluation of this plan.

#### 519.705-5 Awards involving subcontracting plans.

(a) Subcontracting plans requiring SBTA and SBA PCR review.

(1) For each contract that requires a subcontracting plan, the contracting officer will submit electronically the apparent successful offeror's subcontracting plan to the SBTA who will coordinate review by the SBA PCR. When the contracting officer makes multiple awards under a solicitation, electronically submit the subcontracting plans of all apparent successful offerors.

(i) Except as noted in paragraph (b) of this section, provide the SBTA an electronic copy of the plan at least 5 workdays before the anticipated award date.

(ii) Consider any recommendations the SBTA or SBA PCR provides about whether to accept or reject a subcontracting plan. In the case of an unresolved disagreement, notify the AAOSBU and consider any subsequent advice the AAOSBU provides. Document the final decision in the contract file.

(iii) If the contracting officer does not receive review comments from the SBTA within 5 workdays, the contracting officer shall document the file and continue with the award process (see FAR 19.705-5(a)(3)).

(b) Subcontracting plans requiring AAOSBU review.

(1) The AAOSBU (through the contracting officer's designated SBTA or Regional SBUC) will review the SBTA's and SBA PCR's recommendations for contracts that meet either of these conditions:

(i) Contract performance will occur in two or more Regions and the estimated value of the acquisition exceeds \$50 million (including options), excluding multiple award schedule contracts.

(ii) Based on political sensitivity or importance to GSA, the AAOSBU designates the procurement for review.

(2) The contracting officer shall provide the SBTA an electronic copy of the plan at least 10 days before the anticipated award date. The SBTA and SBA PCR have 5 workdays to review and comment on the plan, and the AAOSBU (through the contracting officer's designated SBTA or Regional SBUC) has 5 workdays to review their recommendations and respond. All reviews must be completed in 10 workdays unless the contracting officer grants an extension.



(3) The contracting officer shall consider any recommendations the SBTA, SBA PCR, or AAOSBU provides about whether to accept or reject a subcontracting plan. Document the final decision in the contract file.

(4) If the contracting officer does not receive review comments from the SBTA (inclusive of AAOSBU review) within 10 workdays, the contracting officer shall document the file and continue with the award process (see FAR 19.705-5(a)(3)).

(c) Notification letter for individual subcontracting plans.

(1) The contracting officer shall approve the subcontracting plan as part of the award. After approval of an individual subcontracting plan, using FORMAT A in paragraph (c) of this section, the contracting officer shall electronically send a notification letter to the contractor confirming the subcontracting plan effective dates and when a new or updated plan will be required. The contracting officer shall also inform the contractor of the reporting requirements and due dates for submitting their Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR) through the eSRS.

(2) The contracting officer shall send the letter electronically with the award package or as soon as practicable after award.

#### FORMAT A

Name  
Address  
City, State, Zip Code

Re: Approved Subcontracting Plan and Required Reports for Contract

No. \_\_\_\_\_:

Dear \_\_\_\_\_:

Your individual subcontracting plan submitted for the subject contract has been approved for the base period [insert MM/DD/YY through MM/DD/YY] with goals that are subject to revision for each remaining option period (if any).

You must submit subcontracting reports through the Electronic Subcontracting Reporting System ([www.esrs.gov](http://www.esrs.gov)) using the Individual Summary Report (semi-annually) and the Summary Subcontract Report (annually).

Use the Individual Summary Report (ISR) to report cumulative subcontracting activity under this contract. Submit the report semiannually by April 30 for the reporting period October 1-March 31 and by October 30 for the reporting period April 1-September 30. A separate report is required at contract completion. If requested by the Contracting Officer, you must furnish the name and size status of your subcontractor(s), and the dollar amount of the subcontract(s).

Use the Summary Subcontract Report (SSR) to report total subcontracting activity under all of your GSA contracts. Submit the report annually for the period October 1-September 30 (the Government fiscal year). The report is due on or before October 30<sup>th</sup> of each year. A new reporting cycle begins October 1<sup>st</sup> of each year. Include the Contracting Officer (CO), Administrative Contracting Officer (ACO), the Small Business Administration (SBA) Commercial Market Representative (CMR), the Small Business Technical Advisor (SBTA), and GSA's Subcontracting Plan Program Manager in the email distribution when submitting the ISR and SSR via eSRS.

[Insert address of contracting office administering the contract], with a copy to: [insert address of SBTA in Region or Central Office service where contract was awarded].

(d) Notification letter for commercial plans.

(1) The contracting officer shall approve the commercial plan as part of the award. After approval of a commercial plan, using FORMAT B in paragraph (d) of this section, electronically send a notification letter to the contractor informing them of requirements and due dates for submitting the SSR via eSRS and confirm the subcontracting plan effective dates and when a new or updated plan will be required.

(2) Send the letter with the award package or as soon as practicable after award.

#### FORMAT B

Name  
Address  
City, State, Zip Code

Re: Approved Subcontracting Plan and Required Reports for Contract

No. \_\_\_\_\_:

Dear \_\_\_\_\_:

Your commercial plan, submitted in connection with the subject contract has been approved for the period of [insert MM/DD/YY through MM/DD/YY], by [insert name, address, and telephone number of approving official]. You must submit your Summary Subcontract Report (SSR) via eSRS. The SSR is an annual report due on or before October 30<sup>th</sup> of each year. The reporting period is October 1-September 30, i.e., the Government fiscal year. The report should summarize subcontracting activity under all contracts awarded during the current fiscal year that are covered by this commercial plan.

If at any time during contract performance you are unable to identify capable small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small and service-disabled veteran-owned small business concerns, please contact the Office of Small Business Utilization by telephone at (202) 501-1021.

In addition, please include the SBA Commercial Market Representative (CMR) in the email distribution on the SSR in eSRS, [insert email address of contracting office administering the contract].

Sincerely,  
Contracting Officer.

**519.705-6 Postaward responsibilities of the contracting officer.**

In addition to responsibilities described in FAR 19.705-6, the contracting officer must give the SBA Area Director, SBTA and OSBU a copy of the notice of award and the successful offeror's subcontracting plan within five work days of contract award or contract modification when applicable. The notice of award must contain all the following:

- (a) Contractor's name, address, and phone number.
- (b) Subcontracting plan administrator's name, address, and phone number.
- (c) Contract number.
- (d) Place of performance.
- (e) Dollar amount of contract award.
- (f) Period of contract performance.
- (g) Description of items/services (including FPDS Product/Service Code).
- (h) Contracting Officer's name, address, and phone number.
- (i) Administrative contracting office address and phone number.
- (j) Type of plan and dates that plan will cover.
- (k) Approved goals stated both as percentages of total subcontracting planned and in dollars.
- (l) A notation, "Awarded under the Energy Policy Act of 1992", if the contract will be used to measure GSA achievements under Section 3021 of the Energy Policy Act of 1992.

**519.705-7 Liquidated damages.**

(a) *Initial assessment.* The contracting officer shall provide the SBTA an information copy of his or her initial assessment that the contractor did not make a good faith effort to comply with the plan.

(b) *Final decision.* Before making a final decision, the contracting officer shall consider all pertinent available information including the contractor's response, if any, to the contracting officer's notification letter required by FAR 19.705-7 that the contractor did not comply with the plan. Document the contracting officer's decision in a "final decision", which is appealable by the contractor under the "Disputes" clause of the contract. Provide the SBTA a copy of the contracting officer's final decision assessing liquidated damages. In addition to the FAR provisions, include in the final decision letter:

- (1) A description of the contractor's failure.
- (2) Reference to the appropriate contract terms.
- (3) A statement of the factual areas of agreement and disagreement.
- (4) A statement of the contracting officer's decision with supporting rationale.
- (5) A demand for liquidated damages.
- (6) An explanation of the contractor's appeal rights.

(c) *Funds withheld from payments.* If funds to collect liquidated damages are withheld from payments due, the funds may be returned to the applicable GSA account along with other funds that were obligated but not expended. If a commercial plan is involved, or if all payments have been made under a contract with an individual contract plan, instruct the contractor to submit a check to GSA. The GSA Office of Finance will transfer the funds to the Treasury Department for deposit in the general receipts account.

(d) The contracting officer shall submit to the SBTA his or her final decision assessing liquidated damages.

**519.706 Responsibilities of the cognizant administrative contracting officer.**

(a) If an ACO administers a contract with an individual subcontracting plan, the ACO must also monitor receipt of and accept or reject the ISRs in eSRS.

(b) On all contracts with a subcontracting plan (individual or commercial), the ACO must monitor receipt of the SSRs. ACO must monitor receipt of the SSR in eSRS, and the Contracting Officers will review the reports to ensure they are submitted timely and accurately.

(c) Contracting officers shall review reports for progress in meeting subcontracting goals by comparing the applicable report with the approved plan. If percentage goals are not met, the contracting officer shall require the contractor to explain the shortfall in the "Remarks" block of the subcontracting report. The ACO may also require the contractor to submit evidence of its outreach efforts to locate and provide subcontracting opportunities to small business, HUBZone small business, small disadvantaged business, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns.

(d) If the ISR or SSR has not been received by the due date, the contracting officer shall contact the contractor and request that the report be submitted immediately. For contracts with individual subcontracting plans, the contracting officer shall pay particular attention to the final ISR required at contract completion. Contracting officers shall issue to contractors who do not respond to the first notice a second notice by certified mail indicating that:

- (1) The named report has not been received.
- (2) The contractor's failure to submit the report is a material breach of its contract (see FAR 52.219-9, Small Business Subcontracting Plan).
- (3) If the report is not received within 10 days from the date of the notice, the ACO will consider withholding payments until the report is received or terminating the contract for default. To ensure that the facts support a termination for default, the notice shall provide the contractor with the opportunity to show cause why the contract should not be terminated for default.

## 519.708

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

**Note:** These statements do not apply to leases of real property, unless the terms of the lease expressly provide for withholding of payment or termination under this circumstance.

(4) Failure to submit the report may affect the contractor's ability to receive future awards from GSA (see FAR 9.104-3(b) and willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government for a period of time (see FAR 9.406-2(b)).

(5) The ISR and SSR shall be submitted through eSRS.

**519.708 Contract clauses.****519.708-70 Solicitation provisions.**

Insert the following provisions as directed:

(a) [552.219-71](#), Notice to Offerors of Subcontracting Plan Requirements, on the cover page of solicitations containing the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(b) [552.219-72](#), Preparation, Submission, and Negotiation of Subcontracting Plans, in solicitations requiring submission of the subcontracting plan with initial offers.

(c) [552.219-73](#), Goals for Subcontracting Plan as follows:

(1) Use the basic provision in sealed bid solicitations containing FAR 52.219-9 if you are able to establish realistic target goals.

(2) Use Alternate I in:

(i) Sealed bid solicitations if you cannot establish target goals.

(ii) Negotiated solicitations that include FAR 52.219-9, but do not include [552.219-72](#).

**Subpart 519.8—Contracting With the Small Business Administration (The 8(a) Program)****519.803 Selecting acquisitions for the 8(a) program.****519.803-70 Contracting officer evaluation of recommendations for 8(a) set-aside(s).**

(a) If the contracting officer disagrees with a recommendation by the AAOSBU or the SBTA to set aside a procurement for award under the 8(a) program, discuss the matter with the official who made the recommendation.

(b) If the contracting officer decides not to award the contract under the 8(a) program, forward a copy of the documentation required by FAR 19.202-1(e)(4) to the SBTA within 10 working days.

(c) Once a contracting activity acquires a product or service successfully on the basis of an 8(a) set-aside, the activity

must acquire all future requirements for that product or service using 8(a) set-aside procedures.

(1) However, the availability of Federal Prison Industries, Inc. and Nonprofit Agencies Employing People Who Are Blind or Severely Disabled (AbilityOne), and other mandatory sources, which may not have existed at the time of the original requirement are sufficient reason to discontinue setting aside a continuing requirement.

(2) If the contracting officer determines that acquiring the product or service as an 8(a) set-aside is no longer in the Government's best interest, use the procedures in FAR 19.506 to withdraw a repetitive set-aside.

**519.803-71 Withdrawing or modifying 8(a) set-asides.**

If the contracting officer and the SBTA disagree over the withdrawal or modification of a set-aside, the SBTA must notify the AAOSBU at the same time the matter is referred to the SBA PCR.

**519.870 Direct 8(a) contracting.****519.870-1 Authority and applicability.**

(a) In accordance with FAR 19.800(f), GSA obtained a delegation from SBA permitting direct 8(a) contracting as documented through GSA's Partnership Agreement. The current Partnership Agreement is located on the GSA internal website at <https://insite.gsa.gov/portal/category/529822>. The Partnership Agreement includes the current terms and conditions.

(b) This authority applies to all 8(a) acquisitions conducted by GSA. It does not apply to the multiple award schedule program.

**519.870-8 Contract clauses.**

(a) Insert the following clauses in solicitations, contracts, and orders issued under the MOU:

(1) Insert the clause at [552.219-74](#), Section 8(a) Direct Award.

(2) Insert the clause at FAR 52.219-14, Limitation on Subcontracting.

(3) Insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns. Substitute the paragraph below for paragraph (c) of the clause. Add the word "Deviation" at the end of the clause title.

"(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation."

(b) Do not use the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, or FAR 52.219-17, Section 8(a) Award.



**Subpart 519.10—[Reserved]****Subpart 519.13—[Reserved]****Subpart 519.11—[Reserved]****Subpart 519.14—[Reserved]****Subpart 519.12—Small Disadvantaged Business Participation Program****519.1201 General.**

A solicitation may separately contain source selection evaluation factors or subfactors for small and women-owned small business concerns. However, any factor or subfactor for SDB concerns must comply with FAR 19.12 and this subpart.

**519.1202 Evaluation factor or subfactor.****519.1202-2 Applicability**

In addition to the exceptions in FAR 19.1202-2, do not evaluate the extent of participation of SDB concerns in performance of multiple award schedule contracts when all fair and reasonable offers from responsible sources are accepted.

**519.1202-4 Procedures.**

An offeror may receive credit under the evaluation factor only for proposed SDB participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor in the authorized North American Industry Classification System (NAICS) Industry Subsectors.

**519.1203 Incentive subcontracting with small disadvantaged business concerns.**

(a) To include monetary incentives in a contract under FAR 19.1203, you must have funds available for the incentives and obligate these at the time of contract award.

(b) Do not provide for monetary incentives under FAR 19.1203 in a contract that includes an award fee.

**Subpart 519.70—GSA Mentor-Protégé Program****519.7001 Scope of subpart.**

The GSA Mentor-Protégé Program is designed to encourage and motivate GSA prime contractors to assist small businesses concerns, small disadvantaged businesses concerns, women-owned small businesses concerns, veteran-owned small business concerns, service-disabled veteran-owned small businesses concerns, and HUBZone small businesses concerns, and enhance their capability of performing successfully on GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

**519.7002 Definitions.**

The definitions of small business concern, small disadvantaged business concern, HUBZone small business concern, women-owned small business concern, veteran-owned small business concern, and service-disabled veteran-owned small business concern are the same as found in FAR 2.101. Also see 13 CFR 121, 124, 125 and 126.

(a) “Mentor” as used in the GSA Mentor-Protégé Program, is a prime contractor that elects, on a specific GSA contract, to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé.

(b) “Mentor-Protégé Program Manager” means an employee in the Office of Small Business Utilization (OSBU) (E) designated by the Associate Administrator of OSBU to manage the Mentor-Protégé Program.

(c) “Protégé” as used in the GSA Mentor-Protégé Program is a small business concern that is the recipient of developmental assistance pursuant to a mentor-protégé arrangement on a specific GSA contract.

**519.7003 General Policy.**

(a) A large business prime contractor that meets the requirements at section [519.7006](#), and is approved as a mentor firm by the Mentor-Protégé Program Manager, may enter into an Agreement with a small business concern, small disadvantaged business concern, women-owned small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern or HUBZone small business concern that meets the requirements for being a protégé (see [519.7007](#)) in order to provide appropriate developmental assistance to enhance the capabilities of the protégé to perform successfully as a subcontractor and supplier.

(b) A small business prime contractor that is capable of providing developmental assistance to protégés, may also be approved as a mentor.

(c) An active mentor-protégé arrangement requires the protégé to either be a current or newly selected subcontractor under the mentor's prime contract with GSA.

(d) A small business concern's status as a protégé under a GSA contract shall not have an effect on its ability to seek other prime contracts or subcontracts.

(e) Potential Mentors may submit an application for admittance to the Mentor-Protégé Program at any time as long as the requirements at section [519.7006](#) are met.

(f) The determination of affiliation is a function of the SBA.

**519.7004 Incentives for prime contractors.**

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), the GSA is authorized to provide appropriate incentives to prime contractors in order to encourage subcontracting opportunities for small business concerns consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements, including the GSA Multiple Award Schedule contracts and the GSA Governmentwide Acquisition Contracts. It does not include orders under any GSA contracts.

(b) Costs incurred by a mentor to provide developmental assistance, as described in section [519.7012](#) to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a GSA contract. If GSA is the mentor's responsible audit agency under FAR 42.703-1, GSA will consider these costs in determining indirect cost rates. If GSA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to paragraph (b) of this section, contracting officers may give mentors evaluation credit during the source selection process for subcontracts awarded under their subcontracting plans pursuant to their Mentor-Protégé Agreements. (See FAR 15.101-1). Therefore:

(1) Contracting officers may evaluate proposals with subcontracting plans containing Mentor-Protégé Agreements more favorably than proposals with subcontracting plans that do not include Mentor-Protégé Agreements; and

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under certain circumstances (see FAR 15.304(c)(3) and 15.305(a)(2)(v)) and determining contractor responsibility FAR section 19.705-5(a)(1).

(d) *OSBU Mentoring Award.* A non-monetary award may be presented annually to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Administrator of GSA.

(e) *OSBU Mentor-Protégé Annual Conference.* At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors, and other guests on their experience and progress under the Program. Participation is voluntary.

**519.7005 Measurement of program success.**

The overall success of the GSA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the number, dollar value, and percentage of subcontracts awarded to protégés by mentor firms under GSA contracts since the date of entry into the Program. The baseline that demonstrates an increase is determined by comparing the number and total dollar amount of subcontract awards made to the identified protégé firm(s) during the two preceding fiscal years (if any) that are listed in application;

(b) An increase in the number and dollar value of contract and subcontract awards (including percentage of subcontract awards) to protégé firms since the date of the protégé's entry into the Program (under GSA contracts and contracts awarded by other Federal agencies);

(c) An increase in the number and dollar value of subcontracts awarded to a protégé firm by its mentor firm; and

(d) An increase in subcontracting with protégé firms in industry categories where they have not traditionally participated within the mentor firm's activity (i.e., the protégé is expanding its field of expertise or is increasing its opportunities in areas where it has not traditionally performed).

(e) Assessments of the semi-annual reports submitted by the mentors and "Lessons Learned" evaluation submitted by the mentors and protégés to the GSA Mentor-Protégé Program Manager.

**519.7006 Mentor firms.**

(a) Mentors must be:

(1) A large business prime contractor that is currently performing under an approved subcontracting plan as required by FAR 19.7 - Small business mentors are exempted; or

(2) A small business prime contractor that can provide developmental assistance to enhance the capabilities of protégés to perform as contractors, subcontractors, and suppliers;

(b) Must be eligible (not listed in the “Excluded Parties List System”) for U.S. Government contracts and not excluded from the Mentor-Protégé Program under section [519.7014\(b\)](#);

(c) Must be able to provide developmental assistance that will enhance the ability of protégés to perform as contractors and subcontractors; and

(d) Must provide semi-annual reports detailing the assistance provided and the cost incurred in supporting protégés.

**519.7007 Protégé firms.**

(a) For selection as a protégé, a firm must be:

(1) A small business concern, small disadvantaged business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, or women-owned small business concern;

(2) Small for the NAICS code the prime contractor/mentor assigns to the subcontract; and

(3) Eligible (not listed in the “Excluded Parties List System”) for U.S. Government contracts and not excluded from the Mentor-Protégé Program under section [519.7014\(b\)](#).

(b) A protégé firm may self-represent to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may check the Central Contractor Registration (CCR) at [www.ccr.gov](http://www.ccr.gov) to verify that the self-representation of the potential protégé meets the specified small business and socioeconomic category eligibility requirements (see FAR 19.703(b) and (d)). HUBZone and small disadvantaged business status eligibility and documentation requirements are determined according to 13 CFR Parts 124 and 126.

(c) A protégé firm must not have another formal, active mentor-protégé relationship under GSA’s Mentor-Protégé Program but may have an active mentor-protégé relationship under another agency’s program.

**519.7008 Selection of protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of small business concerns including small disadvantaged business concerns, women-owned small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, and HUBZone small business concerns. A protégé must be either a current subcontractor or a newly selected subcontractor for the prime contractor’s GSA contract.

(b) Mentor firms may have more than one protégé. GSA reserves the right to limit the number of protégés participating under each mentor firm.

(c) The selection of protégé firms by mentor firms is not protestable, except for a protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé. Such protests shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Office of Small Business Utilization (OSBU) of the protest.

**519.7009 Application process.**

(a) Prime contractors interested in becoming a mentor firm must apply in writing by submitting the GSA Form 3695 to the GSA Mentor-Protégé Program Manager, at GSA Office of Small Business Utilization (E), Washington, DC 20405. The Application shall include the Mentor-Protégé Agreement and will be evaluated for approval based on the extent to which the company plans to provide developmental assistance.

(b) The application must contain:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and the firm is eligible, as of the date of Application, for the award of Federal contracts;

(2) The number of proposed protégé arrangements;

(3) Data on all current GSA contracts, and subcontracts including the contract/subcontract number(s), type of contract(s), period of performance (including options), contract/subcontract value(s) including options, technical program effort(s) (program title), name of GSA Project Manager or Contracting Officer’s Representative (including contact information), name of contracting officer(s) and contact information, and awarding GSA installation;

(4) Data on total number and dollar value of subcontracts awarded under GSA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities who are proposed protégés;

(5) Information on the proposed types of developmental assistance. For each proposed mentor-protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(6) Agreement information as listed in [519.7010](#).

#### **519.7010 Agreement contents.**

The contents of the Agreement must contain:

(a) Names, addresses (including facsimile, e-mail, and homepage) and telephone numbers of mentor and protégé firms and the name, telephone number, and position title within both firms of the person who will oversee the Agreement.

(b) An eligibility statement from the protégé stating that it is a small business, its primary NAICS code, and when applicable the type of small business (small disadvantaged business concern, HUBZone small business concern, women-owned small business concern, veteran-owned small business concern, or service-disabled veteran-owned small business concern).

(c) A description of the type of developmental assistance that will be provided by the mentor firm to the protégé firm (see [519.7012](#)).

(d) Milestones for providing the identified developmental assistance.

(e) Factors to assess the protégé firm's developmental progress under the Program.

(f) The anticipated dollar value and type of subcontracts that may be awarded to the protégé firm consistent with the extent and nature of mentor firm's business, and the period of time over which they may be awarded.

(g) Program participation term: State the period of time over which the developmental assistance will be performed.

(h) *Mentor termination procedures*: Describe the procedures applicable to the mentor firm when notifying the Protégé firm, in writing and at least 30 days in advance, of the mentor firm's intent to voluntarily withdraw its participation in the Program, or to terminate the Agreement.

(i) *Protégé termination procedures*: Describe the procedures applicable to the protégé firm when notifying the mentor firm, in writing at least 30 days in advance, of the protégé firm's intent to terminate the Mentor-Protégé Agreement.

(j) Plan for accomplishing contract work should the Mentor-Protégé Agreement be terminated or a party excluded under [519.7014\(b\)](#). The mentor's prime contract with GSA continues even if the Mentor-Protégé Agreement or the Mentor-Protégé Program is discontinued.

(k) The protégé must agree to provide input into the mentor firm's semi-annual reports (see [519.7015](#)). The protégé must submit a "Lessons Learned" evaluation along with the mentor firm at the conclusion of the Mentor-Protégé agreement.

(l) Other terms and conditions as specified by the Mentor-Protégé Manager on a case-by-case basis.

#### **519.7011 Application review.**

(a) The Mentor-Protégé Program Manager will review the information specified in section [519.7009\(b\)](#) and [519.7010](#) to establish the Mentor's and Protégé's eligibility and to ensure all necessary information is included. If the application relates to a specific contract, then the Mentor-Protégé Program Manager will consult with the applicable contracting officer regarding the adequacy of the proposed Agreement, as appropriate. The Mentor-Protégé Program Manager will complete its review no later than 30 days after receipt of the application. The contracting officer must provide feedback to the Program Manager no later than 10 days after receipt of the application.

(b) After the Mentor-Protégé Program Manager completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. The Mentor-Protégé Program Manager will provide a copy of the Mentor-Protégé Agreement to the GSA contracting officer for any GSA contracts affected by the Agreement.

(c) The Agreement defines the relationship between the Mentor and the Protégé firms only. The Agreement itself does not create any privity of contract or contractual relationship between the Mentor and GSA nor the Protégé and GSA.

(d) If the Agreement is disapproved, the Mentor may provide additional information for reconsideration. The Mentor-Protégé Program Manager will complete the review of any supplemental information no later than 30 days after its receipt. Upon finding deficiencies that GSA considers correctable, the Mentor-Protégé Program Manager will notify the Mentor and Protégé and request correction of the deficiencies to be provided within 15 days.

**519.7012 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include:

- (a) Management guidance relating to—
  - (1) Financial management;
  - (2) Organizational management;
  - (3) Overall business management/planning; and
  - (4) Business development.
- (b) Engineering and other technical assistance.
- (c) Loans.
- (d) Rent-free use of facilities and/or equipment.
- (e) Temporary assignment of personnel to the protégé for purpose of training.
- (f) Any other types of developmental assistance approved by the GSA Mentor-Protégé Program Manager.

**519.7013 Obligation.**

- (a) The mentor or protégé may terminate the Agreement in accordance with [519.7010](#). The mentor will notify the Mentor-Protégé Program Manager and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program or to terminate the Agreement, or upon receipt of a protégé's notice to withdraw from the Program.
- (b) Mentor and protégé firms will submit a "Lessons Learned" evaluation to the GSA Mentor-Protégé Program Manager at the conclusion or termination of each Mentor-Protégé Agreement or withdrawal from the Mentor-Protégé program.

**519.7014 Internal controls.**

- (a) The GSA Mentor-Protégé Program Manager will manage the Program. Internal controls will be established by the Mentor-Protégé Program Manager to achieve the stated Program objectives (by serving as checks and balances against undesired actions or consequences) such as:
  - (1) Reviewing and evaluating mentor Applications for realism, validity and accuracy of provided information;
  - (2) Monitoring each Mentor-Protégé Agreement by reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the master plan contained in the approved Agreement;
  - (3) Monitoring milestones in the Agreement (see [519.7010](#)); and
  - (4) Evaluating "Lessons Learned" submitted by the Mentor and the Protégé as required by section [519.7013](#) to improve the GSA Mentor-Protégé Program.
- (b) (1) GSA has the authority to exclude mentor or protégé firms from participating in the GSA Program.

(2) GSA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in GSA's best interest. The rescission shall be in writing and sent to the Mentor and protégé after approval by the Director of OSBU. Rescission of an Agreement does not change the terms of any subcontract between the Mentor and the Protégé.

(3) Exclusion from the Program does not constitute a termination of the subcontract between the mentor and the protégé.

(4)

**519.7015 Reports.**

- (a) Semi-annual reports shall be submitted by the mentor to the GSA Mentor-Protégé Program manager to include information as outlined in section [552.219-76\(c\)](#).
- (b) Protégés must agree to provide input into the mentor firm's semi-annual reports detailing the assistance provided and goals achieved since agreement inception. However, for cost reimbursable contracts, costs associated with the preparation of these reports are unallowable costs under these Government contracts and will not be reimbursed by the Government.
- (c) The GSA contracting officer, or if applicable the technical program manager, shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protégé Program in a quarterly "Strengths and Weaknesses" evaluation report. A copy of this assessment will be provided to the Mentor-Protégé Program Manager and to the mentor and protégé.

**519.7016 Program review.**

At the conclusion of each year in the Mentor-Protégé Program (anniversary date of the Mentor-Protégé Program), the prime contractor and protégé, as appropriate, will formally brief the GSA Mentor-Protégé Program Manager, the technical program manager, and the contracting officer regarding Mentor-Protégé Program accomplishments pertaining to the approved Agreement.

**519.7017 Contract clauses.**

- (a) The contracting officer shall insert the clause at [552.219-75](#), GSA Mentor-Protégé Program, in all unrestricted solicitations (not set aside) and contracts that exceed the simplified acquisition threshold that offer subcontracting opportunities or in the case of a small business, that can offer developmental assistance to a small business protégé.
- (b) The contracting officer shall insert the clause at [552.219-76](#), Mentor Requirements and Evaluation, in contracts anticipated to exceed the simplified acquisition threshold where the prime contractor has signed a Mentor-Protégé Agreement with GSA.

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## Appendix 519A—Small Business Subcontracting Plan Outline (Model)

## Appendix 519A—Small Business Subcontracting Plan Outline (Model)

### Small Business Subcontracting Plan Outline (COVER PAGE)

*Notice to Offerors:* GSA provides this model plan as a tool. You must adapt this model plan to fit your subcontracting situation. The plan is NOT a fill-in-the-blank form and you must remove instructional language. This model does not establish minimum requirements for an acceptable plan. The model reflects objectives GSA encourages contractors to adopt. GSA expects offerors to thoroughly review the requirements set forth in FAR 19.704, Subcontracting Plan Requirements and FAR clause 52.219-9, Small Business Subcontracting Plan before submitting their subcontracting plans.

#### Definitions of Types of Plans:

**COMMERCIAL PLAN:** *Covers the offeror's fiscal year and applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line.)* Note that this type of plan shall relate to the offeror's planned subcontracting generally, for both commercial and government business, rather than solely to the government contract. Per FAR 19.704(d) and clause 52.219-9(g), this is the preferred type of plan for contractors furnishing commercial items. Once a contractor's commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

- (1) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period;
- (2) Submit a new commercial plan, 30 working days before the end of the Contractor's fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;
- (3) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and
- (4) Comply with the reporting requirements stated in paragraph (a)(10) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be

submitted within 30 days after the end of the Government's fiscal year.

**INDIVIDUAL CONTRACT PLAN:** *Covers the entire contract period, applies to a specific contract, and has goals that are based on the offeror's planned subcontracting (and purchasing) in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.* For contracts with option periods, the plan will include separate goals and estimated value (or sales) for the base period with separate goals and estimated value for each option period. Per FAR 52.219-9(c) this type of plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business (including ANCs and Indian Tribes), and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. The Contractor shall submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS and in accordance with FAR clause 52.219-9.

**MASTER PLAN:** *Contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.* A master plan on a plant or division-wide basis that contains all the elements, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by the clause 52.219-9; provided (1) The master plan has been approved; (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan. A contract may have no more than one plan. When a modification meets the criteria in FAR 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontracting plan. The failure of the Contractor or subcontractor to comply in good faith with the clause at FAR 52.219-8 or an approved plan required by FAR 52.219-9 shall be a material breach of the contract. The Contractor shall sub-

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mit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS and in accordance with FAR clause 52.219-9.

**GSA SUBCONTRACTING GOALS**  
(How to do the math tips)

*Subcontracting goals are subject to change, based on recent achievement levels and as negotiated with the Small Business Administration (SBA). SBA is responsible for the Federal Government Goaling Program and their website at [www.sba.gov](http://www.sba.gov) includes details and background on the goaling process.*

• Total estimated subcontracting dollars (or spend) planned to all types of business concerns must be provided, then *separately* state the dollars that will be subcontracted to each cat-

egory. All percents for each category will be expressed as a percentage of the total subcontracting dollars to all concerns (both large and small)\*.

• The Small business dollar amount must include all sub-group category amounts; *i.e.*, HUBZone, SDB, WOSB, VOSB, SDVOSB (plus any “other small” businesses that do not fall within one of these specified subgroups). Again note that Alaskan Native Corporations (ANCs) and Indian tribes will be included in the SDB and total small amounts.

\* Only the large plus all small should equal the total in both dollars and percents. Do **not** add together subgroups to reach the total Small figure, as the same dollars can be double and triple counted for each group as applicable to the company receiving the order.

	Sample Dollars	GSA Goal (FY 2010-11)
<b>Total dollars to be subcontracted</b> (to both Large and Small Business)	\$1,000,000	100%
*To Large Businesses	\$700,000*	*70%
*To all Small Businesses (includes HUBZone Small, Small Disadvantaged, Women-Owned Small, Veteran-Owned Small, Service-Disabled Veteran-Owned Small, and Other Small Business Concerns)	\$300,000*	*30%
To HUBZone Small Businesses	\$30,000	3%
To Small Disadvantaged Businesses	\$50,000	5%
To Women-Owned Small Businesses	\$50,000	5%
To Veteran-Owned Small Businesses (includes SDVOSB below in this total)	\$30,000	3%
To Service-Disabled Veteran-Owned Small Businesses	\$30,000	3%

**NOTE:** The total \$300,000 to all Small businesses already includes each *subgroup* (HUBZone, SDB, ANC, WOSB, VOSB, and SDVOSB), plus *other small* businesses that are only small and do not fall into a specified category.

**PLEASE REMOVE THE COVER PAGES BEFORE  
SUBMITTING THE SUBCONTRACTING PLAN  
TO GSA**



Appendix 519A—Small Business Subcontracting Plan Outline (Model)

[INSERT COMPANY NAME]

**SMALL BUSINESS SUBCONTRACTING PLAN  
OUTLINE (MODEL)**

**I. IDENTIFICATION DATA:**

Address: \_\_\_\_\_

Date \_\_\_\_\_

Prepared: \_\_\_\_\_

Description of Supplies/Services: \_\_\_\_\_

Solicitation Number: (Completed for Individual Plans; N/A for commercial plans) \_\_\_\_\_

Contract Number: (Completed for Individual Plans during option period; N/A for commercial plans) \_\_\_\_\_

*If submitting an Individual Contract Plan, insert dates below for the contract duration, if known (or insert N/A if the contract does not include specified option period).*

**Individual Plan Period:** Base: (Date of Award thru ?? years) Option 1: (1 year, 5 years, etc.) Option 2: (1 year, 5 years, etc.) Option 3: (1 year, 5 years, etc.) Option 4: (1 year, 5 years, etc.)

**Estimated Contract Value (Provide separate estimate for base contract period and each option)**

Base Period: \$ \_\_\_\_\_ Option Period 1: \$ \_\_\_\_\_

Option Period 2: \$ \_\_\_\_\_ Option Period 3: \$ \_\_\_\_\_

Option Period 4: \$ \_\_\_\_\_ (if applicable/Not used for MAS)

Place of Performance: \_\_\_\_\_

DUNS Number: (under the contract awarded or pending award) \_\_\_\_\_

If submitting a Commercial Plan, insert dates below:

Commercial Plan Period: (insert fiscal year for contractor/offeror) \_\_\_\_\_

Projected annual sales (Company-wide): \$ \_\_\_\_\_

**II. TYPE OF PLAN - FAR 19.701 (For definitions, see Cover Page and FAR clause 52.219-9):**

\_\_\_\_\_ Commercial Plan

\_\_\_\_\_ Individual Plan

\_\_\_\_\_ Master Plan (incorporated into Individual Plan)

**III. GOALS:**

*A. The FAR clause at 52.219-9(d) states that the subcontracting plan shall include (1) Goals, expressed in terms of*

*percentages of total planned subcontracting dollars, for the use of small business concerns as subcontractors; and (2) A statement of total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan. FAR 19.704(a)(1) requires separate percentage goals for using small business (including Alaskan Native Corporations (ANCs) and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns as subcontractors; and (3) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns. **Commercial plans will always reflect annual company-wide goals. Individual plans will reflect contract-specific goals and shall contain separate statements and goals for the basic contract (period) and separately for each option (period). Note that dollars and percentages to large and total small businesses (all inclusive) must equal the total subcontracted to all categories in both dollars and percentages. EACH CONTRACTOR IS EXPECTED TO OFFER THE MAXIMUM PRACTICABLE OPPORTUNITIES TO EACH TYPE OF SMALL BUSINESS CONCERN CONSISTENT WITH THEIR BEST FAITH EFFORTS AND SUPPORTED BY THEIR REPORTS AND RECORDS.***

*COMPLETE FORMAT BELOW IF SUBMITTING AN INDIVIDUAL PLAN and note that a separate part is required for the base contract period and for each option period, if any. (Please remove this section and following page if submitting a commercial plan.)*

**[Company Name]** provides the following separate dollar and percentage goals, which are a percentage of the total subcontracting dollars for each business category:

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**BASE GOALS are expressed in dollars and percentages of the total dollars planned to be subcontracted.**

PLANNED SUBCONTRACTING TO:	DOLLARS	PERCENT
1. Total Dollars to be Subcontracted ( $2 + 3 = 1$ ) <i>large and all small businesses must equal total amount to be subcontracted (both \$ and %)</i>		100%
2. Large Businesses (Other than Small)		
3. All Small Businesses (including ANCs & Indian tribes)		
4. Veteran-Owned Small Businesses (VOSB)		
5. Service-Disabled Veteran-Owned Small Businesses (SDVOSB)		
6. HUBZone Small Business (HUBZone)		
7. Small Disadvantaged Businesses (SDB) (including ANCs & Indian tribes)		
8. Women-Owned Small Businesses (WOSB)		

If applicable:

**1st OPTION GOALS are expressed in dollars and percentages of the total dollars planned to be subcontracted.**

PLANNED SUBCONTRACTING TO:	DOLLARS	PERCENT
1. Total Dollars to be Subcontracted ( $2 + 3 = 1$ ) <i>large and all small businesses must equal total amount to be subcontracted (both \$ and %)</i>		100%
2. Large Businesses (Other than Small)		
3. All Small Businesses (including ANCs & Indian tribes)		
4. Veteran-Owned Small Businesses (VOSB)		
5. Service-Disabled Veteran-Owned Small Businesses (SDVOSB)		
6. HUBZone Small Business (HUBZone)		
7. Small Disadvantaged Businesses (SDB) (including ANCs & Indian tribes)		
8. Women-Owned Small Businesses (WOSB)		

If applicable:

**2nd OPTION GOALS are expressed in dollars and percentages of the total dollars planned to be subcontracted.**

PLANNED SUBCONTRACTING TO:	DOLLARS	PERCENT
1. Total Dollars to be Subcontracted ( $2 + 3 = 1$ ) <i>large and all small businesses must equal total amount to be subcontracted (both \$ and %)</i>		100%
2. Large Businesses (Other than Small)		
3. All Small Businesses (including ANCs & Indian tribes)		
4. Veteran-Owned Small Businesses (VOSB)		
5. Service-Disabled Veteran-Owned Small Businesses (SDVOSB)		
6. HUBZone Small Business (HUBZone)		
7. Small Disadvantaged Businesses (SDB) (including ANCs & Indian tribes)		
8. Women-Owned Small Businesses (WOSB)		

**Appendix 519A—Small Business Subcontracting Plan Outline (Model)**

If applicable:

<b>3rd OPTION GOALS are expressed in dollars and percentages of the total dollars planned to be subcontracted.</b>		
<b>PLANNED SUBCONTRACTING TO:</b>	<b>DOLLARS</b>	<b>PERCENT</b>
1. Total Dollars to be Subcontracted ( $2 + 3 = 1$ ) <i>large and all small businesses must equal total amount to be subcontracted (both \$ and %)</i>		100%
2. Large Businesses (Other than Small)		
3. All Small Businesses (including ANCs & Indian tribes)		
4. Veteran-Owned Small Businesses (VOSB)		
5. Service-Disabled Veteran-Owned Small Businesses (SDVOSB)		
6. HUBZone Small Business (HUBZone)		
7. Small Disadvantaged Businesses (SDB) (including ANCs & Indian tribes)		
8. Women-Owned Small Businesses (WOSB)		

If applicable: *(LEAVE BLANK FOR MAS)*

<b>4th OPTION GOALS are expressed in dollars and percentages of the total dollars planned to be subcontracted.</b>		
<b>PLANNED SUBCONTRACTING TO:</b>	<b>DOLLARS</b>	<b>PERCENT</b>
1. Total Dollars to be Subcontracted ( $2 + 3 = 1$ ) <i>large and all small businesses must equal total amount to be subcontracted (both \$ and %)</i>		100%
2. Large Businesses (Other than Small)		
3. All Small Businesses (including ANCs & Indian tribes)		
4. Veteran-Owned Small Businesses (VOSB)		
5. Service-Disabled Veteran-Owned Small Businesses (SDVOSB)		
6. HUBZone Small Business (HUBZone)		
7. Small Disadvantaged Businesses (SDB) (including ANCs & Indian tribes)		
8. Women-Owned Small Businesses (WOSB)		

COMPLETE FORMAT BELOW IF SUBMITTING A COMMERCIAL PLAN *(please remove this page/section if submitting an individual plan)*.

1. Estimated total dollars planned to be subcontracted to all types of concerns (generally for both commercial and government business, in support of commercial items sold during company fiscal year):

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = 100% subcontracted**

2. Total dollars planned to be subcontracted to large business concerns (or classified as other than small):

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

3. Total dollars planned to be subcontracted to all small business concerns (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB small business concerns:

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

4. Total dollars planned to be subcontracted to veteran-owned small business concerns (including service-disabled veteran-owned small businesses):

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

5. Total dollars planned to be subcontracted to service-disabled veteran-owned small business concerns (subset of VOSB above and cannot be higher than #4 above):

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

6. Total dollars planned to be subcontracted to HUBZone small business concerns:

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

7. Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes):

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

8. Total dollars planned to be subcontracted to women-owned small business concerns:

**Annual Commercial Purchases/Spend: \$ \_\_\_\_\_ = \_\_\_\_ % of Total**

*B. FAR 19.704(a)(3) and the clause at 52.219-9(d)(3) requires a description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to SB (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns. Check all that apply below, ensuring that at least one item is indicated for each column. If assistance is needed to locate small business sources, contact your local Small Business Administration Commercial Market Representative via [www.sba.gov/localresources](http://www.sba.gov/localresources), or access the Central Contractor Registration (CCR) Dynamic Small Business Search database at [www.ccr.gov](http://www.ccr.gov). You may also post solicitations for small busi-*

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ness opportunities on SBA's SUB-Net at <https://eweb1.sba.gov/subnet/search/index.cfm>.

The principal types of supplies and/or services that **[Company Name]** anticipates to be subcontracted and the identification of the type of business concern planned are as follows:

## Business Category or Size

[illegible]

ATTACH ADDITIONAL SHEETS IF NECESSARY (OR REMOVE LINES  
IF NOT NEEDED)

*C. FAR 19.704(a)(4) and the clause at 52.219-9(d)(4) require a description of the method used to develop the sub-contracting goals. Explain or state the basis for establishing your proposed goals (i.e. based on historical data and experience, market research, etc.); and provide justification for any low goal(s).*

[*Company Name*] used the following method to develop the sub-contracting goals:

*D. FAR 19.704(a)(5) and clause 52.219-9(d)(5) require a description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining SB, VOSB, SDVOSB, HUBZone, SDB, and WOSB source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.*

[Company Name] identifies potential subcontractors using the following source lists and organizations:

*E. FAR 19.704(a)(6) and clause 52.219-9(d)(6) require a statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with SB (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns.*

**NOTE:** indirect costs represent the expenses of doing business that are NOT easily identified with a specific project (i.e. contract or grant) but are generally recognized as ordinary and necessary for the general operation of the contractor's organization and the conduct of activities it performs. **Types of indirect costs include overhead (e.g., facility/utility & supplies cost), general and administrative (G&A), and fringe benefits (e.g., services or benefits provided to employees such as health insurance, payroll taxes, pension contribution, etc).**

**Indirect costs \_\_\_\_\_HAVE BEEN (or) \_\_\_\_\_HAVE NOT BEEN included in the dollar and percentage subcontracting goals stated above.**

*If indirect costs HAVE been included, the method used to determine the proportionate share of indirect costs to be incurred with small business concerns was as follows:*

#### IV. PROGRAM ADMINISTRATOR:

*FAR 19.704(a)(7) and clause 52.219-9(d)(7) require the name of an individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual. Please add the contact information for this person (telephone number, fax number and/or email address), in case of questions and provide an alternate point of contact if applicable.*

Name: \_\_\_\_\_

**Title/Position:**

**Address:**

City/State/Zip Code: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**Email Address:**

**Alternate POC with contact information:**

Appendix 519A—Small Business Subcontracting Plan Outline (Model)

**Duties:** In accordance with clause 52.219-9(d)(11)(e), in order to effectively implement this plan to the extent consistent with efficient contract performance, the contractor shall perform the following functions:

1. Assist SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential SB, VOSB, SDVOSB, HUBZone, SDB and WOSB subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
2. Provide adequate and timely consideration of the potentialities of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns in all "make-or-buy" decisions.
3. Counsel and discuss subcontracting opportunities with representatives of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB firms.
4. Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
5. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as SB, VOSB, SDVOSB, HUBZone, SDB and WOSB for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
6. Develop and promote company/division policy statements that demonstrate the company's/division's support for awarding contracts and subcontracts to SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
7. Develop and maintain bidders' lists of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns from all possible sources.
8. Ensure periodic rotation of potential subcontractors on bidders' lists.
9. Ensure that SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns are included on the bidders' list for every subcontract solicitation for products and services they are capable of providing.
10. Ensure that subcontract procurement "packages" are designed to permit the maximum possible participation of SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
11. Review subcontract solicitations to remove statements, clauses, etc., which might tend to restrict or prohibit SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
12. Ensure that the subcontract bid proposal review board documents its reasons for not selecting any low bids submitted by SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns.
13. Oversee the establishment and maintenance of contract and subcontract award records.
14. Attend or arrange for the attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.

15. Directly or indirectly counsel SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns on subcontracting opportunities and how to prepare bids to the company.

16. Conduct or arrange training for purchasing personnel regarding the intent and impact of Section 8(d) of the Small Business Act on purchasing procedures.

17. Develop and maintain an incentive program for buyers that support the subcontracting program.

18. Monitor the company's performance and make any adjustments necessary to achieve the subcontract plan goals.

19. Prepare and submit timely reports.

20. Coordinate the company's activities during compliance reviews by Federal agencies.

*IF YOUR PROGRAM ADMINISTRATOR WILL PERFORM ADDITIONAL SUBCONTRACTING DUTIES NOT SHOWN ABOVE, PLEASE IDENTIFY THEM HERE:*

21. Additional Duties:

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**V. EQUITABLE OPPORTUNITY:**

FAR 19.704(a)(8) and clause 52.219-9(d)(8) require a description of the efforts the offeror will make to assure that SB, VOSB, SDVOSB, HUBZone, SDB and WOSB concerns have an equitable opportunity to compete for subcontracts.

[Company Name] will make every effort to ensure that all small business concerns have an equitable opportunity to compete for subcontracts. These efforts may include one or more of the following activities: *(please indicate which of the following apply or adapt list to fit your company's efforts).*

A. Outreach efforts to obtain sources:

\_\_\_ Contacting minority and small business trade associations.

\_\_\_ Contacting business development organizations.

\_\_\_ Requesting sources from the Central Contractor Registration (CCR), Dynamic Small Business Search, which integrated data from the SBA PRO-Net database.

\_\_\_ Attending small and minority business trade fairs and procurement conferences.

B. Internal efforts to guide and encourage purchasing personnel:

\_\_\_ Presenting workshops, seminars and training programs.

\_\_\_ Establishing, maintaining and using small, hubzone small, small disadvantaged, women-owned small, veteran-owned small, and service-disabled veteran-owned small business source lists, guides, and other data for soliciting subcontracts.

\_\_\_ Monitoring activities to evaluate compliance with the subcontracting plan.

## Appendix 519A

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

C. Other Additional efforts: *(Please describe below.)*

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## VI. ASSURANCES OF CLAUSE INCLUSION AND FLOW DOWN:

FAR 19.704(a)(9) and clause 52.219-9(d)(9) require assurances that the offeror will include the clause at 52.219-8, *Utilization of Small Business Concerns* (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1,500,000 for construction) to adopt a plan that complies with the requirements of this clause (see 19.708(b)).

[Company Name] agrees to include the FAR Clause 52.219-8, "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1,500,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan.

## VII. REPORTING AND COOPERATION:

FAR 19.704(a)(10) and clause 52.219-9(d)(10) require assurances that the offeror will do the following:

[Company Name] agrees to:

- (10)(i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS;
- (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using the eSRS;
- (v) Provide its prime contract number and its DUNS number and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and
- (vi) Require that each subcontractor with a subcontracting plan provide the prime contract number and its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

Reports are to be submitted within 30 days after the close of each calendar period as indicated in the following chart:

<u>Calendar Period</u>	<u>Report Due</u>	<u>Date Due</u>	<u>Submit Reports to eSRS with email address for:</u>
10/01–03/31	ISR	04/30	Contracting Officer /SBTA
04/01–09/30	ISR	10/30	Contracting Officer /SBTA
10/01–09/30	SSR	10/30	Contracting Officer /SBTA

The eSRS web-based reporting requirement instructions can be found in the attachment to subcontracting plan taken from FAR clause 52-219-9.

