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453.270 Request for contract action (AD–700).

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.
453.303 Agency forms.
453.303–700 Procurement Request (AD–700).
453.303–838 Purchase Order (AD–838).

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

§ 453.000 Scope of part.

This part:

(a) Prescribes USDA (AD) forms for use in acquisition,

(b) Contains requirements and information generally applicable to AD forms and forms prescribed by FAR part 53, and

(c) Illustrates AD forms.

Subpart 453.1—General

453.103 Exceptions.

(a) The contracting officer shall submit a request for exceptions to forms prescribed in FAR part 53 through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE) for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in part 453 shall be handled as individual or class deviations, as appropriate (see subpart 401.4).

453.108 Recommendations concerning forms.

Contracting officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR part 53 and part 453 through the HCA to the SPE.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.

This subpart prescribes USDA (AD) forms for use in acquisition. Consistent with the approach used in FAR subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the AGAR in which the form usage requirements are addressed.

453.213 Simplified Acquisition and other simplified purchase procedures (AD–838).

Form AD–838, *Purchase Order,* is prescribed for use as a Simplified Acquisition Procedure/delivery order/task order document in lieu of OF 347 and OF 348 (see 413.505–1).

453.270 Request for contract action (AD–700).

Form AD–700, *Procurement Request,* may be used as a contract requisition document by contracting activities in USDA.

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.

This subpart contains illustrations of USDA (AD) forms for use in acquisitions. Forms are not illustrated in the FEDERAL REGISTER or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity or the office of the SPE.

453.303 Agency forms.

453.303–700 Procurement Request (AD–700).

453.303–838 Purchase Order (AD–838).

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SUBCHAPTER A—GENERAL

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Subpart 501.1—Purpose, Authority, Issuance

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Subpart 501–7—Determinations and Findings

501.707 Signatory authority.

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

SOURCE: 54 FR 26486, June 23, 1989, unless otherwise noted.

Subpart 501.1—Purpose, Authority, Issuance

501.102 Authority.

The General Services Administration Acquisition Regulation (GSAR) is issued and maintained by the Associate Administrator for Acquisition Policy under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

501.103 Applicability.

(a) This regulation applies to contracts for supplies or services (including construction).

(b) Parts 501, 502, 503, 505, 506, 517, 530, 533, 552, 553, 570, and subparts 504.2, 504.9, 509.4, 515.1, 515.406, 519.3, 519.6, 519.7, 522.8, 522.13, 522.14, 532.1, 532.4, 532.6, 532.8, and 532.9 apply to leases of real property. Other provisions of the (GSAR) 48 CFR chapter 5 do not apply to leases of real property unless a specific cross-reference is made in part 570.

(c) This regulation applies to the disposal of real and personal property only to the extent explicitly stated. The portions of Subpart 501.6 regarding the Contracting Officer Warrant Program and legal review and assistance, and Subpart 504.70 on the uniform procurement instrument identification system apply to the disposal of real or personal property. Subpart 509.4 regarding suspension and debarment of contractors is applicable to contracts for the disposal of personal property (see FPMR Subpart 101–45.6).

(d) This regulation may deviate from the Federal Acquisition Regulation (FAR) when authorized. (See FAR Subpart 1.4 and Subpart 501.4.) When the GSAR does not implement the FAR, the FAR alone governs.

[54 FR 26486, June 23, 1989, as amended at 60 FR 42794, Aug. 17, 1995; 63 FR 19194, Apr. 17, 1998]

501.104 Issuance.

501.104–1 Publication and code arrangement.

The GSAR is published in the daily issue of the FEDERAL REGISTER, a cumulated form in the Code of Federal Regulations (CFR), and a separate loose-leaf edition.

501.104–2 Arrangement of regulations.

(a) The numbering system used in GSAR conforms to the FAR System. A particular policy or procedure is identified by the same number in both the FAR and GSAR.

(b) When the GSAR implements the FAR, the GSAR is numbered (and captioned) to correspond to the FAR part, subpart, section, or subsection being implemented.

(c) When the GSAR supplements the FAR by dealing with subject matter not in the FAR, numbers beginning with 70 are assigned to the supplementing part, subpart, section, or subsection.

(d) When the FAR requires no implementation, the GSAR will not contain corresponding citations. This will result in some gaps in the GSAR. In such cases, see the FAR for policies and procedures.

501.104–3 Copies.

Copies of the GSAR in CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

501.105 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

GSAR reference	OMB control No.
509.105–1(a)	3090–0007
511.170(b)(3)	3090–0203
511.204(g)	3090–0246
511.404(a)(2)	3090–0204
511.404(a)(5)	3090–0204
514.201(7)(a)	3090–0200
516.203–4(b)	3090–0243
516.505	3090–0248
519.708(b)	3090–0252
522.406–6	1215–0140
523.370	3090–0205
525.105–70(d)	3090–0198
525.205	3090–0240
532.502–3	3090–0229
532.905–70	9000–0102
532.905–71	3090–0080
537.110(a)	3090–0197
537.110(b)	3090–0006
538.203–71(a)	3090–0121
538.203–71(b)	3090–0250
538.203–71(d)	3090–0262
542.1107	3090–0027
546.302–70	3090–0027
546.302–71	3090–0027
546.570	3090–0227
552.210–74	3090–0203
552.210–79	3090–0246
552.212–1	3090–0204
552.212–71	3090–0204
552.214–75	3090–0200
552.216–71	3090–0243
552.216–73	3090–0248
552.216–74	3090–0248
552.219–73	3090–0252
552.223–71	3090–0205
552.225–70	3090–0198
552.225–75	3090–0240
552.228–74	3090–0189
552.232–74	3090–0229
552.232–79	3090–0080
552.237–70	3090–0197
552.237–71	3090–0006
552.238–70	3090–0250
552.238–72	3090–0121
552.238–75	3090–0262
552.242–70	3090–0027
552.246–70	3090–0027
552.246–72	3090–0027
552.249–71	3090–0227
GSA–72	3090–0121
GSA–72–A	3090–0121
GSA–527	3090–0007
GSA–618–D	1215–0149
GSA–1142	3090–0080
GSA–1364	3090–0086
GSA–1678	3090–0027
GSA–2419	9000–0102
570.802(c)	3090–0086

[60 FR 63260, Dec. 8, 1994, as amended at 61 FR 6164, Feb. 16, 1996; 61 FR 14033, Mar. 29, 1996]

501.170 Other GSA publications.

501.170–1 GSA orders and handbooks.

Internal agency guidance, as described in FAR 1.301(a)(2), must be issued by heads of contracting activities in the form of a GSA order or handbook. GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. Policies and procedures for issuing GSA orders and handbooks are in the HB, Writing GSA Internal Directives (OAD P 1832.3A).

[57 FR 14649, Apr. 22, 1992]

501.170–2 Acquisition letters.

(a) Acquisition letters may be issued to provide coverage on an interim basis, pending incorporation of material in GSA orders or handbooks. Acquisition letters will be considered canceled after one year and therefore must be incorporated into the applicable order or handbook within that time period.

(b) The heads of contracting activities (HCA's) or their designees may issue acquisition letters. Normally no more than two officials within a contracting activity, as appropriate, may be designated to issue acquisition letters.

(c) Acquisition letters must be coordinated with appropriate offices including Acquisition Policy, Counsel, and the Inspector General. Proposed procedures affecting the operation of the small business program must be coordinated with the Office of Small and Disadvantaged Business Utilization (AU).

(d) Acquisition letters must be identified by a number assigned by the issuing activity. The number should begin with the correspondence symbol of the issuing office, followed by the last two digits of the calendar year in which it is issued and be numbered consecutively beginning with 1. For example, the number of the first letter issued by the Commissioner, Public Buildings Service, in calendar year 1989 will be P–89–1.

(e) The body of the 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 acquisition letter is applicable).

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

(8) Instructions/procedures.

(f) The issuing office is responsible for distributing its acquisition letters to affected contracting activities, regional Acquisition Management Staffs (RAMS), the Office of Acquisition Policy, appropriate Central Office contracting activities, Associate General Counsels, Regional Counsels, Directives and Correspondence Management Branch in Central Office, and Information Management Branches in the regions. In Region 3, it is the Administrative Operations Branch.

(g) Each issuing office must report on acquisition letters issued and canceled on a quarterly basis so that the Office of Acquisition Policy can issue a consolidated index of all acquisition letters issued or canceled. The index will be distributed to GSA contracting activities.

Subpart 501.4—Deviations From the FAR and GSAR

SOURCE: 61 FR 51374, Oct. 2, 1996, unless otherwise noted.

501.402 Policy.

(a) Uniformity is an objective of the GSA Acquisition Regulatory System. However, the desire for consistency of action by GSA contracting activities must not restrict or discourage development and testing of new procedures and techniques. Similarly, the desire for consistency must not prevent GSA contracting activities from adopting alternate procedures determined to be in the Government's interest based on unique programmatic or managerial considerations.

(b) A contracting activity may deviate from a regulatory provision which implements a statutory requirement only to the extent that the deviation does not violate the underlying statute.

(c) Deviations must not be used to defeat the FAR and GSAR approval requirements.

501.403 Individual deviations.

Individual deviations from the GSAR or the FAR must be approved by the Contracting Director. A copy must be submitted to GSA's Senior Procurement Executive (MV).

501.404 Class deviations.

(a) Class deviations from the FAR or the GSAR must be approved by the head of the contracting activity (HCA). A copy must be submitted to GSA's Senior Procurement Executive (MV).

(b) Requests for class deviations must be supported by statements that disclose the need for and the nature of the deviation.

(c) Class deviations from the GSAR will expire in 12 months if not extended. They may be rescinded earlier by the Senior Procurement Executive or the HCA without prejudice to any action previously taken.

Subpart 501.6—Contracting Authority and Responsibilities

501.601 General.

Heads of contracting activities (see 502.1) are contracting officers by virtue of their position. Other contracting officers are appointed under FAR 1.603 and GSA's contracting officer warrant program.

[60 FR 40108, Aug. 7, 1995]

501.602 Contracting officers.

501.602–2 Responsibilities.

(a) *GSA revolving funds.* Unless otherwise notified, contracting officers may assume that sufficient funds are available for purchases payable from GSA revolving funds upon the receipt of a requisition signed by an authorized individual citing such funds. Requisitions for indefinite delivery contracts which provide for a guaranteed minimum must cite funds adequate to cover the guaranteed minimum quantities.

(b) *GSA funds, other than revolving funds.* (1) A requisition signed by an authorized individual may be considered as evidence that funds cited are available for purchases payable from GSA funds other than revolving funds. A certification that additional funds are available must be obtained from the requisitioning activity before awarding a contract or purchase order when the purchase exceeds (by 10 percent or $50, whichever is greater) the dollar amount of funds cited on the purchase requisition.

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

(c) *Other Federal agencies' funds.* For purchases for direct delivery to Federal agencies other than GSA, the receipt of a properly signed/approved purchase request is sufficient evidence that funds are available. Where, however, the agency's purchase request indicates that a specific dollar amount has been set aside for the acquisition, as in the case of a Project Implementation Order/Commodities (PIO/C) from the Agency for International Development, the buying activity must not exceed the fund limitation except to the extent authorized in supply support agreements. When the funds stated on the purchase request appear to be or are insufficient to cover costs for the acquisition, transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees, additional funds must be obtained from the requiring agency before the acquisition is completed as indicated below:

(1) When requirements are submitted by agencies directly to a contracting division in the Central Office (regardless of where the procurement is actually made), the request for additional funds should be made by the Central Office contracting division.

(2) When requirements are submitted to a regional contracting division (regardless of where the acquisition is made), the request for additional funds will be made by the order processing and control activity in the region initially receiving the requirement.

[54 FR 26486, June 23, 1989, as amended at 56 FR 15288, Apr. 16, 1991]

501.602–3 Ratification of unauthorized commitments.

(a) *Authority.* Under FAR 1.602–3, contracting officers may ratify unauthorized contractual commitments if the HCA approves the ratification action. The HCA may not redelegate this authority.

(b) *Procedures.* (1) Generally, the Government is not bound by commitments made by persons who do not have contracting authority. Such unauthorized acts may violate laws or regulations. Therefore, unauthorized commitments should be considered as serious employee misconduct and consideration given to initiating disciplinary action. If suspected irregularities may involve fraud against the Government, or any type of misconduct that might be punishable as a criminal offense, either the employee's supervisor or the contracting officer must immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(2) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning

the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed-upon contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification, provided that a written determination is made stating that a commitment was in fact made by an employee, who must be identified in the determination.

(3) The contracting director will assign the request to a contracting officer for processing. The contracting officer shall prepare a summary statement of facts addressing the limitations in FAR 1.602–3(c) recommending whether or not the transaction should be ratified. Advice against express ratification should include a recommendation for other appropriate disposition. When ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum meruit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government has received a benefit. (See FAR 1.602–3(d).)

(4) The request for ratification, the information required by paragraph (b)(3) of this section and a recommendation for corrective action to preclude recurrence, must be forwarded, through appropriate channels to the HCA for consideration.

(5) The HCA shall approve the ratification in writing, or direct other disposition as appropriate. Acquisitions approved for ratification are returned to the contracting officer for issuance of the necessary contractual documents. If the request for ratification is not justified, the HCA will return the request without approval and provide a written explanation for the decision not to approve ratification.

(6) HCAs shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized contractual commitment and a copy of the response. This file must be made available for review by the Office of Acquisition Policy and the Inspector General.

501.603–1 General.

The contracting officer warrant program (COWP) is the system established for the selection, appointment, and termination of appointment of contracting officers.

Subpart 501.7—Determinations and Findings

501.707 Signatory authority.

The FAR frequently refers to determinations being made by the agency head. Section 309 of the Federal Property and Administrative Services Act defines agency head and provides that at the option of the Administrator, the term may include the chief official of any principal organizational unit of the GSA. The Administrator has authorized the heads of contracting activities to act as agency head to facilitate the procurement of property and services under Title III of the Federal Property and Administrative Services Act. (See GSA Delegation of Authority Manual, ADM P 5450.39C.) When the applicable statute precludes redelegation of the authority, the Administrator must sign the D&F (see for example, FAR 6.302–7). Class D&Fs, if authorized, must be signed by the HCA.

[60 FR 54955, Oct. 27, 1995]

PART 502—DEFINITIONS OF WORDS AND TERMS

Subpart 502.1—Definitions

502.101 Definitions.

Agency competition advocate means the GSA Competition Advocate located in the Office of Acquisition Policy.

Chief of the contracting office means branch chiefs of Central Office or regional office branches within divisions that are responsible for performing contracting and/or contract administration functions except for FSS. In FSS Commodity Centers, ''chief of contracting office'' means division directors within the Commodity Centers. In Federal Supply Service Bureaus, ''Chief of Contracting Office'' means branch chiefs or supervisory equivalents. In PBS, the Director of a Facility Support Center is considered to be the ''chief of the contracting office.''

Contracting activity competition advocate means the individual designated in writing by the head of the contracting activity. This authority may not be redelegated. The HCA must ensure that the designated competition advocate is not assigned any duty or responsibility that is inconsistent with the advocacy function. The identity of the designated official shall be communicated to procuring staff and the Senior procurement executive.

Contracting director means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions except for FSS. ''Contracting director'' means directors of Commodity Centers and Federal Supply Service Bureaus in the FSS.

Head of the contracting activity means the Associate Administrator for Acquisition Policy, Associate Administrator for Federal Telecommunications Service (FTS), Commissioners of the Federal Supply Services (FSS), Information Technology Services (ITS), Public Buildings Service (PBS), or Regional Administrators. The Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FTS, FSS, ITS and PBS.

Senior procurement executive means the Associate Administrator for Acquisition Policy.

[57 FR 9213, Mar. 17, 1992, as amended at 57 FR 61583, Dec. 28, 1992; 60 FR 21467, May 2, 1995; 60 FR 54957, Oct. 27, 1995]

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1—Safeguards

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503.101 Standards of conduct.
503.101–3 Agency regulations.
503.104 Procurement integrity.
503.104–4 Definitions.
503.104–5 Disclosure, protection, and marking of proprietary and source selection information.
503.104–7 Postemployment restriction applicable to Government officers and employees serving as procurement officers and certifications required from procurement officials leaving Government service.
503.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.
503.104–9 Certification requirement.
503.104–10 Solicitation provisions and contract clauses.
503.104–11 Processing violations or possible violations.
503.104–12 Ethics program training requirements.

Subpart 503.2—Contractor Gratuities to Government Personnel

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

Subpart 503.3—Reports of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

Subpart 503.4—Contingent Fees

503.404 Solicitation provision and contract clause.
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Subpart 503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.

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Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definitions.
503.705 Procedures.

Subpart 503.8—Limitation on Payment of Funds To Influence Federal Transactions

503.804 Policy.
503.806 Processing suspected violations.

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

SOURCE: 54 FR 26496, June 23, 1989, unless otherwise noted.

Subpart 503.1—Safeguards

503.101 Standards of conduct.

503.101–3 Agency regulations.

(a) GSA Standards of Conduct are in Part 105–735 of the General Services Administration Property Management Regulations (GSPMR) (ADM 7900.9). Authorized exceptions to FAR 3.101–2 are in GSPMR 105–735.202(e). Enforcement procedures are in GSPMR 105–735.101.

(b) The requirement for employee financial disclosure and restrictions on private employment for former Government employees are in GSPMR 105–735.4 and 105–735.6.

503.104 Procurement integrity.

503.104–4 Definitions.

Property, as used in FAR 3.104 and in this section, also means acquisitions of leasehold interests in real property.

[55 FR 39972, Oct. 1, 1990]

503.104–5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary and source selection information shall—

(1) Ensure documents are marked as prescribed in FAR 3.104–5(c).

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

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, ''double wrapping'' with more than one envelope and sealing of envelopes.

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

(b) The GSA Form 3611, Cover Page Source Selection Information, may be used as the cover page for documents that contain source selection information. The use of the GSA Form 3611 does not eliminate the requirement to mark each page of the document that contains source selection information.

(c)(1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including client agency representatives, program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer's chain of command.

(v) Attorneys in the Office of General Counsel and Regional Counsel's Offices.

(vi) Contract auditors in the Office of Inspector General and Regional Inspector General's offices.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration (SBA) personnel responsible for reviewing determining not to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR subpart 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.

(x) Department of Labor (DOL) personnel responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for

processing preaward EEO clearances under FAR 22.805.

(xi) Personnel in the Credit and Finance Branch, Region 6, and other personnel who provide support to the contracting officer in making contractor responsibility determinations.

(xii) Personnel serving on technical evaluation boards or source selection evaluation boards.

(xiii) Contract clearance personnel.

(2) The Associate Administrator for Acquisition Policy may authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or source selection information when such access is necessary to the conduct of the procurement and to the extent that the person has a ''bona fide need to know.'' Access must be limited to only that information needed by the person to perform his/her responsibilities.

(4) The GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information, may be used to comply with the requirement at FAR 3.104–5(d)(2) to maintain the list of individuals authorized access to proprietary or source selection information at the contracting activity.

(5) Release of proprietary or source selection information under FAR 3.104–5(d)(3) must be made by letter citing obligation to maintain a list of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for inclusion in the contract file.

(6) In accordance with FAR 3.104–5(i), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

This document, or portions thereof, contains proprietary or 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.

(7) For requests from an individual Member of Congress see 505.403.

[55 FR 39972, Oct. 1, 1990, as amended at 55 FR 50700, Dec. 12, 1990]

§ 503.104–7 Postemployment restriction applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

(a) The supervisor of each departing GSA employee shall remind the departing employee that:

(1) He/she is presumed to know if he/she is a procurement official (see FAR 3.104–8(b)(2));

(2) If he/she is a procurement official at the time of departure, he/she is subject to certain postemployment restrictions (see FAR 3.104–7), and

(3) If he/she leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of $100,000, he/she must certify to the contracting officer that he/she understands the continuing obligation, during the conduct of the procurement, not to disclose proprietary or source selection information related to the procurement.

A procurement is not considered complete until all actions associated with the award or modification of the procurement have been taken. A departing employee must submit the certification to the contracting officer if he/she participated, in a contract or modification expected to exceed $100,000 that has not been completed, even though his/her duties may be complete at the time of departure. The GSA Form 3608, Procurement Integrity Certification of Departing GSA Procurement Officials, must be used by departing employees to make the required certification to contracting officers. The departing employee may list all contracts or modifications for which he/she is a procurement official on the GSA Form 3608. The original or a copy of the form must be submitted to the contracting officer for each contract or modification listed. Each copy must be annotated to identify the contracting officer who received the original certification and the contract number of

the contract that the contracting officer is responsible for so that the contract file with the original certification can be retrieved, if necessary.

(b) The contracting officer shall obtain the GSA Form 3608 from any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of $100,000. (See FAR 3.104–10(d) and 52.203–13).

[55 FR 39972, Oct. 1, 1990, as amended at 55 FR 50700, Dec. 12, 1990]

503.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.

If a contracting officer has not been appointed, the contracting director shall serve as the Administrator's designee and respond to inquiries under FAR 3.104–8(d) and (e) regarding proprietary and source selection information.

[58 FR 52443, Oct. 8, 1993]

503.104–9 Certification requirement.

Contracting Officer shall submit requests for waiver of certification requirements under FAR 3.104–9(f)(2) to the HCA for transmittal to the Senior Procurement Executive (see 502.101). The Senior Procurement Executive will recommend that the Administrator approve or disapprove the request.

[55 FR 39972, Oct. 1, 1990]

503.104–10 Solicitation provisions and contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 552.203–73, Price Adjustments for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $100,000 and all modifications to leases exceeding $100,000 which do not already contain the clause.

[63 FR 18844, Apr. 16, 1998]

503.104–11 Processing violations or possible violations.

(a)(1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a source shall be submitted, along with supporting documentation, to the HCA or SES designee for review and concurrence before award of a contract. In addition, the nature and circumstances of the violation or possible violation, together with any supporting documentation, must be referred to the Inspector General in accordance with agency regulations.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the HCA, who will:

(i) Refer the matter immediately to the Inspector General.

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104–11 (b) and (d).

(b) If the HCA or SES designee determines under FAR 3.104–11(f) that there are urgent and compelling circumstances, or that it is otherwise in the Governments interest to award or modify a contract, the HCA or SES designee shall notify the Administrator.

[55 FR 39974, Oct. 1, 1990]

503.104–12 Ethics program training requirements.

(a) Except as provided in paragraph (b) of this section, the contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with GSA personnel, has executed the Procurement Official's Procurement Integrity Certification pursuant to FAR 3.104–12. Such interaction may occur in the requirements determination process and the development of specifications or statements of work.

(b) Where a non-Government person or another agency's employee(s) act on behalf of GSA (e.g., serves on a Source Selection Board) the contracting officer is responsible for obtaining the Procurement Officials's Procurement Integrity Certification from non-GSA or non-Government persons involved in

the selection of a source in a GSA procurement.

[55 FR 39974, Oct. 1, 1990]

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

Employees shall immediately report any suspected violation of the Gratuities clause to the contracting officer, the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations and to the Deputy Standards of Conduct Counselor in accordance with GSPMR 105–735.202(e)(4). The report must outline circumstances which indicate the Gratuities clause has been violated and include all pertinent documents. The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice and/or the Office of Acquisition Policy, and/or the Office of Ethics and Civil Rights.

503.204 Treatment of violations.

(a) The Associate Administrator for Acquisition Policy or a designee shall make determinations under FAR 3.204.

(b) The Associate Administrator or designee, after coordinating the matter with legal counsel, may initiate proceedings under FAR 3.204(a) by notifying the contractor that action against the contractor for a violation of the Gratuities clause is being considered. Notice must be provided by means of a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

(c) The contractor shall have 30 calendar days to exercise its rights under FAR 3.204(b), unless an extension is granted.

(d) The Associate Administrator or designee may refer a matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals, if a determination is made that there are disputes of fact material to making a determination under FAR 3.204(a). Referrals for fact-finding will not be made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to the determinations under FAR 3.204(a) (1) and (2).

(2) Conduct the proceedings under rules that are consistent with FAR 3.204(b).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the Associate Administrator or designee (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.

(e) The Associate Administrator or designee may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(f) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Associate Administrator or designee shall conduct the hearing required by FAR 3.204(b).

(g) If it is determined that the Gratuities clause has been violated, the contractor may present evidence of mitigating factors to the Associate Administrator or designee, either orally or in writing, in accordance with a schedule established by the Associate Administrator or designee. The Associate Administrator or designee shall exercise 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.

Contracting officers shall report evidence of suspected antitrust violations

in acquisitions to the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations. The Office of Inspector General will investigate and prepare a report and recommendation to the Attorney General and to the Office of Acquisition Policy for suspension or debarment consideration.

Subpart 503.4—Contingent Fees

503.404 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property.

[54 FR 26496, June 23, 1989, as amended at 57 FR 37889, Aug. 21, 1992; 60 FR 42794, Aug. 17, 1995; 63 FR 18844, Apr. 16, 1998]

503.408 Evaluation of the SF 119.

503.408–1 Responsibilities.

The contracting officer's documentation of the evaluation, conclusion and any proposed action must be reviewed by assigned legal counsel and the contracting director.

503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Employees who suspect or have evidence of violations of the Covenant Against Contingent Fees clause shall report the matter to the contracting officer as well as 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.

Contractors shall not refer to contracts awarded by GSA in commercial advertising in a manner which states or implies that the product or service provided is approved or endorsed by the Government or is considered by the Government to be superior to other products or services. This policy is intended to avoid the appearance of preference by the Government toward any product or service.

503.570–2 Contract clause.

The contracting officer shall insert the clause at 552.203–70, Restriction on Advertising, in solicitations and contracts for supplies or services when the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26496, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995]

Subpart 503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.

(a) The heads of contracting activities may authorize exceptions to the policy in FAR 3.601.

(b) Offers submitted by Government employees on solicitations issued under the Office of Management and Budget (OMB) Circular A–76 may be considered if the contracting officer complies with 503.603. When Government employees submit offers, they do so with the knowledge that if the contract is awarded, their Government employment will be terminated. The implementation of OMB Circular A–76 presents a unique situation which may be considered to be an exception to the policy in FAR 3.601. Contracts between the Government and its employees are not expressly prohibited except, where the employee acts for both the Government and the contractor in a particular transaction or where the service to be rendered is such as could be required of the contractor in his/her capacity as a Government employee.

503.603 Responsibilities of the contracting officer.

Before awarding a contract to a GSA employee who responded to an A–76 solicitation, the contracting officer shall:

(a) Obtain a written certification from the employee's supervisor that: the individual was not involved in the development of the solicitation or specifications, or in the preparation of the independent Government cost estimate or in-house cost comparison; had

no advance knowledge of the details of the contents of the solicitation package; and was not otherwise involved in the contracting process.

(b) Refer the proposed award to assigned legal counsel for review and approval.

(c) Ascertain whether a reduction-in-force notice has been issued to the employee.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definitions.

Notice means a letter sent by certified mail with a 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 be presumed.

Voiding and rescinding official means the Associate Administrator for Acquisition Policy or a designee.

503.705 Procedures.

(a) Where a contract has been tainted by fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, rescision, or cancellation. Alternatively, the matter may be referred to the voiding and rescinding official under FAR 3.705, if there has been a final conviction for any violation of 18 U.S.C. 201–224.

(b) The contracting officer may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract pending completion of legal proceedings against a contractor.

(c) A referral to the voiding and rescinding official should identify the final conviction and include the information required by FAR 3.705(d) (2) through (5). The contracting officer should coordinate the referral with the Office of Inspector General to ascertain if a debarment referral is contemplated.

(d) The voiding and rescinding official shall review the referral and coordinate the matter with assigned legal counsel and the contracting activity. If a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, the voiding and rescinding official shall issue the notice required by FAR 3.705, and conduct the hearing contemplated by FAR 3.705(c)(3). If the voiding and rescinding official determines that there is a genuine dispute of material fact regarding the agency decision, the voiding and rescinding official shall refer the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Such a referral will be made if there is a dispute of fact that relates to:

(1) The contracts affected by the final conviction giving rise to the proposed action.

(2) The amounts expended and property transferred by the Government under the contracts covered by the proposed action.

(3) The identity and value of any tangible benefits received by the Government under the affected contracts.

(e) If a referral for fact-finding is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to 503.704(d) (1) through (3).

(2) Conduct the proceedings under rules that are consistent with FAR 3.705(c)(3).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver 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.

(f) The voiding and rescinding official shall not issue the agency's final decision under FAR 3.705(e) until receipt of the fact-finding official's report, if any. The voiding and rescinding official may reject the findings of the fact-

finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(g) In actions in which it is determined there are no material disputes of fact relating to the determinations required by FAR 3.705(d) (2), (4) and (5), the voiding and rescinding official will conduct the hearing contemplated by FAR 3.705(c)(3).

(h) The final decision must be coordinated with the contracting activity and a copy of the decision provided to the activity.

Subpart 503.8—Limitation on Payment of Funds To Influence Federal Transactions

SOURCE: 55 FR 29580, July 20, 1990, unless otherwise noted.

503.804 Policy.

Contracting officers shall submit a copy of each disclosure form received in accordance with FAR 3.803 or 3.804 to the Office of GSA Acquisition Policy (VP) immediately upon receipt. The Office of GSA for Acquisition Policy will prepare the agency report to Congress in accordance with FAR 3.804(b).

503.806 Processing suspected violations.

Contracting officers shall submit 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, to the Assistant Inspector General for Investigation or the Regional Inspector General for Investigation. The Office of Inspector General will investigate and, if appropriate, prepare a report and recommendation to the Department of Justice.

PART 504—ADMINISTRATIVE MATTERS

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

SOURCE: 54 FR 26498, June 23, 1989, unless otherwise noted.

Subpart 504.1—Contract Execution

504.101 Contracting officer's signature.

Contracts and contract modifications must be signed personally and manually by the contracting officer. The contracting officer's name and title must be typed or stamped below the signature. In the absence of the designated contracting officer, another

contracting officer may sign documents. However, in all cases the name and title of the individual actually signing the document must be typed or stamped on the document below the signature.

504.103 Contract clause.

Agency procedures do not require the use of the clause at FAR 52.204–1, Approval of Contract, in solicitations and contracts.

Subpart 504.2—Contract Distribution

504.201 Procedures.

(a) Contracting Officers are required to send documentation to the paying office on all contracts where a delivery order will be generated by GSA. The documentation shall consist of a ''Duplicate Original'' of the entire contract or modification, except as provided in paragraph (c), below.

(b) The Contracting Officer shall certify that the ''Duplicate Original'' is a true copy of the contract or modification by means of a handwritten signature, in ink, on the award or modification form (i.e., SF 26, 33, 1442, etc.). The certification requirement does not apply to:

(1) Leases of real property;

(2) Schedule contracts; or

(3) Standard or GSA multipage purchase/delivery order carbon forms.

(c) For Federal Supply Service contracts entered into the FSS–19 system and subject to the requirement in paragraph (a), above, distribution to the paying office shall be accomplished through the use of a system-generated contract listing.

[57 FR 61583, Dec. 28, 1992]

504.203 Taxpayer identification number information.

The procedure outlined in FAR 4.203 for attaching the completed FAR provision at 52.204–3 as the last page of the contract sent to the paying office does not apply to leases of real property (see 504.903) or schedule contracts.

[55 FR 8954, Mar. 9, 1990]

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. As used in this subpart, the term ''contractor(s)'' includes prospective contractors, subcontractors, vendors, and suppliers of any tier.

(b) This subpart implements the requirements of the Department of Defense's Industrial Security Regulation (ISR) and Industrial Security Manual for Safeguarding Classified Information (ISM). By agreement, the Department of Defense will act for and on behalf of GSA in rendering security services required for safeguarding classified information released by GSA to United States (U.S.) industry.

(c) As used in this subpart, the term ''U.S. industry'' pertains to those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.470 Requests for release of classified information.

Prior to soliciting offers or entering into discussions or negotiations with any contractor involving the disclosure of classified information, the contracting officer shall prepare, in triplicate, section I of GSA Form 1720, Request for Release of Classified Information to U.S. Industry (illustrated in subpart 553.3). After signing as requesting officer and obtaining approval from the immediate supervisor, the contracting officer shall forward all copies of the completed form to the Personnel and Information Security Division (CES), Office of Management Controls and Evaluation.

[56 FR 47004, Sept. 17, 1991]

504.470–1 Authorization for release.

CES, after determining that the contractor has been issued a Department of Defense facility security clearance, will complete the appropriate parts of

section II, of GSA Form 1720, and return the original and one copy to the contracting officer. Under no circumstances will classified information be disclosed or made accessible to any contractor until the completed form has been received from CES. Where only Item 14b, section II, of the form has been checked, the contracting officer's actions will be governed by the instructions on the reverse side of the form. When a contractor is found to be ineligible for a security clearance, CES will advise the contracting officer.

[56 FR 47004, Sept. 17, 1991]

504.470–2 Termination of authorization for release.

When circumstances support withdrawal or revocation of security clearance, CES will advise the contracting officer of the termination of authorization to release classified information and include instructions concerning actions required to safeguard, withhold, or obtain the return of classified information. Reasons for such termination may include:

(a) Failure of the contractor to maintain the physical standards required by the ISM.

(b) Information indicating the contractor no longer: (1) Is eligible for clearance or (2) requires access to classified information.

[56 FR 47004, Sept. 17, 1991]

504.471 Processing security requirements checklist (DD Form 254).

(a) Contracts involving access to classified information by the contractor require preparation of DD Form 254, Contract Security Classification Specification (illustrated in FAR 53.303–DD–254), to identify and indicate to Department of Defense (DOD) and contractors the areas of classified information involved. In the case of contracts for research, advisory and assistance services, graphic arts services, or other procurements of services, written notice of classification may be used in lieu thereof.

(b) Instructions or guidance on completing DD Form 254 may be obtained from CES.

[54 FR 26498, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991]

504.472 Periodic review.

Contracting officers shall review DD Form 254 whenever a change in the phase of performance occurs or at their own discretion, but in any event at least once a year, to determine whether the classified information can be downgraded or declassified. The contractor must be informed of the results of the review by issuance of a revised specification, or by written instructions instead of DD Form 254 (where authorized), or if the review results in no change in the classification specifications, by written notification to that effect. Upon termination or completion of the contract, a final checklist must be prepared.

504.473 Recurring procurement.

When procurement is of a recurring nature, a new DD Form 254 is not required if the end item is not changed and there is no change from the previous security classification.

504.474 Control of classified information.

(a) Classified information must be recorded, marked, handled, and transmitted in accordance with instructions contained in the handbook, Information Security (ADM P 1025.2C).

(b) When classified information is originated by another agency, the consent of the originating agency must be obtained prior to releasing the classified information to the contractor.

504.475 Return of classified information.

(a) Unless the classified information has been destroyed as provided in paragraph 19 of the ISM, the contracting officer must recover the information. When classified information is furnished to a GSA contractor by another Government agency, the return of such information is the responsibility of that agency.

(b) The contracting officer is responsible for insuring that classified information furnished to prospective offerors, offerors, or contractors is returned immediately:

(1) After bid opening or closing date for receipt of proposals from non-responding offerors;

(2) After contract award from unsuccessful offerors;

(3) Upon termination or completion of the contract;

(4) Upon notification that authorization to release classified information has been withdrawn;

(5) After notification that a facility (i) does not have adequate means for safeguarding classified information, or (ii) has had its security clearance revoked or inactivated; or

(6) Whenever otherwise instructed by the authority responsible for the security classification.

504.476 Breaches of security.

When an unauthorized disclosure of classified information is discovered, the contracting officer or other GSA employee responsible for the information shall promptly refer the facts of such breach or compromise to CES.

[56 FR 47005, Sept. 17, 1991]

Subpart 504.8—Contract Files

504.800 Scope of subpart.

This subpart prescribes requirements for using standard contract file format for all contracts, except leases of real property, that exceed the simplified purchase acquisition. The application of this subpart to purchases made using simplified acquisition procedures is optional.

[54 FR 26498, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995]

504.802 Contract files.

(a) *Standardization of files.* Contract files must contain all necessary information and documentation required by FAR 4.802 and 4.803 and be organized in the standardized contract file format in 504.803.

(b) *Responsibility for contract files.* The contracting officer is responsible for the official file. All documents pertaining to the contract must be forwarded by those initiating them to the contracting officer for inclusion in this file. The contracting officer is also responsible for the accountability of contract files transferred to the records center and for knowing the location of the files as provided by the National Archives and Records Administration.

(c) *Transfer of responsibility for contract files.* (1) When responsibility for a contract is transferred from one contracting officer to another, e.g., transfer of assignments or redelegation of contract administration (intraoffice or interoffice), the contracting officer transferring the files shall prepare a detailed listing by file number and/or name to identify the file(s) to be transferred (see also FAR 42.206).

(2) If available, duplicates of the files to be transferred must be retained by the contracting officer until acknowledgement of receipt of the transferred files by the contracting officer is received.

(3) The original contracting officer transferring the files shall retain one copy of the listing and send a copy of the listing to the successor contracting officer under a separate mailing as advance notice of the files to be transferred.

(4) The files to be transferred to the successor contracting officer must be sent by certified mail, return receipt requested, when appropriate, or by another method so as to obtain a signature of the successor contracting officer for receipt of the contract files that are transferred. The transferred files must be accompanied by two copies of the listing to the successor contracting officer.

(5) The successor contracting officer, who becomes responsible for the files, shall sign one copy of the listing, certifying receipt of the files listed, and return the signed copy to the contracting officer transmitting the files.

504.803 Contents of contract files.

(a) The contract file must be numerically tabbed, filed in reverse order starting with item (1) on the bottom of the file and item (27) on the top. Documents within the tab should be filed chronologically with the most recent document on top. If any of the documents are too voluminous to be placed under the applicable tab, they should be included in a separate file and the tab annotated with the location of the file. All of the items described will not always be needed for each contract action. If a tab is not required for a particular action, it should be omitted

from that contract file. The file must be tabbed as specified below:

(1) Requisition or request for contractual action. Where technical or requirements personnel recommend the use of other than full and open competition, the certification of the accuracy and completeness of the data to support the recommendation should be filed under this tab. (See FAR 6.303–1(b).)

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

(3) Acquisition plan including, where applicable, the determination required by OMB Circular A–76 and/or concurrence of the cognizant competition advocate.

(4) Determination and findings required by FAR Subpart 1.7 and Subpart 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 and labor surplus area determinations.

(7) Source list.

(8) Statement as to synopsis of proposed procurement under FAR Subpart 5.2 or other required advertisements.

(9) Presolicitation notice.

(10) IFB/RFP and amendments.

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

(12) Cost or pricing data and information other than cost or pricing data. Where the requirement for submission of cost or pricing data is waived, as provided in FAR 15.804–1(b)(5), the waiver and documentation supporting the waiver should be filed under this tab.

(13) Field pricing report (see FAR 15.805–5 and 515.805–5). Where the requirement for a field pricing report of a price proposal is waived, as provided in FAR 15.805–5, the waiver and documentation supporting the waiver should be filed under this tab.

(14) Price or cost analysis report prepared under FAR 15.608. Supporting technical analyses, other than those supporting an audit report, should be filed under this tab. The profit or fee analysis required by FAR Subpart 15.9 should be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it should also be made a part of the price or cost analysis report.

(15) A price negotiation memorandum, as required by FAR 15.808, must be written so as to permit reconstruction of all the major events of the acquisition and placed under this tab.

(16) Certificate of current cost or pricing data.

(17) Pre-award survey.

(18) EEO compliance review.

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

(20) Unsuccessful bids or proposals. A copy of each rejected bid or unacceptable proposal also must be included in the file under this tab.

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

(22) Actions taken on late bids or proposals.

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action including evidence of submission of contract award data to paying office, if applicable (see 504.201). Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705–5(a)(5), and the successful competing contractor's certificate of procurement integrity required by FAR 3.104–9(b), should be filed under this tab.

(24) Evidence of concurrence for legal sufficiency of the appropriate counsel (if applicable).

(25) Any required approvals—GSA 1535, Recommendation for Award, or documentation of approval of Subcontracting Plan (as applicable). The contracting officer's and any other departing procurement official's certificate of procurement integrity, required by FAR 3.104–7(a) and 48 CFR 503.104–7 and the record of individuals authorized access to proprietary or source selection information, required by FAR 3.104–5(d)(2) and 3.104–9(e)(iii) should be filed under this tab.

(26) Any notices of award including Standard Form 99, Notice of Award of Contract (if applicable).

(27) SF 279, FPDS Individual Contract Action Report.

(b) An index of the file tabs should be placed in the file. Items which do not apply should be so marked, and if necessary, a brief explanation included. The GSA Form 3420, Contract/Modification File Checklist, illustrated in 553.370–3420, must be used by the contracting officers in the Public Buildings Service. The form may be used by other offices or a standard contract file checklist, based on the requirements of 504.803(a), appropriate to that particular office may be prepared. The requirements of a particular office may provide for the inclusion of subheadings under a tab or additional items as appropriate.

[54 FR 26498, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989; 55 FR 39974, Oct. 1, 1990; 57 FR 61584, Dec. 28, 1992; 61 FR 6165, Feb. 16, 1996; 61 FR 14033, Mar. 29, 1996]

504.804–5 Detailed procedures for closing out contract files.

When the statement required by FAR 4.804–5(b) is completed, the administrative contracting officer (ACO) shall forward the statement and the contract files to the cognizant procuring contracting officer (PCO). The ACO shall follow the procedures outlined in 504.802(c) when transferring the files to the PCO.

504.805 Disposal of contract files.

The contracting officer's accountability for contract files terminates at the end of their retention period when the notice of disposal is received from the National Archives and Records Administration, and disposal is approved by the appropriate records liaison officer whose organization has functional responsibility for the files.

Subpart 504.9—Information Reporting to the Internal Revenue Service

504.903 Procedures.

(a) The Office of Finance makes reports required by 26 U.S.C. 6041 and 6041A as implemented in 26 CFR to the IRS on payments made to certain contractors for services performed and to lessors for providing space in buildings. In order for Finance to make the required reports, contracting officers must indicate on obligating documents (e.g. purchase/delivery orders, contracts, or the GSA Form R–620 for leases) forwarded to Finance, the contractor's organization structure (e.g. corporation, partnerships, etc.) and for contractors that are not incorporated (except as provided in FAR 4.902(a)(1)(i)), the contractor's taxpayer identification number (TIN). When certified invoice procedures (see 513.70) are used, contracting officers must identify the organization structure for Finance.

(b) Reports required by 26 U.S.C. 6050M are made through the Federal Procurement Data System.

Subpart 504.70—Uniform Procurement Instrument Identification

504.7001 Uniform procurement instrument identification.

Except for real property leasing activities and procurement activities of the Federal Supply Service, the procedures in this subpart prescribed for the identification of contracts, orders, and other procurement instruments regardless of dollar threshold are applicable for all other contracting activities, including the Federal Supply Service, Property Management Division.

504.7001–1 Policy.

(a) The uniform procurement instrument identification system must be used for procurement instruments listed in paragraph (f) of 504.7001–2. The system does not apply to purchases made through certified invoice procedures (see 513.70) or to imprest fund purchases.

(b) Identification should be placed in the contract number block provided on the applicable forms. If a space is not reserved for the prescribed number, it should be placed in the upper right-hand corner of the form.

(c) Each contracting office shall maintain records to ensure continuity and control of procurement instrument identification numbers. (See 504.7002.)

504.7001–2 Basic procurement instrument identification number.

The basic procurement instrument identification number will normally be

assigned at the time of award. However, the number may be assigned at the time a procurement request is received if assignment at that time will facilitate tracking of the procurement. The basic procurement instrument identification number does not change during the life of the particular instrument and consists of 14 alphanumeric characters as follows:

(a) Characters 1 and 2 of the basic procurement instrument identification number is the symbol ''GS.''

(b) The third and fourth characters reflect the region preparing the instrument as follows:

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

(c) The fifth character is a capital letter assigned to the service/office preparing the instrument as follows:

B Office of the Chief Financial Officer
F Federal Supply Service
G GSA Board of Contract Appeals
C Office of Management and Human Resources
J Office of Inspector General
K Information Technology Service
L Office of General Counsel
P Public Buildings Service
T Federal Telecommunications Service

(d) The sixth and seventh characters identify the fiscal year in which the number is assigned.

(e) The eighth and ninth characters identify the contracting office preparing the instrument. (These codes will be assigned to each GSA organization where a contracting officer is assigned.) See appendix A for code assignment.

(f) The tenth character is a capital letter assigned to indicate the type of procurement instrument code as follows:

A Agreements, including basic agreements, basic ordering agreements, and blanket purchase agreements.
B Reserved
C Contracts, including letter contracts, contracts referencing basic agreements, or basic ordering agreements, excluding indefinite delivery type contracts.
D Indefinite delivery contracts, including definite quantity, requirements contracts and indefinite quantity contracts.
E Sales contracts.
F–L Reserved
M Purchase orders (open market simplified acquisition)—manual
N Reserved
P Purchase orders—(open market simplified acquisition)—automated.
Q Reserved
R Reserved
S Schedule contract
T–Z Reserved

(g) The eleventh through fourteenth characters reflect the serial number of the instrument. A separate series of numbers, maintained at the contracting office level, may be used for each type of instrument listed in paragraph (f) of 504.7001–2, depending upon procurement document volume. At the beginning of each fiscal year, these serial numbers will begin with the number 0001. Alphanumeric characters will be serially assigned, after all the numeric series are exhausted, i.e., 0001 through 9999, with an alpha as the first character, followed by three character numeric serial number. Each issuing office is responsible for controlling the serial number assignments. The following numeric and alphanumeric sequences, excluding alpha I and O, will be used:

0001 through 9999;
A001 through A999, B001 through B999; and so on to Z001 through Z999.

(h) An example of this procurement instrument identification number is:

Positions		GS 02	P	84	PF	L	0002
1-2	The agency designation code						
3-4	A two-digit code identifying the region or Central Office						
5	A capital letter identifying the service/office.						
6-7	The last two digits of the fiscal year.						
8-9	A two-digit alpha code assigned to the contracting office.						
10	A capital letter assigned to the type of instrument						
11-14	The four digit serial number.						

[54 FR 26498, June 23, 1989, as amended at 60 FR 54955, Oct. 27, 1995]

504.7001–3 Order and call instrument identification number.

Delivery orders under indefinite delivery contracts (orders), and orders under schedule contracts must be identified by an ''11'' character alphanumeric identification number placed in the order number block of the order form. The basic indefinite delivery or schedule contract number must be placed in the contract number block of the order form.

(a) The first character is a capital letter assigned to the office issuing the order. This code will be identical to those assigned in paragraph (c) of 504.7001–2.

(b) The second and third characters reflect the Region issuing the order. These identification codes will be identical to the codes assigned in paragraph (b) of 504.7001–2.

(c) The fourth and fifth characters identify the fiscal year in which the number is assigned.

(d) The sixth and seventh characters identify the contracting office preparing the order. These identification codes will be the same as the codes assigned in paragraph (e) of 504.7001–2.

(e) The eighth through the eleventh characters reflect the serial number of the order. Each contracting office maintains its own serial number. Alphanumeric numbers are used when more than 9999 numbers are required. Alphanumeric numbers are serially assigned with an alpha in the first position followed by the numeric serial number. The following sequences, excluding alpha I and O will be used:

0001 through 9999;
A001 through A999; and so on to Z001 through Z999.

(f) An example of a delivery order number is:

Positions		P	01	84	PB	0001
1	Service/office issuing the order.					
2-3	Region issuing the order.					
4-5	Fiscal year.					
6-7	A two-digit code assigned to contracting office.					
8-11	Four digit serial number.					

504.7001–4 Supplemental procurement instrument identification number.

Modifications to the basic contract instrument and to call/order against contracts are numbered by use of a four character alphanumeric number. The supplemental identification numbering system applies to all modifications to contracts and to call/orders against contracts.

(a) The first character is a capital letter identifying the office issuing the modification, as indicated below:

A Contract administration office modification (Administrative Components); or
P Purchasing office modification.

(b) The second character is a capital letter identifying the type of action, as follows:

A Administrative change.
C Change order.
O Other (includes exercise of options, price adjustments under escalation clauses and other changes made under specific contract clauses.)
S Supplemental agreement (bilateral signatures).

(c) The third and fourth characters reflect the serial number. Alphanumeric numbers are used when more than 99 numbers are required. Alphanumeric numbers are serially assigned with an alpha in the first position followed by a numeric number. If additional numbers are needed, alphas may be used in both positions. The following sequences, excluding alpha I and O, will be used:

01 through 99.
A1 through A9, and so on to Z1 through Z9.
AA through AZ, and so on to ZA through ZZ.

(d) An example of the supplemental procurement instrument identification number is:

Positions		EXAMPLE: AS01
1	Identifying office A or P.	A
2	Type action.	S
3-4	The two-digit serial number.	01

504.7002 Procurement contract register.

GSA Form 2728, Procurement Contract Register, or an automated register must be used to ensure continuity and control of procurement instrument identification numbers.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 505—PUBLICIZING CONTRACT ACTIONS

Subpart 505.1—Dissemination of Information

Sec.
505.101 Methods of disseminating information.

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.
505.203 Publicizing and response time.
505.204 Presolicitation notices.
505.204–70 Presolicitation notices used in connection with market searches for competitive sources.
505.207 Preparation and transmittal of synopses.
505.270 Synopsis of amendments to solicitations.

Subpart 505.3—Synopses of Contract Awards

505.303 Announcement of contract awards.
505.303–70 Notification of proposed substantial awards and awards involving Congressional interest.

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

Subpart 505.5—Paid Advertisements

505.502 Authority.
505.503 Procedures.
505.504 Use of advertising agencies.

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

SOURCE: 54 FR 26502, June 23, 1989, unless otherwise noted.

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

(a) Contracting offices located in the same geographic area as the Business Service Center (BSC) may post the notice required by FAR 5.101(a)(2) at the BSC.

(b) The appropriate BSC must be furnished a copy of solicitations (except solicitations for space in buildings) when the estimated contract amount is expected to exceed the simplified acquisition threshold. The BSC will display the solicitation for public examination.

(c) Unless exempt under FAR 5.202 or 505.202, proposed acquisitions must be publicized in local newspapers and may also be posted on on-line information systems, when the acquisition is for:

(1) Real property appraisal services, estimated to cost $10,000 or more; or

(2) Leasehold interests in real property involving blocks of space of both more than 10,000 square feet and terms which exceed 6 months. Proposed leases of 10,000 square feet or less or for terms of 6 months or less may be publicized when the contracting officer determines such advertising will serve to promote competition.

[54 FR 26502, June 23, 1989, as amended at 57 FR 37889, Aug. 21, 1992; 60 FR 42794, 42802, Aug. 17, 1995]

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.

The Administrator has determined under section 18(c)(3) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 416(c)(3) and section 8(g)(3)) of the Small Business Act, as amended (15 U.S.C. 644(g)(3)) that:

(a) Advertising in local newspapers, and optional posting on on-line information systems, are more appropriate than synopsizing in the *Commerce Business Daily* (CBD) for proposed acquisitions of—

(1) Leasehold interests in real property (except lease construction on a designated site);

(2) Real property appraisal services (see 505.101); and

(b) It is not appropriate or reasonable to publish an advance notice of:

(1) Acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program; and

(2) Supplemental agreements to leases of real property involving:

(i) Building alterations (see 570.6);
(ii) Lease extensions (see 570.505); or
(iii) Expansion requests (see 570.503).

[54 FR 26502, June 23, 1989, as amended at 60 FR 42794, Aug. 17, 1995]

505.203 Publicizing and response time.

(a) When publicizing acquisitions of real property appraisal services and leasehold interests in real property is required (see 505.101 and 505.202), the notice must appear in local newspapers at least 3 calendar days before issuance of the solicitation. The solicitation must be issued at least:

(1) 10 calendar days before the date established for receipt of initial offers for real property appraisal services; or

(2) 20 calendar days before the date established for receipt of initial offers for leasehold interests in real property, unless the contracting officer makes a written determination that the urgency of the need necessitates a shorter time period.

(b) The publicizing and response times in paragraph (a) do not apply to proposed acquisitions of leasehold interests in real property being conducted using simplified lease acquisition procedures (see 570.2). In such cases, the contracting officer may establish response times appropriate for the individual acquisition involved.

[54 FR 26502, June 23, 1989, as amended at 60 FR 42794, Aug. 17, 1995]

505.204 Presolicitation notices.

505.204–70 Presolicitation notices used in connection with market searches for competitive sources.

(a) The term ''sources-sought synopsis'' means the type of *Commerce Business Daily* (CBD) notice designed to identify potential sources for procurements. The sources-sought synopsis provides an opportunity for the marketplace to indicate its interest in submitting offers for future acquisitions. It is normally used to discover if more than one firm is interested and qualified to provide a particular product or service, although a solicitation is not yet available. This type of synopsis has particular application when one contractor is thought to be uniquely capable of meeting the Government's minimum requirements and verification of this opinion is needed.

(b) Sources-sought notices publicizing the Government's interest in anticipated supply or service procurements may be published in the CBD, using the general format outlined in 505.207, except where security considerations prohibit such publication. A sources-sought synopsis may be published in connection with market searches for sources of supply or services, other than those discussed in FAR 5.205, when a sources-sought synopsis is required to test the marketplace for competitive sources. In conjunction with that solicitation, the specific procurement of the supply or service must be publicized in the CBD as required by FAR 5.201, unless the contract action will be made through interim or full FACNET.

[54 FR 26502, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995]

505.207 Preparation and transmittal of synopses.

Notices described in 505.204–70 must include a statement similar to the following (modifications may be made to suit needs):

Concerns having the ability to furnish the following supplies (services) are requested to give written notification (including the telephone number for a point of contact) to the acquiring office listed in this notice within _____ calendar days (no less than 30 days should be entered) from the date of this synopsis:

(The contracting officer should describe the requirement so as to furnish a complete supply (service) description, and a condensation of other essential information, to provide concerns with an intelligible basis for judging whether they have an interest in the procurement. Such information may include a statement regarding the Government's belief that the supply or service may be available only from a sole source and the reasons for such belief.)

This is not a formal solicitation. However, concerns that respond should furnish detailed data concerning their capabilities and may request a copy of the solicitation when it becomes available.

505.270 Synopsis of amendments to solicitations.

All amendments to solicitations for offers increasing the anticipated value of the proposed acquisition above the

dollar threshold requiring synopsis or altering the scope of the proposed acquisition so that increased interest of contractors can be reasonably anticipated must be published in the *Commerce Business Daily*.

Subpart 505.3—Synopses of Contract Awards

505.303 Announcement of contract awards.

By complying with 505.303–70 contracting officers automatically fulfill the reporting requirements of FAR 5.303(a).

505.303–70 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability*. The notification procedures in (b), below, apply only to proposed award involving:

(1) A contract with the Small Business Administration (the 8(a) program) exceeding or estimated to exceed $100,000.

(2) A supply contract exceeding or estimated to exceed $500,000 (except for (i) motor vehicles, (ii) products whose points of origin are not readily identifiable, or (iii) products involving foreign production points).

(3) A design (Architect/Engineer) contract or construction contract exceeding or estimated to exceed $500,000.

(4) Any other contract, or class of contract, in excess of $100,000 for which a Member of Congress has specifically requested notification of award.

(b) *Notification procedures.* (1) The Office of Congressional and Intergovernmental Affairs (S) will notify the heads of contracting activities in writing with the names of Members of Congress who wish to be notified of any or all contract awards in excess of $100,000 to contractors located within their district or State, as applicable. Upon such notification, the contracting activities will provide, via electronic mail, facsimile or hand delivery applicable notices of award to S. A copy of the submittal should be provided to the regional congressional liaison office.

(2) Except for submittals hand delivered to S, the submittal must be made by electronic mail or facsimile transmission. Except for contracts awarded under urgent and compelling circumstances, notification to S of an award must be made on the same day that the award is made and 24 hours before telephonic notice (if applicable) is provided to the contractor. If the timeframe for notification to S cannot be met, the Contracting Director must notify S by telephone.

(3) The notification to S must:

(i) Describe the supplies or services acquired and the duration of the contract period.

(ii) Identify the type of contract and contractor using the following codes:

(A) *DO* for definite quantity contract.

(B) *SC* for schedule contract.

(C) *TC* for indefinite delivery contract other than schedule.

(D) *S* for small business concern.

(E) *SD* for small disadvantaged business concern.

(F) *WO* for women-owned small business concern.

(G) *O* for other than a small business concern.

(iii) Include the contractor's name and address (including county and Congressional district, if known) and indicate the dollar value of the contract for each production point. When there are multiple production points and specific items, and their points of production are not shown, or when the number of production points exceed 10, write ''multiple'' and indicate immediately after, in parentheses, the total number of production points.

(iv) Indicate the quantity and unit, in parentheses, for definite quantity awards by production point. Indicate the name of the receiving agency next to the applicable quantity and identify the requirement or portion thereof for overseas use.

(v) Provide the name (where available) and telephone number for a point-of-contact for each award recipient and each production point.

(vi) Include the following statement when Congressional interest is involved.

''Congressional Interest: (*Name of Congressman/Senator*)
(*Indicate State/District*)
(*Describe interest*)''

(vii) Provide the contracting officer's name and telephone number for each award.

(4) The notification to S will contain sensitive preaward information and should be labeled accordingly. S and regional Congressional liaison offices will be responsible for the security of such information and will establish procedures governing the release of such information before official notification of award. Unless otherwise authorized by the contracting officer, the release of such information prior to award shall be limited to Members of Congress and their staff.

(c) *Release of awards.* (1) Release of notifications which require priority processing as determined by the Associate Administrator for Congressional Affairs will be accomplished at the time and date specified.

(2) Unless notified to the contrary, contracting activities may release awards of the type described in (a) and (b) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of notification to S established either by the facsimile transmission or hand delivery.

[54 FR 26503, June 23, 1989, as amended at 54 FR 29722, July 14, 1989; 54 FR 40060, Sept. 29, 1989; 55 FR 39974, Oct. 1, 1990; 60 FR 42802, Aug. 17, 1995; 61 FR 1150, Jan. 17, 1996]

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, proprietary or source selection information as defined in FAR 3.104–4 or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), include the caution notice prescribed in 503.104–5(d)(6) in the response, and inform the Office of Congressional Affairs of the action taken.

[55 FR 39974, Oct. 1, 1990]

Subpart 505.5—Paid Advertisements

505.502 Authority.

(a) *Newspapers.* Written approval from the HCA or a designee is required for paid newspaper advertisements, except when such publication is required by the FAR or the GSAR (see 505.101(c)). The contracting officer shall document the contract file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

(b) *Other media.* Advance approval is not required to place paid advertisements in media other than newspapers.

505.503 Procedures.

The GSA Form 300, Order for Supplies or Services, must be used instead of the Optional Form 347, Order for Supplies and Services, when the dollar amount of the acquisition does not exceed the simplified acquisition threshold or when issuing a delivery order under a basic ordering agreement with an advertising agency for an advertisement.

[54 FR 26502, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995]

505.504 Use of advertising agencies.

The services of commercial advertising agencies may be used whenever it is determined that the services rendered by those agencies can increase competition for contracts and improve the effectiveness of GSA advertising and marketing programs.

PART 506—COMPETITION REQUIREMENTS

Subpart 506.2—Full and Open Competition after Exclusion of Sources

Sec.

506.202 Establishing or maintaining alternative sources.

Subpart 506.3—Other Than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.
506.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
506.303 Justifications.

506.303–1 Requirements.

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

SOURCE: 54 FR 26504, June 23, 1989, unless otherwise noted.

Subpart 506.2—Full and Open Competition After Exclusion of Sources

506.202 Establishing or maintaining alternative sources.

The heads of contracting activities (HCA's) sign determinations and findings under FAR 6.202.

Subpart 506.3—Other than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.

506.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

A class justification has been established for the acquisition of utility services (except electric utility services) that are available from only one source. A copy of the class justification may be obtained from the GSA Acquisition Policy Division (MVP). The contract file for each action taken under the justification must contain a signed statement by the contracting officer that the action taken is within the scope of the class justification and approval.

[55 FR 48847, Nov. 23, 1990, as amended at 61 FR 39088, July 26, 1996]

506.303 Justifications.

506.303–1 Requirements.

The contracting officer should determine whether the facts supporting other than full and open competition would be present in other GSA contracting activities. If the facts would be present, the contracting officer should recommend through appropriate channels that the Deputy Associate Administrator for Acquisition Policy approve a class justification for use by all GSA contracting activities.

[54 FR 26504, June 23, 1989, as amended at 61 FR 39088, July 26, 1996]

PART 507—ACQUISITION PLANNING

Subpart 507.1—Acquisition Plans

Sec.
507.101 Definitions.
507.102 Policy.
507.103 Agency head responsibilities.
507.104 General procedures.
507.105 Contents of written acquisition plans.

Subpart 507.3—Contractor Versus Government Performance

507.307 Appeals.

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

SOURCE: 54 FR 26504, June 23, 1989, unless otherwise noted.

Subpart 507.1—Acquisition Plans

507.101 Definitions.

Comprehensive acquisition plan means a plan which covers the acquisition process from identification of agency need through contract performance and administration.

Limited acquisition plan means a detailed plan which covers the acquisition process from receipt of a purchase request or advanced notice of the need by the contracting office through contract award.

507.102 Policy.

(a) All acquisitions exceeding the simplified acquisition threshold must have a limited acquisition plan unless a comprehensive acquisition plan is required under GSA Order, Comprehensive Acquisition Planning (APD 2800.13A). Priced options must be included when determining the dollar threshold. An acquisition plan must be prepared before exercise of unpriced and/or unevaluated options exceeding the simplified acquisition threshold.

(b) No solicitation may be issued until either a comprehensive acquisition plan or a limited acquisition plan has been prepared or the requirement waived under GSA Order APD 2800.13A or 507.104(d). A contract may not be entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to

the amount of funds available to the acquisition.

[55 FR 28631, July 12, 1990, as amended at 60 FR 42802, Aug. 17, 1995]

507.103 Agency head responsibilities.

The head of the contracting activity (HCA) shall ensure that, during the acquisition planning phase, requirements personnel consider the use of the metric system of measurement consistent with 15 U.S.C. 205 *et seq.* (See 48 CFR 511.002), GSA Order, GSA Metric Program (ADM 8000.1A) and GSA Metric Transition Plan. Use of the metric system must be coordinated with the contracting officer and be consistent with security, operational, economic, technical, logistical, training, and safety requirements.

[56 FR 2864, Jan. 25, 1991, as amended at 61 FR 6165, Feb. 16, 1996]

507.104 General procedures.

(a) Policies and procedures for comprehensive acquisition plans are in GSA Order, Comprehensive Acquisition Planning (APD 2800.13A).

(b) The contracting officer shall be responsible for preparing a limited acquisition plan. Limited plans must be reviewed and approved at least one level above the individual writing the plan unless the requirement is received in the last month of the fiscal year and award is anticipated during the same month. In those cases, the plan must be reviewed and approved at a level no lower than the contracting director. The head of the contracting activity (HCA) may require review and approval at a higher level.

(c) Limited plans must be in writing, unless waived under paragraph (d) of this section.

(d) The contracting director may waive the requirement for a written limited acquisition plan (1) for recurring annual acquisitions or (2) in cases of unusual or compelling urgency. The individual responsible for preparing the plan shall present (as a minimum) an oral plan to at least the next higher level for approval. The file must summarize the content of the oral plan and the name of the individual that approved it. In cases of unusual or compelling urgency, the summary must also indicate the nature of the urgency and may be prepared after award when preparation before award would unreasonably delay the acquisition. The summary may be included in the justification required by FAR 6.302–2(c).

(e) Acquisition plans for contracts which propose using other than full and open competition must be coordinated with and concurred in by the cognizant competition advocate unless the proposed contract will be awarded under the authority at FAR 6.302–5 or will be awarded under a class justification approved by the Associate Administrator for Acquisition Policy.

[54 FR 26504, June 23, 1989, as amended at 55 FR 28631, July 12, 1990; 60 FR 42802, Aug. 17, 1995; 61 FR 54955, Oct. 27, 1995]

507.105 Contents of written acquisition plans.

(a) The specific content of a plan will vary depending on the nature of the acquisition and the dollar value involved. HCA's may authorize:

(1) Development of standard plan outlines meeting the needs of individual programs;

(2) Substitution of automated plans which adequately address individual elements;

(3) Modification of the suggested information for limited acquisition plans by deleting inapplicable elements or adding new ones as needed.

(b) The outline in FAR 7.105 must be used as the basis for comprehensive acquisition plans required under GSA Order APD 2800.13A. If an element does not apply, it must be so annotated. Elements may be added to the outline as appropriate. It is suggested that a limited acquisition plan include the information cited below.

[54 FR 26504, June 23, 1989, as amended at 55 FR 28631, July 12, 1990]

Subpart 507.3—Contractor Versus Government Performance

507.307 Appeals.

Appeal procedures are in GSA Order, Implementation of the OMB Circular A–76 Productivity Improvement Program (ADM P. 5400.40).

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 508.3 [Reserved]

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

Sec.
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

508.705–70 Adding items to the Procurement List.
508.705–71 Workshop performance capability.
508.705–74 Compliance with orders.
508.706 Purchase exceptions.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.802 Policy.

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

SOURCE: 54 FR 26505, June 23, 1989, unless otherwise noted.

Subpart 508.3 [Reserved]

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

508.604 Ordering procedures.

508.604–70 Delinquent delivery orders.

(a) Contracting officers shall establish delivery schedules based on the lead time required by Federal Prison Industries (FPI). Modifications of orders to extend the delivery schedules for excusable or inexcusable delays will not provide for a price adjustment.

(b) Delinquent orders may indicate the need to request clearance to procure from other sources until FPI can make deliveries on time.

508.605 Clearances.

FPI clearance numbers must be cited in solicitations and subsequent award documents.

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

508.705–70 Adding items to the procurement list.

(a) When a central non-profit agency (CNA) expresses an interest in a particular commodity or service being added to the Procurement List, the contracting officer shall provide the CNA with the most recent solicitations issued for the supply or service involved and the price(s) at which the item was awarded.

(b) The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), if requested by the CNA, may assign the supply or service to the CNA for development by a workshop and will list the item in the Preliminary Evaluation Record. A copy of the record, updated monthly, is maintained by the Office of Enterprise Development (E).

(c) Before issuing a solicitation, contracting officers shall request from the CNA, the status of any item previously identified as one in which the Committee has expressed interest.

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity shall consult with E before rejecting such a request.

[54 FR 26505, June 23, 1989, as amended at 60 FR 54956, Oct. 27, 1995]

508.705–71 Workshop performance capability.

In addition to the annual requirement, the purchase document must include an estimated monthly requirement. The contracting officer may verify the workshop's ability to satisfy the Government's anticipated requirement by requesting a preaward survey. If it is determined that the Government's estimated monthly requirement exceeds the workshop's ability to perform, a purchase exception may be requested only for those quantities which cannot be provided in a timely manner by the workshop.

508.705–74 Compliance with orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. In cases of excusable delays, contract delivery schedules should be extended without obtaining consideration. However, when the delay is inexcusable, normal procedures should be followed in reviewing and adjusting contract prices if appropriate.

(b) If the CNA delays acting on a request for or refuses to grant a purchase exception, the matter should be referred to the contracting director for expeditious resolution of the problem with the Committee.

508.706 Purchase exceptions.

CNA purchase exception numbers must be cited in solicitations and subsequent award documents.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.802 Policy.

The Director of the Reproduction Services Division (CAR) is the central printing authority for GSA and serves as the liaison with the Joint Committee on Printing and the Public Printer on all matters related to printing.

PART 509—CONTRACTOR QUALIFICATIONS

Subpart 509.1—Responsible Prospective Contractors

Sec.
509.105 Procedures.
509.105–1 Obtaining information.
509.105–3 Disclosure of preaward information.
509.106 Preaward surveys.
509.106–2 Requests for preaward survey.

Subpart 509.2—Qualification Requirements

509.202 Policy.
509.204 Responsibility for establishment of a qualification requirement.
509.206 Acquisitions subject to qualification requirements.
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Subpart 509.5—Organizational Conflicts of Interest

509.503 Waiver.
509.507 Procedures.

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

SOURCE: 54 FR 26507, June 23, 1989, unless otherwise noted.

Subpart 509.1—Responsible Prospective Contractors

509.105 Procedures.

509.105–1 Obtaining information.

(a) In making a determination of responsibility, the contracting officer may use the GSA Form 527, Contractor's Qualifications and Financial Information, to obtain information regarding financial capability from a prospective contractor.

(b) Advice should be obtained from all appropriate activities, including legal counsel, quality control, credit and finance, in arriving at a determination that an offeror qualifies as responsible under the standards set forth in FAR 9.104.

(c) The ''auditor'' in FAR 9.105–1(b)(2)(ii) is the Assistant Inspector General for Audits in the Central Office or the Regional Inspector General for Audits in the regions except for the evaluation of a prospective contractor's financial competence and credit

needs, then it is the Chief, Credit and Finance Section, Region 6.

509.105–3 Disclosure of preaward information.

When an offer is rejected because of a determination by the contracting officer that the prospective contractor is not responsible, the contracting officer shall notify the prospective contractor by letter of the basis for the rejection. This will provide the offeror with the opportunity to cure the factors that lead to the nonresponsibility determination prior to the submission of offers in response to future solicitations.

509.106 Preaward surveys.

509.106–2 Requests for preaward survey.

The contracting officer or a designee requests a preaward survey by forwarding the Standard Form 1403, Preaward Survey of Prospective Contractor (General), accompanied by the appropriate subparts of the preaward survey (Standard Forms 1404 through 1408) to the surveying activities. The Federal Supply Service is authorized to use GSA Form 353, Performance Evaluation & Facilities Report, for preaward surveys instead of Standard Forms 1403 through 1406. The contracting officer shall complete Section I of the GSA Form 353 in accordance with instructions in 553.370–353–I.

[58 FR 64694, Dec. 9, 1993]

Subpart 509.2—Qualification Requirements

509.202 Policy.

(a) The Federal Supply Service Commodity Center Engineering Division Director shall prepare the written justification required by FAR 9.202(a)(1).

(b) The heads of contracting activities shall approve determinations under FAR 9.202(e) that a proposed procurement need not be delayed to comply with FAR 9.202(a).

509.204 Responsibility for establishment of a qualification requirement.

The Commodity Center Director shall make determinations under FAR 9.204(a)(2) that the Government should bear the cost of conducting specified testing and evaluation for a small business concern or a product manufactured by a small business concern.

509.206 Acquisitions subject to qualification requirements.

509.206–1 General.

The contracting director shall submit requests that a qualification requirement not be enforced in a particular acquisition to the Commodity Center Engineering Division Director under FAR 9.206–1(e)(3).

509.206–2 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 552.209–73, Product Removal from Qualified Products List, in solicitations and contracts, when qualified products are to be acquired. The clause supplements the clauses at FAR 52.209–1 and 52.209–2.

Subpart 509.3—First Article Testing and Approval

509.302 General.

When first article testing and approval is appropriate for a procurement pursuant to FAR Subpart 9.3, the general policy of the Federal Supply Service (FSS) is to require:

(a) The contractor to perform required testing, unless after coordinating with the technical specialist and Quality Assurance Division (FQA) in the Office of Quality and Contract Administration the contracting officer determines that Government testing is in the best interest of the Government;

(b) That the first article be produced at the same facility where production quantities will be produced; and

(c) That the first article serve as the manufacturing standard.

509.303 Use.

The contracting officer shall coordinate all determinations to require first article testing and approval with the technical specialist and FQA. At the time of coordination, the contracting officer should obtain the following information from the technical specialist and FQA:

(a) The test requirements for inclusion in the solicitation as outlined in FAR 9.306 (a) and (b).

(b) Advice on whether the contractor or the Government should perform required testing.

(c) The information necessary to complete the fill-in requirements of FAR clauses 52.209–3 First Article Approval—Contractor Testing [and alternates], and 52.209–4 First Article Approval—Government Testing [and alternates].

509.306 Solicitation requirements.

The contracting officer shall insert the provision at 552.209–74, Waiver of First Article Testing and Approval Requirement, in solicitations that require first article testing and approval. Any determinations to waive first article testing under FAR 9.306(c) must be approved before award by the technical specialist and the Quality Assurance Division (FQA). The first article tests to be performed by the contractor or the Government must be set forth in the solicitation.

509.308 Contract clauses.

509.308–1 Testing performed by the contractor.

In accordance with FAR 9.308–1, the FSS contracting officers shall use the clause at FAR 52.209–3 with its Alternate I and the supplemental clause at 552.209–75, Supplemental Requirements for First Article Approval—Contractor Testing.

509.308–2 Testing performed by the Government.

In accordance with FAR 9.308–2, FSS contracting officers shall use the clause at FAR 52.209–4 with its Alternate I and the supplemental clause at 552.209–76, Supplemental Requirements for First Article Approval—Government Testing.

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.401 Applicability.

This subpart applies to acquisitions of personal property, nonpersonal services (including construction), space in buildings, transportation services (FPMR Subpart 101–40.4), contracts for disposal of personal property (FPMR Subpart 101–45.6), and to covered transactions as defined at GSPMR 105–68.110(a).

509.403 Definitions.

Debarring official and *suspending official* mean the Associate Administrator for Acquisition Policy or a designee.

Fact-finding official means the Chairman of the Debarment and Suspension Board within the GSA Board of Contract Appeals 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.

509.405–1 Continuation of current contracts.

(a) Termination of current contracts should be considered under the circumstances set forth in (a) (1) and (2) of this section.

(1) When the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract, termination for default under the contract's ''Default'' clause is appropriate.

(2) If the contractor presents a significant risk to the Government in completing a current contract, the contracting officer shall determine whether termination for convenience or cancellation under appropriate contract provisions is in the Government's best interest. In making this determination, the contracting officer shall consult with counsel and should consider the following factors:

(i) Seriousness of the cause for debarment or suspension;

(ii) Extent of contract performance;

(iii) Potential costs of termination and reprocurement;

(iv) Urgency of the requirement and the impact of the delay of reprocurement;

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

(b) The debarring or suspending official shall make determinations under FAR 9.405–1(b).

(c) The contracting officer should consult with legal counsel regarding the availability of remedies under FAR Subparts 3.2 and 3.7.

509.405–2 Restrictions on subcontracting.

The debarring or suspending official shall make determinations under FAR 9.405–2.

509.406 Debarment.

509.406–1 General.

The debarring official shall make determinations under FAR 9.406–1(c).

509.406–3 Procedures.

(a) *Investigation and referral.* (1) Any element of GSA, acting as a contracting activity, that becomes aware of circumstances which may serve as the basis for a debarment shall refer the matter to the debarring official for consideration. Circumstances that involve possible criminal or fraudulent activities must first be reported to the Office of the Inspector General (OIG) in accordance with GSPMR 105.735–216, Reporting Suspected Irregularities. If appropriate, the Inspector General will refer the matter to the debarring official.

(2) At a minimum, referrals for consideration of debarment action should include:

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes, and DUNS Number);

(v) GSA's acquisition history with the contractor, including recent experience under contracts and copies of the pertinent contracts;

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

(vii) A statement regarding the impact of the debarment action on GSA programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.* (1) Upon receipt of a referral, the debarring official will decide whether to initiate debarment action, after coordinating the matter with assigned legal counsel.

(2) Contracting activities will be notified of proposed debarments.

(3) Where a determination is made not to initiate action, notice will be given to the agency official who made the referral.

(4) If a response to the notice of proposed debarment is not received by the debarring official within 30 calendar days of a party's receipt of the notice, the debarment becomes final.

(5) If the party desires to present information and arguments in person to the debarring official, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. The oral presentation will be informally conducted and a transcript need not be made. The party may supplement the oral presentation with written information and arguments.

(6) Upon request, the affected party will be furnished a copy of the administrative record which formed the basis for the decision to propose debarment. If there is a reason to withhold from the party any portion of the record, the party will be notified that a portion of the record is being withheld and will be informed of the reasons for the withholding.

(7) In actions not based on a conviction or judgment, the party may request a fact-finding hearing to resolve a genuine dispute of material fact. The party shall identify the material facts in dispute and the basis for disputing

the facts. If the debarring official determines that there is a genuine dispute of material fact, the debarring official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the debarring official's request. Extensions may be granted for good cause upon the request of the party or the agency.

(8) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute material facts relating to the proposed debarment through the submission of oral and written evidence;

(ii) Resolve facts in dispute and provide the debarring official with written findings of fact based on a preponderance of evidence; and

(iii) Provide the debarring official with a determination as to whether a cause for debarment exists, based on facts as found.

(9) Hearings will be conducted by the fact-finding official in accordance with rules consistent with FAR 9.406–3(b)(2) promulgated by that official.

(10) The fact-finding official will notify the affected parties of the schedule for the hearing. The fact-finding official shall deliver written findings of fact to the debarring official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes.

[54 FR 26507, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991; 58 FR 26920, May 6, 1993]

509.407 Suspension.

509.407–1 General.

The suspending official shall make determinations under FAR 9.407–1(d).

509.407–3 Procedures.

(a) *Investigation and referral.* The procedures in 509.406–3(a) apply to referrals for suspension.

(b) *Decisionmaking process.* (1) Upon receipt of a referral, the suspending official will decide whether to suspend, after coordinating the matter with assigned legal counsel.

(2) In cases not based on an indictment, the suspending official must, through OIG, coordinate with the Department of Justice, or state prosecutorial authority. On the basis of advice received, the suspending official shall determine whether substantial interests of the Federal or a state government would be impaired in fact-finding.

(3) A response to a suspension notice must be received by the suspending official within 30 calendar days of receipt by the parties to be considered.

(4) When requested, an oral presentation before the suspending official will be conducted as outlined in 509.406–3(b)(5).

(5) Upon request, a copy of the administrative record will be furnished to the affected party under the guidelines set forth at 509.406–3(b)(6).

(6) Fact-finding hearings will not be conducted in actions based on indictments, or in cases in which the suspending official determines pursuant to FAR 9.407–3(b)(2) not to refer a matter to the fact-finding official. A party may request a fact-finding hearing to resolve genuine disputes of material fact in other cases. The party shall identify the material facts in dispute and the basis for disputing the facts. If the suspending official determines that there is a genuine dispute of material fact, the suspending official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the suspending official's request. Extensions may be requested by the party or the agency.

(7) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute facts relating to the suspension action through the submission of oral and written evidence;

(ii) Determine whether, in light of the evidence presented, there is adequate evidence to suspect that the material allegations in the notice are true; and

(iii) Provide the suspending official with a determination as to whether the evidence is adequate to support a cause for suspension. Hearings will be conducted as outlined in 509.406–3(b)(9).

[54 FR 26507, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989; 58 FR 26920, May 6, 1993; 58 FR 29254, May 19, 1993]

Subpart 509.5—Organizational Conflicts of Interest

509.503 Waiver.

The Associate Administrator for Acquisition Policy approves requests to waive the general rules or procedures of FAR Subpart 9.5.

509.507 Procedures.

If a potential contractor disagrees with the contracting officer's resolution of a potential organizational conflict of interest (see FAR 9.507(b)(4)), the matter must be referred to the Associate Administrator for Acquisition Policy for a determination.

PART 510—MARKET RESEARCH [RESERVED]

PART 511—DESCRIBING AGENCY NEEDS

Sec.
511.001 Definitions.
511.002 Policy.

Subpart 511.1—Selecting and Developing Requirements Documents

511.103 Market acceptance.
511.170 Use of brand name or equal product descriptions.

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

Subpart 511.4—Delivery or Performance Schedules

511.401 General.
511.404 Contract clauses.

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

SOURCE: 54 FR 26511, June 23, 1989, unless otherwise noted.

511.001 Definitions.

Dual systems mean the use of both inch-pound and metric systems. For example, an item is designed, produced, and described in inch-pound values with soft metric values also shown for information or comparison purposes.

Hybrid systems mean the use of both inch-pound and hard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

Metric system means the International System of Units established by the General Conference of Weights and Measures in 1960. The units are listed in Federal Standard 376A, ''Preferred Metric Units for General Use by the Federal Government.''

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

Specification Manager means an official of the Federal Supply Service office responsible for Federal or Interim Federal Specifications (or the program office for other than Federal specifications) and for reviewing requests for a deviation from a specification.

[56 FR 2864, Jan. 25, 1991. Redesignated at 61 FR 6165, Feb. 16, 1996]

511.002 Policy.

Consistent with the policy expressed in FAR 11.002(b) and GSA Order ADM 8000.1A, solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. If metric is not the accepted industry system, the head of Central Office Services responsible for nationwide programs shall ensure that policies promoting and encouraging the use of soft metric, hybrid, or dual systems are developed, except when to do so would be detrimental to the program mission. Whenever possible, commercially developed metric specifications and internationally or domestically developed voluntary standards using metric measurements must be adopted. While an industry is in transition to metric, solicitations must include specifications and purchase descriptions stated in soft metric, hybrid, or dual systems, except when impractical or inefficient.

[56 FR 33721, July 23, 1991. Redesignated and amended at 61 FR 6165, Feb. 16, 1996]

Subpart 511.1—Selecting and Developing Requirements Documents

SOURCE: 61 FR 6165, Feb. 16, 1996, unless otherwise noted.

511.103 Market acceptance.

The contracting officer may require offerors to meet market acceptance criteria in accordance with FAR 11.103 when such criteria determined necessary to satisfy the agency's needs.

511.170 Use of brand name or equal product descriptions.

(a) *Policy*. When a ''brand name or equal'' purchase description is used the purchase description should—

(1) Cite all brand name products known to be acceptable and of current manufacture;

(2) Specify each physical or functional characteristic essential to the intended use of the product including permissible tolerances;

(3) Avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition; and

(4) Give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(b) *Solicitation provisions.* The solicitation—

(1) May require bid samples for ''or equal'' offers, but not for ''brand name'' offers.

(2) Must provide for full consideration and evaluation of ''or equal'' offers against the salient characteristics specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(3) Must include the following immediately after the item description—

Offering on:

Manufacturer's Name _____

Brand _____

Model or Part No. _____

(4) Should include the following notice, unless bid samples are required for ''or equal'' offers, in the item listing after each brand name or equal item (or component part) or at the bottom of each page listing several items:

OFFERORS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN MUST PROVIDE ADEQUATE INFORMATION TO ENSURE THAT A DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED.

(c) *Contract clause.* The contracting officer shall include a clause substantially the same as the clause at 48 CFR 552.211–70, Brand Name or Equal, when a brand name or equal purchase description is used. When component parts or an end item are described by brand name or equal descriptions and application of the clause to some or all of the components is impracticable, either do not use the clause or limit its application to specified components.

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 552.211–71, Standard References, in solicitations and contracts for construction services when the contract amount is expected to exceed the simplified acquisition threshold and when:

(b) The contracting officer shall insert the clause at 48 CFR 552.211–72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal specifications which contain drawings.

(c) The contracting officer shall include the clause at 48 CFR 552.211–73, Marking, in requirements solicitations and contracts for supplies when deliveries may be made to civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold. The clause may be used in definite quantity contracts when it is appropriate.

(d) The contracting officers shall insert the clause at 48 CFR 552.211–74, Charges for Marking, in solicitations

and contracts that include the clause at 48 CFR 552.211–73 or a similar clause.

(e) The contracting officer shall include the clause at 48 CFR 552.211–75, Preservation, Packaging and Packing, in solicitations and contracts for supplies when the contract amount is expected to exceed the simplified acquisition limitation. The contracting officer may include the clause in contracts awarded through simplified acquisition procedures when appropriate.

(f) The contracting officer shall insert a clause substantially the same as the clause at 48 CFR 552.211–76, Charges for Packaging and Packing, in solicitations and contracts for supplies that are to be delivered to GSA distribution centers.

(g) The contracting officer shall include the clause at 48 CFR 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases made using simplified acquisition procedures.

[54 FR 26510, June 23, 1989, as amended at 60 FR 42802, Aug. 17, 1995. Redesignated and amended at 61 FR 6165, Feb. 16, 1996; 61 FR 10846, Mar. 15, 1996]

Subpart 511.4—Delivery or Performance Schedules

SOURCE: 54 FR 26512, June 23, 1989, unless otherwise noted. Redesignated at 61 FR 6166, Feb. 16, 1996.

511.401 General.

(a) Normally, time of delivery in solicitations and contracts, except multiple award schedules, will be stated as ''required'' time of delivery (or shipment), expressed in specific periods from receipt by the contractor of a notice of award (or receipt of a delivery order). In multiple award schedule solicitations delivery times will usually be stated as ''desired'' and offerors will indicate a definite number of days for delivery.

(b) The contracting officer must be satisfied that the requisitioning office has justified, in writing, an unusually short time of delivery. This is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of justifications are:

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

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

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

(c) When a portion of the total delivery is needed early, the contracting officer should:

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

(2) Determine whether the portion required early and the balance should be included as separate items in the same solicitation or whether the two portions should be procured separately.

(d) When a solicitation contains a mixture of items that require different times for delivery, the delivery periods should be set forth separately and items with similar delivery time requirements should be grouped according to delivery times in the solicitation.

(e) In negotiations for multiple award schedules, 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 delivery times which are substantially shorter. The former should be negotiated to bring them in line with the latter. Variable delivery time offers (e.g., 30–90 days) should be negotiated to keep the timespan to a minimum. If the span applies to several items or several quantity breaks for one item, the items or item quantity breaks should be segregated into smaller groups which can be assigned more specific delivery times.

[54 FR 26512, June 23, 1989. Redesignated at 61 FR 6166, Feb. 16, 1996]

511.404 Contract clauses.

(a) *Supply contracts.* The contracting officer shall insert the clause at:

(1) 48 CFR 552.211–1, Time of Delivery, in solicitations and single award schedule contracts for supplies. If it is necessary to show different delivery times for different items or groups of items, use Alternate I.

(2) 48 CFR 552.211–78, Commercial Delivery Schedule (Multiple Award

Schedule), in solicitations issued and contracts awarded under the multiple award schedule program.

(3) 48 CFR 552.211–79, Acceptable Age of Supplies, or 48 CFR 552.211–80, Age on Delivery, in solicitations and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See 101–27.206–2 of the Federal Property Management Regulation.) The Acceptable Age of Supplies clause at 48 CFR 552.211–79 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, Alternate I to 48 CFR 552.211–79 must be substituted for the basic clause when required by the director of the FSS commodity center concerned. The Age on Delivery clause at 48 CFR 552.211–80 should be used when the required shelf life period is more than 12 months, or when source inspection can be performed within a short time period.

(4) 48 CFR 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 48 CFR 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, use Alternate I.

(5) 48 CFR 552.211–82, Notice of Shipment, in solicitation and contracts for supplies when it is in the Government's interest to have the contractor furnish a notice of shipment.

(6) 48 CFR 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 timeframes cannot be determined in advance. If the contract is for stock items, use Alternate I.

(b) *Construction contracts.* The contracting officer shall insert the clause at 48 CFR 552.211–84, Non-compliance with Contract Requirements, in solicitations and contracts for construction when the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26512, June 23, 1989, as amended at 60 FR 42803, Aug. 17, 1995. Redesignated and amended at 61 FR 6166, Feb. 16, 1996; 61 FR 14033, Mar. 29, 1996]

PART 512—ACQUISITION OF COMMERCIAL ITEMS

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

Sec.

512.203 Procedures for solicitation, evaluation, and award.
512.209 Pricing of commercial items when contracting by negotiation.

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.

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

SOURCE: 54 FR 26512, June 23, 1989, unless otherwise noted.

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

SOURCE: 61 FR 6166, Feb. 16, 1996, unless otherwise noted.

512.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies in FAR Part 12 and 48 CFR Part 512 in conjunction with the policies and procedures for Federal Supply Schedules in FAR Part 38 and 48 CFR Part 538.

512.209 Pricing of commercial items when contracting by negotiation.

When awarding multiple award schedule contracts for commercial items, the policies and procedures in FAR Part 15 and 48 CFR Part 515 shall be used to establish the reasonableness of prices.

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

SOURCE: 61 FR 6166, Feb. 16, 1996, unless otherwise noted.

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

(a) *Solicitation provisions/clauses.* The contracting officer shall insert the following provisions or clauses in solicitations for the acquisition of commercial items in accordance with the prescriptions provided:

(1) The provision at 48 CFR 552.212–70, Preparation of Offer (Multiple Award Schedule), in solicitations issued under the multiple award schedule program.

(2) The clause at 48 CFR 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items when listed clauses apply and are incorporated by reference. The clause provides for the incorporation by reference of terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practice. The contracting officer may tailor this clause.

(3) The clause at 48 CFR 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 and are incorporated by reference. The clause provides for the incorporation by reference of terms and conditions which are required to implement provisions of law or executive orders applicable to acquisitions of commercial items.

(4) The provision at 48 CFR 552.212–73, Evaluation—Commercial Items (Multiple Award Schedule), shall be used instead of FAR 52.212–2 in solicitations issued under the multiple award schedule program.

(b) *Use of required GSAR provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the GSAR (48 CFR Chapter 5), when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(c) *Discretionary use of GSAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other GSAR provisions and clauses when their use is consistent with the limitations contained in FAR 12.302(c).

(d) *Use of additional provisions and clauses.* Provisions or clauses that are not prescribed in the FAR or GSAR for use in contracts for commercial items may not be used unless approved by the Senior Procurement Executive (see 48 CFR 502.101) or determined to be consistent with customary commercial practice through market research.

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

Requests for waivers shall be prepared in accordance with FAR 12.302(c) and submitted for approval by the chief of the contracting office (see 48 CFR 502.101) if an individual contract is involved or by the contracting director (see 48 CFR 502.101) if a class of contracts is involved.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 513.1—General

Sec.
513.106 Solicitation competition, evaluation of quotes, and award.
513.106–70 Unusual and compelling urgency procurements.

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements.
513.203–1 General.

Subpart 513.3—Fast Payment Procedure

513.301 General.

Subpart 513.4—Imprest Fund

513.403 Agency responsibilities.
513.404 Conditions for use.
513.405 Procedures.

Subpart 513.5—Purchase Orders

513.505 Purchase order and related forms.
513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
513.505–70 Two-party contract forms.

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

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

SOURCE: 54 FR 26512, June 23, 1989, unless otherwise noted.

Subpart 513.1—General

513.106 Solicitation competition, evaluation of quotes, and award.

(a) *Oral solicitation.* When quotations are being solicited orally and the Service Contract Act applies information on the Act and the applicable wage determination must be communicated to potential contractors.

(b) *Data to support simplified acquisitions.* (1) The GSA Form 2010, Small Purchase Tabulation Source List/Abstract, is available for use to document written and oral quotations for purchases in excess of $2,500.

(2) When quotes or offers are being evaluated based on price alone and other than the lowest quotation is selected for award, the basis for rejecting any lower quotation should be documented.

[60 FR 42803, Aug. 17, 1995]

513.106–70 Unusual and compelling urgency procurements.

When a procurement is of unusual and compelling urgency, competition may be solicited by having prospective sources visit the site together, orally informing them of the exact requirements, and requesting them to prepare quotations while written specifications are being prepared for inclusion in the contract. Unusual and compelling urgency, as used in this subsection, includes situations which, if not corrected immediately, will result in unnecessary expenditure of funds, property damage, personal injury, or interruption of agency functions.

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements.

513.203–1 General.

(a) *Document preparation.* Blanket purchase agreements (BPA's) must be prepared on a purchase order form or on a GSA Form 3521, Blanket Purchase Agreement.

(b) *Terms and conditions.* Each blanket purchase agreement should, when appropriate, specify the geographic area to be served under the BPA.

(c) *Placing orders under the BPA.* Only the contracting officer (CO) or officials authorized by a CO and designated in the BPA are authorized to place orders under the BPA. The GSA Form 2877, Non-Depot Item Requisition / Order / Receiving / Payment Record, is authorized for use by the Federal Supply

Service in placing orders against BPA's for customer supply center items that are not available from Government supply depots. Before placing orders against the BPA, each requirement must be screened for availability from mandatory sources of supply. Necessary controls must be maintained by the person placing orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA number and purchase number should be specified each time an order is placed.

(d) *Delivery or service tickets.* Each delivery ticket, in addition to the requirements of FAR 13.203–1(j)(6), must contain the name of the person placing the order. The delivery ticket must be signed and dated by the individual receiving the items or services. The supplier and the receiving office must retain a copy of the delivery ticket.

(e) *Invoicing.* If a supplier will not accept one of the invoicing statements outlined in FAR 13.203–1(j)(7), the contracting officer is authorized to deviate from FAR 13.203(j)(7) in order to permit the submission and payment of invoices for each delivery under the BPA. Before authorizing submission and payment of invoices for individual deliveries, the contracting officer must make every effort to get the supplier to accept one of the FAR invoicing statements. The BPA file must document the contracting officer's efforts and the supplier's refusal to accept the FAR invoicing statements.

(f) *Processing invoices.* Invoices must be time-stamped by the designated billing office to indicate the date of receipt. Invoices received by ordering offices must be forwarded to the appropriate Finance Division for payment within 5 workdays of receipt of the invoice or acceptance of the supplies or services, whichever is later, unless the BPA provides for the accumulation of invoices as outlined in FAR 13.203–1(j)(7)(iii). If the BPA provides for accumulation of invoices by the ordering office for a specified period, the ordering office must forward the accumulated invoices to the appropriate Finance Division for payment within 5 workdays after the specified period for accumulation. All invoices should be marked to indicate that purchases were made under a BPA.

Subpart 513.3—Fast Payment Procedure

513.301 General.

The fast payment procedure is not authorized for use by GSA contracting activities.

Subpart 513.4—Imprest Fund

513.403 Agency responsibilities.

Imprest fund cashiers must be designated and will function in accordance with HB, Accounting Users Guide—Imprest Fund and Travelers Checks (COM P 4268.1) and FAR Subpart 13.4.

513.404 Conditions for use.

The per transaction limitation for cash payments made through imprest funds is $500 ($600 for emergency disbursements by imprest fund cashiers in Alaska).

513.405 Procedures.

The SF 1164, Claim for Reimbursement for Expenditures on Official Business, or SF 1165, Receipt for Cash—Subvoucher, will serve as the authorized purchase requisition for purchases made by offices maintaining their own imprest funds, e.g., Public Buildings Service Field Offices. Purchase requisitions such as the GSA Form 49, Requisition/Procurement Request for Equipment, Supplies or Services, may be used if required by contracting activity directives. If the GSA Form 49 is used, it must be endorsed ''Payment to be made from imprest fund.''

Subpart 513.5—Purchase Orders

513.505 Purchase order and related forms.

513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Unless another form is prescribed, the GSA Form 300 or 300–1 (pin-feed format), Order for Supplies and Services, must be used instead of the OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and

Reporting (NEAR) System. The forms may also be used to make other purchases when a specific form is not prescribed or as a delivery order to place orders under established contracts. The GSA Form 300 must be prepared and processed in accordance with the instructions at 553.370–300–I. GSA Form 300A or 300–A(1) (pin-feed format), order for Supplies or Services (continuation), is available for use with GSA Form 300 or 300–1.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, must be used instead of the OF 347 when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

(c) The GSA Form 3186, Order for Supplies or Services, GSA Form 3186A, Order for Supplies or Services, or GSA Form 3186B, Order for Supplies or Services (EDI), must be used instead of the OF 347, Order for Supplies or Services, when making simplified acquisitions or placing delivery orders against established contracts through the FSS–19 system. The GSA Form 3186 must be used when generating orders against established contracts that will be mailed to contractors. The GSA Form 3186A must be used when orders, utilizing simplified acquisition procedures, will be mailed to the contractors. The GSA Form 3186B must be generated and placed in the file to document delivery orders and purchase orders transmitted to contractors electronically using Electronic Data Interchange (EDI) procedures. The GSA Form 3186C, Purchase Order Notice, or electronic equivalent, simultaneously will be generated by FSS–19 to provide summary data from the order to the consignee and the freight forwarder (if designated).

(d) GSA Form 8002, Motor Vehicle Delivery Order, is used to order fleet management vehicles. This form is not intended for use as a purchase order for simplified acquisitions and does not include provisions and clauses on the reverse.

[54 FR 26512, June 23, 1989, as amended at 57 FR 7555, Mar. 3, 1992; 60 FR 42803, Aug. 17, 1995]

513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) *General.* Use of the Standard Form 44 will not serve the best interest of either the Government or business when the accounting system of the seller requires production of an invoice as a matter of routine. In these cases, other authorized methods of making simplified acquisitions should be used. Whenever possible, preference should be given to the use of Governmentwide commercial purchase card.

(b) *Issuance of books from stock.* SF 44 books will be issued to contracting directors or their designees. Contracting directors are responsible for the custody and issuance of books to the users.

[54 FR 26502, June 23, 1989, as amended at 60 FR 42803, Aug. 17, 1995]

513.505–70 Two-party contract forms.

When a determination is made that it is in the Government's interest to negotiate a two-party contract (see FAR 13.104(f)) for services, Standard Form 1447, Solicitation Contract, may be used.

[60 FR 42803, Aug. 17, 1995]

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless authorized in the contract.

(b) Such purchases must comply with FAR Part 13 and Part 513, subject to the following:

(1) The amount of any one purchase is $2,000 or less for construction services and $2,500 or less for supplies or service other than construction.

(2) A purchase order is not required by either the supplier or the Government.

(3) The supplier does not accept the Government commercial purchase card

or the individual making the purchase does not have a purchase card.

(4) Appropriate invoices can be obtained from the supplier.

(c) For special rules governing purchases of hand and measuring tools and stainless steel flatware see 525.105–70 and 525.105–71.

(d) Use of the certified invoice procedure does not eliminate the requirements to:

(1) Verifying price reasonableness in accordance with the conditions contained in FAR 13.603.

(2) Certify that the quality and quantity of items/services furnished are in accordance with the verbal agreement made with the vendor;

(e) Quotations may be solicited by authorized personnel without contracting officer warrants. Placement of any orders must be approved in advance by a contracting officer. The approval shall be in writing unless geographic distances make it impracticable to obtain a written approval on the GSA Form 2010 or other documentation. In those cases telephonic approval may be obtained and a notation of the approval recorded.

(f) Contracting officers using this purchasing technique shall require the suppliers to immediately submit properly prepared invoices which itemize property or services furnished.

(g) Upon receiving the invoice, the receiving office shall time-stamp the invoice to indicate the date the invoice is received, verify the accuracy of the invoiced amount, and verify that the supplies and/or services have been received and accepted. The contracting officer or a designated representative shall obtain a certification of receipt and acceptance from the individual that actually inspected and accepted the supplies and/or services before certifying the invoice and forwarding to the appropriate Finance Division for payment. Supplies and/or services should be inspected and accepted or rejected within 7 calendar days of delivery/completion. The invoice must be forwarded to the appropriate Finance Division for payment within 5 workdays after receipt of the invoice or acceptance of the supplies and/or services, whichever is later. Before forwarding the invoice to Finance, the contracting officer shall stamp it with the Certified Invoice Stamp, complete the accounting information, type of business (corporation, sole proprietorship/partnership, or other), and certification, and affix the ACT number label. If a Certified Invoice Stamp is not available, place the following statement on the invoice along with the ACT number label, accounting information and the type of business. (Note: In some organizations, the ACT number label is affixed 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 _____

[54 FR 26512, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991; 57 FR 26609, June 15, 1992; 60 FR 42803, Aug. 17, 1995]

PART 514—SEALED BIDDING

Subpart 514.2—Solicitation of Bids

Sec.

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Subpart 514.4—Opening of bids and Award of Contract

514.401 Receipt and safeguarding of bids.
514.402 Opening of bids.
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514.408–72 Forms for recommending award(s) (Supplies and services).
514.409 Information to bidders.
514.409–1 Award of unclassified contracts.
514.409–70 Restriction on disclosure of inspection or test data.
514.471 Multiple bidding.

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

SOURCE: 54 FR 26514, June 23, 1989, unless otherwise noted.

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitations for bids.

See 514.270 for information on specifying a minimum bid acceptance period.

514.201–1 Uniform contract format.

All solicitations must include the following notice:

The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been 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.

Solicitations that include the Standard Form 33, Solicitation, Offer and Award, should include the following cautionary notice:

Offerors are reminded that block 13 of the Standard Form 33, Solicitation, Offer and Award, is to be used to offer prompt payment discounts. Payment terms are set forth in the Prompt Payment clause of this solicitation. Offerors are cautioned against inserting any statement in block 13 which indicates that payment is due sooner than the time stipulated in the Prompt Payment clause.

EXAMPLE: Inserting ''NET 20'' in block 13 will cause the offer to be rejected as nonresponsive because the entry would be contrary to the 30 day payment terms specified in the Prompt Payment clause.

514.201–6 Solicitation provisions.

(a) The contracting officer shall insert the provision at 552.214–73, ''All or None'' Offers, in solicitations when all or none offers are considered. Alternate I should be used in requirements or indefinite quantity contracts.This provision must not be included in solicitations when the Government requires the bidder to submit bids on all items and will make only one award.

(b) The contracting officer may include the notice at 552.214–74, Solicitation Copies, in solicitations when it is necessary to reduce costs of printing solicitations.

514.201–7 Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.214–75, Progressive Awards and Monthly Quantity Allocations, in solicitations for stock replenishment contracts when it is determined that individual contractors may be unable to furnish the Government's monthly requirements and that it will be expedient to make progressive awards.

(b) The contracting officer shall insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts that (1) involve the use or disposition of Government-furnished property, (2) provide for advance payments, progress payments based on

cost, or guaranteed loans, (3) contain a price warranty or price reduction clause, (4) contain an economic price adjustment clause, (5) are requirements, indefinite quantity or letter type contracts as defined in FAR Part 16, or (6) contain the provision at FAR 52.223–4, Recovered Materials Certification. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government furnished property). Legal Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

514.201–70 GSA forms.

The GSA Form 1602, Notice Concerning Solicitation, may be used to:

(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 and services; and

(d) Include other special notices as appropriate.

[61 FR 6167, Feb. 16, 1996]

514.201–71 Request for brand name information limitation.

When an item is described in a solicitation by a formal specification or a detailed purchase description (other than a brand name or equal purchase description), the solicitation may not require or request that bidders specify the brand names of the products offered. However, brand name information may be requested when—

(a) Descriptive literature for items is requested in accordance with FAR 14.202–5.

(b) First article testing is required.

(c) The procurement is for qualified products.

514.202 General rules for solicitation of bids.

514.202–4 Bid samples.

(a) *Solicitation requirements.* (1) When a determination is made to require bidders to submit bid samples, the solicitation must include a provision incorporating the provision at FAR 52.214–20 and containing the information in FAR 14.202–4(e) and must require:

(i) Samples be from the production of the manufacturer whose products will be furnished under the resultant contract; and

(ii) Bidders use GSA Form 434, Sample Record Sheet, copies of which will be furnished with each solicitation.

(2) If a determination is made that bidders will be permitted to reapply samples furnished under a previous solicitation, FAR 52.214–20, Alternate II, shall be used.

(3) In addition to subjective characteristics of bid samples, objective characteristics may be used when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is necessary to determine the responsiveness of the bid. When both types of characteristics are listed in the solicitation, they must be listed separately under the headings ''Subjective Characteristics'' and ''Objective Characteristics.''

(4) Because of variations in circumstances and differences in commodities, no standard provision can be prescribed for use in all solicitations. The provision at 552.214–76, Bid Sample Requirements, is provided as an example and may be used in solicitations as shown or modified to fit the circumstances of the procurement.

(b) *Handling and disposition of samples.* (1)(i) Samples held during the period of contract performance may be disposed of after deliveries are completed and Government acceptance has occurred, in accordance with the instructions indicated on GSA Form 434.

(ii) If the contracting officer anticipates that there may be a future claim regarding a contract, the bid samples must be retained until the claim is resolved.

(2) All other bid samples should be held until awards are made and then disposed of in accordance with instructions indicated on GSA Form 434.

514.202–7 Facsimile bids.

Contracting officers may authorize facsimile bids (see FAR 14.201–6(w))

after considering factors outlined in FAR 14.202–7, provided that facsimile equipment is available in the office designated to receive bids, and procedures and controls have been established for receiving and safeguarding incoming bids.

[55 FR 20458, May 17, 1990]

514.203 Methods of soliciting bids.

514.203–1 Transmittal to prospective bidders.

(a) Prospective bidders, as used in FAR 14.203–1, include the incumbent contractor (except when its written response to the contracting activity's notice of contract action under FAR subpart 5.2 states a negative interest) and should include bidders that responded to recent solicitations for the same or similar items. Names should be checked against the bidders' mailing list and added if not already listed.

(b) Contracting officers shall ensure that all amendments to solicitations and related notices are furnished promptly to every addressee previously furnished a solicitation.

[54 FR 26514, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991; 60 FR 42803, Aug. 17, 1995]

514.204 Records of invitations for bids and records of bids.

The contracting officer shall obtain from the Business Service Center (BSC) and include in the file the names and addresses of firms to whom the BSC furnished solicitations. Contracting officers shall furnish these firms with applicable amendments or supply the BSC with amendments for distribution.

514.205 Solicitation mailing lists.

514.205–1 Establishment of lists.

(a) Contracting officers within the Federal Supply Service (FSS) should use the computerized central solicitation mailing list maintained by Region 7 for supplies and services for all procurements expected to exceed the simplified acquisition threshold. Other GSA contracting activities may maintain local lists. Contracting activities that maintain local mailing lists must inform the BSC of the list and provide related information regarding the list.

(b) Inquiries from or for business firms requesting inclusion on solicitation mailing lists should be referred to the BSC serving the geographic areas in which the firms are located. The BSC will assist firms to be included on the proper GSA mailing lists and will provide application forms and related information.

[54 FR 26514, June 23, 1989, as amended at 60 FR 42803, Aug. 17, 1995]

514.211 Release of acquisition information.

Before award, access to information concerning the Government cost estimate is limited to Government personnel whose official duties require knowledge of the estimate. After award, the total amount of the Government estimate may be revealed, upon request. The basis for calculating the estimate may not be released at any time.

514.213 Annual submission of representations and certifications.

The Commissioners of the Federal Supply Service, Information Resources Management Service, and the Public Buildings Service may establish procedures for contracting activities in their respective organizations and assign responsibility within contracting activities for centrally requesting, receiving, storing, verifying and updating offerors' annual submissions.

[55 FR 20458, May 17, 1990]

514.270 Bid acceptance period.

(a) The 60-day period stipulated in the parenthetical statement in Item 12 of the Standard Form 33, Solicitation, Offer and Award, is neither a ''standard'' nor a request to bidders to allow such period.

(b) The contracting officer may specify a different minimum bid acceptance period and/or permit a bidder to insert a number of calendar days after bid opening, during which its bid is valid.

(c) When specifying a minimum bid acceptance period, the contracting officer shall:

(1) Insert in solicitations the provision at 552.214–16, Minimum Bid Acceptance Period, instead of the provision at FAR 52.214–16, and

(2) Mark Item 12 of SF 33 as follows to preclude a bidder from inadvertently rendering its bid nonresponsive by inserting a figure less than that stipulated by the Government in 552.214–16(c).

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214.16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within *N/A** calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated points(s), within the time specified in the schedule. **See* Provision 552.214–16.

514.271 Aggregate awards.

514.271–1 General.

(a) *Definition.* ''Aggregate award'' means an arrangement, stipulated by the Government in the solicitation, whereby two or more separately-priced line items are combined for award to that bidder whose offer will result in the lowest overall cost to the Government for all of the line items within the group, without regard to whether the prices offered by the bidder are low on each item within the group. (See also the definition of a ''line item'' in FAR 3.302.)

(b) *Justification for use.* (1) While ordinarily prices are solicited on an individual line item basis, it sometimes may be in the Government's best interest to combine two or more line items for an aggregate award such as when—

(i) Uniformity of design, style, and finish is desired, as in the acquisition of suites of household furniture;

(ii) The articles being acquired will be assembled and used as a unit, and may not be interchangeable if acquired from different manufacturers;

(iii) The demand for certain articles is large, but the demand for other similar articles is not sufficient to attract competitive bids unless awarded in conjunction with the high-demand articles (e.g., various sizes of socket wrenches);

(iv) One location (delivery point) has a large requirement, and another location has a requirement that is too small to individually attract competitive bids; or

(v) It is impractical to award and administer numerous small contracts for similar articles or services.

(2) Before deciding to combine items for aggregate award, the contracting officer shall include in the contract file the rationale for establishing an aggregate award formula, which must:

(i) Address the capability of bidders to furnish the types and quantities of supplies or services in the aggregate as well as the impact on bidders if different delivery points are grouped; and

(ii) Be capable of accurately projecting the lowest overall cost to the Government.

(3) Line items may not be grouped for award on an aggregate basis when it would:

(i) Preclude a significant number of firms from bidding due to an inability to provide all the types or quantities of supplies or services or to make deliveries to the various delivery points included in the prospective aggregate group; or

(ii) Increase overall prices to the Government by restricting significantly the number of eligible bidders for any other reason (see also 514.271–3).

(4) To determine the lowest cost on an aggregate group of items, it is necessary to extend unit prices by accurate weight factors calculated to reflect the true or proportionate quantities that will be purchased under a resultant contract (see 514.271–2). If weight factors must be based upon unreliable or conjectural information, or where reliable estimates on anticipated quantities are not available, the price list method described in 514.272 should be considered.

(5) If accurate weight factors and preestablished list prices are not available, an aggregate award formula should not be used because it could result in unbalanced bids and/or award could not be assured to result in the lowest overall cost to the Government.

(c) *Evaluation factors for award.* When items will be awarded on an aggregate basis, the solicitation must clearly state the basis on which bids will be evaluated.

(1) If weight factors are used, bidders shall be required to submit a price on

each item within the group with award to be made to the responsive and responsible bidder whose computed overall price for the aggregate group of items is actually the lowest or can accurately be projected to result in the lowest overall cost to the Government. Failure to submit a price on each item within a group will make the bid ineligible for award with regard to that group of items.

(2) If the price method is used, bidders shall be required to express prices as a percentage to be added to or subtracted from the list price for each group of items with award to be made to the responsive and responsible bidder whose percentage factor produces the most favorable price to the Government.

514.271–2 Weighting of items for aggregate award.

(a) Unless the same weight factor is applicable to all line items in the aggregate group, accurate weight factors are essential for determining which bid would result in the lowest overall cost to the Government for the aggregate group.

(b) While the phrase ''lowest overall cost to the Government'' is used in this regulation, it is not always necessary that an aggregate award formula be capable of projecting actual cost. It is sufficient if the relative proportionate cost between line items within the aggregate group can be projected accurately, i.e., actual quantities may not be available, but ratios of the requirements within the line items in the aggregate group are available.

(c) Estimated quantities that apply to indefinite quantity or requirements contracts may be reduced to smaller numbers by a common denominator to facilitate the computations involved in evaluating bids, if doing so does not sacrifice precision.

(d) Actual purchase quantities will be used as weight factors for definite quantity acquisitions because a bidder might include two or more aggregate groups, or an aggregate group and various individual line items, under an ''all or none'' qualification. Proportionate weight factors must not be used in the evaluation process where ''all or none'' qualifications are permitted.

(e) Weight factors may not be based on the estimated dollar value of purchases. If the dollar value of previous purchases is the only information available, and there is no recourse but to make award on an aggregate basis, the value of previous purchases must be converted to quantities for the purpose of establishing weight factors (i.e., divide total purchases of each item by the unit price to determine number of units purchased).

514.271–3 Grouping of line items for aggregate award.

(a) *General.* While paragraphs (b) and (c) pertain to supply contracts (articles and delivery points), the same principles apply to service contracts (types of services and service areas).

(b) *Grouping of different articles.* Only related articles, normally manufactured or produced by a majority of prospective bidders, should be included in an aggregate group. The grouping of unrelated articles usually is contrary to 514.271–1(b)(3).

(c) *Grouping of geographic locations or delivery point.* The contracting officer should consider the following guidelines before deciding to group different geographic locations or delivery points for aggregate award:

(1) If different delivery points have sufficient requirements so that individual shipments to each point will involve not only economic production runs, but carload or truckload quantities, these points should be listed as separate line items.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) responding to previous solicitations are an important consideration. For example, if previous bidders are distributors having franchises within certain territories, the grouping of different territories would tend to restrict competition.

(3) The impact of transportation costs on competition and pricing, since transportation costs may constitute a significant portion of the total delivered cost. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce

competition and/or result in higher prices due to the loss of ''area pricing'' advantages when a potential supplier has a single production point.

(ii) Conversely, for many smaller commercial items (hand tools, locks, etc.) manufacturers may quote the same price for delivery anywhere in the U.S.

(iii) Contracting officers should obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points, to include information regarding the location of tariff boundaries.

514.272 Price list method.

(a) *General.* The price list method may be used to avoid unbalanced bidding in requirements and indefinite quantity/indefinite delivery contracts when aggregate awards will be made and accurate estimates of anticipated quantities are unavailable. This method utilizes pre-established list prices for acquiring groups of similar items, services, or repairs and alterations. The following elements of the price list method must be included in the solicitation:

(1) A pre-established price list.

(2) An estimate of requirements, if available.

(3) A requirement that a bidder express its price as ''net'' or as a percentage added to or subtracted from the list prices for each group.

(4) The percentage factor in (a)(3) of this section is a price related factor, which must be identified in Section M of the Uniform Contract Format.

(b) *Development of pre-established list prices.* (1) Pre-established list prices may be developed by one or more of the following methods:

(i) Industry published prices.

(ii) Industry surveys.

(iii) Government cost estimates based upon knowledge of the supplies or services to be grouped and previous contract prices.

(2) When proposed list prices will be used for the first time, prospective bidders should be given an opportunity to review the proposed list and furnished information on how the list prices will be used. Copies of the draft solicitation may be provided.

(3) The contracting officer must ensure that items are properly grouped and that the list prices for the grouped items bear a reasonable and balanced relationship to one another. Before using prices resulting from awards made under the weighted item method to develop price lists, those prices must be reviewed to ensure that they did not result from unbalanced bidding.

514.272–1 Supply contracts.

(a) Estimated requirements for each item in a group or for the entire group must be shown in the solicitation. For contracts for store stock items, estimated quantities should be shown only if estimates of demand for each item within a group can be derived from Government records (or verified contractor sales reports). All the estimates must be current. 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).)

(b) The bidding schedule must clearly state that bidders must quote only one percentage factor for each group, which must be expressed as either ''net'' or as a deduction from or an addition to the listed prices.

(c) The following illustrates a bidding schedule arrangement for a group of items for aggregate award under the price list method:

Drills, Twist, High Speed, under Federal Specification (dated _____) and Amendment _____ (dated _____), Wire gauge sizes, straight shank, shortlength, Type C:

Item No.	National stock No.	Drill size	Est. quantity	Unit	List price
Group 1 (Items 1 through 5)					
1	5133–00–189–9246	1	2,800	Package	$11.16
2	5133–00–189–9247	2	2,400	Package	11.16
3	5133–00–189–9248	3	2,800	Package	10.44
4	5133–00–189–9249	4	1,600	Package	10.80
5	5133–00–189–9250	5	2,000	Package	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.)

514.272–2 Repair and alteration contracts.

(a) The solicitation shall:

(1) Contain a statement indicating the percentage of work anticipated to be performed during normal working hours;

(2) Define ''normal'' in terms of hours and days of the week; and

(3) List the quantities, if available, and unit prices for work performed during both normal working hours and outside of normal working hours.

(b) *Instructions, conditions, and notices to bidders.* (1)(i) Bidders should be advised of the previous year's total expenditures or portions of that total attributable to the listed items.

(ii) When estimates are provided, the solicitation must state that the quantity estimates are furnished for information only and are not to be construed as guarantees or commitments to order items under the contract.

(2) Bidders shall be instructed to quote two or more percentage factors to be applied as specified in (b)(2) (i) and (ii), of this section. The percentage factor(s) must be expressed as ''net,'' or as an addition to or subtraction from the applicable unit prices.

(i) For the line item unit prices listed in the solicitation, two percentage factors must be solicited: one to be applied to the unit prices for the percentage of work performed during normal working hours and the second to be applied to the unit prices for the percentage of work performed outside of normal working hours.

(ii) When unit prices are further grouped by trade or business category, multiple percentages may be required.

(c) *Evaluation factors for award.* (1) When two percentage factors are solicited under (b)(2)(ii) of this section, the evaluated bid price is the sum of the percentage of work performed—

(i) During normal work hours multiplied by the Government's total estimate adjusted by the bidder's percentage factor for that portion of the work, and

(ii) During other than normal working hours multiplied by the Government's total estimate adjusted by the bidder's percentage factor for that portion of the work.

(2) Award must be made to the responsible and responsive bidder submitting the lowest evaluated bid price.

(3) When additional evaluation factors such as options are used, they must be identified in the solicitation.

Subpart 514.3—Submission of Bids

514.301 Responsiveness of bids.

514.303 Modification or withdrawal of bids.

(a) When a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances in FAR 14.303, the identity of the telegraph office employee telephoning the message should be obtained and recorded in the solicitation file.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person should be worded as follows:

I certify as 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 hereby acknowledge receipt of the unopened bid.

_____

(Name and telephone no.)

_____

(Date)

514.304 Late bids, late modifications of bids, or late withdrawal of bids.

514.304–1 General.

Upon receipt of a late bid, the bid custodian should record it on the duplicate copy of the list of bidders and immediately notify the responsible contracting officer that the bid has been received. The contracting officer will arrange for the bid to be picked up or delivered.

514.370 Copies of bids required in submission.

Bids must be submitted in an original and at least one copy. The original will be used by the contracting activity for the tabulation of bids. The copy will be retained by the BSC for public information until the bid abstract is

available to replace it. Supplemental financial forms or other information submitted with a bid, must be retained by the contracting activity and must not be retained by the BSC for public information. These requirements do not apply to bids transmitted and received through an electronic commerce method authorized by the solicitation.

[54 FR 26514, June 23, 1989, as amended at 60 FR 42803, Aug. 17, 1995]

Subpart 514.4—Opening of Bids and Award of Contract

514.401 Receipt and safeguarding of bids.

(a) Except as otherwise provided in paragraph (c), bids and modifications must be received and safeguarded by the appropriate BSC until the time specified for opening. Bids received should be handled as follows:

(1) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid should be immediately time-stamped or indicated thereon the place, date, and time of receipt by authorized personnel. Then the bid(s) should be delivered by special handling to the bid custodian in the Business Service Center.

(2) Mailed bids and modifications delivered to the bid custodian before bid opening time should be recorded on the bidder's list on the same day they are delivered and then placed in a suitable locked cabinet.

(3) Hand-carried bids delivered before bid opening time should be deposited in the locked bid box. In the event a hand-carried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other GSA employee, it should be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian should remove and time stamp the bids, record them and place them with any other bids previously received.

(4) Telegraphic or facsimile bid, if authorized, and modifications must be sealed in envelopes immediately upon receipt, appropriately identified, and handled in the same manner as bids submitted by mail.

(5) For each invitation, the bid custodian will prepare a list indicating the invitation number and listing on the GSA Form 1378, Record of, and Receipt for, Bids and Responses, or the appropriate bid abstract form, the name and address of all responses, including any bid modification, received before bid opening time. When a bid previously recorded on this list is withdrawn, the list will so indicate.

(b) At the scheduled bid opening time, the bid custodian will deliver all bids received in response to the invitation, together with the original and one copy of the GSA Form 1378, Record of, and Receipt for, Bids and Responses, or other appropriate bid list to the authorized bid opening official or designee, who will acknowledge receipt of the bids by signing the duplicate copy of the form and returning it to the bid custodian. The original list becomes part of the contract file.

(c) Business Service Center Directors may designate an individual(s) working at a PBS Facility Support Center or Enhanced Field Office as a bid custodian, provided: (1) Adequate space and facilities are available within the Facility Support Center or Enhanced Field Office, (2) the individual(s) has been trained and (3) the Facility Support Center or Enhanced Field Office has a Small Business Technical Advisor. If such designations are made, the designated bid custodian must submit monthly reports to the BSC Director for forwarding to the Office of Small and Disadvantaged Business Utilization (AU).

514.402 Opening of bids.

514.402–1 Unclassified bids.

(a) Public bid openings will be held in the BSC when the BSC is the bid custodian. When the bid opening will be held elsewhere, the contracting officer shall inform the BSC serving the geographic area in which the contracting office is located of the invitation number and the location where the public bid opening will be held.

(b) The assistant bid opening officer shall be a qualified employee of the contracting office. Upon authorization

by the HCA and the Associate Administrator for Enterprise Development in Central Office or the Director of the Business Service Center in the region, bids may be opened by selected BSC personnel. Normally, this authorization will be requested only when the geographic distance separating the BSC where bids are to be delivered and the contracting office makes it impracticable for the bid opening officer or designee to be present to open bids. (See FAR 14.402–1(b).)

(c) Bid openings are open to business representatives, members of the press, and the general public.

(d) To ensure that bids will be opened at the exact time specified, the bid opening official will verify the accuracy of the timepiece to be used.

(e) For the information of those bidders present, approximately one-minute prior notice of bid opening will be announced audibly by the bid opening official.

(f)(1) The bid opening official shall take precaution to ensure that the exact time of opening has arrived and shall announce this fact audibly, citing the invitation or invitations scheduled for opening. The opening of bids will then proceed in full view of the parties present.

(2) For construction contracts that provide for bid alternates, the amount of funds available for the award will be announced before opening bids.

(g) In reading bids, the following information from each bid should be announced when considered practicable and feasible: The bidder's name, item and unit price bid, and other pertinent information, such as delivery and discount terms. A copy of each bid submitted in multiple copies should remain in the bid opening room until the bid abstract is substituted. For bids submitted in an original only see FAR 14.402–1(c).

(h) No alterations or notations to any bid after it has been formally opened will be permitted.

(i) Negotiable instruments submitted as bid guarantees to meet solicitation requirements must be forwarded by the bid opening official to the Finance Division in accordance with procedures established by the Chief Financial Officer. When award is made, the solicitation is cancelled, or all bids are rejected, the contracting officer shall direct the Finance Division to refund the amount of the bid guarantee to the unsuccessful bidder(s). Bid guarantees may be returned before award when a bidder requests the guarantee be returned and the bidder is not in contention for the award. Other forms of bid guarantees (e.g., bid bonds, letters of credit, corporate and individual sureties, etc.), must be retained by the contracting officer and included in the contract file.

(j) A record, including at least the names of persons attending the bid opening and the firms or organizations they represent, should be made a part of the solicitation file.

(k) When multiple copies of bids are received, the bid opening official shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in FAR 14.406 concerning mistakes in bids.

(l) Envelopes in which bids and bid modifications are received should be retained in a temporary file until after all awards have been made. At that time, those which bear notations concerning abnormal receipt or opening for identification should be made a part of the solicitation file and the remainder may be destroyed.

[54 FR 26514, June 23, 1989, as amended at 58 FR 52443, Oct. 8, 1993; 60 FR 42803, Aug. 17, 1995]

514.403 Recording of bids.

(a) A copy of the abstract of bids and any amendments must be furnished to the appropriate BSC as soon as practicable and be available for public examination for at least 30 calendar days. Late bids determined eligible for consideration must be included on the bid abstract form. If eligibility is established after delivery of the original tabulation, the bids are recorded separately and identified as an amendment to the original tabulation.

(b) Abstracts involving aggregate awards must record unit prices, weight factors and aggregate totals for each aggregate group in addition to any

other information required for bid evaluation.

(c) For building services, the GSA Form 3471, Abstract of Offers, is authorized for use by contracting activities in the Public Buildings Service (PBS) instead of the Standard Form 1409, Abstract of Offers.

514.404 Rejection of bids.

514.404–1 Cancellation of invitations after opening.

(a) *Cancellation of invitations.* The HCA or a designee makes any determinations required by FAR 14.404–1.

(b) *Extension of time for bid acceptance.* Requests for time extensions may be made using GSA Form 2981 and must specify a period reasonable under the circumstances.

[54 FR 26514, June 23, 1989, as amended at 58 FR 52443, Oct. 8, 1993]

514.404–2 Rejection of individual bids.

(a) Individual bids rejected on the basis of responsiveness, responsibility, or eligibility and bids rejected because the bid after evaluation is no longer low shall be documented as provided in FAR 14.404–2(k) and noted in the ''Remarks'' block on GSA Form 1535, Recommendation for Award(s). Examples of bids which may no longer be low after evaluation include aggregate bids (see 514.271), ''all or none'' bids (see 552.214–73), and bids evaluated using Buy American differentials (see FAR 25.105 and 525.105–70).

(b) Explanations which involve cases of a sensitive or controversial nature must be accompanied by all supporting documentation to justify awards, such as copies of the offer to be rejected and the proposed awardee, statements from (or record of conversation with) the requisitioning activity, plant facilities and/or financial responsibility reports, and other relevant correspondence or reports (Certificates of Competency, copies of Congressional correspondence or other high level interest, etc.).

[54 FR 26514, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991]

514.405 Minor informalities or irregularities in bids.

Failure to submit all of the pages of the solicitation is a minor informality or irregularity under FAR 14.405 when the bid as submitted indicates that the bidder takes no exception to the requirements of the solicitation and intends to be bound by all its terms in any resultant contract.

514.407 Mistakes in bids.

514.407–3 Other mistakes disclosed before award.

(a) *Delegations of authority by head of the agency.* In accordance with FAR 14.407–3(e), the contracting directors (see 502.101) are authorized, without power of redelegation, to make the determinations regarding corrections and/or withdrawals treated in FAR 14.407–3(a), (b), and (c), and to make the corollary determinations not to permit withdrawal or correction for reasons indicated in FAR 14.407–3(d).

(b) *Legal review and approval.* Assigned counsel must approve determinations by the contracting director and contracting officer regarding mistakes in bid.

[60 FR 42804, Aug. 17, 1995]

514.407–4 Mistakes after award.

Determinations by the contracting officer must be prepared in the format at 514.406–3(b) and reviewed and approved by the Contracting Director and assigned counsel.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42804, Aug. 17, 1995]

514.407–7 Documentation of award.

Documentation included in the contract file must include the number of firms solicited and the GSA Form 1535, Recommendation for Award(s), or similar document (see also 514.404–2).

514.408 Award.

514.408–1 General.

(a) Oral notices of award shall not be used.

(b) In addition to the requirements in FAR 14.408–1(c)(5), notice of award must identify the solicitation, the item(s) awarded, the contract number, and the effective date of the award.

(c) If partial award is made to a bidder and additional items are being withheld for possible subsequent award to the same bidder, any subsequent

award during the bid acceptance period must be made using SF–30, Amendment of Solicitation/Modification of Contract (except see 519.503–4(b) regarding partial set-asides). The authority cited in paragraph 13D of SF–30 for the subsequent award will be FAR 14.408–1(c)(4).

[54 FR 26514, June 23, 1989. Redesignated and amended at 60 FR 42803, Aug. 17, 1995; 60 FR 44387, Aug. 25, 1995; 60 FR 54957, Oct. 27, 1995]

514.408–6 Equal low bids.

In resolving a tie-bid situation, the status of the bidders (small/large/labor surplus area) on the date the bid was signed is controlling.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.408–70 Preaward inquiries.

(a) Responses to preaward inquiries should be limited to a statement that the award decision is pending and agency policy prohibits release of additional information.

(b) Actions or discussions that may create false impressions in the eyes of prospective contractors about pending awards must be avoided.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.408–71 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of the higher authority to act on that case must be avoided. This includes partial awards to the same bidder under the same solicitation.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.408–72 Forms for recommending award(s) (Supplies and services).

GSA Form 1535, Recommendation for Award(s), and GSA Form 1535–A, Recommendation for Award(s), Continuation Sheet, must be used to document all proposed awards (except construction contracts) exceeding the simplified acquisition threshold. The use of the form for awards at or below the simplified acquisition threshold is at the discretion of the contracting activity. One or more awards may be set forth on each form. All information pertinent to the recommendation must be furnished on the form. The checklist on the back of the form must be completed.

[60 FR 42803, Aug. 17, 1995]

514.409 Information to bidders.

514.409–1 Award of unclassified contracts.

The GSA Form 3577, Notification of Contract Award, may be used to notify all unsuccessful bidders other than(a)a-any apparent low bidder(s) or(b) unsuccessful bidders from designated countries for acquisitions subject to the Trade Agreements Act.

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.409–70 Restriction on disclosure of inspection or test data.

Before award, no inspection or test data, whether prepared by the Government or an outside inspection or testing agency, shall be disclosed to anyone other than Government officials requiring access to such information in connection with bid evaluation. For requests received after award, see FAR 14.408–1(e).

[54 FR 26514, June 23, 1989. Redesignated at 60 FR 42803, Aug. 17, 1995]

514.471 Multiple bidding.

(a) All bids received from a person, firm, or its affiliates must be considered for award if responsive and otherwise acceptable.

(b) Any bid offering two or more products for the same item received from the same bidder may be accepted if it is the lowest received and meets all requirements of the solicitation.

PART 515—CONTRACTING BY NEGOTIATION

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

SOURCE: 54 FR 26521, June 23, 1989, unless otherwise noted.

Subpart 515.1—General Requirements for Negotiation

515.106 Contract clauses.

515.106–70 Examination of records by GSA clause.

(a) The contracting officer shall insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts (other than multiple award schedule contracts), including acquisitions of leasehold interests in real property that:

(1) Involve the use and 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 that are under the control of the contractor,

(5) Include an economic price adjustment clause,

(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, or

(8) Contain the provision at FAR 52,223–4, Recovered Material Certification. The contracting officer may modify the clause 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.

(b) The contracting officer shall insert the clause at 552.215–71, Examination of Records by GSA (Multiple Award Schedule), in solicitations and multiple award schedule contracts. With the Senior Procurement Executive's approval, the contracting officer may modify the clause to also 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. Such a modification of the clause shall provide for the right of access to expire 2 years after award or modification. Before modifying the clause, the contracting officer shall 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. Such determinations must be made on a schedule-by-schedule basis.

[62 FR 44521, Aug. 21, 1997, as amended at 63 FR 18844, Apr. 16, 1998]

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

515.402 General.

Contracting officers may authorize facsimile proposals (see FAR 15.407(j)) after considering the factors outlined in FAR 15.402(i), provided that facsimile equipment is available in the office designated to receive proposals, procedures and controls have been established for receiving and safeguarding incoming proposals.

[58 FR 52443, Oct. 8, 1993]

515.405 Solicitations for information or planning purposes.

515.405–1 General.

Solicitations for information or planning purposes must be approved by the Chief of the Contracting Office (See 502.101).

[58 FR 52443, Oct. 8, 1993]

515.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

515.406–1 Uniform contract format.

(a) Leases of real property are exempted from the requirement for use of the uniform contract format.

(b) All solicitations and contracts must include the two notices in paragraphs (b)(1) and (2), except solicitations for leases and leases of real property must include only the notice in paragraph (b)(1):

(1) ''The information collection requirements contained in this solicitation/contract that are not required by regulation have been 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.''

[54 FR 26521, June 23, 1989, as amended at 57 FR 61584, Dec. 28, 1992; 63 FR 19194, Apr. 17, 1998]

515.408 Issuing solicitations.

Potential sources, as used in FAR 15.403 and 15.408, include the incumbent contractor (except when its written response to the contracting activity's notice of contract action under FAR subpart 5.2 states a negative interest) and should include offerors that responded to recent solicitations for the same or similar items.

[56 FR 47005, Sept. 17, 1991]

515.411 Receipt of proposals and quotations.

(a) Solicitations should provide for proposals and modifications to proposals to be submitted to the appropriate contracting office unless arrangements have been made with the local Business Service Center (BSC) for receipt and safeguarding of proposals by the BSC.

(b) Classified proposals and quotations must be handled under FAR 15.411, GSAR subpart 504.4, and the requirements of GSA Order, Freedom of Information Act procedures (ADM 1035.11B).

[54 FR 26521, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991]

515.411–70 Recording of offers.

The GSA and/or Standard Forms prescribed for abstracting bids in sealed bidding may be used to abstract proposals or quotations submitted in connection with competitively negotiated procurements where more than one

offer is received in response to the solicitation. (See FAR 4.803(a)(10).) The forms may be appropriately modified to include all of the information necessary for evaluation. Abstracts must not be provided to the Business Service Center or disclosed except as provided in 515.1070. See FAR 15.411, 15.413 and 15.1001 regarding disclosure of information.

515.414 Forms.

If partial award is made to an offeror and additional items are being withheld for possible subsequent award to the same offeror, any subsequent award must be made using SF–30, Amendment of Solicitation/Modification of Contract (except see FAR 15.1002 regarding notification to the successful offeror and GSAR 519.502–3(b) regarding partial set-asides). The authority cited in paragraph 13D of SF–30 for subsequent awards will be GSAR 515.414.

[55 FR 48847, Nov. 23, 1990]

515.414–70 GSA forms.

The GSA Form 1602, Notice Concerning Solicitation, may be used as prescribed in 48 CFR 514.201–70.

[61 FR 6167, Feb. 16, 1996]

Subpart 515.5—Unsolicited Proposals

515.501 Definitions.

Coordinating office, as used in this subpart, means the (a) Office of GSA Acquisition Policy, (b) Office of Acquisition, FSS, (c) Office of Information Technology Acquisition, ITS, (d) Office of the Acquisition Executive, PBS, or the office designated in writing by the regional administrator in the regions. The Office of GSA Acquisition Policy serves as the coordinating office for Central Office activities outside of FSS, ITS, and PBS.

[60 FR 54956, Oct. 27, 1995]

515.504 Advance guidance.

Potential offerors should be encouraged to make preliminary contacts with coordinating offices before submitting a detailed unsolicited proposal or proprietary data.

515.506 Agency procedures.

Coordinating offices shall serve as contact points and establish procedures for controlling the receipt, evaluation, and timely disposition of proposals consistent with FAR 15.5.

515.506–2 Evaluation.

The evaluation must be completed as soon as practicable (normally within 45 calendar days). The results of the evaluation should be communicated to the submitter with a copy to the coordinating office.

Subpart 515.6—Source Selection

515.608 Proposal evaluation.

515.608–70 Rejection of all proposals.

HCA may reject all proposals received in response to a solicitation under FAR 15.608(b). This authority may be redelegated. Written documentation citing the reasons for rejecting proposals must be included in the contract file.

515.608–71 Discounts for prompt payment.

The policy of not considering discounts in the evaluation of offers applies where there is direct competition between two or more offerors for a single award. It does not apply to procurements where the evaluation process involves a comparison of the offeror's price to the Government with the offeror's price to its other customers. Accordingly, the policy in FAR 14.407–3 does not apply to multiple award schedule solicitations except in those instances where offers are received on identical products. The clause at 552.232–8, Discounts for Prompt Payment, specifies the extent to which discounts for prompt payment will be considered in the evaluation for multiple award schedules. The formula for computing the annualized rate of return addressed in the clause at 552.232–8 is as follows:

$$\text{Discount (\%)} \times \frac{\text{Number of days in a year}}{\text{Total days to due date for payment* } - \text{Days to discount due date}} = \text{Rate of return}$$

*To determine the total number of days to the due date for payment, start with the date of the invoice and allow 3 days from the date of the invoice to receipt by the Government and assume that the invoice will be received after the supplies have been delivered and accepted by the Government. Normally, the contract will provide for payment in 30 days and the total number of days to the due date for payment will be 33 days.

515.612 Formal source selection.

After the source selection, the releasing authority under FAR 15.612(e)(1) shall be the Contracting Officer. The contracting officer shall obtain the advice and concurrence of assigned legal counsel before releasing proprietary or source selection information outside the agency.

[55 FR 39974, Oct. 1, 1990]

Subpart 515.8—Price Negotiation

515.803 General.

(a) Access to Government cost estimates is limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent necessary to arrive at a fair and reasonable price. After award, the total amount of the independent Government estimate may be revealed, upon written request, to those firms or individuals who submitted proposals.

(b) Whenever a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable as outlined in FAR 15.803(d) the contracting officer shall refer the matter to the contracting director for resolution.

[55 FR 48848, Nov. 23, 1990]

515.804 Cost or pricing data and information other than cost or pricing data.

515.804–2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the threshold at FAR 15.804–2 for requesting certified cost and pricing data, the value of the contract plus any priced options must be considered. Exercise of a priced option is not considered a price adjustment and does not require submission of cost and pricing data.

515.804–3 [Reserved]

515.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Contracting officers should use Alternate IV of the FAR provision at 52.215–41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, to provide the format for submission of information other than cost or pricing data for multiple award schedule (MAS) contracts. To provide for uniformity in requests under the MAS program, contracting officers 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 Table 515–1 of the GSA Acquisition Regulation; 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) Contracting officers shall insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation (see FAR 12.303).

COMMERCIAL SALES PRACTICES FORMAT

Name of Offeror _____ SIN(S) _____

NOTE: Please refer to clause 552.212–70, 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 begining 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. 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 552.212–70).

(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 Table 515–1 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. See definition of ''concession'' and ''discount'' in 552.212–70.

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 Table 515–1 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:

(a) Manufacturer's Name
(b) Manufacturer's Part Number
(c) Dealer's/Reseller's Part Number
(d) Product Description
(e) Manufacturer's List Price
(f) Dealer's/Reseller's percentage discount from List Price or net prices

(End of format)

(c) The contracting officer should include the instructions for completing the commercial sales practices format in Table 515–1 in solicitations issued under the multiple award schedule program.

TABLE 515–1—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 Reduction clause at 552.238–76. 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 for 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 Practice 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.

(d) The contracting officer shall insert the clause at 48 CFR 552.215–72, Price Adjustment—Failure to Provide Accurate Information, in solicitations and contracts to be awarded under the multiple award schedule program.

(e) The contracting officer should use Alternate IV of the FAR clause at 52.215–42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost and pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, the contracting officer 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.

[62 FR 44522, Aug. 21, 1997]

515.805 Proposal analysis.

515.805–5 Field pricing support.

(a) ''Field pricing support'' is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When applying the threshold at FAR 15.805–5 for requesting field pricing support, the value of the proposal (including any priced options) must be used.

Subpart 515.9—Profit

515.902 Policy.

(a) *Structured approach for determining profit fee objectives.* The contracting officer's analysis of these profit factors is based on information available to the Government before negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. The

structured approach also provides a basis for documentation of a profit objective, including an explanation of any significant departure from this objective in reaching a final agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach.* (1) Under exempted procurements, other methods for establishing profit objectives may be used. Generally, such methods will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of profit objective). However, factors within the structured approach considered inapplicable to the procurement may be excluded from the profit objectives. 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; and

(vi) Architect-engineer and construction contracts.

(2) Other exemptions may be made in the negotiation of contracts having unusual pricing situations where the structured approach is determined to be unsuitable. Such exemptions must be justified in writing and approved by the HCA.

515.905 Profit-analysis factors.

(a) The following factors must be considered whenever profit is to be negotiated. The weight ranges listed after each factor should be used when the structured approach is used.

Profit factors	Weight ranges in percent
Contractor Effort	
Material acquisition	1 to 4.
Conversion direct labor	4 to 12.
Conversion related indirect cost.	3 to 8.
	Other costs 1 to 3.
	General management 4 to 8.
Other Factors:	
Contract cost risk	0 to 7.
Capital investment	−2 to +2.
Cost-control and other past accomplishments.	−2 to +2.
Federal socio economic programs.	−.5 to +.5.
Special situations and independent development.	−2 to +2.

(b) GSA Form 1766, Structured Approach Profit/Fee Objective, may be use to facilitate the profit objective computation. The contracting officer shall measure the Contractor Effort by the assignment of a profit percentage within the designated weight ranges to each element of cost recognized.

(c) If the facilities capital cost of money is allowed as an item of cost, either as a part of the contracting officer's 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, the contracting officer shall reduce the profit/fee objective as follows. After the contracting officer has developed a dollar profit/fee amount for the requirement (e.g., the sum of the ''contract effort'' and ''other factors'' dollar profit/fee amounts on the GSA Form 1766, Structured Approach Profit/Fee Objective), the contracting officer shall subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder, after subtraction of the facilities capital cost of money amount, is the profit/fee objective.

[54 FR 26521, June 23, 1989, as amended at 55 FR 48848, Nov. 23, 1990]

515.905–1 Common factors.

(a) *Contractor Effort* encompasses broad and basic categories but shall not include facilities capital cost of money. Individual proposals may be in a different format.

(b) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars for the categories under other factors. This is done by multiplying the total Government cost objective, exclusive of any cost of money for facilities capital, by the specific weights assigned to the elements within the Other Factors category.

(c) In determining the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as prescribed in FAR 15.905–1 and the following:

(1) *General management.* Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may cause more problems and require more managerial time and abilities of a higher order than one that is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward, as many of the problems should have been solved. An evaluation should be made of 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). Analysis of these costs in assigning profit weights must include (i) their significance, (ii) their nature, and (iii) how much they contribute to contract performance.

(3) *Contract-cost-risk.* Where the proper contract type has been selected, the reward for risk by contract type would usually fall into the following ranges:

Cost-reimbursement type contracts	0–3%
Fixed-price type contracts	3–7%

(i) A cost-plus-a-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads. In such cases, up to 1 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The weight range for fixed-price contracts is wide enough to accommodate the many types of fixed-price arrangements. Weighting should indicate the cost risk assumed, with only firm fixed-price contracts reaching the top end of the range.

(ii) 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. This should be a part of the contracting officer's overall evaluation in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor and the risk evaluation may, as a result, be below the range that would otherwise apply for the contract type being proposed. The risk evaluation should not be lowered, however, merely because a substantial portion of the contract cost represents subcontracts without any substantial transfer of contractor's risk.

(iii) In evaluating risk in the definitization of letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements, the effect on risk as a result of partial performance before definitization should be considered. Under some circumstances the total risk may have been effectively reduced. Under other circumstances, the contractor's risk may have remained substantially unchanged. To be equitable, the determination of a profit weight for all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances, not just to the portion of costs incurred or percentage of work completed before definitization.

(iv) Service contracts should have a weight range for cost risk of 0 to 4 percent. A firm fixed-price contract, which is not priced on a labor-hour method, may warrant additional consideration for contractor cost risk. In those circumstances, a weight of up to 4 percent is authorized. Conversely, a cost-plus-a-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investment.* The evaluation of this factor for profit weights should include the following:

(i) *Facilities.* To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities use needed for contract performance, the source of financing of the facilities, and the overall cost effectiveness of the facilities offered.

Contractors who furnish their own facilities that significantly contribute to lower total contract costs, should receive additional profit. Contractors who rely on the Government to provide or finance facilities should receive less profit. Situations between the above examples should be evaluated on their merits with either a positive or negative profit weight adjustment, as appropriate, being made. However, when a contractor who owns a large quantity of facilities is to perform a contract that does not benefit from these facilities, or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(ii) *Payments.* The frequency of payments by the Government to the contractor should be considered. The key to this weighting is the impact the contract will have on the contractor's cash flow. Generally, for payments more frequent than monthly, negative consideration should be given, with maximum reduction as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for payments less frequent than the contractor's or the industry's normal practice.

(5) *Cost control and other past accomplishments.* See FAR 15.905–1(e).

(6) *Federal socio economic programs.* See FAR 15.905–1(c).

(7) *Special situations and independent development.* See FAR 15.905–1(f).

[54 FR 26521, June 23, 1989, as amended at 55 FR 48848, Nov. 23, 1990]

515.905–70 Nonprofit organizations.

(a) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, the structured approach as modified below, should also be used to establish fee objectives for nonprofit organizations. (See FAR 31.701.) The modifications should not be applied as deductions to historical fee levels, but rather, as a reduction in the fee objective calculated under the structured approach.

(b) For contracts with nonprofit organizations, an adjustment of up to 3 percent will be subtracted from the total profit-fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(1) tax position benefits;

(2) granting of financing through letters of credit;

(3) facility requirements of the nonprofit organization; and

(4) other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

Subpart 515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.1070 Release of information concerning unsuccessful offerors.

(a) GSA Order, GSA Freedom of Information Act (FOIA) procedures (ADM 1035.11B), should be consulted to determine what information may be disclosed.

(b) When simplified acquisition procedures are used, the names and dollar amounts of unsuccessful offerors may be released upon request without processing through the formal FOI procedures.

(c) When the contracting officer determines, in connection with negotiated procurements (other than purchases made using simplified acquisition procedures), that the administrative time and workload of processing regular FOIA requests (see FAR 14.408–1(c)) is greater than the workload involved in preparing an abstract of offers to be displayed at an appropriate Business Service Center, the following rules apply:

(1) An abstract of offers may be prepared for display after award in the appropriate Business Service Center in addition to the notification required by FAR Subpart 15.10.

(2) The abstract must include only the names, addresses, and ''best and final'' prices offered for unclassified acquisitions where the award is based on price and price-related factors. The successful offeror(s) must be identified.

(3) Abstracts must not contain information regarding failure to meet minimum standards of responsibility or other notations properly exempt from disclosure under FOI regulations.

(d) The information outlined in paragraph (c) of this section must not be disclosed when the contracting officer determines, on a case-by-case basis, that it is not in the best interest of the Government or when it may be competitively harmful to offerors such as when negotiations are in process for an item that was recently awarded under another solicitation.

[54 FR 26514, June 23, 1989, as amended at 56 FR 47005, Sept. 17, 1991; 60 FR 42804, Aug. 17, 1995]

Subpart 515.70—Use of Bid Samples

515.7000 Scope of subpart.

This subpart supplements the policies and procedures in FAR 14.202–4 and 514.202–4 regarding bid samples required in negotiated acquisitions.

515.7001 General.

Except as provided in 515.7002 and 515.7003, the basic 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'' and the terms ''bidder'' and ''invitation'' or ''invitation for bids'' are used synonymously with ''offeror'' and ''solicitation'' or ''RFP'' when contracting by negotiation.

515.7002 Policy.

(a) Since the terms ''responsiveness'' and ''nonresponsive'' do not apply to negotiated acquisitions, FAR 14.202–4(b) (2) and (4) do not apply when the use of bid samples is determined necessary under this subpart.

(b) Instead of FAR 14.202–4(b) (2) and (4), apply the following:

(1) Bid samples will be used in the technical evaluation of proposals to determine the acceptability of the samples to meet the Government's specification and to ensure compliance with the subjective and any objective characteristics listed in the solicitation.

(2) A proposal may be excluded from further consideration for award if after discussion with the offeror of any deficiencies found in the samples and after the offeror has been given an opportunity to correct those deficiencies, the sample still fails to conform to each of the characteristics listed in the solicitation. (See FAR 15.609.)

515.7003 Procedural requirements.

(a) *Unsolicited samples.* The reference to FAR 14.404–2(d) in FAR 14.202–4(g) is not applicable and the following is to be applied when contracting by negotiation:

Qualifications in the proposal that are at variance with the Government's requirements are deficiencies and must be resolved as provided for in FAR 15.610.

(b) *Solicitation requirements.* (1) When the clause at FAR 52.214–20 is used in a negotiated acquisition, the second sentence in paragraph (c) of the clause does not apply. A sentence substantially as follows must be substituted in the clause when contracting by negotiation.

Failure of the bid samples to conform to all of the required characteristics listed in the solicitation shall constitute a deficiency in the proposal and shall be resolved as provided for in FAR 15.610.

(2) In addition to listing subjective characteristics that cannot be adequately described in the specification, objective characteristics may be listed in the solicitation and evaluated when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is essential to the acquisition of an acceptable product.

(c) Samples received after the time set for receipt of offers may be considered only if they meet the requirements of FAR 52.215–10.

PART 516—TYPES OF CONTRACTS

Subpart 516.2—Fixed-Price Contracts

Sec.
516.203 Fixed-price contracts with economic price adjustment.
516.203–4 Contract clauses.
516.203–70 EPA in FSS multiple award schedules.

Subpart 516.4—Incentive Contracts

516.405 Contract clauses.

Subpart 516.5—Indefinite–Delivery Contracts

516.505 Contract clauses.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.
516.603–3 Limitations.

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

SOURCE: 54 FR 26526, June 23, 1989, unless otherwise noted.

Subpart 516.2—Fixed-Price Contracts

516.203 Fixed-price contracts with economic price adjustment.

516.203–4 Contract clauses.

(a) *General.* When the contracting officer decides to use a clause providing for adjustments based on cost indexes of labor or material under FAR 16.203–4, a clause must be prepared with the assistance of counsel and approved by the contracting director.

(b) *FSS Multiple Award Schedules.* In Federal Supply Service (FSS) multiple award schedule (MAS) procurements, the contracting director will determine whether to use an Economic Price Adjustment (EPA) clause under FAR 16.203–2.

(c) *Stock or Special Order Program Contracts.* (1) The contracting officer shall insert the clause at 552.216–72, Economic Price Adjustment—Stock and Special Order Program Contracts, or a clause prepared as authorized in subparagraph (c)(2) of this section, in solicitations and contracts when the contracting officer has made the determination required by FAR 16.203–2 and the contract is a multiyear contract. If the contract includes one or more options to extend the term of the contract, the contracting officer shall use the clause with its Alternate I. If a multiyear contract with additional option periods is contemplated, the contracting officer may use a clause substantially the same as the clause at 552.216–72 with its Alternate I suitably modified. If the contract requires a minimum adjustment before the price adjustment mechanism is effectuated, the contracting officer shall use the basic clause or the Alternate I clause along with Alternate II.

(2) If the contracting officer decides that an economic price adjustment clause is needed but finds the Producer Price Index is not an appropriate indicator for price adjustment, the contracting officer may modify the clause to use an alternate indicator for adjusting prices. Similarly, if the contracting officer finds other aspects of the clause at 552.216–72 are not appropriate, the contracting officer may develop a clause in accordance with 516.203–4(a) for use instead of the clause at 552.216–72.

[55 FR 39278, Sept. 26, 1990]

516.203–70 EPA in FSS multiple award schedules.

(a) If the FSS multiple award schedule solicitation contains an EPA clause, the contracting officer should establish negotiation objectives reflecting the terms of the clause and seek appropriate discounts. If the clause is not included in the initial solicitation but is negotiated in, it must be added to the contracts at the time of award. Its inclusion is contingent on the approval of the contracting director, the need for an EPA clause, and the concessions granted by the offeror for its inclusion in the contract.

(b) The contract price ceiling may be raised during the contract period only under the following conditions:

(1) Analysis of the current market conditions, conducted in conjunction with the Office of Commodity Management (FC), reveals that the original contract price ceiling is inadequate.

(2) The causes which require an increase in the price ceiling are not unique to an individual contractor, but affect all suppliers for similar products.

(3) The HCA approves the determination to raise the ceiling.

Subpart 516.4—Incentive Contracts

516.405 Contract clauses.

Award fee clauses developed by contracting officers, under FAR 16.405(e), shall be prepared with the advice and

assistance of counsel and be approved by the contracting director.

Subpart 516.5—Indefinite-Delivery Contracts

516.505 Contract clauses.

(a) The contracting officer shall insert the clause at 552.216–73, Placement of Order, in solicitations and contracts for stock or special order program items when the contract authorizes FSS and other agencies to issue delivery orders. If only FSS will issue delivery orders under any of its supply programs, use Alternate I. If a Federal Supply Schedule contract (single or multiple award) permits other agencies to issue delivery orders, use Alternate II.

(b) The contracting officer shall insert the provision at 552.216–74, Ordering Information, in solicitations for stock items and in other Federal Supply Service solicitations when the clause at 552.216–73 is prescribed. Insert 552.216–74 Alternate I when 552.216–73 Alternate I is prescribed. Insert 552.216–74 Alternate II when 552.216.73 Alternate II is prescribed.

[59 FR 32384, June 23, 1994]

Subpart 516.6—Time-and-Material, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

516.603–3 Limitations.

(a) When acquiring architect-engineer (A–E) services the proposed A–E must provide a price proposal for the non-design effort to be performed under the contract before the letter contract is awarded. The letter contract must:

(1) Not authorize the A–E to begin the design effort. The scope of the letter contract may include the design effort but the letter contract may only authorize the A–E to perform those services that are independent of the design effort (e.g., feasibility studies, existing facility surveys or site investigation, etc.) before the letter contract is definitized.

(2) Include a definitization schedule that outlines dates for submission of the design fee proposal, start of negotiations, and definitization. The schedule must provide for definitization of the contract within 90 days after the date of the letter contract instead of 180 days as outlined in FAR 16.603–2(c).

(3) Limit the Government's liability to the amount necessary for the non-design effort to be performed under the contract by inserting that amount in the clause at FAR 52.216–24, Limitation of Government Liability.

(b) If the contracting officer must issue a unilateral price decision for an A–E contract under FAR 16.603–2(c), the maximum contract amount must not exceed a reasonable price for the excludable items plus the 6 percent statutory fee limitation for the project.

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.1—Multiyear Contracting

Sec.
517.105 Solicitation provisions and 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.

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

SOURCE: 54 FR 26527, June 23, 1989, unless otherwise noted.

Subpart 517.1—Multiyear Contracting

517.105 Solicitation provisions and contract clauses.

Inclusion of FAR clauses 52.217–1, Limitations of Price and Contractor Obligations, and 52.217–2, Cancellation of Items, is not required for multiyear contracts authorized by the Federal Property and Administrative Services Act for maintenance and repair of fixed equipment in Federally-owned buildings and utility services.

Subpart 517.2—Options

517.200 Scope of subpart.

This subpart prescribes policies and procedures for the use and exercise of

options. When a requirement in this subpart is inconsistent with FAR 17.2, this subpart takes precedence. When a requirement of this subpart is inconsistent with GSAR 536.6, the latter subpart takes precedence. A class deviation from the FAR has been approved to implement GSA's Quality Contractor Program. This subpart applies to contracts including those for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; (c) automatic data processing (ADP) equipment and systems; and (d) telecommunications equipment and services.

[57 FR 59939, Dec. 17, 1992]

517.202 Use of options.

(a) The inclusion of options in contracts under appropriate circumstances is encouraged. The use of options may reduce procurement lead time and associated costs, ensure continuity of contract support, improve overall contractor performance, and facilitate longer term contractual relationships with those contractors that continuously meet or exceed quality performance expectations outlined in the contract.

(b) Inclusion of an option is normally in the Government's interest where—

(1) Additional supplies or services may be required during the contract term;

(2) Additional supplies or services may be required beyond the initial contract term and either multiyear contracting authority is not available or its use is inappropriate;

(3) There is a need for continuity of supply or services support;

(4) Funds are not available for the entirety of the Government's needs, but are likely to become available during the contract term; or

(5) The contract is with an emerging small business with minimal performance history in the contract supply or service and the basic quantity is intended to be a learning or testing quantity.

(c) Inclusion of an option may not be appropriate where the circumstances described in FAR 17.202(b)(2) and 17.202(c) (1) and (3) exist or where the market prices for the supplies or services are likely to change substantially and an economic price adjustment clause will not adequately protect the Government's interests.

[57 FR 59939, Dec. 17, 1992]

517.203 Solicitations.

Solicitations containing options to extend (see FAR 17.208 (f) and (g)) should normally inform offerors of the potential for entering into a long term contractual relationship with the GSA subject to a continuing need and the successful offeror's ability to perform at levels which meet or exceed the agency's quality performance expectations.

[57 FR 59939, Dec. 17, 1992]

517.204 Contracts.

The head of the contracting activity must approve exceeding the 5-year limitations specified in FAR 17.204(e) for individual contracts. The Associate Administrator for Acquisition Policy must approve requests to exceed the limitations for classes of contracts. The contract file for individual approvals and the requests for approval of classes of contracts must support the need to exceed the 5-year limitation. This section does not apply to contracts for automatic data processing (ADP) equipment and systems or to contracts for telecommunications equipment and services.

[57 FR 59939, Dec. 17, 1992]

517.207 Exercise of options.

(a) If the option was not evaluated as part of the original competition, a synopsis of the option before it is exercised is required unless exempt under FAR 5.202.

(b) In addition to the items listed in FAR 17.207(d), the contracting officer may consider whether the contractor's performance under the contract has met or exceeded the Government's expectation for quality performance, or whether another circumstance exists that would warrant an extended contractual relationship when deciding whether to exercise an option. The contracting officer must always determine

the option price(s) is fair and reasonable before exercising an option.

[57 FR 59939, Dec. 17, 1992]

517.208 Solicitation provisions and contract clauses.

(a) In addition to other applicable provisions or clauses related to options, the contracting officer shall insert a provision substantially the same as the provision at 552.217–71, Notice Regarding Option(s), in solicitations for supplies or services when necessary to inform offerors of the importance GSA will place on past performance when considering whether to exercise options.

(b) The contracting officer shall insert a provision substantially the same as the provision at 552.217–70, Evaluation of Options, in solicitations for procurements under the Federal Supply Service (FSS) stock or special order program when (1) the solicitation contains an option to extend the term of the contract and (2) a firm-fixed price contract with economic price adjustment based on the Producer Price Index or alternative indicator of market price changes is contemplated.

[57 FR 59939, Dec. 17, 1992]

PART 518 [RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 519—SMALL BUSINESS PROGRAMS

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519.803–70 Contracting officer evaluation of recommendations for 8(a) set-aside(s).

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

SOURCE: 54 FR 26527, June 23, 1989, unless otherwise noted.

519.001 Definitions.

Agency small business technical advisors (SBTAs) as used in this part, means the individuals designated in writing by the Office of Enterprise Development (E). In addition to the duties outlined at FAR 19.201(c), the agency small business technical advisors perform the functions of the small business specialist described in FAR 19.506 (a) and (b) and 19.705–4(d)(5).

[61 FR 1150, Jan. 17, 1996]

Subpart 519.2—Policies

519.201 General policy.

The Associate Administrator for Enterprise Development (E) may make recommendations to the contracting officer as to whether a particular acquisition should be awarded under FAR 19.5 as a set-aside or under FAR 19.8 as a section 8(a) award directly or through the SBTA.

[61 FR 1150, Jan. 17, 1996]

519.202 Specific policies.

519.202–2 Locating small business sources.

Contracting officers should request assistance from SBTAs in locating small business sources.

[61 FR 1151, Jan. 17, 1996]

Subpart 519.3—Determination of Status as a Small Business Concern

519.302 Protesting a small business representation.

If SBA determines that an offeror is not a small business and there is evidence that the offeror knowingly misrepresented itself as a small business, the contracting officer shall refer the matter to the Inspector General (J) for investigation.

[56 FR 3044, Jan. 28, 1991]

Subpart 519.5—Set-Asides for Small Business

519.500 Scope of subpart.

The requirements in this subpart for setting aside acquisitions and for reviewing non-set-aside determinations do not apply to construction, architectural and engineering, or trash/garbage collection services estimated to exceed $25,000 that are acquired under the Small Business Competitiveness Demonstration Program during periods when goals are being met and contracting officers are required to contract for such services using unrestricted procedures. (See FAR 19.10.) However, contracts for these services may be awarded under the 8(a) program.

[56 FR 3044, Jan. 28, 1991]

519.502 Setting aside acquisitions.

519.502–3 Partial set-asides.

(a) *Initiating partial set-asides for stock items.* Partial set-asides for procurement of stock items may be made when the following Economic Order Quantity (EOQ) factors are present:

(1) For annual contracts, an EOQ factor not exceeding 3 months; and

(2) For 6-month contracts, an EOQ factor not exceeding 1 month.

(b) *Contract award.* When the set-aside portion of an item is awarded to the same concern as the corresponding non-set-aside portion, the award must be documented by issuing a separate contract or contract number for each group of items.

(c) *Partial coverage.* When only the non-set-aside portion of the procurement is awarded before the expiration of the current contract, contractual documents covering the transaction must be distributed to the ordering activities to provide at least partial coverage of the requirements.

(d) *Contract coding.* Information regarding partial or total set-asides must be included on GSA Form 1535, Recommendation for Award(s), as appropriate. Further, if a class set-aside is involved, the face of the GSA Form 1535 must be annotated as follows: ''Class set-asides apply to items _____.''

(e) *Ordering procedures.* The Inventory Manager shall ensure that the specified division of orders is made in accordance with the clause at 552.219–71 in those cases where two contractors are to supply the same item(s).

519.502–70 Review of non-set-aside determinations.

(a) If the contracting officer decides that a procurement that is expected to exceed $100,000 cannot be set aside for small business, the reasons for the decision must be recorded on the GSA Form 2689, Procurement Not Set Aside. The GSA Form 2689 must be submitted to the SBTA for review and coordination with the SBA.

(b) The SBTA will provide a copy of the GSA Form 2689 to the SBA representative as soon as possible so that the review can be made by GSA and SBA within the timeframe provided in (c) of this section.

(c) Review of the contracting officer's determination should normally be completed within 5 workdays. GSA and SBA reviewing officials should notify the contracting officer if additional time is needed and request an extension of time to complete the review.

(d) Before the GSA or SBA reviewing officials provide additional small business sources to the contracting officer when requesting reconsideration of the non-set-aside determination, the reviewing officials shall contact the sources to ensure the sources are interested in submitting offers and to obtain information regarding the capability of the sources to fulfill the Government's requirements. The information obtained should be provided to the contracting officer for consideration.

(e) If the SBTA recommends that the contracting officer set the procurement aside and the contracting officer still believes the procurement should be unrestricted, the matter must be referred to the contracting director's first level supervisor for a decision.

(f) If the SBA representative recommends that the contracting officer set the procurement aside and the contracting officer rejects the recommendation, the contracting officer shall comply with FAR 19.505.

[54 FR 26527, June 23, 1989, as amended at 61 FR 1151, Jan. 17, 1996]

519.503 Setting aside a class of acquisitions.

(a) A class set-aside may consist of an item (or service), a group of related items under a Federal Supply Class (FSC), or a whole FSC when restricted to small business on more than a one-time basis, as distinct from a one-time basis. A single item or a group of items restricted to small business on more than a one time basis, even though constituting only a small portion of an FSC, is defined as a class set-aside.

(b) Class set-aside determinations must be documented in the following format:

SMALL BUSINESS CLASS SET-ASIDE DETERMINATION

In accordance with FAR 19.502–2, it is hereby determined that procurements by the (*name of contracting activity*) of the following items or services will be set aside for small business concerns on a class basis. This determination does not apply to any individual procurement of $100,000 or less and applies only to the contracting activity named above.

(List items or services)

The above format must be appropriately modified with respect to any class of procurements proposed to be partially set-aside. It must be signed by the contracting officer having procurement responsibility for the class of items or services involved, approved by the appropriate contracting director or a designee, and placed in the contract file.

[54 FR 26527, June 23, 1989, as amended at 61 FR 1151, Jan. 17, 1996]

519.508 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 552.219–71, 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 Eligibility

519.602 Procedures.

519.602–3 Resolving differences between the agency and the Small Business Administration.

(a) Within 5 working days or such longer period as may be agreed to after the contracting officer makes a request to the SBA Regional Office to appeal a notice of intention to issue a Certificate of Competency, the contracting office shall prepare and forward the following information to E:

(1) Copies of all correspondence between GSA and SBA concerning the case, including initial notice to SBA that a small business had been found nonresponsible;

(2) Copies of all technical documents sent to SBA along with the notice (i.e., solicitation, preaward surveys, abstract of offers, if any, etc.);

(3) A fact sheet detailing all pertinent information to support an appeal action to SBA, including any new information and a justification of the contracting officer's decision to continue the appeal.

(b) If the SBA Central Office informs the contracting officer that it concurs with its Regional Office's intention to issue a COC, the documentation available clearly supports an appeal, and the contracting officer believes an appeal to be in the Government's interest, the contracting officer shall contact E and request that office formally appeal the SBA decision on the agency's behalf. After considering all the facts and conferring with the applicable contracting activity, E will decide whether or not to file a formal appeal. Before a decision is made not to appeal, E shall notify the applicable Central Office Service. Once a decision is made regarding the appeal the contracting officer will be notified.

[54 FR 26527, June 23, 1989, as amended at 61 FR 1151, Jan. 17, 1996]

Subpart 519.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.

519.705–2 Determining the need for a subcontracting plan.

The requirement at FAR 19.702(a)(1) for submission of a subcontracting plan by only the apparently successful offeror does not apply to GSA negotiated solicitations when the contract is expected to exceed $500,000 ($1,000,000 for construction) and the contract will be awarded on the basis of an evaluation of technical and/or management proposals and cost or price proposals using source selection procedures. Except for acquisitions of commercial products, or offering minimal subcontracting opportunities, such acquisitions shall require submission of a subcontracting plan with the initial offer by all offerors that are not small business concerns.

[60 FR 42794, Aug. 17, 1995]

519.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.219–72, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of the solicitation if the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(b) The contracting officer shall insert the provision at 552.219–73, Preparation, Submission, and Negotiation of Subcontracting Plans, in negotiated solicitations if the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, and the contract will be awarded on the basis of an evaluation of technical and/or management proposals and cost or price proposals using source selection procedures. The provision does not apply to (1) solicitations for commercial products, or (2) solicitations where, in the judgment of the contracting officer, subcontracting opportunities are minimal.

(c) The contracting officer shall insert the provision at 552.219–74, Goals for Subcontracting Plan, in sealed bid solicitations if the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. The basic provision should be used when the contracting officer is able to realistically establish target goals. Alternate 1 should be used in sealed bid solicitations when the contracting officer cannot establish realistic target goals and in negotiated solicitations that include the clause at FAR 52.219–9 but do not include the provision at 552.219–73.

[61 FR 1151, Jan. 17, 1996]

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).

If the Associate Administrator for Enterprise Development (E) or the SBTA recommends that a procurement be set aside for award under the 8(a) program and the contracting officer disagrees, the contracting officer shall discuss the matter with the official that made the recommendation before making a decision. If the contracting officer decides not to award the contract under the 8(a) program as recommended, the reasons for the decision must be documented for the record as required by FAR 19.202 and a copy of the documentation must be forwarded to E within 10 working days of the contracting officer's decision.

[61 FR 1151, Jan. 17, 1996]

PARTS 520–521 [RESERVED]

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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522.1303 Waivers.
522.1306 Complaint procedures.

Subpart 522.14—Employment of the Handicapped

522.1403 Waivers.
522.1406 Complaint procedures.

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

SOURCE: 54 FR 26532, June 23, 1989, unless otherwise noted.

522.000 Scope of part.

This part provides agency policies regarding contractor labor relations as they relate to the acquisition process; procedures for implementing requirements for FAR part 22; and it also precribes contract clauses for use in certain contracts.

[57 FR 7555, Mar. 3, 1992]

522.001 Definition.

Agency labor advisor as used in this part means the Director of the Office of GSA Acquisition Policy.

[57 FR 7555, Mar. 3, 1992]

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101–1 General.

(a) In conjunction with the Office of General Counsel (OIG), the agency labor advisor:

(1) Serves as the focal point on matters that relate to contractor labor relations;

(2) Is responsible for initiating contact on labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations;

(3) Serves as a clearinghouse for information on labor laws applicable to Government acquisitions; and

(4) Responds to questions involving FAR part 22, GSAR part 522 or other contractor labor relations matters that arise in connection with GSA acquisition programs. OGC is responsible for determining the agency's legal position with respect to these matters.

(b) GSA personnel in discharge of their duties and consistent with FAR 22.101–1(b), shall refrain from involvement in or expressing a position on, labor negotiations between contractors and unions or on the merits of any dispute between labor and a contractor's management.

[57 FR 7556, Mar. 3, 1992]

522.101–3 Reporting labor disputes.

Reports required by FAR 22.101–3 must be submitted to the agency labor advisor.

[57 FR 7556, Mar. 3, 1992]

522.103 Overtime.

522.103–4 Approvals.

The head of the program office is the agency official responsible for approving overtime under FAR 22.103–4(a).

522.103–5 Contract clause.

The contracting officer shall include the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, in solicitations and contracts for items on the DoD Master Urgency List.

[57 FR 7556, Mar. 3, 1992]

Subpart 522.3—Contract Work Hours and Safety Standards Act

522.302 Liquidated damages and overtime pay.

(a) The Administrator has designated the Heads of Central Office Services to make determinations under FAR 22.302(c).

(b) Upon a final administrative determination regarding the assessment of liquidated damages, the contracting officer notifies the appropriate Finance Office of the decision and provides necessary instructions regarding the disposition of funds withheld or the collection of funds. If funds were withheld from contract payments to satisfy the claim for liquidated damages pending a final administrative determination, the appropriate Finance Office shall be instructed to immediately release any funds in excess of the amount specified in the final administrative determination to the contractor. If funds were not withheld or if the amount of liquidated damages assessed exceeds that amount withheld for liquidated damages, the contracting officer initiates collection action by withholding funds from payments due on the instant contract or by issuing a demand for payment. When the contractor has other Government contracts the demand letter should indicate the Government's intent to offset if payment is not made. The contracting officer will provide the appropriate Finance Office with a copy of the demand for payment and request that the Finance Office 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.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.404 Davis-Bacon Act wage determinations.

522.404–6 Modifications of wage determinations.

Contracting directors may request extensions of the 90-day period for application of a general wage determination. See FAR 22.404–6(b)(6).

522.406 Administration and enforcement.

522.406–1 Policy.

The GSA Form 618–A, Transmittal of Contract Award, may be used to inform contractors of their obligations under the labor standards clauses of the contract.

522.406–6 Payrolls and statements.

Prime contractors and subcontractors who personally perform work are required to submit, instead of weekly payrolls and statements of compliance with respect to payment of wages, a

statement clearly showing their contractual relationship, the scope and dates of work performed, that they received no wages, and that no mechanics or laborers were employed in the prosecution of the work. GSA Form 618–D, Statement to be Submitted When Work is Performed Personally, should be used to furnish this information.

522.406–7 Compliance checking.

Compliance checks must be made as frequently as necessary and before final payment is made. Compliance checking is essential to the success of the labor standards enforcement program.

522.406–8 Investigations.

(a) When compliance checks indicate such action is warranted, the contracting officer shall request the Regional Inspector General for Investigations to conduct an investigation of a contractor's compliance with the labor standards requirements.

(b) The contracting director shall review and process the contracting officer's report under FAR 22.406–8(d).

522.406–9 Withholding from or suspension of contract payments.

Upon final administrative determination regarding the assessment of liquidated damages, the contracting officer shall follow the procedures in 522.302(b).

522.406–11 Contract terminations.

Contracting officers shall submit reports required under FAR 22.406–11.

522.406–13 Semiannual enforcement reports.

Contracting activities shall submit semiannual enforcement reports to the agency labor advisor (See 522.001) for consolidation and submission to the Department of Labor. The reports should be submitted within 15 calendar days after the end of the reporting period.

[57 FR 7556, Mar. 3, 1992]

522.470 Forms.

GSA Form 3505, Labor Standards (Construction Contract), is for use in contracts subject to the Davis-Bacon and related Acts. The clauses on this form must be included in solicitations/contracts in full text, and may not be incorporated by reference.

Subpart 522.6—Walsh-Healey Public Contracts Act

522.608 Procedures.

522.608–2 Determination of eligibility.

The contracting officer shall forward ineligibility determinations under FAR 22.608–2(f)(1)(ii) through the contracting director.

522.608–3 Protests against eligibility.

The contracting officer shall forward determinations under FAR 22.608–3(b) through the contracting director.

522.608–4 Award pending final determination.

The certification required by FAR 22.608–4(b)(1) must be approved by the HCA.

522.608–6 Postaward.

The contracting officer shall notify and furnish information to the Department of Labor under FAR 22.608–6(c) after coordinating with legal counsel and the contracting director.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

The contracting officer shall submit questions under FAR 22.803(d) to legal counsel.

522.804 Affirmative action programs.

522.804–1 Nonconstruction.

In addition to the requirements of FAR 22.804, each contractor and subcontractor who serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, must develop a written affirmative action compliance program for each of its establishments within 120 days from the start of its first such Government contract or subcontract.

522.804–70 Reports and other required information.

For contract administration purposes, nonexempt contractors shall be instructed to submit a copy of Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, submitted under the Equal Opportunity clause to the contracting officer (see FAR 52.222–26(b)(7)).

522.804–71 Furnishing information to contractors.

Contracting officers shall provide contractors with (a) a SF–100, and (b) a copy of the notice that is to be provided the labor union or workers' representative and posted in conspicuous places (see FAR 22.805(b) and 52.222.26(b) (3) and (5)).

522.805 Procedures.

(a) The contract amount for purposes of applying the threshold at FAR 22.805(a) includes the value of the basic contract plus priced options. A contract modification exercising an option that has been priced and evaluated does not constitute a contract award under FAR 22.805(a)(1)(ii) and does not require a preaward clearance.

(b) Requests for reviews under FAR 22.805(a)(5) are made directly by the contracting officer.

522.807 Exemptions.

Requests for exemption under FAR 22.807(c) must be submitted to OFCCP through the agency labor advisor.

[57 FR 7556, Mar. 3, 1992]

Subpart 522.10—Service Contract Act

522.1003 Applicability.

522.1003–3 Statutory exemptions.

The statutory exemption in FAR 22.1003–3(c) does not apply to local office relocation moves when the transportation is incidental to the services being acquired. The Service Contract Act applies in such situations and formal contracting procedures must be used.

[55 FR 37880, Sept. 14, 1990]

522.1003–4 Administrative limitations, variations, tolerances, and exemptions.

Requests for limitations, variations, tolerances, and exemptions from the Service Contract Act under FAR 22.1003–4(a) must be submitted to the Administrator, Wage and Hour Division, through the agency labor advisor. The contracting officer shall coordinate requests with assigned legal counsel and the contracting director before forwarding to the agency labor advisor.

[57 FR 7556, Mar. 3, 1992]

522.1003–7 Questions concerning applicability of the Act.

Questions under FAR 22.1003–7 regarding the applicability of the Act may also be directed to assigned legal counsel. Unresolved questions shall be submitted to the Administrator, Wage and Hour Division through the agency labor advisor.

[57 FR 7556, Mar. 3, 1992]

522.1005 Clause for contracts of $2,500 or less.

The total dollar amount of orders reasonably expected to be placed against blanket purchase or basic ordering agreements in a 1-year period should be used for comparison with the dollar threshold.

522.1006 Clauses for contracts over $2,500.

The clauses prescribed in FAR 22.1006 (a) and (b) may be repeated verbatim in solicitations and contracts or the GSA Form 2166, Service Contract Act of 1965 (As Amended) and Statement of Equivalent Rates for Federal Hires, may be used.

[58 FR 47398, Sept. 9, 1993]

522.1011 Response to notice by Department of Labor.

522.1011–2 Requests for status or expediting of response.

Requests to expedite wage determinations or to check the status of a request may be made by the contracting officer directly to the Administrator, Wage and Hour Division.

[55 FR 37880, Sept. 14, 1990]

522.1013 Review of wage determination.

In addition to contacting the agency labor advisor under FAR 22.1013, the contracting officer shall consult with assigned legal counsel when considering instituting a request for a substantial variance hearing under FAR 22.1021.

[57 FR 7556, Mar. 3, 1992]

522.1014 Delay of acquisition dates over 60 days.

Requests under FAR 22.1014 to determine whether the wage determinations issued under the initial submission are still current may be made by the contracting officer.

[57 FR 7556, Mar. 3, 1992]

522.1021 Substantial variance hearings.

The contracting officer shall submit, after coordinating with assigned legal counsel, any request for a hearing under FAR 22.1013(a) through the agency labor advisor to the Administrator, Wage and Hour Division.

[57 FR 7556, Mar. 3, 1992]

Subpart 522.13—Special Disabled and Vietnam Era Veterans

522.1303 Waivers.

Requests for waivers under FAR 22.1303(c) must be submitted to the Administrator through the agency labor advisor.

[57 FR 7556, Mar. 3, 1992]

522.1306 Complaint procedures.

The contracting officer may forward complaints about the administration of the Act to the Veteran's Employment Service in accordance with FAR 22.1306.

Subpart 522.14—Employment of the Handicapped

522.1403 Waivers.

Request for waivers under FAR 22.1403(c) must be submitted to the Administrator through the agency labor advisor.

[57 FR 7556, Mar. 3, 1992]

522.1406 Complaint procedures.

The contracting officer may forward complaints about the administration of the Act to the OFCCP in accordance with FAR 22.1406.

PART 523—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

Sec.
523.303 Contract clause.
523.370 Solicitation provision.

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

SOURCE: 54 FR 26534, June 23, 1989, unless otherwise noted.

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.

(a) The contracting officer shall insert the clause at 552.223–70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

(b) The contracting officer shall insert the clause at 552.223–72, Nonconforming Hazardous Materials, in solicitations and contracts requiring contractors to submit hazardous material data.

[56 FR 1740, Jan. 17, 1991]

523.370 Solicitation provision.

The contracting officer shall insert the provision at 552.223–71, Hazardous Material Information, in solicitations including purchases made using simplified acquisition procedures, which involve the shipment of hazardous materials on an f.o.b. origin basis.

[60 FR 42804, Aug. 17, 1995]

PART 524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 524.1—Protection of Individual Privacy

Sec.
524.103 Procedures.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

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

SOURCE: 54 FR 26535, June 23, 1989, unless otherwise noted.

Subpart 524.1—Protection of Individual Privacy

524.103 Procedures.

See 41 CFR Part 105–64 and GSA Order, Privacy Act Program (OAD P 1878.8) when contracting for the design, development, or operation of a system of records on individuals.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

See 41 CFR part 105–60 and GSA Order, Freedom of Information Act procedures (ADM 1035.11B) for requirements on making records available under the Freedom of Information Act.

[56 FR 47006, Sept. 17, 1991]

PART 525—FOREIGN ACQUISITION

Subpart 525.1—Buy American Act—Supplies

Sec.
525.105 Evaluating offers.
525.105–70 Evaluating offers—hand or measuring tools or stainless steel flatware for other than the Department of Defense (DOD).
525.105–71 Procurement of hand or measuring tools or stainless steel flatware for DOD.
525.108 Excepted articles, materials, and supplies.
525.108–70 Determination of nonavailability.

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.
525.203 Evaluation of offers.
525.204 Violations.
525.205 Solicitation provision and contract clause.

Subpart 525.3—Balance of Payments Program

525.302 Policy.
525.302–70 Procurements for agencies under the Foreign Assistance Act.
525.304 Excess and near-excess foreign currencies.
525.371 Restricted solicitation.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.402 Policy.
525.402–70 Delegation of limited waiver authority.
525.406 Agencies covered by the Agreement on Government Procurement.
525.407 Solicitation provision and contract clause.

Subpart 525.9—Additional Foreign Acquisition Clauses

525.901 Omission of audit clause.

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

SOURCE: 54 FR 26535, June 23, 1989, unless otherwise noted.

Subpart 525.1—Buy American Act—Supplies

525.105 Evaluating offers.

(a) Proposed awards, under FAR 25.105(c), must be submitted to the HCA or a designee for approval. A statement of facts containing the following information should be submitted for approval.

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimated cost and, if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s).

(7) Brief statement as to necessity for procurement.

(8) Reasons supporting request for approval explaining.

(i) Why the cost would not be unreasonable or inconsistent with the public

interest when award to a domestic concern for more than $250,000 would be made to a small business or labor surplus area concern after the 12 percent factor is applied, but not to a firm after the 6 percent is applied.

(ii) Any proposed rejection of an acceptable low foreign offer to protect essential national security interests or rejection of any offer for other reasons of national interest when the Trade Agreements Act of 1979 is not applicable.

(b) A determination to reject a foreign offer using differentials greater than those provided at FAR 25.105 may be made.

(1) If necessary to protect national security interests; and

(2) After the HCA or a designee obtains advice from the Director, Federal Emergency Management Agency. The Executive Office of the President, Office of Management and Budget, must be apprised of the facts of each case where such a determination is made.

525.105–70 Evaluating offers—hand or measuring tools or stainless steel flatware for other than the Department of Defense (DOD).

(a) *Definitions.* ''Hand or measuring tool,'' as used in this section, means Groups 51 and 52 in Cataloging Handbook H2–1, Federal Supply Classification Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(b) *GSA Appropriation Act restrictions.* (1) The current GSA Appropriation Act restricts the acquisition of any hand or measuring tool and stainless steel flatware to domestic end products, except to the extent the Administrator of General Services or a designee determines that a satisfactory quality and sufficient quantity are unavailable from sources in the United States or its possessions or except as prescribed by section 6–104.4(b) of the Armed Services Procurement Regulations (ASPR) in effect on June 15, 1970.

(2) For hand or measuring tools, the GSA Appropriation Act further provides that a factor of 75 percent is to be used in evaluating foreign end products in lieu of the 50 percent in ASPR 6–104.4(b).

(c) *Evaluation procedures.* Offers for hand or measuring tools or stainless steel flatware must be evaluated using the following procedures adapted from ASPR 6–104.4(b).

(1) An offer of an end product manufactured in Canada will be evaluated on the same basis as a domestic end product after applicable duty, determined under 19 U.S.C. 1202, is included, irrespective of whether or not a duty-free entry certificate will be issued.

(2) Any other offer of a foreign end product must be evaluated at the greatest evaluated price determined by increasing either (i) the net value of the offer (exclusive of duty) by 50 percent (75 percent for hand or measuring tools) or (ii) the gross value of the offer (inclusive of duty) by 6 percent.

(3) A 12 percent factor must be used in (c)(2) (ii) above, when (i) a small business or any labor surplus area concern submits the low acceptable domestic offer or (ii) an otherwise low acceptable domestic offer would result in a contract not to exceed $100,000 based on its application, but not on the application of the factors in (c)(2) (i) and (ii).

(4) If a contract exceeding $100,000 to a small business or labor surplus area concern would result under the circumstances in (c)(3)(ii), the matter must be submitted to the HCA for a decision whether such award would involve unreasonable cost or be inconsistent with the public interest. A statement of facts as outlined in 525.105 may be used.

(5) The above evaluation must be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation. Award on the domestic offer will be made when any tie results from the foregoing procedures.

(d) *Solicitation provision.* The contracting officer shall insert the provision at 552.225–70, Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations for the acquisition of hand or measuring tools or stainless steel flatware for other than Department of Defense requirements.

525.105–71 Procurement of hand or measuring tools or stainless steel flatware for DOD.

(a) *Definitions.* ''Domestic end product,'' as used in this section, means a hand or measuring tool, other than an electric or air-motor driven hand tool, or stainless steel flatware, that is wholly produced or manufactured, including all components, in the United States or its possessions.

''Electric or air-motor driven hand tool,'' as used in this section, means a domestic end product if the cost of components produced or manufactured in the United States exceeds 75 percent of the cost of all components in the end product.

''Stainless steel flatware,'' as used in this section, means special order and stock items of stainless steel flatware purchased for DOD, including, but not limited to, the following National Stock Numbers (NSN):

7340–00–060–6057
7340–00–205–3340
7340–00–205–3341
7340–00–241–8169
7340–00–241–8170
7340–00–241–8171
7340–00–559–8357
7340–00–688–1055
7340–00–721–6316
7340–00–721–6971

(b) *DOD Appropriation Act restrictions.* (1) Except for purchases of $25,000 or less, DOD is prohibited from acquiring hand or measuring tools or stainless steel flatware (see 525.105–71(a)), that are not domestic end products, except in the case of stainless steel flatware, when the Secretary of the department concerned determines that a satisfactory quality and quantity produced or manufactured in the United States or its possessions are not available when needed at domestic market prices.

(2) In GSA procurements of such tools or flatware, a determination must be made by the appropriate Commodity Center Director whenever GSA applies the current DOD Appropriation Act restrictions. This determination must be made on a case-by-case basis for tools and flatware for NSNs other than those listed in 525.105–71(a), whenever (i) DOD requirements are included in the solicitation and (ii) the hand or measuring tools or stainless steel flatware are available from domestic sources.

(3) The basis for applying the DOD Appropriation Act restrictions to GSA acquisitions is the—

(i) Statutory prohibition on DOD, which applies when DOD requisitions such items, regardless of whether or not it is from the GSA stock program;

(ii) Impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies; and

(iii) Language in the GSA Appropriation Act, which provides for the rejection of any offer when it is considered necessary for reasons of national interest under ASPR 6–104.4(d)(3)(ii).

(4) When no offers for a domestic end product are received or the total quantity offered by responsive and responsible offerors for a particular NSN of stainless steel flatware is insufficient to meet the requirement, the contracting officer should consider making an unavailability determination (see 525.108–70), amend the solicitation, and complete the acquisition under 525.105–70.

(c) *Contract clause.* The contracting officer shall insert the clause at 552.225–71, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations and contracts for the acquisition of hand or measuring tools or stainless steel flatware when the Commodity Center Director makes a determination under 525.105–71(b).

525.108 Excepted articles, materials, and supplies.

525.108–70 Determination of nonavailability.

(a) Determinations under FAR 25.102(a)(4), 25.202(a)(3), and 25.108 must be supported by a statement of fact (findings), including the following information, and a determination signed by the HCA or a designee:

(1) Description of the item(s), including unit and quantity;

(2) Estimated cost, including duty, if any (show the amount of duty separately);

(3) Transportation costs for delivery to destination, if item is to be procured f.o.b. origin;

(4) Country of origin;

(5) Name and address of prospective contractor(s);

(6) Brief statement as to the necessity for the procurement; and

(7) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item that can be used as a reasonable substitute.

(b) Findings and determination of nonavailability will normally be prepared in the format shown below:

GENERAL SERVICES ADMINISTRATION

Reference No. _____

FINDINGS AND DETERMINATION OF NONAVAILABILITY UNDER THE BUY AMERICAN ACT REGARDING PURCHASE OF (INSERT DESCRIPTION)

Pursuant to the provisions of the Buy American Act (41 U.S.C. 10a–d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), and by virtue of delegated authority, the following findings of fact and determination are hereby made:

1. Findings (set forth a statement of facts).

2. Determination. In view of the foregoing, it is hereby determined that for the purposes of the Buy American Act (insert item description), is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Date Signed _____

(End of findings and determination)

(c) When it has been determined that the Buy American Act is not applicable to the purchase of the end product or to the components from which it is manufactured, the original of the determination must be made a part of the contract file and a copy furnished to the Associate Administrator for Acquisition Policy for transmittal to the appropriate FAR Council and a statement must be inserted in the solicitation and contract that a determination has been made pursuant to FAR 25.108(b).

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.

The HCA is authorized to make determinations required by FAR 25.202(a). The HCA may not redelegate authority to make determinations under FAR 25.202(a)(3) when the cost of the materials is estimated to exceed $100,000. Authority to make other determinations may be redelegated.

525.203 Evaluation of offers.

(a) The HCA or a designee may authorize the use of a particular foreign construction material when the use of a comparable domestic construction material would unreasonably increase the cost of the contract. The cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. The cost of construction material includes all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(b) The evaluation process described in paragraph (a) of this section does not apply to:

(1) Excepted materials listed in the solicitation; or

(2) European Community (EC) and North American Free Trade Agreement (NAFTA) country construction materials offered in response to solicitations for construction contracts with an estimated value of $6,500,000 or more.

(c) Offerors proposing to use foreign construction materials (other than EC or NAFTA country construction materials on contracts with an estimated value of $6,500,000 or more) are required to provide adequate information for Government evaluation under paragraph (a) of this section. Offerors may submit alternate offers for comparable domestic construction materials at stated prices. When foreign construction material (other than EC or NAFTA country construction materials on contracts with an estimated value of $6,500,000 or more) is not authorized under paragraph (a), evaluation of the offer must be based on the stated price, if any, for comparable domestic material. If an offeror proposing to use foreign construction materials (other than EC or NAFTA country construction materials on contracts with an estimated value of $6,500,000 or more) does not furnish data on the cost of comparable domestic construction

material, and the use of foreign construction material is not authorized, such offer must be rejected, unless the contracting officer is able to obtain prices on comparable domestic material which verifies that domestic prices are unreasonable.

(d) The contracting officer shall add 6 percent to the cost of foreign construction materials (other than EC or NAFTA country construction materials on contracts with an estimated value of $6,500,000 or more) authorized for use in accordance with paragraph (a) of this section, to the prices offered, if applicable, for evaluation purposes only.

[59 FR 64856, Dec. 16, 1994]

525.204 Violations.

If a contractor fails to comply with the clause at FAR 52.225–5, Buy American Act—Construction Materials, the contracting officer shall document the failure in a report and forward the report to the debarring official for consideration for debarment action in accordance with Subpart 509.4.

525.205 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 552.225–75, Buy American Act Notice—Construction Materials in solicitations for construction that include the Buy American Act—Construction Materials clause at (FAR) 48 CFR 52.225–5 and have an estimated value less than $6,500,000. Alternate I shall be used for construction contracts with an estimated value of $6,500,000 or more that include the Buy American Act—Construction Materials Under European Community Agreement and NAFTA clause at (FAR) 48 CFR 52.225–15.

[59 FR 64857, Dec. 16, 1994]

Subpart 525.3—Balance of Payments Program

525.302 Policy.

(a) Decisions under FAR 25.302(b)(3) must be supported as provided in 525.108–70(a).

(b) Use of a greater differential than provided in FAR 25.302(c) may be authorized by the HCA or a designee.

525.302–70 Procurements for agencies under the Foreign Assistance Act.

When a contracting activity enters into contracts as the agent for an agency governed by the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*) such as the Agency for International Development (AID), such contracts are governed by the policies and procedures of the agency and not by FAR 25.3 and 525.3.

525.304 Excess and near-excess foreign currencies.

When a contracting activity procures articles or services for use outside the United States for another agency, it will be assumed (unless a specific notation is made on the purchase request) that use of excess or near excess foreign currencies has been considered by the requisitioning agency and that such currencies are not available.

525.371 Restricted solicitation.

(a) Specific written estimates of comparative delivered prices of end products or service of domestic origin versus foreign origin made by the requisitioning office before submitting a purchase request is not required by the contracting activity. Procurements made directly for other agencies of items to be used outside the United States will be made under the Balance of Payments Program, except for agencies supported by GSA that come under the Foreign Assistance Act; e.g., AID and the Bureau of International Narcotics Matters.

(b) Before procuring any item for GSA use outside the United States, cost estimates must be made before restricting competition to U.S. end products or services.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.402 Policy.

(a) Under (FAR) 48 CFR 25.402(a), when the estimated value of all items or products (exclusive of any item or product within any of the exceptions described in (FAR) 48 CFR 25.403) listed in the solicitation exceeds the Trade Agreements Act threshold, contracting officers shall evaluate offers without regard to the restrictions of the Buy

American Act or the Balance of Payments Program.

(b) As a result of the General Services Administration Board of Contract Appeals (GSBCA) decision in the protest of International Business Machines Corporation, GSBCA no. 10532–P, May 18, 1990, contracting officers are hereby authorized to deviate from the FAR provision at 52.225–8, Buy American Act-Trade Agreements Act-Balance of Payment Program Certificate and FAR clause at 52.225–9, Buy American Act-Trade Agreements Act-Balance of Payment Program, in solicitations and contracts that are subject to the Trade Agreements Act by incorporating the provision and clause prescribed in 525.407(a).

(c) When acquiring eligible products without full and open competition using the authorities in FAR 6.302–3(a)(2)(i) or 6.302–7, a copy of the approved justification must be furnished to the Associate Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

[54 FR 26535, June 23, 1989, as amended at 54 FR 33554, Aug. 15, 1989; 55 FR 32635, Aug. 10, 1990; 57 FR 42708, Sept. 16, 1992; 59 FR 64857, Dec. 16, 1994]

525.402–70 Delegation of limited waiver authority.

(a) The U.S. Trade Representative, under section 302(b) of the Trade Agreements Act (Act), has authorized the Administrator of General Services to waive, under limited specified circumstances and on a case-by-case basis, the purchasing prohibition in section 302(a)(1) of the Act.

(b) The Administrator has delegated to the HCA authority to waive the purchasing prohibition in paragraph (a) of this section, in cases where in response to a solicitation:

(1) There are no responsive bids or technically acceptable offers received from responsible offerors of U.S. or designated country end products, or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(c) A copy of any waiver under paragraph (b) of this section must be furnished to the Associate Administrator for Acquisition Policy for transmittal to the U.S. Trade Representative.

525.406 Agencies covered by the Agreement on Government Procurement.

The exclusion provided for in FAR 25.406 for the Tools Commodity Center applies only to purchases of items in Groups 51 and 52 by the Tools Commodity Center Procurement Division of the International, Tools, and Appliances Commodity Center and to the Tools Material Management Division in Region 6.

[55 FR 38552, Sept. 19, 1990]

525.407 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.225–8, Trade Agreements Act Certificate, and the clause at 552.225–9, Trade Agreements Act, in solicitations and contracts subject to the Trade Agreements Act in lieu of the FAR provision at 52.225–8 and the clause at 52.225–9.

(b) The contracting officer shall insert the clause at 552.225–72, Eligible Products From Nondesignated Countries—Waiver, in solicitations and contracts subject to the Trade Agreements Act.

[57 FR 42708, Sept. 16, 1992]

Subpart 525.9—Additional Foreign Acquisition Clauses

525.901 Omission of audit clause.

The heads of contracting activities shall make the determination under FAR 25.901(c)(1) to waive the right to examination of records by the Comptroller General.

[60 FR 54957, Oct. 27, 1995]

PART 526 [RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 527—PATENTS, DATA, AND COPYRIGHTS

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

SOURCE: 54 FR 26538, June 23, 1989, unless otherwise noted.

Subpart 527.4—Rights In Data and Copyrights

527.409 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.227–70, Government Rights (Unlimited), in lieu of the clause at FAR 52.227–17, Rights in Data-Special Works, in contracts for architect-engineer services and construction involving architect-engineer services, except when the clause at 552.227–71 is required.

(b) The contracting officer shall substitute the clause at 552.227–71, Drawings and Other Data to Become Property of Government, for the clauses at 552.227–70 and FAR 52.227–17 in contracts for architect-engineer services and construction involving architect-engineer services, when the sole property rights and exclusive control over the design and data are required by the Government.

PART 528—BONDS AND INSURANCE

Subpart 528.1—Bonds

Sec.
528.101 Bid guarantee.
528.101–1 Policy on use.
528.101–3 Contract clause.
528.102 Performance and payment bonds 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

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 Options in lieu of sureties.

Subpart 528.3—Insurance

528.301 General.
528.310 Contract clause for work on a Government installation.

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

SOURCE: 54 FR 26538, June 23, 1989, unless otherwise noted.

Subpart 528.1—Bonds

528.101 Bid guarantee.

528.101–1 Policy on use.

(a) *Construction contracts.* (1) Bid guarantees must not be required for contracts awarded under section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)).

(2) Unless waived under FAR 28.101–1(c), bid guarantees must be required for construction contracts (except section 8(a) contracts) that do not exceed $25,000 when it is determined under 528.102–1(b) that a performance bond is essential to protect the Government's interest.

(b) *Building service contracts.* Unless waived by the HCA, bid guarantees must be required for building service contracts in excess of $25,000 when 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.

528.101–3 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.228–70, Bid Guarantee and Bonds, in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and a bid guarantee and bond requirement is to be included.

(b) The contracting officer shall insert a clause substantially the same as the clause at 552.228–71, Bid Guarantee, in solicitations and contracts when a

building service or other service contract is contemplated and a bid guarantee requirement is to be included.

528.102 Performance and payment bonds for construction contracts.

528.102–1 General.

(a) The performance and payment bond requirements in FAR 28.102–1 apply to contracts awarded under section 8(a) of the Small Business Act unless the requirement has been waived by SBA under section 8(a)(2) of the Small Business Act, as amended.

(b) Performance and/or payment bonds may be required on a case-by-case basis for construction contracts that do not exceed $25,000 if a written determination is made by the contracting officer and approved by the contracting director indicating that they are essential to protect the Government's interest.

528.103 Performance and payment bonds for other than construction contracts.

528.103–2 Performance bonds.

(a) Performance bonds shall not be required for building service contracts unless a written determination is made by the contracting officer explaining why the bond is essential to protect the Government's interest and justifying the additional cost of the bonding requirement.

(b) Performance bonds must not be required for building service contracts awarded under section 8(a) of the Small Business, Act as amended (15 U.S.C. 637(a)), or 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) The contracting officer shall consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228–72, Performance Bond, in solicitations and contracts when a building service or other service contract is contemplated and a performance bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and options to extend the term of the contract when the solicitation does not include an option provision.

[54 FR 26538, June 23, 1989, as amended at 55 FR 5223, Feb. 14, 1990; 60 FR 54956, Oct. 27, 1995]

528.103–3 Payment bonds.

(a) Payment bonds may be required for other than construction contracts when the contracting director determines, under FAR 28.103–3, that such a requirement is in the Government's interest.

(b) The contracting officer shall consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228–73, Performance and Payment Bonds, in solicitations and contracts when a building service or other service contract is contemplated and a performance and payment bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and options to extend the term of the contract when the contract does not include an option provision.

[54 FR 26538, June 23, 1989, as amended at 55 FR 5223, Feb. 14, 1990]

528.106 Administration.

528.106–6 Furnishing information.

The HCA or a designee shall perform the functions outlined in FAR 28.106–6(c).

Subpart 528.2—Sureties

528.202 Acceptability of corporate sureties.

(a) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. Failure of the surety to affix the corporate seal may be waived as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

(b) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in

satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

[58 FR 52444, Oct. 8, 1993]

528.202–70 Acceptability of bonds and sureties.

The contracting officer shall 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. The bond must be retained with the original of the contract. The contracting officer shall notify the contractor that the bond(s) has been accepted.

[55 FR 5223, Feb. 14, 1990]

528.203 Acceptability of individual sureties.

Evidence of possible criminal or fraudulent activities by an individual surety must first be referred to the Assistant Inspector General for Investigations or to the appropriate regional Inspector General for Investigations. The Office of Inspector General may conduct an investigation and, when appropriate, refer the matter to the Associate Administrator for Acquisition Policy. Referrals must include the information required by 528.203–7.

[55 FR 5223, Feb. 14, 1990]

528.203–7 Exclusion of individual sureties.

(a) The Associate Administrator for Acquisition Policy or designee excludes individuals from acting as a surety on bonds under FAR 28.203–7.

(b) Referrals for consideration of exclusion must include as a minimum:

(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 name 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; and

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

[55 FR 5223, Feb. 14, 1990]

528.204 Options in lieu of sureties.

(a) An irrevocable letter of credit may be accepted as a bid guarantee under FAR clause 52.228–1, Bid Guarantee.

(b) Security deposited instead of corporate or individual sureties on bonds must be safeguarded as provided in procedures issued by the Office of the Comptroller immediately after they are received. 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.

[55 FR 5224, Feb. 14, 1990]

Subpart 528.3—Insurance

528.301 General.

(a) Insurance requirements must be adequate, just, and reasonable, and should be predicated on potential loss or damage (not necessarily on the value of the contract). When it is determined that insurance coverage should be required, the solicitation and resultant contract must contain the appropriate provisions prescribed in FAR 28.309, 28.310, or 28.311. The determination as to the type of insurance, amount, and any related insurance requirements must be made by the contracting officer with the advice of assigned legal counsel. All premiums or costs incurred to comply with an insurance requirement must be paid by the contractor.

(b) Submission of a current certificate of insurance indicating the amount and coverage, to the contracting officer, will serve as certification that the required insurance has been obtained.

528.310 Contract clause for work on a Government installation.

The contracting officer shall insert the clause at 552.228–75,Workmen's Compensation Laws, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold and the

contract will require work to be performed on Government property.

[54 FR 26538, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

PART 529—TAXES

Subpart 529.4—Contract Clauses

Sec.
529.401 Domestic contracts.
529.401–70 Purchases made using simplified acquisition procedures.
529.401–72 Contracts usable by the DC Government.

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

SOURCE: 54 FR 26540, June 23, 1989, unless otherwise noted.

Subpart 529.4–Contract Clauses

529.401 Domestic contracts.

529.401–70 Purchases made using simplified acquisition procedures.

The contracting officer shall insert the clause at 552.229–70, Federal, State, and Local Taxes, in purchases made using simplified acquisition procedures, except acquisitions of utility services and micro purchases.

[60 FR 42804, Aug. 17, 1995]

529.401–72 Contracts usable by the DC Government.

The contracting officer shall insert the clause at 552.229–72, Federal Excise Tax—DC Government, in contracts which involve the purchase of supplies by the District of Columbia Government.

PART 530—COST ACCOUNTING STANDARDS

Subpart 530.2—CAS Program Requirements.

530.201–5 Waiver.

Subpart 530.4—Cost Accounting Standards

530.470 Waiver of Cost Accounting Standard 9904.412–40(c).

Subpart 530.2—CAS Program Requirements.

530.201–5 Waiver.

Requests to waive CAS requirements under FAR 30.201–5 shall be submitted to the CAS Board through the Associate Administrator for Acquisition Policy.

[57 FR 61584, Dec. 28, 1992]

Subpart 530.4—Cost Accounting Standards

530.470 Waiver of Cost Accounting Standard 9904.412–40(c).

The Associate Administrator for Acquisition Policy (V) on a non-delegable basis may waive the cost assignment provisions of 48 CFR 9904.412–40(c). Requests for waivers shall be forwarded to the Associate Administrator with supporting documentation and rationale. A copy of each approved waiver will be furnished by the Associate Administrator to the CAS Board's Executive Secretary.

[57 FR 61584, Dec. 28, 1992]

PART 531—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 531.1—Applicability

531.101 Objectives.

The Associate Administrator for Acquisition Policy approves individual deviations concerning cost principles under FAR 31.101.

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

[54 FR 26541, June 23, 1989]

PART 532—CONTRACT FINANCING

Subpart 532.1—General

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532.7101 General.
532.7102 Submission and processing of invoices or vouchers.
532.7103 Action upon receipt of an audit report.
532.7104 Suspension and disapproval of amounts claimed.

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

SOURCE: 54 FR 26541, June 23, 1989, unless otherwise noted.

Subpart 532.1—General

532.111 Contract clauses.

(a) *Discounts for prompt payment.* The clause at 552.232–8 must be included in multiple award schedule solicitations and resultant contracts, instead of the clause at FAR 52.232–8. (See 515.608–71 for an explanation concerning this deviation.)

(b) *Invoice requirements.* The contracting officer shall insert a clause substantially the same as the clause at 552.232–72, Invoice Requirements, in all solicitations and contracts for supplies, services, construction or the acquisition of leasehold interests in real property that require the submission of invoices for payment. The contracting officer should delete subparagraph (b) of the clause when an Accounting Control Transaction (ACT) number is not required for payment.

(c) *Adjusting payments.* The contracting officer shall insert the clause at 552.232–78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the simplified acquisition threshold.

(d) *Final payment.* The contracting officer shall insert the clause at 552.232–79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the simplified acquisition threshold.

[54 FR 26541, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

532.112 Payment of subcontractors under contracts for non-commercial items.

532.112–1 Subcontractor assertions of nonpayment.

Contracting officers who determine that a certification of payment of a subcontractor or supplier under FAR 32.112–1 is inaccurate in any material respect shall report the matter to the Office of Inspector General. If appropriate, the Office of Inspector General will forward a report and recommendation to the Department of Justice.

[61 FR 1151, Jan. 17, 1996]

Subpart 532.4—Advance Payments

532.402 General.

The findings and determinations required by FAR 32.402(e) must be prepared by the contracting officer in coordination with legal counsel and the contract finance office. The findings, determinations and authorization for advance payments must be approved by the head of the contracting activity (HCA).

532.407 Interest.

The contract finance office will provide 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.

532.501–70 Use of benchmarks with progress payments based on costs.

(a) In unusual circumstances, it may be desirable to provide for the achievement of specified benchmarks such as submission and acceptance of a preproduction or pilot model before making progress payments based on costs. When progress payments are conditioned upon achievement of specified benchmarks during performance of the contract, the HCA must make a written determination that use of benchmarks is in the best interest of the Government. When such a determination is made, the solicitation and each resulting contract must include a provision specifying the benchmarks that must be achieved before progress payments are made.

(b) Benchmarks should not be used in a manner that will convert progress payments based on costs into progress payments based on a percentage or stage of completion.

532.502 Preaward matters.

532.502–2 Contract finance office clearance.

(a) The contract finance office director must provide the approval required by FAR 32.502–2.

(b) Contracting officers must request the contract finance office to provide advice and assistance regarding a contractor's financial condition and the adequacy of the contractor's accounting system and controls before providing for progress payments based on costs.

532.502–4 Contract clauses.

The appropriate legal counsel must concur in the progress payment clause included in each solicitation and contract when the progress payments will be based on cost.

532.503–5 Administration of progress payments.

The contracting officer must ensure that the contract finance office (1) has adequate administrative and fiscal procedures to accomplish the fiscal aspects of FAR 32.503–5, (2) provides the contracting officer with the date and amount of each progress payment to a contractor, and (3) provides the contracting officer with written recommendations whenever findings are made which warrant action by the Government.

532.503–6 Suspension or reduction of payments.

Action recommended by the contracting officer under FAR 32.503–6 must be approved by the HCA after coordination with the assigned legal counsel. Upon approval, the contracting officer will 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 the clause at FAR 52.232–16, may be made only with the approval of the contracting director after coordination with the contract finance office. Upon approval, the contracting officer will request the finance office to reduce the rate.

Subpart 532.6—Contract Debts

532.601 Definitions.

Debt means an amount of money or property which has been determined by a responsible official to be owed to the United States from any person, or entity except that the terms do not apply to amounts owed by another Federal agency.

Delinquent debt means an amount that has not been paid or otherwise collected by the date specified (usually 30 days) in the contracting officer's initial written demand for payment (i.e., final decision letter).

Responsible official as used in this subpart means the contracting officer. However, the contract finance office is responsible for the administration of debt collection under the Accounting Operations—Accounts Receivable and Credit and Finance Operations, and Related Activities Handbook (PFM P 4253.1).

532.606 Debt determination and collection.

532.606–70 Referral of delinquent debts.

(a) When the contracting officer determines that a debt in excess of $100 is delinquent, the contracting officer shall forward notification of the delinquent debt to the applicable finance office for collection in accordance with the Debt Collection Act of 1982, and possible forwarding to a credit reporting agency.

(b) If the contractor appeals the contracting officer's 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.

GSA fiscal regulations are contained in the Budget Administration Handbook (COM P 4251.3A), Accounting Classification Handbook (COM P 4240.1), and Accounting Operations—Voucher Examination, Payment Handbook (PFM P 4252.1).

532.705 Contract clauses.

532.705–1 Clauses for contracting in advance of funds.

The contracting officer shall insert the clause at 552.232–77, Availability of Funds, in solicitations and contracts for services which are ''severable'' when the contact, or a portion of the contract, will be chargeable to funds of the new fiscal year and the circumstances described in the prescriptions for the FAR clauses at 52.232–18 or 52.232–19 do not apply.

[61 FR 1151, Jan. 17, 1996]

Subpart 532.8—Assignment of Claims

532.805 Procedures.

(a) Upon receipt of a notice of assignment, the contracting officer must obtain legal counsel concurrence that both the notice and the instrument of assignment are in proper form, properly executed, and are actions that the contractor is entitled to make under the terms of the contract.

(b) When acknowledging receipt of the notice of assignment, the contracting officer must 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. A copy of the acknowledgement, evidencing legal counsel concurrence, must be sent to the contract finance office.

(c) When payments under requirements or indefinite quantity contracts that are for the sole use of GSA have been assigned, the contracting officer must 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 contractor has been requested to specify the name and address of the assignee on future invoices.

532.806 Contract clauses.

The contracting officer shall 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

532.902 Definitions.

Full cycle electronic commerce means the use of electronic data interchange (EDI), Internet-based invoice processing, and electronic funds transfer (EFT):

(a) By the Government, to place purchase or delivery orders, receive invoices, and pay invoices.

(b) By the Contractor, to accept and fill orders, submit invoices, and receive payment.

[63 FR 12966, Mar. 16, 1998, as amended at 63 FR 38330, July 16, 1998]

532.905 Invoice payments.

(a) Before exercising the authority to modify the date for constructive acceptance in subdivision (a)(6)(i) of the clause at FAR 52.232–25, Prompt Payment, or subdivision (a)(5)(i)(A) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the contracting officer shall prepare a written justification explaining why a longer period is necessary. The time specified must be determined on a case-by-case basis and the justification must be approved by an official one level above the contracting officer. A contracting officer must not specify a constructive acceptance period that exceeds 30 days. The time specified in subdivision (a)(5)(i)(B) of the clause at FAR 52.232–26 for constructive approval of progress payments must not exceed 7 days.

(b) The time specified for payment of progress payments in subdivision (a)(1)(i)(A) of the clause at FAR 52.232–27, Prompt Payment for Construction Contracts, must be determined by the contracting officer on a case-by-case basis. Periods longer than 14 days must be justified in writing and approved by an official one level above the contracting officer. Under no circumstances may more than 30 days be specified. The time specified in subdivision (a)(4)(i) of FAR clause 52.232–27, for constructive acceptance or approval will be determined by the contracting officer on a case-by-case basis but may not exceed 7 days unless a longer period is justified, in writing, and approved by an official one level above the contracting officer. Under no circumstances may more than 30 days be specified.

(c)(1) To increase efficiency and reduce costs to the Government, Federal Supply Service contracts under the Stock, Special Order, and Schedules Programs may authorize payment within 10 days of receipt of a proper invoice. The contract must meet the following conditions:

(i) The contractor agrees to full cycle electronic commerce.

(ii) The contract includes FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment.

(2) The 10 day payment terms apply to each order that meet all the following conditions:

(i) FSS places the order using EDI in accordance with the Trading Partner Agreement.

(ii) The contractor submit EDI invoices in accordance with the Trading Partner Agreement or invoices through the GSA Finance Center Internet-based invoice process.

(iii) A GSA Finance Center pays the invoices using EFT.

(3) The 10 day payment terms do not apply to any order:

(i) Placed by a GSA contracting activity other than FSS.

(ii) Placed by or paid by another agency.

[54 FR 26541, June 23, 1989, as amended at 63 FR 12966, Mar. 16, 1998; 63 FR 38330, July 16, 1998]

532.905–70 Certification of payment to subcontractors and suppliers.

When a contract includes the clause at FAR 52.232–5, Payments Under Fixed-Priced Construction Contracts, no progress payments will be processed until the contractor submits a certification of payment to subcontractors and suppliers. The GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, may be used for certification.

532.905–71 Final payment.

(a) The final payment on construction or building service contracts must not be processed until the contractor submits a properly executed GSA Form 1142, Release of Claims. If, after repeated attempts, the contracting officer is unable to obtain a release of

claims from the contractor, final payment may be processed with the approval of appropriate legal counsel.

(b) The amount of final payment must include, as appropriate, any deductions to cover liquidated damages for late completion, liquidated damages for labor violations, amounts withheld for improper payment of labor wages, and the amount of unilateral change orders covering defects and omissions.

532.908 Contract clause.

(a) For FSS Stock, Special Order, and Schedules solicitations and contracts that provide payment in 10 days under 532.905(c), the contracting officer must:

(1) If the contract will include FAR 52.212–4, insert the clause at 552.232–70. GSA received a class deviation to allow use of 552.232–70 for commercial items.

(2) If the contract will not include FAR 52.212–4, insert 552.232–25, Prompt Payment, instead of FAR 52.232–25.

(b) The contracting officer shall insert the clause at 552.232–71, Prompt Payment, in solicitations and contracts for the acquisition of leasehold interests in real property. The contracting officer may modify the date for constructive acceptance in subparagraph (b)(2) of the basic clause to specify a period longer than 7 calendar days (but not to exceed 30 days) if necessary due to the nature of the services to be received, inspected or accepted by the Government. A written justification for specifying the longer period must be prepared and approved by the contracting director. The contracting officer shall use Alternate I instead of the basic clause if the lease contract does not contain provisions for ordering alterations or overtime utility services.

(c) The contracting officer shall insert the clause at 552.232–73, Electronic Funds Transfer Payment, in solicitations and contracts for acquisitions of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months, if payment may be made by electronic funds transfer.

[54 FR 26541, June 23, 1989, as amended at 57 FR 37890, Aug. 21, 1992; 63 FR 12966, Mar. 16, 1998]

Subpart 532.70—Authorizing Payment by Credit Card Under Schedule Contracts

SOURCE: 54 FR 43180, Oct. 23, 1989, unless otherwise noted.

532.7001 Definition.

Government commercial credit card, used in this subpart, means the uniquely numbered credit card issued by the contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

532.7002 Solicitation requirements.

When solicitations for schedule contracts for supplies (other than telecommunication and telephone equipment) and services (other than teleprocessing services) request offerors to indicate whether payment by Government commercial credit card for orders of $25,000 or less will be accepted, the contracting officer shall identify the clearinghouse that is being used by the contractor issuing credit cards under single award schedule, Federal Supply Schedule IG 615, for Governmentwide Commercial Credit Card Service on the cover page or in section L of the solicitation. The name of the clearinghouse is provided for offerors' information and use in responding to the schedule solicitation.

532.7003 Contract clause.

The contracting officer shall insert the clause at 552.232–80, Payment By Credit Card, in schedule solicitations and resultant contracts for supplies (other than telecommunication and telephone equipment) and services (other than teleprocessing services) to provide for payment by Government commercial credit card as an alternative method of payment for orders of $25,000 or less.

Subpart 532.71—Payments Under Contracts Subject to Audit

532.7101 General.

(a) The contracting officer shall not approve the initial invoice or voucher

before consulting with the Assistant Inspector General—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; or

(4) Fixed-price contracts providing for (i) progress payments based on costs, (ii) advance payments, (iii) guaranteed loans, or (iv) incentives or redetermination.

(b) The contracting officer shall not approve the final payment invoice or voucher for such contracts, nor for 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; provided, that this paragraph (b) shall not apply to fixed-price contracts with escalation where no price revision (upward or downward) is to be made.

532.7102 Submission and processing of invoices or vouchers.

(a) Contractors should be required to submit invoices or vouchers to the contracting officer. Contracting officers must annotate the invoices with the date of receipt as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The processing of invoices or vouchers before payment must include a review by the contracting officer, or a designee, to determine that the items and amounts claimed are in consonance 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 from the invoice amounts which are questionable or which are required to be withheld, the contracting officer shall make the required deduction, except as provided in 532.7103.

(b) Subject to 532.7101, approval by the contracting officer of any payment, must be noted on (or attached to) the invoice or voucher submitted by the contractor. The invoice or voucher will be forwarded to the appropriate contract finance office and retained therein after certification and scheduling for payment by a disbursing office.

532.7103 Action upon receipt of an audit report.

Audit reports will be furnished to the contracting officer, with a copy to the appropriate contract finance office. Upon receipt of an audit report, the contracting officer shall, pursuant to contract terms, determine the allowability of all costs covered by audit, giving full consideration to the auditor's recommendations. When the contracting officer is in doubt or questions the recommendations of the auditor, deductions need not be made from invoices or vouchers for provisional payments. In these cases, the contracting officer shall confer with the auditor and other appropriate Government personnel (such as a price specialist or legal counsel) to determine what further action should be taken regarding the costs in question. If the contracting officer disagrees with the auditor's recommendations, the contracting officer shall document the contract file and furnish the auditor with a copy of the statement.

532.7104 Suspension and disapproval of amounts claimed.

The contracting officer shall notify the appropriate contract finance office in writing when amounts claimed for payment are (a) suspended, (b) disapproved as not being allowable according to contract terms, or (c) not allocable to the contract. This notice by the contracting officer will be the basis for the issuance by the contract finance office of GSA Form 533, Administrative Difference Statement. A copy of GSA Form 533 will be attached to each copy of the invoice or voucher from which the deduction has been made, including an explanation of the deduction.

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

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533.102 General.
533.103 Protest to the agency.
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Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

Subpart 533.71—Processing Contract Appeals

533.7100 Definitions.
533.7101 Notice of appeal.
533.7102 Contents of notices of appeal.
533.7103 Appeal files.
533.7103–1 Preparation of the appeal file.
533.7103–2 Transmittal of the appeal file.
533.7104 The contracting officer's memorandum of position.
533.7105 Procedure following decision of the GSA Board of Contract Appeals.

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

SOURCE: 54 FR 26543, June 23, 1989, unless otherwise noted.

Subpart 533.1—Protests

533.101 Definitions.

Associate General Counsel means the Associate General Counsel of the General Law Division, Personal Property Division, or Real Property Division.

533.102 General.

Except as indicated in this subpart, the Office of General Counsel (OGC) is responsible for all contacts with the GAO or GSBCA, potential contractors, attorneys, and any other persons, concerning protests of GSA contract actions filed with the Comptroller General or GSBCA.

533.103 Protests to the agency.

When a protest is filed only with the agency, the contracting officer is required to issue a written response to the protest. An agency protest is deemed to be filed with the agency when the complete protest is received at the location designated in the solicitation for service of protests. If the complete protest is actually received by the contracting officer at an earlier time, the protest shall be deemed to be filed when received by the contracting officer.

When a protest is filed only with the agency, an award may not be made until a decision on the protest is issued, unless the contracting director first makes the determination required by FAR 33.103(a)(2). The protestor must be notified in writing of the contracting officer's decision in a timely manner.

[56 FR 47006, Sept. 17, 1991]

533.104 Protests to GAO.

(a) *General procedures.* (1) In addition to the requirements of FAR 33.104(a)(3), the agency report must contain the GAO protest number (GAO case file number), the solicitation or contract number, the full corporate name of the protesting organization and other firms involved, and a statement indicating whether the protest was filed before or after award. If the protest is filed after award, the report must contain the identity of the awardee, the date of award, the contract number, the date and time of bid opening (including a statement when the date of bid opening was extended by subsequent amendments), the total number of offerors, a complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken), and any 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.)

(2) GAO protests must be handled on a priority basis. The appropriate Associate General Counsel (AGC) shall prepare a report for signature of the General Counsel responding to GAO protests. These reports are to be based upon a statement of fact and position prepared by the responsible contracting officer and approved by the contracting director. When requested by the appropriate AGC, the Regional Counsel will prepare a statement of legal position analyzing the merits of a protest concerning a regional procurement.

(3) The following procedures must be followed in handling protests:

(i) When a protest is received by the agency, the AGC shall telephonically notify the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. If the contracting activity or Regional Counsel receives a copy of a protest before being notified thereof by the AGC, they must immediately notify the appropriate AGC.

(ii) After receiving the formal protest, which has been filed with GAO, the AGC will formally request a statement of fact and position from the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. The contracting officer shall immediately notify the affected bidders or offerors that a protest has been received.

(iii) The contracting officer shall notify assigned counsel and begin preparing a documented statement of fact and position immediately upon receiving a protest or notice thereof.

(iv) When completed, the statement of fact and position must be concurred in by the contracting director, and on regional procurements, by the Office of Regional Counsel. In appropriate cases, the AGC may request the Regional Counsel to prepare a legal position analyzing the merits of a protest against a regional procurement. In such cases, the contracting officer's statement of fact and position should be included as a referenced attachment thereto.

(v) The Regional Counsel's legal position, when requested, and the contracting officer's statement of fact and position, must be transmitted to the appropriate AGC, in triplicate. If other interested parties are involved, additional copies may be requested. The statement is due in the office of the appropriate AGC no later than 10 workdays after the date on which the contracting officer originally received the protest. This time may be reduced if GAO invokes the express option. If a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate AGC must be notified promptly, by telephone, of the reasons for the delay and of the additional time needed. Additional time may be granted if the specific circumstances of the protest require a longer time. A request for an extension is proper only if the facts or legal issues affecting the resolution of a protest are so complicated that an adequate report cannot be prepared on time; the need to coordinate the report with other agencies, or with offices in distant locations, makes it impossible to prepare the report on time; or other compelling circumstances prevent preparing the report on time. Upon request of the AGC, the contracting officer shall confirm any oral requests for extensions in writing. The contracting director shall concur in the request and send a copy to the HCA. A request for an extension, which will delay submission of the agency's report to GAO beyond 35 days from the date GSA originally received the protest, may be granted only by the GAO. The AGC will notify the Central Office contracting activity or Regional Counsel of the GAO's decision.

(vi) After submitting the statement to the AGC, the contracting officer or Regional Counsel must advise the AGC of all later developments that may affect the case.

(vii) All documents transmitted under these procedures must be sent by the fastest means possible.

(viii) In addition to the requirements of FAR 33.104(a)(5)(ii), a copy of any comments is sent to the AGC.

(4) The Office of General Counsel (OGC) must furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC is responsible for promptly advising the GAO of any change in the designated officials.

(5) The format for notification required by FAR 33.104(a)(2) is as follows:

Name

Address

A protest concerning Solicitation No. _____ has been filed with the General Accounting Office (GAO).

The protest was filed by (*Insert the name and address of the protester, and the name of the person signing the protest.*) on (*Date*).

Copies of the protest may be obtained from this office.

You may submit your views and relevant information regarding the protest directly to the General Accounting Office. A copy of any

submission to the GAO should be provided to this office.

Contracting Officer's signature

(b) *Protests before award.* Under FAR 33.104(b), the HCA may determine in writing that urgent and compelling circumstances significantly affecting the interests of the United States do not permit waiting for the decision of GAO and award is likely to occur within 30 days. The written determinations and findings (D&F), in the format shown at 501.704–70(e)(1), should be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate AGC. After the D&F is approved, it must be returned to the appropriate AGC who notifies GAO of the agency's findings and intended action before the award is made.

(c) *Protests after award.* If the protest is received from GAO (not from protester or any other party) within the time periods specified in FAR 33.104(c) contract performance must be suspended unless the HCA determines in writing that contract performance is in the best interests of the United States or that urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO's decision. The written determination and findings (D&F), in the format shown at 501.704–70(e)(2), should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate AGC. After the D&F is approved, it must be returned to the AGC who notifies GAO of the agency's findings and intended action before contract performance is authorized.

(d) *Notice to GAO.* The HCA responsible for the solicitation, proposed award, or award of the contract must report to the Comptroller General through the OGC within 65 days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report must explain the reasons why the GAO's recommendation will not be followed.

[54 FR 26543, June 23, 1989, as amended at 57 FR 61584, Dec. 28, 1992; 61 FR 1151, Jan. 17, 1996]

533.105 Protests to GSBCA.

(a) *Notification procedure.* After receiving a protest, the contracting officer shall notify the following:

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegating official in the Information Technology Service. When giving such notification, the contracting officer should follow these procedures:

(i) Avoid interpreting or characterizing the nature of the protest.

(ii) Use appropriate means to ensure delivery to all the firms by the workday after the date of filing with the GSBCA.

(iii) Use the following format:

Name (Officer, Managing Agent, or person who signed offer)

Address

A protest concerning Solicitation No. _____ has been filed with the General Services Administration Board of Contract Appeals (GSBCA). The protest was filed by (*Insert the name and address of the protester and the name of the person signing the protest.*) on (*Date*). The protest has been purportedly filed pursuant to Section 2713 of the Competition in Contracting Act, Pub. L. 98–369. Copies of the protest may be obtained from the Office of the Clerk of the GSBCA, 18th and F Streets NW, Washington, DC 20405, or from the contracting officer.

Contracting Officer's signature

(2) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, must be forwarded to the agency by appropriate means to ensure next day delivery to both the requiring office and the agency's legal office.

(3) *Assigned counsel.* A copy of the protest complaint, including all attachments, must be forwarded to the appropriate AGC by appropriate means to ensure next day delivery.

(4) The Board, through assigned counsel, within 3 workdays after the date of filing with the GSBCA, that the notices described in paragraphs (a)(1)

and (2) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice must be provided.

(b) *Protest file.* To ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receiving the protest. The protest file must be forwarded to assigned counsel by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. Assigned counsel will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, assigned counsel will advise the contracting officer. The following rules govern the assembly of protest files:

(1) *Format.* Protest file exhibits are true, legible, and complete copies. They must be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering must be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and indicate which exhibits, if any, have been filed with the Board in camera (see (b)(3) of this section) or otherwise not served on every other party.

(2) *Contents.* In addition to the items required by FAR 33.105(b), the contents should include those items required by GSBCA Rule 4(a), when appropriate. (See 48 CFR 6101.4(a).)

(3) *Confidential, privileged, or proprietary information.* The protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary, or privileged. When such information is required to be included in the protest file, it is to be placed only in the copies going to the Board and to assigned counsel. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the number and identity of the offerors whose proposals are included in the copies of the protest file going to assigned counsel and the GSBCA, and should include an identifying statement, e.g., ''proposals being considered for award.''

(c) *Protest conference.* Within 6 working days of filing a protest, a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or hearing is desired, and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(d) *Procedure following decision of the GSA Board of Contract Appeals.* (1) Upon a Board decision (oral or written) to suspend procurement authority pending a decision on the merits of a protest, the contracting officer, in conjunction with the appropriate AGC, shall comply with the suspension decision.

(2) If the Board suspends performance of a contract for automatic data processing goods and services, the contracting officer shall take immediate action to comply with the suspension decision (40 U.S.C. 759(h)(3)(B)). Such suspension will be effective as directed by the Board.

(3) If the Board revokes, suspends, or revises procurement authority after the award of a contract for ADP resources, the contracting officer shall consider the contract valid as to all goods or services delivered and accepted before the Board's decision (40 U.S.C. 759(h)(6)(B)).

[54 FR 26543, Jun. 23, 1989, as amended at 59 FR 22520, May 2, 1994; 59 FR 29480, June 7, 1994; 61 FR 1152, Jan. 17, 1996]

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

The contracting officer shall insert the clause at 552.233–70, Disputes (Utility Contract), in solicitations and contracts for utility services. This clause supplements the Disputes clause at FAR 52.233–1.

Subpart 533.71—Processing Contract Appeals

533.7100 Definitions.

Assigned Counsel means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

Associate General Counsel means the Associate General Counsel of the General Law Division, Personal Property Division, or Real Property Division.

533.7101 Notice of appeal.

(a) Notices of appeal are to be addressed to the GSA Board of Contract Appeals along with a copy to the contracting officer. Final decisions must be appealed within 90 calendar days from the date the decision of the contracting officer is received. Any request for an extension of the 90-day appeal period will be denied.

(b) If the notice of appeal was mailed or otherwise submitted to the contracting officer in an untimely manner, a separate letter, signed by the contracting director, shall be sent to the AGC, requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of the contracting officer's final decision, and must be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

533.7102 Contents of notices of appeal.

A notice of appeal must be in writing and should indicate that an appeal is thereby intended, should identify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal must be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

533.7103 Appeal files.

(a) Appeal files must be prepared in accordance with this section and forwarded, after concurrence by assigned counsel, to the appropriate AGC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed unless the AGC advises that the Board requires a shorter period under its small claims procedures. In the event the time for submission of the appeal file cannot be met, the contracting officer shall submit in writing a full explanation and a request for additional time to the AGC, before expiration of the designated time.

(b) Upon receipt of the notice of appeal, the contracting activity must establish a record to ensure the timely preparation and submission of appeal cases. The record must show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, contract number, docket number, and name of the contracting officer.

533.7103–1 Preparation of the appeal file.

(a) *General.* Appeal files must be prepared in quadruplicate. Each file is identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the documents included in the first appeal file, but must make reference to the appeal file which contained such documents, including the docket and item numbers. However, if changes to such documents occur subsequent to preparation of the original file, these changes must be appropriately identified and included in the later appeal file. Such files must also include any documents pertinent to the

later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file must be assembled in a looseleaf binder. A gummed label (NSN 7510–00–264–5460) must be used on top of the looseleaf binder to identify the case by contractor, contract number and docket number.

(2) Individual appeal files must not be more than 1 inch thick. If the file will be more than 1 inch thick, two or more consecutive binders must be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (i.e., letter, telegram, memo, report, invoice, etc.) must be legible, complete, included as a separate exhibit in the file, and listed in the ''Index of Exhibits'' by exhibit number and brief description. If a document cannot be legibly reproduced, the unaltered document must be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file must contain division sheets separating the different documents listed in the ''Index of Exhibits.'' Division sheets must be tabbed and numbered consecutively commencing with number one, in whole Arabic numbers (no letters, decimals, or fractions), and continuously from each file to the next so that the complete appeal file will consist of one set of consecutively numbered appeal file exhibits. In addition, the pages within the exhibit shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required.

(c) *Arrangement of documents.* (1) The first (top) document in the appeal file must be the ''Index of Exhibits.'' The index must list, opposite each exhibit number, the date and a brief description of the document and must indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. The exhibits must be arranged in chronological order, earliest document first (as exhibit 1), and be separated by tabs for identification. For example:

	Exhibit	Date
Copy of basic contract, including referenced terms and conditions and any amendments	1	5/20/88
Notice of award.	2	5/20/88
Notice to proceed and facsimile of Post Office receipt	3	6/5/88
Contractor's request for final decision or other documents of claim in response to which the decision was issued	4	8/5/88
Contracting officer's final decision letter applicable to the dispute and facsimile of Post Office receipt	5	8/25/88
Notice of Appeal with attachment, if any.	6	9/10/88
Board of Contract Appeals acknowledgement of contractor's Notice of Appeal	7	9/15/88

(2) In addition to the exhibits listed in (c)(1) of this section, other pertinent exhibits, such as the following, should be included and exhibited as applicable, in chronological order:

(i) Copy of the repurchase contract, including referenced terms and conditions.

(ii) Copies of specifications/drawings applicable to the dispute.

(iii) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(iv) Copy of letter of assessment, including worksheet showing calculation of excess costs and/or other damages including administrative costs.

(v) Copies of defaulted purchase/delivery orders.

(vi) Copies of purchase/delivery orders issued under the repurchase contract.

(vii) Proof of payment and a detailed disbursement listing, annotated and certified, if applicable.

NOTE: The information and documents needed must be obtained from the appropriate GSA finance office. The finance information will include a detailed disbursement listing, annotated with the check number and date, and the amount applicable to the repurchase order if different from the check amount. The disbursement listing will be certified by an appropriate finance division official whose title and date of signature will also be shown.

(viii) Evidence of certification of the claim or claims, as applicable.

(ix) All other correspondence between the Government and the contractor relevant to the appeal.

(x) All documents and other physical evidence on which the contracting officer relied in making a decision.

[54 FR 26543, June 23, 1989, as amended at 59 FR 22520, May 2, 1994]

533.7103–2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file must be forwarded to the AGC by a transmittal letter from the contracting director. The appeal file must be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which must be concurred in by assigned counsel who will also prepare and attach a statement of legal position. In addition, a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision must be prepared. A point of contact must be given to the AGC; name of individual, position, title, and telephone number.

(b) The contracting officer shall retain one copy of the appeal file.

(c) After reviewing the appeal file for adequacy, the trial attorney in the Office of General Counsel will transmit the appeal file to the Board and serve a copy of the appeal file upon appellant.

533.7104 The contracting officer's memorandum of position.

The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position is submitted to the AGC simultaneously with the appeal file, but as a separate document; i.e., it will not be included as part of the appeal file or included in the index. Although no particular form is prescribed, the statement must identify the contract, state the nature of the contractor's claim, cite pertinent portions of the contract, state the contracting officer's decision with citations to pertinent contract provisions and a supporting explanation, and set out any new facts which may have developed since the decision was made. The contracting officer shall sign the memorandum of position.

533.7105 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board will be promptly implemented. However, it must be recognized that the contractor may decide to appeal a Board decision in the United States Court of Appeals for the Federal Circuit. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision. If further appeal of a decision or a motion for reconsideration of a decision is contemplated, the implementation of the decision may be postponed; if the issue is over quantum, however, consideration should be made to making payment of the undisputed amount to minimize interest to be paid the contractor.

(b) The contracting officer need not take any further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection must be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, Office of Finance will normally pursue the necessary collection.) Any written demand must instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA finance office. A copy of any written demand must be provided to the appropriate GSA finance office for information and followup.

(c) In appeals brought under the disputes clause of the contract, when the Board does not uphold the contracting officer's original decision and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrence of assigned counsel. The supplemental agreement will ensure against further

litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate finance office with the original of the supplemental agreement and a copy of the Board's decision.

(d) In appeals brought under the Contract Disputes Act of 1978, when the Board does not uphold the contracting officer's original decision and the Board's decision awards the contractor an amount of money, and the AGC informs the contracting officer that the Government will not move for reconsideration of the Board's decision or appeal it to the United States Court of Appeals for the Federal Circuit, the contracting officer must complete the Certificate of Finality attached to the copy of the Board's decision and return it to the Board. The Board will forward the Certificate of Finality, completed by both parties, and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the contractor.

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

Subpart 536.1—General

Sec.
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.

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

536.303–70 Bids that include alternates.
536.303–71 Bids that include options.
536.303–72 Bids that include alternates and options.
536.370 Exercise of options.

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.
536.570–7 Measurements.
536.570–8 Specifications and drawings.
536.570–9 Shop drawings, coordination drawings, and schedules.
536.570–10 Samples.
536.570–11 Heat.
536.570–12 Use of equipment by the Government.
536.570–13 Subcontracts.
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

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]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION

Subpart 542.2—Assignment of Contract Administration

Sec.
542.200–70 Policy.
542.201 Definitions.
542.202 Assignment of contract administration.

Subpart 542.3—Contract Administration Office Functions

542.302 Contract administration functions.

Subpart 542.4—Correspondence and Visits

542.470 Implementation.

Subpart 542.7—Indirect Cost Rates

542.703 Policy.

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542.7101 General.
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542.7103 Types of contracts subject to audit.
542.7104 Additional internal controls.
542.7105 Releasing or withholding of audit reports.

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

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

Subpart 542.2—Assignment of Contract Administration

542.200–70 Policy.

(a) Contracting directors shall establish procedures that will ensure that contract administration activities are performed by qualified personnel and in an effective manner.

(b) Contract administration may be performed by the contracting officer who awarded the contract or by an administrative contracting officer (ACO) within the contracting office. As an alternative, management may establish a separate contract administration office (CAO) consistent with the nature and complexities of the contracts, the need to perform contract administration at or near the contractor's facility or the place of performance, and the availability of resources.

(c) 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 specialities. These representatives may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer except to the limited extent permitted for construction contracts. (See 542.201.2(d).) Designations of ACOs and contracting officers representatives must be in writing and communicated to the contractor.

542.201 Definitions.

Assignment of contract administration means that process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to a CAO or an ACO within a contracting office.

Contract administration means the performance of actions after contract award that the Government takes to obtain compliance with contract requirements, including 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.

Contracting Officer's Representative (COR), Contracting Officer's Technical

Representative (COTR), or *Contract Administrator* means an individual designated and authorized in writing by the contracting officer to perform specific limited contract administration activities.

Procuring Contracting Officer (PCO) means, a contracting officer (see FAR Subpart 2.1). This regulation uses the term to differentiate between procuring and administrative responsibilities when contract administration authority has been delegated to an ACO within a contracting office or a CAO.

542.202 Assignment of contract administration.

(a) The contracting officer may delegate to an ACO functions not listed in FAR 42.302 and 542.302(b) provided that:

(1) The requirements of FAR 42.202(c) are met and,

(2) The Associate Administrator for Acquisition Policy approves the additional delegation. Requests for additional delegations must be submitted through the appropriate Central Office Service Commissioner or Assistant Administrator of the appropriate service or staff office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the affected service/office.

(b) In addition to the requirements of FAR 42.202(d), the contracting officer shall provide or make available a complete copy of the contract file to the ACO.

Subpart 542.3—Contract Administration Office Functions

542.302 Contract Administration functions.

(a) Normal contract administration functions identified at FAR 42.302(a) are to be performed, to the extent they apply, either by the contracting office or an office specifically established to perform contract administration functions.

(b) The ACO or CAO shall perform the additional functions listed below only when and to the extent specifically authorized by the contracting officer.

(1) Negotiate and issue priced or unpriced orders under indefinite delivery type contracts and basic ordering agreements.

(2) Issue change orders to modify the method of shipment, the packing requirements, the place where supplies are to be delivered, or the specifications after coordinating with the PCO (only applies to ACO's in FSS).

(3) Accept/reject requests for acceptance of nonconforming supplies after coordinating with the PCO if other than a minor nonconformance is involved (only applies to ACO's in the Federal Supply Service (FSS)).

(4) Negotiate price adjustments and execute supplemental agreements resulting from acceptances in (b)(3) of this section.

(5) Issue cure or show cause notices under FAR 49.402–3(b) after coordinating with the PCO (only applies to ACO's in FSS).

(6) Terminate individual purchase/delivery orders after coordinating with the PCO.

(7) Terminate the contract for default after coordinating with the PCO (only applies to ACO's in FSS).

(8) Assess liquidated damages.

(c) Functions peculiar to specific programs may be delegated when approved by the Associate Administrator for Acquisition Policy. Requests to delegate contract administration functions not found in FAR 42.302 and 542.302(b) must be submitted to the Office of Acquisition Policy by the head of the affected Central Office service for approval.

[54 FR 26551, June 23, 1989, as amended at 58 FR 52445, Oct. 8, 1993]

Subpart 542.4—Correspondence and Visits

542.470 Implementation.

HCA's issuing implementing guidelines or procedures must obtain the concurrence of the Associate Administrator for Acquisition Policy.

Subpart 542.7—Indirect Cost Rates

542.703 Policy.

The contracting directors may waive the certification requirement under FAR 42.703–2.

[60 FR 54957, Oct. 27, 1995]

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

The contracting officer shall insert the clause at 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 also 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.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR subpart 42.12, the contracting officer shall consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third-party successor is a large business. Under the following conditions the contracting officer should refuse to recognize the successor and nonconcur in the transfer of the contract(s):

(a) There is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program; or

(b) The contract involved is a multiple award schedule (MAS) contract and other MAS small business contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item numbers, the contracting officer shall cancel that part of the contract related to the set-aside items, and process the novation request for the non-set-aside items under FAR Subpart 42.12.

Subpart 542.70—Bankruptcy, Insolvency or Dissolution of a Business

542.7001 General.

Prompt action is vital when a contractor becomes insolvent or files under any of the laws relating to bankruptcy, insolvency, and dissolution of businesses (11 U.S.C. 101 et. seq.) to assure that the Government's rights are protected. Terminated and current contracts with the contractor must be considered in any action contemplated. Contracting officers may be advised of such difficulties by the quality assurance specialist (QAS), contracting officer's representatives (COR), the Office of Finance, the Office of Inspector General, or other means, e.g., newspaper items, Dun and Bradstreet, an industry association, other contractors, other Federal agencies, or financial institutions. The contracting officer shall verify the accuracy of the information received and follow the procedures in 542.7002.

542.7002 Procedures.

(a) When a contractor is experiencing financial difficulties the contracting officer shall:

(1) Determine whether the contractor is delivering supplies and/or performing the services within the timeframes specified in the contract and whether the contractor is making satisfactory progress toward future deliveries or performance. Obtain, if needed, the recommendations of the QAS or COR.

(2) If the contractor has failed without excuse to deliver or perform under the contract or has failed to make progress so as to endanger performance, consider terminating the contract for default.

(3) If contract termination is not considered necessary, continue to monitor contract(s) by requesting that the QAS or COR visit the contractor's plant or the work site more often than usual to ascertain that progress is being made.

(4) If a small business contractor is involved, notify the regional Small

Business Administration (SBA) office and the agency Small Business Technical Advisor.

(5) If the contract has a performance bond and/or payment bond, the bonding company should be notified if the circumstances of the particular case dictate such notification.

(b) When a contractor has filed for bankruptcy, the contracting officer shall:

(1) Notify the contracting director, assigned counsel, the Office of Finance and other interested parties.

(2) Determine whether the contractor is performing in accordance with the terms of the contract and/or is making satisfactory progress towards completion of the contract. If the contractor has failed without excuse to deliver or perform under the contract or failed to make progress so as to endanger performance, consider terminating the contract for default. Termination must not be effected without concurrence of assigned counsel, who will coordinate with the assigned Assistant United States Attorney.

(3) Determine the status of and provide for the protection and disposition of Government-owned property, if applicable.

(4) If special safeguards for Government property are needed, determine the names, addresses, and phone numbers of the local Government officials concerned in the bankruptcy proceedings, e.g., sheriff, marshal, or the Receiver or Trustee in bankruptcy, if assigned.

(5) Transmit immediately all relevant communications to assigned counsel; e.g., notice of bankruptcy, notice of meeting of creditors, plan of arrangement, status of such plan, claims bar date and address of the Bankruptcy Court where proceedings were filed. Assigned counsel shall immediately transmit a copy of the notice of bankruptcy to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(6) Prepare, in consultation with assigned counsel, the preliminary, contingent and, after reprocurement (if any), final proof of claim. Such proofs of claim will be forwarded by the assigned counsel to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(7) Consult with assigned counsel regarding possible setoffs of Government claims from retained and unpaid contractor earnings.

(8) Advise the Inspector General whenever there is reason to believe that the contractor may have fraudulently transferred assets before filing for bankruptcy. Also advise the Inspector General in any case where the contracting officer is aware of an ongoing audit or investigation of the contractor.

(c) Upon receipt of information that a contractor intends to dissolve a business or to cease operations for whatever reason, e.g., because of retirement, fire sale of business (without public notice), etc., the contracting officer shall verify the accuracy of the information. If the information is accurate, the contracting officer shall request the QAS or COR to verify status of contract(s) and notify other directly interested parties. However, the QAS or COR should not be requested to make special contract administration visits unless all other efforts to obtain the necessary information have failed. If a claim against the contractor is either pending or outstanding, the contracting officer should notify assigned counsel and simultaneously obtain information that would aid in finalizing the amount of claim(s).

Subpart 542.71—Audit of Contractor's Record

542.7101 General.

The Assistant Inspector General—Auditing and the Field Audit Offices audit contractors' records when required by law, regulation, or sound business judgment. These audits include periodic or special request audits of contractors determined to be necessary because of such matters as the financial condition, integrity, and reliability of the contractor and prior audit experience, adequacy of the accounting system, and the amount of unaudited claims. So that the Government can benefit to the maximum extent from these audits, a coordinated and cooperative effort must be made by

contracting officers, technical specialists, and finance and audit personnel.

542.7102 Purpose of audit.

Audits are conducted to advise and make recommendations to the contracting officer concerning:

(a) Propriety of amounts paid, or to be paid, by GSA to contractors when such amounts are based on a cost or time determination or on variable features related to the results of contractors' operations;

(b) Adequacy of measures taken by contractors regarding the use and safeguarding of Government assets under their custody or control;

(c) Compliance by contractors with contractual provisions such as progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments; and

(d) Reasonableness of contractor's termination settlement proposals.

542.7103 Types of contracts subject to audit.

(a) The following types of contracts, (excluding small purchases) include either the Audit-Negotiation clause prescribed in FAR 15.106–2 or the Examination of Records by GSA clause at 552.215–70 and are subject to audit.

(1) Cost-reimbursement type contracts;

(2) Contracts involving the use or disposition of Government-furnished property;

(3) Contracts that provide for advance payments, progress payments based on costs, or guaranteed loans;

(4) Contracts containing a price warranty or price reduction clause;

(5) Contracts or leases involving income to the Government when the income is based on operations that are under the control of the contractor or lessee;

(6) Fixed-price contracts or leases with economic price adjustment, with incentives and with price redetermination;

(7) Requirements and indefinite quantity (call-type) contracts;

(8) Time-and-material, labor-hour, and letter contracts; and

(9) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(b) A copy of each contract or modification of the types described in paragraph (a) of this section must be furnished to the Assistant Inspector General for Auditing (JA), General Services Administration, Washington, DC 20405, or to the Field Audit Office, as appropriate, simultaneously with distribution of other copies of the contract.

542.7104 Additional internal controls.

As a supplement to the contractual right to audit contractor records in cost-reimbursement type, time and materials, labor-hour, requirements and indefinite quantity (call-type) contracts, the contracting officer (with the assistance of the Assistant Inspector General—Auditing or the Field Audit Office) shall establish internal controls or procedures prior to the performance of those contracts with respect to any flexible or variable features. For example, if a time and materials or labor-hour contract is performed (on a Government facility or elsewhere) subject to observation or overall supervision by Government personnel approval of time records may be provided for as incidental to the Government supervision. Any reasonable and reliable method or procedure may be established to account for such matters as the time spent on the job and materials or supplies received which will assist the contract auditor and the contracting officer to determine the correctness of the charges to the contract.

542.7105 Releasing or withholding of audit reports.

The Freedom of Information Act generally requires the disclosure of Government records subject to certain exceptions. It may be to the benefit or detriment of the Government to release contract audit reports or portions of them depending upon the circumstances. However, because of the complexity of the matter, contracting officers shall consult with both the Assistant Inspector General-Auditing and the Office of General Counsel, before releasing or withholding such information.

PART 543—CONTRACT MODIFICATION

Subpart 543.1—General

Sec.
543.102 Policy.
543.170 Changes in designated subcontractors, inspection and/or production points.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.
543.205 Contract clauses.

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

SOURCE: 54 FR 26554, June 23, 1989, unless otherwise noted.

Subpart 543.1—General

543.102 Policy.

A modification for work outside the scope of a contract must be treated as a new procurement. Such modifications must be justified and approved under FAR Subpart 6.3, synopsized under FAR Subpart 5.2 and Subpart 505.2, and effected through a supplemental agreement.

543.170 Changes in designated subcontractors, inspection and/or production points.

(a) The contracting officer shall not execute a contract modification that authorizes a change in a designated subcontractor or any designated inspection or production point, without considering the impact of the change on the contractor's ability to fulfill the terms and conditions of the contract. When considering the impact, the contracting officer should consider the same factors that would be considered in evaluating whether a contractor is responsible. (See FAR Subpart 9.1 and Subpart 509.1.)

(b) If the contracting officer approves a change of subcontractor, inspection point, or production point, the contracting officer shall issue a contract modification specifying the nature of the change and the effective date. Where feasible, the modification should provide that delivery orders placed before the effective date will remain in effect as written. In determining the effective date, contracting officers should take into consideration the time necessary for offices concerned to take required actions.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.

(a) A contracting officer's representative (COR) for a construction contract that has been issued a warrant under 501.603–70, may be authorized to issue change orders. (See 542.302.) Such change order authority may be exercised on a contract-by-contract basis by the contracting officer's written authorization. The contracting officer may further limit the authorization, e.g., to lower dollar amounts, to emergency situations, etc. In addition, the contracting officer's written authorization must instruct the COR to avoid personally performing all of the following tasks for a single change order: (1) Determining the need for change, (2) Preparing the Government's cost estimate, (3) Conducting negotiations, (4) Issuing the change order and (5) Inspecting the work. The contracting officer shall further instruct the COR to submit change orders to a designated official for review before issuance (for price-to-be-determined-later change orders before definitization) whenever all of these activities are personally performed. The contracting officer may personally review change orders or may designate the COR's immediate supervisor or a higher-level official within the organization to review change orders. To the maximum extent possible, the same individual should review change orders issued under a particular contract.

(b) Change orders should be issued after coordination as appropriate, with counsel, quality control, finance, audit or other technical personnel.

[58 FR 52445, Oct. 8, 1993]

543.205 Contract clauses.

(a) The contracting officer shall insert the clause at 552.243–70, Pricing of Adjustments, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold and a contract other than a cost type contract is contemplated.

(b) The contracting officer shall insert the clause at 552.243–71, Equitable Adjustments, in solicitations and contracts for (1) dismantling, demolishing, or removing improvements; or (2) construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

(c) The contracting officer shall insert the clause at 48 CFR 552.243–72, Modifications (Multiple Award Schedule), in solicitations and multiple award schedule contracts.

[54 FR 26554, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995; 61 FR 6169, Feb. 16, 1996; 62 FR 44524, Aug. 21, 1997]

PART 544—SUBCONTRACTING POLICIES AND PROCEDURES [RESERVED]

PART 545—GOVERNMENT PROPERTY

Subpart 545.3—Providing Government Property to Contractors

545.302–1 Policy.

The head of the contracting activity (HCA) may issue determinations and findings under FAR 45.302–1(a)(4).

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

[55 FR 8954, Mar. 9, 1990]

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.
546.302 Fixed-price supply contracts.
546.302–70 Source inspection by Quality Approved Manufacturer.
546.302–71 Source inspection.
546.312 Construction contracts.

Subpart 546.4—Government Contract Quality Assurance

546.400 Scope of subpart.
546.402 Government contract quality assurance at source.
546.403 Government contract quality assurance at destination.
546.470 Testing.
546.470–1 Acceptance testing.
546.470–2 Certification testing.

Subpart 546.7—Warranties

546.704 Authority for use of warranties.
546.705 Limitations.
546.708 Warranties of data.
546.709 Warranties of commercial items.
546.710 Contract Clauses.

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

SOURCE: 54 FR 26555, June 23, 1989, unless otherwise noted.

Subpart 546.3—Contract Clauses

546.302 Fixed-price supply contracts.

546.302–70 Source inspection by Quality Approved Manufacturer.

Contracting officers in the Federal Supply Service shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection, except multiple award schedules contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division of the Office of Scientific Equipment Commodity Center, unless the contracting officer, in conjunction with the Central Office Quality Assurance Division (FQA), decides inspection by Government personnel is necessary. Contracting officers may authorize the use of manufacturing plants or other facilities located outside the United States (including Puerto Rico and the Virgin Islands) to perform inspection and testing under paragraph (a)(1) of the clause when:

(a) Inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area;

(b) An inspection interchange agreement exists with another agency concerning inspection at a contractor's plant;

(c) Procurement is being made for AID and specifies the area of source; or

(d) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

Such authorization must be fully coordinated with FQA and documented in the file.

546.302–71 Source inspection.

The contracting officer shall insert the clause at 552.246–72, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source by Government personnel.

546.312 Construction contracts.

The contracting officer shall insert the clause at 552.246–71, Final Inspection and Tests, in solicitations and contracts for construction that include the Inspection of Construction clause at FAR 52.246–12.

Subpart 546.4–Government Contract Quality Assurance

546.400 Scope of subpart.

This subpart prescribes policies and procedures for use by the Federal Supply Service. Use by other GSA activities is optional.

546.402 Government contract quality assurance at source.

(a) Source inspection of supplies shall be performed either by Government personnel or by a Quality Approved Manufacturer when the contract is:

(1) A Federal Supply Schedule contract selected for source inspection;

(2) A requirements contract which is national in scope (including shipments to GSA distribution centers);

(3) A requirements contract which is regional in scope;

(4) A definite quantity contract for stock items;

(5) For Class 8010 items; or

(6) For Special-purpose vehicles, trucks over 10,000 pounds gross vehicle weight (GVW), trucks weighing 10,000 pounds GVW or less that are not covered by a Federal standard, and vehicles to be shipped outside the coterminous United States.

(b) Contracts may also provide for source inspection when the contracting director, after coordination with FQA, determines that it is in the Government's interest due to the critical nature of the supplies.

546.403 Government contract quality assurance at destination.

Inspection of supplies at destination should be performed when the supplies are purchased using simplified acquisition procedures, a schedule contract is involved (except for schedules selected for source inspection), or the contract is for:

(a) Commercial or off-the-shelf products;

(b) Standard vehicles purchased for domestic consignees; or

(c) Trucks weighing 10,000 pounds GVW or less purchased for domestic consignees using a Federal Standard.

[54 FR 26555, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

546.470 Testing.

Testing to determine conformance with specifications and standards may be conducted at facilities of Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate.

546.470–1 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with purchase descriptions or specifications before a shipment is accepted. Such testing must not be solely for the purpose of furnishing information to a producer or vendor as to conformance with specification requirements.

(b) The cost of services for acceptance testing of samples of a shipment normally will be borne by GSA, except for retesting necessitated by prior rejection.

546.470–2 Certification testing.

(a) Certification testing is conducted to determine conformance of an item with a specification for the purpose of executing a certificate of compliance required by the specification.

(b) When a certificate from a recognized laboratory is required by the contract and there is a lack of suitable commercial testing facilities, GSA, upon request and agreement by the contractor to pay all costs, will arrange, for the required certification testing by a Government laboratory, where feasible.

Subpart 546.7—Warranties

546.704 Authority for use of warranties.

The contracting officer must consider the criteria in FAR 46.703 and decide whether to use a warranty in a specific acquisition.

546.705 Limitations.

The use of warranties in cost reimbursement contracts, other than those in FAR clause 52.246–3 or 52.246–8, must be approved by the contracting director.

546.708 Warranties of data.

Warranties of data should be developed by the technical or specification manager when the contracting officer decides that the use of a warranty is in the Government's interest and the contracting director concurs.

546.709 Warranties of commercial items.

The specification manager shall advise the contracting officer: (a) Whether the specification contains a warranty or a commercial warranty applies and (b) when an extended warranty is necessary and recommends the duration of the extended warranty.

546.710 Contract Clauses.

(a)(1) The contracting officer shall insert the clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, or applicable alternate in solicitations and contracts instead of the FAR clause at 52.246–17 or applicable alternate.

(2) If commercial products or items are being acquired under a program other than Multiple Award Schedules, the contracting officer shall use the clause at 48 CFR 552.247.17 with its Alternate I.

(3) If the acquisition is for other than commercial items in Class 8010, the contracting officer shall use the clause at 552.246–17 with its Alternate II.

(4) If the acquisition is for other than commercial items in Class 8030 or 8040, the contracting officer shall use the clause at 552.246–17 with its Alternate III. In addition, the contracting officer shall specify in the solicitation whether items being acquired are ''non-critical end use items'' or ''critical end use items''.

(b) The contracting officer shall insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and multiple award schedule (except international schedule) contracts.

(c) The contracting officer shall insert the clause at 552.246–74, Warranty—International Multiple Award Schedule, in solicitations and international multiple award schedule contracts.

(d) The contracting officer shall insert the clause at 552.246–76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

(e) The contracting officer shall insert the clause at 552.246–75, Guarantees, in solicitations and contracts for construction when the contract amount is expected to exceed the simplified acquisition threshold.

[54 FR 26555, June 23, 1989, as amended at 56 FR 1741, Jan. 17, 1991; 60 FR 42804, Aug. 17, 1995; 61 FR 6169, Feb. 16, 1996]

PART 547—TRANSPORTATION

Subpart 547.3—Transportation in Supply Contracts

Sec.
547.300 Scope of subpart.
547.303 Standard delivery terms and contract clauses.
547.303–1 F.o.b. origin.
547.304–5 Exceptions.
547.305 Solicitation provisions, contract clauses, and transportation factors.
547.370 Restrictions on transportation to military installations.

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

SOURCE: 54 FR 26556, June 23, 1989, unless otherwise noted.

Subpart 547.3—Transportation in Supply Contracts

547.300 Scope of subpart.

This subpart prescribes policies and procedures for Federal Supply Service (FSS) acquisitions.

547.303 Standard delivery terms and contract clauses.

547.303–1 F.o.b origin.

(a) The contractor shall request a carrier routing from the applicable transportation zone office on all shipments weighing 10,000 pounds or more.

(b) The contractor shall ship on a Government bill of lading (GBL) unless:

(1) Shipment is via postal or parcel service;

(2) Shipment on a commercial bill of lading (CBL) is authorized in writing by the contracting officer because (i) shipment is urgently required and (ii) a GBL cannot be issued in a timely manner; or

(3) The transportation cost estimate is under $100 (see FAR 42.1403).

(c) The signature of the carrier's agent and the annotation at FAR 52.247–1 must be shown on the original and all copies of the CBL. The original of the CBL must be mailed to the office, which authorized the CBL.

[54 FR 26556, June 23, 1989, as amended at 61 FR 39089, July 26, 1996]

547.304–5 Exceptions.

(a) Unless the contracting officer can justify more restrictive delivery terms and documents the contract file accordingly, solicitations including delivery to Alaska, Hawaii, or Puerto Rico must specify that offers:

(1) May be f.o.b origin; f.o.b. vessel, part of shipment; f.o.b. destination; or any combination of these delivery terms (other delivery terms may be provided for, if appropriate); and

(2) Will be evaluated on the basis of the lowest overall cost to the Government delivered to the ultimate destination.

(b) Federal Supply Schedules should attempt to obtain a f.o.b. destination delivery term for Alaska, Hawaii, and Puerto Rico, if such delivery term is offered for shipments within CONUS.

547.305 Solicitation provisions, contract clauses, and transportation factors.

The contracting officer shall insert in solicitations and contracts the clause at 552.247–70, Placarding Railcar Shipments, when it is essential that the railcar doors be specially positioned next to the unloading dock, platform, or warehouse door.

547.370 Restrictions on transportation to military installations.

Solicitations and contracts specifying direct delivery to military installations must specify applicable delivery restrictions.

PART 548—VALUE ENGINEERING [RESERVED]

PART 549—TERMINATION OF CONTRACTS

Subpart 549.1—General Principles

Sec.
549.111 Review of proposed settlements.

Subpart 549.4—Termination for Default

549.402–6 Repurchase against contractor's account.
549.402–7 Other damages.

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.
549.570 Submission of termination liability schedule.

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

SOURCE: 54 FR 26557, June 23, 1989, unless otherwise noted.

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.

[60 FR 54956, Oct. 27, 1995]

Subpart 549.4—Termination for Default

549.402–6 Repurchase against contractor's account.

(a) After termination but before repurchase, the contracting officer shall revalidate the need for the supplies or services and document the file.

(b) Repurchase against a contractor's account must be based on the original contract terms, conditions, and specification. If acceptable offers cannot be obtained on this basis, similar supplies or services may be bought to substantially satisfy the original requirement. Advice of counsel must be obtained before issuing a solicitation for similar supplies or services.

(c) To protect the Government's rights to recover reprocurement costs, the contracting officer must document the file to explain the circumstances of any delay in the reprocurement.

[54 FR 26557, June 23, 1989, as amended at 56 FR 33722, July 23, 1991]

549.402–7 Other damages.

(a) Under the default clause, in addition to assessing reprocurement costs, the contracting officer may assess other damages, including administrative costs (e.g., salaries and fringe benefits paid to Government employees who perform work as a result of the default, preaward survey expense incurred in qualifying reprocurement contractors, and costs incurred in printing and distributing the reprocurement solicitation), if in the best interest of the Government.

(b) Documents supporting an assessment of administrative costs must be detailed and must demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer must record:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default.

(ii) Date(s) of work and time(s) spent by each employee on the repurchase.

(iii) Description of specific tasks performed (i.e., solicitation, preparation, clerical).

(iv) Hourly rate of pay (straight time or overtime).

(v) Applicable fringe benefits.

(vi) Explanation of how the time spent by the employees during the reprocurement would have been used on other projects but for the default.

(2) To support other incurred administrative costs (i.e., travel, per diem, printing and distribution of the repurchase contract), documents may include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

(c) After deciding that the assessment of administrative costs is appropriate, the contracting officer shall make a written demand on the contractor. The basis of calculating the costs being assessed must be furnished to the contractor. A single demand letter may be used to recover excess costs and administrative costs.

[54 FR 26557, June 23, 1989, as amended at 56 FR 33722, July 23, 1991]

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.

The contracting officer shall insert the clause at 552.249–70, Termination for Convenience of the Government (Fixed-Price), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Information Technology Fund (IT). This clause should be used with the FAR clauses at 52.249–1 or 52.249–2 and 52.249–4.

549.570 Submission of termination liability schedule.

The contracting officer shall insert the clause at 552.249–71, Submission of Termination Liability Schedule, in all solicitations for the acquisition and maintenance of telephone systems to be funded through the Information Technology Fund (IT). This provision is to be used when the clause at 552.249–70 is used.

PART 550—EXTRAORDINARY CONTRACTUAL ACTIONS

550.001 Definitions.

Approving authority, as used in FAR Part 50, means the Administrator of General Services Administration.

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

[54 FR 26557, June 23, 1989]

PART 551—USE OF GOVERNMENT SOURCES BY CONTRACTORS [RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of subpart.

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

SOURCE: 54 FR 26558, June 23, 1989, unless otherwise noted.

552.000 Scope of part.

This part provides the text of provisions and clauses which are unique to GSA or supplement the FAR. Matrixes are also provided for acquisitions of various supplies, services and leasehold interests in real property.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101 Using Part 552.

(a) *Definition.* ''Clause,'' as used in this subpart, means provision or clause as defined in FAR 52.101(a).

(b) *Numbering.* When a clause in this part has the same title as a clause in the FAR, that clause is preceded by the number 5 and is included under the same subsection number and caption as in the FAR. Clauses numbered in this manner represent (1) clauses which are ''substantially'' the same as FAR clauses, and (2) clauses which are to be used instead of FAR clauses. All supplemental clauses are numbered in the same manner as the FAR, except that the number is preceded by the chapter number and the subsection numbers begin with 70 and are sequentially numbered, e.g., 552.232–70, 552.232–71, etc.

(c) *Matrixes.* Matrixes are included as a guide to locating clauses for supply, service, construction, and architect-engineer solicitations/contracts. There is a separate matrix for small purchases. Matrixes listing FAR and GSAR clauses for utility contracts (sole-supplier-regulated rates) and leases of real property are also included. 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, and (3) when one clause is dependent upon the use of another clause, all necessary clauses are included in the solicitation.

552.102 Incorporating provisions and clauses.

552.102–1 Incorporation by reference.

Clauses prescribed in the GSAR may be incorporated in solicitations/contracts by reference. As an alternative, forms containing GSAR clauses in full text may be incorporated by reference.

552.103 Identification of provisions and clauses.

(a) When a class deviation from a FAR clause is prescribed in the GSAR, the contracting officer shall identify the clause by the GSAR citation (552.232–8—Prompt Payment Discount (NOV 1987) (Deviation FAR 52.232–8)).

(b) When a ''substantially the same as'' clause is used that varies from a FAR or GSAR clause, the word ''(Variation),'' must be included as a part of the title of the clause, along with the FAR or GSAR citation (552.215–70 Examination of Records by GSA (Apr 1984) (Variation I)). If there is more than one variation of a provision or clause, the variations are titled (Variation I), (Variation II), (Variation III), etc. Variations of clauses which result from negotiations do not need to be identified unless an amendment to the solicitation is issued.

(c) Variations of FAR or GSAR clauses should generally be used for individual cases. A copy of clause variations developed for repeated use must be furnished to the Office of GSA Acquisition Policy (VP) 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 Provisions and clauses prescribed in Subpart 552.1.

(a) The contracting officer shall insert the provision at 552.252–5, Authorized Deviations or Variations in Provisions, in solicitations that include any FAR or GSAR clause with an authorized deviation or variation. This provision must be used in lieu of the FAR provision at 52.252–5.

(b) The contracting officer shall insert the clause at 552.252–6, Authorized Deviations or Variations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation or variation. This clause must be used in lieu of the FAR clause at 52.252–6.

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, and for each provision and clause, provides a cross-reference to the location in the GSAR that prescribes its use.

552.203–4 Contingent Fee Representation and Agreement.

As prescribed in 503.404(a), insert the following provision:

CONTINGENT FEE REPRESENTATION AND AGREEMENT (MAY 1989)

(a) *Representation.* The Offeror represents that, except for full-time bona fide employees working solely for the offeror or bona fide established real estate agents or brokers maintained by the Offeror for the purpose of securing business, the Offeror—

NOTE: The Offeror must check the appropriate boxes. For interpretation of the term ''bona fide employee or agency,'' see paragraph (b) of the Covenant Against Contingent Fees clause.

(1) _____ has, _____ has not employed or retained any person or company to solicit or obtain this contract; and

(2) _____ has, _____ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

552.203–5 Covenant Against Contingent Fees.

As prescribed in 503.404(b), insert the following clause:

COVENANT AGAINST CONTINGENT FEES (MAY 1989)

(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)

[54 FR 26558, June 23, 1989, as amended at 55 FR 6256, Feb. 22, 1990]

§ 552.203–70 Restriction on advertising.

As prescribed in 503.570–2, insert the following clause:

RESTRICTION ON ADVERTISING (DEC 1990)

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.''

(End of clause)

[56 FR 965, Jan. 10, 1991]

552.203–71 [Reserved]

552.203–72 [Reserved]

552.203–73 Price adjustment for illegal or improper activity.

As prescribed in 503.104–10, insert the following clause:

PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(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 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 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 therefor. 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, 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)

[55 FR 39975, Oct. 1, 1990, as amended at 63 FR 18844, Apr. 16, 1998]

552.209–73 Product removal from qualified products list.

As prescribed in 509.206–2, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (FEB 1996)

If, during the performance of this contract, the product being furnished is for any reason (except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification for security cabinets, security vault doors and changeable combination padlocks) removed from the Qualified Products List, the Government may terminate this contract for default.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 61 FR 6169, Feb. 16, 1996]

552.209–74 Waiver of first article testing and approval requirements.

As prescribed in 509.306, insert the following provision:

WAIVER OF FIRST ARTICLE TESTING AND APPROVAL REQUIREMENT (FEB 1990)

(a) Offerors must submit an offer including testing and approval, however, an offeror may submit an alternate offer excluding testing and approval, provided the offeror satisfies the requirements for the waiving of first article testing.

(b) Before a waiver of the first article testing requirement of this solicitation will be considered, the offeror is requested to identify the procurement under which the product offered was previously approved and accepted:

_____

(Offeror to insert both contract number and applicable national stock number)

(End of provision)

[55 FR 8954, Mar. 9, 1990]

552.209–75 Supplemental requirements for first article approval—contractor testing.

As prescribed in 509.308–1, insert the following clause:

SUPPLEMENTAL REQUIREMENTS FOR FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (MAY 1989)

(a) The term ''Contracting Officer'' as used in FAR 52.209–3, First Article Approval—Contractor Testing, means the Administrative Contracting Officer (ACO).

(b) The Contractor shall have either (1) the necessary inspection and test equipment at the Contractor's plant to perform first article testing, or (2) if the inspection and test equipment is not available, a letter of commitment from a laboratory acceptable to the Government to perform the inspection and testing.

(c) When the Government elects to witness the first article testing, the Contractor shall conduct the testing between the hours of 7:00 AM and 5:00 PM, Monday thru Friday, unless a different time is agreed to by the ACO.

(d) The first article test report shall contain:

(1) The complete test data, the test method(s) used and date of test;

(2) Signature and printed name of the individual who performed the inspection;

(3) Applicable specification/CID and/or drawing numbers;

(4) Name and type of test equipment used; and

(5) All numerical values as a result of testing with each noted as to whether it passes or fails the contract test requirements.

(e) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under control of the Quality Assurance Specialist (QAS), to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(f) If the Contractor delivers the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of clause)

552.209–76 Supplemental requirements for first article approval—government testing.

As prescribed in 509.308–2, insert the following clause:

SUPPLEMENTAL REQUIREMENTS FOR FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (MAY 1989)

(a) The term ''Contracting Officer'' as used in FAR 52.209–4, First Article Approval—Government Testing, means the Administrative Contracting Officer (ACO).

(b) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under the control of the Quality Assurance Specialist (QAS) to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(c) If the Contractor delivers the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of clause)

552.211–1 Time of delivery.

As prescribed in 48 CFR 511.404(a)(1) insert the following clause:

TIME OF DELIVERY (FEB 1996)

(a) The time of delivery for each item means the time required after receipt of an order (1) to make delivery to a destination in the case of delivered prices, or (2) to place shipment in transit in the case of f.o.b. origin prices.

(b) Delivery is required to be made at the point(s) specified within _____ days after receipt of order.

(End of clause)

Alternate I (FEB 1996). If it is necessary to show different delivery times for different items or groups of items, the Contracting Officer may substitute the following paragraph (b) for paragraph (b) of the basic clause.

(b) Delivery is required to be made at the point(s) specified within the number of calendar days after receipt of order as indicated below:

Items or groups of items (special item numbers or nomenclature	Required delivery time (days ARO)

[54 FR 26558, June 23, 1989, as amended at 54 FR 51886, Dec. 19, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–70 Brand name or equal.

As prescribed in 48 CFR 511.170(c) insert the following clause:

BRAND NAME OR EQUAL (FEB 1996)

(As used in this clause, the term ''brand name'' includes identification of products by make and model.)

(a) Identification of items in this solicitation by a ''brand name or equal'' description is intended to indicate the quality and characteristics of products that will be satisfactory and is not intended to be restrictive. Offers of ''equal'' products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless clearly indicated in the offer that an ''equal'' product is offered, the offer shall be considered as offering a referenced brand name product.

(c)(1) An offeror proposing to furnish an ''equal'' product shall insert the name of the product in the space provided in the solicitation or otherwise clearly identify the product. The Government's determination as to the acceptability of the ''equal'' product shall be based on information furnished or otherwise identified in the offer as well as other information reasonably available to the purchasing activity. Caution to Offerors. The purchasing activity is not responsible for locating or securing any information not identified in the offer and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror must furnish with its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the specified salient characteristics, and (ii) establish exactly what the offeror proposes to furnish. The information furnished may include specific references to information previously furnished or otherwise reasonably available to the purchasing activity.

(2) An offeror proposing to modify a product to make it conform to the requirements of the solicitation shall (i) include in its offer a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) In sealed bidding, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of clause)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6169, Feb. 16, 1996]

552.211–71 Standard references.

As prescribed in 48 CFR 511.204(a), insert the following clause:

STANDARD REFERENCES (FEB 1996)

(a) All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in subparagraph (a)(1) of this clause, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Federal Specifications, Federal Standards, Standard Specifications of the Public Buildings Service and Public Buildings Service Standard Methods of Test may be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding ''Commercial Standards,'' ''Product Standards,'' and ''Simplified Practice Recommendations'' should be addressed to the Standard Development Service Section, National Bureau of Standards, Washington, DC 20234. Publications of Associations referred to in the specifications may be obtained directly from the Associations.

(c) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

(End of clause)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6169, Feb. 16, 1996]

552.211–72 Reference to specifications in drawings.

As prescribed in 48 CFR 511.204(b), 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)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6169, Feb. 16, 1996]

552.211–73 Marking.

As prescribed in 48 CFR 511.204(c) 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 therefor 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)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6169, Feb. 16, 1996]

552.211–74 Charges for marking.

As prescribed in 48 CFR 511.204(d), insert a clause substantially as follows:

CHARGES FOR MARKING (FEB 1996)

The rate provided for in paragraph (b) of 48 CFR 552.211–73, Marking, is $_____*_____ per man-hour or fraction thereof.

(End of clause)

*The rate to be inserted in the above clause shall be determined and published by the Commissioner, Federal Supply Service, or a designee.

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–75 Preservation, packaging and packing.

As prescribed in 48 CFR 511.204(e), 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)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–76 Charges for packaging and packing.

As prescribed in 48 CFR 511.204(f), insert a clause substantially as follows:

CHARGES FOR PACKAGING AND PACKING (FEB 1996)

If supplies shipped to a GSA wholesale distribution center are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking, by contract or otherwise, and charge the Contractor therefor 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 Supply Service, or a designee.

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–77 Packing list.

As prescribed in 48 CFR 511.204(g), 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)

[54 FR 26548, June 23, 1989, as amended at 54 FR 43180, Oct. 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–78 Commercial Delivery Schedule (Multiple Award Schedule).

As prescribed in 48 CFR 511.404(a)(2), insert the following clause:

COMMERCIAL DELIVERY SCHEDULE (MULTIPLE AWARD SCHEDULE) (FEB 1996)

(a) *Time of Delivery*. The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the ''Time of Delivery (days ARO)'' column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal commercial practice. The Government requires the Contractor's normal commercial delivery time, as long as it is less than the ''stated'' delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time, as stated below:

Items or group of items (special item No. or nomenclature)	Government's stated delivery time (days ARO)	Contractor's normal commercial delivery time

(b) *Expedited Delivery Times.* For those items that can be delivered quicker than the delivery times in paragraph (a), above, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Item or group of items (special item No. of nomenclature)	Expedited delivery time (hours/days ARO)

(c) *Overnight and 2-Day Delivery Times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

(End of clause)

[61 FR 6170, Feb. 16, 1996]

552.211–79 Acceptable age of supplies.

As prescribed in 48 CFR 511.404(a), 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.

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6169, Feb. 16, 1996]

552.211–80 Age on delivery.

As prescribed in 48 CFR 511.404(a), 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)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6169, Feb. 16, 1996]

552.211–81 Time of shipment.

As prescribed in 48 CFR 511.404(a)(4), 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.)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–82 Notice of shipment.

As prescribed in 48 CFR 511.404(a)(5), insert the following clause:

NOTICE OF SHIPMENT (FEB 1996)

If specified in an order placed under this contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified. This requirement may be satisfied by completion and return of appropriate forms furnished by the ordering office or by the furnishing of copies of bills of lading, freight bills, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and the name of initial carrier.

(End of clause)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996; 61 FR 14033, Mar. 29, 1996]

552.211–83 Availability for inspection, testing, and shipment/delivery.

As prescribed in 48 CFR 511.404(a)(6), 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.

[54 FR 26558, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.211–84 Non-compliance with contract requirements.

As prescribed in 48 CFR 511.404(b), insert the following clause:

NON-COMPLIANCE WITH CONTRACT REQUIREMENTS (FEB 1996)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

[54 FR 26558, June 23, 1989. Redesignated and amended at 61 FR 6170, Feb. 16, 1996]

552.212–70 Preparation of Offer (Multiple Award Schedule).

As prescribed in 48 CFR 512.301(a)(1), insert the following clause:

PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE) (AUG 1997)

(a) *Definitions. Concession*, as used in this solicitation, means a benefit, enhancement or privilege (other than a discount), which either reduces the overall cost of a customer's acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to freight allowance, extended warranty, extended price guarantees, free installation and bonus goods.

Discount, as used in this solicitation, means a reduction to catalog prices (published or unpublished). Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions other than concessions) which reduce the amount of money a customer ultimately pays for goods or services ordered or received. Any net price lower than the list price is considered a ''discount'' by the percentage difference from the list price to the net price.

(b) For each Special Item Number (SIN) included in an offer, the Offeror shall provide the information outlined in paragraph (c). Offerors may provide a single response covering more than one SIN, if the information disclosed is the same for all products under each SIN. If discounts and concessions vary by model or product line, offerors shall ensure that information is clearly annotated as to item or items referenced.

(c) Provide information described below for each SIN:

(1) Two copies of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered. If special catalogs or price lists are printed for the purpose of this offer, such descriptive catalogs or price lists shall include a statement indicating the special catalog or price list represent a verbatim extract from the Offeror's commercial catalog and/or price list and identify the descriptive catalog and/or price list from which the information has been extracted.

(2) Next to each offered item in the commercial catalog and/or price list, the Offeror shall write the special item number (SIN) under which the item is being offered. Unless a special catalog or price list is submitted, all other items shall be marked ''excluded,'' lined out, and initialed by the offeror.

(3) The discount(s) offered under this solicitation. The description of discounts offered shall include all discounts, such as prompt payment discounts, quantity/dollar volume discounts (indicate whether models/products can be combined within the SIN or whether SINs can be combined to earn discounts), blanket purchase agreement discounts, or purchase option credits. If the terms of sale appearing in the commercial catalogs or price list on which an offer is based are in conflict with the terms of this solicitation, the latter shall govern.

(4) A description of concessions offered under this solicitation which are not granted to other customers. Such concessions may include, but are not limited to, an extended

warranty, a return/exchange goods policy, or enhanced or additional services.

(5) If the Offeror is a dealer/reseller or the Offeror will use dealers to perform any aspect of contract awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(End of clause)

[62 FR 44524, Aug. 21, 1997]

§ 552.212–71 Contract terms and conditions applicable to GSA acquisition of commercial items.

As prescribed in 512.301(a)(2), insert the following provision:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (MAR 1998)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial times 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 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.]

—552.203–70 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
—552.219–71 Allocation of Orders—Partially Set-Aside Items
—552.228–75 Workmen's Compensation
—552.229–70 Federal, State, and Local Taxes
—552.232–8 Discounts for Prompt Payment
—552.232–23 Assignment of Claims
—552.232–70 Invoice Payments
—552.232–77 Availability of Funds
—552.232–78 Adjusting Payments
—552.232–79 Final Payment
—552.237–70 Qualifications of Offerors
—552.237–71 Qualifications of Employees
—552.238–72 Contractor's Report of Sales
—552.238–74 Submission and Distribution of Authorized FSS Schedule Price List
—552.238–76 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 provision)

[61 FR 6171, Feb. 16, 1996; 61 FR 10846, Mar. 15, 1996, as amended at 62 FR 44524, Aug. 21, 1997; 63 FR 12967, Mar. 16, 1998]

552.212–72 Contract terms and conditions required to implement statutes or Executive Orders applicable to GSA acquisition of commercial items.

As prescribed in 48 CFR 512.301(a)(3), insert the following provision:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (FEB 1996)

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 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.]

—552.223–70 Hazardous Substances
—552.223–71 Hazardous Material Information
—552.223–72 Nonconforming Hazardous Material
—552.225–70 Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware
—552.225–71 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware
—552.238–70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
—552.238–75 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes
—552.238–77 Industrial Funding Fee

(End of clause)

[61 FR 6171, Feb. 16, 1996]

552.212–73 Evaluation—Commercial Items (Multiple Award Schedule).

As prescribed in 48 CFR 512.301(a)(4), insert the following provisions:

EVALUATION—COMMERCIAL ITEMS (MULTIPLE AWARD SCHEDULE) (AUG 1997)

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a ''commercial item'' in FAR 52.202–1. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the Government, taking into consideration the multiplicity and complexity of items of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s) that constitute the best value and that meet their needs at the lowest overall cost.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

Alternate I (AUG 1997). When anticipating competition of identical items, add the following paragraph after paragraph (b) of the basic provision.

(c) The Government reserves the right to award only one contract for all or a part of a manufacturer's product line. When two or more offerors (e.g., dealers/resellers) offer the identical product, award may be made competitively to only one offeror on the basis of the lowest price. (Discounts for early payment will not be considered as an evaluation factor in determining the low offeror). During initial open season for an option period, any offers that are equal to or lower than the current contract price received for identical items will be considered. Current contractors will also be allowed to submit offers for identical items during this initial open season. The current contractor which has the identical item on contract will be included in the evaluation process. The Government will evaluate all offers and may award only one contract for each specified product or aggregate group.

[62 FR 44524, Aug. 21, 1997]

552.214–16 Minimum bid acceptance period.

As prescribed in 514.270, insert the following provision:

MINIMUM BID ACCEPTANCE PERIOD (OCT 1985) (DEVIATION FAR 52.214–16)

(a) ''Acceptance period,'' as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of ____*____ calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement. *(Insert any number equal to or greater than the minimum requirement stated in paragraph (c) of this provision. Failure to insert any number means the offeror accepts the minimum in paragraph (c)).*

The bidder allows the following *total* acceptance period: _____ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above, or (2) any longer acceptance period stated in paragraph (d) above, or (3) any extension of the offered acceptance period as may be subsequently agreed to by the bidder.

(End of provision)

**The contracting officer shall insert an appropriate number of days.*

552.214–73 "All or none" offers.

As prescribed in 514.201–6(a), insert the following provision:

''ALL OR NONE'' OFFERS (APR 1984)

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on an ''all or none'' basis as provided below.

(b) An offer submitted on an ''all or none'' or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the ''all or none'' offer 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'' offer. Award will be made to result in the lowest total cost to the Government.

(End of provision)

Alternate I (APR 1984). For a requirements or indefinite quantity contract, the following paragraph (b) shall be substituted in the basic provision:

(b) An offer submitted on an ''all or none'' or similar basis will not be considered unless the offer is low on each item to which the ''all or none'' offer is made applicable. The term ''each item'' as used in this provision refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

552.214–74 Solicitation copies.

As prescribed in 514.201–6(b), insert the following notice:

SOLICITATION COPIES (MAY 1989)

To reduce costs, only one copy of this solicitation is mailed to active bidders and to addressees on our bidders' mailing list. If additional copies are required by the solicitation, you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the address specified below:

_____

_____

_____

Tel. _____

(End of notice)

552.214–75 Progressive awards and monthly quantity allocations.

As prescribed in 514.201–7(a), insert the following clause:

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS (MAY 1989)

(a) *Monthly quantity allocation.* (1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. Offerors shall indicate, in the spaces provided, the monthly quantity which they are willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, offerors are urged to group as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each offeror.

(2) Offerors need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If an offeror does not insert monthly allocation quantities, it will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

National stock number	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	Monthly allocation quantity

(b) *Progressive awards.* If the low responsive offeror's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive offeror and including each next low responsive offeror to the extent necessary to meet the estimated requirements.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. When cumulative orders during any month, placed with a lower priced Contractor, equal or exceed 95 percent of its monthly quantity allocation, to avoid the placement of unduly small orders or the splitting of a subsequent order, the Government reserves the right to award the full quantity of the subsequent order to the next lower priced Contractor. In no case will orders be placed with any Contractor in excess of its monthly quantity allocation.

(End of clause)

552.214–76 Bid sample requirements.

As prescribed in 514.202–4(a)(4), insert the following provision:

BID SAMPLE REQUIREMENTS (MAY 1989)

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: (1) Bidders ____ Are or ____ Are Not authorized to re-apply samples being retained by GSA in connection with previous solicitations and/or resultant contracts. When the block ''Are'' is marked by the Government, FAR 52.214–20, Alternate II, shall apply.

(2) Bidders who 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. Samples must be submitted with the original copy of the attached GSA Form 434 enclosed and properly executed.

CAUTION: Use proper address for method of shipment selected.

Mail and parcel post	Freight or express
(Insert Address of Bid Sample Room).	(Insert Address of Bid Sample Room).

(e) Samples shall be disposed of, after they have served the Government's purpose, pursuant to a bidder's instructions indicated on GSA Form 434.

(End of provision)

552.215–70 Examination of records by GSA.

As prescribed in 515.106–70 and 514.201–7(b), 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)

[54 FR 26558, June 23, 1989, as amended at 61 FR 6172, Feb. 16, 1996]

552.215–71 Examination of records by GSA (Multiple Award Schedule).

As prescribed in 48 CFR 515.106–70, insert the following clause:

EXAMINATION OF RECORDS BY GSA (MULTIPLE AWARD SCHEDULE) (AUG 1997)

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 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)

[62 FR 44525, Aug. 21, 1997]

552.215–72 Price adjustment—Failure to provide accurate information.

As prescribed in 48 CFR 515.804–6(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 the 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)

[62 FR 44525, Aug. 21, 1997]

552.216–71 Economic price adjustment—FSS multiple award schedule contracts.

As prescribed in 516.203–4(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT (FEB 1996)

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 indicating that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.

Alternate I (JAN 1989). The following is substituted 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 subparagraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) In 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.

(End of clause)

*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.

[54 FR 26558, June 23, 1989, as amended at 61 FR 6172, Feb. 16, 1996; 61 FR 10846, Mar. 15, 1996]

552.216–72 Economic Price Adjustment—Stock and Special Order Program Contracts.

As prescribed in 516.203–4(c)(2), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—STOCK AND SPECIAL ORDER PROGRAM CONTRACTS (AUG 1990)

(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 upward or downward a maximum of * percent. 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—

$$\text{ACP} = \frac{\text{Updated index}}{\text{Base index}} \times \text{Awarded price}$$

(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 (b) above 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 (b) above.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 31st 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 1990). As prescribed in 516.203–4(c)(2), substitute the following paragraphs (b), (e) and (f) for paragraphs (b), (e) and (f) of the basic clause:

(b) In any option 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 (b) (1) or (2) above 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 Contractor 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 (b) (1) or (2) above.

(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 1990). As prescribed in 516.203–4(c)(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.

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* The appropriate percentage should be determined based upon the historical trend in the PPI for the product code. A ceiling of more than 10 percent must be approved by the Contracting Director.

** The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

[55 FR 39279, Sept. 26, 1990]

552.216–73 Placement of orders.

As prescribed in 516.505(a), insert the following clause:

PLACEMENT OF ORDERS (JUN 1994)

(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, GSA's Federal Supply Service (FSS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS 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 (g) below.

(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 items 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, Systems Inventory and Operations Management Center (FCS), Washington, DC 20406, Telephone: [Contracting Officer insert appropriate telephone numbers] FAX:

Alternate I (JUN 1994). As prescribed in 516.505(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 Supply Service (FSS). 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, FSS will use an alternative 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 FSS 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 and placed, the transaction sets used, security procedures, and guidelines for implementation.

Alternate II (JUN 1994). As prescribed in 516.505(a), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Delivery orders under this contract may be placed by either the using Federal agencies or the General Services Administration's Federal Supply Service (FSS).

[59 FR 32384, June 23, 1994]

552.216–74 Ordering information.

As prescribed in 516.505(b), insert the following provision:

ORDERING INFORMATION (JUN 1994)

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Supply Service (FSS) 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 number(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.

_____

_____

_____

(End of provision)

Alternate I (JUN 1994). As prescribed in 516.505(b), delete paragraph (d) of the basic provision:

Alternate II (JUN 1994). As prescribed in 516.505(b), add the following paragraph (e) to the basic provision:

(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.

[59 FR 32385, June 23, 1994]

552.217–70 Evaluation of Options.

As prescribed in 517.208, 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.

(End of provision)

[55 FR 39280, Sept. 26, 1990]

552.217–71 Notice Regarding Option(s).

As prescribed in 517.208(a), 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.

(End of provision)

[57 FR 59939, Dec. 17, 1992]

552.219–71 Allocation of orders—partially set-aside items.

As prescribed in 519.508, insert the following clause:

ALLOCATION OF ORDERS—PARTIALLY SET-ASIDE ITEMS (JUN 1986)

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)

[54 FR 26558, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989]

552.219–72 Notice to offerors of subcontracting plan requirements.

As prescribed in 519.708(a), insert the following provision:

NOTICE OF OFFERORS OF SUBCONTRACTING PLAN REQUIREMENTS (DEC 1995)

The General Services Administration (GSA) is committed to assuring that maximum practicable opportunity is provided to small, small disadvantaged, and women-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, Small Disadvantaged and Women Owned Small Business Subcontracting Plan, to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding $500,000 ($1,000,000 for construction) will be required to demonstrate that its subcontracting plan represents a creative and innovative program for involving small, small disadvantaged, and women-owned small business concerns as subcontractors in the performance of this contract.

(End of provision)

[61 FR 1152, Jan. 17, 1996]

552.219–73 Preparation, submission, and negotiation of subcontracting plans.

As prescribed in 519.708(b), insert the following provision:

PREPARATION, SUBMISSION, AND NEGOTIATION OF SUBCONTRACTING PLANS (DEC 1995)

(a) An offeror, other than a small business concern, submitting an offer that exceeds $500,000 ($1,000,000 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 products plan. Maximum practicable utilization of small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. It is the General Services Administration's (GSA's) expectation that an offeror's subcontracting plan will reflect a commitment to assuring that small, small disadvantaged, and women-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 products 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.

(b) GSA believes that this potential contract provides significant opportunities for the use of small, small disadvantaged, and women-owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described in FAR 52.219–9(d) of the clause in this contract entitled Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the offeror shall demonstrate that its subcontracting plan represents a creative and innovative program for involving small, small disadvantaged, and women-owned small business concerns in performing the contract. The subcontracting plan shall 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. 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.

(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 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, small disadvantaged, and women-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, small disadvantaged, and women-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)

[59 FR 38936, Aug. 1, 1994, as amended at 61 FR 1152, Jan. 17, 1996]

552.219–74 Goals for Subcontracting Plan.

As prescribed in 519.708(c), insert the following provision:

GOALS FOR SUBCONTRACTING PLAN (DEC 1995)

(a) Maximum practicable utilization of small, small disadvantaged, and women-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, small disadvantaged, and women-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, Small Disadvantaged and Women-Owned 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, small disadvantaged, and women-owned small business concerns in performing this contract. An offeror submitting a commercial products plan can demonstrate its commitment in providing maximum practicable opportunities through subcontracting opportunities it provides to

small, small disadvantaged, and women-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, small disadvantaged, and women-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
Small Disadvantaged Business _____ percent
Women-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, small disadvantaged, and women-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, small disadvantaged, and women-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 (DEC 1995). The Contracting Officer, as prescribed in 519.708(c), shall delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

[59 FR 38936, Aug. 1, 1994; 59 FR 45063, Aug. 31, 1994, as amended at 61 FR 1152, Jan. 17, 1996; 61 FR 39089, July 26, 1996; 61 FR 42462, Aug. 15, 1996]

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 Substances 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)

[54 FR 26558, June 23, 1989, as amended at 56 FR 1741, Jan. 17, 1991]

552.223–71 Hazardous material information.

As prescribed in 523.370, insert the following provision:

HAZARDOUS MATERIAL INFORMATION (APR 1984)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes[ ] No[ ]

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes[ ] No[ ]
			Yes[ ] No[ ]

(End of provision)

552.223–72 Nonconforming hazardous materials.

As prescribed in 523.303(b), insert the following clause:

NONCONFORMING HAZARDOUS MATERIALS (MAR 1992)

(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(c) 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)

[56 FR 1741, Jan. 17, 1991, as amended at 57 FR 14649, Apr. 22, 1992]

552.225–8 Trade Agreements Act Certificate.

As prescribed in 525.407(a), insert the following provision:

TRADE AGREEMENTS ACT CERTIFICATE (DEC 1994) (DEVIATION FAR 52.225–8)

(a) The Offeror, by signing this offer, certifies that each end product to be delivered under this contract is a U.S. made end product, a designated country end product, a Caribbean Basin country end product, a Canadian end product or a Mexican end product as defined in the clause entitled ''Trade Agreements Act'' at 48 CFR 552.225–9.

(b) Offers will be evaluated in accordance with subpart 25.4 of the Federal Acquisition Regulation except that offers of U.S. made end products, designated country end products, Caribbean Basin end products, Canadian end products, or Mexican end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of provision)

[59 FR 64857, Dec. 16, 1994]

552.225–9 Trade Agreements Act.

As prescribed in 525.407(a), insert the following clause.

TRADE AGREEMENTS ACT (DEC 1994) (DEVIATION FAR 52.225–9)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582) by providing a preference for U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products or Mexican end products over other products.

''Caribbean Basin country end products,'' as used in this clause, means an article that: (1) is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products that are excluded from duty free treatment from Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized

System of Preference under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers, (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps) of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

''Designated country end product,'' as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

''Canadian end product,'' as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of Canada, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

''Mexican end product,'' as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of Mexico, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

''End products,'' as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

''U.S. made end product,'' as used in this clause, means an article which (1) is wholly the growth, product, or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

''Nondesignated country end products,'' as used in this clause, means any end product which is not a U.S. made end product, designated country end product, Caribbean Basin Country end product, Canadian end product or Mexican end product.

''United States,'' as used in this clause, means the United States, its possessions, Puerto Rico, and any other place which is subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees to deliver under this contract only U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products or Mexican end products or, if a national interest waiver is granted under section 302 of the Trade Agreements Act of 1979, nondesignated country end products. Only if such waiver is granted may a nondesignated country end product be delivered under this contract(s).

(c) Offers will be evaluated in accordance with the policies and procedures of Part 25 of the FAR except that offers of U.S. made end products, designated country end products, Caribbean Basin end products, Canadian end products or Mexican end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of clause)

[59 FR 64857, Dec. 16, 1994]

552.225–70 Buy American Act—hand or measuring tools or stainless steel flatware.

As prescribed in 525.105–70(d), insert the following provision:

BUY AMERICAN ACT—HAND OR MEASURING TOOLS OR STAINLESS STEEL FLATWARE (MAY 1989)

Offers of foreign end products will be evaluated in accordance with GSAR 525.105–70(c) (48 CFR 525.105–70(c)). Offerors that intend to supply foreign end products must specify below or on an attachment to this offer the amount of duty (a) applicable if a duty-free entry certificate was *not* issued (for Canadian end products only) or (b) included in each offered price (for all other offers of foreign end products). If no duty is specified,

the differential in GSAR 525.105–70(c)(2)(i) will be applied to the offered price.

Item No.	Unit	Amount of duty (in dollars and cents)

(End of provision)

[54 FR 26558, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989]

552.225–71 Notice of procurement restriction—hand or measuring tools or stainless steel flatware.

As prescribed in 525.105–71(c), insert the following clause:

NOTICE OF PROCUREMENT RESTRICTION—HAND OR MEASURING TOOLS OR STAINLESS STEEL FLATWARE (MAY 1989)

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with section 6–104.4 of the Armed Services Procurement Regulation (6/15/70) (32 CFR 6–104.4), that it is in the national interest to reject foreign products.

As used in this clause, a ''domestic end product'' is—

(1) Any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

(End of clause)

§ 552.225–72 Eligible Products from Nondesignated Countries—Waiver.

As prescribed in 525.407(b), insert the following clause:

ELIGIBLE PRODUCTS FROM NONDESIGNATED COUNTRIES—WAIVER (AUG 1992)

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product that originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country identified in paragraph (c) below, may be submitted in response to this solicitation and will be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible offeror is received offering U.S. or designated country end products, Caribbean Basin country end products, Canadian or Mexican end products as defined in the clause entitled ''Trade Agreement Act'' in this solicitation; or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee (48 CFR 525.402).

(c) The Offeror certifies that the following product(s) is an end product other than an end product of the United States, a designated country or a Caribbean Basin country Canadian or Mexican end products, as such end products are defined in the clause entitled ''Trade Agreements Act'' in this solicitation:

Line item number	Country of origin
.....	.....
.....	.....

(End of clause)

[57 FR 42709, Sept. 16, 1992, as amended at 59 FR 64858, Dec. 16, 1994; 60 FR 21467, May 2, 1995]

552.225–75 Buy American Act Notice—Construction Materials.

As prescribed in 525.205, insert the following provision:

BUY AMERICAN ACT NOTICE—CONSTRUCTION MATERIALS (JAN 1994)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in performing this contract (See the clause entitled ''Buy American Act—Construction Materials''). This requirement does not apply to the excepted construction material or components listed below:

(List applicable excepted materials or indicate ''none.'')

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost of this contract.

(c) Any offer based on the use of one or more other foreign construction materials shall include current data, based on a reasonable canvass of suppliers, in the format listed in paragraph (g) below, clearly demonstrating that the cost of each other foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government will add to the offer 6 percent of the cost of other foreign construction material that qualifies for acceptance under paragraph (c) above.

(e) When offering other foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material to avoid the possibility that the entire offer will be rejected if the other foreign construction material is not accepted under (c) above. If any other foreign construction material does not qualify for acceptance under paragraph (c) above, the Government will evaluate the offer on the basis of the stated price for comparable domestic construction material, and the Offeror shall be required to furnish such domestic construction material at that price. If the Offeror does not state a price for a comparable domestic construction material, and the other foreign construction material does not qualify for acceptance under paragraph (c) above, the offer will be rejected in sealed bid procurements and may be rejected in negotiated procurements.

(f) If the foregoing procedure results in a tie between a foreign offer as evaluated and a domestic offer, award shall be made on the domestic offer. In such case, offers proposing to use any foreign construction material will be considered to be foreign offers.

(g) For evaluation purposes under paragraph (c) above, the following information and any applicable supporting data based on the canvass of suppliers shall be included in the offer for the use of one or more other foreign construction materials:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars)[1]
Item 1:			
Foreign construction material	.....	.....	$
Comparable domestic construction material	.....	.....	$
Item 2:			
Foreign construction material	.....	.....	$
Comparable domestic construction material	.....	.....	$

[1] Include all delivery costs to the construction site and any applicable duty.

(End of provision)

Alternate I (JAN 1994). If Alternate I is used, paragraphs (a) and (f) of the basic clause should be deleted and the following paragraphs (a) and (f) substituted. In addition, two asterisks should be inserted after the phrase ''Foreign construction material'' each time it appears in the chart in paragraph (g) and the following explanation added at the bottom of the chart ''* * * Do not include EC or NAFTA country construction materials.''

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in performing this contract. However, the Memorandum of Understanding between the United States of America and the European Community (EC) on Government procurement and the North American Free Trade Agreement (NAFTA) exempt EC and NAFTA country construction material from application of the Buy American Act. (See FAR 52.225–15 ''Construction Materials under European Community and NAFTA Agreements''). Therefore, the Contractor shall use only domestic construction material, EC construction materials, or NAFTA country construction materials in the performance of this contract except for other foreign construction materials, if any, listed below. ''Other foreign construction material,'' as used in this provision, means construction material that is not EC or NAFTA country construction material as defined in FAR 52.225–15.

(List applicable excepted materials or indicate ''none.'')

(f) If the foregoing procedure results in a tie between an offer that includes other foreign construction material as evaluated and an offer that includes domestic, EC or NAFTA construction material, award shall be made on the offer providing domestic, EC or NAFTA construction material.

[59 FR 64858, Dec. 16, 1994]

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)

552.228–70 Bid guarantee and bonds.

As prescribed in 528.101–3(a) insert a clause substantially the same as follows:

BID GUARANTEE AND BONDS (MAY 1989)

A bid guarantee is required as provided in Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).

(a) If the contract price is more than $25,000, the Contractor shall furnish a performance bond in a penal amount of 100 percent of the contract price, and payment bond in a penal amount as follows:

(1) Fifty percent of the contract price if the contract price is more than $25,000 but not more than $1,000,000; or

(2) Forty percent of the contract price if the contract price is more than $1,000,000 but not more than $5,000,000; if the contract price is over $5,000,000, then forty percent of the contract price or $2,500,000, whichever is less.

(b) If offers on one or more alternate and/or unit price offers were accepted in awarding the contract, contract price as used above shall mean the aggregate of the lump sum amount plus the product of each unit price accepted multiplied by the applicable number of units specified in the bid form, plus or minus such alternate offers as were accepted.

(c) Performance and payment bonds shall be submitted within the time specified on the Standard Form 1442, Solicitation, Offer, and Award, for this contract.

(d) The Contractor shall not lose the right to receive any payment due or to become due under the contract unless and until the surety has made payment in settlement of claims by suppliers of labor or material in accordance with the requirements of the surety's undertaking under the payment or performance bond and has notified the Contracting Officer of the claims and amount so paid.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 58 FR 52446, Oct. 8, 1993]

552.228–71 Bid guarantee.

As prescribed in 528.101–3(b), insert a clause substantially as follows:

BID GUARANTEE (MAY 1989)

If the contract price is more than $25,000, offerors shall furnish a bid guarantee in a penal amount of _____ percent of the offer price for the term of the contract (excluding options to extend the term of the contract, if any) or $3,000,000, whichever is less.

For bid guarantee purposes the amount of the offer shall be deemed to be the aggregate of each unit price bid multiplied by the applicable number of units shown on the offer form or in the method of award formula.

(End of clause)

552.228–72 Performance bond.

As prescribed in 528.103–2(d), insert a clause substantially as follows:

PERFORMANCE BOND (FEB 1990)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to ____ percent of the contract price for the base term of the contract. In determining the bond amount, ''base term of the contract'' refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) When the government exercises an option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to ____ percent of the contract price for each option term exercised by the Government. In determining the bond amount, ''option term'' refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bond shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure of the Contractor to provide the required bond may be cause to terminate the Contractor's right to proceed under the base of option term of the contract.

(d) The failure of a surety to renew a bond for any option term shall not result in a default of the bond previously furnished covering any base or option term.

(e) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of clause)

[55 FR 5224, Feb. 14, 1990, as amended at 55 FR 9886, Mar. 16, 1990]

552.228–73 Performance and Payment Bonds.

As prescribed in 528.103–3(c), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS (FEB 1990)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to ____ percent of the contract price and a payment bond in an amount equal to ____ percent of the contract price for the base term of the contract. In determining the bond amount, ''base term of the contract'' refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) Prior to exercise of any option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to ____ percent of the contract price and a payment bond in an amount equal to ____ percent of the contract price for each option term exercised by the Government. In determining the bond amount, ''option term'' refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bonds shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure to provide the required bonds may be cause to terminate the Contractor's right to proceed under the base or option term of the contract.

(d) The failure of a surety to renew a bond for any option term shall not result in a default of the bond previously furnished covering any base or option term.

(e) The performance and payment bonds shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in

accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of clause)

[55 FR 5224, Feb. 14, 1990]

552.228–75 Workmen's compensation laws.

As prescribed in 528.310, insert the following clause:

WORKMEN'S COMPENSATION LAWS (APR 1984)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989]

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)

552.229–72 Federal Excise Tax—DC Government.

As prescribed in 529.401–72, insert the following clause:

FEDERAL EXCISE TAX—DC GOVERNMENT (FEB 1990)

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)

[55 FR 6256, Feb. 22, 1990]

552.232–8 Discounts for prompt payments.

As prescribed in 532.111(a), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (APR 1989)
(DEVIATION FAR 52.232–8)

(a) Discounts for early payment (hereinafter referred to as ''discounts'' or ''the discount'') will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the ''Offers on Identical Products'' provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the ''value of funds'' rate established by the Department of the Treasury and published quarterly in the FEDERAL REGISTER. The ''value of funds'' rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101–26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) 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.

(End of clause)

552.232–23 Assignment of claims.

As prescribed in 532.806, insert the following clause:

ASSIGNMENT OF CLAIMS (MAY 1989)

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, no claim(s) for amounts due or to become due under this contract, shall be assigned by the Contractor; but it shall be permissible for the Contractor 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 delivery order amounting to $1,000 or more issued by any Government agency under this contract. Any such assignment shall be effective 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 delivery order and the finance office designated in the delivery order to make payment. Unless otherwise stated in the delivery order, payments to an assignee of any amounts due or to become due under any delivery 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(a)(2), insert the following clause:

PROMPT PAYMENT (JUL 1998) (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 subparagraph (a)(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 Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(A) The 10th 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 10th 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 10th 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 30th 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 30th 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 30th 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 (a)(1)(i) above 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 (i) through (iii) above must adhere to implementation conventions provided by GSA.

(3) If any of the conditions in (a)(2) above 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 7th 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 7th 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 10th 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 10th 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. A proper invoice must include the items listed in subdivisions (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 subparagraph (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 subdivisions (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 subparagraph (a)(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 7th 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 subparagraph (a)(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 subdivision (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 subdivision (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 40th 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 40th 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 40th 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 subdivision (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 30th 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)

[63 FR 12967, Mar. 16, 1998, as amended at 63 FR 38331, July 16, 1998]

552.232–70 Invoice payments.

As prescribed in 532.908(a)(1), insert the following clause:

INVOICE PAYMENTS (JUL 1998)

(a) The due date for making invoice payments by the designated payment office is:

(1) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(i) The 10th 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 10th 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 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(2) For all other orders, the later of the following two events:

(i) The 30th 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 30th 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 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(3) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(b) The General Services Administration will issue payment on the due date in (a)(1) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(1) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(2) 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.

(3) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(4) The EDI transaction sets in (b)(1) through (b)(3) above must adhere to implementation conventions provided by GSA.

(c) If any of the conditions in (b) above do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(d) All other provisions of the Prompt Payment Act (31 U.S.C. 3901 *et seq.*) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment, apply.

(End of clause)

[63 FR 12969, Mar. 16, 1998, as amended at 63 FR 38331, July 16, 1998]

552.232–71 Prompt payment.

As prescribed in 532.908(b), insert the following clause:

PROMPT PAYMENT (APR 1989)

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 15th 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 15th 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 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th 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 30th 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 7 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 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 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 1 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.

(End of clause)

Alternate I (APR 1989). 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 (b).

552.232–72 Invoice requirements.

As prescribed in 532.111(b), insert the following clause:

INVOICE REQUIREMENTS (APR 1989)

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or purchase/delivery order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the purchase/delivery order.

ACT NUMBER (*Contracting Officer Insert Number*)

(c) In addition to the requirements for a proper invoice specified in the Prompt Payment clause of this contract or purchase/delivery order, the following information or documentation must be submitted with each invoice:

(Contracting Officer *List Additional Requirements*)

(End of clause)

552.232–73 Electronic funds transfer payment.

As prescribed in 532.908(c), insert the following clause:

ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1992)

(a) Payments under this lease will be made by the Government either by check or electronic funds transfer (EFT). If the Lessor elects to receive payment by EFT, after award, but no later than 30 days before the first payment, the Lessor shall designate a financial institution for receipt of EFT payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(b) For payment by EFT, the Lessor shall provide the following information:

(1) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account (''C'' for checking, ''S'' for savings).

(4) If the Lessor is a new enrollee to the EFT system, a ''Payment Information Form,'' SF 3881, must be completed before payment can be processed.

(c) In the event the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and the required information specified above must be received by the appropriate Government official no later than 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Lessor or an authorized representative designated by the Lessor, as well as the Lessor's name and lease number.

(e) Lessor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

[57 FR 37890, Aug. 21, 1992]

552.232–77 Availability of funds.

As prescribed in 532.705–1, insert the following clause:

AVAILABILITY OF FUNDS (JUL 1984)

The authorization of performance of work under this contract during the initial contract period and any option or extension period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded, extended, or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award or extension is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Government for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the Contractor.

(End of clause)

552.232–78 Adjusting payments.

As prescribed in 532.111(c), insert the following clause:

ADJUSTING PAYMENTS (MAY 1989)

(a) Under the Inspection of Services clause of this contract, payments may be adjusted if any services do not conform with contract requirements. The Contracting Officer or a designated representative will inform the Contractor, in writing, of the type and dollar amount of proposed deductions by the 10th workday of the month following the performance period for which the deductions are to be made.

(b) The Contractor may, within 10 working days of receipt of the notification of the proposed deductions, present to the Contracting Officer specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10-day period will be interpreted to mean that the Contractor accepts the deductions proposed.

(c) All or a portion of the final payment may be delayed or withheld until the Contracting Officer makes a final decision on the proposed deduction. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust payments under the contract accordingly.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 54 FR 40060, Sept. 29, 1989]

552.232–79 Final payment.

As prescribed in 532.111(d), insert the following clause:

FINAL PAYMENT (APR 1986)

Before final payment is made, the Contractor shall furnish the Contracting Officer with a release of 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)

552.232–80 Payment by credit card.

As prescribed in 532.7003, insert the following clause:

PAYMENT BY CREDIT CARD (DEC 1989)

(a) Definitions. ''Government commercial credit card'' means the uniquely numbered credit card issued by the Contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

''Oral delivery order'' means an order placed orally either in person or by telephone, which is paid for by Government commercial credit card.

(b) At the option of the Government and if agreeable to the Contractor, payments of $25,000 or less for oral or written delivery orders may be made using the Government commercial credit card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item in accordance with other contract requirements, the Contractor shall immediately credit a cardholder's account for items returned as defective or faulty.

(End of clause)

[54 FR 26548, June 23, 1989, as amended at 54 FR 43181, Oct. 23, 1989]

552.233–70 Disputes (utility contract).

As prescribed in 533.214, insert the following clause:

DISPUTES (UTILITY CONTRACT) (APR 1984)

The requirements of the Disputes clause at FAR 52.233–1 are supplemented to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

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) 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. 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. 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 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. 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) below. 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). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

[54 FR 26558, June 23, 1989, as amended at 54 FR 40061, Sept. 29, 1989]

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)

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 (APR 1984)

The requirements of the clause entitled ''Specifications and Drawings'' 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 (APR 1984)

The requirements, of the clause entitled ''Specifications and Drawings'' 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
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 heating 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 Furnishing information and records.

As prescribed in 536.570–14, insert the following clause:

FURNISHING INFORMATION AND RECORDS (APR 1984)

(a) If the Contractor or any subcontractor under this contract or the officers or agents of the Contractor or any subcontractor, refuses, except as provided by the terms of this contract, to furnish to any Government agency or any establishment in the legislative or judicial branch of the Government information or records reasonably pertinent to this contract, the following actions may be taken:

(1) In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work. The rights and remedies provided in this clause are in addition to those outlined in paragraph (a) of the Default (Fixed-Price Construction) clause at FAR 52.249–10, paragraph (b) of the Liquidated Damages—Construction clause at FAR 52.212–5 and to any other rights and remedies provided by law or under this contract;

(2) In the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to in subparagraph (a)(1) of this clause.

(b) The term ''subcontract'' as used in this paragraph means any contract entered into or any purchase order issued by a prime contractor under a contract with the Government in connection with the performance of the prime contractor's obligations under this contract.

(c) The term ''subcontractor'' as used in this paragraph means a party to a subcontract other than the prime contractor under this contract.

(End of clause)

552.237–70 Qualifications of offerors.

As prescribed in 537.110(a), insert the following provision:

QUALIFICATIONS OF OFFERORS (MAY 1989)

(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. In order 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(b), 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 Certification regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following certification:

CERTIFICATION REGARDING ''QUASI-MILITARY ARMED FORCES'' (APR 1984)

(a) By signing this offer, the offeror certifies that the individual, firm, or corporation submitting this offer is not a ''Quasi-Military Armed Force'' within the meaning of the decision of the court in United States ex. rel. Weinberger v. Equifax, 557 F. 2d 456 (5th Cir., 1977).

(b) The Offeror further certifies that it will not, during the term of this contract, offer ''Quasi-Military Armed Forces'' for hire.

(End of certification)

[54 FR 26558, June 23, 1989, as amended at 54 FR 40061, Sept. 29, 1989]

552.238–70 Identification of electronic office equipment providing accessibility for the handicapped.

As prescribed in 538.203–71(b), 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 means 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.

[56 FR 29443, June 27, 1991, as amended at 56 FR 51660, Oct. 15, 1991]

552.238–72 Contractor's report of sales.

As prescribed in 538.203–71(a), insert the following clause:

CONTRACTOR'S REPORT OF SALES (APR 1998)

(a) The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of all sales under this contract by calendar quarter (i.e., January–March, April–June, July–September, and October–December). The dollar value of a sale is the price paid by the schedule user for products and services on a schedule contract delivery order, as recorded by the Contractor. The reported contract sales value must include the industrial funding fee (see Clause 552.238–77).

(b) The Contractor must report the quarterly dollar value of sales on electronic GSA Form 72A, Contractor's Report of Sales, to the FSS Vendor Support Center (VSC) Website at Internet, http://VSC.gsa.gov. The Contractor must report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or subitem. If no sales occur, the Contractor must show zero on the report for each separate NSN, SIN, or subitem.

(c) The Contractor must register with the VSC before using the automated reporting system. To register, the Contractor (or its authorized representative) must call the VSC at (703) 305–6235 and provide the necessary information regarding the company, contact name(s), and telephone number(s). The VSC will then issue a 72A specific password and provide other information needed to access the reporting system. Instructions for electronic reporting are available at the VSC Website or by calling the above phone number.

(d) The Contractor must 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 must use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from: Department of the Treasury, Financial Management Service, International Funds Branch, 3700 East-West Highway, PGCII, Room 5A19, Hyattsville, MD 20782, Telephone: (202) 874–7994, Internet: http://www.fms.treas.gov/intn.html

(e) The report is due 30 days following the completion of the reporting period. The Contractor must provide a close-out report within 120 days after the expiration date of the contract. This close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then show zero sales in the close-out report.

(End of clause)

[63 FR 19194, Apr. 17, 1998]

552.238–74 Submission and distribution of authorized FSS schedule pricelists.

As prescribed in 538.203–71(c), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS SCHEDULE PRICELISTS (JUL 1998)

(a) Definition. For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: ''the list of Federal 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.

(c)(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.

(d) 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.

(e) 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)

[58 FR 54524, Oct. 22, 1993, as amended at 61 FR 6172, Feb. 16, 1996; 63 FR 38331, July 16, 1998]

552.238–75 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes.

As prescribed in 538.203–71(d), insert the following clause:

IDENTIFICATION OF ENERGY-EFFICIENT OFFICE EQUIPMENT AND SUPPLIES CONTAINING RECOVERED MATERIALS OR OTHER ENVIRONMENTAL ATTRIBUTES (SEP 1994)

(a) *Definitions.* ''Energy-efficient office equipment,'' as used in this clause, means office equipment that, in representative use, provides equivalent or better performance and value to users, but uses significantly less energy than most functionally equivalent models.

''Recovered materials,'' as used in this clause, means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused, within an original manufacturing process (42 U.S.C. 6903(19)). For paper, it also includes postconsumer materials, and manufacturing and certain other wastes. (42 U.S.C. 6962(h)).

''Remanufactured products,'' as used in this clause, means equipment or parts that have been factory remanufactured or rebuilt to meet new equipment or part performance specifications and have had no use subsequent to their remanufacture.

(b) The offeror shall identify in its offer and include in any commercial catalogs and pricelists and any resultant Government catalogs or pricelists submitted to the Contracting Officer, energy-efficient office equipment and supplies that contain recovered material, remanufactured products, or other environmental attributes. Examples of energy-efficient office equipment are microcomputers and associated equipment that meet the requirements of the Environmental Protection Agency's (EPA's) Energy Star Computers Program. Supplies that contain recovered materials and other environmental attributes include, but are not limited to, products identified in EPA procurement guidelines (40 CFR subchapter I) and products that are either degradable, ozone safe, recyclable, contain low volatile organic content compounds, contribute to source reduction, or otherwise are designed or manufactured to achieve environmental improvement. For example, an offeror can identify products that are safe or safer alternatives for more toxic or hazardous products and products that can be substituted for ones manufactured with toxic or hazardous materials. Such supplies shall satisfy the guidance contained in 16 CFR part 260, Guides for the Use of Environmental Marketing Claims.

(c) An offeror, in identifying an item with an environmental attribute, shall possess evidence or rely upon a reasonable basis to substantiate the claim (see 16 CFR 260.5). 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., EPA's Energy Star Computers 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)

[59 FR 63260, Dec. 8, 1994]

552.238–76 Price reductions.

As prescribed in 538.203–71(e), insert the following clause:

PRICE REDUCTIONS (OCT 1994)

(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 was 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 limitation specified in this contract;

(2) To Federal agencies; or

(3) 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)

[59 FR 52452, Oct. 18, 1994]

552.238–77 Industrial funding fee.

As prescribed in 538.203–71(f) insert the following clause:

INDUSTRIAL FUNDING FEE (APR 1998)

(a) The Contractor must pay the Federal Supply Service, GSA, an industrial funding fee (IFF). The Contractor must remit the IFF in U.S. dollars within 30 days after the end of each quarterly reporting period as established in clause 552.238–72, Contractor's Report of Sales. The IFF equals _____* of total quarterly sales reported. The IFF reimburses the GSA Federal Supply Service for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities. 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.

(b) The Contractor must remit any monies due as a result of the close-out report required by Clause 552.238–72 at the time the close-out report is submitted to GSA.

(c) The contractor must pay the IFF amount due by check, or electronic funds transfer through the Automated Clearing House (ACH), to the ''General Services Administration.'' If the payment involves multiple special item numbers or contracts, the Contractor may consolidate the IFFs into one payment. To ensure that the payment is credited properly, the Contractor must identify the check or electronic transmission as an ''Industrial Funding Fee'' and include the following information: contract number(s); report amount(s); and report period(s). If the Contractor makes payment by check, provide this information on either the check, check stub, or other remittance material.

(1) If paying the IFF by check, the Contractor must forward the check to the following address: General Services Administration, Accounts Receivable Branch, P.O. Box 70500, Chicago, IL 60673–0500.

(2) If paying by electronic funds transfer through the ACH, the Contractor must call GSA, Financial Information Control Branch, Receivables, Collections and Sales Section (6BCDR) at [*Contracting Officer to insert phone number*] to make arrangements.

(d) If the full amount of the IFF is not paid within 30 calendar days after the end of the applicable reporting period, it constitutes a contract debt to the United States Government under the terms of FAR 32.6. The Government may exercise all rights under the Debt Collection Act of 1982, including withholding or setting off payments and interest on the debt (see FAR 52.232–17, Interest).

(e) If the Contractor fails to submit sales reports, falsifies sales reports, or fails to pay the IFF in a timely manner, the Government may terminate or cancel this contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to pay the IFF timely constitutes sufficient cause for terminating the Contractor for cause under the termination provisions of this contract.

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*The Commissioner, Federal Supply Service, or a designee determines and provides to contracting officers the percentage amount of the fee to insert in the above clause.

(End of clause)

[63 FR 19195, Apr. 17, 1998]

§ 552.242–70 Status report of orders and shipments.

As prescribed in 542.1107, insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (APR 1992)

(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 instruction 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 [Contracting Officer insert appropriate telephone number of FQC]. Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of clause)

[57 FR 26609, June 15, 1992]

552.243–70 Pricing of adjustments.

As prescribed in 543.205(a), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1989)

When costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract.

(End of clause)

552.243–71 Equitable adjustments.

As prescribed in 543.205(b), insert the following clause in solicitations and contracts for (a) dismantling, demolition, or removal of improvements; and (b) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation:

EQUITABLE ADJUSTMENTS (APR 1984)

(a) The provisions of the ''Changes'' clause prescribed by FAR 52.243–4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the ''Equitable Adjustments'' clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs
(Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)
Labor breakdown by trades and unit costs
(Identified with specific item of material to be placed or operation to be performed)
Construction equipment exclusively necessary for the change
Costs of preparation and/or revision to shop drawings resulting from the change
Workmen's Compensation and Public Liability Insurance
Employment taxes under FICA and FUTA
Bond Costs—when size of change warrants revision

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work

involved, but in no case shall exceed the following unless the Contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit	Commission
To Contractor on work performed by other than his own forces.	.....	.....	10%
To first tier subcontractor on work performed by his subcontractors.	.....	.....	10%
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces.	To be Negotiated ...	10%	.....

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided, however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the ''Differing Site Conditions'' clause prescribed by FAR 52.236–2 are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this ''Equitable Adjustments'' clause.

(End of clause)

552.243–72 Modifications (Multiple Award Schedule).

As prescribed in 48 CFR 543.205(c), insert the following clause:

MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (AUG 1997)

(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 SIN's. 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 SIN's.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 as applicable 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 new SIN(s) as described in 552.212–70, Preparation of Offer (Multiple Award Schedule) is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with 552.211–78, Commercial Delivery Schedule (Multiple Award Schedules).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215–20, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by 52.223–3 (ALT I), Hazardous Material Identification and Material Safety Data; and 552.223–71, Hazardous Material Information; and as requested by the Separate Charge for Performance Oriented Packaging clause of this contract, if applicable.

(vii) Recovered Material estimate(s) and certification (if applicable) must be submitted as required by 52.223–8 (or 52.223–8 (ALT I) or 52.223–8 (ALT II), Estimate of Percentage of Recovered Material for Designated Items to be used in the Performance of the Contract; and 52.223–9, Certification of Recovered Material Content for EPA Designated Items used in Performance of the Contract.

(viii) Any information requested by 52.212–3(f), Offerors Representations and Certifications—Commercial Items, that may be necessary to assure compliance with 552.225–9, Trade Agreements Act.

(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 subparagraph (c)(1) of the Price Reduction clause at 552.238–76. 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 Reduction clause at 552.238–76.

(d) Electronic file updates. The Contractor shall update electronic file submissions to reflect all modifications. Except for price reductions and corrections, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until updates to electronic files are received. Price reductions and correction may be transmitted without prior approval. However, the contracting officer shall be notified as set forth in the Price Reduction clause at 552.238–76.

(e) Amendments to paper Federal Supply Schedule Price Lists. The Contractor shall distribute a supplemental paper Federal Supply Schedule Price List reflecting accepted changes within 15 days after the effective date of the modification. At a minimum, distribution shall be made to these ordering activities that previously received the basic document. In addition, two copies of the supplemental price list shall be submitted to the contracting officer, and one copy shall be submitted to the FSS Schedule Information Center.

(End of clause)

[61 FR 6172, Feb. 16, 1996; 61 FR 10846, Mar. 15, 1996, as amended at 62 FR 44525, Aug. 21, 1997]

552.246–17 Warranty of supplies of a noncomplex nature.

As prescribed in 546.710(a)(1), insert the following clause:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (DEC 1990) (DEVIATION FAR 52.246–17)

(a) *Definitions.* ''Acceptance,'' as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract. ''Correction,'' as used in this clause, means the elimination of a defect. ''Supplies,'' as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include ''data.''

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for*

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant with no return, correction or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and ''fitness for a particular purpose'' are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

(1) The Contracting Officer shall give written notice to the Contractor of any breach of

warranties in paragraph (b)(1) of this clause within **. This notice shall contain information concerning the deficiencies found, the location of the nonconforming supplies, and the quantity involved.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. 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 equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided,* that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement. All costs incurred by the Government in returning the nonconforming supplies, including costs to the freight carrier resulting from the Contractor's refusal to accept their return, shall be for the Contractor's account.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure failure within a period of 10 days (or such longer period as the Contracting Office may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which either have been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may return the supplies for screening and correction or replacement under subparagraph (c)(3)(ii)(D) above; store the nonconforming supplies for the Contractor's account; sell the nonconforming supplies to the highest bidder on the open market and apply the proceeds against the accumulated storage and other costs, including the cost of the sale; or otherwise dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) whom to

notify if the supplies are found to be defective.

(End of clause)

*Contracting Officer shall state the specific period of time after delivery or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.

**Contracting Officer shall insert specific period of time; e.g., ''45 days from the last delivery under contract,'' or ''45 days after discovery of the defect.'' The number of days specified shall be no less than 30.

Alternate I (DEC 1990). As prescribed in 546.710(a)(2), substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

Alternate II (DEC 1990). As prescribed in 546.710(a)(3), substitute the following paragraph for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * all supplies furnished—

(i) Conform to the specifications except that in the case of solvent systems, the viscosity may exceed the specified maximum by 10 Kreb Units, unless otherwise specified elsewhere in this contract; and

(ii) Are suitable for their intended purpose as stated in this contract.

Alternate III (DEC 1990). As prescribed in 546.710(a)(4), substitute the following for paragraph (b)(1) of the basic clause, redesignate paragraph (c) of the basic clause as paragraph (d), and add the following as paragraph (c) in the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * , beginning with the first day of the first full month following the month of manufacture marked on the container, all supplies furnished retain their original characteristics to the extent that the supplies remain suitable for the intended use as stated in this contract (i) under actual application conditions or (ii) when tested in accordance with requirements stated elsewhere in this contract.

(c) *Government surveillance and testing.*

(1) During this period, surveillance will be maintained on supplies warehoused in Government facilities; and the supplies will be tested periodically to determine their suitability for intended use. Sampling for surveillance testing will be in accordance with Military Standard No. 105, and such testing will be made after NORMAL MIXING, STIRRING, OR SHAKING, in accordance with directions either furnished with the supplies or as shown in the applicable specifications.

(2) Surveillance testing will be based on storage stability requirements set forth in the contract specification, or purchase description on the basis of salient characteristics (e.g., viscosity or sag flow, curing time, strip adhesion or tensile shear, etc.) established by GSA as appropriate to determine suitability for intended use. In the case of brand name items not covered by detailed purchase descriptions, surveillance testing may be based on salient characteristics included in the manufacturer's data sheets. If storage stability requirements showing allowable variations are not included in applicable specifications or elsewhere in the contract, material will be considered suitable for intended use if the salient characteristics vary not more than 20 percent from the originally specified values (i.e., those applicable to acceptance testing of the supplies) for noncritical end-use items, and not more than 10 percent for critical end-use items.

[56 FR 1741, Jan. 17, 1991]

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 (MAR 1994)

(a) *Inspection system and inspection facilities.*

(1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause ((FAR) 48 CFR 52.246–2) of this contract shall be maintained

throughout the contract period and 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 (ANSI/ASQC Q 91) (Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation and Servicing), or ISO Standard 9002 (ANSI/ASQC Q 92) (Quality Systems—Model for Quality Assurance in Production and Installation). The ISO 9000 family of standards is a set of worldwide standards used to document, implement and demonstrate quality assurance systems. When using the ISO option the Contractor's quality system must be registered by a third party registrar accredited by either the Registrar Accreditation Board (RAB) or an organization recognized as equivalent. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office 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 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 or ISO 9002 records shall include the date when 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) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Administrative Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.*

(1) For each shipment released, one of the officials named by the Contractor under paragraph (a)(4) above shall sign a Quality Approved Manufacturer Certificate certifying that supplies have been inspected and found to comply with contract requirements.

The certification shall read as follows:

''I certify that all items in this shipment have been listed herein, and have been inspected and found to comply with all requirements of the contract.''

Signature of Certifying Official

(i) For shipments made to military facilities, the Contractor shall prepare and distribute the DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent of the form not later than the close of business the workday following shipment. The certification above shall be placed in block 16 on this form. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution.

(ii) For shipments made to civilian facilities only, the Contractor shall prepare and distribute not later than the close of business the workday following shipment a certification of inspection and conformance for the identified items, in accordance with instructions furnished at the time of award. The Contractor may furnish the requisite information on the DD Form 250 or computer formatted equivalent, company letterhead, or invoice document.

(c) *Inspection by Government personnel.*

(1) Although the Government will normally rely upon the Contractor's certification 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) 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.

(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 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.

(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 Government may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its 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 amount equitable 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) If supplies in process, shipped or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). 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 GSA quality assurance office, within 5 workdays, of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination. Delays due to the issuance of a QDN do not constitute excusable delay under the Default clause. Failure to complete corrective action in a timely manner may result in termination of this 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 which do not meet the requirements of the specification are being shipped, or there is failure to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor will 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) above, 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.

(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)

*The Contracting Officer shall 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, the shelf-life period should be used, or in the instance where a longer period may reasonably be expected to be available, the longer period should be used.

** The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

[56 FR 1742, Jan. 17, 1991, as amended at 58 FR 64694, Dec. 9, 1993; 59 FR 15134, Mar. 31, 1994]

552.246–71 Final inspection and tests.

As prescribed in 546.312, insert the following clause:

FINAL INSPECTION AND TESTS (MAY 1989)

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)

552.246–72 Source inspection by Government.

As prescribed in 546.302–71, insert the following clause:

SOURCE INSPECTION BY GOVERNMENT (DEC 1990)

(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 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 Supply Service or a designee.

[56 FR 1744, Jan. 17, 1991]

552.246–73 Warranty—multiple award schedule.

As prescribed in 546.710, insert the following clause:

WARRANTY—MULTIPLE AWARD SCHEDULE (FEB 1996)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list will apply to this contract.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 61 FR 6173, Feb. 16, 1996]

552.246–74 Warranty—International multiple award schedule.

As prescribed in 546.710(c), insert the following clause:

WARRANTY—INTERNATIONAL MULTIPLE AWARD SCHEDULE (MAY 1989)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except: (a) The Contractor shall provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the Government accepts the product; (b) parts and labor required under the warranty provisions shall be supplied free of charge; (c) transportation costs of returning the products to and from the repair facility, or the costs involved with contractor personnel traveling to the Government facility for the purpose of repairing the product onsite shall be borne by the Contractor during the 90-day warranty period.

(End of clause)

552.246–75 Guarantees.

As prescribed in 546.710(b), insert the following clause:

GUARANTEES (MAY 1989)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was

placed in use by the Government, whichever occurs first.

(b)(1) If, within any guarantee period, the Contracting Officer finds that guaranteed work requires repair or change because of defective or inferior materials, equipment, or workmanship or is not in accordance with contract requirements, the Contracting Officer shall notify the Contractor in writing. The Contractor shall promptly, and without additional expense to the Government, correct:

(i) All guaranteed work;

(ii) All damage to equipment, the site, the building or its contents resulting from the unsatisfactory guaranteed work; and

(iii) Any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work, materials, and equipment that may have been guaranteed under another contract.

(2) If the Contractor fails to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract will be subject to paragraphs (a) and (b), insofar as they do not conflict with special guarantees.

(d) The Contractor shall furnish to the Government: (1) Each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of business; (2) All information required to make such guarantee or warranty legally binding and effective; and (3) The information and the guarantee or warranty in sufficient time to permit the Government to meet any time limit specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

(End of clause)

552.246–76 Warranty of pesticides.

As prescribed in 546.710, insert the following clause:

WARRANTY OF PESTICIDES (MAY 1989)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for 1 year after the date of shipment, all pesticides furnished under this contract shall meet the requirements of Pub. L. 92–516, as amended, and shall be registered with the Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) Contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

(End of clause)

552.247–70 Placarding railcar shipments.

As prescribed in 547.305, insert the following clause:

PLACARDING RAILCAR SHIPMENTS (MAY 1989)

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the Contractor shall place on the appropriate railcar door a placard reading ''Unload From This Side'' and on the opposite door a placard reading ''Unload From Other Side.''

(End of clause)

552.249–70 Termination for convenience of the Government (fixed-price) (short form).

As prescribed in 549.502 insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (MAY 1988) (DEVIATION FAR 52.249–1 AND 52.249–2)

(a) If the Government terminates this contract for convenience, the rights of the Government and the Contractor shall be determined under paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined under paragraph (c).

(b) The clause at [Contracting Officer inserts 52.249–1 or 52.249–2, as applicable] of the FAR shall apply to the supply portion of the contract and the clause at 52.249–4 of the FAR shall apply to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the Contractor for such termination; except that, there shall be no termination liability for equipment installed after termination of this contract.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 54 FR 40061, Sept. 29, 1989]

552.249–71 Submission of termination liability schedule.

As prescribed in 549.570 insert the following clause:

SUBMISSION OF TERMINATION LIABILITY SCHEDULE (MAY 1989)

(a) An offeror may submit, as part of its proposal, a termination liability schedule to be applied if any resultant contract is terminated by the Government for reasons other than default. The offeror shall provide and explain the amount and method of computation of the termination liability charge(s).

(b) If submitted, the termination liability schedule will be incorporated into Part I, Section B of the contract document. If a termination liability schedule is not submitted and the Government terminates any resultant contract for its convenience, the rights of the parties shall be determined under paragraph (b) of the GSAR Termination for Convenience of the Government clause at 552.249–70.

(c) Any termination liability charges existing at the end of the evaluated contract period will be considered in the evaluation of offers.

(End of clause)

552.252–5 Authorized deviations or variations in provisions.

As prescribed in 552.107(a), insert the following provision:

AUTHORIZED DEVIATIONS OR VARIATIONS IN PROVISIONS (DEVIATION FAR 52.252–5) (JUL 1985)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR chapter 1) provision with an authorized deviation or variation is indicated by the addition of ''(Deviation)'' or ''(Variation)'' after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) provision with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of ''(Deviation (FAR provision no.))'' or ''(Variation (FAR provision no.))'' after the date of the provision.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation provision with an authorized deviation or variation is indicated by the addition of ''(Deviation)'' or ''(Variation)'' after the date of the provision.

(c) Changes in wording of provisions that are prescribed for use on a ''substantially the same as'' basis are not considered deviations. Therefore, when such provisions are not worded exactly the same as the FAR or GSAR provision, they are identified by the word ''(Variation).''

(End of provision)

552.252–6 Authorized deviations or variations in clauses.

As prescribed in 552.107(b), insert the following clause:

AUTHORIZED DEVIATIONS OR VARIATIONS IN CLAUSES (DEVIATION FAR 52.252–6) (JUL 1985)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR chapter 1) clause with an authorized deviation or variation is indicated by the addition of ''(Deviation)'' or ''(Variation)'' after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) clause with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of ''(Deviation (FAR clause no.))'' or ''(Variation (FAR clause no.))'' after the date of the clause.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation clause with an authorized deviation or variation is indicated by the addition of ''(Deviation)'' or ''(Variation)'' after the date of the clause.

(c) Changes in wording of clauses that are prescribed for use on a ''substantially the same as'' basis are not considered deviations. Therefore, when such clauses are not worded exactly the same as the FAR or GSAR clause, they are identified by the word ''(Variation).''

(End of clause)

552.270–1 Instructions to offerors—Acquisition of leasehold interests in real property.

As prescribed in 570.702(a), insert the following provision:

INSTRUCTIONS TO OFFERORS—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (MAR 1998)

(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'' or ''written'' means any worded or numbered expression which 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 5th 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 20th of the month must have been mailed by the 15th).

(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 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 subparagraphs (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 amended 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 unconditional written acceptance of an offer establishes a valid 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.

(End of provision)

Alternate I (MAR 1998). As prescribed in 570.702(a)(1), 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 (DATE). As prescribed in 570.702(a)(2), 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 Government 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.

[63 FR 18844, Apr. 16, 1998]

552.270–2 [Reserved]

552.270–3 [Reserved]

552.270–4 Historic preference.

As prescribed in 570.702(b), insert the following provision:

HISTORIC PREFERENCE (AUG 1994)

(a) Preference will be given to offers of space in buildings on, or formally listed as eligible for inclusion in the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. Such preference will be extended to historic buildings and will result in award if:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floors, etc.); and

(2) The rental is no more than 10 percent higher on a total annual square foot (occupiable) cost to the Government than the lowest otherwise acceptable offer.

(b) If more than one offer of an historic building is received and they meet the above criteria, an award will then be made to the lowest priced historic property offered.

(End of provision)

[54 FR 26558, June 23, 1989, as amended at 59 FR 52253, Oct. 17, 1994; 60 FR 42795, Aug. 17, 1995; 63 FR 18846, Apr. 16, 1998]

552.270–5 [Reserved]

552.270–6 Parties to execute lease.

As prescribed in 570.702(c), insert the following provision:

PARTIES TO EXECUTE LEASE (AUG 1992)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.

(b) If the Lessor is a partnership, the lease shall be signed with the partnership name, followed by the name of the legally authorized partner signing the same, and, if required by the Government, a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany the lease.

(c) If the Lessor is a corporation, the lease shall be signed with 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.

(End of provision)

[57 FR 37890, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995; 63 FR 18846, Apr. 16, 1998]

552.270–10 Definitions.

As prescribed in 570.703(a)(1), insert the following clause:

DEFINITIONS (AUG 1992)

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) *Commencement Date* means the first day of the term.

(b) *Contract* and *Contractor* means *Lease* and *Lessor*, respectively.

(c) *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.

(d) *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.

(e) *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.

(f) *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.

(g) *Lessor* means the sub-lessor if this lease is a sublease.

(h) *Lessor shall provide* means the Lessor shall furnish and install at Lessor's expense.

(i) *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.

(j) *Premises* means the space described in this lease.

(k) *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 completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(l) *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)

[57 FR 37890, Aug. 21, 1992, as amended at 57 FR 52826, Nov. 5, 1992; 60 FR 42795, Aug. 17, 1995]

552.270–11 Subletting and assignment.

As prescribed in 570.703(a)(2), insert the following clause:

SUBLETTING AND ASSIGNMENT (AUG 1992)

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)

[57 FR 37891, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–12 Maintenance of building and premises—Right of entry.

As prescribed in 570.703(a)(3), insert the following clause:

MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (AUG 1992)

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)

[57 FR 37891, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–13 Fire and casualty damage.

As prescribed in 570.703(a)(4), insert the following clause:

FIRE AND CASUALTY DAMAGE (AUG 1992)

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 untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; 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)

[57 FR 37891, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–14 [Reserved]

552.270–15 Compliance with applicable law.

As prescribed in 570.703(a)(5), insert the following clause:

COMPLIANCE WITH APPLICABLE LAW (AUG 1992)

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)

[57 FR 37891, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–16 Inspection—Right of entry.

As prescribed in 570.703(a)(6), insert the following clause:

INSPECTION—RIGHT OF ENTRY (AUG 1992)

(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 leases. 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)

[57 FR 37891, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–17 Failure in performance.

As prescribed in 570.703(a)(7), insert the following clause:

FAILURE IN PERFORMANCE (AUG 1992)

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 or payments 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)

[57 FR 37891, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–18 Successors bound.

As prescribed in 570.703(a)(8), insert the following clause:

SUCCESSORS BOUND (AUG 1992)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of clause)

[57 FR 37892, Aug. 21, 1992, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–19 Alterations.

As prescribed in 570.703(a)(9), insert the following clause:

ALTERATIONS (JUN 1985)

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)

[54 FR 26558, June 23, 1989, as amended at 60 FR 42795, Aug. 17, 1995]

552.270–20 Proposals for adjustment.

As prescribed in 570.703(a)(10), insert the following clause:

PROPOSALS FOR ADJUSTMENT (APR 1998)

(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 details—

(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—

(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).

(End of clause)

[57 FR 37892, Aug. 21, 1992, as amended at 60 FR 19363, Apr. 18, 1995; 60 FR 42795, Aug. 17, 1995; 63 FR 18846, Apr. 16, 1998]

552.270–21 Changes.

As prescribed in 570.703(a)(11), insert the following clause:

CHANGES (AUG 1995)

(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; or

(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; or

(4) An equitable adjustment of the annual operating costs per occupiable square foot specified in this lease.

(c) The Lessor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government shall not be liable to Lessor under this clause.

(End of clause)

[57 FR 37892, Aug. 21, 1992, as amended at 59 FR 52253, Oct. 17, 1994; 60 FR 42795, Aug. 17, 1995]

552.270–22 Liquidated damages.

As prescribed in 570.703(b), insert the following clause:

LIQUIDATED DAMAGES (AUG 1992)

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)

[57 FR 37892, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–23—552.270–24 [Reserved]

552.270–25 Adjustment for vacant premises.

As prescribed in 570.703(a)(12), insert the following clause:

ADJUSTMENT FOR VACANT PREMISES (AUG 1994)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the lease, the rental rate will be reduced.

(b) The rate will be reduced by that portion of the costs per occupiable square foot of operating expenses not required to maintain the space. Said reduction must occur after the Government gives 30 calendar days prior notice to the Lessor, and must continue in effect until the Government occupies the premises or the lease expires or is terminated.

(End of clause)

[54 FR 26558, June 23, 1989, as amended at 59 FR 52253, Oct. 17, 1994; 60 FR 42796, Aug. 17, 1995]

552.270–26 [Reserved]

552.270–27 Delivery and condition.

As prescribed in 570.703(a)(13), insert the following clause:

DELIVERY AND CONDITION (AUG 1992)

(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)

[57 FR 37893, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–28 Default in delivery—Time Extensions.

As prescribed in 570.703(a)(14), insert the following clause:

DEFAULT IN DELIVERY—TIME EXTENSIONS (AUG 1994)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date (as such date may be modified pursuant to this lease), time is of the essence. If the Lessor fails to prosecute the work with the diligence that will 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, which termination shall be effective when received by Lessor. The Lessor and the Lessor's sureties, if any, shall be jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and 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; provided, if the Government procures replacement premises for a term (including all option terms) in excess of the term, the Lessor shall not be liable for excess Government rent or adjustments during such excess part of such term;

(2) All administrative and other costs borne by the Government in procuring a replacement lease or leases;

(3) Such other, additional relief as may be provided for in this lease, at law or in equity.

(4) Damages to which the Government may be entitled under this clause shall be due and payable thirty (30) days next following the date Lessor receives notice from the Contracting Officer specifying such damages.

(b) Delivery by Lessor of less than the minimum occupiable square footage required by this lease shall in no event be construed as substantial completion, except as permitted by the Contracting Officer.

(c) Notwithstanding in paragraph (a) of this clause, this lease shall not be terminated under this clause nor the Lessor charged 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 such action, the delivery date shall be extended, by the Contracting Officer, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of clause)

[57 FR 37893, Aug. 21, 1992, as amended at 57 FR 52826, Nov. 5, 1992; 59 FR 52253, Oct. 17, 1994; 60 FR 42796, Aug. 17, 1995]

552.270–29 [Reserved]

552.270–30 Progressive occupancy.

As prescribed in 570.703(a)(15), insert the following clause:

PROGRESSIVE OCCUPANCY (AUG 1992)

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)

[57 FR 37893, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–31 Payment.

As prescribed in 570.703(a)(16), insert the following clause:

PAYMENT (AUG 1994)

(a) When space is offered and accepted, the occupiable square footage delivered will be confirmed by:

(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 is in conformance with such plans; or

(2) a mutual on-site measurement of the space if the Contracting Officer determines that it is necessary.

(b) Payment will not be made for space which is in excess of the amount of occupiable square footage stated in the lease.

(c) If it is determined that the amount of occupiable square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of occupiable space delivered and the annual rental will be adjusted as follows:

(1) Occupiable square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF).

(2) OSF×(1+CAF)×Rate per RSF=Reduction in Annual Rent.

[59 FR 52253, Oct. 17, 1994, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–32 Effect of acceptance and occupancy.

As prescribed in 570.703(a)(17), insert the following clause:

EFFECT OF ACCEPTANCE AND OCCUPANCY (AUG 1992)

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)

[57 FR 37893, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–33 Default by lessor during the term.

As prescribed in 570.703(a)(18), insert the following provision:

DEFAULT BY LESSOR DURING THE TERM (AUG 1992)

(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)

[57 FR 37893, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–34 Subordination, nondisturbance and attornment.

As prescribed in 570.703(a)(19), insert the following clause:

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (AUG 1992)

(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)

[57 FR 37894, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–35 Statement of lease.

As prescribed in 570.703(a)(20), insert the following clause:

STATEMENT OF LEASE (AUG 1992)

(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)

[57 FR 37894, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–36 Substitution of tenant agency.

As prescribed in 570.703(a)(21), insert the following clause:

SUBSTITUTION OF TENANT AGENCY (AUG 1992)

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)

[57 FR 37894, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–37 No waiver.

As prescribed in 570.703(a)(22), insert the following clause:

NO WAIVER (AUG 1992)

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)

[57 FR 37894, Aug. 21, 1992, as amended at 57 FR 52826, Nov. 5, 1992; 60 FR 42796, Aug. 17, 1995]

552.270–38 Integrated agreement.

As prescribed in 570.703(a)(23), insert the following clause:

INTEGRATED AGREEMENT (AUG 1992)

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)

[57 FR 37894, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–39 Mutuality of obligation.

As prescribed in 570.703(a)(24), insert the following clause:

MUTUALITY OF OBLIGATION (AUG 1992)

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)

[57 FR 37894, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–40 Asbestos and hazardous waste management.

As prescribed in 570.703(a)(25), insert the following clause:

ASBESTOS AND HAZARDOUS WASTE MANAGEMENT (AUG 1992)

The certifications made by the Offeror regarding asbestos and hazardous waste management contained in the representation and certification provisions of this lease are material representations of fact upon which the Government relies when making award. If it is later determined that the presence or management of asbestos and/or hazardous waste has been misrepresented, the Government reserves the right to require the Lessor, at no cost to the Government, to abate (remove, encapsulate, enclose, or repair) such asbestos and/or mitigate hazardous waste conditions, with such work performed in accordance with Federal (e.g., EPA, OSHA, and DOT), State, and local regulations and guidance, or, alternatively, the Government may terminate the lease. This is in addition to other remedies available to the Government.

(End of clause)

[57 FR 37894, Aug. 21, 1992, as amended at 60 FR 42796, Aug. 17, 1995]

552.270–41 Acceptance of space.

As prescribed in 570.703(a)(26), insert the following clause:

ACCEPTANCE OF SPACE (AUG 1994)

(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 occupiable square footage as indicated in Paragraph 1.1, Amount and Type of Space, of this solicitation.

[59 FR 52253, Oct. 17, 1994, as amended at 60 FR 42796, Aug. 17, 1995]

Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of subpart.

This subpart consists of a series of matrixes, one each for supply, service, construction, architect-engineer and simplified acquisition contracts which lists the applicable GSA provisions and clauses; and one each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

NOTE: The matrixes do not appear in this volume of the FEDERAL REGISTER or Title 48, Chapter 5 of the Code of Federal Regulations. Individual copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Street, NW., Washington, DC 20405.

[54 FR 26558, June 23, 1989, as amended at 60 FR 42804, Aug. 17, 1995]

PART 553—FORMS

Subpart 553.1—General

553.101 Requirements for use of forms.
553.102 Current editions.
553.170 Establishing and revising GSA forms.
553.171 Forms incorporated by reference.

Subpart 553.3—Illustrations of Forms

553.300 Scope of subpart.

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

SOURCE: 54 FR 26584, June 23, 1989, unless otherwise noted.

Subpart 553.1—General

553.101 Requirements for use of forms.

(a) The requirements for use of GSA forms are explained in other parts of this regulation.

(b) The location in the text where a form is prescribed is identified by a cross-reference shown on the illustration of the form. When a form is mentioned in more than one place in this regulation, the section referenced on the illustration is the section where the basic prescription can be found.

553.102 Current editions.

Contracting officers shall use the current edition of the forms in Subpart 553.3 unless otherwise authorized under this regulation.

553.170 Establishing and revising GSA Forms.

(a) If two or more GSA services/offices use a GSA form, the Office of Acquisition Policy is responsible for maintaining the form. When a GSA form is used by a particular GSA service/office or if the form is used in connection with a type of contract which is unique to one service/office (e.g., construction contracts), that service/office is responsible for maintenance of the form.

(b) Proposed new or revised GSA procurement related forms must be submitted to the Office of Acquisition Policy for review and concurrence.

553.171 Forms incorporated by reference.

Forms containing solicitation provisions and/or contract clauses may be incorporated by reference in solicitations/contracts.

The contracting officer shall insert a clause substantially the same as the clause at 552.253–70 in solicitations and contracts when GSA Forms containing solicitation provisions and/or contract clauses are incorporated by reference.

Subpart 553.3—Illustrations of Forms

553.300 Scope of subpart.

Standard and GSA forms prescribed or referenced in the text of this chapter are illustrated in and made a part of the GSAR loose-leaf edition. The forms are not illustrated in this volume of the FEDERAL REGISTER or Title 48, Chapter 5 of the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Washington, DC 20405.

SUBCHAPTERS I–M [RESERVED]
SUBCHAPTER N—SPECIAL CONTRACTING PROGRAMS

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

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570.301 Market surveys.
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570.307 Late offers, modifications of offers, and withdrawals of offers.
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Subpart 570.4—Mistakes, Protests, Miscellaneous

570.401 Disclosure of mistakes after award.
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Subpart 570.5—Special Aspects of Contracting for Continuing Space Requirements

570.501 Renewal options.
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Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.601 General.
570.602 Alterations by the lessor.
570.602–1 Justification and approval requirements.
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570.603 Alterations by the Government.

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 FAR provisions and clauses.
570.702 Solicitation provisions.
570.703 Contract clauses.
570.704 Use of provisions and clauses.

Subpart 570.8—Forms Used for Contracting for Leasehold Interests in Real Property

570.801 Standard forms.
570.802 GSA forms.

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

SOURCE: 54 FR 26585, June 23, 1989, unless otherwise noted.

Subpart 570.1—General

570.101 Applicability.

(a) This part does not apply to the acquisition of leasehold interests in real property by the power of eminent domain, or by donation, or to the acquisition of leasehold interests in bare or unimproved land.

(b) Other parts of the GSAR apply to the acquisition of leasehold interests in real property only to the extent specified in this part and 501.103(b).

570.102 Definitions.

Acquisition means the acquiring by lease with appropriated funds of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy

agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

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 services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

Lessee or *tenant* means the United States of America.

Rent and related services means the consideration paid for the use of leased property plus the costs of operational services such as heat, light, and janitor services whether furnished by the lessor, the Government, or both.

Simplified lease acquisition threshold means $100,000 average annual rent, excluding the cost of operational services, such as heat, light, and janitorial services, whether furnished by the lessor, the government, or both, for the term of the lease, including option periods.

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 has annual average gross receipts of $15 million or less for the preceding three fiscal years.

Solicitation for Offers (SFO) means invitation for bids in sealed bidding or request for proposals in negotiations.

Space in buildings means the premises leased, or to be leased, including improvements. Its quantity is normally expressed in terms of square feet. It does not include space acquired by the power of eminent domain, donation, or condemnation or acquisitions of bare or unimproved land.

Substantially as follows or *substantially the same as,* when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition, provided that the variation includes the salient features of the FAR/GSAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR/GSAR provision or clause or related coverage on the subject matter.

[54 FR 26585, June 23, 1989, as amended at 60 FR 19363, Apr. 18, 1995; 60 FR 42796, Aug. 17, 1995]

570.103 Authority to lease.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, and Section 1 of the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 Note) authorize the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvements that do not bind the Government for periods in excess of 20 years.

570.104 Contracting officers.

Contracting officers, acting within the scope of their appointments, are the exclusive agents to enter into and administer leases on behalf of the Government in accordance with agency procedures.

[60 FR 42796, Aug. 17, 1995]

570.105 Competition.

Unless the simplified procedures in subpart 570.2 are used, the competition requirements of FAR part 6 and part 506 apply to the acquisition of leasehold interests in real property.

[60 FR 42796, Aug. 17, 1995]

570.106 Methods of contracting.

(a) The use of sealed bidding to acquire space in buildings is generally not feasible, unless a building site has been preselected and a building is to be constructed on the site in accordance with Government furnished plans and specifications for lease to the Government. When using sealed bidding, see

the procedures in FAR Part 14 and Part 514.

(b) The negotiated method is normally the best suited for acquiring space in buildings through a lease contract because it is necessary to conduct discussions with offerors about their proposals and factors other than price must be considered in making the award.

(c) Unless another acquisition procedure authorized by law is used, the design-build selection procedures in section 303M of the Federal Property and Administrative Services Act of 1949, as amended, shall be used for lease construction projects, including projects with options to purchase the real property leased. The design-build selection procedures in section 303M shall be used when the lease involves the design and construction of a public building, facility or work for lease to the Government when the contracting officer determines that this method is appropriate, based on the following:

(1) Three or more offers are anticipated;

(2) A substantial amount of design work will be performed by offerors, that may result in offerors incurring substantial expenses in preparing offers; and

(3) Criteria, such as the following, have been considered:

(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 suitability of the project for use of the two-phase selection procedures;

(v) The capability of the agency to manage the two-phase selection process; and

(vi) Other criteria established by the head of the contracting activity.

[54 FR 26585, June 23, 1989, as amended at 61 FR 24721, May 16, 1996; 62 FR 5166, Feb. 4, 1997]

570.107 Oral presentations.

Oral presentations may be used for acquisitions of leasehold interests in real property. Follow the procedures in FAR 15.102.

[63 FR 18846, Apr. 16, 1998]

Subpart 570.2—Simplified Lease Acquisition Procedures

SOURCE: 60 FR 42796, Aug. 17, 1995, unless otherwise noted.

570.201 Definitions.

Simplified lease acquisition procedures mean the procedures described in this subpart for awarding leases at or below the simplified lease acquisition threshold of $100,000, including options.

570.202 Purpose.

The purpose of this subpart is to prescribe simplified procedures for small leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.203 Policy.

Simplified lease acquisition procedures should be used to the maximum extent practicable for actions at or below the simplified lease acquisition threshold.

570.204 Procedures.

570.204–1 Market survey.

A market survey must be conducted to identify potential sources. The contracting officer may use information available within GSA or from other available sources to identify locations that will meet the Government's minimum requirements.

570.204–2 Competition.

(a) When the lease is not expected to exceed the simplified lease acquisition threshold, the solicitation of at least three sources is considered to promote competition to the maximum extent practicable. When repeated requirements for space occur in the same market, and if practicable, two sources not included in the most recent solicitation should be invited to submit offers.

(b) If only one source is solicited, the file must be documented with an explanation for the lack of competition.

570.204–3 Soliciting offers.

(a) Offers should be solicited by presenting each prospective offeror with a proposed short form lease or SFO which identifies all minimum requirements, all award factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and which states the relative importance the Government places on the evaluation factors or subfactors. In describing the evaluation factors to be considered, the solicitation shall clearly disclose whether all evaluation factors other than cost or price when combined, are significantly more important than cost or price; approximately equal in importance to cost or price; or significantly less important than cost or price.

(b) The proposed lease or SFO must describe the Government's requirements and include, either in full text or by reference, applicable FAR provisions and contract clauses required by 570.701 and applicable GSAR provisions and clauses required by 570.702 and 570.703.

(c) To the extent necessary, the Government's requirements, pricing matters, evaluation procedures and submission of offers should be reviewed with prospective offerors.

570.204–4 Negotiation, evaluation, and award.

(a) Negotiations, if applicable, should be conducted in accordance with 570.305.

(b) Offers must be evaluated in accordance with the solicitation. The contracting officer shall evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices. In cases where the total cost exceeds $500,000, cost and pricing data must be obtained unless the requirement is waived or one of the exceptions at FAR 15.403–1 applies. For purposes of FAR 15.403–1(c)(1)(iii), ''same or similar items'' means similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the price reasonableness.

(c) An acceptable small business subcontracting plan must be provided if the total contract value of the lease will exceed $500,000, unless the lease will be awarded to a small business concern.

(d) The contracting officer should review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, to ensure the proposed awardee is eligible to receive the award and is otherwise responsible before awarding the lease.

(e) An award will be made to the responsible offeror whose proposal represents the best value after evaluation considering price and other factors included in the solicitation.

[63 FR 18846, Apr. 16, 1998]

570.204–5 Inspection.

The space must be inspected to ensure that it is in substantial compliance with the Government's requirements and specifications before acceptance by the contracting officer. The contract file must be documented accordingly.

Subpart 570.3—Procedures for Contracting for Leasehold Interests in Real Property

SOURCE: 60 FR 42797, Aug. 17, 1995, unless otherwise noted.

570.301 Market surveys.

A market survey must be conducted to identify potential sources. The contracting officer may use information available within GSA or from other available sources to identify locations that will meet the Government's minimum requirements.

570.302 Publicizing/Advertising.

(a) Leasing actions for blocks of space of more than 10,000 square feet must be publicized in local newspapers and may also be posted on an on-line information system, unless exempt under FAR 5.202 or 505.202.

(b) When the Government intends to acquire a leasehold interest in a building to be constructed on a preselected site, the proposed acquisition must be synopsized in the Commerce Business Daily (CBD).

570.303 Solicitation for offers (SFO).

(a) The SFO is the basis for the entire lease negotiation process and must be made a part of the lease. SFO's must contain the information necessary to enable the prospective offeror to prepare a proposal. Each SFO, at a minimum, must—

(1) Be in writing.

(2) Contain a description of the minimum requirements of the Government, including—

(i) A description of the required space.

(ii) Specifications. The type of specification will depend upon the nature of the space needed by the agency and the market available to satisfy the need. Specifications may be stated in terms of function, performance, or design requirements. The specification must be drafted to promote full and open competition and include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(iii) Any special requirements.

(iv) A delivery schedule.

(3) State the method to be used to measure space.

(4) Specify a date and place for the submission of offers.

(5) Indicate how offers will be evaluated.

(6) Indicate how offers are to be structured.

(7) Describe the source selection procedures to be used.

(i) Unless the design-build selection procedures are being used as authorized by 570.106(c), the solicitation must comply with FAR 15.304 and either:

(A) FAR 15.101–1 if the Government will use the tradeoff process, or

(B) FAR 15.101–2 if the Government will use the lowest price technically acceptable source selection process.

(ii) When the design-build selection procedures are being used as authorized by 570.106(c), the solicitation must

(A) Identify the evaluation factors and subfactors to be used in evaluating phase-one proposals and indicate their relative importance,

(B) State the maximum number of offerors that are to be selected to submit competitive proposals in phase-two, and

(C) Identify the evaluation factors and subfactors, including cost or price, to be used in evaluating phase-two proposals and selecting the successful offeror. Evaluation factors to be used in evaluating phase-one proposals must be stated in the solicitation. Phase-one factors include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, such as site or location. In phase-one, offerors will not be required to submit detailed design information or cost or price information and use of cost related or price related evaluation factors is not permitted. The maximum number of offerors to be selected for phase-two must not exceed 5 unless the contracting officer determines that specifying a number greater than 5 is in the Government's interest and is consistent with the purpose and objectives of the two-phase selection process. For phase-two the solicitation should identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and state the relative importance the Government places on those evaluation factors and subfactors and otherwise comply with paragraph (a)(7)(i) of this section.

(8) Include a statement outlining the information that may be disclosed in preaward and postaward debriefings.

(9) Include appropriate forms as prescribed in subpart 570.8.

(b) The SFO must be released to all prospective offerors at the same time.

[60 FR 42797, Aug. 17, 1995, as amended at 61 FR 24721, May 16, 1996; 63 FR 18846, Apr. 16, 1998]

570.304 Changes to SFO's.

(a) When the Government's requirements change (either before or after receipt of proposals), the SFO must be amended in writing.

(b) When time is of the essence, information on SFO amendments may be provided orally if—

(1) A record is made of the information provided;

(2) All offerors or prospective offerors are given notice, or attempts to provide offerors or prospective offerors

with such notice are made, on the same day, if possible; and

(3) The information provided orally is promptly confirmed by a written amendment.

(c) When amendments to the Government's requirements occur, the following procedures apply—

(1) If proposals have not been submitted, amendments must be sent to all prospective offerors who have been sent a copy of the SFO.

(2) If proposals have been received, the amendments must be sent to all of the offerors.

(3) If an amendment is so substantial that it requires a complete revision of the SFO, the SFO should be concealed and a new SFO issued.

570.305 Negotiations.

(a) Follow the procedures in FAR 15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, and 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)(1).

[63 FR 18846, Apr. 16, 1998]

570.306 [Reserved]

570.307 Late offers, modifications of offers, and withdrawals of offers.

Offers determined to be received late will be handled in accordance with FAR 15.208.

[63 FR 18847, Apr. 16, 1998]

570.308 Preaward requirements.

570.308–1 General.

(a) If an offeror answers affirmatively on the Contingent Fee Representation and Agreement, in order to comply with the warranty requirement of 41 U.S.C. 254(a), the requirements of FAR 3.4 and 503.4 must be followed for leasing actions expected to exceed the simplified lease acquisition threshold.

(b) Other applicable certifications should be reviewed for compliance with regulations.

[60 FR 42797, Aug. 17, 1995, as amended at 63 FR 18847, Apr. 16, 1998]

570.308–2 Cost or pricing data.

(a) Cost or pricing data are required under the circumstances described in FAR 15.403–4.

(b) The exceptions to and waivers of submission of cost or pricing data outlined in FAR 15.403–1 apply to leasing actions. For purposes of FAR 15.403–1(c)(1)(iii), ''same or similar items'' means similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the price reasonableness.

(c) In exceptional cases, the requirement for submission of cost or pricing data may be waived under FAR 15.403–1(c)(4).

(d) When cost or pricing data is required, the contracting officer shall follow the procedural requirements in FAR 15.403–5.

[63 FR 18847, Apr. 16, 1998]

570.308–3 Proposal evaluation.

(a) Offers must be evaluated in accordance with the solicitation.

(b) The contracting officer shall evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices.

(c) The contracting officer shall evaluate past performance in accordance with FAR 15.305(a)(2).

(d) The lease file must document the evaluation of other award factors listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings. An abstract of final proposal revisions may be prepared to aid in the analysis of offers received.

[63 FR 18847, Apr. 16, 1998]

570.308–4 Responsibility determinations.

(a) The contracting officer shall make a determination that the prospective awardee is responsible with respect to the lease being considered. The

contracting officer's signature on the contract is deemed to be an affirmative determination. When an offeror is found to be nonresponsible, the contracting officer shall make, sign and place in the contract file a determination of nonresponsibility which shall state the basis for the determination.

(b) If a small business concern is found to be nonresponsible, the procedures at FAR 19.6 and 519.6 must be followed. All documents and reports supporting a determination of responsibility or nonresponsibility must be placed in the lease file.

570.309 Award.

(a) As used in this section, ''day'' has the meaning set forth at FAR 33.101.

(b) The contracting officer is designated as the source selection authority unless the Head of the Contracting Activity appoints another individual for a particular leasing action or group of leasing actions.

(c) An award will be made to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(d) Award will be made in writing within the timeframe specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

(e) Unsuccessful offerors will be notified in writing or electronically in accordance with FAR 15.503(b).

(f) 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.

[63 FR 18847, Apr. 16, 1998]

570.310 Debriefings.

The procedures in FAR 15.505 and 15.506 apply to leasing actions.

[63 FR 18847, Apr. 16, 1998]

570.311 Inspection.

The space must be inspected to ensure that it is in substantial compliance with the Government's requirements and specifications before acceptance by the contracting officer. The contract file must be documented accordingly.

Subpart 570.4—Mistakes, Protest, Miscellaneous

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake should be handled as provided in FAR 14.407–4 and subpart 514.4.

[63 FR 18847, Apr. 16, 1998]

570.402 Protests.

Protests regarding the award of lease contracts are handled as provided in FAR Subpart 33.1 and Subpart 533.1.

570.403 Awards to Federal employees.

Offers from officers or employees of the Government must be handled as provided in FAR 3.6 and 503.6.

Subpart 570.5—Special Aspects of Contracting for Continued Space Requirements

570.501 Renewal options.

(a) *Exercise of options.* Before exercising an option, the provisions of Part 517 must be followed.

(b) *Notification.* When a contracting officer determines that it is in the best interest of the Government to continue to lease a property, the lessor must be notified within the timeframe required by the lease.

(c) *Market survey.* When the right to renew a lease exists, a renewal must be based on a market survey and other applicable considerations. Surveys should focus on the prevailing rental rates for comparable space.

[54 FR 26585, June 23, 1989, as amended at 55 FR 11588, Mar. 29, 1990; 60 FR 19363, Apr. 18, 1995]

570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building which do not exceed the simplified lease acquisition threshold may be acquired through use of the simplified procedures outlined in subpart 570.2. Absence of competition must be

explained in the contract file. Succeeding leases which exceed the simplified lease acquisition threshold may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation costs and duplication of costs to the Government that are not expected to be recovered through competition.

(b) *Procedure*—(1) *Publicizing/Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals if required by 505.101(c). The notice should normally (i) indicate the Government's lease is expiring, (ii) describe the requirement in terms of type and quantity of space, (iii) indicate the Government is interested in considering alternative space if economically advantageous, (iv) advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (v) provide a contact person for those interested in providing space to the Government.

(2) *Market survey.* A market survey must be conducted in accordance with 570.301.

(3) *Competition determination.* (i) If no potential acceptable locations are identified through the advertisement or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR subpart 6.3 and subpart 506.3, and should fully document the efforts to locate alternative sources.

(ii) If potential acceptable locations are identified through the advertisement or market survey and relocation costs (including estimated moving costs, telecommunications costs, and the estimated cost of alterations, amortized over the firm term of the lease) will be low enough to allow recovery through a competitive process, the contracting officer should develop a SFO and negotiate with all interested parties in accordance with the procedures in subpart 570.3.

(iii) If potential acceptable locations are identified through the advertisement or market survey and substantial relocation costs are involved, the contracting officer shall conduct a cost-benefit analysis to determine whether the duplication of costs to the Government could be recovered through competition. The cost-benefit analysis must give consideration to the prices of other potentially available properties, relocation costs, and other appropriate considerations. The prices for other potentially available properties must be established by requesting the prospective offeror to provide an informational quotation for standard space for comparison purposes. The prices quoted for standard space will be adjusted by the Government for special requirements. A formal solicitation for offers (SFO) is not required for the purpose of obtaining the informational quotation. The contracting officer shall provide a general description of the Government's needs when requesting informational quotations. If oral quotations are provided, the record must be documented to reflect the following information, as a minimum: the name and address of the firm solicited, the name of the firm's representative providing the quote, the price(s) quote, the description of the space and services for which the quote is provided, the name of the Government employee soliciting the quotation, and the date of the conversation. The informational quotations must be compared to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease. Based on the results of the cost-benefit analysis, the contracting officer will:

(A) Prepare a justification for approval in accordance with FAR Subpart 6.3 and Subpart 506.3 to support the determination to negotiate with the present lessor for continued occupancy because it is likely that award to any other offeror would result in substantial duplication of costs to the Government that are not expected to be recovered through competition; or

(B) Develop an SFO and negotiate with all interested parties in accordance with the procedures in subpart 570.3.

[54 FR 26585, June 23, 1989, as amended at 57 FR 37897, Aug. 21, 1992; 60 FR 42799, Aug. 17, 1995]

570.503 Expansion requests.

(a) When the expansion space is within the general scope of the lease, the space may be acquired through a modification to the lease without further justification pursuant to FAR subpart 6.3.

(b) When 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 satisfy the requirement by competitive means. A market survey must be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations that can satisfy the total requirement, a cost-benefit analysis must be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location;

(2) The cost of moving;

(3) The cost of duplicating existing improvements;

(4) The cost of the unexpired portion of the firm lease term (unless a termination is possible, in which case the actual cost of such an action should be used); and

(5) The cost of disruption to the agency's operation.

(c) When the expansion space is outside the general scope of the lease, a justification must be prepared for approval in accordance with FAR subpart 6.3 and 506.3, except when competitive procedures or simplified lease acquisition procedures are used.

[54 FR 26585, June 23, 1989, as amended at 57 FR 37897, Aug. 21, 1992; 60 FR 42799, Aug. 17, 1995]

570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease that would replace the existing lease when the changes or modifications to the space contemplated are so numerous or detailed as to cause complications, or they would substantially change the present lease.

(b) The justification and approval requirements in FAR subpart 6.3 and 506.3 must be complied with before negotiating a superseding lease if the value of the lease exceeds the simplified lease acquisition threshold. When the cost is less than or equal to the simplified lease acquisition threshold, the contracting officer may use simplified procedures outlined in 570.2 and explain the absence of competition in the file.

[60 FR 42800, Aug. 17, 1995]

570.505 Lease extensions.

(a) The justification and approval requirements in FAR subpart 6.3 and 506.3 must be complied with before negotiating a Supplemental Lease Agreement exceeding the simplified lease acquisition threshold to extend the term of the lease to provide for continued occupancy on a short term basis (usually not to exceed 1 year). For extensions valued less than or equal to the simplified lease acquisition threshold, the contracting officer must explain the absence of competition in the contract file.

(b) FAR 6.302–1 provides for 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 be used to extend the term of a lease by supplemental agreement in situations such as the following:

(1) When the agency occupying the leased space is scheduled to move into other Federally controlled space but unexpected delays are encountered in preparing the new space for occupancy.

(2) When unexpected delays which are outside of GSA's control (i.e., protests, etc.) are encountered in acquiring replacement space.

(3) When various agencies occupying leased space are being consolidated and it is necessary to extend the terms of some leases to establish a common expiration date.

[54 FR 26585, June 23, 1989, as amended at 60 FR 42800, Aug. 17, 1995]

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.601 General.

(a) Although the Government generally has a contractual right to alter the space leased, normally most alterations are acquired through a modification to the lease because they fall within the general scope of the lease and it is in the Government's interest to acquire the alterations from the lessor.

(b) As the need for alterations arise during the term of a lease contract, the contracting officer must examine each project and make a determination as to whether the alterations fall within the general scope of the lease and may be acquired through a modification to the lease. The primary test is whether the work can be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for. If the alterations are outside the general scope, the contracting officer must make a decision to acquire the alterations through a separate contract, through a Supplemental Lease Agreement, or to request the work be performed by Federal employees.

570.602 Alterations by the lessor.

570.602–1 Justification and approval requirements.

(a) The justification and approval requirements in FAR Subpart 6.3 and 506.3 must be complied with before negotiating directly with the lessor for any alteration project exceeding $100,000 that is outside the general scope of the lease contract.

(b) Before negotiating directly with the lessor for any alteration project of $100,000 or less, that is outside the general scope of the lease, the contracting officer shall document, in writing, the reasons for the absence of competition.

[54 FR 26585, June 23, 1989, as amended at 60 FR 42800, Aug. 17, 1995]

570.602–2 Procedures.

(a) *Scope of work.* A scope of work must be prepared for all alteration projects.

(b) *Independent Government estimate.* An independent Government estimate must be prepared for all alteration projects, including changes to alteration agreements with lessors.

(c) *Request for proposal.* (1) The lessor must be provided with a scope of work, including any plans and specifications which have been developed, and should be requested to submit a proposal. The request for proposal should indicate whether progress payments will be made and provide for retainage, when appropriate.

(2) The proposal must be requested to be submitted in such detail that a cost or price analysis can be made.

(3) The requirements for the submission of cost or pricing data outlined in FAR 15.403–4, 15.403–5, and 15.406–2 apply to alteration projects over $500,000. The procedural requirements at FAR 15.403–5 must be followed when requesting cost and pricing data. Exceptions or waivers to submission of cost or pricing data must be processed in accordance with the requirements of FAR 15.403–1. If the lease does not include the clauses at FAR 52.215–10 and 52.215–12 or the clauses at FAR 52.215–11 and 52.215–13, the modification to the lease for the alterations must add the clauses at FAR 52.215–11 and 52.215–13 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.403–1, an audit must be requested for negotiated alteration projects which are not competed as a part of the lease and exceed $500,000.

(e) *Evaluation of proposals.* The contracting officer shall:

(1) Determine whether the proposal will meet the Government's requirements;

(2) Analyze cost as compared to the independent estimate and the audit;

(3) Analyze profit in accordance with FAR 15.404–4 if the project exceeds $100,000; and

(4) Document analysis leading to negotiation objectives developed from paragraphs (e) (1) through (3) of this section.

(f) *Price negotiations.* (1) The contracting officer is responsible for exercising sound judgment and may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Negotiations must be documented in accordance with FAR 15.406–3.

(g) *Award.* Alterations may be procured using the GSA Form 276, Supplemental Lease Agreement, or the GSA Form 300, Order for Supplies or Services (alteration project of $100,000 or less) provided a reference is made to the lease.

(h) *Inspection and payment.* Final payment for alterations must not be made until the work is:

(1) Inspected by a qualified Government employee or independent Government contractor; and

(2) Certified as completed in a satisfactory manner.

[54 FR 26585, June 23, 1989, as amended at 57 FR 37897, Aug. 21, 1992; 60 FR 19363, Apr. 18, 1995; 60 FR 42800, Aug. 17, 1995; 61 FR 6173, Feb. 16, 1996; 63 FR 18847, Apr. 16, 1998]

570.603 Alterations by the Government.

When the Government elects to exercise its rights to make the alterations rather than contract directly with the lessor, the work may be performed by Federal employees or may be contracted out using all of the standard contracting procedures that would apply to a construction contract if the work were to be performed on Federal property. If the Government decides to contract for the work, the lessor, as well as all other prospective contractors, should be invited to submit an offer for the project.

Subpart 570.7—Solicitation Provisions and Contract Clauses

SOURCE: 60 FR 42800, Aug. 17, 1995, unless otherwise noted.

570.701 FAR provisions and clauses.

In addition to including solicitation provisions and contract clauses prescribed in the GSAR (48 CFR chapter 5), provisions and/or clauses substantially the same as the FAR provisions/clauses listed, shall be included in the circumstances indicated.

(a) All solicitations and contracts, regardless of the dollar value, must include the following provisions/clauses:

FAR part 52 cite	Title
52.204–3	Taxpayer Identification.
52.233–1	Disputes.

(b) All solicitations and contracts which exceed $1,000 must include the FAR clause at 52.232–23, Assignment of Claims.

(c) All solicitations and contracts which exceed $2,500 must include the following provisions/clauses:

FAR part 52 cite	Title
52.219–1	Small Business Program Representations.
52.222–36	Affirmative Action for Handicapped Workers.

(d) All solicitations and contracts which exceed $10,000 must include the following provisions/clauses:

FAR part 52 cite	Title
52.222–21	Certification of Nonsegregated 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.
52.222–37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.

(e) All solicitations and contracts which exceed $25,000 must include the FAR clause at 52.209–6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

(f) All solicitations and contracts which exceed $100,000 must include the following FAR provisions/clauses:

FAR part 52 cite	Title
52.203–11	Certificate and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(g) All solicitations and contracts for actions which exceed the simplified lease acquisition threshold must include the following FAR provisions/clauses:

FAR part 52 cite	Title
52.203–2	Certificate of Independent Price Determination.
52.203–7	Anti-Kickback Procedures.

FAR part 52 cite	Title
52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
52.215–2	Audits and Records—Negotiation.
52.219–8	Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns.
52.223–6	Drug-Free Workplace.
52.233–2	Service of Protest (Solicitations only).

(h) All solicitations and contracts which exceed $500,000 must include the FAR clauses at 52.219–9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, and 52.219–16, Liquidated Damages—Subcontracting Plan.

(i) Solicitations which exceed $1 million must include the FAR provision at 52.222–24, Preaward On-site Equal Opportunity Compliance Review.

(j) When cost or pricing data is required for work or service exceeding $500,000 the FAR clauses at 52.215–10, Price Reduction for Defective Cost or Pricing Data, and 52.215–12, Subcontractor Cost or Pricing Data, must be included in solicitations and contracts.

(k) When the contracting officer determines that it is desirable to authorize the submission of facsimile proposals, the solicitation must include the FAR provision at 52.215–5, Facsimile Proposals.

[60 FR 42800, Aug. 17, 1995, as amended at 63 FR 18847, Apr. 16, 1998]

570.702 Solicitation provisions.

When a solicitation for offers is issued, the contracting officer should include provisions substantially the same as the following unless the contracting officer makes a determination that use of one or more of the provisions is not appropriate:

(a) 552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

(1) Use Alternate I if the contracting officer decides that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for receipt of final proposal revisions.

(2) Use Alternate II if the Government intends to award without discussions.

(b) 552.270–4 Historic Preference.

(c) 552.270–6 Parties to Execute Lease.

[63 FR 18848, Apr. 16, 1998]

570.703 Contract clauses.

(a) The contracting officer shall insert the following clauses or clauses substantially the same as the following clauses in solicitations and contracts for leasehold interests in real property which exceed the simplified lease acquisition threshold unless the contracting officer makes a determination that use of one or more of the clauses is not appropriate. Use of the clauses is optional for those actions which fall at or below the simplified lease acquisition threshold.

(1) 552.270–10 Definitions (Included if 552.270–28 is used).

(2) 552.270–11 Subletting and Assignment.

(3) 552.270–12 Maintenance of Building and Premises—Right of Entry.

(4) 552.270–13 Fire and Casualty Damage.

(5) 552.270–15 Compliance with Applicable Law.

(6) 552.270–16 Inspection—Right of Entry.

(7) 552.270–17 Failure in Performance.

(8) 552.270–18 Successors Bound.

(9) 552.270–19 Alterations.

(10) 552.270–20 Proposals for Adjustment.

(11) 552.270–21 Changes.

(12) 552.270–25 Adjustment for Vacant Premises.

(13) 552.270–27 Delivery and Condition.

(14) 552.270–28 Default in delivery—Time Extensions.

(15) 552.270–30 Progressive Occupancy.

(16) 552.270–31 Payment.

(17) 552.270–32 Effect of Acceptance and Occupancy.

(18) 552.270–33 Default by Lessor During the Term.

(19) 552.270–34 Subordination, Nondisturbance and Attornment.

(20) 552.270–35 Statement of Lease.

(21) 552.270–36 Substitution of Tenant Agency.

(22) 552.270–37 No Waiver.

(23) 552.270–38 Integrated Agreement.

(24) 552.270–39 Mutuality of Obligation

(25) 552.270–41 Acceptance of Space.

(b) The contracting officer shall insert the clause at 552.270–22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

[60 FR 42800, Aug. 17, 1995, as amended at 63 FR 18848, Apr. 16, 1998]

570.704 Use of provisions and clauses.

The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved under subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., GSAR 552.203–5, Covenant Against Contingent Fees, FAR 52.215–2, Audit and Records—Negotiation, etc.) in order to modify the language of the provision or clause, when permitted by the statute. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause. Also, certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them (e.g., 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 Handicapped Workers, 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).

[63 FR 18848, Apr. 16, 1998]

Subpart 570.8—Forms Used for Contracting for Leasehold Interests in Real Property

570.801 Standard forms.

Standard Form 2, U.S. Government Lease for Real Property, should be used to award leases unless GSA Form 3626 is used. When the Standard Form 2 is used, reference to the Standard Form 2–A in paragraph 7 must be deleted.

[60 FR 42801, Aug. 17, 1995]

570.802 GSA forms.

(a) The GSA Form 3626, U.S. Government Lease for Real Property (Short Form), may be used to award leases when the simplified leasing procedures in 570.2 are used or when the Contracting Officer finds its use to be advantageous.

(b) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases that involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, restoration settlements, and alterations.

(c) GSA Form 1364, Proposal To Lease Space to the United States of America, may be used to obtain offers from prospective offerors.

[60 FR 42801, Aug. 17, 1995]

APPENDIX A TO CHAPTER 5—CONTRACTING OFFICE ASSIGNMENT CODES

NOTE: Appendix A is illustrated in and made a part of the GSAR loose-leaf edition. Appendix A is not illustrated in this volume of the FEDERAL REGISTER or title 48, chapter 5 of the Code of Federal Regulations.