(iii) That if the non-resident alien serves as a lifeboatman, he or she must have the necessary lifeboatman's endorsement; and

(iv) The non-resident alien has completed the training for crewmembers on passenger ships performing duties involving safety or care for passengers, as required in subpart 12.35 of this subchapter.

(c) No more than 25 percent of the total number of ratings on a U.S. flag large passenger vessel may be aliens, whether admitted to the United States for permanent residence or authorized for employment in the United States as non-resident aliens.

(d) The owner or operator of a U.S. flag large passenger vessel employing non-resident aliens holding Coast Guard-issued merchant mariner credentials described in subpart 12.40 of this subchapter must:

(1) Retain custody of all non-resident alien merchant mariner credentials for the duration of employment, under § 12.40–13(b)(2) of this subchapter; and

(2) Return all non-resident alien merchant mariner credentials to the Coast Guard upon termination of employment, under § 12.40–13(b)(3) of this subchapter.

(e) The owner or operator of a U.S. flag large passenger vessel employing non-resident aliens holding Coast Guard-issued merchant mariner credentials described in subpart 12.40 of this subchapter is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f), for any violation of this section.

Dated: September 10, 2009.

Jeffrey G. Lantz,

Director of Commercial Regulations & Standards CG–52.

[FR Doc. E9–22355 Filed 9–16–09; 8:45 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 514, and 552

[GSAR Amendment 2009–11; GSAR Case 2008–G505 (Change 39); Docket 2008–0007; Sequence 20]

RIN 3090–AI73

General Services Acquisition Regulation; GSAR Case 2008–G505; Rewrite of GSAR Part 514, Sealed Bidding

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) by revising the sections of GSAR Part 514 that provide requirements for sealed bidding. This rule is a result of the GSA Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR), and to implement streamlined and innovative acquisition procedures that contractors, bidders, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

DATES: October 19, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson at (202) 208–4949. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G505 (Change 39), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to revise sections of GSAR Part 514 that provide requirements for sealed bidding.

This final rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, bidders, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 514. The specific changes are as follows:

501.106 OMB Approval under the Paperwork Reduction Act.

• Added OMB Control No. 3090–0162 as a cross reference for 514.201–1.

514.201–2 Part I—The Schedule.

• Changed paragraph (a) from ''When you'' to ''When using''. Also in paragraph (a) changed ''which'' to ''that'' and added all three FAR clauses for Prompt Payment (52.232–25, 52.232–26, and 52.232–27).

• Changed the word ''offer'' to ''bid''.

• Changed paragraph (b) from ''When you use'' to ''When using'' to clarify the reference to ''you'' and added a reference to the Standard Form 1449 as an example that this form can also be used.

514.201–6 Solicitation provisions.

• Changed ''When you'' to ''When considering'' to delete the reference to the word ''you''.

• Changed ''All or None Offers'' to ''All or None Bids''.

• Deleted the reference for Alternate I because the alternate is being proposed for deletion because it is not consistent with the intention of the basic clause.

514.201–7 Contract clauses.

• In the old paragraph (a) changed ''you'' to ''The contracting officer''.

• Deleted paragraph (b), Examination of Records. The clause does not provide basic audit rights that are in addition to the FAR clauses at 52.215–2, Audit and Records—Negotiation and 52.214–26, Audit and Records—Sealed Bidding. And as opposed to the GSA clause, the FAR clause is specific to sealed bids. Further, the GSA clause grants to the agency rights to audit subcontractors that are in excess of those granted by the FAR and the statute.

514.202–4 Bid samples.

• Renamed paragraphs (a) and (b) to be more consistent with the FAR.

• Also in paragraphs (a) and (b) restructured the language to remove the word ''you'' and replaced with contracting officer.

• Clarified the language to state who must take physical custody of bid samples.

• Deleted paragraph (c) because it is redundant with FAR 14.202–4(d).

514.202–5 Descriptive Literature.

• Added a new GSAR section in order to address the requirements of FAR 14.202–5(c).

514.270–1 Definition. Deleted hyphenation in ''separately-priced''.