## VIII. RECORDKEEPING:

FAR 19.704(a)(11) and clause 52.219-9(d)(11) require a *description* of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the efforts to locate SB (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns and award subcontracts to them.

[Company Name] will maintain records concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of efforts to locate SB (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

1. Source lists (*e.g.*, CCR), guides, and other data that identify SB (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns.
2. Organizations contacted in an attempt to locate sources that are SB (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns.
3. Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating:
  - (A) Whether small business concerns were solicited and, if not, why not;
  - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
  - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
  - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
  - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;

Appendix 519A—Small Business Subcontracting Plan Outline (Model)

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

4. Records of any outreach efforts to contact:

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

5. Records of internal guidance and encouragement provided to buyers through:

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

6. On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. **Contractors having commercial plans need not comply with this requirement.**

7. Other records to support your compliance with the subcontracting plan: (Please describe below.)

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**IX. STATUTORY REQUIREMENTS (Found at FAR 19.702)**

î Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that SB (including ANC and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANC and Indian tribes), and WOSB concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.

î It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with SB (including ANC and Indian tribes), VOSB, SDVOSB, HUBZone, SDB (including ANC and Indian tribes), and WOSB concerns.

î See 19.702(a)(1) for requirements that are imposed in negotiated acquisitions, and (a)(2) for requirements that are imposed in sealed bidding acquisitions.

î As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(F) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages (see 19.702(c) and 19.705-7).

**X. DESCRIPTION OF GOOD FAITH EFFORT (Also refer to 13 CFR 125.3(d), Determination of Good Faith Effort)**

*In order to demonstrate your compliance with a good faith effort to achieve the small business subcontracting goals, outline the steps below that your company plans to take.*

[Company Name] will take the following steps to demonstrate compliance with a good faith effort in achieving small business subcontracting goals:

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The above requirements will be negotiated with the contracting officer prior to approval. The contracting officer must ensure per FAR 19.705-5(a)(5) that an acceptable plan is incorporated into and made a material part of the contract.

**SIGNATURE REQUIRED:** Plan must be signed and dated by a company official.

This subcontracting plan was SUBMITTED by:

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Company Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

Government Contracting Officer APPROVAL:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Agency: \_\_\_\_\_

Date signed: \_\_\_\_\_

**REPORTING INSTRUCTIONS FOR CONTRACTORS**

Electronic Subcontracting Reporting System web-based reporting requirements found at FAR clause 52.219-9(l):

The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

(1) **ISR.** This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.



Appendix 519A

GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) **SSR.** (i) *Reports submitted under individual contract plans—*

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.*, plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1,500,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) **Reports submitted under a commercial plan—**

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) **All reports** submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

<b>Contracting Officer</b>	<b>(insert e-mail addresses)</b>
<b>Small Business Technical Advisor</b>	<b>(email address for specific office/service/agency)</b>
<b>Subcontracting Manager, Office of Small Business Utilization</b>	<b>(janice.keys@gsa.gov or applicable alternate agency)</b>
<b>Small Business Administration Representative (found at <a href="http://www.sba.gov">www.sba.gov</a> and enter business zip code to find local resources/ POC for contractor's location)</b>	



## CHANGE 54 MARCH 26, 2012

## Appendix 519B—Subcontracting Plan Evaluation Checklist

## Appendix 519B—Subcontracting Plan Evaluation Checklist

## CHECKLIST FOR REVIEW OF SUBCONTRACTING PLAN

1. POINTS OF CONTACT, ADDRESS WITH ROOM NUMBER & SYMBOL PHONE & FAX NUMBERS  Prepared by: _____ Phone: _____ FAX: _____ GSA, (Insert Service & Symbol)  PCO is: _____ Phone: _____ FAX: _____		2. ADMINISTRATIVE CONTRACTING OFFICE, ADDRESS, PHONE & FAX NUMBERS NAME: _____ Address: _____  Telephone: _____ FAX: _____	
3. SOLICITATION NUMBER		4. CONTRACT NUMBER	
5. CONTRACTOR NAME, ADDRESS, DUNS NUMBER, AND CONTACT INFORMATION  Phone: _____ FAX: _____ DUNS No.: _____ E-Mail: _____		6. SUBCONTRACTING PLAN ADMINISTRATOR NAME, ADDRESS, & CONTACT INFORMATION Phone: _____ FAX: _____ E-Mail: _____	
7. PLACE OF PERFORMANCE ( If different from No. 5 )		8. TYPE OF CONTRACT q SEALED BID or q NEGOTIATED q SCHEDULE or q NON-SCHEDULE	
9. a. CONTRACT PERIOD OR OPTION PERIOD  THRU	9. b. DATE OF AWARD AND DATE OF OPTION	10. ESTIMATED CONTRACT VALUE (EACH PERIOD) OR ESTIMATE ANNUAL SALES FOR THIS CONTRACT \$	

## 11. DESCRIPTION OF PRODUCTS OR SERVICES

12. TYPE OF SUBCONTRACTING PLAN BEING SUBMITTED		COMPANY-WIDE PLAN FOR COMMERCIAL ITEMS
<input type="checkbox"/> INDIVIDUAL CONTRACT PLAN	<input type="checkbox"/> INDIVIDUAL INCORPORATING MASTER PLAN	<input type="checkbox"/> COVERS ANNUAL PERIOD THRU

## 13. CHECKLIST

PROPOSED TARGET GOALS ESTABLISHED	Percent	Dollar Amount	PCO/ACO ACCEPTABLE		SBTA ACCEPTABLE		SBA/PCR ACCEPTABLE	
			Yes	No	Yes	No	Yes	No
(1) TOTAL SUBCONTRACTING PLANNED (To large & all small business concerns)	100							
(2)(a) TO ALL SMALL BUSINESSES (Includes ANCs or Indian Tribes, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small concerns)								
(2)(b) TO VETERAN-OWNED SMALL BUSINESS (VOSB) Percent of Total								
(2)(c) TO SERVICE-DISABLED VETERAN-OWNED SMALL (SDVOSB) Percent of Total and subset of VOSB								
(2)(d) TO HUBZONE SMALL BUSINESS (HUBZone) Percent of Total								
(2)(e) TO SMALL DISADVANTAGED BUSINESS (SDB Includes ANCs or Indian Tribes) Percent of Total								
(2)(f) TO WOMEN-OWNED SMALL BUSINESS (WOSB) Percent of Total								

(3) DESCRIPTION OF PRINCIPAL TYPES OF SUPPLIES AND SERVICES TO BE SUBCONTRACTED, AND IDENTIFICATION OF TYPES PLANNED FOR SUBCONTRACTING TO EACH BUSINESS CATEGORY ( <i>i.e.</i> SMALL, VOSB, SDVOSB, HUBZ, SDB, and WOSB CONCERNS);						
(4) DESCRIPTION OF METHOD USED TO DEVELOP GOALS;						
(5) DESCRIPTION OF METHOD USED TO IDENTIFY POTENTIAL SOURCES FOR SOLICITATION PURPOSES;						
(6) STATEMENT AS TO WHETHER OR NOT THE OFFEROR INCLUDED INDIRECT COSTS IN ESTABLISHING SUBK GOALS AND DESCRIPTION OF METHOD USED TO DETERMINE THE PROPORTIONATE SHARE OF INDIRECT COSTS TO BE INCURRED WITH EACH BUSINESS CONCERN;						
(7) NAME OF INDIVIDUAL WHO WILL ADMINISTER THE OFFEROR'S SUBCONTRACTING PROGRAM AND A DESCRIPTION OF THEIR DUTIES; (Include phone & fax numbers and email address of contact for further questions.)						
(8) DESCRIPTION OF EFFORTS THE OFFEROR WILL MAKE TO ASSURE EQUITABLE OPPORTUNITY TO COMPETE FOR SUBCONTRACTS;						
(9) FLOW DOWN ASSURANCE THAT THE OFFEROR WILL INCLUDE FAR CLAUSE 52.219-8 IN ALL SUBCONTRACTS THAT OFFER FURTHER SUBCONTRACTING OPPORTUNITIES; AND ASSURANCE THAT THE OFFEROR WILL REQUIRE ALL SUBCONTRACTORS (except SB concerns) THAT RECEIVE SUBCONTRACTS IN EXCESS OF \$650,000 (\$1.5 M for construction) TO ADOPT A PLAN THAT COMPLIES WITH THE REQUIREMENTS OF THE CLAUSE 52.219-9.						
(10) ASSURANCE THAT THE OFFEROR WILL: COOPERATE IN STUDIES OR SURVEYS; SUBMIT PERIODIC REPORTS; SUBMIT INDIVIDUAL (ISR) & SUMMARY REPORTS (SSR) USING THE eSRs; ENSURE THAT SUBCONTRACTORS WITH PLANS AGREE TO SUBMIT THE ISR/SSR USING THE eSRs; PROVIDE ITS PRIME CONTRACT NUMBER AND DUNS NUMBER AND EMAIL ADDRESS OF OFFICIALS RESPONSIBLE, ETC.						
(11) DESCRIPTION OF THE TYPES OF RECORDS THAT WILL BE MAINTAINED CONCERNING PROCEDURES ADOPTED TO COMPLY, AND A DESCRIPTION OF THE OFFEROR'S EFFORTS TO LOCATE VARIOUS SMALL BUSINESS CONCERNS AND AWARD SUBCONTRACTS TO THEM						

CHANGE 54 MARCH 26, 2012

Appendix 519B

GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

REMARKS PCO/ACO COMMENTS ( <i>i.e.</i> original contract award, first plan or first govt. contract, annual commercial update or riding previously approved plan (copy attached), option renewal, change in business size from small to large, etc.)		SBTA	
REVIEWED BY I  (Signatures and Dates)	PCO/ACO  DATE:	SBTA  DATE:	SBA/PCR  DATE:

**PART 520—[RESERVED]**

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**PART 521—[RESERVED]**

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# AMENDMENT 2008–01 AUGUST 8, 2008

## PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

*Sec.*

522.001 Definition.

### **Subpart 522.1—Basic Labor Policies**

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522.101-1 General.  
522.101-3 Reporting labor disputes.  
522.103 Overtime.  
522.103-4 Approvals.  
522.103-5 Contract clauses.

### **Subpart 522.3—Contract Work Hours and Safety Standards Act**

522.302 Liquidated damages and overtime pay.

### **Subpart 522.4—Labor Standards for Contracts Involving Construction**

522.404 Davis-Bacon Act wage determinations.  
522.404-6 Modifications of wage determinations.  
522.406 Administration and enforcement.  
522.406-6 Payrolls and statements.  
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522.406-8 Investigations.  
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522.406-10 Disposition of disputes concerning construction contract labor standards enforcement.  
522.406-11 Contract terminations.  
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### **Subpart 522.6—Walsh-Healey Public Contracts Act**

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522.803 Responsibilities.  
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522.1305 Waivers.  
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522.1403 Waivers.  
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522.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

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**PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**522.001 Definition.**

“Agency labor advisor,” as used in this part, means the Director of the Contract Policy Division (VPC) within the Office of the Chief Acquisition Officer (OCAO).

**Subpart 522.1—Basic Labor Policies**

**522.101 Labor relations.**

**522.101-1 General.**

The Office of General Counsel (OGC) and the agency labor advisor shall—

- (a) Serve as the GSA points of contact on all contractor labor relations matters;
- (b) Initiate contact on contractor labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations. Contracting offices shall notify OGC and the agency labor advisor when they are contacted by such external organizations;
- (c) Serve as a clearinghouse for information on labor laws applicable to Government acquisitions; and
- (d) Respond to questions involving FAR Part 22, Application of Labor Laws to Government Acquisitions, or other contractor labor relations matters concerning GSA acquisition programs. OGC determines the agency’s legal position.

**522.101-3 Reporting labor disputes.**

Written reports of contractor labor disputes shall be submitted to the agency labor advisor as soon as the circumstances surrounding a labor dispute are identified. Include in the report a description of the following: the nature of the labor dispute; location of the dispute and contracts affected; the potential or actual impact of the dispute on GSA operations or programs; and any actions taken to reduce the impact. The agency labor advisor will notify other GSA contracting offices that may be affected, and will determine further actions to be taken.

**522.103 Overtime.**

**522.103-4 Approvals.**

The contracting officer is the “agency approving official” under FAR 22.103-4.

**522.103-5 Contract clauses.**

Insert FAR 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts for DX rated orders under the Defense Priorities and Allocations System (DPAS). Information on the DPAS can be found at FAR Subpart 11.6, Priorities and Allocations.

**Subpart 522.3—Contract Work Hours and Safety Standards Act**

**522.302 Liquidated damages and overtime pay.**

- (a) *Contracting officer’s responsibilities.* (1) Provide instructions to the appropriate Finance Office whether to withhold funds from contract payments pending final administrative determination.
- (2) Notify the Finance Office of your final decision to assess liquidated damages.
- (3) After final decision, provide instructions to either immediately release to the contractor any funds in excess of the amount specified in your decision or initiate the collection of additional funds (see paragraph (c) of this section).
- (4) Advise the contractor in writing of any decision to withhold funds, including the reasons for the withholding, and the amount held to satisfy the contractor’s liability for unpaid wages and liquidated damages. Coordinate all written communications with the contractor, including the notification of dispute resolution procedures under the Department of Labor’s regulations at 29 CFR Parts 4 through 8, with the Office of Regional Counsel.
- (b) *Procedures for the collection of liquidated damages.*
  - (1) Initiate collection action by either:
    - (i) Withholding funds from payments due on the contract.
    - (ii) Issuing a demand for payment, if no funds were withheld or the amount withheld was less than the liquidated damages.
  - (2) Indicate in the demand letter the intent to offset from the contractor’s other Government contracts if payment is not made.
  - (3) Provide the Finance Office with a:
    - (i) Copy of the demand letter.
    - (ii) Request that it initiate collection action under 41 CFR Part 105-55, Collection of Claims Owed the United States, if payment is not made in accordance with the demand letter.
  - (c) Consult the GSA Delegations of Authority Manual, ADM P 5450.39C, to determine who the agency head is for purposes of FAR 22.302(c) (Chapters 13(2)(f) and 17(5)(a)).

**Subpart 522.4—Labor Standards for  
Contracts Involving Construction**

**522.404 Davis-Bacon Act wage determinations.**

**522.404-6 Modifications of wage determinations.**

The contracting director shall serve as the agency head for purposes of requesting extensions under FAR 22.404-6(b)(6).

**522.406 Administration and enforcement.**

**522.406-6 Payrolls and statements.**

Weekly payrolls and statements of compliance with respect to payment of wages are not required from a prime contractor or a subcontractor that personally performs work.

**522.406-7 [Reserved]**

**522.406-8 Investigations.**

(a) If a compliance check uncovers information of possible violations, the contracting officer shall consult with OGC and, if warranted, submit a request to the appropriate Office of the Inspector General Field Office under FAR 22.406-8(a).

(b) The contracting officer shall consult the GSA Delegations of Authority Manual, ADM P 5450.39C, (Chapters 13(2)(f) and 17(5)(a)), to determine who the agency head is for purposes of FAR 22.406-8(d).

**522.406-9 Withholding from or suspension of contract payments.**

Contracting officers shall follow the procedures in [522.302](#) in order to assess liquidated damages.

**522.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

Submit the information required by FAR 22.406-10(d) to the Administrator, Wage and Hour Division, Department of Labor and submit a copy to the agency labor advisor.

**522.406-11 Contract terminations.**

When a contract or subcontract is terminated for labor standards violations, the contracting officer shall submit the report required by FAR 22.406-11 to the Administrator, Wage and Hour Division, Department of Labor and submit a copy to the agency labor advisor.

**522.406-13 Semiannual enforcement reports.**

(a) PBS and FAS shall report through the Commissioners the semiannual enforcement reports required by FAR 22.406-13, in the format described in paragraph (d) of this section. The Commissioner will consolidate the regional and central office information and submit the report to the agency

labor advisor, Office of the Chief Acquisition Officer. The report must identify the service submitting the report and the name, phone number, and email address of the official responsible for preparing the report.

(b) Central Office Contracting Offices outside of FAS and PBS must submit the reports directly to the agency labor advisor. Each report must identify the contracting office and the name, phone number, and e-mail address of the official responsible for preparing the report.

(c) The reports from the FAS and PBS and Central Office Contracting Offices must be submitted to the agency labor advisor within 15 calendar days after the end of the reporting periods. The ALA will consolidate the reports and submit an official agency report to the:

U.S. Department of Labor (DOL)  
Wage and Hour Division  
Office of Enforcement Policy  
Government Contracts Team  
Room S3018  
200 Constitution Avenue, N.W.  
Washington, DC 20210  
E-Mail Address: [osp@fenix2.dol-esa.gov](mailto:osp@fenix2.dol-esa.gov).

(d) The official agency report shall include only the compliance or enforcement of the labor standards requirements for the time periods specified in FAR 22.406-13, and identify the responsible agency official, title, address, phone number, and email address. The report shall be submitted to DOL within 30 calendar days after the end of the reporting periods using the following instructions and format:

**SEMI-ANNUAL ENFORCEMENT REPORT**

FY \_\_\_\_

1. Enter the beginning and ending dates of the period covered by the semiannual report. \_\_\_\_\_
2. Enter the total number of prime contracts awarded subject to Davis-Bacon Act or the Contract Work Hours and Safety Standards Act awarded during the period covered by this report. \_\_\_\_\_
3. Enter the total dollar value of the contracts listed on line 2. \_\_\_\_\_
4. Enter the total number of contractors/subcontractors against whom complaints were received.  
\_\_\_\_\_
5. Enter the total number of investigations completed.  
\_\_\_\_\_

6. Enter the total number of contractors/subcontractors found in violation as a result of the investigations reported on line 5. \_\_\_\_\_

7. Enter the total amount of back wages determined due employees by contractors/subcontractors under the:

a) Davis-Bacon Act (prevailing wage violations). \_\_\_\_\_

b) Contract Work Hours and Safety Standards Act (overtime violations). \_\_\_\_\_

8. Enter the total amount of back wages paid employees by contractors/subcontractors reported on line 6, for the:

a) Davis-Bacon Act (prevailing wage violations). \_\_\_\_\_

b) Contract Work Hours and Safety Standards Act (overtime violations). \_\_\_\_\_

9. Enter the total number of employees paid wage restitution as reported on line 8, under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. \_\_\_\_\_

10. Enter the amount of liquidated damages assessed as a result of violations under the Contract Work Hours and Safety Standards Act. \_\_\_\_\_

**Remarks: (Enter any explanation or comment considered necessary for proper understanding of the report.)**

### **Subpart 522.6—Walsh-Healey Public Contracts Act**

#### **522.608 Procedures.**

Before notifying or furnishing information to DOL under FAR 22.608(b), coordinate with legal counsel.

### **Subpart 522.8—Equal Employment Opportunity**

#### **522.803 Responsibilities.**

Contracting officers should submit questions on the applicability of EO 11246 and implementing regulations to assigned legal counsel.

#### **522.804 Affirmative action programs.**

##### **522.804-1 Nonconstruction.**

(a) The requirements of FAR 22.804 also apply to each contractor and subcontractor with 50 or more employees that either:

(1) Serves as a depository of Government funds; or

(2) Is a financial institution serving as an issuing and paying agent for U.S. savings bonds and savings notes.

(b) The contractors, subcontractors, and financial institutions described in 522.804-1(a) must develop a written affirmative action compliance program for each of its establishments regardless of the contract or holding value, in accordance with 41 CFR 60-1.40.

##### **522.804-2 Construction.**

Goals for the employment of minorities and women in the construction industry are established by the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor. The current goal for the utilization of women is 6.9%, regardless of the location of the Federal contract. This goal was extended indefinitely by the Department of Labor in 1980. The current goals for minority participation vary by location and are listed in Appendix E of DOL's "Technical Assistance Guide for Federal Construction Contractors." This guide can be accessed at <http://www.dol.gov/esa/ofccp/TAguides/ctaguide.htm>.

#### **522.805 Procedures.**

(a) To determine whether the contract meets the threshold in FAR 22.805(a), contracting officers shall include the value of the basic contract plus priced options. A contract modification exercising a priced option is not a contract award under FAR 22.805(a)(1)(ii) and does not require a preaward clearance.

(b) Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. A list of these offices can be found at <http://www.dol.gov/esa/contacts/ofccp/ofcpkey.htm>.

(c) The EEO poster required by FAR 22.805(b) can be found at: <http://www.dol.gov/esa/regs/compliance/posters/pdf/eeopost.pdf>. In addition to providing this poster to each non-exempt contractor, the contracting officer shall advise contractors to complete the Employer Information Report (EEO-1) at <http://www.eeoc.gov/eo1survey/index.html>.

#### **522.807 Exemptions.**

The agency labor advisor submits a request for exemption.

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**Subpart 522.10—Service Contract Act  
of 1965, As Amended**

**522.1003 Applicability.**

**522.1003-3 Statutory exemptions.**

The Service Contract Act of 1965, as amended, applies to local office relocation moves if transportation costs are incidental to the principal purpose of the contract. Such contracts do not meet the statutory exemption cited in FAR 22.1003-3(c).

**522.1003-4 Administrative limitations, variations,  
tolerances, and exemptions.**

Contracting officers shall coordinate with assigned legal counsel before submitting a request under FAR 22.1003-4(a) to the agency labor advisor.

**522.1003-7 Questions concerning applicability of the Act.**

The contracting officer may submit a question regarding the applicability of the Act to assigned legal counsel. If the question cannot be answered, the agency labor advisor will forward it to the Administrator, Wage and Hour Division.

**522.1021 Requests for hearing.**

Contracting Officers who are considering requesting a substantial variance should coordinate with assigned legal counsel and the agency labor advisor. The agency labor advisor submits any request.

**Subpart 522.13—Special Disabled Veterans,  
Veterans of the Vietnam Era, and Other  
Eligible Veterans**

**522.1305 Waivers.**

Submit each waiver request to the agency labor advisor. The agency labor advisor forwards the request to the appropriate office for concurrence and approval.

**522.1308 Complaint procedures.**

After consultation with OGC, the contracting officer shall forward complaints to the cognizant Department of Labor office, with a copy to the agency labor advisor and the appropriate Office of Inspector General Field Office.

**Subpart 522.14—Employment of Workers  
With Disabilities**

**522.1403 Waivers.**

Submit each waiver request to the agency labor advisor. The agency labor advisor forwards the request to the appropriate office for concurrence and approval.

**522.1406 Complaint procedures.**

After consultation with OGC, forward complaints to the cognizant OFCCP office, with a copy to the agency labor advisor and the appropriate Office of Inspector General Field Office.

**Subpart 522.15—Prohibition of Acquisition  
of Products Produced by Forced or  
Indentured Child Labor**

**522.1503 Procedures for acquiring end products on the  
List of Products Requiring Contractor Certification as  
to Forced or Indentured Child Labor.**

Refer matters for investigation under FAR 22.1503(e) to the appropriate Office of Inspector General Field Office.

# **PART 523—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE**

*Sec.*

## **Subpart 523.3—Hazardous Materials Identification and Material Safety Data**

- 523.303 Contract clause.
- 523.370 Solicitation provision.

## **Subpart 523.4—Use of Recovered Materials**

- 523.403 Policy.
- 523.404 Procedures.
- 523.404-70 Preference programs for other than EPA designated products.
- 523.405 Solicitation provision and contract clause.

## **Appendix 523A—GSA Affirmative Procurement Program GSA Order OGP 2851.1**

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## PART 523—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE

### Subpart 523.3—Hazardous Materials Identification and Material Safety Data

#### 523.303 Contract clause.

(a) Insert [52.223-70](#), Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

(b) Insert [52.223-71](#), Nonconforming Hazardous Materials, in solicitations and contracts for supplies that contain hazardous materials.

#### 523.370 Solicitation provision.

Insert [52.223-72](#), Hazardous Material Information, in any solicitation that provides for delivery of hazardous materials on an f.o.b. origin basis.

### Subpart 523.4—Use of Recovered Materials

#### 523.403 Policy.

(a) GSA's Affirmative Procurement Program ([Appendix 523A](#)) establishes agency policy and procedures for the procurement of products containing recovered materials. In implementing the Program, contracting activities will:

- (1) Communicate to industry that markets exist for environmentally preferable products (See FAR 23.7), including products containing recovered materials.
- (2) Ensure that product specifications do not impede the acquisition of products containing recovered materials.
- (3) Purchase EPA designated products to the maximum extent practicable.
- (4) Identify other product categories that offer opportunities for the purchase of environmentally preferable products. To the maximum extent practicable, and consistent with applicable provisions of Federal procurement law, acquire these products before non-environmentally preferable products.

(b) To the extent permitted by law, and where economically feasible, E.O. 13101 applies to the acquisition and management of federally owned and leased space.

(1) Solicitations for services, leased space, and construction must include environmental and recycling provisions.

(2) These provisions should include specifications promoting, and maximizing, the use of environmentally prefera-

ble products, including products containing recovered materials, by contractors and subcontractors.

(c) Purchases by construction contractors or their subcontractors are included in this program.

(d) You must use applicable minimum content standards in all acquisitions that include an EPA designated product. In addition to new acquisitions, this includes:

(1) Delivery orders placed against established source contracts that identify environmentally preferable products.

(2) Orders from such sources as the GSA/Federal Supply Service Environmental Products Guide or GSA Supply Catalog.

#### 523.404 Procedures.

Under FAR 23.404(b)(3), the Agency Environmental Executive must approve any purchase of designated products that does not meet or exceed EPA guidelines and standards.

#### 523.404-70 Preference programs for other than EPA designated products.

(a) The statutory requirements associated with affirmative procurement programs only apply to products covered by EPA guidelines. GSA must also meet goals established under E.O. 13101 to maximize the number of recycled products purchased. Contracting activities should conduct market research and analysis for routinely procured products to identify additional opportunities to establish product preferences through:

- (1) Minimum material content requirements in applicable product descriptions.
- (2) Description of services to be performed.

(b) Alternatively, the contracting activity may require that offerors provide a product incorporating some recovered material, without specifying a percentage, that will allow the product to meet the required standard of performance. Do this only if market research indicates that industry is capable of producing a product with recovered material, but the specification manager cannot identify an appropriate minimum content requirement.

#### 523.405 Solicitation provision and contract clause.

In FAR clause 52.223-9, instruct the contractor to submit the required certification to you. The contracting activity must forward a copy to the agency Environmental Executive, by November 1 of each year, of each certification received in the preceding fiscal year.

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**Appendix 523A—GSA Affirmative Procurement Program  
GSA Order OGP 2851.1**

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OGP 2851.1  
March 15, 2000

**GSA ORDER**

**SUBJECT: GSA Affirmative Procurement Program**

1. *Purpose.* This Order establishes the GSA Affirmative Procurement Program for purchase and use of Environmental Protection Agency (EPA) designated Comprehensive Procurement Guideline (CPG) items containing recovered materials, environmentally preferable, and biobased products.
2. *Cancellations.* GSA Affirmative Procurement Program dated June 19, 1996, and Acquisition Letter MV-93-9, Acquisition of Environmentally Preferable Products, are canceled.
3. *Background.* GSA, as a Federal procuring agency, is required to procure and use products containing post-consumer content (recycled material) by the Resource Conservation and Recovery Act (RCRA), Section 6002, and Executive Order (EO) 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." EO 13101 also requires Federal agencies to procure and use environmentally preferable and biobased products. Both RCRA Section 6002 and EO 13101 require Federal agencies to develop and implement an Affirmative Procurement Program to facilitate the procurement of these products.
4. *Nature of revision.* This revision updates GSA's Affirmative Procurement Program to comply with current statutory, Executive Order and EPA requirements.
5. *Implementation.* Heads of Contracting Activities (HCAs) that are responsible for acquiring personal property, nonpersonal services (including construction), and leasehold interests in real property, will develop implementation plans within 180 days of the date of this order to comply with the attached GSA Affirmative Procurement Program. This order is not intended to restrict Federal Supply Schedule contracting programs.

Sue McIver  
Acting Deputy Associate Administrator  
for Acquisition Policy

Paul M. Lynch  
GSA Environmental Executive

Attachment

## U.S. General Services Administration Affirmative Procurement Program

March 15, 2000

A Program for Compliance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) and Executive Order (EO) 13101 requiring the purchase and use of Environmental Protection Agency (EPA) designated Comprehensive Procurement Guideline (CPG) items containing recovered materials, “environmentally preferable,” and biobased products.

### Preface

The U.S. General Services Administration (GSA), as a Federal procuring agency, is required to procure and use products containing post-consumer content (recycled material) by the Resource Conservation and Recovery Act (RCRA), Section 6002, and Executive Order (EO) 13101, “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.” EO 13101 also requires Federal agencies to procure and use “environmentally preferable” and biobased products. Both RCRA Section 6002 and EO 13101 require each Federal agency to develop and implement an Affirmative Procurement Program (APP) to facilitate the procurement of these products.

The APP seeks to promote markets for products containing recycled materials, thereby reducing the quantity of solid waste requiring disposal. Procurement and use of “environmentally preferable” and biobased products promotes the technologies to develop products that effectively compete with the traditional products already familiar to us. The Federal Government is the largest purchasing agent in the U.S.; therefore, it is important that we maximize the procurement and use of these new environmental products in order to help increase and expand the market.

Implementing these guidelines to the maximum extent possible provides for:

- (1) The opportunity for GSA to demonstrate its commitment to the environment by becoming a leader in the procurement and use of environmental products.
- (2) Increased demand for these products, creating markets for recycled materials.
- (3) Decreased demand for virgin products.
- (4) Reduction in landfill space required and associated costs.
- (5) Direct or indirect cost savings from the procurement of designated products containing recycled content versus traditional virgin products.
- (6) Benefits associated with some products containing recycled content that possess improved properties over traditional virgin products.
- (7) Development of new environmental technologies.

Each GSA region and Central Office service and staff office must participate in the GSA APP to the maximum extent feasible. Questions regarding this program may be directed to the Office of Acquisition Policy (MV) or the GSA Environmental Executive.

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## GSA Affirmative Procurement Program

### 1. Purpose

The GSA Affirmative Procurement Program (APP) establishes policy and procedures to assist GSA procurement and program offices promote the purchase of products containing recycled material, “environmentally preferable” products and services, and biobased products in accordance with the requirements of RCRA, Section 6002, EO 13101, and Office of Federal Procurement Policy (OFPP) Letter 92-4.

### 2. Policy

(a) All GSA procurement and requisitioning offices will procure and use products containing recycled materials, “environmentally preferable” products and services, and biobased products to the maximum extent feasible. GSA will procure and use those products:

(1) Specified by the U.S. Environmental Protection Agency (EPA) as Comprehensive Procurement Guideline (CPG) items and their associated Recovered Materials Advisory Notices (RMANs). The list of CPG items is available at <http://www.epa.gov/cpg>.

(2) Designated as environmentally oriented in the GSA Federal Supply Service “Environmental Products and Services Guide.” This guide is available at the FSS Environmental Homepage at <http://pub.fss.gsa.gov/environ>.

(3) To be designated as biobased products on the United States Department of Agriculture (USDA) Biobased Products List. The APP will be updated once this list becomes available.

(b) Many of these products are already available through various GSA supply programs.

*(c) Each region and Central Office service and staff office must implement this program tailored to its own needs. Each Head of the Contracting Activity (HCA) will develop an implementation plan that, at a minimum, addresses key program elements that are required by law. To facilitate program implementation, the appendices include an APP Fact Sheet, sample determination format, a summary of legislative and regulatory requirements, and definitions. The list of EPA-designated CPG items and RMANs is available at <http://www.epa.gov/cpg>.*

### 3. Applicability

The APP applies to 100 percent of GSA purchases of EPA-designated CPG items unless the item is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. This program applies to all regions and to Central Office services and staff offices that are responsible

for acquiring personal property, nonpersonal services (including construction), and leasehold interests in real property. The program applies to GSA offices purchasing items for internal use or consumption (e.g., office supplies, carpet, etc.) as well as to contracts that provide for contractor operation of a Government-owned or -leased facility and contracts that provide for contractor or other support services at Government-owned or -operated facilities. This APP applies to the acquisition and management of Federally owned and leased space and the acquisition and management of all leased space and construction of new Federal buildings.

### 4. Background

(a) RCRA Section 6002, EO 13101, and OFPP Letter 92-4 require each procuring agency to develop and implement an affirmative procurement program. A procuring agency is defined as:

“...any Federal agency, or any State agency, or agency of a political subdivision of a State which uses appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.” [The term “person” is defined in such a way as to include contractors.]

(b) The OFPP letter and the order further require that this program be cost-effective. The letter defines a “Cost-Effective Procurement Preference Program” as one “...that favors, where price and other factors are equal, the procurement of products and services that are more environmentally-sound or energy-efficient than other competing products and services.”

(c) Any solicitation or contract that is for, or specifies the use of, an EPA-designated CPG item must include the appropriate solicitation provision and contract clause (FAR 52.223-4 and 52.223-9).

(d) There are 3 situations when GSA may justify not purchasing an EPA-designated CPG item or “environmentally preferable” product:

(1) It is not available competitively within a reasonable time frame.

(2) It does not meet appropriate performance standards.

(3) It is only available at an unreasonable price.

(e) References to environmental issues are included in the Federal Acquisition Regulation (FAR) at Parts 7 (Acquisition Planning), 10 (Market Research), 11 (Describing Agency Needs), 23 (Environment, Conservation, Occupational Safety, and Drug-Free Workplace), and 42 (Contract Administration). Similar references may also be found in the General Services Administration Acquisition Manual (GSAM) at [Parts 508](#), [511](#), and [523](#).

## 5. EPA-Designated CPG Items and RMANs

(a) RCRA and the Executive order require EPA to designate CPG items and their accompanying RMANs. All procuring agencies must comply with the EPA guidance. The RMAN for each product line describes the minimum amount or a range of recycled material that must be present in the particular product purchased.

(b) The EPA-designated CPG items and associated RMANs are subject to additions and revisions by EPA. The web site at <http://www.epa.gov/cpg> will be updated accordingly.

## 6. Affirmative Procurement Key Program Elements

(a) For compliance with RCRA, Section 6002 and EO 13101, an APP is to address the following key program elements:

- (1) Preference Program
- (2) Promotion Program
- (3) Procedures for estimation, certification and verification
- (4) Performance measures or procedures (for annual review and monitoring)

***(b) At a minimum, each APP implementation plan must incorporate these program elements.***

## 7. Preference Program

(a) Each HCA will develop a plan to implement the procurement preference program for each of the EPA-designated CPG items, “environmentally preferable” products and services, and biobased products. Many such products are available through GSA’s Federal Supply Schedules. **Give preference to these when price, performance and availability are equal to traditional products and services.**

(b) Competition between environmental products and services required by RCRA and EO 13101 and traditional products and is encouraged when adequate competition is not available for the former based on market research. Award may be made to the traditional product or service based on one of the exemptions. While the EPA web site lists manufacturers and suppliers for the CPG items, newly introduced products or services may not have sufficient manufacturers and suppliers to provide a satisfactory level of competition.

(c) The procurement originator is responsible for defining product performance requirements. When the solicitation includes a recycled product, the originator must ensure that it meets the minimum recycled content required by EPA.

(d) If a contracting officer consistently experiences a problem procuring a CPG item that meets the RMAN requirements for recycled content, he or she should contact the GSA Environmental Executive for assistance.

(e) For purchases at or under the micropurchase threshold, procurement originators and purchasers are encouraged to consider aggregating when this method would promote economy and efficiency. When aggregating results in a requirement that exceeds the purchasing authority of an individual, another purchaser with adequate authority must execute the action.

## 8. Promotion Program

(a) The GSA Office of Acquisition Policy (MV) and the GSA Environmental Executive will actively promote GSA’s policy to purchase recycled products and will provide guidance to the services and regional offices on implementing the program. MV and the GSA Environmental Executive will:

- (1) Promote the GSA preference program in trade publications, recycling/environmental journals, and procurement publications.
- (2) Develop and provide standard language for solicitations and statements of work.
- (3) Develop and provide information and training to procurement and program offices regarding GSA’s preference program for recycled products through conferences, workshops, and meetings.
- (4) Provide vendor and product information by means of:

- (a) Multi-use File for Interagency News (MUFFIN).
- (b) GSA *Advantage!* on-line shopping service.
- (c) FSS publications such as the “Environmental Products and Services Guide,” applicable Federal Supply Schedules, “Marketips,” and other customer catalogs.

(b) Each HCA will implement a promotional program that:

- (1) Informs suppliers about the recycled product lines in GSA’s preference program.
- (2) Educates procurement and program offices about requirements to procure recycled products.
- (3) Incorporates life cycle cost analysis whenever feasible and appropriate to assist in selecting an EPA-designated CPG item.
- (4) Provides GSA and its contractors information on sources of recycled products.
- (5) Encourages contractors to use electronic commerce/electronic data interchange (EC/EDI).
- (6) Requires contractors to maximize the use of double-sided recycled content paper for submitting written acquisition documents.

## 9. Vendor Estimation, Certification and Verification

(a) The GSA Federal Supply Service, Government Printing Office (GPO) and Department of Defense (DoD)/Defense Logistics Agency (DLA) have established their own system regarding certification and verification of EPA-designated

CPG items. Products purchased from these sources will need no further action.

(b) When conducting open market procurements in excess of the micropurchase threshold, the following procedures apply:

(1) *Estimation and Certification.* (a) In solicitations that are for, or specify the use of, recovered materials:

(i) The contracting officer must include FAR 52.223-4, Recovered Material Certification.

(ii) A vendor responding to the solicitation must provide the required certification with its offer.

(b) In contracts exceeding the simplified acquisition threshold that are for, or specify the use of, an EPA-designated item:

(i) The contracting officer must include FAR 52.223-9, Certification and Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

(ii) The contractor must provide the required certification and estimate at contract completion.

(2) *Verification.* The GSA Environmental Executive shall periodically review vendor certification documents as part of the annual review and monitoring process. These reviews will assist in verifying GSA's compliance with EO 13101.

## 10. Annual Review, Monitoring and Reporting

(a) RCRA and EO 13101 require the GSA Environmental Executive to:

(1) Ensure that GSA procures and uses the maximum amount feasible of EPA-designated CPG items.

(2) Submit an annual status report to the Office of Management and Budget (OMB) and the Office of the Federal Environmental Executive.

(b) The annual status report must address:

(1) CPG item purchases.

(2) Status of review of product specifications, descriptions and standards regarding new products.

(3) Justification as to why CPG products were not purchased or submit a plan as to how GSA will increase purchases.

(c) The GSA Environmental Executive will relay to regional and Central Office services and staff offices strengths and weaknesses of the GSA APP identified by this process.

(d) Regions and Central Office services and staff offices are required to participate and cooperate in all tracking mechanisms and review processes developed and implemented by the GSA Office of Acquisition Policy and Environmental Executive. The GSA Environmental Executive will initiate specific procedures for gathering procurement data, develop a monitoring strategy and transmit these to the responsible service and regional offices.

## 11. Determination

(a) The following conditions may justify not purchasing an EPA-designated CPG item or a product that does not meet the content level described in EPA's web site at <http://www.epa.gov/cpg> (for certain product lines GSA may exceed the amount of recycled material specified in the RMAN):

(1) It is not available competitively within a reasonable time frame.

(2) It does not meet appropriate performance standards.

(3) It is only available at an unreasonable price. EPA defines an unreasonable price "...as a price that is greater than the price of a competing product made from virgin materials. EPA further interprets the reasonable price provision of RCRA Section 6002(c)(1)(C) to mean that there are no projected or observed long-term or average increases over the price of competing virgin items. This interpretation is supported in the preamble to the OFPP Policy Letter 92-4 (57 FR 53364), which provides that there is no legal mandate to provide a price preference for products containing recovered materials over similar virgin products."

(b) For acquisitions exceeding the micropurchase threshold, each determination must be documented in writing, citing the appropriate justification(s), and providing an explanation. The contracting officer must:

(1) Sign and date the determination.

(2) Retain the original determination in the official contract file.

(3) Provide a copy of the determination to the GSA Environmental Executive.

(c) [Appendix B](#) provides a sample format for determinations. Either the procurement originator or the contracting officer may initiate the determination.

## 12. Specification Control

(a) The procurement originator is responsible for reviewing product performance specifications, product descriptions, and standards of EPA-designated CPG items during the acquisition planning stage. Specifications and standards regarding a CPG product line must relate to the performance of that product. Product specifications and standards that prevent the purchase of CPG items or "environmentally preferable" products must be revised or eliminated in the actual procurement specifications. Product specifications, where appropriate, must:

(1) Express preference for purchase of products with recovered materials.

(2) Eliminate requirements for virgin materials.

(3) Eliminate requirements excluding use of recovered materials.

(4) Specify performance requirements.

(5) Eliminate performance standards having more stringent requirements than necessary.

(b) Questions regarding product performance and availability should be directed to the GSA Environmental Executive.

### **13. Awards**

(a) The GSA Environmental Executive administers the annual GSA Environmental Awards program in which the Administrator recognizes employees for their successful efforts in waste prevention, recycling, and affirmative procurement. Requests for nominations will appear in “GSA Update” periodically. Any GSA employee may submit nominations (e.g., procurement, program, environmental personnel, supervisors, or co-workers). In completing your nomination, consider the following suggestions:

- (1) Provide a clear and concise description of the environmental initiative.
- (2) Show how success was measured.
- (3) Document success with data.

### **14. Goals**

The GSA Environmental Executive will establish annual agency-wide environmental goals, which will focus on the requirements of EO 13101 and the current environmental initiatives established by the Administration and GSA. Environmental goals will be updated as necessary. The GSA Environmental Executive will distribute information on goals to services and regions to allow them to plan the coming fiscal year initiatives.

### **15. Waste Prevention Opportunities**

The GSA Environmental Executive will update services and regions on the latest waste prevention opportunities on a regular basis and establish a clearinghouse of best practices in the environmental arena.

## Appendix A

### GSA Affirmative Procurement Program Fact Sheet

#### What is the GSA Affirmative Procurement Program?

The GSA Affirmative Procurement Program (APP) was developed to fulfill the requirements of both the Resource Conservation and Recovery Act (RCRA) Section 6002 and Executive Order (EO) 13101, “Greening the Government Through Waste Prevention, Recycling and Federal Acquisition.” It ensures that we procure and use “environmentally preferable” products and those containing recycled materials to the maximum extent feasible. GSA will focus its attention on the procurement and use of those products specified by the U.S. Environmental Protection Agency (EPA) as Comprehensive Procurement Guideline (CPG) items and the companion publications “Recovered Materials Advisory Notices” (RMANs) (see <http://www.epa.gov/cpg>).

#### Why must GSA comply with RCRA Section 6002 and EO 13101?

RCRA requires all Federal agencies to purchase an EPA-designated CPG item when either (1) the purchase of such item or a “functionally equivalent” one exceeds \$10,000, or (2) applicable purchases or acquisitions made in the preceding fiscal year exceeded \$10,000. This \$10,000 threshold applies to each procuring agency as a whole; therefore, all GSA contracting officers and requisitioning offices are required to comply.

#### How will the GSA APP be implemented?

Each service and region will determine the best way to implement this program, but every GSA employee is responsible for purchasing EPA-designated CPG items whenever feasible. Each region and Central Office service and staff office must also measure their success in meeting environmental goals.

#### Does the APP apply to micropurchases?

Yes. You must give preference to EPA-designated CPG items, “environmentally preferable” products and services, and biobased products when price, performance, and availability are equal to traditional products and services. The list of EPA-designated CPG items is available at <http://www.epa.gov/cpg>. Many EPA-designated CPG items with appropriate recovered material content levels and “environmentally preferable” products and services are available in the GSA Federal Supply Service “Environmental Products and Services Guide” which is available at <http://pub.fss.gsa.gov/environ>. The United States Department of

Agriculture (USDA) will be developing a Biobased Products List and this APP will be updated once this list becomes available. Neither the clauses in paragraph 9 nor the written determination required in paragraph 11 of the APP apply to micropurchases.

#### Exactly what products is GSA required to buy and use?

We will concentrate our efforts to buy and use the products designated by EPA as CPG items. These items are manufactured from recycled materials and range from office products to construction materials. A complete listing of these items appears at <http://www.epa.gov/cpg>. We will also procure and use “environmentally preferable” products, especially cleaning products and paints and other chemicals with appropriate Volatile Organic Compound (VOC) content levels. Many of these are available at <http://pub.fss.gsa.gov/environ>.

#### What is a “Recovered Materials Advisory Notice” (RMAN)?

The RMAN is the amount of recycled content that a CPG item must contain in order to fulfill the objective of RCRA and EO 13101. Before EPA designates a certain product line for inclusion as a CPG item, they do extensive research into the product availability, efficacy, and costs at a specified level of recycled content. For example, suppose you want to buy copier paper containing 100% recycled content; it may be so costly or scarce that its purchase and use wouldn’t be feasible. However, EPA has determined that copier paper containing 30% recycled content is widely available and competitively priced. Therefore 30% recycled content for copier paper becomes the EPA RMAN.

#### How does the GSA APP impact our contracts and contractors?

Under covered contracts, procurement originators must write specifications to ensure the following: preference for recovered material and elimination of requirements for virgin materials; preference for purchase of products with recovered materials and elimination of requirements that exclude the use of recovered materials; and, performance standards that do not contain more stringent requirements than necessary. Additionally, contracting officers must include the necessary Federal Acquisition Regulation (FAR) provision and clause in solicitations for covered contracts (FAR 52.223-4 and FAR 52.223-9).



## **Appendix 523A—GSA Affirmative Procurement Program GSA Order OGP 2851.1**

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### **Are there any situations when we are excused from purchasing a CPG item?**

There are only 3 situations when GSA may justify not purchasing an EPA-designated CPG item:

(1) It is not available competitively within a reasonable time frame.

(2) It does not meet appropriate performance standards.

(3) It is only available at an unreasonable price.

For acquisitions exceeding the micropurchase threshold, contracting officers must submit a written determination citing the appropriate justification(s) and providing an explanation to the GSA Environmental Executive (see sample format at [Appendix B](#) of the GSA APP).

### **Where can I obtain more information about the GSA APP?**

If you have specific questions regarding the environmental aspects of this program, contact the GSA Environmental Executive on (202) 501–0971. For acquisition related questions, contact the GSA Acquisition Policy Division (MVP) on (202) 501–1224.

### **Who is responsible for reporting GSA’s success in implementing this APP?**

The GSA Environmental Executive makes annual reports to the Office of Management and Budget and the Office of the Federal Environmental Executive.

## Appendix B

### Format for Determination

Procurement Request No. \_\_\_\_\_

The following CPG item(s):  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

were not procured due to (check all that apply):

- ☐ Not available competitively within a reasonable time frame.
- ☐ Does/Do not meet appropriate performance standards.
- ☐ Only available at an unreasonable price.
- ☐ Attending small, minority, and women-owned business procurement conferences and trade fairs

Explanation:

(Signature)  
\_\_\_\_\_  
Procurement Originator\_\_\_\_\_  
Date

Approved:

(Signature)  
\_\_\_\_\_  
Contracting Officer\_\_\_\_\_  
DateCopy to:  
GSA Environmental Executive

## Appendix C

### Summary of Legislative and Regulatory Requirements

#### **Resource Conservation and Recovery Act (RCRA).**

In 1976, RCRA was enacted to replace the Solid Waste Disposal Act of 1965. The primary function of RCRA is to ensure the safe and environmentally acceptable management of solid waste. Two preferred methods of solid waste management are recycling and resource recovery, and both can be encouraged through Federal procurement policies promoting purchasing and using products made from recovered materials.

**Executive Order (EO) 13101.** On September 14, 1998, the President of the United States issued EO 13101, “Greening the Government Through Waste Prevention, Recycling and Federal Acquisition.” The order expands Federal waste prevention and recycling programs and reiterates Federal procurement policies mandated by RCRA. The order also requires Federal agencies to procure other “environmentally preferable” products and services. EO 13101 specifies that Federal agencies, that have not already done so must develop and implement, to the extent practicable, affirmative procurement programs within 90 days after the effective date of the order.

The main goals of Section 6002 of RCRA and EO 13101 are to:

- Promote cost-effective waste prevention activities and recover materials reusable by Federal agencies.
- Stimulate private sector markets for recovered materials through preferential (designated) item procurement.
- Spur private sector new technologies development, thereby creating new business and employment opportunities, through the use of recycled and “environmentally preferable” products.
- Conserve waste disposal capacity through cost-effective waste prevention and recycling programs.
- Establish Federal waste prevention and recycling leadership.

GSA’s Affirmative Procurement Program (APP) incorporates the requirements of RCRA and the Executive order pertaining to affirmative procurement.

**Environmental Protection Agency (EPA).** EPA has issued Federal procurement guidelines containing regulatory requirements binding on Federal agencies. The guidelines also contain recommendations for Federal agencies to develop and implement affirmative procurement programs. For each guideline, EPA requires procuring agencies to incorporate the designated item into their APPs. EPA’s guidelines are codified at 40 CFR 247. Agencies have one year from the time of issuance to comply with additional guidelines.

A complete reference of EPA Procurement Guidelines for the current CPG items is available electronically on the EPA web site at <http://www.epa.gov/cpg>.

