

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 534—MAJOR SYSTEM ACQUISITION

Sec.

534.002 Policy.

534.002-70 Directives.

534.002-71 Definitions.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 26547, June 23, 1989, unless otherwise noted.

#### **534.002 Policy.**

#### **534.002-70 Directives.**

Additional policies and procedures on major systems acquisitions are contained in the following:

(a) GSA Order, Major System Acquisitions in the General Services Administration (ADM 5400.33).

(b) FIRMR 201-32.103, The Acquisition of Major ADP Resource Systems.

(c) GSA Order, Major System Acquisitions in the Automated Data and Telecommunications Service (DTS 5400.1).

#### **534.002-71 Definitions.**

Major system acquisitions are those that are:

(a) Directed at and critical to fulfilling an agency mission;

(b) Estimated to entail the allocation of \$25 million or more life cycle cost in current year dollars; or

(c) Determined by the Administrator to warrant special management attention or to be of critical importance to the agency or technologically advanced.

### PART 535—RESEARCH AND DEVELOPMENT CONTRACTING [RESERVED]

### PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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536.570-14 Furnishing information and records.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 26548, June 23, 1989, unless otherwise noted.

#### Subpart 536.1—General

#### **536.101 Applicability.**

Other requirements of this regulation are generally applicable to construction and architect-engineer contracts. However, if a requirement in this part is inconsistent with a requirement in another part of this regulation, 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*, as used in this part, means the cost limits that may be 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 shall prepare a performance report for each construction contract of \$25,000 or more, and each construction contract where any element of performance was unsatisfactory or outstanding.

(b) Each regional construction activity shall establish an evaluation report file with procedures for maintaining alphabetically the evaluation reports, for cross referencing all names under which a contractor does business with GSA, and for ensuring that fully qualified personnel possessing the knowledge of the contractor's performance prepare and review the evaluation reports.

[58 FR 52445, Oct. 8, 1993]

#### 536.202 Specifications.

Under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules in 40 CFR Parts 248 and 249, regarding the use of certain waste by-products as generally acceptable substitutes for energy-intensive raw materials. The rules provide that when certain construction material containing energy intensive raw material is required that the technical specification allows as an alternate, construction material containing certain waste byproducts. However, specifications should not be revised to allow the use of the alternate material if it is found that performance requirements for the construction material would not be met or that the use of the alternate material would be unsatisfactory for technical reasons.

#### 536.203 Government estimate of construction cost.

(a) A copy of the independent Government estimate must be sealed in an envelope and submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (See paragraphs (b) and (c) of this section.)

(b) If the procurement is by sealed bidding, the sealed copy of the Government estimate must be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate must be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate will be opened and retained with abstract of offers (See Optional Forms 1419 and 1419A). However, the Government's estimate must not be disclosed until after award. Immediately after award the Government estimate must be recorded on the abstract of offers as the Independent Government Estimate.

(c) If the procurement is by negotiation, the sealed copy of the Government estimate must be stored with the proposals until the closing time for receipt of proposals. Cost figures in the Government estimate may be disclosed during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price, provided that the overall amount of the Government estimate is not disclosed before award. Before the release of a modification to the solicitation which may affect price, a revised Government estimate must be prepared, sealed, and stored, with the proposals until closing time for proposals. After award, the independent Government estimated price may be revealed, upon request, to those firms or individuals who submitted proposals.

(d) The Government estimate must be used 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.

[58 FR 52445, Oct. 8, 1993]

**536.204 Disclosure of the magnitude of construction projects.**

The magnitude of construction projects in excess of \$10,000,000 should be shown in increments of \$10,000,000 (e.g. \$20,000,000 to \$30,000,000).

**Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting****536.303-70 Bids that include alternates.**

(a) The base bid must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) Before opening bids that include alternates, the contracting officer shall 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 and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

[58 FR 52445, Oct. 8, 1993]

**536.303-71 Bids that include options.**

(a) Subject to the limitations in paragraph (c) of this section, the contracting officer may include options in contracts when it is in the Government's interest.

(b) The appropriate use of options may include, but is not limited to, the following:

(1) When 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) When fixed building equipment, e.g. elevators, escalators, etc., 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) The contracting officer shall not employ options if:

(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; or

(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) The solicitations must state whether the basis of award is inclusive or exclusive of the options. Before a solicitation that includes evaluated options is issued, the contracting officer shall make a determination that there is reasonable certainty that funds will be made available to permit exercise of the option.

(f) The language of all solicitation provisions for options must be approved, in writing, by counsel.

[54 FR 26548, June 23, 1989, as amended at 58 FR 52445, Oct. 8, 1993]

**536.303-72 Bids that include alternates and options.**

(a) Solicitations may include alternates and options when the conditions in 536.303-70, Bids that include alternates, and 536.303-71, Bids that include options, are satisfied. In such solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid plus 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 all options designated to be evaluated.

(b) In the case of options associated with alternates, the basis of award may require the evaluation of such options if the related alternate is selected.

(c) Before opening bids that include alternates and options, the contracting officer shall 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, provided that the award amount of the base bid and evaluated options plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid, the evaluated options, and the same combination of alternate items.

