

GSA ORDER

Subject: Amendment 2009-03, GSAR Case 2008-G510, Rewrite of GSAR Part 537, Service Contracting (Change 29)

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).
2. Background. The General Services Administration (GSA) is issuing a final rule to amend the General Services Administration Acquisition Regulation (GSAR) as part of the GSAM Rewrite Project. There are a number of changes to the policies in GSAM Part 537, as well as general editing throughout the part.

GSA published GSAR Case 2008-G510, Change 29, final rule, in the *Federal Register* at 74 FR 20605, May 5, 2009.

3. Effective date. June 4, 2009.
4. Explanation of changes. To amend the GSAM by revising and updating references and titles and deleting redundant supplementary material. In accordance with FAR 1.302, FAR (Governmentwide) forms and clauses were given preference over GSA-unique forms and clauses wherever possible.

This final rule contains the revisions made to Part 537, Service Contracting. The rule revises 537 to address the text at GSAR 537.101, Definitions; 537.110 Solicitation provisions and contract clauses; provision 552.237-70, Qualifications of Offerors; and clause 552.237-73, Restriction on Disclosure of Information. The language in 537.101, Definitions, is removed from inclusion in the GSAR. This language clarifies the definition for “contracts for building services” for contracting officers; therefore, this language is being incorporated as non-regulatory GSAM language. GSAR clauses 552.237-71, Qualifications of Employees and 552.237-72, Prohibition Regarding “Quasi-Military Armed Forces” are retained with no changes.

Subparagraph 537.102-70 was written to incorporate the policy that GSA contracting activities are not required to use performance-based acquisition (PBA) methods for leases and leasehold interests in real property from GSA Acquisition Letter V-05-11, dated June 6, 2005c. The language in 546.470-2, Certification Testing, is deleted.

5. Cancellations and Rescissions. Acquisition Letter V-05-11, entitled Exclusion of Leases or Leasehold Interest in Real Property from the Use of Performance-Based Contracting, published June 6, 2005, is cancelled.

6. Filing instructions. Insert the following pages to the GSAM:

Remove Pages

General Structure
pp. vii and viii

Part 537 TOC
pp. 537-i and 537-ii
537-1 and 537-2

552-37 and 552-38

Matrix
552-69 and 552-70

Insert Pages

General Structure
pp. vii and viii

Part 537 TOC
pp. 537-i and 537-ii
537-1 and 537-2

552-37 and 552-38

Matrix
552-69 and 552-70



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PART 537—SERVICE CONTRACTING

Sec.

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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 AbilityOne under the Javits-Wagner-O’Day Act:

(1) Insert [552.237-70](#), Qualifications of Offerors, in the solicitation.

(2) 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.

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 Qualifications of Offerors.

As prescribed in [537.110\(a\)](#), insert the following provision:

QUALIFICATIONS OF OFFERORS (JUNE 2009)

(a) Offers will be considered only from responsible organizations or individuals now or recently engaged in the performance of building service contracts comparable to those described in this solicitation. To determine an Offeror’s qualifications, the Offeror may be requested to furnish a narrative statement listing comparable contracts which it has performed; a general history of its operating organization; and its complete experience. An Offeror may also be required to furnish a statement of its financial resources; show that it has the ability to maintain a staff of regular employees adequate to ensure continuous performance of the work; and, demonstrate that its equipment and/or plant capacity for the work contemplated is sufficient, adequate, and suitable.

(b) Competency in performing comparable building service contracts, demonstration of acceptable financial resources, personnel staffing, plant, equipment, and supply sources will be considered in determining whether an Offeror is responsible.

(c) Prospective Offerors are advised that in evaluating these areas involving any small business concern(s), any negative determinations are subject to the Certificate of Competency procedures set forth in the Federal Acquisition Regulation.

(End of provision)

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 (5th 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 Contract-