**OFPP Policy Letter 92-4.** OFPP Policy Letter 92-4, “Procurement of Environmentally-Sound and Energy-Efficient Products and Services,” establishes Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services. OFPP’s Policy Letter requires procuring Federal agencies, when drafting or reviewing specifications for guideline items, to assure they:

- (1) Do not exclude the use of recovered materials;
- (2) Do not unnecessarily require the item to be manufactured from virgin materials; and
- (3) Require the use of recovered materials and environmentally-sound components to the maximum extent practicable without jeopardizing the intended use of the item.

Federal agencies must use product descriptions and prepare contract specifications reflecting cost-effective procurement and use of designated recycled products, encouraging bidders to supply products containing recycled material.

An electronic copy of this letter is available on: <http://www.arnet.gov>. Click the “Reference Corner” and then the “Office of Federal Procurement Policy Letters.”

## Appendix D

### Definitions

**Acquisition**—acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation, selection of sources, contract award and financing details, contract performance and administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. [EO 13101] **Note:** The term acquisition also applies to the act of obtaining items of supply from established Federal supply sources, such as GSA/FSS and DoD/DLA, through the automated or manual requisitioning process.

**Affirmative Procurement Program (APP)**—a program assuring that EPA-designated Comprehensive Procurement Guideline (CPG) items composed of recovered materials and “environmentally preferable” and biobased products will be purchased to the maximum extent practicable, consistent with Federal law and procurement regulations. [RCRA, Section 6002, EO 13101]

**Biobased Product**—a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

**Certification**—written documentation provided by offerors/bidders/vendors certifying that the percentage of recovered materials contained in products or used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of postconsumer waste and recycled material contained in the major constituents of the product. [EPA Guidelines]

**Cost-Effective Procurement Preference Program**—a procurement program favoring more environmentally-sound or energy-efficient products and services than other competing products and services, where price and other factors are equal. [OFPP Policy Letter 92-4]

**Designated Item**—an available EPA guideline item or category of items, made with recovered material, advancing the purpose of RCRA when purchased. [RCRA, Section 6002]

**Environmentally Preferable**—products or services having a lesser or reduced [negative] effect on human health and the environment when compared with competing products or services, serving the same purpose. This comparison may consider raw materials acquisition, production, manufactur-

ing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. [EO 13101]

**Environmentally-Sound**—a product or service less damaging to the environment when used, maintained, and disposed of in comparison to a competing product or service. [OFPP Policy Letter 92-4]

**Estimation**—quantitative determination made by vendors of the total percentage of recovered material contained in offered products. Estimations should be based on historical or actual percentages of recovered materials in products sold in substantial quantities to the general public or on other factual basis. EPA recommends procuring agencies maintain records of these documents for three years by product type, quantity purchased, and price paid. [EPA Guidelines]

**Executive Agency or Agency**—an Executive agency as defined in 5 U.S.C. 105. For the purpose of EO 13101, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense. [EO 13101]

**Federal Supply Source**—any supply source managed by a Federal agency such as the General Services Administration’s Federal Supply Service, the Government Printing Office, or the Department of Defense’s Defense Logistics Agency.

**Life Cycle Assessment**—the comprehensive examination of a product’s environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal. [EO 13101]

**Life Cycle Cost**—the amortized annual cost of a product, including capital costs, installation costs, operations costs, maintenance costs, and disposal costs discounted over the lifetime of the product. [EO 13101]

**Minimum Content Standard**—the minimum recovered material content specifications set to assure the recovered material content required is the maximum available without jeopardizing the intended item use or violating the limitations of the minimum content standards set forth by EPA’s guidelines. [RCRA, Section 6002]

**Performance Specification**—a specification stating the desired product operation or function, but not specifying its construction materials. [EPA Guidelines]

**Postconsumer Material**—a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. “Postconsumer material” is a part of the broader category of “recovered material.” [EO 13101]

**Postconsumer Waste**—a material or product, discarded for disposal after passing through the hands of a final user, having served its intended purpose. Postconsumer waste is

## Appendix 523A—GSA Affirmative Procurement Program GSA Order OGP 2851.1

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part of the broader category of “recycled material.” [OFPP Policy Letter 92-4 and 40 CFR 247.101(e)]

**Practicable**—capable of performing in accordance with applicable specifications, available at a reasonable price and within a reasonable period of time, and while maintaining a satisfactory level of competition with other products. [EPA Guidelines]

**Preference**—when two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product. [OFPP Policy Letter 92-4]

**Preference Standard**—the highest practicable minimum content standards for products. When minimum content is impractical to calculate, preference is for the presence of a recovered material or an environmentally oriented trait (i.e., retread tires).

**Procurement Guidelines**—regulations issued by EPA pursuant to Section 6002 of RCRA: (1) identifying items produced (or that can be produced) with recovered materials, where procurement of such items will advance the objectives of RCRA; and (2) providing recommended practices for the procurement of such items. [RCRA, Section 6002]

**Procuring Agency**—any federal or State agency, or agency of a State’s political subdivision using appropriated Federal funds for a procurement, or any person contracting with any such agency with respect to work performed under a contract. [EPA Guidelines]. The term “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

[42 U.S.C. 6903 (15)]

**Recovered Material**—waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process. [EO 13101 and 42 U.S.C. 6903 (19)]

**Recycled Material**—a material utilized in place of raw or virgin material in product manufacturing consisting of materials derived from postconsumer waste, industrial scrap,

material derived from agricultural wastes, and other items, all of which can be used in new product manufacture. [EPA Guidelines and OFPP Policy Letter 92-4]

**Recycling**—the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion. [EO 13101]

**Solid Waste**—garbage, refuse, sludges, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This excludes solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow, etc. [EPA Guidelines]

**Specification**—a clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials’ quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

**Verification**—procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplied to them or to be used in the performance of a contract. [EPA Guidelines]

**Virgin Material**—a mined or harvested raw material to be used in manufacturing.

**Waste Prevention**—any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials. [EO 13101]

**Waste Reduction**—preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and “environmentally preferable” products. [EO 13101]

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## **PART 524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

*Sec.*

### **Subpart 524.1—Protection of Individual Privacy**

524.103

Procedures.

### **Subpart 524.2—Freedom of Information Act**

524.203

Policy.

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**PART 524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**Subpart 524.1—Protection of Individual Privacy**

**524.103 Procedures.**

(a) See 41 CFR part 105-64, GSA Order, Privacy Act Program (CPO 1878.1), and Privacy Act Program information available on Insite, when contracting for the design, development, or operation of a system of records on individuals.

(b) The Office of the Chief Acquisition Officer (OCAO) will review every two years a random sample of contracts that

provide for the maintenance of a system of records pursuant to OMB Circular A-130, Appendix 1.

**Subpart 524.2—Freedom of Information Act**

**524.203 Policy.**

(a) See 41 CFR 105-60 and GSA FOIA procedures available on Insite, for requirements on making records available under FOIA.

(b) The contracting officer shall notify the appropriate FOIA officer of the request.

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# AMENDMENT 2009–04 JULY 6, 2009

## PART 525—FOREIGN ACQUISITION

*Sec.*

<b>Subpart 525.1—Buy American Act—Supplies</b>		<b>Subpart 525.10—Additional Foreign Acquisition Regulations</b>	
525.103	Exceptions	525.1070	Purchases Using Department of Defense (DoD) Appropriated Funds.
<b>Subpart 525.2—Buy American Act—Construction Materials</b>			
525.202	Exceptions.		
525.206	Noncompliance.		

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**PART 525—FOREIGN ACQUISITION****Subpart 525.1—Buy American Act—  
Supplies****525.103 Exceptions**

(a) *Public Interest*. The HCA is authorized to make the determination required by FAR 25.103(a). The HCA may not redelegate this authority.

(b) *Class Determination*. FAR 25.103(b)(1)(i) does not allow for class determinations to be made at the agency level.

(c) *Class Determination - Notice of Availability*. Regarding FAR 25.103(b)(1)(iii)(C), documentation supporting removal of an item from the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the Senior Procurement Executive (SPE) in the Office of the Chief Acquisition Officer. The SPE will determine whether the documentation should be forwarded to the Civilian Agency Acquisition Council (CAAC).

(d) *Individual Determinations—Nonavailability*. For the one-time, single procurement determination required by FAR 25.103(b)(2)(i):

If the estimated value of the supplies...	Then...
(1) Exceeds \$100,000.	Only the HCA may make the determination. The HCA may not redelegate this authority.
(2) Does not exceed \$100,000.	The HCA may redelegate authority to make the determination.

(e) *Individual Determinations—Notice of Nonavailability*. Regarding When the contracting officer considers that non-availability of an item will affect future acquisitions (see FAR 25.103(b)(2)(ii)), documentation supporting the addition of articles to the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the SPE. The SPE will determine whether the documentation should be forwarded to the CAAC.

**Subpart 525.2—Buy American Act—  
Construction Materials****525.202 Exceptions.**

(a) *Public Interest*. The HCA is authorized to make the determination required by FAR 25.202(a)(1). The HCA may not redelegate this authority.

(b) *Nonavailability*. For the determination under FAR 25.202(a)(2):

If the estimated cost of materials...	Then...
(1) Exceeds \$100,000.	Only the HCA may make the determination. The HCA may not redelegate this authority.
(2) Does not exceed \$100,000.	The HCA may redelegate authority to make the determination.

**525.206 Noncompliance.**

Regarding potentially fraudulent noncompliance under FAR 25.206(c)(4), refer the matter to the appropriate Office of Inspector General Office.

**Subpart 525.10—Additional Foreign  
Acquisition Regulations****525.1070 Purchases Using Department of Defense (DoD)  
Appropriated Funds.**

(a) The Berry Amendment, 10 U.S.C. 2533a, applies domestic-source requirements to certain food, clothing, fabrics, specialty metals, and hand or measuring tools when purchased with DoD appropriated funds. The Berry Amendment, as applicable to purchases using DoD appropriated funds, is implemented at DFARS Subpart 225.70 and in clauses prescribed there.

(b) GSA acquisition personnel are responsible for reviewing requests for purchases using DoD appropriated funds to ensure that all special funding and procurement requirements, e.g., Berry Amendment applicability, have been disclosed to GSA.

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## **PART 526—OTHER SOCIOECONOMIC PROGRAMS**

*Sec.*

**[RESERVED]**

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## **SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS**

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## **PART 527—PATENTS, DATA, AND COPYRIGHTS**

*Sec.*

### **Subpart 527.4—Rights in Data and Copyrights**

527.409 Solicitation provisions and contract clauses.

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**PART 527—PATENTS, DATA, AND COPYRIGHTS****Subpart 527.4—Rights in Data and Copyrights****527.409 Solicitation provisions and contract clauses.**

*Architect-engineer services and construction contracts involving architect-engineer services.* Insert the following in solicitations and contracts for architect-engineer services and construction contracts involving architect-engineer services:

(a) Insert [552.227-70](#), Government Rights (Unlimited), instead of FAR 52.227-17, Rights in Data-Special Works, in contracts, except if [552.227-71](#) is prescribed.

(b) If the Government requires sole property rights and exclusive control over the design and data, insert [552.227-71](#), Drawings and Other Data to Become Property of Government, instead of FAR 52.227-17.

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## AMENDMENT 2009–02 MAY 14, 2009

### PART 528—BONDS AND INSURANCE

*Sec.*

#### **Subpart 528.1—Bonds and Other Financial Protections**

528.101	Bid guarantees.
528.101-1	Policy on use.
528.102	Performance and payment bonds and alternative payment protections for construction contracts.
528.102-1	General.
528.103	Performance and payment bonds for other than construction contracts.
528.103-2	Performance bonds.
528.103-3	Payment bonds.
528.106	Administration.
528.106-6	Furnishing information.

#### **Subpart 528.2—Sureties and Other Security for Bonds**

528.202	Acceptability of corporate sureties.
528.202-70	Acceptability of bonds and sureties.
528.203	Acceptability of individual sureties.
528.203-7	Exclusion of individual sureties.
528.204	Alternatives in lieu of corporate or individual sureties.

#### **Subpart 528.3—Insurance**

528.301	Policy.
528.310	Contract clause for work on a Government installation.
528.311	Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
528.311-1	Contract clause.

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**PART 528—BONDS AND INSURANCE****Subpart 528.1—Bonds and Other Financial Protections****528.101 Bid guarantees.****528.101-1 Policy on use.**

(a) *Construction contracts.* The contracting officer shall require bid guarantees for contracts awarded under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) *Building service contracts.* The contracting officer shall require bid guarantees for building service contracts over \$100,000 if it is determined under [528.103-2](#) that a performance bond is essential to protect the Government's interest.

(c) *All other contracts.* Refer to FAR 28.101 for guidance on the use of bid guarantees.

**528.102 Performance and payment bonds and alternative payment protections for construction contracts.****528.102-1 General.**

The performance and payment bond requirements in FAR 28.102-1 apply to contracts awarded under Section 8(a) of the Small Business Act.

**528.103 Performance and payment bonds for other than construction contracts.****528.103-2 Performance bonds.**

(a) The contracting officer shall not require performance bonds for building service contracts unless a written determination is made explaining why the bond is essential to protect the Government's interest and justifying the additional cost of the bonding requirement.

(b) The contracting officer shall require a performance bond for building service contracts awarded under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)). The contracting officer shall not require a performance bond for building service contracts awarded to workshops for the blind or other severely handicapped under the Javits-Wagner-O'Day Act, as amended (41 U.S.C. 46-48c).

(c) Consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

**528.103-3 Payment bonds.**

(a) The contracting officer may require payment bonds for other than construction contracts if the contracting director determines, under FAR 28.103-3, that such a requirement is in the Government's interest.

(b) Consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

**528.106 Administration.****528.106-6 Furnishing information.**

The HCA or designee performs the functions outlined in FAR 28.106-6(c).

**Subpart 528.2—Sureties and Other Security for Bonds****528.202 Acceptability of corporate sureties.**

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. The contracting officer may waive failure of the surety to affix the corporate seal as a minor informality. (See B-184120, July 2, 1975, 75-2 CPD 9.)

**528.202-70 Acceptability of bonds and sureties.**

Verify the acceptability of the surety on a bond by placing the words "Acceptability of Bond Verified," and sign immediately thereunder, on the bond or on a properly identified attachment. Retain the bond with the original of the contract. The contracting officer may use the Notice to Proceed to notify the contractor that the bond(s) has been accepted.

**528.203 Acceptability of individual sureties.**

Refer evidence of possible criminal or fraudulent activities by an individual surety first to the Assistant Inspector General for Investigations or to the appropriate Regional Special Agent in Charge. The Office of Inspector General may conduct an investigation and, when appropriate, refer the matter to the Senior Procurement Executive. Include in referrals the information required by [528.203-7](#).

**528.203-7 Exclusion of individual sureties.**

(a) The Senior Procurement Executive or designee excludes individuals from acting as a surety on bonds under FAR 28.203-7.

(b) Include the following, as a minimum, in referrals for consideration of exclusion:

- (1) The basis for exclusion (see FAR 28.203-7(b)).
- (2) A statement of facts.
- (3) Copies of supporting documentary evidence.
- (4) The individuals' names and current or last known home and or business addresses, including zip codes.
- (5) A statement of GSA's history with such individuals, if any.

**528.204**

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

(c) In accordance with GSA Order ADM 5000.4A Legal Services, legal review shall be obtained for the proposed exclusion.

**528.204 Alternatives in lieu of corporate or individual sureties.**

Security deposited instead of corporate or individual sureties on bonds must be safeguarded immediately after they are received, as provided in procedures issued by the Office of the Chief Financial Officer (see GSA Order, Accounts Receivable Policy Handbook (CFO P 4253.1)). United States bonds or notes received in the District of Columbia must be deposited with the Treasurer of the United States, as provided in FAR 28.204-1.

**Subpart 528.3—Insurance****528.301 Policy.**

Insurance requirements must be adequate, just, and reasonable. They should be predicated on potential loss or damage, not necessarily on the value of the contract.

**528.310 Contract clause for work on a Government installation.**

Insert the clause at [552.228-5](#), Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

- (a) The contract amount is expected to exceed the simplified acquisition threshold; and
- (b) The contract will require work to be performed on Government property.

**528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.****528.311-1 Contract clause.**

Use the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

# CHANGE 33, JUNE 15, 2009

## PART 529—TAXES

*Sec.*

	<b>Subpart 529.1—General</b>		<b>Subpart 529.4—Contract Clauses</b>
529.101	Policy.	529.401	Domestic contracts.
	<b>Subpart 529.3—State and Local Taxes</b>	529.401-70	Purchases at or under the simplified acquisition threshold.
529.302	Application of State and local taxes to the Government.	529.401-71	Contracts for supplies and services usable by the DC Government.

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**PART 529—TAXES****Subpart 529.1—General****529.101 Policy.**

Action may not be taken on any matters involving taxes on Federal purchases or contracts without obtaining legal review. See ADM 5000.4A for the requirement to obtain legal review by the Office of General Counsel (OGC) for agency actions. See FAR 29.101 (b) through (d) for the type of tax-related issues that require legal review.

**Subpart 529.3—State and Local Taxes****529.302 Application of State and local taxes to the Government.**

If it has been determined that evidence of tax exemption is required, contracting officers shall follow the guidance as outlined on GSA Insite. Contracting officers shall input “Tax

Exemption Information” in the search tool and then select “Tax Exemption Information” from the results list for point of contact information and GSA’s tax exemption number.

**Subpart 529.4—Contract Clauses****529.401 Domestic contracts.****529.401-70 Purchases at or under the simplified acquisition threshold.**

Insert [552.229-70](#), Federal, State, and Local Taxes, in purchases and contracts estimated to exceed the micropurchase threshold, but not the simplified acquisition threshold.

**529.401-71 Contracts for supplies and services usable by the DC Government.**

Insert [552.229-71](#), Federal Excise Tax—DC Government, in solicitations and contracts that permit the District of Columbia Government to place orders.

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## **PART 530—COST ACCOUNTING STANDARDS ADMINISTRATION**

*Sec.*

### **Subpart 530.2—Subpart 530.2 CAS Program Requirements**

530.201-5      Waiver.

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**PART 530—COST ACCOUNTING STANDARDS ADMINISTRATION**

**Subpart 530.2—Subpart 530.2 CAS  
Program Requirements**

**530.201-5 Waiver.**

Submit waiver requests to the Senior Procurement Executive.

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## **PART 531—CONTRACT COST PRINCIPLES AND PROCEDURES**

*Sec.*

531.101      **Subpart 531.1—Applicability**  
Objectives.

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**PART 531—CONTRACT COST PRINCIPLES AND PROCEDURES**

**Subpart 531.1—Applicability**

**531.101 Objectives.**

The Senior Procurement Executive is the designee under FAR 31.101.

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# AMENDMENT 2012–01 MARCH 12, 2012

## PART 532—CONTRACT FINANCING

*Sec.*

### **Subpart 532.1—Non-Commercial Item Purchase Financing**

- 532.111 Contract clauses for non-commercial purchases.
- 532.112 Payment of subcontractors under contracts for non-commercial items.
- 532.112-1 Subcontractor assertions of nonpayment.

### **Subpart 532.4—Advance Payments for Non- Commercial Items**

- 532.402 General.
- 532.407 Interest.

### **Subpart 532.5—Progress Payments Based on Costs**

- 532.501 General.
- 532.501-2 Unusual progress payments.
- 532.502 Preaward matters.
- 532.502-2 Contract finance office clearance.
- 532.503-5 Administration of progress payments.
- 532.503-6 Suspension or reduction of payments.
- 532.503-9 Liquidation rates—alternate method.

### **Subpart 532.6—Contract Debts**

- 532.606 Debt determination and collection.

### **Subpart 532.7—Contract Funding**

- 532.700 Scope of subpart.
- 532.702 Policy.
- 532.703 Contract funding requirements.

### **Subpart 532.8—Assignment of Claims**

- 532.805 Procedure.
- 532.806 Contract clauses.

### **Subpart 532.9—Prompt Payment**

- 532.904 Determining payment due dates.
- 532.905 Payment documentation and process.
- 532.905-70 Final payment—construction and building service contracts.
- 532.908 Contract clauses.

### **Subpart 532.11—Electronic Funds Transfer**

### **Subpart 532.70—Authorizing Payment by Government Charge Card**

- 532.7002 Solicitation requirements.
- 532.7003 Contract clause.

### **Subpart 532.71—[Reserved]**

### **Subpart 532.72—Payments Under Contracts Subject to Audit**

- 532.7201 General.
- 532.7202 Submission and processing of invoices or vouchers.
- 532.7203 Action upon receipt of an audit report.
- 532.7204 Suspension and disapproval of amounts claimed.

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**PART 532—CONTRACT FINANCING****Subpart 532.1—Non-Commercial Item  
Purchase Financing****532.111 Contract clauses for non-commercial purchases.**

For contracts that include the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, the contracting officer shall provide the contractor with GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, to be used to make the certification required by FAR 52.232-5(c).

**532.112 Payment of subcontractors under contracts for non-commercial items.****532.112-1 Subcontractor assertions of nonpayment.**

If the contracting officer determines under FAR 32.112-1 that a contractor's certification of payment is inaccurate in any material respect, the contracting officer shall report the matter to the Office of Inspector General.

**Subpart 532.4—Advance Payments for  
Non-Commercial Items****532.402 General.**

The contracting officer shall prepare the findings and determinations required by FAR 32.402(e) in coordination with the contract finance office. The HCA approves the findings, determinations and authorization for advance payments.

**532.407 Interest.**

The contract finance office will give the contracting officer the interest rate to be charged on the unliquidated balance of advance payments.

**Subpart 532.5—Progress Payments Based on  
Costs****532.501 General.****532.501-2 Unusual progress payments.**

The HCA must approve or disapprove requests for "unusual" progress payments.

**532.502 Preaward matters.****532.502-2 Contract finance office clearance.**

Before providing for progress payments based on costs, the contracting officer shall request the Office of the Chief Financial Officer to provide advice and assistance about a contractor's financial condition and the adequacy of its accounting system and controls.

**532.503-5 Administration of progress payments.**

The contracting officer shall ensure that the contract finance office provides to the contracting officer:

- (a) The date and amount of each progress payment to a contractor; and
- (b) Written recommendations if findings warrant action by the Government.

**532.503-6 Suspension or reduction of payments.**

The HCA must approve any action recommended under FAR 32.503-6. Upon approval, the contracting officer shall request the contract finance office to suspend or reduce payments.

**532.503-9 Liquidation rates—alternate method.**

Reduction of the liquidation rates specified in paragraph (b) of FAR 52.232-16 may be made only with the contracting officer's approval after coordination with the contract finance office. Upon approval, the contracting officer shall request the finance office to reduce the rate.

**Subpart 532.6—Contract Debts****532.606 Debt determination and collection.**

(a) The contract finance office is responsible for the administration of debt collection pursuant to GSA directives, currently found in the Accounting Operations—Accounts Receivable and Credit and Finance Operations, and Related Activities Handbook (PFM P 4253.1).

(b) If the contracting officer determines that a debt in excess of \$100 is delinquent, he/she shall notify the applicable finance office for collection in accordance with the Debt Collection Improvement Act of 1996, and possibly forward the information to the Department of the Treasury's Financial Management Service for administrative offset and cross-servicing.

(c) If the contractor appeals the demand for payment pursuant to the Disputes clause of its contract, the contracting officer shall advise the Finance Office whether to suspend collection efforts pending resolution of the dispute.

**Subpart 532.7—Contract Funding****532.700 Scope of subpart.**

GSA fiscal regulations are in the Budget Administration Handbook (CFO 4251.4), Accounting Classification Handbook (CFO P 4240.1), and Accounting Operations—Voucher Examination Payment Handbook (CFO P 4252.1).

**532.702 Policy.**

GSA's contract funding policies are in compliance with the full funding policy at Part 2, Section 31.6, OMB-C A-11, published June 26, 2008.

**532.703 Contract funding requirements.**

(a) "Severable services" means services that are continuing and ongoing in nature—such as help-desk support, maintenance, or janitorial services—for which benefit is received each time the service is rendered.

(b) "Non-severable services" means work that results in a final product or end-item and for which benefit is received only when the entire project is complete, such as systems design, building conversion, or environmental study.

(c) Contracts for severable services may cross fiscal years as long as the period of performance (excluding options) is no more than 12 months. Contracts for goods or non-severable services are not similarly limited.

**Subpart 532.8—Assignment of Claims****532.805 Procedure.**

(a) When acknowledging receipt of the notice of assignment, the contracting officer shall notify the contractor that all future invoices or other requests for payment under the contract must specify the name and address of the assignee and include a notation that payments due thereunder have been duly assigned. The contracting officer must send a copy of the acknowledgment to the contract finance office.

(b) When payments under requirements or indefinite quantity contracts that are for the sole use of GSA have been assigned, the contracting officer shall provide all GSA offices that will place orders against the contract the name and address of the assignee that will receive amounts due under the contract. The notification should also state that the contracting officer requested the contractor to specify the name and address of the assignee on future invoices.

**532.806 Contract clauses.**

Insert the clause at [552.232-23](#), Assignment of Claims, in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders.

**Subpart 532.9—Prompt Payment****532.904 Determining payment due dates.**

Payment due dates for construction contracts are addressed at FAR 32.904(d). The following procedures apply to construction and building service contracts:

(a) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

(5) The agreed-upon dollar amount in a Deficiency Report, which is included in all applicable Operation and Maintenance (O&M) service contracts.

(b) When the contract is for the performance of building services, the contracting officer shall include the clause at [552.232-72](#), Final Payment Under Building Services Contracts.

(c) When the contract is for the performance of building services, the contracting officer shall include the clause at [552.232-72](#), Final Payment Under Building Services Contracts.

**532.905 Payment documentation and process.**

For contracts of the type shown in [532.7201](#)(a)(1) through (4):

(a) Contractors are to submit invoices or vouchers to the contracting officer for approval. Invoices must be annotated with the date of receipt, as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The contracting officer or designee must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer must make the required deduction, except as provided in [532.7203](#). Subject to [532.7201](#), the contracting officer must note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor and forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

(b) See GSAM [532.7203](#) for the handling of audit findings.

**532.905-70 Final payment—construction and building service contracts.**

The following procedures apply to construction and building service contracts:

(a) The Government shall pay the final amount due the Contractor under this contract after the documentation in the payment clauses of the contract is submitted. This includes the final release prescribed for construction at FAR 52.232-5, and for building services at GSAR 552.232-72.

(b) Contracting officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, except as provided in paragraph (c) of this section

(c) In cases where, after 60 days from the initial attempt, the contracting officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel.

(d) The amount of final payment must include, as appropriate, deductions to cover any of the following:

- (1) Liquidated damages for late completion.
- (2) Liquidated damages for labor violations.
- (3) Amount withheld for improper payment of labor wages.
- (4) The amount of unilateral change orders covering defects and omissions.

**532.908 Contract clauses.**

(a) GSA has a FAR deviation that allows this agency to use the clause at [552.232-1](#), Payments, in lieu of the clause at FAR 52.232-1, Payments.

(b) *General.* Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in paragraph (a)(5)(i) of the clause at FAR 52.232-25, Prompt Payment, the contracting officer must prepare a written justification explaining why a longer period is necessary. An official one level above the contracting officer must approve the justification. The time needed should be determined on a case-by-case basis, but the specified constructive acceptance period shall not exceed 30 days.

(c) *Stock, Special Order, and Schedules Programs.*

(1) GSA has obtained a FAR Deviation to authorize payment within 10 days of receipt of a proper invoice. The authority applies only to:

- (i) Orders placed by GSA under the referenced programs;
- (ii) That include FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment; and
- (iii) For which the order is placed, and the contractor submits invoices, using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is for commercial items and will include FAR 52.212-4, use the clause with its Alternate II. If the contract is not for commercial items, use the clause at [552.232-25](#), Prompt Payment, instead of FAR 52.232-25.

**Subpart 532.11—Electronic Funds Transfer**

[Reserved]

**Subpart 532.70—Authorizing Payment by Government Charge Card**

**532.7002 Solicitation requirements.**

(a) In solicitations for supplies and services, except FSS schedule solicitations, request offerors to indicate if they will accept payment by Governmentwide commercial purchase card. Identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract, on the cover page or in Section L of the solicitation.

(b) For FSS schedule contracts, identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Governmentwide commercial purchase card only for orders that do not exceed \$100,000 (see GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1)).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Governmentwide commercial purchase card, for example:

“If awarded a contract under this solicitation, the offeror agrees to accept payment by Governmentwide commercial purchase card for orders of:

_____ \$2,500 or less	_____ \$25,000 or less
_____ \$50,000 or less	_____ \$100,000 or less”

**532.7003 Contract clause.**

For indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Schedules, insert the clause at [552.232-77](#), Payment By Government Charge Card, if the contract will provide for payment by Government charge card as an alternative method of payment for orders. For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at [Part 538](#).

**Subpart 532.71—[Reserved]**

## **Subpart 532.72—Payments Under Contracts Subject to Audit**

### **532.7201 General.**

(a) The contracting officer should not approve an initial invoice or voucher before having consulted with the Assistant Inspector General for Auditing or the Field Audit Office regarding cost or other supporting data as required under:

- (1) Cost-reimbursement type contracts.
- (2) The cost-reimbursement portion of fixed-price type contracts.
- (3) Time and materials or labor-hour contracts.
- (4) Fixed-price contracts providing for any of the following:
  - (i) Progress payments based on costs.
  - (ii) Advance payments.
  - (iii) Guaranteed loans.
  - (iv) Cost-based Incentives or redetermination.

(b) Except for fixed-price contracts with redetermination where no price revision (upward or downward) is to be made, the contracting officer shall not approve the final payment invoice or voucher for contracts specified in [532.7201\(a\)](#) or the final payment or settlement of other contracts subject to audit prior to:

- (1) Receipt and review of the contract audit report; or
- (2) Consultation with the Assistant Inspector General for Auditing or the Field Audit Office if no audit is to be conducted.

### **532.7202 Submission and processing of invoices or vouchers.**

(a) Contractors should be required to submit invoices or vouchers to the contracting officer. The date on which the contracting officer receives the invoice or voucher will be used to determine interest penalties for late payments. The contracting officer, or designee, must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract.

If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer is responsible for making the required deduction, except as provided in [532.7203](#).

(b) Subject to [532.7201](#), the contracting officer should note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor, then forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

### **532.7203 Action upon receipt of an audit report.**

Audit reports will be furnished to the contracting officer and Field Audit Office, with a copy to the appropriate contract finance office. Upon receipt of an audit report, pursuant to contract terms, the contracting officer is responsible for determining the allowability of all costs covered by audit. While the auditor's recommendations should be given full consideration, the contracting officer must make an independent business judgment before taking any action based on the audit report. If there is doubt or question about the auditor's recommendations, the contracting officer is required to follow the audit resolution procedures in GSA Order ADM P 2030.2C, Audit Resolution and Followup System, Chapter 4, paragraph 3.

### **532.7204 Suspension and disapproval of amounts claimed.**

(a) The contracting officer shall notify the appropriate contract finance office in writing when amounts claimed for payment are—

- (1) Suspended;
- (2) Disapproved as not being allowable according to contract terms; or
- (3) Not allocable to the contract.

(b) The contracting officer's notice forms the basis for the contract finance office to issue GSA Form 533, Administrative Difference Statement. Finance will attach a copy of GSA Form 533 to each copy of the invoice or voucher from which the deduction has been made, and will include an explanation of the deduction.

## AMENDMENT 2008-03 JANUARY 8, 2009

### PART 533—PROTESTS, DISPUTES, AND APPEALS

*Sec.*

#### **Subpart 533.1—Protests**

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**PART 533—PROTESTS, DISPUTES, AND APPEALS**

**Subpart 533.1—Protests**

**533.101 Definitions.**

“Agency Protest Official for GSA” means the Central Office official in the Office of the Chief Acquisition Officer (OCAO) designated to independently review and decide procurement protests filed with GSA when the protester requests an agency review by other than the contracting officer.

“Deciding official” means the person chosen by the protester to decide the agency protest; it may be either the contracting officer or the Agency Protest Official for GSA.

**533.102 General.**

Unless otherwise authorized by the Office of General Counsel (OGC), OGC contacts anyone outside of GSA involved in protests of GSA contract actions filed with the Comptroller General or in a Federal court.

**533.103 Protests to the agency.**

**533.103-1 Filing a protest.**

(a) Any protester filing an agency protest has the choice of requesting either that the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest. If a party requests a review at a level above the contracting officer, the Agency Protest Official will decide the protest. The decision by the Agency Protest Official for GSA is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official for GSA will not consider an appeal of the contracting officer’s decision on an agency protest.

(b) If an agency protest is filed, the deciding official uses the procedures in FAR 33.103 and this section to resolve the protest. The deciding official will provide a fair and quick review of any protest filed with the agency.

(c) The filing timeframes in FAR 33.103(e) apply. An agency protest is filed when the complete protest is received at the location the solicitation designates for serving protests. GSA’s hours of operation are 8 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

(d) The protest must meet all the following conditions:

(1) Include the information required by FAR 33.103(d)(2).

(2) Indicate that it is a protest to the agency.

(3) Be filed in writing with the contracting officer.

(4) State whether the protester chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest does not include the protester’s choice, then the contracting officer will decide the protest (see paragraph (a) of this subsection).

(e) The following procedures apply to information submitted in support of or in response to an agency protest:

(1) GSA procedures do not provide for any discovery.

(2) The deciding official has discretion to request additional information from either the agency or the protester, orally or in writing, as may be necessary to render a timely decision on the protest. However, protests are normally decided on the basis of information initially provided by the protester and the agency.

(3) To the extent permitted by law and regulations, the parties may exchange relevant information.

(4) The agency must make a written response to the protest within ten days unless another date is set by the deciding official.

(5) The agency must also provide the protester with a copy of the response on the same day it files the protest response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it should identify and provide the information to the deciding official for *in camera* review.

(f) A protester may represent itself or be represented by legal counsel. GSA will not reimburse the protester for any legal fees related to the agency protest.

(g) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest forum outside of GSA.

**533.103-2 Deciding a protest.**

(a) When the Agency Protest Official is the deciding official:

(1) The contracting officer must ensure that the Agency Protest Official and assigned legal counsel receive a copy of the materials served on the contracting officer within one business day after the filing date.

(2) The Agency Protest Official must conduct a scheduling conference with the protester and assigned agency legal counsel as soon as practicable after the protest is filed. The scheduling conference will establish the Agency Protest Official’s plan to develop an appropriate record to assist his/her decision making. The Agency Protest Official, in his/her discretion, may ask the parties to participate in an oral presentation and/or to submit other written material related to the protest issues. In the event the Agency Protest Official deems it necessary to have an oral presentation following submission of the agency’s written response, it should be limited to

resolving remaining issues of material fact necessary for resolution of the protest, as identified in advance by the Agency Protest Official. In such a case, the Agency Protest Official will determine whether a further written response from both parties is required following the oral conference. Other parties (e.g., representatives of the program office) may attend at the discretion of the Agency Protest Official.

(3) If the Agency Protest Official sustains a protest, the contracting officer must, within thirty (30) days after receiving the protest decision, fully implement the recommended relief.

(b) Conferences and presentations may take place either by telephone or in person.

(c) If GSA receives an agency protest before contract award, the contracting officer shall not make award unless the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if GSA receives an agency protest within ten (10) days after award or within five (5) days after a debriefing date offered to the protester under a timely debriefing request under FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend contract performance unless the HCA makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(d) The deciding official must obtain legal review of all draft protest decisions as required by GSA Order, Legal Services (ADM 5000.4A).

(e) The decision of the deciding official must be in writing, dated, and include the following information:

(1) Whether the protest was denied, sustained, or dismissed; and

(2) The rationale for the decision.

(f) If the deciding official sustains the protest, relief may consist of any of the following recommendations:

(1) Terminating the contract.

(2) Reopening the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Reevaluating the offers or bids and awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(6) Other action determined appropriate by the deciding official.

#### 533.104 Protests to GAO.

(a) *General procedures.* (1) The expeditious and timely handling of Government Accountability Office (GAO) protests is a GSA priority.

(2) As soon as GAO receives a protest filed against GSA, it informs the GSA Office of General Counsel (OGC). OGC will —

(i) Formally request a Statement of Fact and Position and compilation of documents (see FAR 33.104(a)(3)) from the contracting officer;

(ii) Notify the contracting officer of the designated protest counsel (the GSA attorney responsible for handling the case);

(iii) Provide GAO with the name, title, and telephone number of one or more GSA officials who may be contacted by GAO regarding the protest.

(3) If the contracting activity receives a protest before being informed of it by OGC, he/she must immediately forward it to OGC.

(4) The designated protest counsel is responsible for preparing a report to GAO, based upon the Contracting Officer's Statement of Fact and Position.

(5) The Contracting Officer's Statement of Fact and Position shall be reviewed by designated protest counsel and the contracting director.

(6) The Contracting Officer's Statement of Fact and Position and the compilation of documents under FAR 33.104(a)(3)(ii) are due to the designated protest counsel within 10 business days after receipt of the protest by the contracting officer. The time period may be reduced if the GAO so decides. If the contracting officer cannot complete the Statement of Fact and Position and the compilation of documents within the time, the contracting officer must promptly telephone the designated protest counsel with the reason for the delay. The designated protest counsel has the discretion to authorize or disapprove the request; if the extension would delay submission of GSA's report to GAO beyond 30 days from receipt of the protest, the designated protest counsel must first consult with GAO.

(7) Once the Statement of Fact and Position has been sent to the designated protest counsel, the contracting officer and Regional Counsel are responsible for promptly informing the designated protest counsel of any later developments that may affect the case.

(8) The contracting officer is responsible for informing all interested parties that a GAO protest has been filed. (See FAR 33.104(a)(2).) This should be done in writing using a method that provides evidence of receipt.

(b) *Competition in Contracting Act (CICA) stay overrides.*

GSA requires the contracting officer to prepare the written determination and findings (D&F) under FAR 33.104(b) and (c) and obtain the concurrence of the Associate General Counsel (and Regional Counsel if a regional procurement) before submitting the D&F for the HCA's approval and signature. Once the D&F is signed, the designated protest counsel must inform GAO of the findings and intention to award, or authorize contract performance, before GSA can actually take the intended action. Copies of the decision must be distributed in accordance with FAR 33.104(d).

(c) *Content of Report to GAO.* (1) *All reports.* In addition to the requirements of FAR 33.104(a)(3), the GSA report contains all the following:

- (i) GAO protest number (GAO case file number).
- (ii) Solicitation or contract number.
- (iii) Full corporate name of the protesting organization and other firms involved.
- (iv) Statement indicating if the protest was filed before or after award.

(2) *Report for protest after award.* If the protest is filed after award, the report also includes:

- (i) Identity of the awardee.
- (ii) Date of award.
- (iii) Contract number.
- (iv) Date and time of bid opening (including a statement if the date of bid opening was extended by amendments).
- (v) Total number of offerors.
- (vi) Complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken).
- (vii) Other relevant documents believed helpful in determining the validity of the protest. This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, *e.g.*, Tab A, Exhibit 1, etc.

(d) *Notice to GAO.* OGC concurs on the HCA's report to the Comptroller General if GSA has decided not to comply with GAO's recommendation.

**533.105 Court of Federal Claims Protests.**

(a) Upon receipt of either a copy of a protest filed in the Court of Federal Claims (COFC) or a telephone call from the Department of Justice (DOJ) advising of the filing of a COFC protest, the contracting officer shall immediately notify and/or send a copy of any filed documents received to OGC.

(b) OGC is responsible for communicating and coordinating with DOJ regarding defense of any COFC protest. The contracting officer shall provide information and support as directed by OGC, including compilation of necessary documents and other materials.

**Subpart 533.2—Disputes and Appeals**

**533.209 Suspected fraudulent claims.**

In GSA, the agency official responsible for investigating fraud is the Office of Inspector General.

**533.211 Contracting officer's decision.**

The contracting officer's written decision must include the paragraph at FAR 33.211(a)(4)(v). The contracting officer shall state in the decision that a contractor's notice of appeal to the Civilian Board of Contract Appeals (CBCA) should include a copy of the contracting officer's decision.

**533.212 Contracting officer's duties when an appeal is filed.**

**533.212-1 General.**

(a) The contractor may elect to appeal the contracting officer's decision by filing a notice of appeal with the Civilian Board of Contract Appeals (CBCA) or by filing suit in the United States Court of Federal Claims (COFC). In cases brought before the CBCA, GSA is represented by the GSA Office of General Counsel (OGC). In cases brought before the COFC, GSA is represented by the Department of Justice (DOJ), with the assistance of OGC.

(b) When a case is brought before the CBCA or the COFC, OGC will notify the contracting officer of the designated litigation counsel (the GSA attorney responsible for handling the case). The contracting officer shall provide assistance to designated litigation counsel as specified in this section or as otherwise requested by designated litigation counsel.

(c) Notwithstanding the filing of an appeal, the contracting officer retains existing authorities with respect to the administration of the contract. However, the contracting officer is not authorized to represent GSA before the CBCA or the COFC or to an attorney representing the contractor. If the contracting officer is contacted by an attorney for the contractor, the contractor's attorney must be referred to GSA's designated litigation counsel.

(d) If a contractor appeals a decision that has been deemed to be denied in accordance with the Contract Disputes Act (CDA), the CBCA or COFC may require the contracting officer to issue a decision in accordance with the CDA at 41 U.S.C. §605.

**533.212-2 Procedures when an appeal is filed.**

(a) *Timeliness.* If the contracting officer believes that the appeal is untimely filed, either at the CBCA or COFC, the contracting officer shall immediately transmit to designated litigation counsel copies of documentary evidence related to timeliness, including a copy of the final decision and certified mail receipt.

**(b) CBCA Appeal File.**

(1) When an appeal is filed before the CBCA, the contracting officer shall prepare the file of documentary exhibits required in the Board's Rules of Procedure at <http://www.cbca.gsa.gov>, in accordance with the Board's rules governing the Appeal File.

(2) Generally, the Appeal File shall include all documents referenced in and supporting the agency's position, including, the contract, the claim, and the contracting officer's decision.

(3) The contracting officer should consult with the counsel to obtain general assistance in preparing the Appeal File, and consult with designated litigation counsel to determine requirements specific to the appeal, including possible electronic submission of the Appeal File. If the contract is voluminous and the dispute pertains only to a discrete portion of the contract, the contracting officer should consult with designated litigation counsel to determine whether inclusion of a portion of the contract is acceptable.

(4) In preparing the Appeal File, the contracting officer must adhere to the following particular requirements:

(i) The exhibits must be placed in a 3-ring binder(s), with numbered tabbed division sheets separating each exhibit.

(ii) The exhibits must be assembled in chronological order, with the oldest exhibit coming first.

(iii) If a multi-page exhibit lacks internal pagination, page numbering must be added, by hand, label, stamp or other means.

(iv) An index must be prepared including a brief description of each exhibit, the date of the exhibit, and the tab number corresponding to the exhibit.

(5) The contracting officer shall submit the proposed Appeal File, together with an electronic version of the index, to designated litigation counsel within 20 days of receiving notice of appeal, or shorter, if notified that accelerated procedures apply. Should the volume of exhibits or other factors require additional time for preparation of the Appeal File, the contracting officer should immediately notify designated litigation counsel in order that an extension may be obtained.

(6) After designated litigation counsel has reviewed the proposed Appeal File and index, the contracting officer shall make revisions as requested. Unless otherwise requested, the contracting officer shall produce five copies of the Appeal File and transmit four copies to designated litigation counsel.

**(c) COFC Litigation Report.**

(1) When a case is filed at the COFC, the agency is required to furnish a litigation report to DOJ. The contracting officer shall furnish all necessary information to designated litigation counsel for preparation of the litigation report.

(2) At a minimum, the information to be furnished shall include—

(i) A narrative of the factual background underlying the dispute;

(ii) A copy of the claim and the contracting officer's decision;

(iii) Copies of documents related to the dispute, including copies of documents referenced in the claim or contracting officer's decision;

(iv) Name and contact information for GSA and other personnel involved in the dispute.

(d) *Answer to Complaint.* When an appeal is filed at the CBCA or COFC, the contractor is required to file a formal pleading called a Complaint, which sets forth the allegations of fact upon which the claim is based. The Government, except for the situation discussed below, is obligated to respond to the Complaint by admitting, denying, or otherwise responding to the contractor's allegations in a formal pleading called the Answer. The contracting officer shall assist designated litigation counsel in the drafting of the Answer by advising whether the contractor's allegations of fact should be admitted or denied. If a response to an allegation in the complaint requires information in the possession of other GSA personnel, the contracting officer shall conduct sufficient research reasonably necessary in order to form a belief as to the truth of the allegation. If the information necessary to form a belief as to the truth of the allegation is not in GSA's possession, the contracting officer shall so advise designated litigation counsel. In some cases, the Government may respond to the Complaint by filing a motion to dismiss in lieu of filing an Answer. Designated litigation counsel will advise the contracting officer if a motion to dismiss will be filed.

(e) *Discovery.* After the complaint and answer are filed with the CBCA or COFC, each party will usually commence discovery. The contracting officer shall assist designated litigation counsel in responding to all discovery requests, including providing information in response to interrogatories, identifying and locating requested documents, and assisting with production of witnesses for depositions.

**533.212-3 Preservation of Evidence.**

When an appeal is filed, the contracting officer is required to ensure that evidence in his or her control related to a dispute is preserved. In addition to physical documentation, such evidence includes electronic data stored on agency computer systems. The contracting officer shall assist designated litigation counsel with preservation of evidence by identifying relevant files containing physical documentation, including not only the contract file but files containing information related to the dispute that are maintained by other GSA organizations. The contracting officer shall also assist designated litigation counsel in identifying other GSA personnel whose electronic data, including email, word processing documents, spreadsheets, and other electronic files may include information relating to the dispute.

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## **533.212-4 Settlement.**

Notwithstanding the contracting officer's claim of settlement authority, the contracting officer is not authorized to settle a case brought before the CBCA or COFC. Only OGC may authorize settlement of a case before the CBCA or concur on behalf of GSA to the settlement of a case before the COFC, subject to internal OGC approval requirements. The contracting officer shall provide requested assistance to designated litigation counsel in the negotiation, review, and approval of settlements.

## **533.214 Alternative dispute resolution (ADR).**

It is GSA's policy to use ADR to effect the prompt, efficient and just resolution of disputes. The contracting officer should refer to GSA Order CSL P 5050.1A, Using Alternative Dispute Resolution Techniques, and consult with designated litigation counsel on the use of ADR.

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## **SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**

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**CHANGE 19 FEBRUARY 6, 2008**  
**PART 534—MAJOR SYSTEM ACQUISITION**

*Sec.*

**Subpart 534.2—Earned Value Management  
Systems.**

534.201	Policy.
534.201-70	Procedures.
534.202	Integrated Baseline Reviews (IBR).

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**PART 534—MAJOR SYSTEM ACQUISITION****Subpart 534.2—Earned Value Management Systems.****534.201 Policy.**

(a) *Policy.* This Subpart provides policies and procedures for incorporating an Earned Value Management System (EVMS) (see FAR 2.101) in GSA contracts, for the exclusive use of GSA, pursuant to OMB Circular A-11, Part 7. It is a results-based tool that can also provide for the preclusion of possible problems or concerns during the project.

(b) *Definition of major acquisition.* OMB Circular A-11, Part 7, Capital Planning Guide Supplement, refers to the definition of “major acquisition” as a capital project that requires special management attention because of its: (1) importance to an agency’s mission; (2) high development, operating, or maintenance costs; (3) high risk; (4) high return; or (5) significant role in the administration of an agency’s programs, finances, property, or other resources.

(c) *Applicability.* It is GSA policy to define major acquisition for the purposes of EVMS as follows:

(1) *GSA acquisitions valued at \$20 million or more.* Cost-reimbursement or incentive contracts and orders (see FAR subparts 16.3 and 16.4) shall require a formally validated EVMS (in accordance with ANSI/EIA-748-A Earned Value Management System Acceptance Guide (see 534.201(d) below)). EVMS requirements shall be included in commercial and non-commercial contracts, MAS orders, and GWAC orders when the requirements entail developmental or modernization work, as defined by OMB’s definition of Developmental/Modernization/Enhancement in A-11, Part 7. Firm-fixed price, time-and-materials, and labor hour contracts and orders that are solely for commercial items or services, as defined at FAR 2.101, should not normally include EVMS.

(2) *GSA acquisitions valued at less than \$20 million.* EVMS requirements apply for contracts and orders of any type valued at less than \$20 million if the program manager and contracting officer determine that EVMS is needed in that instance. This rationale shall be documented in the acquisition plan for the procurement.

(d) *Industry Guides.* Earned Value Management is based upon the application of an international standard, ANSI/EIA-748-A (June 2007). Specific EVMS Guides approved for use by industry and U.S. Government for implementation of various aspects of ANSI/EIA-748-A are maintained by the National Defense Industrial Association (NDIA). These Guides include:

- (1) EVMS Application Guide.
- (2) EVMS Surveillance Guide.
- (3) EVMS Intent Guide.

(4) EVMS System Acceptance Guide.

(5) Program Managers’ Guide to the Integrated Baseline Review Process.

(6) Integrating Risk Management with Earned Value Management.

(e) The Guides can be found at <http://www.ndia.org/evm>.

**534.201-70 Procedures.**

(a) *General.* Major acquisitions are designated by agency planners in coordination with OMB. All major acquisitions should have a complete and approved acquisition plan, a performance-based work statement, and a performance-based management system. The contracting officer should coordinate with the program manager to determine whether the program has been designated a major acquisition and, if so, to ensure that the following have been adequately addressed in order to apply EVMS properly.