[54 FR 26548, June 23, 1989, as amended at 58 FR 52445, Oct. 8, 1993]

#### **536.370 Exercise of options.**

(a) When exercising an option, the contracting officer shall notify the contractor, in writing, within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining that:

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing Government need; and
- (3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(c) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination must be included 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. In addition, when exercising an unpriced and/or unevaluated option

cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and 517.207).

### **Subpart 536.5—Contract Clauses**

#### **536.570 Supplemental provisions and clauses.**

##### **536.570-1 Definitions.**

The contracting officer shall insert the clause at 552.236-70, Definitions, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

##### **536.570-2 Authorities and limitations.**

The contracting officer shall insert the clause at 552.236-71, Authorities and Limitations, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

##### **536.570-3 Specialist.**

The contracting officer shall insert the clause at 552.236-72, Specialist, in construction contracts when the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

##### **536.570-4 Basis of award—construction contract.**

The contracting officer shall insert a provision substantially the same as the provisions at 552.236-73, Basis of Award—Construction Contract, in solicitations for fixed price construction contracts except when:

- (a) The solicitation requires the submission of a lump sum bid only;
- (b) The solicitation is for an indefinite quantity contract; or
- (c) The contract amount is not expected to exceed the simplified acquisition threshold.

If the solicitation requests the submission of a base bid and unit prices, the contracting officer shall use the basic provision. If the solicitation requests

the submission of a base bid and options the contracting officer shall use the provision with its Alternate I. If the solicitation requests the submission of a base bid and alternates, the contracting officer shall use the provision with its Alternate II. If the solicitation requests the submission of a base bid, alternates, and options, the contracting officer shall use the provision with its Alternate III.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

**536.570-5 Working hours.**

The contracting officer shall insert the clause at 552.236-74, Working Hours, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

**536.570-6 Use of premises.**

The contracting officer shall insert the clause at 552.236-75, Use of Premises, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

**536.570-7 Measurements.**

The contracting officer shall insert the clause at 552.236-76, Measurements, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

**536.570-8 Specifications and drawings.**

The contracting officer shall insert the clause at 552.236-77, Specifications and Drawings, in contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract is expected to exceed the simplified acquisition threshold.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

**536.570-9 Shop drawings, coordination drawings, and schedules.**

The contracting officer shall insert the clause at 552.236-78, Shop Drawings,

Coordination Drawings, and Schedules, in contracts when construction is contemplated and the contract is expected to exceed the simplified acquisition threshold.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

**536.570-10 Samples.**

The contracting officer shall insert the clause at 552.236-79, Samples, in construction contracts when the technical sections of the contract require the submission and approval of samples.

**536.570-11 Heat.**

The contracting officer shall insert the clause at 552.236-80, Heat, in contracts, as appropriate, when construction, dismantling, demolition, or removal of improvements is contemplated.

**536.570-12 Use of equipment by the Government.**

The contracting officer shall insert the clause at 552.236-81, Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings when 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.**

The contracting officer shall insert the clause at 552.236-82, Subcontracts, in solicitations and contracts for construction when the contract is expected to exceed the simplified acquisition threshold.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

**536.570-14 Furnishing information and records.**

The contracting officer shall insert the clause at 552.236-83, Furnishing Information and Records, in solicitations and contracts when construction, dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26548, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

**PART 537—SERVICE CONTRACTING**

**Subpart 537.1—Service Contracts—  
General**

Sec.

537.101 Definitions.

537.106 Funding and term of service contracts.

537.110 Solicitation provisions and contract clauses.

**Subpart 537.2—Advisory and Assistance  
Service**

537.205 Management controls.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 26551, June 23, 1989, unless otherwise noted.

**Subpart 537.1—Service  
Contracts—General**

**537.101 Definitions.**

*Building service contract* means a contract 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 and repair of fixed equipment (elevators, air-conditioning, and heater systems, etc.) and protection or guard service.

**537.106 Funding and term of service contracts.**

The Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 260), authorizes GSA to enter into contracts for periods not to exceed three years for the operation, maintenance, and repair of fixed building equipment in Federally owned buildings (40 U.S.C. 490(a)(14)) and contracts for periods not exceeding ten years for utility services (40 U.S.C. 481(a)(3)). Contracts for these services may be awarded for the performance periods indicated without an "Availability of Funds" clause.

**537.110 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the provision at 552.237-70, Qualifications of Offerors, in solicitations and contracts for building services when the contract amount is expected

to exceed the small purchase limitation.

(b) The contracting officer shall insert the clause at 552.237-71, Qualifications of Employees, in solicitations and contracts for building services when the amount is expected to exceed the small purchase limitation. Supplemental clauses may be used with the clause at 552.237-71 to outline specific requirements regarding employees who will perform work on contracts.

(c) The contracting officer shall insert the certification at 552.237-72, Certification Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

**Subpart 537.2—Advisory and  
Assistance Service**

**537.205 Management controls.**

All requests for advisory and assistance services must be processed in accordance with the requirements of GSA Order, Procurement of Consulting Services (ADM 2800.12D).