ing 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*

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.300

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.236-80	536.570-11	Heat			R		WR		
C	552.236-81	536.570-12	Use of Equipment by the Government			WR		WR		
C	552.236-82	536.570-13	Subcontracts			R				
C	552.236-83	536.570-14	Requirement for a Project Labor Agreement			WR				
P	552.237-70	537.110(a)	Qualifications of Offerors		WR					
C	552.237-71	537.110(a)	Qualifications of Employees		WR					
C	552.237-72	537.110(b)	Prohibition Regarding "Quasi-Military Armed Forces"		WR			WR		
C	552.237-73	537.270	Restriction on Disclosure of Information		WR			WR		
C	552.238-70	538.273(a)(1)	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped	WR						
C	552.238-71	538.273(a)(2)	Submission and Distribution of Authorized FSS Schedule Pricelists	WR	WR					
C	552.238-72	538.273(a)(3)	Identification of Products That Have Environmental Attributes	WR	WR					
C	552.238-73	538.273(a)(4)	Cancellation	WR	WR					
C	552.238-74	538.273(b)(1)	Industrial Funding Fee and Sales Reporting	WR	WR					
C	552.238-75	538.273(b)(2)	Price Reductions	WR	WR					
C	552.238-76	538.7104(a)	Definition (Federal Supply Schedules)—Recovery Purchasing	WR	WR					
C	552.238-77	538.7004(a)	Definition (Federal Supply Schedules)	WR	WR					
C	552.238-78	538.7004	Scope of Contract (Eligible Ordering Activities)	WR	WR					
C	552.238-79	538.7004(c)	Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing	WR	WR					
C	552.238-80	538.7104(c)	Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing	WR	WR					
C	552.242-70	542.1107	Status Report of Orders and Shipments	WR				WR		
C	552.243-71	543.205	Equitable Adjustments			WR				
C	552.246-70	546.302-70	Source Inspection by Quality Approved Manufacturer	WR				WR		
C	552.246-71	546.302-71	Source Inspection by Government	WR				WR		
C	552.246-72	546.312	Final Inspection and Tests			WR		O		
C	552.246-77	546.710	Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature	WR						
C	552.246-78	546.302-72	Inspection at Destination	WR						
C	552.247-70	547.305(a)	Placarding Railcar Shipments	WR				WR		
C	552.247-71	547.305(b)	Diversion of Shipment Under f.o.b. Destination Contracts	WR				WR		
C	552.249-70	549.502(a)	Termination for Convenience of the Government (Fixed Price) (Short Form)	WR				WR		
C	552.249-71	549.502(b)	Submission of Termination Liability Schedule	WR				WR		
P	552.252-5	552.107-70(a)	Authorized Deviations in Provisions	WR	WR	WR	WR	WR	WR	
C	552.252-6	552.107-70(b)	Authorized Deviations in Clauses	WR	WR	WR	WR	WR	WR	
P	552.270-1	570.602	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property							R
P	552.270-2	570.602	Historic Preference							R
P	552.270-3	570.602	Parties to Execute Lease							R
C	552.270-4	570.603	Definitions							R*
C	552.270-5	570.603	Subletting and Assignment							R
C	552.270-6	570.603	Maintenance of Building and Premises—Right of Entry							R

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.270-7	570.603	Fire and Casualty Damage							R
C	552.270-8	570.603	Compliance with Applicable Law							R
C	552.270-9	570.603	Inspection—Right of Entry							R
C	552.270-10	570.603	Failure in Performance							R
C	552.270-11	570.603	Successors Bound							R
C	552.270-12	570.603	Alterations							R
C	552.270-13	570.603	Proposals for Adjustment							R
C	552.270-14	570.603	Changes							R
C	552.270-15	570.603	Liquidated Damages							R
C	552.270-16	570.603	Adjustment for Vacant Premises							R
C	552.270-17	570.603	Delivery and Condition							R
C	552.270-18	570.603	Default in Delivery—Time Extensions							R
C	552.270-19	570.603	Progressive Occupancy							R
C	552.270-20	570.603	Payment							R
C	552.270-21	570.603	Effect of Acceptance and Occupancy							R
C	552.270-22	570.603	Default by Lessor During the Term							R
C	552.270-23	570.603	Subordination, Nondisturbance and Attornment							R
C	552.270-24	570.603	Statement of Lease							R
C	552.270-25	570.603	Substitution of Tenant Agency							R
C	552.270-26	570.603	No Waiver							R
C	552.270-27	570.603	Integrated Agreement							R
C	552.270-28	570.603	Mutuality of Obligation							R
C	552.270-29	570.603	Acceptance of Space							R
P	52.203-2	570.601(e)	Certificate of Independent Price Determination							WR
C	52.203-7	570.601(e)	Anti-Kickback Procedures							WR
P	52.203-11	570.601(d)	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions							WR
P	52.204-3	570.601(a)	Taxpayer Identification							WR
P	52.209-5	570.601(e)	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters							WR
C	52.209-6	570.601(c)	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment							WR
C	52.215-2	570.601(e)	Audit and Records—Negotiation							WR
P	52.215-5	570.601(j)	Facsimile Proposals							WR
C	52.215-10	570.601(i)	Price Reduction for Defective Cost or Pricing Data							WR
C	52.215-12	570.601(i)	Subcontractor Cost or Pricing Data							WR
P	52.219-1	570.601(a)	Small Business Program Representations							WR
C	52.219-8	570.601(e)	Utilization of Small Business Concerns							WR
C	52.219-9	570.601(f)	Small Business Subcontracting Plan,							WR
C	52.219-16	570.601(f)	Liquidated Damages—Subcontracting Plan							WR
P	52.219-24	570.601(g)	Small Disadvantaged Business Participation Program—Targets							WR
C	52.219-25	570.601(g)	Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting							WR
C	52.219-26	570.601(k)	Small Disadvantaged Business Participation Program—Incentive Subcontracting							WR
P	52.222-21	570.601(b)	Prohibition of Segregated Facilities							WR
P	52.222-22	570.601(b)	Previous Contracts and Compliance Reports							WR