(b) *Adequate funding.* Before proceeding with the procurement, the contracting officer should verify that the program budget contains sufficient funding to conduct required EVMS reviews and the Integrated Baseline Review (IBR) (see FAR 34.202 and appropriate NDIA Guide).

(c) *Contract work breakdown structure.* The program manager is responsible for preparing the Contract Work Breakdown Structure (CWBS) to be included in the work statement. The reporting of progress, performance, and engineering evaluations, as well as financial data and variance analysis, is based on the CWBS.

(d) *Requirements Package language.* When a proposed acquisition meets the requirements for EVM applicability, the requirements package must address the Contract Work Breakdown Structure (CWBS) and the performance schedule, and it must include in the work statement the requirement for EVMS. Sample language is provided below and should be modified to fit particular program requirements.

**(1) EVMS statement for work statement.**

“The Contractor must utilize an EVMS for planning, controlling, and integrating project scope, schedule, and resources. The Contractor must provide documentation that its EVMS is compliant with the Standard. If the Contractor proposes to use an EVMS or similar system that is not compliant, the Contractor must submit with its proposal a comprehensive plan to develop and implement a compliant EVMS.”

(2) *Contract Work Breakdown Structure (CWBS).* The program manager is responsible for preparing a preliminary CWBS that is compatible with the Program Work Breakdown Structure (PWBS) and for including the CWBS in the requirements package. When determining the appropriate reporting level, the program manager should extend the CWBS only to the level that allows visibility into those high-cost, high-risk, or specific areas critical to the success of the program. The

CWBS should not specify an excessive number of lower-level elements because it may impinge on the contractor's normal method of operations or result in excessive reporting. Sample CWBS language follows:

"The Contractor must extend the preliminary CWBS specified in the solicitation to meaningful management or product-oriented lower levels that reflect the way it does business. The Contractor must prepare and deliver a CWBS Index and Dictionary. The Contractor has complete flexibility in extending the CWBS, but it must ensure that the CWBS is reconcilable with the Program WBS and that reporting of progress, performance, and engineering evaluations, as well as financial data and variance analysis, is based on the CWBS. The CWBS must be extended to the necessary level to support development of a logical and efficient sequence of tasks designed to accomplish the effort described in the Contract."

(3) *Performance Schedule*. To ensure that the management control system is integrated, the program manager is required to define requirements in the work statement for a schedule showing the sequence of events and the critical path for program milestones or deliverables. Offerors should be required to use this schedule in preparing their proposals, and the performance schedule will ultimately result in an Integrated Master Schedule after completion of the IBR. Sample work statement language follows:

"The Contractor must establish a performance schedule that describes in sufficient detail the sequence of events needed to accomplish the requirements of the contract. The performance schedule must also reflect congruent CWBS elements. The Contractor must ensure the performance schedule portrays an integrated schedule plan to meet the milestones and delivery requirements of the contract. The performance schedule also must identify the program's critical path. The performance schedule is to be constructed using a software tool compatible with standard scheduling software. The Contractor must submit the performance schedule at the post-award conference and an updated version monthly in program status reviews."

(e) *Acquisition planning*. See FAR 7.105(b)(3) and (b)(10) for required acquisition planning for EVMS.

(f) *Reporting*. Contractors are required to submit EVM reports on a monthly basis. These reporting requirements shall be included as contract data deliverables. The work statement should require the contractor to use appropriately tailored value information as the basis for preparing the monthly EVM reports and to integrate and present cost, schedule, and technical performance reviews.

#### **534.202 Integrated Baseline Reviews (IBR).**

GSA policy prohibits the conduct of pre-award Integrated Baseline Reviews (IBR). Therefore, when an Integrated Baseline Review is conducted, it shall be conducted after award.

## **PART 535—RESEARCH AND DEVELOPMENT CONTRACTING**

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## PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

*Sec.*

### **Subpart 536.1—General**

- 536.101 Applicability.
- 536.102 Definitions.

### **Subpart 536.2—Special Aspects of Contracting for Construction**

- 536.201 Evaluation of contractor performance.
- 536.202 Specifications.
- 536.203 Government estimate of construction cost.
- 536.204 Disclosure of the magnitude of construction projects.
- 536.213 Special procedures for sealed bidding in construction contracting.
- 536.213-3 Invitations for bids.
- 536.213-370 Bids that include alternates.
- 536.213-371 Bids that include options.
- 536.213-372 Bids that include both alternates and options.
- 536.270 Exercise of options.
- 536.271 Project labor agreements.

### **Subpart 536.5—Contract Clauses**

- 536.570 Supplemental provisions and clauses.
- 536.570-1 Definitions.
- 536.570-2 Authorities and limitations.
- 536.570-3 Specialist.
- 536.570-4 Basis of award—construction contract.
- 536.570-5 Working hours.
- 536.570-6 Use of premises.
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- 536.570-9 Shop drawings, coordination drawings, and schedules.
- 536.570-10 Samples.
- 536.570-11 Heat.
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### **Subpart 536.6—Architect-Engineer Services**

- 536.602 Selection of firms for architect-engineer contracts.
- 536.602-1 Selection criteria.
- 536.602-2 Evaluation boards.
- 536.602-3 Evaluation board functions.

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## PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 536.1—General

#### 536.101 Applicability.

If a requirement in this part is inconsistent with a requirement in another GSAR part, this part takes precedence.

#### 536.102 Definitions.

“Construction activity” means the organizational level of the agency that has authority and responsibility for the architectural, engineering, and other technical or administrative aspects of design and construction.

“Statutory cost limitations” means the cost limits included in the agency’s statutory authorization or annual appropriations act (by law).

### Subpart 536.2—Special Aspects of Contracting for Construction

#### 536.201 Evaluation of contractor performance.

(a) The construction activity must prepare the performance report required by FAR 36.201(a).

(b) Each Regional construction activity must establish an evaluation report file. The file may be either automated or manual. It must implement procedures for all the following:

- (1) Maintaining alphabetically the evaluation reports.
- (2) Cross referencing all names under which a contractor does business with GSA.
- (3) Ensuring that fully qualified personnel with knowledge of the contractor’s performance prepare and review the evaluation reports.

#### 536.202 Specifications.

Under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, the Environmental Protection Agency issued rules in 40 CFR part 247 allowing the use of certain waste by-products as substitutes for energy-intensive raw materials. These by-products are known as recovered materials. EPA’s rules state that agencies should use construction products containing recovered materials to the maximum extent feasible if technical specifications allow their alternative use. RCRA does not require the use of products containing recovered materials if they will not meet performance requirements or their use would be unsatisfactory for technical reasons.

#### 536.203 Government estimate of construction cost.

(a) A copy of the independent Government estimate must be submitted to you before the date and time for bid opening or the date for receipt of proposals. (See paragraphs [\(b\)](#) and [\(c\)](#).)

(b) Before releasing a solicitation amendment that may affect price, a revised Government estimate must be provided.

(c) You may disclose cost figures in the Government estimate during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price. The overall amount of the Government estimate cannot be disclosed before award. After award, you may reveal the independent Government estimated price, upon request, to those firms or individuals who submitted proposals.

(d) Use the Government estimate to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness of prices.

#### 536.204 Disclosure of the magnitude of construction projects.

For construction projects over \$10,000,000, show the magnitude in ranges having increments of \$10,000,000 (e.g., \$25,000,000 to \$35,000,000). You may use a multiple of \$10,000,000 (e.g., \$70,000,000 to \$100,000,000), but the lower figure must be at least half of the higher figure.

#### 536.213 Special procedures for sealed bidding in construction contracting.

##### 536.213-3 Invitations for bids.

##### 536.213-370 Bids that include alternates.

(a) The base bid must include all features essential to a sound and adequate building design. If it appears that funds available for a project may be insufficient to include all desired features in the base bid, you may issue a solicitation for a base bid and include one or more alternates in the order of priority. Use alternates only if they are clearly justified and involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only “add” alternates.

(b) Before opening bids that include alternates, determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. The amount is the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to award to the low bidder if the following condition is met: the award amount of the base bid plus the combination of alternate items does not exceed the amount offered for the base bid and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the alternates to be used.

**536.213-371 Bids that include options.**

(a) Subject to the limitations in (c) below, you may include options in contracts if it is in the Government's interest.

(b) The appropriate use of options may include, but is not limited to, any of the following:

(1) If additional work is anticipated but funds are not expected to be available at the time of award, and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) If fixed building equipment, e.g. elevators or escalators, will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) You must not use options under any of the following conditions:

(1) The prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded.

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) Solicitations must state whether the basis of award is inclusive or exclusive of the options. Before issuing a solicitation that includes evaluated options, you must determine that there is reasonable certainty that funds will be made available to permit exercise of the option.

**536.213-372 Bids that include both alternates and options.**

(a) Solicitations may include both alternates and options if the conditions in [536.213-370](#), Bids that include alternates, and [536.213-371](#), Bids that include options, are satisfied. In these solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and the alternates, in the order of priority listed in the solicitation, that provide the most work features within the funds available at bid opening, plus all options designated to be evaluated.

(b) The basis of award may require the evaluation of options associated with alternates if the related alternate is selected.

(c) Before opening bids that include both alternates and options, determine, and record in the contract file, the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options plus the alternate items does not exceed the amount offered for the base bid, the evaluated options, and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation.

**536.270 Exercise of options.**

(a) If exercising an option, notify the contractor, in writing, within the time period specified in the contract.

(b) Exercise options only after determining that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(c) Before exercising an option, you must determine that the action complies with the option's terms and this section's requirements. Include your written determination in the contract file.

(d) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and [517.207](#)).

**536.271 Project labor agreements.**

(a) *Authority.* This subpart implements the Presidential memorandum of June 5, 1997, on using project labor agreements (PLAs) on Federal construction projects. The Presidential memorandum authorizes executive departments and agencies to require PLAs on large and significant construction projects for facilities to be owned by a Federal department or agency.

(b) *Applicability.* These policies and procedures apply to all GSA activities authorized to award contracts for construction of facilities to be owned by a Federal department or agency. You may use a PLA in leasehold arrangements, Federally funded projects, and other appropriate circumstances.

*(c) Definitions.*

“Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. The terms buildings, structures, or other real property are defined further in Federal Acquisition Regulation (FAR) 36.102.

“Labor organization” means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, and any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization (42 U.S.C. 2000e(d)).

“Large and significant project” means a Federal construction project with a total cost to the Federal Government of more than \$5 million.

“Project Labor Agreement” (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

*(d) Policy.* (1) You may, on a project-by-project basis, use a PLA on a large and significant project when both of the following conditions apply:

(i) A PLA will advance the Government's procurement interests.

(ii) No laws that apply to the specific construction project preclude the use of the PLA.

(2) Do not require any contractor to enter into a PLA with any particular labor organization.

(3) The use of a PLA is not intended to create any right or benefit, substantive or procedural, enforceable by a nonfederal party against the United States, its departments, and agencies, its officers or employees, or any other person.

*(e) Procedures.* (1) As part of procurement planning for construction projects with a total estimated cost to the Federal Government of more than \$5 million, you may consider requiring a PLA.

(2) To require a PLA, you must determine whether use of a PLA will advance the Government's procurement interests in all the following areas:

(i) Cost, efficiency, and quality.

(ii) Promoting labor-management stability.

(iii) Promoting compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters.

(3) In making the determination required by paragraph (b) of this section, consult with the agency project or program manager and obtain guidance from the Agency Labor Advisor and assigned legal counsel. You should consider the following factors:

(i) Whether past experience with construction projects in the location where the project will be performed indicates that a PLA will be effective.

(ii) Whether delays in performance of the construction contract would have significant adverse impact on the mission of the agency or operation of the installation or facility.

(iii) Whether any law applies to the specific construction project that would impede use of a PLA.

(iv) Whether the labor organizations in the area can provide a reliable source of skilled, experienced building trades workers in all crafts needed on the job site for the project's duration (taking into consideration other major construction work in the area).

(v) Whether the Government can benefit from uniform work rules and working conditions and established procedures for resolving labor disputes, no strike/no lock-out protections.

(vi) Whether the Government can benefit from increased stability and labor peace that derives from greater labor-management cooperation.

(vii) Whether the requirements for a PLA will unreasonably restrict competition.

(viii) Other relevant information.

(4) Document the rationale supporting your decision to require a PLA in the contract file.

(5) Provide the following information to the Agency Labor Advisor (GSA Acquisition Policy Division (MVP)):

(i) A brief description of the project.

(ii) The estimated cost.

(iii) A copy of the document supporting your decision to require a PLA.

(iv) A copy of the solicitation.

## Subpart 536.5—Contract Clauses

### 536.570 Supplemental provisions and clauses.

#### 536.570-1 Definitions.

Insert [552.236-70](#), Definitions, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

#### 536.570-2 Authorities and limitations.

Insert [552.236-71](#), Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

#### 536.570-3 Specialist.

Insert , Specialist, in solicitations and contracts for construction if the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

#### 536.570-4 Basis of award—construction contract.

(a) Insert a provision substantially the same as [552.236-73](#), Basis of Award—Construction Contract, in solicitations for fixed-price construction contracts except if any of the following conditions apply:

- (1) The solicitation requires the submission of a lump-sum bid only.
  - (2) The solicitation is for an indefinite quantity contract.
  - (3) The contract amount is not expected to exceed the simplified acquisition threshold.
- (b) Instructions for use.

If the solicitation requests the submission of a...	Then use the...
(1) Base bid and unit prices	Basic provision
(2) Base bid and options	Provision with its Alternate I.
(3) Base bid and alternates	Provision with its Alternate II
(4) Base bid, alternates, and options	Provision with its Alternate III

#### 536.570-5 Working hours.

Insert [552.236-74](#), Working Hours, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

#### 536.570-6 Use of premises.

Insert [552.236-75](#), Use of Premises, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

#### 536.570-7 Measurements.

Insert [552.236-76](#), Measurements, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

#### 536.570-8 Specifications and drawings.

Insert the clause at [552.236-77](#), Specifications and Drawings, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

#### 536.570-9 Shop drawings, coordination drawings, and schedules.

Insert the clause at [552.236-78](#), Shop Drawings, Coordination Drawings, and Schedules, in solicitations and contracts if construction is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

#### 536.570-10 Samples.

Insert the clause at [552.236-79](#), Samples, in solicitations and contracts for construction if the technical sections of the contract require the submission and approval of samples.

#### 536.570-11 Heat.

Insert the clause at [552.236-80](#), Heat, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

#### 536.570-12 Use of equipment by the Government.

Insert the clause at [552.236-81](#), Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings if it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

#### 536.570-13 Subcontracts.

Insert [552.236-82](#), Subcontracts, in solicitations and contracts for construction if the contract amount is expected to exceed the simplified acquisition threshold.

#### 536.570-14 Requirement for a project labor agreement.

Insert a clause substantially the same as [552.236-83](#), Requirement for a Project Labor Agreement, in solicitations and contracts that will require a project labor agreement.



## Subpart 536.6—Architect-Engineer Services

### 536.602 Selection of firms for architect-engineer contracts.

#### 536.602-1 Selection criteria.

(a) FAR 36.602-1 requires that agencies include “location in the general geographical area of the project and knowledge of locality of the project” as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5 percent of the total weight of all evaluation criteria. In order to receive the maximum score for this factor, the architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602-1(a)(5), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(b) The public announcement (Commerce Business Daily notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure.

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program must apply the geographical evaluation criteria in the second phase.

(d) The public announcement (Commerce Business Daily notice) must provide the number of calendar days the architect-engineer of record has to establish a production capability within the general geographical area of the project. You may allow the architect-engineer of record up to 45 calendar days after contract award to establish this production capability.

#### 536.602-2 Evaluation boards.

(a) Architect-engineer evaluation board members must be experts in the fields of architecture, engineering or related design professions, such as landscape architecture, urban design and interior design, except as provided in [536.602-2\(c\)\(5\)](#). Board members must also collectively have expertise in construction, government, and related acquisition matters.

(b) The majority of board members must be GSA employees. Other members may include other Federal agency employees or members of the GSA National Register of Peer

Professionals who are private sector practitioners of architecture, engineering or related design professions.

(c) Evaluation boards must not exceed five (5) voting members. If fewer, the board must have an odd number of voting members. The voting members of the evaluation board shall include:

(1) One (1) highly qualified architect or a related design professional employed by GSA.

(2) One (1) highly qualified engineer employed by GSA.

(3) One (1) representative of the Chief Architect of GSA.

(4) For new construction and prospectus level modernization projects, one (1) private sector practitioner of architecture designated from the GSA National Register of Peer Professionals. For other types of projects this slot may be filled by another GSA design professional.

(5) One (1) representative of the client organization(s), at the client’s option. GSA’s policy is to afford the client organization(s) the opportunity to participate in the architect-engineer selection process. Although not mandatory, GSA strongly recommends that this voting member be a highly qualified design professional.

(d) A maximum of two (2) non-voting advisors may participate in all activities of the evaluation board except voting. The client organization(s) may have only one (1) non-voting advisor to the board. The GSA may also have one non-voting advisor.

(e) Other than you and the individuals appointed under paragraphs [\(c\)](#) and [\(d\)](#) of this subsection, there must be no other advisors, or participants in the official activities of the board.

(f) The selection authority officially appoints the evaluation board members. For new construction and prospectus level modernization projects, the selection authority must obtain the concurrence of the Chief Architect of GSA on the appointment of board members.

(g) Each board member (voting and non-voting) must sign a “Conflict of Interest Acknowledgement and Nondisclosure Agreement” (Figure 515-1) before the activities of the board commence. No person may serve as a board member if that person or any member of that person’s family has any direct financial or employment interest in any of the firms being evaluated. The board member is responsible for identifying any possible conflict of interest once you identify the competing architect-engineer firms. You determine whether to disqualify the member from the board.

#### 536.602-3 Evaluation board functions.

(a) The evaluation board performs the functions described in FAR 36.602-3.

(b) Evaluation board members who are private sector design professionals from the GSA National Register of Peer

Professionals may participate in all activities of the board, including deliberations and voting. However, they must provide their individual and independent evaluation of each competing architect-engineer firm to you.

(c) Evaluation boards recommend, in order of preference, the most highly qualified architect-engineer firms for the specific project to the selection authority.

(1) Each board member is responsible individually for evaluating and rating the qualifications of each firm being considered following the established evaluation criteria.

(2) The Chairperson of the board must maintain the integrity of the evaluation process and ensure that the final selection report is prepared and submitted to the selection authority.

(3) The selection authority concurs with the recommendations from the evaluation board which lists in order of preference the most highly qualified firms. If the selection authority does not concur with the recommendation from the evaluation board, the selection authority must provide for the contract file a written explanation of the reason.

# AMENDMENT 2009–03 JUNE 4, 2009

## PART 537—SERVICE CONTRACTING

*Sec.*

### **Subpart 537.1—Service Contracts—General**

- 537.101 Definitions.
- 537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.
- 537.106 Funding and term of service contracts.
- 537.110 Solicitation provisions and contract clauses.

### **Subpart 537.2—Advisory and Assistance Services**

- 537.201 Definitions.
- 537.204 Guidelines for determining availability of personnel.
- 537.270 Contract clause.

### **Subpart 537.6—Performance-based Acquisition**

- 537.601 General.

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## PART 537—SERVICE CONTRACTING

## Subpart 537.1—Service Contracts—General

**537.101 Definitions.**

“Contracts for building services” means contracts for services relating to the operation and maintenance of a building (e.g., janitorial, window washing, snow removal, trash removal, lawn and grounds care), inspection, maintenance, repair or replacement of building systems or equipment (e.g., elevators, air-conditioning, heating systems, and protection or guard service).

**537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.**

GSA contracting activities are not required to use PBA methods for leases and leasehold interests in real property. However, contracting activities are not precluded from using PBA methods when contracting for leases or leasehold interests in real property if using PBA best meets the Government’s needs.

**537.106 Funding and term of service contracts.**

[517.101](#) identifies GSA-specific statutory authority for multiyear contracts for certain services.

**537.110 Solicitation provisions and contract clauses.****Contracts for Building Services**

The following provision and clauses apply to contracts for building services:

(a) If the contract is expected to exceed the simplified acquisition threshold and it is not initiated with Ability One under the Javits-Wagner-O'Day Act insert [552.237-71](#), Qualifications of Employees, in the solicitation and contract. If needed, use supplemental provisions or clauses to describe specific requirements for employees performing work on the contract.

(b) Insert [552.237-72](#), Prohibition Regarding “Quasi-Military Armed Forces,” in solicitations and contracts for guard service.

## Subpart 537.2—Advisory and Assistance Services

**537.201 Definitions.**

As used in this subpart—

*Evaluation or analysis of a proposal* means proposal evaluation as described in FAR 15.305. It includes: Cost or price evaluation using cost or price analysis, as defined in FAR 15.404.

*Proposal* means a proposal submitted for an initial contract award. (See FAR 37.203(d)). It does not include proposals submitted after contract award, such as value engineering proposals, proposals related to contract modifications, claims, or other contract administration actions.

*Readily available* means that employees with the requisite training and capability are employed by the agency, capable of handling additional work relating to other duties as assigned by management, and that the travel and other costs associated with using covered personnel does not exceed the projected cost of a contract for evaluation and analysis services.

*Requisite training and capability* means training and capability necessary to successfully perform the task or contract at issue in the time and in the manner required. It may include relevant experience, recent performance of work of similar size and scope, specific training and other factors that the contracting officer determines are necessary to the successful performance of the task or contract at issue.

**537.204 Guidelines for determining availability of personnel.**

(a) *Authority*. The contracting officer is authorized to make the determinations required by FAR 37.204 unless the HCA designates another agency official.

(b) *Policy*. The contracting officer, or the HCA’s designee, must make the determination whether GSA personnel with the requisite training and capabilities are readily available to perform the evaluation or analysis before issuing a solicitation which includes evaluation and analysis services (see FAR 37.205).

(c) *Identifying qualified personnel*. The contracting officer, or the HCA’s designee, must base the determination on information received in response to a survey conducted as follows:

(1) If the estimated cost of evaluation and analysis services to be obtained under a contract or order is less than the micropurchase threshold, the administrative cost and time associated with conducting the search and other costs, such as travel, will likely exceed the cost of providing the services under the contract or order. In this case, the survey need only include the appropriate Assistant Commissioner, Assistant

Regional Administrator, or designee within the contracting organization at the location where the services are to be performed.

(2) If the estimated cost of the evaluation and analysis services to be obtained under a contract or order is expected to exceed the micropurchase threshold, the survey must include all of the following:

(i) The appropriate Assistant Commissioner, Assistant Regional Administrator, or designee at the location where the services are to be performed, and managers within other GSA Regions and Central Office of the contracting organization.

(ii) Other Federal agencies that are reasonably expected to have covered personnel with the requisite training and capability at the location where the services are to be performed.

(d) *Decisions on availability of personnel.* The contracting officer, or the HCA's designee, should request that decisions on availability be made by a management official at a level higher than the employee's immediate supervisor.

(e) *Documentation.* The determination required by FAR 37.204 may be incorporated in the acquisition plan or made a part of another document prepared in the normal course of a procurement action. The file should, at a minimum, describe:

(1) Who was surveyed and a summary of the responses received;

(2) The circumstances requiring the use of outside evaluators;

(3) Actions GSA will take to avoid organizational or other conflicts of interest under FAR 9.5; and

(4) The competitive relationship between prospective offerors, including proposed subcontractors, and the prospective evaluator(s).

(f) *Indefinite delivery contracts for evaluation and analysis services.* You may issue an indefinite delivery contract for evaluation and analysis services if there is a reasonable expectation that there will be occasions when personnel with the requisite training and capabilities will not be readily available to perform the evaluation and analysis services covered by the contract.

(1) Before issuing a solicitation for an indefinite delivery contract, the appropriate agency official should first assess the ability of the Federal Supply Schedule Program to support the need and consider manpower and workload projections over the proposed contract period. This should help avoid unnecessarily incurring the cost of soliciting offers and awarding a contract. Document the acquisition file accordingly.

(2) The appropriate agency official should establish procedures for making determinations regarding particular evaluations before orders are placed under the contract.

**537.270 Contract clause.**

Insert the clause at [552.237-73](#), Restriction on Disclosure of Information, in solicitations and contracts for proposal evaluation and analysis services.

**Subpart 537.6—Performance-based Acquisition**

**537.601 General.**

GSA Contracting Activities are encouraged to use the Seven Steps to Performance-Based Acquisition (PBA) Guide. This guide may be accessed at [http://www.acquisition.gov/comp/seven\\_steps/home.html](http://www.acquisition.gov/comp/seven_steps/home.html).

# AMENDMENT 2007-01 FEBRUARY 1, 2007

## PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

*Sec.*

### **Subpart 538.2—Establishing and Administering**

#### **Federal Supply Schedules**

- 538.270 Evaluation of multiple award schedule (MAS) offers.
- 538.271 MAS contract awards.
- 538.272 MAS price reductions.

### **Subpart 538.70—Cooperative Purchasing**

- 538.7000 Scope of subpart.
- 538.7001 Definitions.
- 538.273 Contract clauses.
- 538.7002 General.
- 538.7003 Policy.
- 538.7004 Solicitation provisions and contract clauses.

### **Subpart 538.71—Recovery Purchasing**

- 538.7100 Scope of subpart.
- 538.7101 Definitions.
- 538.7102 General.
- 538.7103 Policy.
- 538.7104 Solicitation provisions and contract clauses.

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**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING****Subpart 538.2—Establishing and Administering Federal Supply Schedules****538.270 Evaluation of multiple award schedule (MAS) offers.**

(a) The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(b) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(c) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

- (1) Aggregate volume of anticipated purchases.
- (2) The purchase of a minimum quantity or a pattern of historic purchases.
- (3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.
- (4) Length of the contract period.
- (5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices.
- (6) Ordering and delivery practices.
- (7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the customer (*e.g.*, dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(d) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

(2) Award is otherwise in the best interest of the Government.

**538.271 MAS contract awards.**

(a) MAS awards will be for commercial items as defined in FAR 2.101. Negotiate contracts as a discount from established catalog prices.

(b) Before awarding any MAS contract, determine that the offered prices are fair and reasonable (see FAR Subpart 15.4 and [538.270](#)). Document the negotiation and your determination using FAR 15.406-3 as guidance.

(c) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) on which the award is predicated.

**538.272 MAS price reductions.**

(a) Section [552.238-75](#), Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities and the offeror's customer or category of customers on which the contract award was predicated (see [538.271\(c\)](#)). If a change occurs in the contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the eligible ordering activities and this customer or category of customers, the change constitutes a "price reduction."

(b) Make sure that the contractor understands the requirements of section [552.238-75](#) and agrees to report to you all price reductions as provided for in the clause.

**538.273 Contract clauses.**

(a) *Multiple award schedules*. Insert in solicitations and contracts:

(1) [552.238-70](#), Identification of Electronic Office Equipment Providing Accessibility for the Handicapped, if you include electronic office equipment items.

(2) [552.238-71](#), Submission and Distribution of Authorized FSS Schedule Pricelists.

(i) Use Alternate I, in solicitations and contracts for—

(A) Federal Supply Schedule 70;

(B) The Consolidated Schedule contracts containing information technology Special Item Numbers;

(C) Federal Supply Schedule 84; and

(D) Federal Supply Schedules for recovery purchasing (see [538.7102](#)), use Alternate I.

(ii) If GSA is not prepared to accept electronic submissions for a particular schedule delete—

(A) The paragraph identifier “(i)” in (b)(1) and the word “and” at the end of paragraph (b)(1)(i); and

(B) Paragraphs (b)(1)(ii) and (b)(3).

(3) [552.238-72](#), Identification of Products that have Environmental Attributes.

(4) [552.238-73](#), Cancellation.

(b) *Multiple and single award schedules*. Insert in solicitations and contracts:

(1) [552.238-74](#), Industrial Funding Fee and Sales Reporting.

(2) [552.238-75](#), Price Reductions. Use Alternate I in solicitations and contracts for—

(i) Federal Supply Schedule 70;

(ii) The Consolidated Schedule containing information technology Special Item Numbers;

(iii) Federal Supply Schedule 84; and

(iv) Federal Supply Schedules for recovery purchasing (see [538.7102](#)).

(3) [552.238-81](#), Modifications (Federal Supply Schedule). Use Alternate I for Federal Supply Schedules that only accept electronic modifications.

**538.7001 Definitions.**

“Ordering activity” (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see [552.238-78](#)) authorized to place orders under Federal Supply Schedule contracts.

“Schedule 70,” as used in this subpart, means Schedule 70 information technology contracts, and Consolidated Products and Services Schedule contracts containing information technology SINs. The Consolidated Products and Services Schedule is a compilation of multiple individual Federal Supply Schedules; therefore, only the SINs that fall under Schedule 70 of the Consolidated Products and Services Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and Consolidated Products and Services Schedule contracts containing Schedule 70 SINs, will apply.

“Schedule 84” means the Federal Supply Schedule for alarm and signal systems, facility management systems, fire-fighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal Supply Classification Code Group 84 or any amended or subsequent version of that Federal supply classification group).

“State and local government entities,” as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) “Local educational agency” has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) “Institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) “Tribal government” means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

**Subpart 538.70—Cooperative Purchasing****538.7000 Scope of subpart.**

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use—

(a) Federal Supply Schedule 70;

(b) The Consolidated Schedule contracts containing information technology Special Item Numbers (SINs); and

(c) Federal Supply Schedule 84.

**538.7002 General.**

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal Supply Schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) Pub. L. 110-248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

(d) State and local governments are authorized to procure from Schedule 70 contracts, Consolidated Schedule contracts containing information technology SINS, and Schedule 84 contracts. A listing of the participating contractors and SINS for the products and services that are available through Schedule 70 contracts, the Consolidated Schedule contracts containing information technology SINS, and Schedule 84 contracts, is available in GSA's Schedules e-Library at [www.gsa.gov/elibrary](http://www.gsa.gov/elibrary). Click on Schedules e-Library, and under Cooperative Purchasing, click on "View authorized vendors." The contractors and the products and services available for Cooperative Purchasing will be labeled with the Cooperative Purchasing icon.

**538.7003 Policy.**

*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening Schedule 70, the Consolidated Schedule containing information technology SINS, and Schedule 84, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under Schedule 70, and the Consolidated Schedule containing information technology SINS, and Schedule 84. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

- (a) 52.212-4, Contract Terms and Conditions—Commercial Items.
- (b) 52.216-18, Ordering.
- (c) 52.216-19, Order Limitations.
- (d) 52.229-1, State and Local Taxes.
- (e) 52.229-3, Federal, State, and Local Taxes.
- (f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232-17, Interest.
- (h) 52.232-19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
- (j) 52.232-36, Payment by Third Party.
- (k) 52.237-3, Continuity of Services.
- (l) 52.246-4, Inspection of Services-Fixed Price.
- (m) 52.246-6, Inspection—Time-and-Material and Labor-Hour.
- (n) 52.247-34, F.O.B. Destination.
- (o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.



**538.7004 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the clause at [552.238-77](#), Definition (Federal Supply Schedules), in solicitations and contracts for—

(1) Schedule 70;

(2) The Consolidated Schedule containing information technology SINs; and

(3) Schedule 84.

(b) The contracting officer shall insert the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for—

(1) Schedule 70; and

(2) The Consolidated Schedule containing information technology SINs; and

(3) Schedule 84.

(c) The contracting officer shall insert the clause at [552.238-79](#), Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and contracts for—

(1) Schedule 70;

(2) The Consolidated Schedule containing information technology SINs; and

(3) Schedule 84.

(d) See [552.101-70](#) for authorized FAR deviations.

**Subpart 538.71—Recovery Purchasing**

**538.7100 Scope of subpart.**

This subpart prescribes policies and procedures to implement the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) authorizing non-federal organizations to use Federal Supply Schedule contracts to purchase products and services to be used for recovery from major disasters, terrorism or nuclear, biological, chemical, or radiological attack.

**538.7101 Definitions.**

The definitions in subsection [538.7001](#) shall apply for purposes of this subpart.

**538.7102 General.**

(a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. Use of Federal supply schedules by State and local governments is voluntary. Agreement of a schedule contractor to offer recovery purchasing under the contract and acceptance of any order for recovery purchasing from a state or local government is voluntary.

(b) State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to be used to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. A listing of the Federal Supply Schedules for the products and services is available in GSA's Schedules e-Library at web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating contractors and the products and services available for recovery purchasing will be labeled with the Disaster Recovery Purchasing ICON.



(c) State and local governments that wish to use the Federal Supply Schedules to facilitate recovery from major disasters or attacks are responsible for ensuring that only authorized representatives of their governments place orders against these schedules and that procured products and services are used only for the purposes authorized by Section 833 of Public Law 109-364.

#### **538.7103 Policy.**

*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation (FAR) and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete “Government” or similar language referring to the U.S. Government and substitute “ordering activity” or similar language when preparing solicitations and contracts to be awarded under the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security. When such changes are made, the word “(DEVIATION)” shall be added at the end of the title of the provision or clause. These clauses include but are not limited to—

- (a) 52.212-4, Contract Terms and Conditions—Commercial Items.
- (b) 52.216-18, Ordering.
- (c) 52.216-19, Order Limitations.
- (d) 52.229-1, State and Local Taxes.
- (e) 52.229-3, Federal, State, and Local Taxes.
- (f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232-17, Interest.
- (h) 52.232-19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
- (j) 52.232-36, Payment by Third Party.
- (k) 52.237-3, Continuity of Services.
- (l) 52.246-4, Inspection of Services-Fixed Price.
- (m) 52.246-6, Inspection-Time-and-Material and Labor-Hour.
- (n) 52.247-34, F.O.B. Destination.
- (o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.

#### **538.7104 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the clause at [552.238-76](#), Definition (Federal Supply Schedules)—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(b) The contracting officer shall insert the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities), with Alternate I in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(c) The contracting officer shall insert the clause at [552.238-80](#), Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security that facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(d) See [552.101-70](#) for authorized Federal Acquisition Regulation deviations.

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PART 539—ACQUISITION OF INFORMATION TECHNOLOGY

*Sec.*

539.001

Applicability.

**Subpart 539.70—Additional Requirements for  
Purchases Not in Support of National Security  
Systems**

- 539.7000 Scope of subpart.
- 539.7001 Policy.
- 539.7002 Solicitation provisions and contract clauses.

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**PART 539—ACQUISITION OF INFORMATION TECHNOLOGY****539.001 Applicability.**

In accordance with FAR 39.001, this part does not apply to acquisitions of information technology supplies, services and systems in support of national security systems, but see GSAM [Subpart 507.70](#), Additional Requirements for Purchases in Support of National Security Systems involving Weapons Systems.

**Subpart 539.70—Additional Requirements  
for Purchases Not in Support of National  
Security Systems**

**539.7000 Scope of subpart.**

This subpart prescribes acquisition policies and procedures for use in acquiring information technology supplies, services and systems not in support of national security systems, as defined by FAR part 39.

**539.7001 Policy.**

(a) GSA must provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act (FISMA) describes Federal agency security responsibilities as including “information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency.”

(b) Employees responsible for or procuring information technology supplies, services and systems shall possess the appropriate security clearance associated with the level of security classification related to the acquisition. They include, but are not limited to contracting officers, contract specialists, project/program managers, and contracting officer representatives.

(c) Contracting activities shall coordinate with requiring activities and program officials to ensure that the solicitation documents include the appropriate information security requirements. The information security requirements must be sufficiently detailed to enable service providers to fully understand the information security regulations, mandates, and requirements that they will be subject to under the contract or task order.

(d) GSA’s Office of the Senior Agency Information Security Officer issued CIO IT Security Procedural Guide 09-48, “Security Language for Information Technology Acquisitions Efforts,” to provide IT security standards, policies and reporting requirements that shall be inserted in all solicitations and contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at <http://www.gsa.gov/portal/category/25690>.

**539.7002 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the provision at [552.239-70](#), Information Technology Security Plan and Security Authorization, in solicitations that include information technology supplies, services or systems in which the contractor will have physical or electronic access to government information that directly supports the mission of GSA.

(b) The contracting officer shall insert the clause at [552.239-71](#), Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision at [552.239-70](#). The provision and clause shall not be inserted in solicitations and contracts for personal services with individuals.

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**PART 540—[RESERVED]**

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## AMENDMENT 2010–04 SEPTEMBER 13, 2010

### PART 541—ACQUISITION OF UTILITY SERVICES

*Sec.*

#### **Subpart 541.1—General**

541.100 Scope of part.  
541.101 Definitions.

#### **Subpart 541.2—Acquiring Utility Services**

541.201 Policy.  
541.202 Procedures.  
541.202-1 Procedures for acquisition planning for  
deregulated utility supplies.  
541.204 GSA areawide contracts.  
541.206 Interagency agreements format.

#### **Subpart 541.4—Administration**

541.401 Monthly and annual review.

#### **Subpart 541.5—Solicitation Provisions and Contract Clauses**

541.501 Solicitation provision and contract clauses.



**PART 541—ACQUISITION OF UTILITY SERVICES****Subpart 541.1—General****541.100 Scope of part.**

(a) This part applies to the acquisition of utility services from regulated utilities with the exception of section [541.202-1](#), which covers acquisition planning for deregulated utilities.

(b) Acquisitions from deregulated suppliers for natural gas and/or electricity shall use the competitive policies and procedures as prescribed in GSAM [Part 512](#).

**541.101 Definitions.**

As used in this part—

“Independent regulatory body” means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority that has the power to fix, establish, or control the rates and services of utility suppliers.

“Local regulated utility” means a utility controlled by a body that regulates a utility which is owned or operated by the same entity that created the regulatory body, *e.g.*, a municipal utility.

“Tariff regulated utility” means a utility regulated by an independent regulatory body.

**Subpart 541.2—Acquiring Utility Services****541.201 Policy.**

(a) GSA purchases utility services in a manner that is consistent with the regulations, rulings and franchise or service territories. Rates are established by independent regulatory bodies. These Tariff rates:

- (1) Are considered “prices set by law or regulation”; and
- (2) Are sufficient to set prices without obtaining cost or pricing data (see FAR 15.403-1(c) (2)).

**541.202 Procedures.**

(a) Contracting officers shall perform market research and create acquisition plans in accordance with FAR 41.202 (a), (b), and (e).

(b) Acquisition plans for utility acquisitions over the simplified acquisition threshold are required for separate contracts and orders against GSA areawide contracts; this does not apply to the basic areawide contract.

(c) Task/delivery orders may be issued as orders against established contracts for the term of the contract and shall not exceed ten years, in accordance with FAR 41.103 (a) and 40 U.S.C. 501. The orders shall be incrementally funded on an annual basis for consistency with the bona fide needs rule.

Contract data shall be entered into FPDS for each obligation action (including orders issued for obligation purposes only) for the initial contract action and all annual funding modifications.

**541.202-1 Procedures for acquisition planning for deregulated utility supplies.**

Acquisition plans are not required for delivery orders under deregulated (competitive) acquisitions for natural gas and/or electricity when all of the following criteria are met:

- (a) The basic contract was entered into pursuant to a written acquisition plan.
- (b) The delivery address (including the associated account number) of the order is listed in the requirements type contract.
- (c) The order is issued only as a funding mechanism for the location awarded in the basic contract.

**541.204 GSA areawide contracts.**

The existence of a GSA areawide contract for the required service and location does not necessarily mean that the subject utility provider is the only source capable of meeting the requirement (see FAR 41.202(a) and 41.204(c)(1)). When market research and acquisition planning support ordering the entire requirement under an area-wide contract, the contracting officer may do so, but shall utilize the annual reviews required by FAR 41.401 to determine the feasibility of later entering into a competitive contract for a portion of the requirement.

**541.206 Interagency agreements format.**

When acquiring utility services for another agency the following format shall be used in accordance with 40 U.S.C. 501 (b) which clearly delineates the roles and responsibilities of the servicing and requesting agencies. (See [http://www.gsa.gov/energy\\_library](http://www.gsa.gov/energy_library)).

**Subpart 541.4—Administration****541.401 Monthly and annual review.**

(a) *Monthly reviews.* As an alternative to the requirements outlined in FAR 41.401, which requires monthly reviews of all invoices with annual values exceeding the simplified acquisition threshold, the Comptroller General decision, B-227682.2, August 16, 1989, 68 Comp. Gen. 618 (GAO) authorized GSA to use an alternative methodology to meet this requirement. The GAO decision allows for the use of statistical sampling techniques to pay and audit utility invoices. Specifically, the GAO decision requires analysis and review of any problems discovered through 3% random sampling.

15% out-of-tolerance reports and historical data of utility invoices. Contract files shall include documentation of any corrective actions taken.

(b) *Annual reviews.* In addition to the requirements of FAR 41.401, the Public Buildings Service (PBS) will provide further guidance for conducting annual reviews.

### **Subpart 541.5—Solicitation Provisions and Contract Clauses**

#### **541.501 Solicitation provision and contract clauses.**

In addition to the solicitation terms, provisions and contract clauses at FAR 41.501(c), the contracting officer shall include the following clauses—

(a) [552.241-70](#), *Availability of Funds for the Next Fiscal Year or Quarter*. As prescribed in [541.501](#), insert the clause [552.241-70](#), *Availability of Funds for the Next Fiscal Year or Quarter*, instead of FAR 52.232-19, in all utility acquisitions; and

(b) [552.241-71](#), *Disputes (Utility Contracts)*. As prescribed in [541.501](#), insert clause [552.241-71](#), *Disputes (Utility Contracts)*, in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

## **SUBCHAPTER G—CONTRACT MANAGEMENT**

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## AMENDMENT 2008–05 FEBRUARY 9, 2009

### PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

*Sec.*

542.001 Definitions.

#### **Subpart 542.1—Contract Audit Services**

542.102 Assignment of contract audit services.

#### **Subpart 542.2—Contract Administration Services**

542.202 Assignment of contract administration.

#### **Subpart 542.3—Contract Administration Office Functions**

542.302 Contract administration functions.

#### **Subpart 542.11—Production Surveillance and Reporting**

542.1107 Contract clause.

#### **Subpart 542.12—Novation and Change-of-Name Agreements**

542.1203 Processing agreements.

#### **Subpart 542.15—Contractor Performance Information**

542.1503 Procedures.

#### **Subpart 542.70—Audit of Contractor's Records**

542.7001 General.

542.7002 Purpose of audit.

542.7003 Additional internal controls.

542.7004 Releasing or withholding of audit reports.

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**PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES****542.001 Definitions.**

“Contract administration” means Government actions taken after contract award to obtain compliance with such contract requirements as timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer. It may include additional tasks requested or needed by the contracting activity including support in the pre-award phase of contracting.

**Subpart 542.1—Contract Audit Services****542.102 Assignment of contract audit services.**

(a) The contracting officer shall request all audit services through the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing, as appropriate.

(b) The contracting officer must follow the procedures set out in GSA Order, Audit Resolution and Follow-Up System (ADM P 2030.2C), for handling contract audit reports.

**Subpart 542.2—Contract Administration Services****542.202 Assignment of contract administration.**

(a) Assignment of contract administration is the process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to either a contract administration office (CAO) or an administrative contracting officer (ACO) within a contracting office.

(b) Each contracting director must establish procedures that ensure that qualified personnel perform contract administration activities in an effective manner. Usually, the PCO or the ACO in the contracting office performs these activities (but see paragraphs (c)–(g) of this section).

(c) If it is more efficient, management may establish a separate CAO. Consider each of the following:

- (1) The nature and complexity of the contract.
- (2) The need to perform contract administration at or near the contractor’s facility or the place of performance.
- (3) The availability of resources.

(d) The contracting officer may designate one or more representatives to perform specified functions such as quality assurance, production, price analysis, finance and various engineering and technical specialties. The contracting officer’s representatives (CORs) may not enter into or modify a contract or otherwise perform functions reserved for a con-

tracting officer (except see [543.202](#) for construction contracts).

(e) If the contracting officer delegates contract administration to an ACO or designates a contracting officer’s technical representative (COTR) or contracting officer’s representative (COR), then provide the contractor with the name of the ACO and any representative and identify the functions each is authorized to perform.

(f) The contracting officer may provide or make available to the ACO a complete copy of the contract file. The contracting officer may provide each COR and COTR with the contract file information they need to perform their duties.

(g) The contracting officer may delegate to an ACO functions other than those listed in FAR 42.302 and [542.302\(b\)](#) after obtaining approval from the Senior Procurement Executive. The contracting officer may submit requests through the HCA. If approved, the contracting officer should follow FAR 42.202(c).

**Subpart 542.3—Contract Administration Office Functions****542.302 Contract administration functions.**

(a) Assignment of contract administration office functions is the process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to a contract administration office (CAO) or an administrative contracting officer (ACO) within a contracting office.

(b) Usually, the CO or the ACO in the contracting office performs these activities (but see paragraphs (c)–(g) of this section).

(c) If it is more efficient, management may establish a separate CAO. Consider each of the following:

- (1) The nature and complexity of the contract.
- (2) The need to perform contract administration at or near the contractor’s facility or the place of performance.
- (3) The availability of resources.

(d) The contracting officer may designate one or more representatives to perform specified functions such as quality assurance, production, price analysis, finance and various engineering and technical specialties. The contracting officer’s representative (COR or COTR) may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer (except see [543.202](#)). However, the authority to issue in-scope change orders not exceeding \$25,000 may be delegated to a COTR assigned to construction contracts. See [543.202](#) and [501.603-2\(d\)](#).

(e) If the contracting officer delegates contract administration to an ACO or designates a contracting officer’s technical

representative (COTR) or contracting officer's representative (COR), then the contracting officer must provide the contractor with the name of the ACO and any representative and identify the functions each is authorized to perform.

(f) The contracting officer shall provide or make available to the ACO a complete copy of the contract file and provide each COR and COTR with the contract file information needed to perform assigned duties.

(g) ACO functions other than those listed in FAR 42.302 may be delegated if the Senior Procurement Executive approves. Such requests must be submitted through the HCA. If approved, follow FAR 42.202(c).

### **Subpart 542.11—Production Surveillance and Reporting**

#### **542.1107 Contract clause.**

The contracting officer shall insert [552.242-70](#), Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for Stock or Special Order Program items. The clause may be used in indefinite-delivery definite-quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

### **Subpart 542.12—Novation and Change-of-Name Agreements**

#### **542.1203 Processing agreements.**

Contracting officers should process agreements as soon as a complete package has been received from the contractor. If the proposed successor is a large business and the contract was originally awarded under a small business set-aside, the contracting officer shall—

(a) Notify and solicit comments from the SBTA (see FAR 42.1203(b) and (c)); and

(b) Not recognize the proposed successor if—

(1) The conclusion is that the transaction is intended to circumvent the requirements and objectives of the small business program; or

(2) If a MAS contract is involved and other MAS small business contracts exist for the same special item number(s); and

(c) Cancel the set-aside items if a MAS contract is involved and the contract has both set-aside and non-set-aside special item numbers, then process the novation request for the non-set-aside items.

### **Subpart 542.15—Contractor Performance Information**

#### **542.1503 Procedures.**

(a) *Heads of Services.* (1) Consistent with FAR 42.1500 and this Subpart, the Head of each Service must take all the following actions:

(i) Establish mechanisms for systematically collecting and maintaining positive and negative information on contractor performance.

(ii) Identify pertinent performance data elements for collection.

(iii) Ensure that contractor performance information is readily available to contracting officials and other individuals with procurement-related responsibilities.

(iv) Clearly identify the officials responsible for collecting, disseminating, and applying this information in the acquisition process.

(2) The system for collecting contractor performance data should include, as appropriate:

(i) Timeliness of delivery or performance (for example: Adherence to contract delivery schedules; resolution of delays, number of “show cause” letters and “cure notices” issued, number of delinquent deliveries, number of contract extensions resulting from contractor-caused delays, and/or timely submission or performance or required tests).

(ii) Conformance of product or service to contract requirements (for example: Quality of workmanship, reliability, adequacy of correction of defects, number of safety defects, number of product rejections, results of laboratory tests, number and extent of warranty problems).

(iii) Customer comments (for example: Number and quality of positive comments, number and nature of complaints, and adequacy of resolving customer complaints).

(iv) Terminations for default.

(v) On-the-job safety performance record, including the number of lost or restricted workdays due to occupational injuries in comparison to the national average.

(vi) Adequacy of contractor's quality assurance system.

(vii) Compliance with other key contract provisions (for example: Subcontracting program, labor standards, safety standards, and reporting requirements).

(viii) Exhibiting customer-oriented behavior.

(ix) Other performance elements identified by the Service.

(b) *Senior Procurement Executive.* The Senior Procurement Executive is responsible for ensuring the evaluation of each Service's system for collecting and applying contract performance information for compliance with the FAR and GSAM.

(c) *Contracting directors.* The contracting director shall review and consider any disagreement between GSA and the

contractor regarding GSA's evaluation of the contractor. Based on the review, the contracting director makes the final determination on the performance evaluation.

(d) *Contracting officers.* (1) The contracting officer shall promptly provide a copy of the contracting director's final determination to the contractor.

(2) When responding to another department or agency request for past performance information, the contracting officer shall include a copy of any related contractor comments and contracting director's final determination.

### **Subpart 542.70—Audit of Contractor's Records**

#### **542.7001 General.**

The OIG Office of Audits audits a contractor's records if required by law, regulation, or sound business judgment. These audits include periodic or special request audits necessary to determine a contractor's financial condition, adequacy of its accounting system, and integrity and reliability. The contracting officer should coordinate with technical specialists, finance and audit personnel to achieve the maximum benefits from these audits.

#### **542.7002 Purpose of audit.**

The contracting officer may obtain from audits advice or recommendations on the:

(a) Propriety of amounts paid, or to be paid, by GSA to a contractor when such amounts are based on a cost or time determination or on variable features related to the results of the contractor's operations.

(b) Adequacy of a contractor's measures to safeguard Government property in its custody or under its control.

(c) Contractor's compliance with contractual obligations concerning progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments.

(d) Reasonableness of a contractor's termination settlement proposals.

#### **542.7003 Additional internal controls.**

(a) The contracting officer should not rely solely on contractual audit rights. The contracting officer should establish internal controls or procedures for any flexible or variable features of these contracts:

- (1) Cost-reimbursement.
- (2) Time-and-materials or labor-hour.
- (3) Requirements or indefinite-quantity.

For example, for a time-and-materials or labor-hour contract performed at a Government facility or elsewhere, the contracting officer should provide for the review of time records. The contracting officer should provide for this review even if the contractor is subject to supervision by Government personnel.

(b) The contracting officer should establish these internal controls or procedures prior to the commencement of contract performance. Use any reasonable and reliable method or procedure that will enable the Government to determine the correctness of the charges for such matters as the time spent on the job and materials or supplies received. If needed, obtain assistance from the Assistant Inspector General for Auditing or the Regional OIG Audit Office.

#### **542.7004 Releasing or withholding of audit reports.**

The Freedom of Information Act requires the disclosure of Government records subject to certain exceptions. The contracting officer should consult with both the Assistant Inspector General for Auditing and the GSA Office of General Counsel before releasing or withholding a contract audit report.

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# AMENDMENT 2008-04 JANUARY 9, 2009

## PART 543—CONTRACT MODIFICATIONS

*Sec.*

	<b>Subpart 543.1—General</b>		<b>Subpart 543.2—Change Orders</b>
<b>I</b>		543.202	Authority to issue change orders.
543.170	Changes in designated subcontractors, inspection and/or production points.	543.205	Contract clauses.

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**PART 543—CONTRACT MODIFICATIONS****Subpart 543.1—General****543.170 Changes in designated subcontractors, inspection and/or production points.**

(a) Before executing a contract modification authorizing changes in either a designated subcontractor or inspection or production point, the contracting officer must consider the impact of the change on the contractor's ability to satisfy contract requirements. Employ the same standards that were used to determine that the contractor was responsible (see FAR 9.1 and GSAM [509.1](#)).

(b) The modification must identify the nature of the change and the effective date. In establishing an effective date, consider the time necessary for affected offices to take required actions.

**Subpart 543.2—Change Orders****543.202 Authority to issue change orders.**

This section applies to construction contracts.

(a) *COR authority.* The contracting officer may authorize a warranted COR to issue change orders. Authorization must be in writing, on a contract-by-contract basis, and must identify any limitations. For example, identify dollar limitations or specify that authority is only valid in emergency situations.

(b) *Additional restrictions.* The Contracting Officer should provide the following instruction to the COR as part of the written authorization:

(1) For any single change order, the COR may perform some or all of these actions:

- (i) Determining the need for a change.
- (ii) Preparing the Government's cost estimate.
- (iii) Conducting negotiations.
- (iv) Issuing the change order.
- (v) Inspecting the work.

(2) For an unpriced change order, if the COR personally performs all the actions in paragraph (1) of this section, the change order must be reviewed by a designated official before issuance or definitization.

(c) *Review change orders.* For unpriced change orders when the COR personally performs all actions, the contracting officer must either personally review each change order or designate a capable official to perform the review. Consider designating the COR's immediate supervisor or a higher-level official within the organization. Avoid designating more than one official to review change orders issued under an individual contract.

(d) *Coordination of change orders.* Issue change orders only after coordination, as appropriate, with quality control, finance, audit or other technical personnel.

**543.205 Contract clauses.**

The contracting officer shall insert [552.243-71](#), Equitable Adjustments, in solicitations and contracts containing FAR 52.243-4, Changes.

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## **PART 544—SUBCONTRACTING POLICIES AND PROCEDURES**

**[RESERVED]**

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## **PART 545—GOVERNMENT PROPERTY**

**[RESERVED]**

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# AMENDMENT 2009–08 JUNE 1, 2009

## PART 546—QUALITY ASSURANCE

*Sec.*

### **Subpart 546.3—Contract Clauses**

### **Subpart 546.7—Warranties**

546.302 Fixed-price supply contracts.  
546.302-70 Source inspection by Quality Approved  
Manufacturer for fixed-price supply  
contracts.  
546.302-71 Source inspection.  
546.302-72 Destination Inspection.  
546.312 Construction contracts.

546.705 Limitations.  
546.708 Warranties of data.  
546.710 Contract clause.

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**PART 546—QUALITY ASSURANCE**

**Subpart 546.3—Contract Clauses**

**546.302 Fixed-price supply contracts.**

**546.302-70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts.**

(a) For solicitations issued and contracts awarded by FAS that will exceed the simplified acquisition threshold and include the clause at 52.246-2, Inspection of Supplies—Fixed-Price:

(1) The contracting officer shall insert the clause at [552.246-70](#), Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection for the Stock and Special Order Programs.

(2) The contracting officer may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the U.S. Virgin Islands, under paragraph (a)(1) of the clause at [552.246-70](#) under any of the circumstances listed below after coordinating the authorization with QVOC and documenting the authorization in the file.

(i) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(ii) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(iii) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

(b) When the estimated value of the acquisition is below the simplified acquisition threshold and will include the clause at 52.246-2, Inspection of Supplies—Fixed-Price, insert the clause at [552.246-70](#), Source Inspection by Quality Approved Manufacturer only:

(1) In solicitations and contracts that support the Wild-fire program.

(2) In contracts when a pattern of acquisitions demonstrates an ongoing relationship with the contractor.

**546.302-71 Source inspection.**

For solicitations and contracts issued by FAS, if Government personnel at the source will perform inspection, insert [552.246-71](#), Source Inspection by Government.

**546.302-72 Destination Inspection.**

The contracting officer shall include the clause at 552.246-78, Inspection at Destination (JULY 2009) in supply contracts that require inspection at destination.

**546.312 Construction contracts.**

Insert the clause at [552.246-72](#), Final Inspection and Tests, in solicitations and contracts for construction that include FAR 52.246-12, Inspection of Construction.

**Subpart 546.7—Warranties**

**546.705 Limitations.**

The contracting director must approve the use of warranties in cost reimbursement contracts, except those in FAR clauses 52.246-3 and 52.246-8.

**546.708 Warranties of data.**

(a) The contracting officer shall use warranties of data only when both of the following conditions are applicable:

(1) Use of a warranty is in the Government's interest and is documented; and

(2) The contracting director concurs with the decision.

(b) The contracting officer shall consult with the technical or specification manager responsible for developing any warranties of data.

**546.710 Contract clause.**

The Contracting officer shall insert the clause at [552.246-77](#), Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, when using the clause at 52.246-17 in solicitations and contracts.

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**AMENDMENT 2009–06 JUNE 29, 2009**

**PART 547—[RESERVED]**

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## **PART 548—VALUE ENGINEERING**

*Sec.*

### **Subpart 548.1—Policies and Procedures**

548.101       General.

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**PART 548—VALUE ENGINEERING****Subpart 548.1—Policies and Procedures****548.101 General.**

GSA Order, GSA Value Engineering Program (ADM 8030.1C) provides guidance on using value engineering.

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## AMENDMENT 2009–05 JUNE 8, 2009

### PART 549—TERMINATION OF CONTRACTS

*Sec.*

#### **Subpart 549.1—General Principles**

549.111      Review of proposed settlements.

#### **Subpart 549.4—Termination for Default**

549.402      Termination of fixed-price contracts for default.

549.402-6    Repurchase against contractor's account.

549.402-7    Other damages.

#### **Subpart 549.5—[Reserved]**

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**PART 549—TERMINATION OF CONTRACTS**

**Subpart 549.1—General Principles**

**549.111 Review of proposed settlements.**

The HCA may establish procedures for the review and approval of settlement agreements at a level above the contracting officer.

**Subpart 549.4—Termination for Default**

**549.402 Termination of fixed-price contracts for default.**

**549.402-6 Repurchase against contractor's account.**

The contracting officer shall—

(a) Place a brief explanation for the repurchase in the contract file.

(b) If practical, use the original contract terms, conditions, and specification for the repurchase. Whether or not the original terms are used, obtain the advice of assigned legal counsel before issuing a solicitation for similar supplies or work (services and construction).

(c) If the repurchase is delayed, protect the Government's rights to recover repurchase costs by documenting the file to explain the circumstances of the delay.

**549.402-7 Other damages.**

(a) Even if the repurchase price does not exceed the price of the terminated supplies or work (services and construction), the contracting officer shall include administrative costs incurred for the repurchase when determining the final purchase price. The contracting officer shall include all repurchase costs in a single demand letter (see FAR 49.402-6(c)). The contracting officer shall include detailed

documentation in the contract file to support the Government's position that the additional administrative costs were a direct result of the default. The contracting officer shall provide a summary of the additional administrative costs in the demand letter.

(b) Administrative costs include, but are not limited to, the following:

(1) Salaries and fringe benefits paid to Government employees who perform work as a result of the default.

(2) Preaward survey expenses incurred by qualifying repurchase contractors.

(3) Printing and distribution costs of the repurchase solicitation and repurchase contract.

(4) Travel and per diem.

(c) For administrative labor costs, record each of the following:

(1) Name, position, and organization of each employee performing work activities as a consequence of the default.

(2) Date(s) of work and time(s) spent by each employee on the repurchase.

(3) Description of specific tasks performed (for example, solicitation preparation or clerical).

(4) Hourly rate of pay (straight time or overtime).

(5) Applicable fringe benefits.

(6) Explanation of how the time spent by the employees during the repurchase would have been used on other projects but for the default.

(d) For other incurred administrative costs, the contracting officer shall include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

**Subpart 549.5—[Reserved]**

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## **PART 550—EXTRAORDINARY CONTRACTUAL ACTIONS**

*Sec.*

550.001

Definitions.

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**PART 550—EXTRAORDINARY CONTRACTUAL ACTIONS**

**550.001 Definitions.**

“Approving authority,” as used in FAR Part 50, means  
GSA’s Administrator.

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## **PART 551—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

**[RESERVED]**

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## **SUBCHAPTER H—CLAUSES AND FORMS**

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

552.000	Scope of part.	552.211-94	Time of Delivery.
	<b>Subpart 552.1—Instructions for Using Provisions and Clauses</b>	552.212-4	Contract Terms and Conditions—Commercial Items.
552.101-70	Using Part 552.	552.212-70	[Reserved]
552.102	Incorporating provisions and clauses.	552.212-71	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.
552.103	Identification of provisions and clauses.	552.212-72	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.
552.104	Procedures for modifying and completing provisions and clauses.		
552.105	Procedures for using alternates.	552.212-73	[Reserved]
552.107-70	Provisions and clauses prescribed in Subpart 552.1.	552.214-70	“All or None” Bids.
	<b>Subpart 552.2—Text of Provisions and Clauses</b>	552.214-71	[Reserved]
552.200	Scope of subpart.	552.214-72	Bid Sample Requirements.
552.203-5	[Reserved]	552.215-70	Examination of Records by GSA.
552.203-70	[Reserved]	552.215-71	Examination of Records by GSA (Multiple Award Schedule).
552.203-71	Restriction on Advertising.	552.215-72	Price Adjustment—Failure to Provide Accurate Information.
552.204	[Reserved]	552.216-70	Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
552.204-9	Personal Identity Verification Requirements.	552.216-71	Economic Price Adjustment—Special Order Program Contracts.
552.211-8	[Reserved]	552.216-72	Placement of Orders.
552.211-70	[Reserved]	552.216-73	Ordering Information.
552.211-71	[Reserved]	552.216-74	Task-Order and Delivery-Order Ombudsman.
552.211-72	Reference to Specifications in Drawings.	552.217-70	Evaluation of Options.
552.211-73	Marking.	552.217-71	Notice Regarding Option(s).
552.211-74	[Reserved]	552.219-70	Allocation of Orders—Partially Set-aside Items.
552.211-75	Preservation, Packaging and Packing.	552.219-71	Notice to Offerors of Subcontracting Plan Requirements.
552.211-76	Charges for Packaging , Packing, and Marking.	552.219-72	Preparation, Submission, and Negotiation of Subcontracting Plans.
552.211-77	Packing List.	552.219-73	Goals for Subcontracting Plan.
552.211-78	[Reserved]	552.219-74	Section 8(a) Direct Award.
552.211-79	Acceptable Age of Supplies.	552.219-75	GSA Mentor-Protégé Program.
552.211-80	Age on Delivery.	552.219-76	Mentor Requirements and Evaluation.
552.211-81	Time of Shipment.	552.223-70	Hazardous Substances.
552.211-82	[Reserved]	552.223-71	Nonconforming Hazardous Materials.
552.211-83	Availability for Inspection, Testing, and Shipment/Delivery.	552.223-72	Hazardous Material Information.
552.211-84	[Reserved]	552.227-70	Government Rights (Unlimited).
552.211-85	Consistent Pack and Package Requirements.		
552.211-86	Maximum Weight per Shipping Container.		
552.211-87	Export Packing.		
552.211-88	Vehicle Export Preparation.		
552.211-89	Non-Manufactured Wood Packaging Material for Export.		
552.211-90	Small Parts.		
552.211-91	Vehicle Decals, Stickers, and Data Plates.		
552.211-92	Radio Frequency Identification (RFID) Using Passive Tags.		
552.211-93	[Reserved]		

# CHANGE 59 OCTOBER 21, 2014

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

552.227-71	Drawings and Other Data to Become Property of Government.		by Certain Entities—Cooperative Purchasing.
552.228-5	Government as Additional Insured.	552.238-80	Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing.
552.229-70	Federal, State, and Local Taxes.		
552.229-71	Federal Excise Tax—DC Government.	552.238-81	Modification (Federal Supply Schedule).
552.232-1	Payments.	552.239	[Reserved]
552.232-23	Assignment of Claims.	552.239-70	Information Technology Security Plan and Security Authorization.
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552.232-73	[Reserved]	552.241-70	Availability of Funds for the Next Fiscal Year or Quarter.
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552.232-75	[Reserved]	552.241-71	Disputes (Utility Contracts).
552.232-76	[Reserved]	552.242-70	Status Report of Orders and Shipments.
552.232-77	Payment By Government Charge Card.	552.243-71	Equitable Adjustments.
552.236-70	Definitions.	552.246-70	Source Inspection by Quality Approved Manufacturer.
552.236-71	Authorities and Limitations.		
552.236-72	Specialist.	552.246-71	Source Inspection by Government.
552.236-73	Basis of Award—Construction Contract.	552.246-72	Final Inspection and Tests.
552.236-74	Working hours.	552.246-77	Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.
552.236-75	Use of Premises.		
552.236-76	Measurements.	552.246-78	Inspection at Destination.
552.236-77	Specifications and Drawings.	552.252-5	Authorized Deviations in Provisions.
552.236-78	Shop Drawings, Coordination Drawings, and Schedules.	552.252-6	Authorized Deviations in Clauses.
		552.270-1	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.
552.236-79	Samples.		
552.236-80	Heat.	552.270-2	Historic Preference.
552.236-81	Use of Equipment by the Government.	552.270-3	Parties to Execute Lease.
552.236-82	Subcontracts.	552.270-4	Definitions.
552.236-83	Requirement for a Project Labor Agreement.	552.270-5	Subletting and Assignment.
552.237-70	[Reserved]	552.270-6	Maintenance of Building and Premises—Right of Entry.
552.237-71	Qualifications of Employees.		
552.237-72	Prohibition Regarding “Quasi-Military Armed Forces.”	552.270-7	Fire and Casualty Damage.
		552.270-8	Compliance with Applicable Law.
552.237-73	Restriction on Disclosure of Information.	552.270-9	Inspection—Right of Entry.
552.238-70	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.	552.270-10	Failure in Performance.
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552.238-71	Submission and Distribution of Authorized FSS Schedule Pricelists.	552.270-12	Alterations.
552.238-72	Identification of Products that have Environmental Attributes.	552.270-13	Proposals for Adjustment.
		552.270-14	Changes.
552.238-73	Cancellation.	552.270-15	Liquidated Damages.
552.238-74	Industrial Funding Fee and Sales Reporting.	552.270-16	Adjustment for Vacant Premises.
552.238-75	Price Reductions.	552.270-17	Delivery and Condition.
552.238-76	Definition (Federal Supply Schedules)—Recovery Purchasing.	552.270-18	Default in Delivery—Time Extensions.
552.238-77	Definition (Federal Supply Schedules).	552.270-19	Progressive Occupancy.
552.238-78	Scope of Contract (Eligible Ordering Activities).	552.270-20	Payment.
		552.270-21	Effect of Acceptance and Occupancy.
552.238-79	Use of Federal Supply Schedule Contracts	552.270-22	Default by Lessor During the Term.
		552.270-23	Subordination, Nondisturbance and Attornment.
		552.270-24	Statement of Lease.

552.270-25	Substitution of Tenant Agency.	<b>Subpart 552.3—Provision and Clause Matrixes</b>	
552.270-26	No Waiver.	552.300	Scope of subpart.
552.270-27	Integrated Agreement.		
552.270-28	Mutuality of Obligation.		
552.270-29	Acceptance of Space.		
552.270-30	Price Adjustment for Illegal or Improper Activity.		
552.270-31	Prompt Payment.		
552.270-32	Covenant Against Contingent Fees.		

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## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 552.000 Scope of part.

This part provides the text of provisions and clauses which are unique to GSA or supplement the FAR.

### Subpart 552.1—Instructions for Using Provisions and Clauses

#### 552.101-70 Using Part 552.

(a) *Definition*. “Clause,” as used in this subpart, means provision or clause as defined in FAR w52.101(a).

(b) *Numbering*. (1) Clauses which are “substantially” the same as FAR clauses and clauses to be used instead of FAR clauses are identified as follows:

(i) The clause has the same title as a clause in the FAR.

(ii) The number 5 precedes the clause.

(iii) The clause appears under the same subsection number and caption as in the FAR.

(2) Supplemental clauses are numbered in the same manner as the FAR, except:

(i) The chapter number precedes the clause.

(ii) The subsection numbers begin with 70.

(iii) The clauses are sequentially numbered, e.g., [552.232-70](#), [552.232-71](#), etc.

(c) *Matrixes*. Matrixes provide a guide to locating clauses. Matrixes are included for:

(1) Simplified acquisitions.

(2) Supply, service, construction, and architect-engineer solicitations and contracts.

(3) FAR and GSAR clauses for utility contracts (sole-supplier-regulated rates).

(4) Leases of real property.\

(d) Individuals drafting solicitations must research pertinent regulations or make other determinations to ensure that:

(1) The clauses selected fit the procurement.

(2) There are no restrictions on their use.

(3) When one clause depends on the use of another clause, the solicitation includes all necessary clauses.

### 552.102 Incorporating provisions and clauses.

You may incorporate clauses prescribed in the GSAR for solicitations and contracts by reference.

### 552.103 Identification of provisions and clauses.

*Deviations*. If the GSAR prescribes a class deviation from a FAR clause, identify the clause by the GSAR citation (e.g., [552.232-8](#) PROMPT PAYMENT DISCOUNT (NOV 1987) (DEVIATION FAR 52.232-8)).

### 552.104 Procedures for modifying and completing provisions and clauses.

(a) The procedures in FAR 52.104 apply when you modify or complete a GSAR provision or clause. Provisions and clauses shall not be modified unless the GSAR authorizes their modification.

(b) You do not need to identify modifications of clauses which result from negotiations unless you issue an amendment to the solicitation.

(c) In general, you should modify FAR or GSAR clauses only for individual cases. If a contracting activity develops a modification for repeated use, furnish a copy to the Office of GSA Acquisition Policy (MV) for potential inclusion in the GSAR.

### 552.105 Procedures for using alternates.

The procedures in FAR 52.105 apply to GSAR [Part 552](#).

### 552.107-70 Provisions and clauses prescribed in Subpart 552.1.

(a) Insert the provision at [552.252-5](#), Authorized Deviations in Provisions, in solicitations that include any FAR or GSAR clause with an authorized deviation. You must use this provision in lieu of the FAR provision at 52.252-5.

(b) Insert the clause at [552.252-6](#), Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation. You must use this clause in lieu of the FAR clause at 52.252-6.

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**Subpart 552.2—Text of Provisions and Clauses****552.200 Scope of subpart.**

This subpart sets forth the text of all GSAR provisions and clauses. It also cross-references the location in the GSAR that prescribes the use of each provision and clause.

**552.203-5 [Reserved]****552.203-70 [Reserved]****552.203-71 Restriction on Advertising.**

As prescribed in [503.570-2](#), insert the following clause:

**RESTRICTION ON ADVERTISING (SEP 1999)**

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: “This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government.”

**552.204 [Reserved]****552.204-9 Personal Identity Verification Requirements.**

As prescribed in 504.1303, insert the following clause:

**PERSONAL IDENTITY VERIFICATION REQUIREMENTS (OCT 2012)**

(a) The contractor shall comply with GSA personal identity verification requirements, identified at <http://www.gsa.gov/hspd12>, if contractor employees require access to GSA controlled facilities or information systems to perform contract requirements.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have access to a GSA-controlled facility or access to a GSA-controlled information system.

(End of clause)

**552.211-8 [Reserved]****552.211-70 [Reserved]****552.211-71 [Reserved]****552.211-72 Reference to Specifications in Drawings.**

As prescribed in [511.204\(a\)](#), insert the following clause:

**REFERENCES TO SPECIFICATIONS IN DRAWINGS  
(FEB 1996)**

If military or other drawings are made a part of this contract, any reference in the drawings to Federal specifications or standards will be considered to be a reference to the date of such Federal specification or standard identified in the contract. If the date of the Federal specification or standard is not identified in the contract, the edition, including revisions thereto, in effect on the date the solicitation is issued will apply.

(End of clause)

**552.211-73 Marking.**

As prescribed in [511.204\(b\)\(1\)](#), insert the following clause:

**MARKING (FEB 1996)**

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards:

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required marking, by contract or otherwise, and charge the Contractor therefore at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

**552.211-74 [Reserved]****552.211-75 Preservation, Packaging and Packing.**

As prescribed in [511.204\(b\)\(2\)](#), insert the following clause:

PRESERVATION, PACKAGING, AND PACKING (FEB 1996)

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

*Alternate I (May 2003).* As prescribed at [511.204\(b\)\(2\)](#), insert the following sentence in place of the last sentence of the clause:

Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

**552.211-76 Charges for Packaging, Packing, and Marking.**

As prescribed in [511.204\(b\)\(3\)](#), insert a clause substantially as follows:

CHARGES FOR PACKAGING, PACKING, AND MARKING  
(JAN 2010)

If supplies shipped to a GSA wholesale distribution center are not packaged, packed and marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking/remarking, by contract or otherwise, and charge the Contractor therefore at the rate of \$ \_\_\_\_\_ \* per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

*\*The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Acquisition Service, or a designee.*

**552.211-77 Packing List.**

As prescribed in [511.204\(c\)](#) insert the following clause:

PACKING LIST (FEB 1996)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate:

- (1) Name and address of the consignor;
- (2) Name and complete address of the consignee;
- (3) Government order or requisition number;
- (4) Government bill of lading number covering the shipment (if any); and

(5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

- (1) Cardholder name and telephone number and
- (2) The term "Credit Card."

(End of clause)

*Alternate I (May 2003).* As prescribed at [511.204\(2\)](#), substitute the following paragraphs (a)(3) and (b) for (a)(3) and (b) of the basic clause:

- (a) (3) Ordering activity order or requisition number;
- (b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:
  - (1) Cardholder name and telephone number; and
  - (2) The term "Credit Card."

**552.211-78 [Reserved]****552.211-79 Acceptable Age of Supplies.**

As prescribed in [511.404\(a\)\(1\)](#), insert the following clause:

ACCEPTABLE AGE OF SUPPLIES (FEB 1996)

The supplies furnished under this contract shall not be more than \_\_\_\_\_ months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified period, the Government may exercise its right to reject the supplies.

(End of clause)

*Alternate I (Feb 1996).* For items having a limited shelf-life, the sentence below should be substituted for the first sentence of the basic clause when authorized:

The supplies furnished under this contract shall not be more than \_\_\_\_\_ days old, beginning with the date of manufacture (month, day, year) marked on the container.

#### 552.211-80 Age on Delivery.

As prescribed in [511.404\(a\)\(2\)](#) insert the following clause:

##### AGE ON DELIVERY (FEB 1996)

Included in the description of each shelf-life item is a statement regarding the “age on delivery.” The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies.

(End of clause)

#### 552.211-81 Time of Shipment.

As prescribed in [511.404\(b\)](#), insert the following clause:

##### TIME OF SHIPMENT (FEB 1996)

Shipment is required within \_\_\_\_\_ calendar days after receipt of order.

(End of clause)

*Alternate I (Feb 1996).* If the contract will require shipment more than 45 calendar days after receipt of the order, the following paragraph should be added to the basic clause.

Each delivery order will specify that shipment is required no later than the number of days shown above. If such order also states that “Early Shipment is Precluded,” the Contractor agrees to make shipment no sooner than \_\_\_\_\_ calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival.

*(The second number to be inserted should be 15 calendar days less than the first number.)*

#### 552.211-82 [Reserved]

#### 552.211-83 Availability for Inspection, Testing, and Shipment/Delivery.

As prescribed in [511.404\(c\)](#), insert the following clause:

##### AVAILABILITY FOR INSPECTION, TESTING, AND SHIPMENT/DELIVERY (FEB 1996)

(a) The Government requires that the supplies be made available for inspection and testing within \_\_\_\_\_\* calendar days after receipt of *[Insert “Notice of Award” or “order”]*, and be *[Insert “shipped” or “delivered”]* within \_\_\_\_\_\* calendar days after receipt of (1) notice of approval and release by the Government inspector or (2) authorization to ship without Government inspection.

(b) Failure to make supplies available for inspection and testing or to *[Insert “ship” or “deliver”]* as required by this clause may result in termination of this contract for default.

(End of clause)

*Alternate I (Feb 1996).* If the contract is for stock items, the Contracting Officer shall insert “shipped” or “ship” in the basic clause, add the following paragraph (b) and redesignate paragraph (b) of the basic clause as paragraph (c).

(b) If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before \_\_\_\_\_\* calendar days after receipt of the *[Insert “Notice of Award” or “order”]*, receipt of such notice shall be deemed to be received on the \_\_\_\_\_\* calendar day after receipt of *[Insert “Notice of Award” or “order”]*. Shipments shall not be made before the \_\_\_\_\_\* calendar day after receipt of the *[Insert “Notice of Award” or “order”]* unless authorized in writing by the Contracting Officer.

*\*Entries are normally the same number of days specified for availability.*

#### 552.211-84 [Reserved]

#### 552.211-85 Consistent Pack and Package Requirements.

As prescribed in [511.204\(b\)\(5\)](#), insert the following clause:

##### CONSISTENT PACK AND PACKAGE REQUIREMENTS (JAN 2010)

The Contractor is advised that the Government will, where possible, order in full shipping containers and/or unitized loads. If volume warrants, the Government may also order in truckload or carload quantities provided such quantities do not exceed the maximum order limitation of this contract.

When the number of items per unit container, intermediate container and/or shipping container is not specified for an item, the offeror will state, in the spaces provided in the schedule of items, the number of items to be provided in each container. The quantities which are accepted at the time of award shall remain in effect throughout the term of the contract unless the Contracting Officer approves in writing a request by the Contractor to change the package quantities. Requests for changes shall be directed to the Contracting Officer or Administrative Contracting Officer, whichever is applicable.

(End of clause)

#### 552.211-86 Maximum Weight per Shipping Container.

As prescribed in [511.204\(b\)\(6\)](#), insert the following clause:

##### MAXIMUM WEIGHT PER SHIPPING CONTAINER (JAN 2010)

In no instance shall the weight of a shipping container and its contents exceed 23 kilograms (51 pounds), except when caused by—

(1) The weight of a single item within the shipping container;

(2) A prescribed quantity per pack for an item per shipping container; or

(3) A definite weight limitation set forth in the purchase description.

(End of clause)

#### **552.211-87 Export Packing.**

As prescribed in [511.204\(b\)\(7\)](#), insert the following clause:

##### **EXPORT PACKING (JAN 2010)**

(a) Offerors are requested to quote, in the pricelist accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial or military export packing. Military export packing, if offered, shall be in accordance with Mil-Std-2073-1 Level A or B as specified. If commercial export packing is offered, the offer or pricelist shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to utilize the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export packed when such packing is specified on the purchase order.

(End of clause)

#### **552.211-88 Vehicle Export Preparation.**

As prescribed in [511.204\(b\)\(8\)](#), insert the following clause:

##### **VEHICLE EXPORT PREPARATION (JAN 2010)**

Vehicles shall be prepared for export on wheels, unboxed, unless otherwise specified in the Schedule of Items. All parts and equipment easily removable (subject to pilferage) shall be enclosed in a box substantially secured to the vehicle (inside body if feasible) in such a manner as to minimize the possibility of loss or damage while in transit to ultimate destination.

(End of clause)

#### **552.211-89 Non-Manufactured Wood Packaging Material for Export.**

As prescribed in [511.204\(b\)\(4\)](#), insert the following clause:

##### **NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JAN 2010)**

(a) *Definitions:*

*IPPC Country:* Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) "Guidelines for Regulating Wood Packaging Material in International Trade," approved March 15, 2002. A listing of countries participating in the IPPC is found at [http://www.aphis.usda.gov/import\\_export/plants/plant\\_exports/wpm/country/index.shtml](http://www.aphis.usda.gov/import_export/plants/plant_exports/wpm/country/index.shtml).

*Non-manufactured wood,* is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a combination thereof.

*Packaged material, and solid wood packing material (SWPM),* for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLAD 47.305-1 (available at <http://www.dla.mil/j-3/j-3311/DLAD/rev5.htm>), and MIL-STD-2073-1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery to the countries endorsing the IPPC Guidelines will comply with DLAD 47.305-1, and MIL-STD-2073-1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

(End of clause)



**552.211-90 Small Parts.**

As prescribed in [511.204\(b\)\(9\)](#), insert the following clause:

SMALL PARTS (JAN 2010)

All small parts required to be furnished with machines covered by contracts resulting from this solicitation shall be packed in envelopes, sealed, identified with part numbers and quantity on outside of envelopes. Larger parts must be individually tagged and identified with part number on face of tag.

(End of clause)

**552.211-91 Vehicle Decals, Stickers, and Data Plates.**

As prescribed in [511.204\(b\)\(10\)](#), insert the following clause:

VEHICLE DECALS, STICKERS, AND DATA PLATES  
(JAN 2010)

Unless otherwise specified, caution plates/decals shall be conspicuously installed for all equipment requiring such notices. Vehicles for civil agencies shall be provided with the manufacturer's current warranty legend imprinted on decal-comania, and applied in a visible area of the engine compartment. In addition, a decal or sticker shall provide at least the following information: contract number; purchase order number; date of delivery, month and year; and the warranty time, in month and miles.

(End of clause)

**552.211-92 Radio Frequency Identification (RFID) Using Passive Tags.**

As prescribed in [511.204\(b\)\(11\)](#), insert the following clause:

RADIO FREQUENCY IDENTIFICATION (RFID) USING  
PASSIVE TAGS (JAN 2010)

Radio Frequency Identification shall be required on all non-bulk shipments to the Defense Logistics Agency (DLA) or Department of Defense (DoD) destinations. Shipments shall be tagged in accordance with 48 CFR clause 252.211-7006. Shipments to GSA Distribution Centers with final destinations to DLA and DoD shall be in compliance to 48 CFR 252.211-7006. Copies may be obtained from <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

(End of clause)

**552.211-93 [Reserved]****552.211-94 Time of Delivery.**

As prescribed at [511.404\(d\)](#), insert the following clause:

TIME OF DELIVERY (JAN 2010)

An "X" mark in the left hand block shall be considered a mandatory requirement to be fulfilled by the contractor.

	The Contractor will ship contract item(s) to the Federal Acquisition Service (FAS) stocking points identified in the delivery order at its discretion in order to maintain the required stock levels within the minimum and maximum requirements provided in the weekly status report.
	Delivery is required to be made at destination within * _____ * calendar days after receipt of order for deliveries to a GSA facility.
	Orders under this contract may require direct delivery to other agencies. Orders for direct delivery must be shipped and delivered within the time specified in blocks below.
	Shipment must be made with * _____ * days after receipt of order.
	In addition to block above the Contractor must also ensure that delivery will be made within * _____ * days after receipt of order.

(End of clause)

**552.212-4 Contract Terms and Conditions—Commercial Items.**

*Alternate II (FAR Deviation) (Nov 2009).* When a commercial item contract is contemplated and the contract will include the clause at FAR 52.212-4, insert this Alternate II instead of subparagraph (g)(2) of the FAR clause.

(g)(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10<sup>th</sup> day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10<sup>th</sup> day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10<sup>th</sup> day after Government acceptance of supplies delivered or services performed by the Contractor.

**552.212-70 [Reserved]****552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.**

As prescribed in [512.301\(a\)\(1\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO  
GSA ACQUISITION OF COMMERCIAL ITEMS (OCT 2014)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The clauses in paragraph (b) of this section are incorporated by reference:

*[The Contracting Officer should check the clauses 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.]*

**(b) Clauses.**

- [552.203-71](#) Restriction on Advertising
- [552.211-73](#) Marking
- [552.215-70](#) Examination of Records by GSA
- [552.215-71](#) Examination of Records by GSA (Multiple Award Schedule)
- [552.215-72](#) Price Adjustment—Failure to Provide Accurate Information
- [552.219-70](#) Allocation of Orders—Partially Set-Aside Items
- [552.228-70](#) Workers' Compensation Laws
- [552.229-70](#) Federal, State, and Local Taxes
- [552.232-8](#) Discounts for Prompt Payment
- [552.232-23](#) Assignment of Claims
- [552.232-71](#) Adjusting Payments
- [552.232-72](#) Final Payment
- [552.232-73](#) Availability of Funds
- [552.232-78](#) Payment Information
- [552.237-71](#) Qualifications of Employees
- [552.238-71](#) Submission and Distribution of Authorized FSS Schedule Price List
- [552.238-74](#) Industrial Funding Fee and Sales Reporting
- [552.238-75](#) Price Reductions
- [552.242-70](#) Status Report of Orders and Shipments
- [552.243-72](#) Modifications (Multiple Award Schedule)
- [552.246-73](#) Warranty—Multiple Award Schedule
- [552.246-76](#) Warranty of Pesticides

(End of clause)

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

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 ITEMS (SEP 2003)

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 following provisions and clauses are incorporated by reference:

*[The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.]*

(a) *Provisions.*

— [552.223-72](#) Hazardous Material Information

(b) *Clauses.*

— [552.223-70](#) Hazardous Substances

— [552.223-71](#) Nonconforming Hazardous Material

— [552.238-70](#) Identification of Electronic Office Equipment Providing Accessibility for the Handicapped

— [552.238-72](#) Identification of Products that have Environmental Attributes

(End of clause)

**552.212-73 [Reserved]**

**552.214-70 “All or None” Bids.**

As prescribed in [514.201-6](#), insert the following provision:

“ALL OR NONE” BIDS (OCT 2009)

(a) The Government reserves the right to evaluate bids and make awards on an “all or none” basis as provided below.

(b) A bid submitted on an “all or none” or similar basis will be evaluated as follows: The lowest acceptable bid exclusive of the “all or none” bid will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable “all or none” bid. Award will be made to result in the lowest total cost to the Government.

(End of provision)

**552.214-71 [Reserved]**

**552.214-72 Bid Sample Requirements.**

As prescribed in [514.202-4\(a\)\(3\)](#), insert the following provision:

BID SAMPLE REQUIREMENTS (OCT 2009)

This provision supplements FAR 52.214-20, which is incorporated by reference. Samples shall be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable Representative Samples

NOTE: Bidders that propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective Characteristics	Objective Characteristics

(d) Forward samples addressed to the Sample Room indicated below. Except for samples delivered by U.S. Mail, deliveries will be accepted between the hours of \_\_\_\_\_ Mondays through Fridays, official holidays excluded.

CAUTION: *USE PROPER ADDRESS FOR METHOD OF SHIPMENT SELECTED.*

Mail and Parcel Post	Freight or Express
<i>[Insert Address of Bid Sample Room]</i>	<i>[Insert address of Bid Sample Room]</i>

(e) Contracting Officer insert address.

(End of provision)

**552.215-70 Examination of Records by GSA.**

As prescribed in [514.201-7\(b\)](#) and [515.209-70\(a\)](#) insert the following clause:

EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the

expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

**552.215-71 Examination of Records by GSA (Multiple Award Schedule).**

As prescribed in [515.209-70\(c\)](#) insert the following clause:

EXAMINATION OF RECORDS BY GSA  
(MULTIPLE AWARD SCHEDULE) (JUL 2003)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this contract for overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee and Sales Reporting clause of this contract. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

(End of clause)

**552.215-72 Price Adjustment—Failure to Provide Accurate Information.**

As prescribed in [515.408\(d\)](#), insert the following clause:

PRICE ADJUSTMENT—FAILURE TO PROVIDE  
ACCURATE INFORMATION (AUG 1997)

(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)

**552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.**

As prescribed in [516.203-4\(a\)](#), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD  
SCHEDULE CONTRACTS (SEP 1999)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases under the following conditions:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) Only three increases will be considered during the contract period.



(3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) The aggregate of the increases in any contract unit price under this clause shall not exceed \_\_\_\_\_\* percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/pricelist showing the price increase and the effective date for commercial customers.

(2) Commercial Sales Practice format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price- list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;

(2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist has been mailed to the addressees previously furnished by the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)

*\*Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.*

Alternate I (Sep 1999). As prescribed by 516.203-4(a)(2), substitute the following for paragraphs (b) and (c) of the clause:

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this paragraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed \_\_\_\_ percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

*\*Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on*

*the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the Contracting Director.*

#### **552.216-71 Economic Price Adjustment—Special Order Program Contracts.**

As prescribed in 516.203-4(a), insert the following clause:

##### **ECONOMIC PRICE ADJUSTMENT—SPECIAL ORDER PROGRAM CONTRACTS (AUG 2010)**

(a) "Producer Price Index" (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor (Labor) for product code \_\_\_\_\_ found under Table \_\_\_\_\_.

(b) During the term of the contract, the award price may be adjusted once during each 12-month period upward or downward. However, if an upward adjustment, a maximum of \_\_\_\_ percent shall apply. Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12 months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is—

$$ACP = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Labor designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formula in paragraph (b) of this clause is received by the Contracting Officer within 30 calendar days of the release of the updated index, the Contractor shall have waived its right to an upward price adjustment for the balance of the contract. Alternatively, the Contracting Officer will unilaterally adjust the award price downward when appropriate using the updated index defined in paragraph (b) of this clause.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 31<sup>st</sup> day following the release of the updated index, whichever is later, shall indicate the updated index and percent of change

as well as the ACP, and shall not apply to delivery orders issued before the effective date.

(End of clause)

*Alternate I (Aug 2010).* As prescribed in [516.203-4\(a\)\(1\)](#) and (2), substitute the following paragraphs (b), (e), and (f) for paragraphs (b), (e), and (f) of the basic clause:

(b) Once during each 12-month period, the contract price may be adjusted upward or downward a maximum of     \* percent.

(1) For the first option period, any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period stated in the solicitation (the updated index). This initial contract period may be less than 12 months. The formula for determining the Adjusted Contract Price (ACP) applicable to shipments during the first option period is—

$$\text{ACP} = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(2) For any subsequent option period, the price adjustment shall be the percentage change between the previously updated index (the new base index) and the PPI released 12 months later (the most recent updated index). This percentage shall be applied to the Current Contract Price (CCP). The formula for determining the ACP applicable to shipments for the subsequent option period(s) is—

$$\text{ACP} = \frac{\text{Most Recent Updated Index}}{\text{New Base Index}} \times \text{CCP}$$

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formulas in paragraphs (b)(1) or (2) of this clause is received by the Contracting Officer within 30 calendar days of the date of the Government's preliminary written notice of its intent to exercise the option, the Contractors shall have waived its right to an upward price adjustment for that option period. Alternatively, the Contracting Officer in its written notice shall exercise the option at the CCP or at a reduced price when appropriate using the formulas in paragraphs (b)(1) or (2) of this clause.

(f) Price adjustments shall be effected by execution of a contract modification by the Government indicating the most recent updated index and percent of change and shall apply to delivery orders placed on or after the first day of the option period.

*Alternate II (Aug 2010).* As prescribed in [516.203-4\(a\)\(2\)](#), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least     \* percent.

The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

#### 552.216-72 Placement of Orders.

As prescribed in [516.506\(a\)](#), insert the following clause:

##### PLACEMENT OF ORDERS (AUG 2010)

(a) Delivery orders (orders) will be placed by:

*[Contracting Officer insert names of Federal agencies]*

(b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, General Services Administration's Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other agencies may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Federal agencies may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

(e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.

(f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.

(g) The basic content and format of the TPA will be provided by: General Services Administration, Office of the Chief Information Officer (OI), 2100 Crystal Drive, Arlington, VA 22202, Telephone: (703) 605-9444.

(End of clause)

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*Alternate I (Aug 2010).* As prescribed in [516.506\(a\)](#), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration's Federal Acquisition Service (FAS). The Contractor is not authorized to accept orders from any other agency. Violation of this restriction may result in termination of the contract pursuant to the default clause of this contract.

(b) All orders shall be placed by Electronic Data Interchange (EDI) using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, transmission will be computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into a Trading Partner Agreement (TPA) with FAS in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

#### 552.216-73 Ordering Information.

As prescribed in [516.506\(c\)](#), insert the following provision:

##### ORDERING INFORMATION (AUG 2010)

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Acquisition Service (FAS) by either ?facsimile transmission or ? computer-to-computer Electronic Data Interchange (EDI).

(b) An offeror electing to receive computer-to-computer EDI is requested to indicate below the name, address, and telephone number of the representative to be contacted regarding establishment of an EDI interface.

(c) An offeror electing to receive orders by facsimile transmission is requested to indicate below the telephone num-

ber(s) for facsimile transmission equipment where orders should be forwarded.

(d) For mailed orders, the offeror is requested to include the postal mailing address(es) where paper form orders should be mailed.

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

YES ? NO ?

If "yes" is checked, ordering information to be inserted above shall reflect that in addition to offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule pricelist.

(End of provision)

*Alternate I (Sep 1999).* As prescribed in [516.506\(c\)](#), delete paragraph (d) of the basic provision.

#### 552.216-74 Task-Order and Delivery-Order Ombudsman.

As prescribed in [516.506\(b\)](#), insert the following provision:

##### TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (AUG 2010)

GSA has designated a Task-Order and Delivery-Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer.

In the case that the contractor is not satisfied with the resolution of the complaint by the GSA Task-Order and Delivery-Order Ombudsman, the contractor may follow the procedures outlined in subpart 33.1.

The GSA Ombudsman is the Director, Office of Acquisition Integrity located at: General Services Administration (GSA), Office of Governmentwide Policy (OGP), Office of

Acquisition Policy (MV), Acquisition Integrity Division (MVA), 1800 F Street, NW., Room 4014, Washington, D.C. 20405, Telephone: (202) 219-3454, Fax: (202) 219-3615, E-mail: joseph.neurauter@gsa.gov.

#### 552.217-70 Evaluation of Options.

As prescribed in [519.208\(a\)](#), insert the following provision:

##### EVALUATION OF OPTIONS (AUG 1990)

(a) The Government will evaluate offers for award purposes by determining the lowest base period price. When option year pricing is based on a formula (e.g., changes in the Producer Price Index or other common standard); option year pricing is automatically considered when evaluating the base year price, as any change in price will be uniformly related to changes in market conditions. All options are therefore considered to be evaluated. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government will reject the offer if exceptions are taken to the price provisions of the Economic Price Adjustment clause, unless the exception results in a lower maximum option year price. Such offers will be evaluated without regard to the lower option year(s) maximum. However, if the offeror offering a lower maximum is awarded a contract, the award will reflect the lower maximum.

#### 552.217-71 Notice Regarding Option(s).

As prescribed in [517.208\(b\)](#), insert the following provision:

##### NOTICE REGARDING OPTION(S) (NOV 1992)

The General Services Administration (GSA) has included an option to *[Insert “purchase additional quantities of supplies or services” or “extend the term of this contract” or “purchase additional quantities of supplies or services and to extend the term of this contract”]* in order to demonstrate the value it places on quality performance by providing a mechanism for continuing a contractual relationship with a successful Offeror that performs at a level which meets or exceeds GSA’s quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor’s past performance under this contract in accordance with 48 CFR 517.207.

#### 552.219-70 Allocation of Orders—Partially Set-aside Items.

As prescribed in [519.508](#), insert the following clause:

##### ALLOCATION OF ORDERS—PARTIALLY SET-ASIDE ITEMS (SEP 1999)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than the one receiving the

award on the corresponding non-set-aside portion, the Government will divide the requirements to be ordered between the two Contractors with the objective of achieving, as nearly as possible, a 50/50 division of the total value of orders placed after the award of the set-aside portion. In no case will this division vary by more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion) from the time of the award of the set-aside portion.

(End of clause)

#### 552.219-71 Notice to Offerors of Subcontracting Plan Requirements.

As prescribed in [519.708-70\(a\)](#), insert the following provision:

##### NOTICE TO OFFERORS OF SUBCONTRACTING PLAN REQUIREMENTS (MAR 2012)

The General Services Administration (GSA) is committed to assuring that maximum practicable opportunity is provided to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns to participate in the performance of this contract consistent with its efficient performance. GSA expects any subcontracting plan submitted pursuant to FAR 52.219-9, Small Business Subcontracting Plan, to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding \$650,000 (\$1,500,000 for construction), must demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors in the performance of this contract.

(End of provision)

#### 552.219-72 Preparation, Submission, and Negotiation of Subcontracting Plans.

As prescribed in [519.708-70\(b\)](#), insert the following provision:

##### PREPARATION, SUBMISSION, AND NEGOTIATION OF SUBCONTRACTING PLANS (MAR 2012)

(a) An offeror, other than a small business concern, submitting an offer that exceeds \$650,000 (\$1,500,000 for construction) shall submit a subcontracting plan with its initial offer. The subcontracting plan will be negotiated concurrently with price and any required technical and management proposals, unless the offeror submits a previously-approved commercial plan.

(b) Maximum practicable utilization of small, HUBZone small, small disadvantaged, women-owned, veteran-owned,



and service-disabled veteran owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. The General Services Administration (GSA) expects that an offeror's subcontracting plan will reflect a commitment to assuring that small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns are provided the maximum practicable opportunity, consistent with efficient contract performance, to participate as subcontractors in the performance of the resulting contract. An offeror submitting a commercial plan can reflect this commitment through subcontracting opportunities it provides that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(c) GSA believes that this potential contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described at FAR 52.219-9(d) of the clause in this contract entitled Small Business Subcontracting Plan, the offeror shall:

(1) Demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns in performing the contract.

(2) Include a description of the offeror's subcontracting strategies used in any previous contracts, significant achievements, and how this plan will build upon those earlier achievements.

(3) Demonstrate through its plan that it understands the small business subcontracting program's objectives and GSA's expectations, and it is committed to taking those actions necessary to meet these goals or objectives.

(d) In determining the acceptability of any subcontracting plan, the Contracting Officer will take each of the following actions:

(1) Review the plan to verify that the offeror demonstrates an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the program and has included all the information, goals, and assurances required by FAR 52.219-9.

(2) Consider previous goals and achievements of contractors in the same industry.

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns.

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(e) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

#### 552.219-73 Goals for Subcontracting Plan.

As prescribed in [519.708-70\(c\)](#), insert the following provision:

##### GOALS FOR SUBCONTRACTING PLAN (JUNE 2005)

(a) Maximum practicable utilization of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits.

(1) The General Services Administration's (GSA's) commitment to ensuring that maximum practicable opportunity is provided to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns to participate as subcontractors in the performance of this contract, consistent with its efficient performance, must be reflected in the offeror's subcontracting plan submitted pursuant to the clause of this contract at FAR 52.219-9, Small Business Subcontracting Plan.

(2) In addressing the eleven elements described at FAR 52.219-9(d), the offeror shall demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns in performing this contract. An offeror submitting a commercial plan can demonstrate its commitment in providing maximum practicable opportunities through subcontracting opportunities it provides to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(3) The subcontracting plan shall include a description of the offeror's subcontracting strategies used in previous contracts and significant achievements, with an explanation of how this plan will build upon those earlier achievements. Additionally, the offeror shall demonstrate through its plan

that it understands the small business subcontracting program's objectives, GSA's expectations, and is committed to taking those actions necessary to meet these goals or objectives.

(b) GSA believes that this contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors. Accordingly, it is anticipated that an acceptable subcontracting plan will contain at least the following goals:

Small Business	_____ percent
HUBZone Small Business	_____ percent
Small Disadvantaged Business	_____ percent
Women-Owned Small Business	_____ percent
Veteran-Owned Small Business	_____ percent
Service-Disabled Veteran-Owned Small Business	_____ percent

**NOTE:** Target goals are expressed as a percentage of planned subcontracting dollars.

(c) In determining the acceptability of any subcontracting plan, the Contracting Officer will—

(1) Review the plan to verify that the offeror has demonstrated an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the programs and has included all the information, goals, and assurances required by FAR 52.219-9;

(2) Consider previous goals and achievements of contractors in the same industry;

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns; and

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(d) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified

by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

*Alternate I (Sep 1999).* As prescribed in [519.708-70\(c\)\(2\)](#), delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

#### **552.219-74 Section 8(a) Direct Award.**

As prescribed in [519.870-8](#), insert the following clause:

##### **SECTION 8(A) DIRECT AWARD (SEP 1999)**

(a) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a) certifications, 8(a) eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

*[Complete at time of award]*

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To the requirements of 52.219-14, Limitations on Subcontracting.

(End of clause)

#### **552.219-75 GSA Mentor-Protégé Program.**

As prescribed in [519.7017\(a\)](#), insert the following clause:

##### **GSA MENTOR-PROTÉGÉ PROGRAM (SEP 2009)**

(a) Prime contractors, including small businesses, are encouraged to participate in the GSA Mentor-Protégé Pro-



gram for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in GSA contracts.

(b) The Program consists of:

(1) Mentor firms are large prime contractors with at least one active subcontracting plan, or that are eligible small businesses;

(2) Protégés are subcontractors to the prime contractor, and include small business concerns, small disadvantaged business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, and women-owned small business concerns meeting the qualifications specified in [Subpart 519.70](#); and

(3) Mentor-protégé Applications and Agreements, approved by the Mentor-Protégé Program Manager in the GSA Office of Small Business Utilization (OSBU).

(c) *Mentor participation in the Program* means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform GSA contracts and subcontracts.

(d) Contractors interested in participating in the Program are encouraged to read FAR Subpart 19.7 and to contact the GSA Office of Small Business Utilization (E), Washington, DC 20405, (202) 501-1021, for further information.

(End of clause)

#### 552.219-76 Mentor Requirements and Evaluation.

As prescribed in [519.7017\(b\)](#), insert the following clause:

##### MENTOR REQUIREMENTS AND EVALUATION (MAR 2012)

(a) The purpose of the GSA Mentor-Protégé Program is for a GSA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include small business concerns, small disadvantaged business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, and women-owned small business concerns meeting the qualifications specified in section [519.7007](#). The Program requires an Application process and an Agreement between the mentor and the protégé. See GSAR [Subpart 519.70](#) for more information.

(b) GSA will evaluate a GSA mentor's performance on the following factors:

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of its protégé as a subcontractor and supplier;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of its protégé as defined in the Agreement;

(3) To what extent the protégé has met the developmental objectives in the Agreement; and

(4) To what extent the firm's participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms other than the mentor, and from agencies.

(c) Semi-annual reports shall be submitted by a GSA mentor to the GSA Mentor-Protégé Program Manager, GSA Office of Small Business Utilization (E), Washington, DC 20405. The reports must include information as outlined in paragraph (b) of this section. The semi-annual report may include a narrative describing the forms of developmental assistance a mentor provides to a protégé and any other types of permissible, mutually beneficial assistance.

(d) A GSA mentor will notify the GSA Mentor-Protégé Program Manager and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the GSA Program or terminate the Agreement, or upon receipt of a protégé's notice to withdraw from the Program.

(e) GSA mentor and protégé firms will submit a "Lessons Learned" evaluation to the GSA Mentor-Protégé Program Manager at the conclusion of the Mentor-Protégé Agreement. At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the GSA Mentor-Protégé Program manager, the technical program manager, and the contracting officer during a formal Program review regarding Program accomplishments as they pertain to the approved Agreement.

(f) GSA has the authority to exclude mentor or protégé firms from participating in the GSA Program. If GSA excludes a mentor or a protégé from the Program, the GSA Office of Small Business Utilization will deliver to the contractor a Notice specifying the reason for Program exclusion and the effective date. The exclusion from the Program does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the Agreement be terminated shall be submitted with the Agreement as required in section [519.7010\(j\)](#).

(g) Subcontracts awarded to GSA protégé firms under this Program are exempt from competition requirements, notwithstanding FAR 52.244-5. However, price reasonableness should still be determined.

(End of clause)

**552.223-70 Hazardous Substances.**

As prescribed in [523.303\(a\)](#), insert the following clause:

## HAZARDOUS SUBSTANCES (MAY 1989)

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Materials Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

(End of clause)

**552.223-71 Nonconforming Hazardous Materials.**

As prescribed in [523.303\(b\)](#), insert the following clause:

## NONCONFORMING HAZARDOUS MATERIALS (SEP 1999)

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure:

- (1) May be interpreted as a willful failure to perform,
- (2) May result in termination of the contract for default and
- (3) Shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104-3(b) and 9.406-2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

(End of clause)

**552.223-72 Hazardous Material Information.**

As prescribed in [523.370](#), insert the following provision:

## HAZARDOUS MATERIAL INFORMATION (SEP 1999)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT Shipping Name	DOT Hazard Class	DOT Label Required
			Yes [ ] No [ ]
			Yes [ ] No [ ]
			Yes [ ] No [ ]

(End of provision)

**552.227-70 Government Rights (Unlimited).**

As prescribed in [527.409\(a\)](#), insert the following clause:

## GOVERNMENT RIGHTS (UNLIMITED) (MAY 1989)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

**552.227-71 Drawings and Other Data to Become Property of Government.**

As prescribed in [527.409\(b\)](#), substitute the following clause:

DRAWINGS AND OTHER DATA TO BECOME  
PROPERTY OF GOVERNMENT (MAY 1989)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect

thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of works beyond such period.

(End of clause)

**552.228-5 Government as Additional Insured.**

As prescribed in [528.310](#), insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (MAY 2009)

(a) This clause supplements the requirements set forth in FAR clause 52.528-5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

**552.229-70 Federal, State, and Local Taxes.**

As prescribed in [529.401-70](#), insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (APR 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of clause)

**552.229-71 Federal Excise Tax—DC Government.**

As prescribed in [529.401-71](#), insert the following clause:

FEDERAL EXCISE TAX—DC GOVERNMENT (SEP 1999)

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

(End of clause)

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**552.232-1 Payments.**

As prescribed in [532.7104](#), insert the following clause:

**PAYMENTS (NOV 2009) (DEVIATION FAR 52.232-1)**

(a) The Government shall pay the Contractor, without submission of invoices or vouchers, 30 days after the service period, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

(b) Unless otherwise specified in this contract, the Government will make payment on partial deliveries accepted by the Government if either:

(1) The amount due on the deliveries warrants it.

(2) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the PDN assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 2007). The PDN appears on the contract award document.

(End of clause)

**552.232-23 Assignment of Claims.**

As prescribed in [532.806](#), insert the following clause:

**ASSIGNMENT OF CLAIMS (SEP 1999)**

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232-23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due

under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

(End of clause)

**552.232-25 Prompt Payment.**

As prescribed in [532.908\(c\)\(2\)](#), insert the following clause:

**PROMPT PAYMENT (NOV 2009)  
(DEVIATION FAR 52.232-25)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph [\(c\)\(4\)](#) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments.* (1) The due date for making invoice payments by the designated payment office is:

(i) For orders placed electronically by the General Services Administration (GSA) Federal Acquisition Service (FAS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(A) The 10<sup>th</sup> day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10<sup>th</sup> day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 10<sup>th</sup> day after Government acceptance of supplies delivered or services performed by the Contractor.

(ii) For all other orders, the later of the following two events:

(A) The 30<sup>th</sup> day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30<sup>th</sup> day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 30<sup>th</sup> day after Government acceptance of supplies delivered or services performed by the Contractor.

(iii) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(2) The General Services Administration will issue payment on the due date in paragraph (a)(1)(i) of this clause if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(i) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(ii) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) or submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

(iii) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(iv) The EDI transaction sets in paragraphs (a)(2)(i) through (a)(2)(iii) of this clause must adhere to implementation conventions provided by GSA.

(3) If any of the conditions in paragraph (a)(2) of this clause do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(4) *Certain food products and other payments.* (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7<sup>th</sup> day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7<sup>th</sup> day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10<sup>th</sup> day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10<sup>th</sup> day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry

practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(5) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. Notwithstanding paragraph (g) of the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required. A proper invoice must include the items listed in paragraphs (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in paragraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(6) *Interest penalty.* An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(6)(i) through



(a)(6)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(7) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the “Renegotiation Board Interest Rate,” and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in paragraph (c)(5) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7<sup>th</sup> day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials

to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(8) *Prompt payment discounts.* An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in paragraph (c)(7) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(9) *Additional interest penalty.* (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with paragraph (a)(9)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(9)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all

overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40<sup>th</sup> day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40<sup>th</sup> day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40<sup>th</sup> day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in paragraph (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* (1) Due dates for recurring financing payments. If this contract provides for contract

financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the *[insert day as prescribed by Agency head; if not prescribed, insert 30<sup>th</sup> day]* day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

**552.232-70 [Reserved]**

**552.232-71 [Reserved]**

**552.232-72 Final Payment Under Building Services Contracts.**

As prescribed in [532.904\(c\)](#), insert the following clause:

FINAL PAYMENT UNDER BUILDING SERVICES  
CONTRACTS (MAR 2012)

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)



# AMENDMENT 2009–13 NOVEMBER 25, 2009

**552.232-73 [Reserved]**

**552.232-74 [Reserved]**

**552.232-75 [Reserved]**

**552.232-76 [Reserved]**

**552.232-77 Payment By Government Charge Card.**

As prescribed in [532.7003](#), insert the following clause:

**PAYMENT BY GOVERNMENT CHARGE CARD (NOV 2009)**

(a) *Definitions.* “Governmentwide commercial purchase card” means a uniquely numbered charge card issued by a contractor under the GSA SmartPay® program contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

“Oral order” means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of \_\_\_\_\* or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment using the charge card until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder’s account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

(End of clause)

*\*Enter amount not to exceed \$100,000.*

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**552.236-70 Definitions.**

As prescribed in [536.570-1](#), insert the following clause:

DEFINITIONS (APR 1984)

The terms “Administration” and “Service” as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of clause)

**552.236-71 Authorities and Limitations.**

As prescribed in [536.570-2](#), insert the following clause:

AUTHORITIES AND LIMITATIONS (APR 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer’s authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the ion) of anyone not authorized to issue such order.

(End of clause)

**552.236-72 Specialist.**

As prescribed in [536.570-3](#), insert the following clause:

SPECIALIST (APR 1984)

The term “Specialist,” as used in the contract specification, shall mean an individual or firm of established reputation (or, if

newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer’s direct supervision.

(End of clause)

**552.236-73 Basis of Award—Construction Contract.**

As prescribed in [536.570-4](#), insert the following provision or the appropriate Alternate:

BASIS OF AWARD—CONSTRUCTION CONTRACT  
(APR 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled “Contract Award—Sealed Bidding.”

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

*Alternate I (Apr 1985).* If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled “Contract Award—Sealed Bidding.”

*Alternate II (Apr 1985).* If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price

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bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled “Contract Award—Sealed Bidding.”

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is \$100,000 and a bidder’s base bid is \$85,000, with its separate bids on four successive alternates being \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of selecting the alternates would be \$99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the \$100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceed the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

*Alternate III (Apr 1985).* If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) of this provision. The evaluation of options will not obligate the Government to exercise the

options. See the provision entitled “Contract Award—Sealed Bidding.”

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is \$100,000 and a bidder’s base bid is \$85,000, with its separate bids on four successive alternates being \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of selecting the alternates would be \$99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the \$100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c) of this provision. If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

#### **552.236-74 Working hours.**

As prescribed in [536.570-5](#), insert the following clause:

##### **WORKING HOURS (APR 1984)**

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of clause)

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**552.236-75 Use of Premises.**

As prescribed in [536.570-6](#), insert the following clause:

USE OF PREMISES (APR 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

(End of clause)

**552.236-76 Measurements.**

As prescribed in [536.570-7](#), insert the following clause:

MEASUREMENTS (APR 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of clause)

**552.236-77 Specifications and Drawings.**

As prescribed in [536.570-8](#), insert the following clause:

SPECIFICATIONS AND DRAWINGS (SEP 1999)

The requirements of the clause entitled “Specifications and Drawings for Construction” at FAR 52.236-21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(b) Where the word “similar” occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the

drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and the drawings prepared specifically for this contract, the later shall govern.

(End of clause)

**552.236-78 Shop Drawings, Coordination Drawings, and Schedules.**

As prescribed in [536.570-9](#), insert the following clause:

SHOP DRAWINGS, COORDINATION DRAWINGS, AND  
SCHEDULES (SEP 1999)

The requirements, of the clause entitled “Specifications and Drawings for Construction” at FAR 52.236-21, are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers’ scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer’s approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:

Number and title of drawing

Date of drawing or revision

Name of project building or facility

Name of Contractor and (if appropriate) name of subcontractor submitting drawing

Clear identity of contents and location on the work

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## Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of clause)

**552.236-79 Samples.**

As prescribed in [536.570-10](#), insert the following clause:

## SAMPLES (APR 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

- (1) Name of project building or facility, project title and contract number.
- (2) Name of Contractor and, if appropriate, name of subcontractor.
- (3) Identification of material or equipment with specification requirement.
- (4) Place of origin.
- (5) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) of this clause. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not

approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

(End of clause)

**552.236-80 Heat.**

As prescribed in [536.570-11](#), insert the following clause:

## HEAT (APR 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall:

- (a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;
- (b) Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and
- (c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

(End of clause)

**552.236-81 Use of Equipment by the Government.**

As prescribed in [536.570-12](#), insert the following clause:

## USE OF EQUIPMENT BY THE GOVERNMENT (APR 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heat-

## 552.236-82

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

ing or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.

(c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.

(d) The guarantee period, elsewhere provided for in this contract, for each piece of equipment shall be in accordance with the "Guarantees" clause of this contract.

(End of clause)

**552.236-82 Subcontracts.**

As prescribed in [536.570-13](#), insert the following clause:

## SUBCONTRACTS (APR 1984)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.

(c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

(End of clause)

**552.236-83 Requirement for a Project Labor Agreement.**

As prescribed in [536.570-14](#), insert a clause substantially the same as the following:

REQUIREMENT FOR A PROJECT LABOR AGREEMENT  
(SEP 1999)

(a) *Definition.* "Project Labor Agreement" (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(b) The Contractor shall, after contract award, enter into a PLA for performance of *[Insert project or contract name]*. The PLA binds the Contractor and subcontractors of whatever tier engaged in onsite construction work. The PLA shall include all the following terms:

(1) Guarantees against strikes, lockouts, and similar work disruptions.

(2) Effective, prompt and mutually binding procedures for resolving labor disputes arising during the project.

(3) Other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.

(4) The PLA shall fully conform to all applicable statutes, regulations, and Executive Orders.

(c) Any PLA reached under this clause shall not change the terms of this contract or provide for any pricing adjustment by the Government.

(d) The Government shall not participate in the negotiations of any PLA.

(e) Nothing in this clause precludes contractors or subcontractors from competing for contracts or subcontracts on this project without discrimination based on union or non-union status.

(End of clause)

**552.237-70 [Reserved]****552.237-71 Qualifications of Employees.**

As prescribed in [537.110\(a\)](#), insert the following clause:

## QUALIFICATIONS OF EMPLOYEES (MAY 1989)

(a) The contracting officer or a designated representative may require the Contractor to remove any employee(s) from GSA controlled buildings or other real property should it be determined that the individual(s) is either unsuitable for security reasons or otherwise unfit to work on GSA controlled property.

(b) The Contractor shall fill out and cause each of its employees performing work on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor and its employees shall be fingerprinted.

(c) Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or, who presents other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

(End of clause)

**552.237-72 Prohibition Regarding “Quasi-Military Armed Forces.”**

As prescribed in [537.110\(b\)](#), insert the following clause:

PROHIBITION REGARDING “QUASI-MILITARY  
ARMED FORCES” (SEP 1999)

The Contractor must not, during the term of this contract, offer for hire “Quasi-Military Armed Forces” within the meaning of the court decision in *United States ex. rel. Weinberger v. Equifax*, 557 F. 2d 456 (5<sup>th</sup> Cir., 1977).

(End of clause)

**552.237-73 Restriction on Disclosure of Information.**

As prescribed in [537.270](#), insert the following clause:

RESTRICTION ON DISCLOSURE OF INFORMATION  
(JUNE 2009)

(a) The Contractor shall, in the performance of this contract, keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor shall not publish or otherwise divulge such information in whole or in part, in any manner or form, nor authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to such information, while in the Contractor’s possession, to those employees needing such information to perform the work provided herein, i.e., on a “need to know” basis. The Contractor shall immediately notify, in writing, the Contracting Officer in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor shall not disclose any information concerning the work under this contract to any persons or entity unless the Contractor obtains prior written approval from the Contracting Officer.

(c) The Contractor shall insert the substance of this clause in any consultant agreement or subcontract under this contract.

(d) Any unauthorized disclosure of information may result in termination of this contract for cause.

(End of clause)

**552.238-70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.**

As prescribed in [538.273\(a\)\(1\)](#), insert the following clause:

IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT  
PROVIDING ACCESSIBILITY FOR THE HANDICAPPED  
(SEP 1991)

(a) *Definitions.* “Electronic office equipment accessibility” means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a

manner that accommodates the functional limitations of individuals with disabilities (i.e., handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

“Handicapped individuals” mean qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

“Special peripheral” means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

(End of clause)

**552.238-71 Submission and Distribution of Authorized FSS Schedule Pricelists.**

As prescribed in [538.273\(a\)\(2\)](#), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS  
SCHEDULE PRICELISTS (SEP 1999)

(a) *Definition.* For the purposes of this clause, the Mailing List is [*Contracting officer shall insert either: “the list of addressees provided to the Contractor by the Contracting Officer” or “the Contractor’s listing of its Federal Government customers”*].

(b) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium.

The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(c) The Contractor shall make all of the distributions required in paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(d) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of clause)

*Alternate I (May 2003).* As prescribed in [538.273\(a\)\(2\)](#), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *Definition.* For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: "the list of addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its ordering activity customers"].

#### **552.238-72 Identification of Products that have**

##### **Environmental Attributes.**

As prescribed in [538.273\(a\)\(3\)](#), insert the following clause:

##### **IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES (SEP 2003)**

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (e.g., publications and electronic formats).

(b) *Definitions.* As used in this clause—

"Energy-efficient product" means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

"GSA Advantage!" is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

"Other environmental attributes" refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several

examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

"Post-consumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

"Recovered materials" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

"Remanufactured" means factory rebuilt to original specifications.

"Renewable energy" means energy produced by solar, wind, geothermal, and biomass power.

"Renewable energy technology" means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) (1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25<sup>th</sup> percentile levels (see ENERGY STAR® at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/femp/procurement/>);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.



(2) These identifications must be made in each of the offeror's following mediums:

- (i) The offer itself.
- (ii) Printed commercial catalogs, brochures, and pricelists.
- (iii) Online product website.
- (iv) Electronic data submission for GSA *Advantage!* submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA *Advantage!*.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

- (1) Participation in a Federal agency sponsored program (e.g., the EPA and DOE ENERGY STAR® product labeling program);
- (2) Verification by an independent organization that specializes in certifying such claims; or
- (3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

#### 552.238-73 Cancellation.

As prescribed in [538.273\(a\)\(4\)](#), insert the following clause:

#### CANCELLATION (SEP 1999)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

(End of clause)

#### 552.238-74 Industrial Funding Fee and Sales Reporting.

As prescribed in [538.273\(b\)\(1\)](#), insert the following clause:

#### INDUSTRIAL FUNDING FEE AND SALES REPORTING (MAY 2014)

(a) *Reporting of Federal Supply Schedule Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including "zero" sales, by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA)'s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: <http://www.fms.treas.gov/intn.html>.

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after

physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: *Acquisition Services Fund*. Net operating revenues generated by the IFF are also applied to fund initiatives benefiting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at <https://72a.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

#### 552.238-75 Price Reductions.

As prescribed in [538.273\(b\)\(2\)](#), insert the following clause:

##### PRICE REDUCTIONS (MAY 2004)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer

(or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the Government with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to State and local government entities when the order is placed under this contract (and the State and local government entity is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

*Alternate I (May 2003).* As prescribed in [538.273\(b\)\(2\)](#) substitute the following paragraph (c)(2) for paragraph (c)(2) of the basic clause, and substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause.

(c)(2) The Contractor shall offer the price reduction to the eligible ordering activities with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d)(2) To eligible ordering activities under this contract; or

**552.238-76 Definition (Federal Supply Schedules)—Recovery Purchasing.**

As prescribed in [538.7104\(a\)](#), insert the following clause:

**DEFINITION (FEDERAL SUPPLY SCHEDULES)—RECOVERY PURCHASING (FEB 2007)**

*Ordering activity* (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see [552.238-78](#), Alternate I) authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

**552.238-77 Definition (Federal Supply Schedules).**

As prescribed in [538.7004\(a\)](#), insert the following clause:

**DEFINITION (FEDERAL SUPPLY SCHEDULES) (MAY 2003)**

*Ordering activity* (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see [552.238-78](#)) authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

**552.238-78 Scope of Contract (Eligible Ordering Activities).**

As prescribed in [538.7004\(b\)](#) insert the following clause:

**SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (SEP 2008)**

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For Special Item Number 132-53, Wireless Services ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 USC 450j(k);

(7) Qualified Nonprofit Agencies as authorized under 40 USC 502(b); and

(8) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions.* *Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes

a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

*Overseas delivery* is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

o Contractor will provide domestic and overseas delivery.

o Contractor will provide overseas delivery only.

o Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities: State and local government, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f) (1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause [552.232-79](#), Payment by Credit Card. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause [552.232-79](#), Payment by Credit Card.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of \$2,500 (two thousand, five hundred dollars) during the contract term.

(End of clause)

*Alternate I (FEB 2007).* As prescribed in [538.7104\(b\)](#), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic clause:

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic delivery.

(1) Executive agencies (as defined in Federal Acquisition Regulation Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to Federal Acquisition Regulation Subpart 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(8) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(d) The following activities may place orders against Federal Supply Schedules for products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities: State and local government entities, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

“State and local government entities”, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) “Local educational agency” has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) “Institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) “Tribal government” means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

#### **552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.**

As prescribed in [538.7004\(c\)](#), insert the following clause:

##### **USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY CERTAIN ENTITIES—COOPERATIVE PURCHASING (MAY 2004)**

(a) If an entity identified in paragraph (d) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies “Compliance with laws unique to Government contracts” (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (*e.g.*, FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or



in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause [552.238-74](#), Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause [552.238-78](#).

(End of clause)

#### **552.238-80 Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing.**

As prescribed in [538.7104\(c\)](#), insert the following clause:

##### **USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY CERTAIN ENTITIES—RECOVERY PURCHASING (FEB 2007)**

(a) If an entity identified in paragraph (d) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities)—Alternate I, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., Federal Acquisition Regulation 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B).

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for

any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(7) The state or local government ordering activity will be responsible for purchasing products or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities)—Alternate I, the Contractor agrees to the following conditions—

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause [552.238-74](#), Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number—

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities)—Alternate I; and

(2) The dollar value for sales to entities identified in paragraph (d) of clause [552.238-78](#), Alternate I.

(d) A listing of the Federal Supply Schedule contracts for the products and services available for disaster recovery purchasing is accessible in GSA's Schedules e-Library at web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating Contractors and the products and services available for disaster recovery purchasing will be labeled with the Disaster Recovery Purchasing icon.

(End of clause)

## **552.238-81 Modification (Federal Supply Schedule).**

As prescribed in [538.273\(b\)](#), insert the following clause:

### **MODIFICATIONS (FEDERAL SUPPLY SCHEDULE) (APR 2014)**

(a) General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) Types of Modifications. (1) Additional items/additional SINs. When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at [552.238-75](#). If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the

effective date, duration, terms and conditions of the price reduction.

(c) Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at [552.238-75](#).

(d) Electronic File Updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at [552.238-75](#).

(e) Amendments to Paper Federal Supply Schedule Price Lists.

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of clause)

*Alternate I (Apr 2014).* As prescribed in [538.273\(b\)\(3\)](#), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (<http://vsc.gsa.gov>). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

## 552.239 [Reserved]

### 552.239-70 Information Technology Security Plan and Security Authorization.

As prescribed in [539.7002\(a\)](#), insert the following provision:

#### INFORMATION TECHNOLOGY SECURITY PLAN AND SECURITY AUTHORIZATION (JUN 2011)

All offers/bids submitted in response to this solicitation must address the approach for completing the security plan and certification and security authorization requirements as required by the clause at [552.239-71](#), Security Requirements for Unclassified Information Technology Resources.

(End of provision)

### 552.239-71 Security Requirements for Unclassified Information Technology Resources.

As prescribed in [539.7002\(b\)](#), insert the following clause:

#### SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2012)

(a) *General.* The Contractor shall be responsible for information technology (IT) security, based on General Services Administration (GSA) risk assessments, for all systems connected to a GSA network or operated by the Contractor for GSA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to GSA's information that directly supports the mission of GSA, as indicated by GSA. The term information technology, as used in this clause, means any equipment, including telecommunications equipment that is used in the automatic acquisition, storage, manipulation, management, control, display, switching, interchange, transmission, or reception of data or information. This includes major applications as defined by OMB Circular A-130. Examples of tasks that require security provisions include:

(1) Hosting of GSA e-Government sites or other IT operations;

(2) Acquisition, transmission, or analysis of data owned by GSA with significant replacement cost should the Contractors copy be corrupted;

(3) Access to GSA major applications at a level beyond that granted the general public; e.g., bypassing a firewall; and

(4) Any new information technology systems acquired for operations within the GSA must comply with the requirements of HSPD-12 and OMB M-11-11. Usage of the credentials must be implemented in accordance with OMB policy and NIST guidelines (e.g., NIST SP 800-116). The system must operate within the GSA's access management environment. Exceptions must be requested in writing and can only



be granted by the GSA Senior Agency Information Security Officer.

(b) *IT Security Plan.* The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and GSA policies and procedures. GSA's Office of the Chief Information Officer issued "CIO IT Security Procedural Guide 09-48, Security Language for Information Technology Acquisitions Efforts," to provide IT security standards, policies and reporting requirements. This document is incorporated by reference in all solicitations and contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at <http://www.gsa.gov/portal/category/25690>. Specific security requirements not specified in "CIO IT Security Procedural Guide 09-48, Security Language for Information Technology Acquisitions Efforts" shall be provided by the requiring activity.

(c) *Submittal of IT Security Plan.* Within 30 calendar days after contract award, the Contractor shall submit the IT Security Plan to the Contracting Officer and Contracting Officers Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractor's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer and COR, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) *Submittal of a Continuous Monitoring Plan.* The Contractor must develop a continuous monitoring strategy that includes:

- (1) A configuration management process for the information system and its constituent components;
- (2) A determination of the security impact of changes to the information system and environment of operation;
- (3) Ongoing security control assessments in accordance with the organizational continuous monitoring strategy;
- (4) Reporting the security state of the information system to appropriate GSA officials; and
- (5) All GSA general support systems and applications must implement continuous monitoring activities in accordance with this guide and NIST SP 800-37 Revision 1, *Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach*.

(e) *Security authorization.* Within six (6) months after contract award, the Contractor shall submit written proof of IT security authorization for acceptance by the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. The security authorization must be in accordance with NIST Special Publication 800-37. This security authorization will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This security authorization, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted security authorization documentation.

(f) *Annual verification.* On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security plan remains valid.

(g) *Warning notices.* The Contractor shall ensure that the following banners are displayed on all GSA systems (both public and private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

\*\*WARNING\*\*WARNING\*\*WARNING\*\*

Unauthorized access is a violation of U.S. law and General Services Administration policy, and may result in criminal or administrative penalties. Users shall not access other users or system files without proper authority. Absence of access controls IS NOT authorization for access! GSA information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

\*\*WARNING\*\*WARNING\*\*WARNING\*\*

(h) *Privacy Act notification.* The Contractor shall ensure that the following banner is displayed on all GSA systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93-579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to \$5,000, or both.

(i) *Privileged or limited privileges access.* Contractor personnel requiring privileged access or limited privileges access to systems operated by the Contractor for GSA or intercon-

nected to a GSA network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(j) *Training.* The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB Circular A-130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on the rules of behavior.

(k) *GSA access.* The Contractor shall afford GSA access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, IT systems and devices, and personnel used in performance of the contract, regardless of the location. Access shall be provided to the extent required, in GSA's judgment, to conduct an inspection, evaluation, investigation or audit, including vulnerability testing to safeguard against threats and hazards to the integrity, availability and confidentiality of GSA data or to the function of information technology systems operated on behalf of GSA, and to preserve evidence of computer crime. This information shall be available to GSA upon request.

(l) *Subcontracts.* The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(m) *Notification regarding employees.* The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to GSA information systems or data. If an employee's employment is terminated, for any reason, access to GSA's information systems or data shall be immediately disabled and the credentials used to access the information systems or data shall be immediately confiscated.

(n) *Termination.* Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

#### 552.240 [Reserved]

#### 552.241 [Reserved]

#### 552.241-70 Availability of Funds for the Next Fiscal Year or Quarter.

As prescribed in [541.501](#), insert the clause [552.241-70](#), Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232-19, in all utility acquisitions.

##### AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR OR QUARTER (SEP 2010)

Funds are not presently available for performance under this contract beyond \_\_\_\_\_. The Government's obliga-

tion for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond \_\_\_\_\_, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

#### 552.241-71 Disputes (Utility Contracts).

As prescribed in [541.501](#), insert clause [552.241-71](#), Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

##### DISPUTES (UTILITY CONTRACTS) (SEP 2010)

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

#### 552.242-70 Status Report of Orders and Shipments.

As prescribed in [542.1107](#), insert the following clause:

##### STATUS REPORT OF ORDERS AND SHIPMENTS (FEB 2009)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [*Insert appropriate telephone number of QVOC*]. Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) A copy of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be reproduced by the Contractor.

(End of clause)

**552.243-71 Equitable Adjustments.**

As prescribed in [543.205](#), insert the following clause:

EQUITABLE ADJUSTMENTS (JAN 2009)

(a) This clause governs the determination of equitable adjustments to which the Contractor may be entitled under the “Changes” clause prescribed by FAR 52.243-4, the “Differing Site Conditions” clause prescribed by FAR 52.236-2, and any other provision of this contract allowing entitlement to an equitable adjustment. This clause does not govern determination of the Contractor’s relief allowable under the “Suspension of Work” clause prescribed by FAR 52.242-14.

(b) At the written request of the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements set forth herein, for an equitable adjustment to the contract for changes or other conditions that may entitle a Contractor to an equitable adjustment. If the Contractor deems an oral or written order to be a change to the contract, it shall promptly submit to the Contracting Officer a proposal for equitable adjustment attributable to such deemed change. The proposal shall also conform to the requirements set forth herein.

(c) The proposal shall be submitted within the time specified in the “Changes” clause, or such other time as may reasonably be required by the Contracting Officer. In the case of a proposal submitted based on the “Differing Site Conditions” clause, the notice requirement of that clause shall be met.

(d) Proposals for equitable adjustments, including no cost requests for adjustment of the contract’s required completion date, shall include a detailed breakdown of the following elements, as applicable:

(1) Direct Costs.

(2) Markups.

(3) Change to the time for completion specified in the contract.

(e) *Direct Costs.* The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work impacted by the change. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized);

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor

rate, together with itemization of applied labor burdens (exclusive of employer’s overhead, profit, and any labor cost burdens carried in employer’s overhead rate);

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed;

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs [\(e\)\(1\)](#) and [\(e\)\(2\)](#) of this clause;

(5) Delivery costs, if not included in material unit costs;

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor’s or subcontractors’ overhead rates, as specified in paragraph [\(g\)](#) of this clause; and

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph [\(i\)](#) of this clause.

(g) *Extensions of Time and Time-related Costs.* The Contractor shall propose a daily rate for each firm’s time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm’s time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm’s performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm’s overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor’s project schedule.

(h) *Markups.* For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose

an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractor[s] shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth below in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h).

(j) *Proposal Preparation Costs.* If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them.

Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o), or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:



- (1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.
- (2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.
- (3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor’s proposal or receipt of additional requested information, despite the Contracting Officer’s diligent efforts to negotiate the equitable adjustment.

(End of clause)

552.246-70 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302-70, insert the following clause:

SOURCE INSPECTION BY QUALITY APPROVED MANUFACTURER (JULY 2009)

(a) *Inspection system and inspection facilities.* (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246-2) of this contract shall be maintained throughout the contract period. Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001:2000 (Quality Management Systems—Requirements). A documented description of the inspection system shall be made available to the Government before contract award. At the sole discretion of the Contracting Officer, he/she may authorize in writing exceptions to the quality assurance standards identified above. The Contractor shall immediately notify the Administrative Contracting Officer (ACO) of any changes made in the inspection system during the contract period. As used herein, the term “inspection system” means the Contractor’s own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the U.S. Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001:2000 or as otherwise approved by the Govern-

ment, records shall include the date inspection and testing were performed. These records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor’s fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) The Contractor shall provide the Administrative Contracting Officer ACO with the name(s) of the individual and an alternate responsible for the inspection system. In the event that the designated individual(s) becomes unavailable to oversee the inspection system, the Contractor, within 10 calendar days of such event, shall provide the ACO with the names of the replacement individual(s).

(b) *Inspection by the Contractor.* The Contractor is required to demonstrate that the supplies in the shipment have been subject to and have passed all inspections and tests required by the contract and meet the requirements of the contract.

(c) *Inspection by Government personnel.* (1) Although the Government will normally rely upon the Contractor’s representation as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) The offeror shall indicate, in the spaces provided below, the location(s) at which the supplies will be inspected or made available for inspection.

INSPECTION POINT

ITEM NO(S)	NAME OF MANUFACTURER	NAME, ADDRESS (Including County), and	TELEPHONE NUMBER

NOTE: If additional space is needed, the offeror may furnish the requested information by an attachment to the offer.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification, inspection, and testing. Samples selected for testing will be disposed of



as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.* (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of \_\_\_\_\* months after acceptance shall, at the Government's option, be replaced, repaired, or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its own expense, supplies rejected or required to be replaced, repaired, or corrected. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies, and reducing the contract price by an equitable amount under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) The Contractor may be issued a Quality Deficiency Notice (QDN) if:

(i) Supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or

(ii) deficiencies in either plant quality or process controls are found. Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the Government representative, within 5 workdays, of the action plan or the corrective action taken. The Government may elect to verify the corrective action at the Contractor location(s). Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination of the contract. Delays due to the insurance of a QDN do not constitute excusable delay under the default clause of this contract. Failure to complete corrective action in a timely manner may result in termination of the contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies that do not meet the requirements of the contract are being shipped, or if the contractor fails to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor shall be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246-2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of \$ \_\_\_\_\* per man-hour or fraction thereof if the inspection is at a GSA distribution center; \$ \_\_\_\_\* per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and \$ \_\_\_\_\* per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph (d) of this clause, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246-2, supplies may be—

(1) Stored and charged against the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return shall also be charged against the Contractor's account);

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale; or

(4) Otherwise disposed of by the Government.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

*(End of clause)*

\* Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.

\*\* The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.

**552.246-71 Source Inspection by Government.**

As prescribed in [546.302-71](#), insert the following clause:

**SOURCE INSPECTION BY GOVERNMENT (JUNE 2009)**

**(a) *Inspection by Government personnel.***

(1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by the Government.

**(b) *Inspection and receiving reports.*** For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

**(c) *Inspection facilities.*** (1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246-2, Inspection of Supplies—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the the U.S. Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

**(d) *Availability of records.*** (1) In addition to any other requirement of this contract, the Contractor shall maintain records showing the following information for each order received under the contract:

- (i) Order number;
- (ii) Date order received by the Contractor;
- (iii) Quantity ordered;
- (iv) Date scheduled into production;
- (v) Batch or lot number, if applicable;
- (vi) Date inspected and/or tested;
- (vii) Date available for shipment;
- (viii) Date shipped or date service completed; and
- (ix) National Stock Number (NSN), or if none is

provided in the contract, the applicable item number or other contractual identification.

(2) These records should be maintained at the point of source inspection and shall be available to the Contracting Officer, or an authorized representative, for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

**(e) *Additional cost for inspection and testing.*** The Contractor will be charged for any additional cost for inspecting/testing or reinspection/ retesting supplies for the reasons stated in paragraph (e) of FAR 52.246-2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of \$ \_\_\_\*\_\_\_ per man-hour or fraction thereof if the inspection is at a GSA distribution center; \$ \_\_\_\*\_\_\_ per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and \$ \_\_\_\*\_\_\_ per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246-2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246-2, supplies may be—

- (1) Stored for the Contractor's account;
- (2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or
- (3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(End of clause)

*\*The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.*

#### **552.246-72 Final Inspection and Tests.**

As prescribed in [546.312](#), insert the following clause:

##### **FINAL INSPECTION AND TESTS (SEP 1999)**

The Contractor shall give written notice to the Contracting Officer at least 10 calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within 10 calendar days after the date specified in the Contractor's notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of clause)

#### **552.246-77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.**

As prescribed in [546.710](#), insert the following clause in solicitations and contracts that include FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature.

##### **ADDITIONAL CONTRACT WARRANTY PROVISIONS FOR SUPPLIES OF A NONCOMPLEX NATURE (JUNE 2009)**

(a) *Definitions.* *Correction*, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations.* When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction, or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense.

(c) *Remedies available to the Government.* When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equi-

table price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(End of clause)

#### **552.246-78 Inspection at Destination.**

As prescribed in [546.302-72](#) insert the following clause:

##### **INSPECTION AT DESTINATION (JUNE 2009)**

Inspection of all purchases under this contract will be made at destination by an authorized Government representative.

(End of clause)

#### **552.252-5 Authorized Deviations in Provisions.**

As prescribed in [552.107-70\(a\)](#), insert the following provision:

##### **AUTHORIZED DEVIATIONS IN PROVISIONS (DEVIATION FAR 52.252-5) (SEP 1999)**

(a) *Deviations to FAR provisions.* (1) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) provision by the addition of "(DEVIATION)" after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) provision that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR provision no.))" after the date of the provision.

(b) *Deviations to GSAR provisions.* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation provision by the addition of "(DEVIATION)" after the date of the provision.

(c) *"Substantially the same as" provisions.* Changes in wording of provisions prescribed for use on a "substantially the same as" basis are not considered deviations.

(End of provision)

#### **552.252-6 Authorized Deviations in Clauses.**

As prescribed in [552.107-70\(b\)](#), insert the following clause:

##### **AUTHORIZED DEVIATIONS IN CLAUSES (DEVIATION FAR 52.252-6) (SEP 1999)**

(a) *Deviations to FAR clauses.* (1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of "(DEVIATION)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition Regulation by the addition of “(DEVIATION (FAR clause no.))” after the date of the clause.

(b) *Deviations to GSAR clauses.* This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of “(DEVIATION)” after the date of the clause.

(c) *“Substantially the same as” clauses.* Changes in wording of clauses prescribed for use on a “substantially the same as” basis are not considered deviations.

(End of clause)

#### **552.270-1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.**

As prescribed in [570.702](#), insert the following provision:

##### **INSTRUCTIONS TO OFFERORS—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (JUN 2011)**

(a) *Definitions.* As used in this provision—

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer’s discretion, result in the offeror being allowed to revise its proposal.

“In writing, writing or written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time,” if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages. Offers must be:

(i) Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and

(ii) Signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) *Late proposals and revisions.* (i) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers unless it is received before the Government makes award and it meets at least one of the following conditions:

(A) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20<sup>th</sup> of the month must have been mailed by the 15<sup>th</sup>).

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation.

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays.

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals.

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers, and that the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in paragraphs (c)(2)(i)(A) through (c)(2)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression

(exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(5) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(6) The Government will construe an offer to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) *Restriction on disclosure and use of data.* An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, must meet both of the following conditions:

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*].

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(e) *Lease award.* (1) The Government intends to award a lease resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a lease after conducting discussions with offerors



whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(6) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(7) ) The execution and delivery of the Lease contract by the Government establishes a valid award and contract.

(8) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection; and

(iii) A summary of the rationale for award.

(f) *Paperwork collection.* The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

*(End of provision)*

*Alternate I (Mar 1998).* As prescribed in [570.702](#), substitute the following paragraph for paragraph (c)(2)(i) of the basic provision:

(i) Any offer received at the office designated in the solicitation after the exact time specified for receipt of final proposal revisions will not be considered unless it is received before award is made and it meets one of the following conditions—

*Alternate II (Mar 1998).* As prescribed in [570.702](#), substitute the following paragraph for paragraph (e)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a lease without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Gov-

ernment reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

#### **552.270-2 Historic Preference.**

As prescribed in [570.702](#), insert the following provision:

##### **HISTORIC PREFERENCE (SEPT 2004)**

(a) The Government will give preference to offers of space in historic properties following this hierarchy of consideration: Historic properties within historic districts.

(1) Non-historic developed and non-historic undeveloped sites within historic districts.

(2) Historic properties outside of historic districts.

(b) *Definitions.* (1) "Determination of eligibility" means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register (36 CFR 60.3(c)).

(2) "Historic district" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history (36 CFR 60.3(d)). The historic district must be included in or be determined eligible for inclusion in the National Register of Historic Places.

(3) "Historic property" means any pre-historic or historic district, site, building, structure, or object included in or been determined eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior (36 CFR 800.16(l)).

(4) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of the Interior is authorized to expand and maintain under the National Historic Preservation Act (36 CFR 60.1).

(c) The offer of space must meet the terms and conditions of this solicitation. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of an historic building, such as high ceilings and wooden floors, or to maintain the integrity of an historic district, such as setbacks, floor-to-ceiling heights, and location and appearance of parking.

(d) When award will be based on the lowest price technically acceptable source selection process, the Government

will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(e) When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within a historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(f) The Government will compute price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in this provision. The price evaluation preference will be used for price evaluation purposes only. The Government will award a contract in the amount of the actual price(s) proposed by the successful offeror and accepted by the Government.

(g) To qualify for a price evaluation preference, offerors must provide satisfactory documentation in their offer that their property qualifies as one of the following:

(1) An historic property within an historic district.

(2) A non-historic developed or undeveloped site within an historic district.

(3) An historic property outside of an historic district..

(End of provision)

#### 552.270-3 Parties to Execute Lease.

As prescribed in [570.702](#), insert the following provision:

##### PARTIES TO EXECUTE LEASE (JUN 2011)

(a) If the lessor is an individual, that individual shall sign the lease. A lease with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, "an individual doing business as \_\_\_\_\_ [insert name of firm]."

(b) If the Lessor is a corporation, the lease must be signed in the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, evidence of this authority to so act shall be furnished.

(c) If the Lessor is a corporation, the lease must be signed in the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to so act shall be furnished.

(d) If the Lessor is a joint venture, the lease must be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) of this provision for each type of participant. When a corporation is participating in the joint venture, the corporation shall provide evidence that the corporation is authorized to participate in the joint venture.

(e) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of the power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(End of provision)

#### 552.270-4 Definitions.

As prescribed in [570.703](#), insert the following clause:

##### DEFINITIONS (SEP 1999)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) "ANSI/BOMA Office Area (ABOA)" means the area "where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed," as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1-1996.

(b) “Commencement Date” means the first day of the term.

(c) “Contract” and “Contractor” means “Lease” and “Lessor,” respectively.

(d) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(e) “Delivery Date” means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

(f) “Delivery Time” means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provisions of this lease.

(g) “Excusable Delays” mean delays arising without the fault or negligence of Lessor and Lessor’s subcontractors and suppliers at any tier, and shall include, without limitation:

- (1) acts of God or of the public enemy,
- (2) acts of the United States of America in either its sovereign or contractual capacity,
- (3) acts of another contractor in the performance of a contract with the Government,
- (4) fires,
- (5) floods,
- (6) epidemics,
- (7) quarantine restrictions,
- (8) strikes,
- (9) freight embargoes,
- (10) unusually severe weather, or
- (11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(h) “Lessor” means the sub-lessor if this lease is a sub-lease.

(i) “Lessor shall provide” means the Lessor shall furnish and install at Lessor’s expense.

(j) “Notice” means written notice sent by certified or registered mail, Express Mail or Comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.

(k) “Premises” means the space described in this lease.

(l) “Substantially complete” and “substantial completion” means that the work, the common and other areas of the building, and all other things necessary for the Government’s access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been com-

pleted or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(m) “Work” means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

(End of clause)

#### **552.270-5 Subletting and Assignment.**

As prescribed in [570.703](#), insert the following clause:

##### **SUBLETTING AND ASSIGNMENT (SEP 1999)**

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

(End of clause)

#### **552.270-6 Maintenance of Building and Premises—Right of Entry.**

As prescribed in [570.703](#), insert the following clause:

##### **MAINTENANCE OF BUILDING AND PREMISES— RIGHT OF ENTRY (SEP 1999)**

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building and all equipment, fixtures, and appurtenances furnished by the lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government’s access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(End of clause)

#### **552.270-7 Fire and Casualty Damage.**

As prescribed in [570.703](#), insert the following clause:

##### **FIRE AND CASUALTY DAMAGE (JUN 2011)**

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial



destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days after such determination; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of clause)

#### **552.270-8 Compliance with Applicable Law.**

As prescribed in [570.703](#), insert the following clause:

##### **COMPLIANCE WITH APPLICABLE LAW (SEP 1999)**

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of clause)

#### **552.270-9 Inspection—Right of Entry.**

As prescribed in [570.703](#), insert the following clause:

##### **INSPECTION—RIGHT OF ENTRY (SEP 1999)**

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

(1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;

(2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;

(3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and

(4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

(End of clause)

#### **552.270-10 Failure in Performance.**

As prescribed in [570.703](#), insert the following clause:

##### **FAILURE IN PERFORMANCE (SEP 1999)**

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the

Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

(End of clause)

**552.270-11 Successors Bound.**

As prescribed in [570.703](#), insert the following clause:

SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of clause)

**552.270-12 Alterations.**

As prescribed in [570.703](#), insert the following clause:

ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

(End of clause)

**552.270-13 Proposals for Adjustment.**

As prescribed in [570.703](#), insert the following clause:

PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following detail—

- (1) Material quantities and unit costs;
- (2) Labor costs (identified with specific item or material to be placed or operation to be performed);
- (3) Equipment costs;
- (4) Worker's compensation and public liability insurance;
- (5) Overhead;

(6) Profit; and

(7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4); and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of clause)

**552.270-14 Changes.**

As prescribed in [570.703](#), insert the following clause:

CHANGES (JUN 2011)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs).

(2) Work or services.

(3) Facilities or space layout.

(4) Amount of space, provided the Lessor consents to the change.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date.

(2) An equitable adjustment in the rental rate.

(3) A lump sum equitable adjustment.

(4) An equitable adjustment of the annual operating costs per ABOA square foot specified in this lease.

(c) The Lessor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and must submit a proposal for adjustment. The Lessor's failure to assert its right for adjustment within the time frame specified herein shall be a waiver of the Lessor's right to an adjustment under this paragraph. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government is not liable to Lessor under this clause.

(End of clause)

**552.270-15 Liquidated Damages.**

As prescribed in [570.703](#), insert the following clause:

LIQUIDATED DAMAGES (SEP 1999)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of \$ \_\_\_\_\_ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law.

(End of clause)

**552.270-16 Adjustment for Vacant Premises.**

As prescribed in [570.703](#), insert the following clause:

ADJUSTMENT FOR VACANT PREMISES (JUN 2011)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part before the lease term expires, the rental rate will be reduced. The reduction shall occur after the Government gives 30 calendar days notice to the Lessor, and shall continue in effect until the Government occupies or reoccupies the vacant premises or the lease expires or is terminated.

(b) The rate will be reduced by that portion of the costs per ABOA square foot of operating expenses not required to maintain the space. In addition, at the first operating cost adjustment after the notice of reduction to the rent, the base cost of services subject to escalation will be reduced by said amount. In the event that the Government occupies or reoccupies the vacant premises on the lease anniversary date following the occupation of the vacant premises, the base cost of services subject to escalation will be increased by said amount.

(c) The reduction in operating costs shall be negotiated and stated in the lease.

(End of clause)

**552.270-17 Delivery and Condition.**

As prescribed in [570.703](#), insert the following clause:

DELIVERY AND CONDITION (SEP 1999)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease,

elect to reduce the rent payments.

(End of clause)

**552.270-18 Default in Delivery—Time Extensions.**

As prescribed in [570.703](#), insert the following clause:

DEFAULT IN DELIVERY—TIME EXTENSIONS (SEP 1999)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government is entitled to the following damages:

(1) The Government's aggregate rent, estimated real estate tax, and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement premises for a term (including all option terms) in excess of this lease term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

(2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.