**PART 538—FSS SCHEDULE  
CONTRACTING**

**Subpart 538.2—Establishing and  
Administering Schedules**

Sec.

538.203 Solicitation preparation.

538.203-71 Solicitation provisions and contract clauses.

538.270 Evaluation of multiple award schedule offers.

538.271 MAS contract awards.

538.272 MAS price reductions.

AUTHORITY: 40 U.S.C. 486(c).

**Subpart 538.2—Establishing and  
Administering Schedules**

**538.203 Solicitation preparation.**

**538.203-71 Solicitation provisions and contract clauses.**

(a) The Contracting Officer shall insert the clause at 552.238-72, Contractor's Report of Sales, in solicitations issued and contracts awarded under GSA's schedule program.

(b) The contracting officer shall insert the clause at 552.238-70, Identification of Electronic Office Equipment

Providing Accessibility for the Handicapped, in solicitations and contracts awarded under the multiple award schedule program when the solicitation includes electronic office equipment.

(c) The contracting officer shall insert the clause at 552.238-74, Submission and Distribution of Authorized GSA Schedule Pricelists, in solicitations and contracts awarded under the multiple award schedule program. When GSA is not prepared to accept electronic submissions for a particular schedule, the contracting officer is authorized to modify the clause by deleting subparagraph (c)(1)(ii) and (c)(3) and modifying subparagraph (c)(1) to eliminate “(i)” and the word “and” at the end of subparagraph (i).

(d) The contracting officer shall insert the clause at 552.238-75, Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes, in solicitations and contracts awarded for supplies under the multiple award schedule program.

(e) Contracting officers shall insert the clause at 552.238-76, Price Reductions, in all MAS solicitations and contracts.

(f) Contracting officers in the Federal Supply Service (FSS) shall insert the clause at 552.238-77, Industrial Funding Fee, in solicitations and contracts awarded under the single award schedule and multiple award schedule programs.

[56 FR 29443, June 27, 1991, as amended at 58 FR 54524, Oct. 22, 1993; 59 FR 3657, Jan. 26, 1994; 59 FR 52451, Oct. 18, 1994; 59 FR 63260, Dec. 8, 1994; 60 FR 19361, Apr. 18, 1995; 63 FR 19194, Apr. 17, 1998]

**538.270 Evaluation of multiple award schedule 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 that there may be legitimate reasons why the best price is not achieved.

(b) The contracting officer will establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(c) When establishing negotiation objectives and determining price reasonableness, contracting officers will compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror’s commercial customers. The contracting officer will consider the following factors when determining the Government’s price negotiation objectives:

(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; and

(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 best prices offered to the most favored commercial customer(s). For example, if it is more expensive for an offeror to sell to the Government than to the customer who receives the offeror’s best price or if the customer (e.g., dealer, distributor, OEM, other reseller) who receives the best price performs certain value-added functions for the offeror that the Government does not perform, then some reduction in the discount given to the Government may be appropriate. In cases where the best price is not offered to the Government, the contracting officer should ask the offeror to identify and explain the reason for any differences. Offerors shall not be required to provide detailed cost breakdowns.

(c) The contracting officer may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases, when the contracting officer makes a determination that:

(1) The prices offered to the Government are fair and reasonable even

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though comparable discounts were not negotiated, and

(2) Award of a contract is otherwise in the best interest of the Government.

[62 FR 44523, Aug. 21, 1997]

### **538.271 MAS contract awards.**

(a) MAS awards will be for commercial items as defined in FAR 2.101. Contracts will be negotiated as a discount from established catalog prices.

(b) Before awarding any MAS contract, the contracting officer will determine whether offered prices are fair and reasonable in accordance with FAR subparts 15.8 and 15.9 and 48 CFR 538.270.

[61 FR 6169, Feb. 16, 1996, as amended at 62 FR 44524, Aug. 21, 1997]

### **538.272 MAS price reductions.**

(a) Prior to the award of a MAS contract, the contracting officer and the offeror shall reach an agreement as to the customer (or category of customers), price lists, and discounts which will serve as the basis of contract award. The award document shall expressly state the price/discount relationship between the Government and the identified commercial customer which is the basis of contract award. The Price Reductions clause is intended to maintain this price/discount relationship (and/or term and condition relationship) between the Government and the offeror's customer or category

of customers upon which the MAS contract was predicated for the contract period.

(b) During the term of the contract, any changes in discount/pricing practices by the contractor which result or will result in a less advantageous relationship between the Government and the customer or category of customers upon which the MAS contract discount/price was predicated, shall result in a price reduction to the Government to the extent necessary to reflect the original relationship.

[59 FR 52451, Oct. 18, 1994]

## **PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES [RESERVED]**

### **PART 540 [RESERVED]**

### **PART 541—ACQUISITION OF UTILITY SERVICES**

AUTHORITY: 40 U.S.C. 486(c).

#### **Subpart 541.4—Administration**

##### **541.401 Monthly and annual review.**

Unless other procedures are established, the contracting officer shall perform or cause to be performed the reviews required by FAR 41.401.

[60 FR 54956, Oct. 27, 1995]