514.270–2 Justification for use.

• Inserted ''the contracting officer should'' in paragraph (b) and made last sentence of paragraph (3) a new number paragraph (4) and renumbered old paragraphs (4) and (5) to paragraphs (5) and (6), respectively.

• Added ''the contracting officer should'' to replace the understood ''you'' and deleted ''Do'' in paragraph (c).

514.270–3 Evaluation factors for award.

• Edited to avoid either using the passive voice or repeating ''the contracting officer''.

514.270–4 Grouping line items for aggregate award.

• In paragraph (a) the title ''Type of contract'' was changed to one that is more descriptive of the substance of the paragraph; type of contract refers to Part 16 contract types.

• In paragraph (b) changed the ''when you group'' to ''when grouping'' and in paragraph (d)(3)(i) changed ''It can cause you to lose'' to ''It can cause the loss of''.

• In paragraph (d)(2) changed ''respond'' to ''responded''.

514.270–6 Guidelines for using the weight factors method.

• In paragraph (a) changed ''you have'' to ''there are''.

• In paragraph (d) changed ''You may reduce estimated quantities'' to ''Estimated quantities may be reduced''.

• In paragraph (e) deleted the ''you'' in the first sentence.

514.270–7 Guidelines for using the price list method.

• In paragraph (a) changed ''you need to make'' to ''making''.

• In paragraph (b) changed ''When you use'' to ''using''.

• In paragraph (c) changed ''You may develop price lists'' to ''Price lists may be developed''.

• In paragraph (d) changed ''you use'' to ''the contracting officer uses'' and changed ''You may provide'' to ''This information may be provided''.

• In paragraph (e) changed ''You may use prices'' to ''Prices may be used''.

• In paragraph (h) changed ''If you cannot estimate the Government's needs'' to ''If the Government's needs cannot be estimated''.

• In paragraph (i)(6) changed ''If you provide'' to ''If providing''.

• In paragraph (i)(8) deleted the sentence in its entirety and replaced it with ''When the solicitation further groups united prices by trade or business category, multiple percentages may be required''.

514.407–3 Other mistakes disclosed before award.

• Deleted paragraph (b) because it is redundant with FAR 14.407–3(f).

• Renumbered old paragraphs (1) and (2) as paragraphs (a) and (b), respectively.

514.407–4 Mistakes after award.

• Added ''are required to'' and changed ''your'' to ''the contracting officer's''.

552.214–70 ''All or None'' Bids.

• In paragraph (a) deleted the first part of the sentence so it now to begins with ''The Government . . . .''

• Deleted Alternate I in its entirety to match the changes.

• Changed all occurrences of the word ''offer'' to ''bid''.

552.214–71 Progressive Awards and Monthly Quantity Allocations.

• Changed all occurrences of the words ''offeror'', ''offer'' or ''offering'' to ''bidder'', ''bid'', or bidding.

552.214–72 Bid Sample Requirements.

• Deleted ''NOTE: (1)'' because it is redundant.

Discussion of Comments

A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** at 73 FR 60225 on October 10, 2008. The public comment period for GSAR Part 514 closed on December 9, 2008, and four (4) comments were received. A discussion of these comments is provided below:

Comment 1: 514.201–2.

''(See FAR 52.232–25)'' has been added to the subsection. However, that is only one of three Prompt Payment clauses. Recommend all three clauses be referenced as historically construction has been procured with sealed bidding. While that has changed in the last decade, all three clauses should still be referenced: ''(See FAR 52.232–25, 52.232–26, or 52.232–27, as applicable)''.

Response:

Concur. All three Prompt Payment clauses have been added.

Comment 2: 514.202–5.

Recommend deleting this section. It merely states the clause in the FAR is sufficient. It does not add any value. If the information is already in the FAR, no further information needs to be identified in the GSAR.

Response:

Non-concur; 514.202–5 amplifies the information, or rather points the reader to the information in the FAR.

Comment 3: 514.270–2.