(3) Other, additional relief provided for in this lease, at law, or in equity.

(b) Damages to which the Government is entitled to under this clause are due and payable thirty (30) days following the date Lessor receives notice from the Contracting Officer specifying such damages.

(c) Delivery by Lessor of less than the minimum ABOA square footage required by this lease shall in no event be construed as substantial completion, except as the Contracting Officer permits.

(d) The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays, and (2) the Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant, the Contracting Officer shall extend the delivery date, to the extent of such delay at no addi-

tional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of clause)

#### 552.270-19 Progressive Occupancy.

As prescribed in [570.703](#), insert the following clause:

##### PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

(End of clause)

#### 552.270-20 Payment.

As prescribed in [570.703](#), insert the following clause:

##### PAYMENT (SEP 1999)

(a) When space is offered and accepted, ABOA square footage delivered will be confirmed by either:

(1) The Government's measurement of plans submitted by the successful offeror as approved by the Government, and an inspection of the space to verify that the delivered space conforms with such plans.

(2) A mutual on-site measurement of the space if the Contracting Officer determines it necessary.

(b) The Government will not pay for space in excess of the amount of ABOA square footage stated in the lease.

(c) If the amount of ABOA square footage delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is:

$$(1 + \text{CAF}) \times \text{Rate per RSF} = \text{Reduction in Annual Rent}$$

(End of clause)

#### 552.270-21 Effect of Acceptance and Occupancy.

As prescribed in [570.703](#), insert the following clause:

##### EFFECT OF ACCEPTANCE AND OCCUPANCY (SEP 1999)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

(End of clause)

#### 552.270-22 Default by Lessor During the Term.

As prescribed in [570.703](#), insert the following clause:

##### DEFAULT BY LESSOR DURING THE TERM (SEP 1999)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

(End of clause)

#### 552.270-23 Subordination, Nondisturbance and Attornment.

As prescribed in [570.703](#), insert the following clause:

##### SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (SEP 1999)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and



subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

(End of clause)

#### **552.270-24 Statement of Lease.**

As prescribed in [570.703](#), insert the following clause:

##### STATEMENT OF LEASE (SEP 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of clause)

#### **552.270-25 Substitution of Tenant Agency.**

As prescribed in [570.703](#), insert the following clause:

##### SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

(End of clause)

#### **552.270-26 No Waiver.**

As prescribed in [570.703](#), insert the following clause:

##### NO WAIVER (SEP 1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either

party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of clause)

#### 552.270-27 Integrated Agreement.

As prescribed in [570.703](#), insert the following clause:

##### INTEGRATED AGREEMENT (SEP 1999)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

(End of clause)

#### 552.270-28 Mutuality of Obligation.

As prescribed in [570.703](#), insert the following clause:

##### MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of clause)

#### 552.270-29 Acceptance of Space.

As prescribed in [570.703](#), insert the following clause:

##### ACCEPTANCE OF SPACE (JUN 2011)

(a) When the lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the lessor shall notify the Contracting Officer. The Contracting Officer or designated representative shall promptly inspect the space.

(b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required ABOA square footage as indicated in the solicitation paragraph, Amount and Type of Space.

#### 552.270-30 Price Adjustment for Illegal or Improper Activity.

As prescribed in [570.703](#), insert the following clause:

##### PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis thereof. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) 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 lease.

(End of clause)

#### 552.270-31 Prompt Payment.

As prescribed in [570.703](#) insert the following clause:

##### PROMPT PAYMENT (JUN 2011)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date.* (1) Rental payments. Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15<sup>th</sup> day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first

workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15<sup>th</sup> day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30<sup>th</sup> day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30<sup>th</sup> day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30<sup>th</sup> day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.* (1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.* (1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than one year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number;

(iii) Affected lease line item or subline item, if applicable; and

(iv) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

*Alternate I (Sep 1999).* If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated as (b).

#### **552.270-32 Covenant Against Contingent Fees.**

As prescribed in [570.703](#), insert the following clause:

##### **COVENANT AGAINST CONTINGENT FEES (JUN 2011)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee,

except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

*Bona fide employee*, as used in this clause, means a person, employed by a Contractor and subject to the Contractor's

supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

*Contingent fee*, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

*Improper influence*, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)



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**Subpart 552.3—Provision and Clause  
Matrixes****552.300 Scope of subpart.**

This subpart consists of a series of matrixes:

(a) One matrix each for supply, service, construction, architect-engineer and simplified acquisition contracts which lists the applicable GSAR provisions and clauses.

(b) One matrix each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

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**MATRIX OF PROVISIONS AND CLAUSES**

**KEY:** Sup = Supply      Leas = Acquisitions of leasehold interests in real property  
 Serv = Service Contract (excluding construction and A-E services)      P = Provision  
 Const = Construction Services      C = Clause  
 A-E = Architect-Engineer Services      R = Required  
 SAT = Acquisitions at or under the simplified acquisition threshold      WR = When required  
 Util = Utility services, sole supplier-regulated rate      O = Optional

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	<a href="#">552.203-71</a>	<a href="#">503.570-2</a>	Restriction on Advertising	R	R	R	R			R
C	<a href="#">552.204-9</a>	<a href="#">504.1303</a>	Personal Identity Verification Requirements	WR	WR	WR	WR	WR		
C	<a href="#">552.211-72</a>	<a href="#">511.204(a)</a>	Reference to Specifications in Drawings	WR	WR	WR		WR		
C	<a href="#">552.211-73</a>	<a href="#">511.204(b)(1)</a>	Marking	WR						
C	<a href="#">552.211-75</a>	<a href="#">511.204(b)(2)</a>	Preservation, Packaging and Packing	WR				O		
C	<a href="#">552.211-76</a>	<a href="#">511.204(b)(3)</a>	Charges for Packaging, Packing, and Marking	WR				WR		
C	<a href="#">552.211-77</a>	<a href="#">511.204(c)</a>	Packing List	WR				WR		
C	<a href="#">552.211-79</a>	<a href="#">511.404(a)(1)</a>	Acceptable Age of Supplies	WR				WR		
C	<a href="#">552.211-80</a>	<a href="#">511.404(a)(2)</a>	Age on Delivery	WR				WR		
C	<a href="#">552.211-81</a>	<a href="#">511.404(b)</a>	Time of Shipment	WR				WR		
C	<a href="#">552.211-83</a>	<a href="#">511.404(c)</a>	Availability for Inspection, Testing, and Shipment/ Delivery	WR				WR		
	<a href="#">552.211-85</a>	<a href="#">511.204(b)(5)</a>	Consistent Pack and Package Requirements	WR				WR		
	<a href="#">552.211-86</a>	<a href="#">511.204(b)(6)</a>	Maximum Weight Per Shipping Container	WR				WR		
	<a href="#">552.211-87</a>	<a href="#">511.204(b)(7)</a>	Export Packing	WR				WR		
	<a href="#">552.211-88</a>	<a href="#">511.204(b)(8)</a>	Vehicle Export Preparation	WR				WR		
	<a href="#">552.211-89</a>	<a href="#">511.204(b)(4)</a>	Non-Manufactured Wood Packaging Material for Export	WR				WR		
	<a href="#">552.211-90</a>	<a href="#">511.204(b)(9)</a>	Small Parts	WR				WR		
	<a href="#">552.211-91</a>	<a href="#">511.204(b)(10)</a>	Vehicle Decals, Stickers, and Data Plates	WR				WR		
	<a href="#">552.211-92</a>	<a href="#">511.204(b)(11)</a>	Radio Frequency Identification (RFID) Using Passive Tags	WR				WR		
	<a href="#">552.211-94</a>	<a href="#">511.404(d)</a>	Time of Delivery	WR				WR		
C	<a href="#">552.212-71</a>	<a href="#">512.301(a)(1)</a>	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
C	<a href="#">552.212-72</a>	<a href="#">512.301(a)(2)</a>	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
P	<a href="#">552.214-70</a>	<a href="#">514.201-6</a>	“All or None” Bids	WR	WR			WR		
P	<a href="#">552.214-72</a>	<a href="#">514.202-4(a)(3)</a>	Bid Sample Requirements	WR	WR			WR		
C	<a href="#">552.215-70</a>	<a href="#">514.201-7(a)(1)</a> <a href="#">515.209-70(a)</a>	Examination of Records by GSA	WR	WR	WR	WR			WR
C	<a href="#">552.215-71</a>	<a href="#">515.209-70(c)</a>	Examination of Records by GSA (Multiple Award Schedule)	WR	WR					
C	<a href="#">552.215-72</a>	<a href="#">515.408(d)</a>	Price Adjustment—Failure to Provide Accurate Information	WR	WR					

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GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	<a href="#">552.216-70</a>	<a href="#">516.203-4(a)</a>	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	WR	WR					
C	<a href="#">552.216-71</a>	<a href="#">516.203-4(a)</a>	Economic Price Adjustment—Special Order Program Contracts	WR				WR		
C	<a href="#">552.216-72</a>	<a href="#">516.506(a)</a>	Placement of Orders	WR				WR		
P	<a href="#">552.216-73</a>	<a href="#">516.506(c)</a>	Ordering Information	WR	WR			WR		
C	<a href="#">552.216-74</a>	<a href="#">516.506(b)</a>	Task-Order and Delivery-Order Ombudsman	R	R	R	R	R	R	R
P	<a href="#">552.217-70</a>	<a href="#">517.208(a)</a>	Evaluation of Options	WR				WR		
P	<a href="#">552.217-71</a>	<a href="#">517.208(b)</a>	Notice Regarding Option(s)	WR	WR	WR	WR	WR		
C	<a href="#">552.219-70</a>	<a href="#">519.508</a>	Allocation of Orders—Partially Set-aside Items	WR						
P	<a href="#">552.219-71</a>	<a href="#">519.708-70(a)</a>	Notice to Offerors of Subcontracting Plan Requirements	WR	WR	WR	WR			WR
P	<a href="#">552.219-72</a>	<a href="#">519.708-70(b)</a>	Preparation, Submission, and Negotiation of Subcontracting Plans	WR	WR	WR	WR			WR
P	<a href="#">552.219-73</a>	<a href="#">519.708-70(c)</a>	Goals for Subcontracting Plan	WR	WR	WR	WR			WR
C	<a href="#">552.219-74</a>	<a href="#">519.870-8(a)</a>	Section 8(a) Direct Award	WR	WR	WR	WR	WR		WR
C	<a href="#">552.219-75</a>	<a href="#">519.7017(a)</a>	GSA Mentor-Protégé Program	R	R	R	R		R	R
C	<a href="#">552.219-76</a>	<a href="#">519.7017(b)</a>	Mentor Requirements and Evaluation	WR	WR	WR	WR		WR	WR
C	<a href="#">552.223-70</a>	<a href="#">523.303(a)</a>	Hazardous Substances	WR				WR		
C	<a href="#">552.223-71</a>	<a href="#">523.303(b)</a>	Nonconforming Hazardous Materials	WR				WR		
P	<a href="#">552.223-72</a>	<a href="#">523.370</a>	Hazardous Material Information	WR				WR		
C	<a href="#">552.227-70</a>	<a href="#">527.409(a)</a>	Government Rights (Unlimited)				WR			
C	<a href="#">552.227-71</a>	<a href="#">527.409(b)</a>	Drawings and Other Data to Become Property of Government				WR			
C	<a href="#">552.228-5</a>	<a href="#">528.310</a>	Government as Additional Insured	WR	R	WR	WR			WR
C	<a href="#">552.229-70</a>	<a href="#">529.401-70</a>	Federal, State, and Local Taxes		WR	WR	WR	R		
C	<a href="#">552.229-71</a>	<a href="#">529.401-71</a>	Federal Excise Tax—DC Government	WR	WR			WR		
C	<a href="#">552.232-1</a>	<a href="#">532.7103(a)</a>	Payments		WR					
C	<a href="#">552.232-23</a>	<a href="#">532.806</a>	Assignment of Claims	WR	WR					
C	<a href="#">552.232-25</a>	<a href="#">532.908(c)(2)</a>	Prompt Payment	WR	WR			WR		
C	<a href="#">552.232-72</a>	<a href="#">532.904(c)</a>	Final Payment Under Building Services Contracts		WR					
C	<a href="#">552.232-77</a>	<a href="#">532.7003</a>	Payment By Government Charge Card	WR	WR			WR		
C	<a href="#">552.236-70</a>	<a href="#">536.570-1</a>	Definitions			WR	WR	WR		
C	<a href="#">552.236-71</a>	<a href="#">536.570-2</a>	Authorities and Limitations			WR	WR			
C	<a href="#">552.236-72</a>	<a href="#">536.570-3</a>	Specialist			WR		WR		
P	<a href="#">552.236-73</a>	<a href="#">536.570-4</a>	Basis of Award—Construction Contract			WR				
C	<a href="#">552.236-74</a>	<a href="#">536.570-5</a>	Working Hours			R				
C	<a href="#">552.236-75</a>	<a href="#">536.570-6</a>	Use of Premises			R		WR		
C	<a href="#">552.236-76</a>	<a href="#">536.570-7</a>	Measurements			R		WR		
C	<a href="#">552.236-77</a>	<a href="#">536.570-8</a>	Specifications and Drawings			R				
C	<a href="#">552.236-78</a>	<a href="#">536.570-9</a>	Shop Drawings, Coordination Drawings, and Schedules			R				
C	<a href="#">552.236-79</a>	<a href="#">536.570-10</a>	Samples			WR		WR		
C	<a href="#">552.236-80</a>	<a href="#">536.570-11</a>	Heat			R		WR		
C	<a href="#">552.236-81</a>	<a href="#">536.570-12</a>	Use of Equipment by the Government			WR		WR		
C	<a href="#">552.236-82</a>	<a href="#">536.570-13</a>	Subcontracts			R				
C	<a href="#">552.236-83</a>	<a href="#">536.570-14</a>	Requirement for a Project Labor Agreement			WR				

# CHANGE 56 APRIL 14, 2014

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	<a href="#">552.237-71</a>	<a href="#">537.110(a)</a>	Qualifications of Employees		WR					
C	<a href="#">552.237-72</a>	<a href="#">537.110(b)</a>	Prohibition Regarding "Quasi-Military Armed Forces"		WR			WR		
C	<a href="#">552.237-73</a>	<a href="#">537.270</a>	Restriction on Disclosure of Information		WR			WR		
C	<a href="#">552.238-70</a>	<a href="#">538.273(a)(1)</a>	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped	WR						
C	<a href="#">552.238-71</a>	<a href="#">538.273(a)(2)</a>	Submission and Distribution of Authorized FSS Schedule Pricelists	WR	WR					
C	<a href="#">552.238-72</a>	<a href="#">538.273(a)(3)</a>	Identification of Products That Have Environmental Attributes	WR	WR					
C	<a href="#">552.238-73</a>	<a href="#">538.273(a)(4)</a>	Cancellation	WR	WR					
C	<a href="#">552.238-74</a>	<a href="#">538.273(b)(1)</a>	Industrial Funding Fee and Sales Reporting	WR	WR					
C	<a href="#">552.238-75</a>	<a href="#">538.273(b)(2)</a>	Price Reductions	WR	WR					
C	<a href="#">552.238-76</a>	<a href="#">538.7104(a)</a>	Definition (Federal Supply Schedules)—Recovery Purchasing	WR	WR					
C	<a href="#">552.238-77</a>	<a href="#">538.7004(a)</a>	Definition (Federal Supply Schedules)	WR	WR					
C	<a href="#">552.238-78</a>	<a href="#">538.7004</a>	Scope of Contract (Eligible Ordering Activities)	WR	WR					
C	<a href="#">552.238-79</a>	<a href="#">538.7004(c)</a>	Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing	WR	WR					
C	<a href="#">552.238-80</a>	<a href="#">538.7104(c)</a>	Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing	WR	WR					
C	<a href="#">552.238-81</a>	<a href="#">538.273(b)</a>	Modification (Federal Supply Schedule)	R	R	WR	WR	WR		
P	<a href="#">552.239-70</a>	<a href="#">539.7002(a)</a>	Information Technology Security Plan and Security Authorization		WR		WR	WR		
C	<a href="#">552.239-71</a>	<a href="#">539.7002(b)</a>	Security Requirements for Unclassified Information Technology Resources		WR		WR	WR		
C	<a href="#">552.241-70</a>	<a href="#">541.501(a)</a>	Availability of Funds for the Next Fiscal Year or Quarter						R	
C	<a href="#">552.241-71</a>	<a href="#">541.501(b)</a>	Disputes (Utility Contracts)						R	
C	<a href="#">552.242-70</a>	<a href="#">542.1107</a>	Status Report of Orders and Shipments	WR				WR		
C	<a href="#">552.243-71</a>	<a href="#">543.205</a>	Equitable Adjustments			WR				
C	<a href="#">552.246-70</a>	<a href="#">546.302-70</a>	Source Inspection by Quality Approved Manufacturer	WR				WR		
C	<a href="#">552.246-71</a>	<a href="#">546.302-71</a>	Source Inspection by Government	WR				WR		
C	<a href="#">552.246-72</a>	<a href="#">546.312</a>	Final Inspection and Tests			WR		O		
C	<a href="#">552.246-77</a>	<a href="#">546.710</a>	Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature	WR						
C	<a href="#">552.246-78</a>	<a href="#">546.302-72</a>	Inspection at Destination	WR						
P	<a href="#">552.252-5</a>	<a href="#">552.107-70(a)</a>	Authorized Deviations in Provisions	WR	WR	WR	WR	WR	WR	
C	<a href="#">552.252-6</a>	<a href="#">552.107-70(b)</a>	Authorized Deviations in Clauses	WR	WR	WR	WR	WR	WR	
P	<a href="#">552.270-1</a>	<a href="#">570.702</a>	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property							R
P	<a href="#">552.270-2</a>	<a href="#">570.702</a>	Historic Preference							R
P	<a href="#">552.270-3</a>	<a href="#">570.702</a>	Parties to Execute Lease							R
C	<a href="#">552.270-4</a>	<a href="#">570.703</a>	Definitions							R*
C	<a href="#">552.270-5</a>	<a href="#">570.703</a>	Subletting and Assignment							R
C	<a href="#">552.270-6</a>	<a href="#">570.703</a>	Maintenance of Building and Premises—Right of Entry							R
C	<a href="#">552.270-7</a>	<a href="#">570.703</a>	Fire and Casualty Damage							R
C	<a href="#">552.270-8</a>	<a href="#">570.703</a>	Compliance with Applicable Law							R
C	<a href="#">552.270-9</a>	<a href="#">570.703</a>	Inspection—Right of Entry							R
C	<a href="#">552.270-10</a>	<a href="#">570.703</a>	Failure in Performance							R
C	<a href="#">552.270-11</a>	<a href="#">570.703</a>	Successors Bound							R

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	<a href="#">552.270-12</a>	<a href="#">570.703</a>	Alterations							R
C	<a href="#">552.270-13</a>	<a href="#">570.703</a>	Proposals for Adjustment							R
C	<a href="#">552.270-14</a>	<a href="#">570.703</a>	Changes							R
C	<a href="#">552.270-15</a>	<a href="#">570.703</a>	Liquidated Damages							R
C	<a href="#">552.270-16</a>	<a href="#">570.703</a>	Adjustment for Vacant Premises							R
C	<a href="#">552.270-17</a>	<a href="#">570.703</a>	Delivery and Condition							R
C	<a href="#">552.270-18</a>	<a href="#">570.703</a>	Default in Delivery—Time Extensions							R
C	<a href="#">552.270-19</a>	<a href="#">570.703</a>	Progressive Occupancy							R
C	<a href="#">552.270-20</a>	<a href="#">570.703</a>	Payment							R
C	<a href="#">552.270-21</a>	<a href="#">570.703</a>	Effect of Acceptance and Occupancy							R
C	<a href="#">552.270-22</a>	<a href="#">570.703</a>	Default by Lessor During the Term							R
C	<a href="#">552.270-23</a>	<a href="#">570.703</a>	Subordination, Nondisturbance and Attornment							R
C	<a href="#">552.270-24</a>	<a href="#">570.703</a>	Statement of Lease							R
C	<a href="#">552.270-25</a>	<a href="#">570.703</a>	Substitution of Tenant Agency							R
C	<a href="#">552.270-26</a>	<a href="#">570.703</a>	No Waiver							R
C	<a href="#">552.270-27</a>	<a href="#">570.703</a>	Integrated Agreement							R
C	<a href="#">552.270-28</a>	<a href="#">570.703</a>	Mutuality of Obligation							R
C	<a href="#">552.270-29</a>	<a href="#">570.703</a>	Acceptance of Space							R
C	<a href="#">552.270-30</a>	<a href="#">570.703</a>	Price Adjustment for Illegal or Improper Activity							
C	<a href="#">552.270-31</a>	<a href="#">570.703</a>	Prompt Payment.							
C	<a href="#">552.270-32</a>	<a href="#">570.703</a>	Covenant Against Contingent Fees.							
P	52.203-2	<a href="#">570.601(e)</a>	Certificate of Independent Price Determination							WR
C	52.203-7	<a href="#">570.601(e)</a>	Anti-Kickback Procedures							WR
P	52.203-11	<a href="#">570.701(d)</a>	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions							WR
P	52.204-3	<a href="#">570.601(a)</a>	Taxpayer Identification							WR
P	52.209-5	<a href="#">570.601(e)</a>	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters							WR
C	52.209-6	<a href="#">570.701(c)</a>	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment							WR
C	52.215-2	<a href="#">570.601(e)</a>	Audit and Records—Negotiation							WR
P	52.215-5	<a href="#">570.701(j)</a>	Facsimile Proposals							WR
C	52.215-10	<a href="#">570.701(i)</a>	Price Reduction for Defective Cost or Pricing Data							WR
C	52.215-12	<a href="#">570.701(i)</a>	Subcontractor Cost or Pricing Data							WR
P	52.219-1	<a href="#">570.601(a)</a>	Small Business Program Representations							WR
C	52.219-8	<a href="#">570.601(e)</a>	Utilization of Small Business Concerns							WR
C	52.219-9	<a href="#">570.701(f)</a>	Small Business Subcontracting Plan,							WR
C	52.219-16	<a href="#">570.701(f)</a>	Liquidated Damages—Subcontracting Plan							WR
P	52.219-24	<a href="#">570.701(g)</a>	Small Disadvantaged Business Participation Program—Targets							WR
C	52.219-25	<a href="#">570.701(g)</a>	Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting							WR
C	52.219-26	<a href="#">570.701(k)</a>	Small Disadvantaged Business Participation Program—Incentive Subcontracting							WR
P	52.222-21	<a href="#">570.701(b)</a>	Prohibition of Segregated Facilities							WR
P	52.222-22	<a href="#">570.701(b)</a>	Previous Contracts and Compliance Reports							WR
P	52.222-24	<a href="#">570.701(h)</a>	Preaward On-site Equal Opportunity Compliance Review							WR
P	52.222-25	<a href="#">570.701(b)</a>	Affirmative Action Compliance							WR

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	52.222-26	<a href="#">570.701(b)</a>	Equal Opportunity							WR
C	52.222-35	<a href="#">570.701(b)</a>	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era							WR
C	52.222-36	<a href="#">570.601(a)</a>	Affirmative Action for Workers with Disabilities							WR
C	52.222-37	<a href="#">570.701(b)</a>	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era							WR
C	52.223-6	<a href="#">570.601(e)</a>	Drug-Free Workplace							WR
C	52.232-23	<a href="#">570.601(a)</a>	Assignment of Claims							WR
C	52.233-1	<a href="#">570.601(a)</a>	Disputes							WR
P	52.233-2	<a href="#">570.601(e)</a>	Service of Protest							WR

\*Clauses prescribed in GSAR [570.703](#) are optional for acquisitions that do not exceed the simplified lease acquisition threshold.

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PART 553—FORMS

*Sec.*

**Subpart 553.1—General**

- 553.101 Requirements for use of forms.
- 553.102 Current editions.
- 553.170 Establishing and revising GSA Forms.

**Subpart 553.3—Illustrations of Forms**

- 553.300 Scope of subpart.
- 553.300-70 Forms not illustrated.
- 553.370-618D [Removed]
- 553.370-1378 GSA Form 1378, Record of, and Receipt for, Bids and Responses.
- 553.370-1458 GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order.
- 553.370-1535A GSA Form 1535A, Recommendation for Award(s) (Continuation).
- 553.370-1602 GSA Form 1602, Notice Concerning Solicitation.
- 553.370-1678 GSA Form 1678, Status Report of Orders and Shipments.
- 553.370-1720 [Removed]

- 553.370-1766 GSA Form 1766, Structured Approach Profit/Fee Objective.
- 553.370-2689 Small Business Analysis Record.
- 553.370-2728 GSA Form 2728, Procurement Contract Register.
- 553.370-3186 GSA Form 3186, Order for Supplies or Services.
- 553.370-3186B GSA Form 3186B, Order for Supplies or Services (EDI).
- 553.370-3410 GSA Form 3410, Request for Appointment.
- 553.370-3471 GSA Form 3471, Abstract of Offers.
- 553.370-3521 Blanket Purchase Agreement.
- 553.370-3577 [Removed]
- 553.370-3611 GSA Form 3611, Cover Page Source Selection Information.
- 553.370-8002A GSA Form 8002A, Motor Vehicle Requisition Status.
- 553.370-8002B GSA Form 8002B, Motor Vehicle Delivery Order.

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**PART 553—FORMS****Subpart 553.1—General****553.101 Requirements for use of forms.**

Parts 501–552 and 570 prescribe the requirements for use of GSA forms illustrated or referenced in this part. You may identify the prescription as follows:

(a) *Forms available on-line.* The list of forms available on-line in 553.370-1 identifies the basic prescription for each referenced form.

(b) *Illustrated forms.* The prescription for each illustrated form is identified by a cross-reference shown on the illustration. When a form is mentioned in more than one place in this regulation, the section referenced on the illustration is the section that contains the basic prescription.

**553.102 Current editions.**

You must use the current edition of the forms identified in [Subpart 553.3](#) unless otherwise authorized under this regulation.

**553.170 Establishing and revising GSA Forms.**

(a) If two or more GSA Services or Offices use a GSA form, the Office of Acquisition Policy maintains the form.

(b) If only one GSA Service or Office uses a GSA form or if the form is used for a contract type unique to one Service or Office (e.g., construction contracts), that Service or Office is responsible for maintaining the form.

(c) Any proposed new or revised GSA acquisition related form must be submitted to the Office of Acquisition Policy for review and concurrence.

**Subpart 553.3—Illustrations of Forms****553.300 Scope of subpart.**

This subpart illustrates standard and GSA forms prescribed or referenced in Parts 501–551 and 570. Instructions on completing a form, if included, are identified by the suffix “I” after the GSAR section number.

**553.300-70 Forms not illustrated.**

This subpart does not illustrate either:

(a) Standard forms illustrated in the FAR.

(b) Forms available on-line. You can access the forms listed below at the location indicated.

Reference	Form No.	Title	On-line Location
<a href="#">570.801</a>	Standard Form 2	U.S. Government Lease for Real Property	<a href="http://www.gsa.gov/pbs/pe/stancla/stancla.htm">http://www.gsa.gov/pbs/pe/stancla/stancla.htm</a>
<a href="#">552.238-74</a>	GSA Form 72A	Contractor's Report of Sales	<a href="http://vsc.gsa.gov">http://vsc.gsa.gov</a>
<a href="#">570.802(b)</a>	GSA Form 276	Supplemental Lease Agreement	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">513.302-70(b)</a>	GSA Form 300	Order for Supplies and Services	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">513.302-70(a)(3)</a>	GSA Form 300A	Order for Supplies and Services (Continuation)	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">509.105-1(a)</a>	GSA Form 527	Contractor's Qualifications and Financial Information	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">532.905-71(a)</a>	GSA Form 1142	Release of Claims	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">570.802(c)</a>	GSA Form 1364	Proposal to Lease Space	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">570.802(d)</a>	GSA Form 1217	Lessor's Annual Cost Statement	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
514.407-72	GSA Form 1535	Recommendation for Award(s)	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">513.106-3</a>	GSA Form 2010	Small Purchase Tabulation Source List/Abstract	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">532.905-70</a>	GSA Form 2419	Certification of Progress Payments Under Fixed-Price Construction Contracts	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">519.502-70</a>	GSA Form 2689	Small Business Analysis Record	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">501.603-3(e)(1)</a>	GSA Form 3409	Personal Qualifications Statement for Appointment as Contracting Officer	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">504.803(b)</a>	GSA Form 3420	Contract/Modification File Checklist File Format (Award)	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">503.104-4</a>	GSA Form 3617	Record of Authorization of Access to Proprietary or Source Selection Information	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>
<a href="#">570.802(a)</a>	GSA Form 3626	U.S. Government Lease for Real Property (Short Form)	<a href="http://www.gsa.gov/pbs/pe/stancla/stancla.htm">http://www.gsa.gov/pbs/pe/stancla/stancla.htm</a>
<a href="#">519.7009(a)</a>	GSA Form 3695	Mentor-Protégé Program Application	<a href="http://www.gsa.gov/forms">http://www.gsa.gov/forms</a>

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## CHANGE 22 AUGUST 8, 2008

PART 553—FORMS

553.370-618D

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**553.370-618D [Removed]**

[GSA Form 618D has been removed.]

## 553.370-1378 GSA Form 1378, Record of, and Receipt for, Bids and Responses.

RECORD OF, AND RECEIPT FOR, BIDS AND RESPONSES	REGION	NUMBER OF RESPONSES RECEIVED	INVITATION NUMBER	
	O P E N I N G			
	TIME	A.M. P.M.	DATE	
NAMES AND ADDRESSES OF RESPONDENTS			TIME AND DATE RECEIVED	
			TIME	DATE
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				

I received \_\_\_\_\_ bids and responses from the bid custodian.  
(Number)

BID OPENING OFFICIAL (Signature)	TITLE	DATE AND TIME
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GENERAL SERVICES ADMINISTRATION GSA FORM 1378 (REV. 7-75)

**553.370-1458 GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order.**

[illegible]

## 553.370-1458 GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order.

**PURCHASE ORDER TERMS AND CONDITIONS**

- 552.229-70 FEDERAL, STATE, AND LOCAL TAXES (APR 1984)  
The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.
- 552.210-79 PACKING LIST (DEC 1989)  
(a) A packing list or other suitable shipping documents shall accompany each shipment and shall indicate: (1) Name and address of consignee; (2) Name and address of consignor; (3) Government order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).  
(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number and (2) the term "Credit Card."
- 52.232-1 PAYMENTS (APR 1984)  
The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries as follows: (a) The amount of the contract price accepted by the Government; (b) The amount of the contract price accepted by the Government; and (c) The amount of the contract price accepted by the Government. The Contractor shall request payment of the contract price in installments of at least \$1,000 or 50 percent of the total contract price.
- 52.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989)  
(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offeror awarded contracts may include prompt payment discounts on individual invoices.  
(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.
- PROMPT PAYMENT  
Prompt payment clause 52.232-25 is incorporated in this contract by reference. The clause contains information on payment due date, invoice requirements, constructive acceptance and interest penalties. Certain portions of the clause regarding payment due date, invoice requirements, and constructive acceptance have been extracted for your convenience. All days referred to in the extracts below are calendar days.  
(a)(2) . . . The due date for making invoice payments by the designated payment office shall be the later of the following two events:
- 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)  
The 30th day after the designated billing office has received a proper invoice from the Contractor.
- 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)  
The 30th day after Government acceptance of supplies delivered or services performed by the Contractor . . .
- (52.222-41 and 52.222-42 apply to service contracts when the amount exceeds \$2,500.)  
The GSA Form 2166, Service Contract Act of 1965, as amended, and Statement of Equivalent Rates for Federal Hires is attached hereto and made a part hereof.
- 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 88)  
This contract incorporates one or more clauses by reference, with the effort and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.
- FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES  
Applicable to purchase orders for supplies or services:  
52.203-1 Officials Not to Benefit (APR 84)  
52.203-3 Gratuities (APR 84)  
52.203-6 Restriction on Subcontractor Sales to the Government (JUL 85)  
52.212-9 Variation in Quantity (APR 84) (in the preceding clause, the permissible variations are stated in the schedule.)  
52.222-3 Convict Labor (APR 84)  
52.222-26 Equal Opportunity (APR 84) (Applies when amount exceeds \$10,000.)  
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 84) (Applies when amount exceeds \$10,000.)  
52.222-36 Affirmative Action for Handicapped Workers (APR 84) (Applies when amount exceeds \$2,500.)  
52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 88) (Applies whenever Clause 52.222-35 is used.)  
52.223-6 Drug Free Workplace (JUL 90) (Applies if contract is awarded to an individual.)  
52.225-3 Buy American Act-Supplies (JAN 94)  
52.225-11 Restrictions on Certain Foreign Purchases (MAY 92)  
52.232-25 Prompt Payment (MAR 94)  
52.233-1 Disputes (MAR 94)  
52.233-3 Protest After Award (DEC 89)  
52.246-1 Contractor Inspection Requirements (APR 84)  
52.249-8 Default (Fixed-Price Supply and Service) (APR 84)  
Applicable to purchase orders for supplies:  
52.222-20 Walsh-Healy Public Contracts Act (APR 84) (Applies when amount exceeds \$10,000.)  
52.243-1 Changes - Fixed Price (AUG 87)  
52.249-1 Amendment for Convenience of the Government (Fixed Price) (Short Form) (APR 84)  
Applicable to purchase orders for services:  
52.243-1 Changes - Fixed Price (APR 84) - Alt. II  
52.249-4 Termination for Convenience of the Government (Services) (Short Form) (APR 84)
- 52.222-40 SERVICE CONTRACT ACT OF 1965, AS AMENDED -- CONTRACTS OF \$2,500 OR LESS (MAY 1989)  
Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of \$2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

GSA FORM 1458 BACK (REV. 2-96)



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**553.370-1535A GSA Form 1535A, Recommendation for Award(s) (Continuation).**

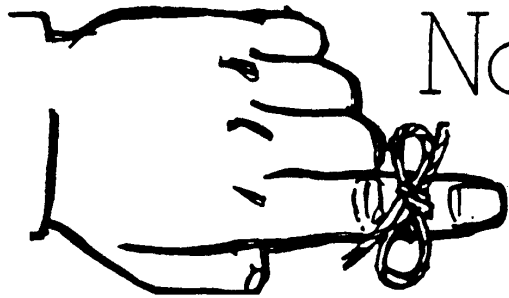
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RECOMMENDATION FOR AWARD(S) <i>(Continuation)</i>				PAGE	PAGES
				OF	
SOLICITATION					
12. PROPOSED AWARD(S) AND PRICE/DISCOUNT ANALYSIS					
ACQUISITION CODING (a)	CONTRACTOR'S NAME, ADDRESS, DUNS NUMBER, AND CONTRACT NUMBER (b)	ITEM NUMBERS (c)	PRODUCTION POINT <i>(City, County, and State)</i> (d)	\$ AMOUNT (e)	

[514.408-71]

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553.370-1602 GSA Form 1602, Notice Concerning Solicitation.



# Notice Concerning Solicitation



[514.201-70]  
[515.210-70]

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**QUALITY: FIRST TIME. EVERY TIME. ON TIME**

**GSA Form 1602** (Rev. 4-92)

**553.370-1678 GSA Form 1678, Status Report of Orders and Shipments.**

[illegible]

553.370-1678 GSA Form 1678, Status Report of Orders and Shipments.

INSTRUCTIONS	
I. GENERAL	
A. A report period is from the first through the last day of a calendar month, notwithstanding that the ordering period applicable to a requirements contract may not coincide with these dates.	
B. Contractors shall report on each new order received during the report period, and each order shown in a preceding report as not completely shipped. If no orders are on hand during a report period, a negative report shall be submitted.	
C. A separate report shall be submitted for each plant location.	
D. Contractors shall continue to furnish reports after the expiration of the contract period until all shipments required under the contract have been made.	
II. SPECIFIC ENTRIES	
A. Block 1. Insert mailing address of the office assigned responsibility for the administration of the contract (unless preprinted).	F. Columns 7(a) through 7(c). These columns apply only to contracts which include an "Availability for Inspection and Testing, and Shipment" (or Delivery) clause. Entries are not required in these columns if the contractor is authorized to ship the supplies under a Quality Approved Manufacturer Agreement.
B. Blocks 2, 4, and 5 are self-explanatory.	G. Column 8. Insert date based on the time for shipment/delivery provisions of the contract, or in accordance with any authorized extensions of time for shipment or delivery.
C. Block 3. Insert city and State. If the contractor has more than one plant in the same city, insert complete address.	(NOTE: If the contract includes a "Monthly Supply Potential" (MSP) clause and the contractor has exercised his option thereunder to extend the shipping/delivery time with respect to the acceptance of orders for quantities exceeding his MSP, entries in this column showing extended due dates shall be asterisked and briefly explained below in the space provided for remarks.)
D. Insert page numbers in the spaces provided.	H. Column 10. If a partial shipment is made, but the unshipped quantity is within the limitation of the "Variation in Quantity" clause of the contract, and if the contractor does not intend to include the unshipped quantity with a future shipment, insert a zero or "none."
E. Columns 6(a) through 6(d) are self-explanatory.	I. Certification. The certification is required only on the first page of each monthly report.
REMARKS	

## CHANGE 55 OCTOBER 1, 2012

PART 553—FORMS

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553.370-1720 [Removed]

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[GSA Form 1720 has been removed.]

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**553.370-1766 GSA Form 1766, Structured Approach Profit/Fee Objective.**

[Go to <http://www.gsa.gov/forms> to access form.]

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**553.370-2689 Small Business Analysis Record.**

[Go to *<http://www.gsa.gov/forms>* to access form.]



**553.370-2728 GSA Form 2728, Procurement Contract Register.**

PROCUREMENT CONTRACT REGISTER												
ACT. NO. DATE AWARDED <i>(a)</i>	CONTRACT NUMBER/ ORDER <i>(b)</i>	TYPE OF CONT. <i>(c)</i>	CONTRACT PERIOD <i>(d)</i>	DOLLAR AMOUNT <i>(e)</i>	SOLICITATION NUMBER <i>(f)</i>	FEDERAL SUPPLY SCHEDULE AND PSC <i>(g)</i>	COMMODITY SERVICE <i>(h)</i>	BUS. SIZE <i>(i)</i>	PRODUCTION POINT <i>(j)</i>	SPEC. CODE <i>(k)</i>	DUNS ID NO. <i>(l)</i>	CONTRACTOR NAME AND ADDRESS <i>(m)</i>
												[504.7002]

GSA FORM 2726 (REV. 1-79)

GENERAL SERVICES ADMINISTRATION

## 553.370-3186 GSA Form 3186, Order for Supplies or Services.

ORDER FOR SUPPLIES OR SERVICES		1. GSA USE ONLY	2. DATE OF ORDER	3. ORDER NUMBER
4. FROM: GENERAL SERVICES ADMINISTRATION		IMPORTANT — A copy of this order or the information specified in item 10 below MUST accompany shipment.		
ADMINISTRATION BY: <input type="checkbox"/> A. ABOVE OFFICE <input type="checkbox"/> B.		5. INSPECTION/ACCEPTANCE <input type="checkbox"/> A. DESTINATION <input type="checkbox"/> B. ORIGIN BY REGION <input type="checkbox"/> C. ACCEPTANCE BY (days after delivery)		6. MODIFICATION NO.
9A. VENDOR WILL: <input type="checkbox"/> DELIVER <input type="checkbox"/> SHIP		9B. BY <input type="checkbox"/> OR SOONER <input type="checkbox"/> SEE NOTE IN ITEM 12		7. F.O.B. <input type="checkbox"/> A. DESTINATION <input type="checkbox"/> B. ORIGIN <input type="checkbox"/> C. INSIDE DELIVERY <input type="checkbox"/> D. TAILGATE DELIVERY
10. SHIP TO/REQUIRED MARKING: (CONSIGNEE )		8. GBL NUMBER		
MARK FOR <input type="checkbox"/> PROJ. <input type="checkbox"/> PRI. <input type="checkbox"/> RDD.		11. TO CONTRACTOR <input type="checkbox"/> (Remittance address differs)		
TRANSP. CNTRL. NO. <input type="checkbox"/> TAC: <input type="checkbox"/>		CONTRACT NUMBER <input type="checkbox"/>		
(INCLUDE REQUISITION NUMBER(S) AS SHOWN IN ITEM 12)				
12. REQUISITION NO., ITEM/STOCK NO. AND DESCRIPTION		13. QUANTITY	14. UNIT	15. COST A. UNIT PRICE B. AMOUNT
[513.302-70(d)]				
16. DISCOUNT TERMS		17. QUANTITY VARIATION ALLOWED (+) % / (-) %		18. TOTAL(S) <input type="checkbox"/>
19. AFTER SHIPMENT, SUBMIT INVOICE(S) ELECTRONICALLY IN ACCORDANCE WITH TRADING PARTNER AGREEMENT, OR MAIL TO: GSA ACCOUNTS PAYABLE BRANCH  KANSAS CITY, MO 64141  FOR PAYMENT INQUIRY, CALL THE CHIEF, ACCOUNTS PAYABLE BRANCH:		CONDITIONS: YOU MUST ABIDE BY THE TERMS AND CONDITIONS REFERENCED IN THE CONTRACT NUMBER SHOWN ABOVE IN ITEM 11.		
20. FOR INFORMATION (OTHER THAN PAYMENT INQUIRIES) CALL:		21. SIGNATURE (CONTRACTING/PURCHASING OFFICER)		
		22. DPAS RATING	23. MSDS REQ'D	24. POP
				25. PAGES OF
GENERAL SERVICES ADMINISTRATION NSN 7530-01-329-3613		1 - FILE		
		GSA FORM 3186 (Rev. 7/94)		

**553.370-3186 GSA Form 3186, Order for Supplies or Services.**

<b>ORDER FOR SUPPLIES OR SERVICES</b>		1. GSA USE ONLY		2. DATE OF ORDER		3. ORDER NUMBER	
4. FROM: GENERAL SERVICES ADMINISTRATION				<b>IMPORTANT</b> — A copy of this order or the information specified in item 10 below <b>MUST</b> accompany shipment.			
5. INSPECTION/ACCEPTANCE <input type="checkbox"/> A. DESTI- NATION <input type="checkbox"/> B. ORIGIN BY REGION <input type="checkbox"/> C. ACCEPT- ANCE BY      (days after delivery)				6. MODIFICA- TION NO.			
ADMINISTRATION BY: <input type="checkbox"/> A. ABOVE OFFICE <input type="checkbox"/> B.				7. F.O.B.			
9A. VENDOR WILL: <input type="checkbox"/> DELIVER <input type="checkbox"/> SHIP    9B. BY <input type="checkbox"/> OR SOONER <input type="checkbox"/> SEE NOTE IN ITEM 12				<input type="checkbox"/> A. DESTINATION <input type="checkbox"/> B. ORIGIN <input type="checkbox"/> C. INSIDE <input type="checkbox"/> D. TAILGATE DELIVERY    DELIVERY			
10. SHIP TO/REQUIRED MARKING: (CONSIGNEE )				8. GBL NUMBER			
11. TO CONTRACTOR (Remittance address differs)				12. REQUESTION NO., ITEM/STOCK NO. AND DESCRIPTION			
13. QUANTITY 14. UNIT 15. COST A. UNIT PRICE      B. AMOUNT				16. DISCOUNT TERMS 17. QUANTITY VARIATION ALLOWED (+)    %    /    (-)    % 18. TOTAL(S)			
19. AFTER SHIPMENT, SUBMIT INVOICE(S) ELECTRONICALLY IN ACCORDANCE WITH TRADING PARTNER AGREEMENT, OR MAIL TO:  GSA ACCOUNTS PAYABLE BRANCH  KANSAS CITY, MO 64141  FOR PAYMENT INQUIRY, CALL THE CHIEF, ACCOUNTS PAYABLE BRANCH:				CONDITIONS: YOU MUST ABIDE BY THE TERMS AND CONDITIONS REFERENCED IN THE CONTRACT NUMBER SHOWN ABOVE IN ITEM 11. 20. FOR INFORMATION (OTHER THAN PAYMENT INQUIRIES) CALL: 21. SIGNATURE (CONTRACTING/PURCHASING OFFICER) 22. DPAS RATING    23. MSDS REQ'D.    24. POP    25. PAGES <div style="text-align: right;">OF</div>			

## 553.370-3186B GSA Form 3186B, Order for Supplies or Services (EDI).

ORDER FOR SUPPLIES OR SERVICES (EDI)		1 GSA USE ONLY	2 DATE OF ORDER	3 ORDER NUMBER
4 FROM: GENERAL SERVICES ADMINISTRATION		IMPORTANT - A copy of this order or the information specified in Item 10 below MUST accompany shipment.		
5. INSPECTION/ACCEPTANCE		6 MODIFICATION NO		
A DESTINATION		B ORIGIN BY REGION		C ACCEPTANCE BY (days after delivery)
7 F.O.B.		8 GBL NUMBER		
A. DESTINATION		B. ORIGIN		
C. INSIDE DELIVERY		D. TAKE-DATE DELIVERY		
10 SHIP TO/REQUIRED MARKING (CONSIGNEE)		11 TO CONTRACTOR (Remittance address differs)		
MARK FOR		PROJ PRI RDD		
TRANSP CNTRL NO		TAC		
CONTRACT NUMBER				
(INCLUDE REQUISITION NUMBER(S) AS SHOWN IN ITEM 12)				
12 REQUISITION NO., ITEM/STOCK NO. AND DESCRIPTION		13 QUANTITY	14 UNIT	15 COST
				A UNIT PRICE B AMOUNT
[513.302-70(d)]				
16 DISCOUNT TERMS		17 QUANTITY VARIATION ALLOWED (+) % / (-) %		18 TOTAL(s)
19 AFTER SHIPMENT, SUBMIT INVOICE(S) ELECTRONICALLY IN ACCORDANCE WITH TRADING PARTNER AGREEMENT, OR MAIL TO: GSA ACCOUNTS PAYABLE BRANCH  KANSAS CITY, MO 64144  FOR PAYMENT INQUIRY CALL THE CHIEF ACCOUNTS PAYABLE BRANCH		CONDITIONS: YOU MUST ABIDE BY THE TERMS AND CONDITIONS REFERENCED IN THE CONTRACT NUMBER SHOWN ABOVE IN ITEM 11.		
20 FOR INFORMATION (OTHER THAN PAYMENT INQUIRIES) CALL		21 SIGNATURE (CONTRACTING/PURCHASING OFFICER)		
		22 DPAS RATING	23 MSDS REQ'D	24 POP
				25 PAGES
				OR
GENERAL SERVICES ADMINISTRATION NSN 7530-01-329-3815		FILE COPY (EDI)		GSA FORM 3186B (Rev 7-91)

## 553.370-3410 GSA Form 3410, Request for Appointment.

**REQUEST FOR APPOINTMENT**

The following findings and determinations are made under the applicable laws and regulations:

1. There is a clear and convincing need to appoint a contracting officer for the following reasons (quantify where practicable and indicate proposed limits of the warrant):

[501.603-3(b)(1)(ii)]

2. The nominee contracting officer is:

3. The nominee contracting officer will occupy the following organizational position, with responsibility for the processing and execution of procurement contracts and/or modifications, sales agreements, or leases:

4. The nominee's attached Personal Qualifications Statement has been evaluated and either (check as applicable):

- ☐ The candidate's experience, and training meet the established GSA minimum qualifications for training and experience, or
- ☐ An interim request to waive experience requirements and requires scheduling of training as appropriate.

5. The nominee's knowledge of the Federal Acquisition Regulation, the GSA Acquisition Regulation, and other applicable laws, Executive Orders, and regulations affecting procurement, contracts, and/or sales agreements, as appropriate, is adequate for the appointment.

6. The nominee's business acumen, judgment, character, reputation, and ethics are found.

7. The nominee is well qualified for the appointment.

SUPERVISOR'S SIGNATURE	TYPED NAME AND TITLE	CONTRACTING ACTIVITY	DATE
WARRANT BOARD MEMBERS TYPED NAME AND TITLE	SIGNATURES	ACTION	DATE
		<input type="checkbox"/> CONCUR <input type="checkbox"/> DISAPPROVE	
		<input type="checkbox"/> CONCUR <input type="checkbox"/> DISAPPROVE	
		<input type="checkbox"/> CONCUR <input type="checkbox"/> DISAPPROVE	
		<input type="checkbox"/> CONCUR <input type="checkbox"/> DISAPPROVE	
CONCUR: (Recommending Official Signature)	DISAPPROVED: (Recommending Official Signature)		DATE
		(Reason attached)	

GENERAL SERVICES ADMINISTRATION

GSA DC-8911000922

GSA FORM 3410 (REV. 12-89)



**553.370-3521 Blanket Purchase Agreement.****GENERAL SERVICES ADMINISTRATION**

Blanket Purchase Agreement No.

[513.307]

Description of agreement. The Supplier agrees to furnish the supplies or services described herein, if and when ordered by the Contracting Officer or an authorized representative during the specified term of this agreement.

Description of supplies or services.

Term of agreement. This agreement will become effective upon acceptance by the Supplier and will remain in effect until

\_\_\_\_\_.

Geographic area to be served.

Extent of Obligation. The Government is obligated only to the extent of authorized purchases actually made under this agreement.

Pricing. Any purchases made pursuant to this agreement will be based on written quotations submitted in response to a Standard Form 18, Request for Quotations, or will be based on quotations obtained orally by telephone or personal contact at the time the Government's need for the item(s) or services arises. The Supplier agrees that the prices quoted to the Government will be as low or lower than those charged to the Supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

Purchase limitation. The amount of any one purchase under this agreement shall not exceed \$10,000 and lower amounts may be established for specific individuals named in this agreement.

Notice of individuals authorized to purchase under the BPA and dollar limits. The following GSA employees are hereby authorized to place orders under this agreement.

<u>Name</u>	<u>Organization</u>	<u>Dollar limit per purchase</u>
-------------	---------------------	----------------------------------

Placing orders. No written orders will be placed against this agreement. GSA employees will place orders telephonically or in person and will identify themselves and provide the following information:

- (1) BPA number;
- (2) Purchase number;
- (3) Specific description of the supplies or services being purchased;
- (4) The unit price(s) and total price established by agreement with the Supplier; and
- (5) The time and place of delivery.

Delivery tickets. All deliveries under this agreement must be accompanied by delivery tickets or sales slips which must contain the following information as a minimum:

- (1) Name of Supplier;
- (2) BPA Number;
- (3) Date of Purchase.
- (4) Purchase number.

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**553.370-3521 Blanket Purchase Agreement.**

- (5) Name of person placing the order;
- (6) Itemized list of supplies or services furnished.
- (7) Quantity, unit price, and extension of each item, less applicable discount (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information).
- (8) Date of delivery or shipment.

Invoices.

Invoices shall be submitted to:

Terms and conditions. The terms and conditions included in this agreement apply to all purchases made pursuant to this agreement. In the event of an inconsistency between the provisions of this agreement and the supplier's invoice, the provisions of this agreement will take precedence.

Acknowledgment. The supplier is hereby requested to acknowledge acceptance of this agreement, including its terms, conditions, and clauses, by signing and returning a copy to:

Sincerely,

CONTRACTING OFFICER

Accepted by:

\_\_\_\_\_  
(Name)

Taxpayer Identification No. \_\_\_\_\_

\_\_\_\_\_  
(Title)

Type of business (check one)

\_\_\_\_\_  
(Date)

Corporation \_\_\_\_\_  
Partnership \_\_\_\_\_  
Sole Proprietorship \_\_\_\_\_

Please indicate the remittance address for payment in the space provided below if different than the supplier address.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**553.370-3521 Blanket Purchase Agreement.****TERMS AND CONDITIONS****552.229-70 FEDERAL, STATE, AND LOCAL TAXES (APR 1984)**

The Contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

**552.210-79 PACKING LIST (DEC 1989)**

A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of consignor; (2) Name and complete address of the consignee; (3) Government order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

**52.232-1 PAYMENTS (APR 1984)**

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if (a) The amount due on the deliveries warrants it; or (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

**52.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

**52.232-25 PROMPT PAYMENT (APR 1989) (Certain portions extracted for your convenience).**

Prompt Payment clause 52.232-25 is incorporated in this contract by reference. The clause contains information on payment due date, invoice requirements, constructive acceptance and interest penalties. Certain portions of the clause regarding payment due date, invoice requirements, and constructive acceptance have been extracted for your convenience.

(a)(2)...The due date for making invoice payments by the designated payment office shall be the later of the following two events:

- (i) The 30th day after the designated billing office has received a proper invoice from the Contractor.
- (ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor...

(a)(4)... An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed ... in (i) through ... (viii) ... If the invoice does not comply with these requirements then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office ... Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor ...

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
- (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where applicable) title, phone number, and mailing address of person to be notified in event of a defective invoice.
- (viii) Any other information or documentation required by other requirements of the contract (such as evidence of shipment).

(a)(6)(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless a different period is specified in block 20) after the

## 553.370-3521 Blanket Purchase Agreement.

Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision ...

### 52.222-40 SERVICE CONTRACT ACT OF 1965, AS AMENDED - CONTRACT OF \$2,500 OR LESS (MAY 1989)

Except to the extent that an exception, variation, or tolerance would apply if this were a contract in excess of \$2,500, the Contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Services Contract Act of 1965, as amended, or contained in 29 CFR Part 4.

SERVICE CONTRACT ACT OF 1965 (Applies to service contracts when the amount exceeds \$2,500). The GSA Form 2166, Service Contract Act of 1965 (as amended) is attached hereto and made a part hereof.

### 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available:

#### FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Applicable to orders for supplies or services:

52.203-1	Official Not to Benefit (APR 84)
52.203-3	Gratuities (APR 84)
52.203-5	Covenant Against Contingent Fees (APR 84)
52.203-6	Restriction on Subcontractor Sales to the Government (JUN 88)
52.203-7	Anti-Kickback Procedures (OCT 88)
52.212-9	Variation in Quantity (APR 84) (In the preceding clause, the permissible variations are stated in the schedule.)
52.215-1	Examination of Records by Comptroller General (APR 84) (Applies when amount exceeds \$10,000.)
52.222-3	Convict Labor (APR 84)
52.222-26	Equal Opportunity (APR 84) (Applies when amount exceeds \$10,000.)
52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 84) (Applies when amount exceeds \$10,000.)
52.222-36	Affirmative Action for Handicapped Workers (APR 84) (Applies when amount exceeds \$2,500.)
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 88) (Applies whenever clause 52.222-35 is included.)
52.223-6	Drug-Free Workplace (JUL 90) (Applies if agreement is awarded to an individual.)
52.225-3	Buy American Act-Supplies (JAN 89)
52.225-11	Restrictions on Certain Foreign Purchases (APR 91)
52.232-25	Prompt Payment (APR 89)
52.233-1	Disputes (APR 84)
52.233-3	Protest After Award (AUG 89)
52.246-1	Contractor Inspection Requirements (APR 84)
52.249-8	Default (Fixed-Price Supply and Service) (APR 84)

Applicable to orders for supplies:

52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation (MAR 86) (Applies when amount is between \$2,500 and \$10,000.)
52.222-20	Walsh-Healey Public Contracts Act (APR 84) (Applies when amount exceeds \$10,000.)
52.243-1	Changes-Fixed Price (AUG 87)
52.249-1	Termination for Convenience of the Government (Fixed Price) (Short Form) (APR 84)

Applicable to orders for services:

52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation (MAR 86) (Applies when amount exceeds \$2,500.)
52.243-1	Changes-Fixed Price (APR 84) - Alt. II
52.243-4	Termination for Convenience of the Government (Services) (Short Form) (APR 84)

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**553.370-3577 [Removed]**

[GSA Form 3577 has been removed.]

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553.370-3611 GSA Form 3611, Cover Page Source Selection Information.

## Cover Page


[503.104-5(b)(1)]

# Source Selection Information

See FAR 3.104

This document contains source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

## 553.370-8002A GSA Form 8002A, Motor Vehicle Requisition Status.

1. FROM <b>General Services Administration</b>		MOTOR VEHICLE REQUISITION STATUS			
		2. DATE	3. ORDER NO.		
		4. IFB/SFO	4B. LINE ITEM NO.	4C. STD. ITEM NO.	
5. DESCRIPTION 					
6. COLOR		7. STANDARD OPTIONS			
8. AGENCY		9. DATE REC'D.	10. AB CODE	17. REQUISITIONING OFFICE	
11. AGENCY ORDER NO.					
12. REQUISITION NO.		13. SUP. ADDR.	14. SIG.	15. FUND	
16. COST					
A. QUANT.	B. UNIT	C. UNIT PRICE	D. TOTAL		
18. CONSIGNEE (DELIVERY ADDRESS)			19. CONSIGNEE (MAILING ADDRESS)		
[513.302-70(d)]					
MESSAGE					

## 553.370-8002B GSA Form 8002B, Motor Vehicle Delivery Order.

<b>MOTOR VEHICLE DELIVERY ORDER</b> (INCOMPLETE)				1. DATE OF ORDER		2. ORDER NO.	
3. FROM: General Services Administration				4. CONTRACTOR			
5A. CONTRACT NO.		5B. AWARD DATE		6A. CONT. MODE		6B. EFFECTIVE DATE	
				7A. TIME FOR: <input type="checkbox"/> DELIVERY <input type="checkbox"/> SHIPMENT		7B. DATE	
8. DELIVERY							
<input type="checkbox"/> A. FOB ORIGIN		<input type="checkbox"/> B. FOB DESTINATION		<input type="checkbox"/> C. FAS VESSEL (Port ▶)			
9. INSPECTION				10. ORIGIN / ASSEMBLY POINT		11. DISCOUNT TERMS	
A. SOURCE BY ZONE						A. AMOUNT	
<input type="checkbox"/> B. DESTINATION						\$	
12A. <input type="checkbox"/> If box checked, GSA shall furnish shipping instructions and Government Bill of Lading upon receipt of GSA Form 1611, Export Traffic Release, at the address shown in item 12B.				12B. GSA			
13. CONSIGNEE (DELIVERY ADDRESS)				14. CONSIGNEE (MAILING ADDRESS)			
[513.302-70(d)]							
M/F ▶ TCN ▶							
15. REQUISITIONING AGENCY INFORMATION				16. REQUISITIONING OFFICE			
A. AGENCY		B. DATE RECEIVED		C. AB CODE			
D. AGENCY ORDER NO.							
E. FED./MIL. STRIP DATA							
REQUISITION NO.		SUPP. ADDRESS		SIG		FUND	
F. COST				17A. IFB / SFO		17B. LINE ITEM NO.	
QUANTITY	UNIT	UNIT PRICE	TOTAL			17C. STD ITEM NO.	
		\$	\$				
This delivery order is issued pursuant to the above cited contract, whose terms and conditions apply.							
18. DESCRIPTION ▶							
19. COLOR		20. STANDARD OPTIONS					
21. CONTRACTOR'S REMITTANCE				22. MAIL INVOICE TO:			
23. ADMINISTRATIVE CONTRACTING OFFICER						24. TELEPHONE NO.	

GENERAL SERVICES ADMINISTRATION

GSA FORM 8002B (8-82)

## **SUBCHAPTER I—SPECIAL CONTRACTING PROGRAMS**

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**PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY**

*Sec.*

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**PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY**

**Subpart 570.1—General**

**570.101 Applicability.**

(a) This part applies to acquisitions of leasehold interests in real property except:

(1) Leasehold interests acquired by the power of eminent domain or by donation.

(2) Acquisition of leasehold interests in bare or unimproved land.

(b) In addition, the GSAR rules in the table below apply. Other provisions of 48 CFR Chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-referenced in this [Part 570](#).

<b>GSAR Rules Applicable to Acquisitions of Leasehold Interests in Real Property</b>			
<a href="#">501</a>	<a href="#">515.209-70</a>	<a href="#">519.12</a>	<a href="#">533</a>
<a href="#">502</a>	<a href="#">515.305</a>	<a href="#">522.805</a>	<a href="#">536.271</a>
<a href="#">503</a>	<a href="#">517.202</a>	<a href="#">522.807</a>	<a href="#">537.2</a>
<a href="#">509.4</a>	<a href="#">517.207</a>	<a href="#">532.111</a>	<a href="#">552</a>
<a href="#">514.407</a>	<a href="#">519.7</a>		<a href="#">553</a>

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in addition to the GSAR requirements identified in [570.101\(b\)](#).

<b>GSAM Applicable to Acquisitions of Leasehold Interests in Real Property</b>			
<a href="#">501</a>	<a href="#">507</a>	<a href="#">522.14</a>	<a href="#">532.8</a>
<a href="#">503</a>	<a href="#">519.3</a>	<a href="#">523.4</a>	<a href="#">532.9</a>
<a href="#">504.2</a>	<a href="#">519.6</a>	<a href="#">530</a>	<a href="#">532.11</a>
<a href="#">504.9</a>	<a href="#">519.7</a>	<a href="#">532.1</a>	<a href="#">533</a>
<a href="#">505</a>	<a href="#">519.12</a>	<a href="#">532.4</a>	<a href="#">537.2</a>
<a href="#">506</a>	<a href="#">522.13</a>	<a href="#">532.6</a>	

(d) The FAR does not apply to leasehold acquisitions of real property. Where referenced in this part, FAR provisions have been adopted based on a statutory requirement applicable to such lease acquisitions or as a matter of policy, including, but not limited to “Federal agency procurement” as defined at FAR 3.104.

**570.102 Definitions.**

“ANSI/BOMA Office Area (ABOA)” means the area “where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed,” as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication Z65.1-1996.

“Contract” means lease.

“Contractor” means lessor.

“Landlord” or “lessor” means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

“Lease” or “leasehold interest in real property” means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include operational services provided by the landlord.

“Lease acquisition” means the acquiring by lease of an interest in improved real property for use by the Government, whether the space already exists or must be constructed.

“Lease extension” means extension of the expiration date of a lease to provide for continued occupancy on a short term basis.

“Lease renewal” (option) means the right, but not the obligation of the Government to continue a lease upon specified terms and conditions, including lease term and rent.

“Lessee” or “tenant” means the United States of America.

“Operational services” means services that support use of a leased property, such as heating, ventilation, air conditioning, utilities, and custodial services.

“Simplified lease acquisition procedures” mean the procedures for awarding leases at or below the simplified lease acquisition threshold.

“Simplified lease acquisition threshold” means the simplified acquisition threshold (see FAR 2.101), when applied to the average annual amount of rent for the term of the lease, including option periods and excluding the cost of services.

“Small business” means a concern including affiliates, which is organized for profit, is independently-owned and operated, is not dominant in the field of leasing commercial real estate, and that has annual average gross receipts for the preceding three fiscal years which are less than the size standard established by the Small Business Administration pursuant to 13 CFR Part 121. The size standards may be found at [http://www.sba.gov/size/sizetable\\_2002.html](http://www.sba.gov/size/sizetable_2002.html). For most lease procurements, the NAICS code is 531190.

“Solicitation for Offers (SFO)” means a request for proposals.

“Substantially as follows” or “substantially the same as,” when used in prescribing a provision or clause, means that the contracting officer may prepare and use a variation of that provision or clause to accommodate requirements peculiar to an individual acquisition. The variation must include the salient features of the FAR or GSAR provision or clause. It must also be consistent with the intent, principle, and substance of the FAR or GSAR provision or clause and related coverage on the subject matter.

## 570.103

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

“Succeeding lease” means a lease whose effective date immediately follows the expiration date of an existing lease for space in the same building.

“Superseding lease” means a lease that replaces an existing lease, prior to the scheduled expiration of the existing lease term.

**570.103 Authority to lease.**

(a) The Administrator of General Services is authorized by 40 U.S.C. §585 to enter into a lease agreement for the accommodation of a Federal agency in a building (or improvement) which is in existence or being erected by the lessor for the accommodation of the Federal agency. The lease agreement may not bind the Government for more than 20 years.

(b) The contracting officer has exclusive authority to enter into and administer leases on the Government’s behalf to the extent provided in the certificate of appointment as a contracting officer. Nothing in this paragraph is intended to limit the contracting officer’s authority to designate, consistent with statute and regulation, a contracting officer’s representative.

**570.104 Competition.**

Unless the contracting officer uses the simplified procedures in [Subpart 570.2](#), the competition requirements of FAR Part 6 apply to acquisition of leasehold interests in real property.

**570.105 Methods of contracting.****570.105-1 Contracting by negotiation.**

Contracting by negotiation is appropriate for acquiring space in a building through a lease contract. The contracting officer will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.

**570.105-2 Criteria for the use of two-phase design-build.**

The contracting officer may use the two-phase design-build selection procedures in 41 U.S.C. 253m for lease construction projects. This includes lease construction projects with options to purchase the real property leased. Use the procedures in 41 U.S.C. 253m and FAR 36.3 when the conditions in (a) and (b) below are met:

(a) The contracting officer anticipates that the lease will involve the design and construction of a building, facility, or work for lease to the Government.

(b) The contracting officer determines whether the procedures are appropriate for entering into a lease construction contract based on the following:

(1) The contracting officer expects to receive three or more offers.

(2) Offerors will need to perform design work before developing a price.

(3) Offerors will incur a substantial amount of expense in preparing offers.

(4) The contracting officer considers criteria such as the following:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The past performance of potential contractors.

(v) The suitability of the project for use of the two-phase selection procedures.

(vi) The capability of the agency to manage the two-phase selection process.

(vii) Other criteria established by the HCA.

(c) See 570.305 for additional information.

**570.106 Advertising, publicizing, and notifications to Congress.**

(a) If a proposed acquisition is not exempt under FAR 5.202 or GSAR [570.106\(e\)](#), and is for a leasehold interest in real property estimated to exceed 10,000 square feet, then the contracting officer must publicize the proposed acquisition in <http://www.FBO.gov>.

(b) For leasehold acquisitions where the solicitation requires the construction of a new building on a preselected site, the contracting officer, in accordance with the time-frames established in FAR 5.203, must publicize the proposed acquisition in <http://www.FBO.gov> regardless of size or value.

(c) For leasehold acquisitions not subject to a square foot measurement (e.g., antennas, piers, parking), contracting officers must publicize the proposed acquisition in <http://www.FBO.gov> when the contract action is expected to exceed \$25,000, unless an exception under FAR 5.202 applies.

(d) Other than as identified in paragraphs (a) through (c) of this section, the contracting officer need not publicize the proposed acquisition of a leasehold interest in real property, including expansion requests within the scope of a lease (see 570.403), lease extensions under the conditions defined in 570.405, and building alterations within the scope of a lease (see 570.5). However, the contracting officer may publicize proposed lease acquisitions of any dollar value or square footage in <http://www.FBO.gov> or local newspapers if, in the opinion of the contracting officer, doing so is necessary to promote competition.

(e) The contracting officer may issue a consolidated advertisement for multiple leasing actions.

(f) Except as otherwise provided in paragraph (b) of this section, where publicizing of the proposed acquisition is

required, the notice shall be published in <http://www.FBO.gov> not less than three calendar days prior to issuance of a solicitation.

(g) Except as otherwise provided in paragraph (b) of this section and as set forth in paragraphs (g) and (h) of this section, the contracting officer shall provide offerors not less than 20 calendar days between solicitation issuance and the date established for receipt of initial offers.

(1) For a proposed acquisition using simplified lease acquisition procedures (see 570.2), consider the individual acquisition and establish a reasonable response time.

(2) In cases of unusual and compelling urgency (FAR 6.303-2), provide as much time as reasonably possible under the circumstances and document the contract file.

(h) If a Member of Congress has specifically requested notification of award, the contracting officer must provide award notifications in accordance with 505.303.

**570.106-1 Synopsis of lease awards.**

(a) Except for lease actions described in paragraph (b) of this section, contracting officers must synopsis in <http://www.FBO.gov> awards exceeding \$25,000 total contract value that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required if—

(1) The notice would disclose the occupant agency's needs and the disclosure of such needs would compromise the national security; or

(2) The lease—

(i) Is for an amount not greater than the simplified lease acquisition threshold;

(ii) Was made through a means where access to the notice of proposed lease action was provided through <http://www.FBO.gov>; and

(iii) Permitted the public to respond to the solicitation electronically.

(c) Justifications for other than full and open competition must be posted in <http://www.FBO.gov>. Information exempt from public disclosure must be redacted.

**570.107 Oral presentations.**

The contracting officer may require oral presentations for acquisitions of leasehold interests in real property. Follow the procedures in FAR 15.102.

**570.108 Responsibility determination.**

(a) Determine that the prospective awardee is responsible with respect to the lease under consideration. The standards in FAR 9.104 apply. As part of the determination that a prospec-

tive contractor is otherwise qualified and eligible for award, review the Excluded Parties List System (EPLS).

(b) The contracting officer's signature on the contract is deemed an affirmative determination.

(c) If the contracting officer finds an offeror nonresponsible, sign and place in the contract file a determination of non-responsibility. State the basis for the determination.

(d) If the contracting officer finds a small business concern nonresponsible, the procedures at FAR 19.6 apply. Place all documents and reports supporting a determination of responsibility or nonresponsibility in the lease file.

**570.109 Certifications.**

Before awarding a lease, review applicable representations and certifications for compliance with statute and regulations.

**570.110 Cost or pricing data and information other than cost or pricing data.**

(a) The policies and procedures of FAR 15.403 apply to lease contract actions.

(b) FAR 15.403-1 defines exceptions to and waivers for submitting cost or pricing data. Most leasing actions will have adequate price competition. For price analysis of offered rental rates, the contracting officer may use a market survey, an appraisal conducted using accepted real property appraisal procedures to establish a market price for comparison, or other relevant market research data. For price analysis of offered tenant improvement costs, obtain two offers or cost and pricing data.

(c) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived under FAR 15.403-1(c)(4).

(d) If cost or pricing data are required, follow the procedures in FAR 15.403-4 and 15.406-2.

**570.111 Inspection and acceptance.**

Before accepting the space, the contracting officer must verify that the space complies with the Government's requirements and specifications and document this in an inspection report. The inspection and acceptance document must contain the square footage accepted and the acceptance date. Include the inspection and acceptance in the contract file. When space such as piers, antennas, and parking are leased, square footage may not be the manner in which the amount of space is specified; therefore, document that the space complies with the Government's written requirements.

**570.112 Awards to Federal employees.**

If the contracting officer receives an offer from an officer or employee of the Government, follow the procedures in FAR 3.6.

**570.113 Disclosure of mistakes after award.**

If a mistake in a lessor's offer is discovered after award, the contracting officer should process it substantially in accordance with FAR 14.407-4 and GSAM [514.407-4](#).

**570.114 Protests.**

FAR 33.1 and [533.1](#) apply to protests of lease acquisitions.

**570.115 Novation and change of ownership.**

In the event of a transfer of ownership of the leased premises or a change in the lessor's legal name, FAR 42.12 applies.

**570.116 Contract format.**

The uniform contract format is not required for leases of real property.

**570.117 Sustainable requirements for lease acquisition.**

Contracting officers must include sustainable design requirements appropriate for the type of leasing action in the solicitations for offers. Contracting officers can find solicitation requirements and instructions on <http://www.gsa.gov/leasing> under Leasing Policies and Procedures, Green Leasing, and in the Leasing Desk Guide to assist them in complying with GSA's sustainable requirements identified in this part.

**570.117-1 Federal leadership in environmental, energy, and economic performance.**

In order to create a clean energy economy that will increase our Nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, GSA will accomplish all requirements of E.O. 13514 that apply to lease acquisition.

**570.117-2 Guiding principles for federal leadership in high performance and sustainable buildings.**

GSA is committed to the design, construction, operation, and maintenance of leased space that comply with all of the following Guiding Principles:

- (a) Employ Integrated Design Principles;
- (b) Optimize Energy Performance;
- (c) Protect and Conserve Water;
- (d) Enhance Indoor Environmental Quality; and
- (e) Reduce the Environmental Impact of Building Materials.

**Subpart 570.2—Simplified Lease Acquisition Procedures**

**570.201 Purpose.**

This subpart prescribes simplified procedures for small leases. These procedures reduce administrative costs, while

improving efficiency and economy, when acquiring small leasehold interests in real property.

**570.202 Policy.**

Use simplified lease acquisition procedures to the maximum extent practicable for actions at or below the simplified lease acquisition threshold.

**570.203 Procedures.**

**570.203-1 Market survey.**

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations that will meet the Government's requirements.

**570.203-2 Competition.**

(a) To the maximum extent practicable, the contracting officer must solicit at least three sources to promote competition. If there are repeated requirements for space in the same market, invite two sources, if practicable, that are not included in the most recent solicitation to submit offers.

(b) If the contracting officer solicits only one source, document the file to explain the lack of competition.

**570.203-3 Soliciting offers.**

(a) The contracting officer must solicit offers by providing each prospective offeror a proposed short form lease GSA Form 3626 or SFO. The short form lease or SFO must:

- (1) Describe the Government's requirements.
- (2) List all award factors, including price or cost, and any significant subfactors that the contracting officer will consider in awarding the lease.
- (3) State the relative importance of the evaluation factors and subfactors.
- (4) State whether all evaluation factors other than cost or price, when combined, are either:
  - (i) Significantly more important than cost or price.
  - (ii) Approximately equal in importance to cost or price.
  - (iii) Significantly less important than cost or price.
- (5) Include either in full text or by reference, applicable FAR provisions and contract clauses required by [570.6](#).
- (6) Include sustainable design requirements.

(b) As necessary, review with prospective offerors the Government's requirements, pricing matters, evaluation procedures and submission of offers.

**570.203-4 Negotiation, evaluation, and award.**

(a) If the contracting officer needs to conduct negotiations, use the procedures in [570.307](#).

(b) Evaluate offers in accordance with the solicitation. Evaluate prices and document the lease file to demonstrate

whether the proposed contract prices are fair and reasonable. See [570.110](#).

(c) If the total price, including options, exceeds the amount established by FAR 15.403-4, consider whether the contracting officer needs cost and pricing data to determine that the price is fair and reasonable. In most cases, the exceptions at FAR 15.403-1 will apply.

(d) Regardless of the process used, the contracting officer must determine whether the price is fair and reasonable.

(e) If the total contract value of the lease, including options, will exceed the amount established by FAR 19.702(a), the proposed awardee must provide an acceptable small business subcontracting plan. This requirement does not apply if the proposed awardee is a small business concern.

(f) Make award to the responsible offeror whose proposal represents the best value to the Government considering price and other factors included in the solicitation.

### **Subpart 570.3—Acquisition Procedures for Leasehold Interests in Real Property Over the Simplified Lease Acquisition Threshold**

#### **570.301 Market survey.**

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations capable of meeting the Government's requirements.

#### **570.302 Description of requirements.**

(a) The description of requirements depends on the nature of the space the agency needs and the market available to satisfy that need.

(b) The description of requirements must include all the following:

- (1) A statement of the purpose of the lease.
- (2) Functional, performance, or physical requirements.
- (3) Any special requirements.
- (4) The delivery schedule.

(c) The description must promote full and open competition. Include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs or as authorized by law.

#### **570.303 Solicitation for offers.**

##### **570.303-1 Preparing the SFO.**

The SFO forms the basis for the lease negotiation process and becomes part of the lease. Document each SFO in writing or electronically. Include the information necessary to enable prospective offerors to prepare proposals. Each SFO, at a minimum, must:

- (a) Describe the Government's requirements.

(b) State the method the Government will use to measure space.

(c) Explain how to structure offers.

(d) Specify a date, time, and place for submission of offers.

(e) Explain how the Government will evaluate offers.

(f) Describe the source selection procedures the Government will use.

(g) Include a statement outlining the information the Government may disclose in debriefings.

(h) Include appropriate forms prescribed in [570.8](#).

(i) Include sustainable design requirements.

##### **570.303-2 Issuing the SFO.**

Release the SFO to all prospective offerors at the same time. The SFO may be released electronically.

##### **570.303-3 Late offers, modifications of offers, and withdrawals of offers.**

Follow the procedures in FAR 15.208.

##### **570.303-4 Changes to SFOs.**

(a) If the Government's requirements change, either before or after receipt of proposals, issue an amendment. Document the amendment using the same method as for the SFO, written or electronic.

(b) If time is critical, you may provide information on SFO amendments orally.

(1) Make a record of the information provided.

(2) Provide, or attempt to provide, the notice to all offerors or prospective offerors on the same day.

(3) Promptly confirm the information provided orally in a written amendment.

(c) Distribute an amendment as follows:

(1) If before the proposal due date, send the amendment to all prospective offerors who were sent a copy of the SFO.

(2) If after proposal receipt, send the amendment to each offeror who submitted a proposal.

(d) If an amendment is so substantial that it requires a complete revision of the SFO, cancel the SFO, readvertise if required by [570.106](#), and issue a new SFO.

(e) If there are changes to the Government's requirements for amount of space, delineated area, occupancy date, and/or other major aspects of the requirements, the contracting officer shall consider whether there is a need to readvertise, and to document the file accordingly.

##### **570.304 General source selection procedures.**

(a) These procedures apply to acquisitions of leasehold interests except if the contracting officer uses one of the following:

- (1) Simplified lease acquisition procedures authorized by [570.2](#).



(2) Two-phase design-build selection procedures authorized by [570.105-2](#).

(b) The contracting officer is designated as the source selection official unless the HCA appoints another individual for a particular leasing action or group of leasing actions.

(c) In a trade off procurement, the contracting officer must include price or cost to the Government, past performance, the planned participation of small disadvantaged business concerns in performance of the contract, and other factors as required by FAR 15.304 as evaluation factors. The contracting officer may include other evaluation factors as needed.

(d) The evaluation factors and significant subfactors must comply with FAR 15.304 and either one of the following:

(1) FAR 15.101-1 if the contracting officer will use the tradeoff process.

(2) FAR 15.101-2 if the contracting officer will use the lowest price technically acceptable source selection process.

**570.305 Two-phase design-build selection procedures.**

(a) These procedures apply to acquisitions of leasehold interests if the contracting officer uses the two-phase design-build selection procedures authorized by [570.105-2](#). Follow FAR 36.3.

(b) The SFO must include all the following information:

(1) The Scope of Work.

(2) The evaluation factors and subfactors to be used in evaluating phase-one proposals and their relative importance.

(3) The maximum number of offerors to be selected to submit competitive proposals in phase-two.

(4) The evaluation factors, including cost or price, and subfactors to be used in evaluating phase-two proposals and selecting the successful offeror, and their relative importance.

(c) The following procedures apply to phase-one evaluation factors:

(1) Phase one factors include:

(i) Specialized experience and technical competence.

(ii) Capability to perform.

(iii) Past performance of the offeror's team (including architect-engineer and construction members of the team).

(iv) The planned participation of small disadvantaged business concerns in performance of the contract.

(v) Other appropriate factors, such as site or location.

(2) The contracting officer shall not require offerors to submit detailed design information or cost or price information in phase one. The contracting officer shall not use cost related or price related evaluation factors.

(d) The contracting officer shall set the maximum number of offerors to be selected for phase-two to not exceed five unless the contracting officer determines that a number greater than five is both:

(1) In the government's interest.

(2) Consistent with the purpose and objectives of the two-phase selection process.

(e) In phase-two, require detailed technical and price proposals. Evaluate the proposals using the procedures in [570.306](#).

**570.306 Evaluating offers.**

(a) The contracting officer must evaluate offers solely in accordance with the factors and subfactors stated in the SFO.

(b) Evaluate prices and document the lease file to demonstrate that the proposed contract price is fair and reasonable. The contracting officer must review the elements of the offeror's proposed rent to analyze whether the individual elements are realistic and reflect the offeror's clear understanding of the work to be performed. The contracting officer must discuss any inconsistencies with the offeror. If the offeror refuses to support or make any changes to the rent proposed, consider the risk to the Government prior to making any lease award.

(c) Evaluate past performance on previous lease projects in accordance with [515.305](#) and FAR 15.305(a)(2). Obtain information through:

(1) Questionnaires tailored to the circumstances of the acquisition;

(2) Interviews with program managers or contracting officers;

(3) Other sources; or

(4) Past performance information collected under FAR 42.15 and available through the Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov>.

(d) The contracting officer may obtain information to evaluate an offeror's past performance on subcontracting plan goals and small disadvantaged business participation, monetary targets, and notifications under FAR 19.1202-4(b) from the following sources:

(1) The Small Business Administration;

(2) Information on prior contracts from contracting officers and administrative contracting officers;

(3) Offeror's references; and

(4) Past performance information collected under FAR 42.15 and available through PPIRS.

(e) Document the evaluation of award factors other than price listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings.

(f) Also see the requirements in [570.108](#), [570.109](#) and [570.111](#).

**570.307 Negotiations.**

(a) Follow the procedures in FAR 15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, discussions, and revisions).



- (b) Place a written record of all exchanges in the lease file.
- (c) Provide prompt written notice to any offeror excluded from the competitive range or otherwise eliminated from the competition in accordance with FAR 15.503(a).

**570.308 Award.**

- (a) Make award to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the SFO.
- (b) Make award in writing and in the timeframe specified in the SFO.
  - (1) If the contracting officer cannot make an award in that time, request in writing from each offeror an extension of the acceptance period through a specific date.
  - (2) If time is critical, the contracting officer may request the extensions orally. The contracting officer must make a record of the request and confirm it promptly in writing.
- (c) Notify unsuccessful offerors in writing or electronically in accordance with FAR 15.501 and 15.503(b).
- (d) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

**570.309 Debriefings.**

The procedures of FAR 15.505 and 15.506 apply to leasing actions.

**Subpart 570.4—Special Aspects of Contracting for Continued Space Requirements**

**570.401 Renewal options.**

- (a) *Exercise of options.* Before exercising an option to renew, follow the procedures in [517.207](#). The contract must first provide the right to renew the lease. If a renewal option was not evaluated as part of the lease at award, then the addition of a renewal option during the lease term must satisfy the requirements of GSAM [506](#) regarding full and open competition.
- (b) *Market information review.* Before exercising an option to renew a lease, review current market information to determine that the rental rate in the option is fair and reasonable.

**570.402 Succeeding leases.**

**570.402-1 General.**

- (a) If a succeeding lease for the continued occupancy of space in a building does not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified

procedures in [570.2](#). Explain the absence of competition in the contract file.

- (b) If a succeeding lease will exceed the simplified lease acquisition threshold, the contracting officer may enter into the lease under either of the following conditions:

- (1) The contracting officer does not identify any potential acceptable locations.
- (2) The contracting officer identifies potential acceptable locations, but a cost-benefit analysis indicates that award to an offeror other than the present lessor will result in substantial relocation costs or duplication of costs to the Government, and the Government cannot expect to recover such costs through competition.

**570.402-2 Publicizing/Advertising.**

The contracting officer must publish a notice if required by [570.106](#). The notice should:

- (a) Indicate that the Government's lease is expiring.
- (b) Describe the requirements in terms of type and quantity of space.
- (c) Indicate that the Government is interested in considering alternative space if economically advantageous, and that otherwise the Government intends to pursue a sole source acquisition.
- (d) Advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate.
- (e) Provide a contact person for those interested in providing space to the Government.

**570.402-3 Market survey.**

Conduct a market survey following [570.301](#).

**570.402-4 No potential acceptable locations.**

If the contracting officer does not identify any potential acceptable locations through the advertisement or the market survey, prepare a written justification to negotiate directly with the present lessor. Fully document the efforts to locate alternative sources. Prepare the justification and obtain approval following FAR 6.3 and [506.3](#).

**570.402-5 Potential acceptable locations.**

If the contracting officer identifies potential acceptable locations through the advertisement or market survey, conduct a cost-benefit analysis following the procedures [570.402-6](#). Based on the results of the cost-benefit analysis, take appropriate action as follows:

- (a) If the cost-benefit analysis indicates that the Government will recover relocation costs and duplication of costs through competition, develop an SFO and negotiate with all interested parties following [570.3](#).
- (b) If the cost-benefit analysis indicates that the Government cannot expect to recover relocation costs and duplica-

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tion of costs through competition, prepare a justification for approval in accordance with FAR 6.3 and [506.3](#). Explain both:

- (1) How the contracting officer performed the cost-benefit analysis.
- (2) That the cost-benefit analysis indicates that award to any other offeror will likely result in substantial costs to the Government that the Government cannot expect to recover through competition.

**570.402-6 Cost-benefit analysis.**

(a) The cost-benefit analysis must consider all the following:

- (1) The prices of other potentially available properties.
  - (2) Relocation costs, including estimated costs for moving, telecommunications, and alterations, amortized over the firm term of the lease.
  - (3) Duplication of costs to the Government.
  - (4) Other appropriate considerations.
- (b) Establish the prices for other potentially available properties by requesting each prospective offeror to provide an informational quotation for standard space for comparison purposes.

- (1) Adjust the prices quoted for standard space for any special requirements.
- (2) You do not need a formal SFO to obtain the informational quotation. However, you must provide a general description of the Government's needs.
- (3) If you obtain oral quotations, document the following information, as a minimum:
  - (i) Name and address of the firm solicited.
  - (ii) Name of the firm's representative providing the quote.
  - (iii) Price(s) quoted.
  - (iv) Description of the space and services for which the quote is provided.
  - (v) Name of the Government employee soliciting the quotation.
  - (vi) Date of the conversation.
- (4) Compare the informational quotations to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease.

**570.403 Expansion requests.**

- (a) If the expansion space is in the general scope of the lease, the contracting officer may acquire the space through a modification without further justification under FAR 6.3.
- (b) If the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to meet the expansion requirement and existing tenancy to the requirement by competitive means.

(1) Conduct a market survey to determine the availability of suitable alternative locations.

(2) If you identify alternate locations that can satisfy the total requirement, perform a cost-benefit analysis to determine whether it is in the Government's best interest to relocate. Consider, as appropriate:

- (i) The cost of the alternate space compared to the cost of expanding at the existing location.
- (ii) The cost of moving.
- (iii) The cost of duplicating existing improvements.
- (iv) The cost of the unexpired portion of the firm lease term. If a termination is possible, use the actual cost of such an action.
- (v) The cost of disruption to the agency's operation.

(c) If the contracting officer determines not to use competitive procedures and the expansion space is outside the general scope of the lease:

- (1) If the estimated value of the acquisition does not exceed the simplified lease acquisition threshold, document the file as required by [570.203-2\(b\)](#).
- (2) If the estimated value of the acquisition exceeds the simplified lease acquisition threshold, prepare a justification for approval under FAR 6.3 and [506.3](#).

**570.404 Superseding leases.**

- (a) Consider executing a superseding lease to replace an existing lease when the Government needs numerous or detailed modifications to the space that would cause complications or substantially change the present lease or when market conditions warrant renegotiation of an existing lease.
- (b) If the value of the superseding lease exceeds the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and [506.3](#) apply. If the cost does not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified procedures in [570.2](#) and explain the absence of competition in the file.

**570.405 Lease extensions.**

- (a) This subsection applies to extension of the term of a lease to provide for continued occupancy on a short term basis.
- (b) If the value of a lease extension will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and [506.3](#) apply. For extensions that will not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified procedures in [570.2](#) and explain the absence of competition in the file.
- (c) FAR 6.302-1 permits contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may apply to lease

extensions in situations such as, but not limited to, the following:

- (1) The agency occupying the leased space is scheduled to move into other Federally controlled space, but encounters unexpected delays in preparing the new space for occupancy.
- (2) The Government encounters unexpected delays outside of its control in acquiring replacement space.
- (3) The Government is consolidating various agencies and the contracting officer needs to extend the terms of some leases to establish a common expiration date.
- (4) The agency occupying the space has encountered delays in planning for a potential relocation to other federally controlled space due to documented organizational, financial, or other uncertainties.

### **Subpart 570.5—Special Aspects of Contracting for Lease Alterations**

#### **570.501 General.**

(a) The procedures in [570.502](#) apply to alterations acquired directly from a lessor by modification or supplemental lease agreement. This is allowed if the following conditions are met:

- (1) The alterations fall within the scope of the lease. Consider whether the work can be regarded fairly and reasonably as part of the original lease requirement.
  - (2) The lessor is willing to perform the proposed alterations at a fair and reasonable price.
  - (3) It is in the Government's interest to acquire the alterations from the lessor.
- (b) If proposed alterations are outside the scope of the existing lease, decide whether to acquire the alterations through either:
- (1) A supplemental lease agreement, as justified and approved under [570.502-1](#).
  - (2) Government performance or a separate contract. The lease must first provide the Government with the right to perform alterations to the leased space.

#### **570.502 Alterations by the lessor.**

##### **570.502-1 Justification and approval requirements.**

If the proposed alterations are outside the general scope of the lease and the contracting officer plans to acquire them from the lessor without competition, the following justification and approval requirements apply:

- (a) If the alteration project will not exceed the micro-purchase threshold identified in FAR 2.101(b), no justification and approval is required.
- (b) If the alteration project will exceed the micro-purchase threshold identified in FAR 2.101(b), but not the simplified lease acquisition threshold, the contracting officer may use

simplified acquisition procedures and explain the absence of competition in the file.

- (c) If the alteration project will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and [506.3](#) apply.

##### **570.502-2 Procedures.**

(a) *Scope of work.* The contracting officer must prepare a scope of work for each alteration project.

(b) *Independent Government estimate.* The contracting officer must obtain an independent Government estimate for each alteration project, including changes to existing alteration agreements with the lessor.

(c) *Request for proposal.*

(1) The contracting officer must provide the scope of work to the lessor, including any plans and specifications, and request a proposal.

(2) The contracting officer must request sufficient cost or price information to permit a price analysis.

(d) *Audits.* If the contracting officer requires cost or pricing data and the alteration project will exceed the threshold identified in FAR 15.403-4, request an audit.

(e) *Proposal evaluation.* The contracting officer must—

(1) Determine if the proposal meets the Government's requirements.

(2) Analyze price or cost information. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit results received.

(3) Analyze profit following FAR 15.404-4.

(4) Document the analysis under this paragraph and the resulting negotiation objectives.

(f) *Price negotiations.* The contracting officer must—

(1) Exercise sound judgment. Make reasonable compromises as necessary.

(2) Provide the lessor with the greatest incentive for efficient and economical performance.

(3) Document negotiations in the contract file, including discussions regarding restoration cost or waiver of restoration cost.

(g) *Order.* For modifications not exceeding the simplified acquisition threshold, lease contracting officers may delegate alteration contracting authority to a warranted contracting officer's representative in GSA or the tenant agency. Alterations awards must reference the lease number. If the modification does not exceed the simplified acquisition threshold, the contracting officer may use GSA Form 300, Order for Supplies or Services. Reference the lease on the form.

(h) *Inspection and payment.* The contracting officer must not make final payment for alterations until the work is:

- (1) Inspected by a qualified Government employee or independent Government contractor.
- (2) Confirmed as completed in a satisfactory manner.

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## 570.503 Alterations by the Government or through a separate contract.

If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:

- (a) Have Federal employees perform the work.
- (b) Contract out the work using standard contracting procedures that apply to a construction contract performed on Federal property. If the Government decides to contract for the work, invite the lessor, as well as all other prospective contractors, to submit offers for the project.

officers may negotiate overtime rates for services and utilities and include those rates in leases where a need is projected. Only lease contracting officers may negotiate overtime rates.

(b) An independent government estimate is required in support of the negotiated rate.

(c) *Order.* To order overtime services and utilities, if the order does not exceed the simplified acquisition threshold, a warranted contracting officer's representative, in GSA or the tenant agency, may place an order. The order must reference the lease number.

(d) *Payment.* Do not make final payment for services and utilities until confirmed as delivered in a satisfactory manner.

## Subpart 570.6—Contracting for Overtime Services and Utilities in Leases

### 570.601 General.

(a) Lease tenant agencies may need overtime services and utilities on a regular or intermittent basis. Lease contracting

## Subpart 570.7—Solicitation Provisions and Contract Clauses

### 570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

If...	Then include...
(a) the estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101	52.204-3 Taxpayer Identification. 52.204-6 Data Universal Numbering System (DUNS) Number. 52.204-7 Central Contractor Registration. 52.219-1 Small Business Program Representations. 52.219-28 Post-Award Small Business Program Rerepresentation (use if lease term exceeds five years). 52.232-23 Assignment of Claims. 52.232-33 Electronic Funds Transfer—Central Contractor Registration. 52.233-1 Disputes.
(b) the estimated value of the acquisition exceeds \$10,000	52.222-21 Prohibition of Segregated Facilities. 52.222-22 Previous Contracts and Compliance Reports. 52.222-25 Affirmative Action Compliance. 52.222-26 Equal Opportunity. 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. 52.222-36 Affirmative Action for Workers with Disabilities. 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
(c) the estimated value of the acquisition is \$25,000 or more (not applicable to individuals)	52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.
(d) the estimated value of the acquisition exceeds the threshold identified in FAR 9.409(b)	52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

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If...	Then include...	
(e) the estimated value of the acquisition exceeds \$100,000	52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(f) the estimated value of the acquisition exceeds the simplified lease acquisition threshold.	52.203-2 52.203-7 52.204-5 52.209-5  52.215-2 52.219-8 52.223-6 52.233-2	Certificate of Independent Price Determination. Anti-Kickback Procedures. Women-Owned Business (Other than Small Business). Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. Audit and Records-Negotiation. Utilization of Small Business Concerns. Drug-Free Workplace. Service of Protest.
(g) the estimated value of the acquisition exceeds the threshold identified in FAR 19.708(b)	52.219-9 52.219-16	Small Business Subcontracting Plan. Liquidated Damages-Subcontracting Plan.
(h) the estimated value of the acquisition exceeds the threshold identified in FAR 19.1202-2(a) and the contracting officer is using a best value trade off analysis in an acquisition includes an evaluation factor that considers the extent of participation of small disadvantaged business concerns in accordance with FAR 19.12.	52.219-24 52.219-25	Small Disadvantaged Business Participation Program-Targets. Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting.
(i) the value of the contract is expected to exceed \$5 million and the performance period is 120 days or more.	52.203-13 52.203-14	Contractor Code of Business Ethics and Conduct. Display of Hotline Poster(s).
(j) the estimated value of the acquisition exceeds \$10 million.	52.222-24	Pre-award On-site Equal Opportunity Compliance Review.
(k) the contracting officer requires cost or pricing data for work or services exceeding the threshold identified in FAR 15.403-4	52.215-10 52.215-12	Price Reduction for Defective Cost or Pricing Data. Subcontractor Cost or Pricing Data.
(l) the contracting officer authorizes submission of facsimile proposals	52.215-5	Facsimile Proposals.
(m) negotiated acquisition provides monetary incentives based on actual achievement of small disadvantaged business subcontracting targets under FAR 19.1203 and 519.1203.	52.219-26	Small Disadvantaged Business Participation Program-Incentive Subcontracting.

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### 570.702 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless the contracting officer determines that the provision is not appropriate. However, document the file with the basis for deleting or substantially changing a clause.

[552.270-1](#) Instructions to Offerors—Acquisition of Leasehold Interests in Real Property. Use Alternate I if you decide that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for award. Use

Alternate II if the Government intends to award without discussions. These two alternates are not exclusive.

[552.270-2](#) Historic Preference.

[552.270-3](#) Parties to Execute Lease.

### 570.703 GSAR contract clauses.

(a) Insert clauses substantially the same as the following in solicitations and contracts for leasehold interests in real property that exceed the simplified lease acquisition threshold, unless the contracting officer determines that a clause is not appropriate. However, document the file with the basis for deleting or substantially changing a clause. A deviation is not required under section 570.704 to determine that a clause in this section is not appropriate. Use the clauses at your discretion in actions at or below the simplified lease acquisition threshold.

[552.215-70](#) Examination of Records by GSA.

[552.270-4](#) Definitions. You must use this clause if you use [552.270-28](#).

[552.270-5](#) Subletting and Assignment.

[552.270-6](#) Maintenance of Building and Premises—Right of Entry.

[552.270-7](#) Fire and Casualty Damage.

[552.270-8](#) Compliance with Applicable Law.

[552.270-9](#) Inspection—Right of Entry.

[552.270-10](#) Failure in Performance.

[552.270-11](#) Successors Bound.

[552.270-12](#) Alterations.

[552.270-13](#) Proposals for Adjustment.

[552.270-14](#) Changes.

[552.270-15](#) Liquidated Damages. Insert this clause in solicitations and contracts if you have a critical requirement to meet the delivery date and you cannot establish an actual cost for the loss to the Government resulting from late delivery.

[552.270-16](#) Adjustment for Vacant Premises.

[552.270-17](#) Delivery and Condition.

[552.270-18](#) Default in Delivery—Time Extensions.

[552.270-19](#) Progressive Occupancy.

[552.270-20](#) Payment.

[552.270-21](#) Effect of Acceptance and Occupancy.

[552.270-22](#) Default by Lessor During the Term.

[552.270-23](#) Subordination, Nondisturbance and Attornment.

[552.270-24](#) Statement of Lease.

[552.270-25](#) Substitution of Tenant Agency.

[552.270-26](#) No Waiver.

[552.270-27](#) Integrated Agreement.

[552.270-28](#) Mutuality of Obligation.

[552.270-29](#) Acceptance of Space.

(b) Include the following provisions and clauses in leasehold interests in real property.

[552.270-30](#) Price Adjustment for Illegal Improper Activity.

[552.270-31](#) Prompt Payment.

[552.270-32](#) Covenant Against Contingent Fees.

### 570.704 Deviations to provisions and clauses.

(a) The contracting officer needs a deviation approved under Subpart [501.4](#) to omit any required provision or clause.

(b) The contracting officer also needs an approved deviation to modify the language of a provision or clause mandated by statute (*e.g.*, FAR 52.215-2, Audit and Records—Negotiation). The authorizing statute must allow for a waiver.

(c) Certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them. For example, FARs 52.222-26, Equal Opportunity; 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222-36, Affirmative Action for Workers with Disabilities, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease.

## Subpart 570.8—Forms

### 570.801 Standard forms.

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless the contracting officer uses GSA Form 3626 (see [570.802](#)).

### 570.802 GSA forms.

(a) The contracting officer may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if using the simplified leasing procedures in Subpart [570.2](#) or if the contracting officer determines it advantageous to use the form.

(b) The contracting officer may use GSA Form 276, Supplemental Lease Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial

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release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) The contracting officer may use GSA Form 1364, Proposal To Lease Space, to obtain offers from prospective offerors.

(d) The contracting officer may use GSA Form 1217, Lessor's Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

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