The new paragraph (a)(4) already exists, verbatim, as part of paragraph (a)(3). As the proposed paragraph (a)(4) is related to the information in paragraph (a)(3), recommend leaving it in paragraph (a)(3), but reformatting the sentence to make it clear it is part of (a)(3). In the current GSAR, it has been dropped down a line.

Response:

Non-concur. Items (a)(3) and (a)(4) are different enough that they can be listed as two different items in the list of series.

Comment 4: 514.270–3.

Recommend adding a clause or provision as a consistent method for providing the notification required in the solicitation. Revise as, ''Insert a clause substantially the same as the clause at 552.214–XX, Evaluation for Aggregate Award, in solicitations that will include aggregate line items for award.''

Response:

Non-concur. The team believes that FAR 52.214–22, Evaluation of Bids for Multiple Awards, provides equivalent coverage.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. This is not a significant change. Therefore, a Regulatory Flexibility Analysis was not performed. In accordance with 5 U.S.C. 610, the proposed rule requested comments from small entities concerning this assessment, and no comments were received.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 501, 514, and 552

Government procurement.

Dated: August 31, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 501, 514, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 514, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

■ 2. Amend section 501.106 by adding the GSAR Reference number ''514.201–1'', in numerical sequence, and its corresponding OMB Control No. ''3090–0163''.

PART 514—SEALED BIDDING

■ 3. Revise section 514.201–2 to read as follows:

514.201–2 Part I—The Schedule.

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

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

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

■ 4. Revise section 514.201–6 to read as follows:

514.201–6 Solicitation provisions.

When considering all or none bids, insert the provision at 552.214–70, ''All or None'' Bids, in the solicitation.

■ 5. Revise section 514.201–7 to read as follows:

514.201–7 Contract clauses.

Stock replenishment contracts. For some stock replenishment contracts, individual contractors may be unable to furnish the Government's monthly requirements. The contracting officer may determine that progressive awards will be more expedient. In such cases, insert a clause substantially the same as the clause at 552.214–71, Progressive Awards and Monthly Quantity Allocations, in the solicitation and contract.

■ 6. Revise section 514.202–4 to read as follows:

514.202–4 Bid samples.

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

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

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

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

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

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

■ 7. Add section 514.202–5 to read as follows:

514.202–5 Descriptive literature.

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

514.203 [Removed]

■ 8. Remove section 514.203.

■ 9. Amend section 514.270–2 by—

■ a. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), respectively, and adding new paragraph (a)(4); and

■ b. Revising the introductory text of paragraph (b), and paragraph (c).

■ The revised and added text reads as follows:

514.270–2 Guidelines for use.

(a) * * *

(4) Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

* * * * *

(b) Before deciding to combine items for aggregate award, the contracting officer should consider the following factors:

* * * * *

(c) The contracting officer should not use an aggregate award if it will significantly restrict the number of eligible bidders.

■ 10. Revise section 514.270–3 to read as follows:

514.270–3 Evaluation factors for award.

The solicitation should clearly state the basis for evaluating bids for aggregate award, require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price, and advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

■ 11. Amend section 514.270–4 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b) ''you group'' and adding ''grouping'' in its place;

■ c. Removing from paragraph (d)(2) ''respond'' and adding ''responded'' in its place; and

■ d. Removing from paragraph (d)(3)(i) ''you to lose'' and adding ''the loss of'' in its place.

514.270–4 Grouping line items for aggregate award.

(a) *Supplies and services.* This subsection applies to acquisitions of supplies and services.

* * * * *

■ 12. Amend section 514.270–6 by—

■ a. Removing from the introductory text of paragraph (a) ''you have'' and adding ''there are'' in its place;

■ b. Revising the first sentence in paragraph (d); and

■ c. Removing from paragraph (e) the word ''you''.

■ The revised text reads as follows:

514.270–6 Guidelines for using the weight factors method.

* * * * *

(d) Estimated quantities may be reduced to smaller numbers by a common denominator. * * *

* * * * *

■ 13. Amend section 514.270–7 by—

■ a. Revising the first sentence in paragraph (a);

■ b. Revising the introductory text of paragraphs (b) and (c);

■ c. Revising paragraph (d);

■ d. Revising the second sentence of paragraph (e); and

■ e. Revising the third sentence in paragraph (h), and paragraphs (i)(6) and (i)(8).

■ The revised text reads as follows:

514.270–7 Guidelines for using the price list method.

(a) *General.* The price list method helps avoid unbalanced bidding when making aggregate awards, but lack accurate estimates of anticipated quantities. * * *

(b) *Solicitation requirements.* When using the price list method, in the solicitation:

* * * * *

(c) *Developing list prices.* Price lists may be developed using one or more of the following sources:

* * * * *

(d) *First time use for an item or service.* The first time the contracting officer uses list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. This information may be provided in a draft solicitation.

(e) * * *. Prices may be used from previous awards made using the weight factors method to develop price lists.

* * * * *

(h) * * *. If the Government's needs cannot be estimated, the solicitation may include past orders. * * *

(i) * * *

(6) If providing quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

* * * * *

(8) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

* * * * *

■ 14. Revise section 514.407–3 to read as follows:

514.407–3 Other mistakes disclosed before award.

Delegation of authority by head of the agency. Under FAR 14.407–3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make:

(a) The determinations regarding corrections and withdrawals under FAR 14.407–3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407–3(d).

■ 15. Revise section 514.407–4 to read as follows:

514.407–4 Mistakes after award.

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407–4(b) and (c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Revise the section heading, date of the provision and paragraphs (a) and (b) of section 552.214–70; and remove Alternate I.

■ The revised text reads as follows:

552.214–70 ''All or None'' Bids.

* * * * *

''ALL OR NONE'' BIDS (Oct 2009)

(a) The Government reserves the right to evaluate bids and make awards on an ''all or none'' basis as provided below.

(b) A bid submitted on an ''all or none'' or similar basis will be evaluated as follows: The lowest acceptable bid exclusive of the ''all or none'' bid will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable ''all or none'' bid. Award will be made to result in the lowest total cost to the Government.

■ 17. Amend section 552.214–71 by revising the date of the clause, paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (b) to read as follows:

552.214–71 Progressive Awards and Monthly Quantity Allocations.

* * * * *

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS (Oct 2009)

(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. Bids shall indicate, in the spaces provided, the monthly quantity which the bidder is willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, bidders 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 bidder.

(2) Bidders 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 a bid does not include 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.

* * * * *

(b) *Progressive awards.* If the low responsive bid's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive bid and including each next low responsive bid to the extent necessary to meet the estimated requirements.

* * * * *

■ 18. Amend section 552.214–72 by—

■ a. Revising the date of the provision;

■ b. Revising the ''Note'' in paragraph (b); and

■ c. Adding paragraph (e).

■ The revised and added text reads as follows:

552.214–72 Bid Sample Requirements.

* * * * *

BID SAMPLE REQUIREMENTS (Oct 2009)

* * * * *

(b) * * *

NOTE: Bidders that propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

* * * * *

(e) Contracting Officer insert address.

_____

_____

_____

[FR Doc. E9–22209 Filed 9–16–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 579

[Docket No. NHTSA–2008–0169; Notice 2]

RIN 2127–AK28

Early Warning Reporting Regulations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends certain provisions of the early warning reporting (EWR) rule published pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and adds requirements for information identifying products involved in a recall under 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports.* This rule modifies the threshold for submitting quarterly EWR reports for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle and trailer manufacturers. It further requires manufacturers submitting EWR reports to submit product names that are consistent from reporting quarter to quarter and amends the definition of ''other safety campaign.'' It also amends part 573 *Defect and Noncompliance Responsibility and Reports* to add requirements that tire manufacturers provide a range of tire identification numbers of recalled tires and manufacturers provide the country of origin of a component involved in a recall.

DATES: *Effective Date:* The effective date of this final rule is October 19, 2009.

Compliance Date: Compliance by bus manufacturers producing 100 or more but fewer than 500 buses annually is not required until September 13, 2010.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket