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GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL (GSAM)

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

General Structure and Subparts

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INTRODUCTION

The General Services Administration Acquisition Manual (GSAM) consolidates the General Services Administration (GSA) agency acquisition rules and guidance. Distinguishing Regulatory Material The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. GSAR material is shaded. The shading helps users to distinguish and identify those parts that are regulatory from those that apply internally to GSA. The shaded parts are those subject to section 22 of the Office Federal Procurement Policy Act, as amended (41 U.S.C. 418b). GSA must publish these rules in the Federal Register and codify them in 48 CFR Chapter 5 in accordance with the Paperwork Reduction Act (44 U.S.C. 3051 et seq.) and the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rules that require publication fall into two major categories: (1) Those that affect GSA's business partners (e.g., prospective offerors, contractors). (2) Those that apply to acquisition of leasehold interests in real property. The Federal Acquisition Regulation (FAR) does not apply to leasing actions. GSA establishes regulations for lease of real property under the authority of 40 U.S.C. 490 note. Separating regulatory material from internal directives decreases the number of rules subject to publication in the Federal Register. It also provides greater flexibility and responsiveness because an internal directive is easier and quicker to update or change. Addressed to the Contracting Officer Both the GSAR and GSAM address the contracting officer, except where specifically indicated. "You" means the contracting officer. Compliance with Internal Directives Non-shaded material is nonregulatory, but occasionally includes requirements that are mandatory for GSA personnel. These requirements are necessary to ensure uniformity or for other reasons. Consolidation of Acquisition Directives To the extent practicable, acquisition directives have been integrated into one document to eliminate the burden of checking multiple sources for related acquisition guidance.

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SUBCHAPTER A - GENERAL

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PART 501 - GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

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PART 501 - GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Subpart 501.1 - Purpose, Authority, Issuance

501.101 Purpose.

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

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

501.103 Authority.

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

501.104 Applicability.

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

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

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

501.105 Issuance.

501.105-1 Publication and code arrangement.

The GSAR is published in the following sources:

(a) The Federal Register at https://www.federalregister.gov/.

(b) Annual Code of Federal Regulations (CFR), as Chapter 5 of Title 48.

501.105-2 Arrangement of regulations.

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

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

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

501.105-3 Copies.

Copies of the GSAR may be purchased from the Government Printing Office at https://www.gpo.gov/. The GSAR is also available electronically at https://www.ecfr.gov/ or at https://www.acquisition.gov under the agency supplements tab.

501.106 OMB Approval under the Paperwork Reduction Act.

GSAR Reference	OMB Control No.	GSAR Reference	OMB Control No.
509.105-1(a)	3090-0007	552.237-71	3090-0006
511.204(b)	3090-0246	552.238-73	3090-0250
514.201-1	3090-0163	552.238-78	3090-0262

GSAR Reference	OMB Control No.	GSAR Reference	OMB Control No.
515.408	3090-0235	552.238-80	3090-0121 3090-0306
516.203-4(a)(1)	3090-0243	552.238-82	3090-0302
516.506	3090-0248	552.238-84	3090-0303
522.406-6	1215-0149	552.238-85	3090-0121, and 3090-0306
523.370	3090-0205	552.238-87	3090-0303
532.905-70	3090-0080	552.238-95	3090-0303
537.110(a)	3090-0197	552.238-96	3090-0303
537.110(b)	3090-0006	552.238-97	3090-0303
538.273	3090-0250, 3090-0262, 3090-0121, and 3090-0303	552.238-99	3090-0303
542.1107	3090-0027	552.238-111	3090-0303
546.302-70	3090-0027	552.239-71	3090-0294
546.302-71	3090-0027	552.242-70	3090-0027
552.211-13(a)	9000-0026	552.246-70	3090-0027
552.211-70(b)	9000-0058	552.246-71	3090-0027
552.211-77	3090-0246	GSA-72-A	3090-0121
552.215-73	3090-0163	GSA-527	3090-0007
552.216-70	3090-0243	GSA-618D	1215-0149
552.216-72	3090-0248	GSA-1142	3090-0080
552.216-73	3090-0248	GSA-1364	3090-0086
552.216-75	3090-0306	GSA-1678	3090-0027
552.223-70	3090-0205	GSA-2419	9000-0102
552.232-5	3090-0080, 9000-0070, and 9000-0102	570.802(c)	3090-0086
552.232-72	3090-0080	570.802(c)	3090-0086
552.236-15	9000-0058	570.802(d)	3090-0086
552.236-72	3090-0308		
552.236-79	3090-0320		
552.236-80	9000-0034		

501.107 Certifications.

(a) A new requirement for a certification by a contractor or offeror may not be included in the GSAR unless

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is approved by all of the following:

(i) The head of the contracting activity (HCA);

(ii) The Senior Procurement Executive (SPE); and

(iii) The GSA Administrator.

501.170 General Services Administration Acquisition Management System.

(a) *Description*. The General Services Administration Acquisition Management System consists of the General Services Administration Acquisition Regulation (GSAR) and agency and Service non-regulatory acquisition policies and procedures guidance documents. The General Services Administration Acquisition Manual (GSAM) consolidates acquisition policies and procedures for all GSA personnel.

(b) *Applicability*. The GSAM applies to GSA contracts for supplies or services, including construction. The GSAM does not apply to the acquisition of leasehold interests in real property, unless specifically cross-referenced in part 570.

(c) *Format*. The GSAM adheres to GSAR numbering and drafting conventions (see GSAR 501.105-2). Shading distinguishes regulatory material from non-regulatory material that applies internally to GSA. GSAR material is shaded. Non-shaded material is non-regulatory.

(d) *Availability*. The GSAM is available electronically at https://www.acquisition.gov/browsegsam.

Subpart 501.3 - Agency Acquisition Regulations

501.301 Policy.

(a) (1) GSA's implementation and supplementation of the Federal Acquisition Regulation (FAR) is issued in the GSAM, which includes the GSAR. The GSAM is under authorization and subject to the authority, direction, and control of the SPE. The GSAR contains acquisition policies and procedures that have a significant effect beyond the internal operating procedures of GSA or a significant cost or administrative impact on contractors or offerors.

(2) Relevant acquisition procedures, guidance, instruction, and information that do not meet the criteria in paragraph (a)(1) of this section are issued through the non-regulatory portion of the GSAM (see 501.170) and other GSA publications (see 501.370).

(b) See 501.304 for when Federal Register publication is required for any acquisition policy, procedure, solicitation provision, contract clause, or form.

501.304 Agency control and compliance procedures.

(a) *Federal Register publication.* Federal Register publication is required for any acquisition policy, procedure, solicitation provision, contract clause, or form, that has a significant effect beyond the internal operating procedures of GSA or a significant cost or administrative impact on GSA contractors or offerors, including any significant revisions (see FAR 1.501-1 and 501.501(a)).

(1) SPE approval is required for all Federal Register publications covered by paragraph (a) of this section.

(2) The Office of Acquisition Policy will coordinate with the HCA or authorized designee to adjudicate any comments received in response to a Federal Register publication.

(b) *Business case*. When publication in the Federal Register or a change to the GSAM is identified by a contracting activity, the HCA shall develop and submit a business case to the SPE for review and approval. The business case shall include, at a minimum, the following information—

(1) The name of the Service (*e.g.*, PBS) and, if applicable, the contracting activity requesting the change;

(2) The rationale supporting the need, including a–

(i) Description of the problem or matter to be addressed; and

(ii) Discussion of the benefit to the agency and/or organization.

(3) A discussion of the effect, if any, on GSA's internal operating procedures, including an analysis of any impact on the following–

(i) The acquisition workforce;

(ii) Another office within GSA (*e.g.*, FAS, PBS, OSBU, OIG); or

(iii) Automated systems (*i.e.*, financial and procurement).

(4) A discussion of the effect on contractors or offerors, if any, including an analysis of the following–

(i) The contracts and contractors affected (e.g. number, dollar value, and business size);

(ii) The estimated annual costs and benefits associated with the proposed change; and

(iii) The burden of new information collection requirements (see 44 U.S.C. 3501, *et seq*.), if any, associated with the proposed change (see 5 CFR 1320.8).

(5) An analysis of alternatives, risks, and risk mitigation;

(6) A discussion of the approach to be used to implement and monitor success;

(7) The proposed amendments to the FAR or the GSAM in line-in line-out format;

(8) A listing of the organization(s), if any, that have been briefed or involved in drafting the proposed amendments (*e.g.*, Office of Federal Procurement Policy, Category Management Leadership Council); and

(9) A statement of legal sufficiency from the requestor's legal counsel.

(c) *Compliance*. HCAs are responsible for ensuring compliance with this section. At a minimum, HCAs should consider establishing a structure for reviewing new policies issued at a higher level (*e.g.*, FAR and GSAM) and how this will facilitate the timely updating of any internal acquisition policy, procedure or guidance issued by the HCA consistent with their delegated authorities.

501.370 Other acquisition policies, procedures, and guidance.

(a) *SPE Issuance.* The SPE may issue an acquisition letter to provide interim acquisition policies, procedures, and guidance for a specific period of time or until such time that it can be incorporated into the GSAM or FAR, as applicable.

(b) *HCA Issuance.*

(1) HCAs, consistent with their delegated authorities, may issue internal acquisition policies, procedures, and guidance as described in FAR 1.301(a)(2) for their respective contracting activities.

(2) Internal acquisition policies, procedures, guidance shall not–

(i) Unnecessarily repeat, paraphrase, or otherwise restate the FAR, GSAM or SPE acquisition letters.

(ii) Except as required by law or as provided in subpart 501.4, conflict or be inconsistent with GSAM content.

(3) Prior to issuance, any new Service-level acquisition policy, procedure, or guidance shall be distributed to the following for review:

(i) The Office of Small Business Utilization, if applicable.

(ii) The Office of Acquisition Policy.

(c) *Contents.* All acquisition policy documents must contain the following elements, as appropriate—

(1) Purpose;

(2) Document type (*e.g.*, policy, procedure, or guidance);

(3) Background;

(4) Effective period;

(5) Other affected or cancelled policies;

(6) Applicability (*i.e.*, the offices to which the document applies);

(7) Instructions or requirements;

(8) Designated point of contact or e-mail address; and

(9) Supporting documents, as attachments.

(d) *Availability.* All GSA publications that include acquisition policies, procedures, or guidance (including those issued according to paragraph (b) of this section) must be accessible through the GSA Acquisition Policy Library available at https://insite.gsa.gov/acquisitionpolicylibrary.

(e) *Maintenance.*

(1) The Office of Acquisition Policy is responsible for maintaining a current list of acquisition policies, procedures, and guidance issued by the SPE within, or accessible through the GSA Acquisition Policy Library.

(2) (i) The Service-level policy organization (*e.g.*, FAS' Office of Policy and Compliance and PBS' Office of Acquisition) is responsible for maintaining a current list of acquisition policies, procedures and guidance issued by their respective contracting activities within, or accessible through, the GSA Acquisition Policy Library.

(ii) Each HCA is responsible for reviewing new or amendments to existing acquisition policies, procedures and guidance issued at a higher level (*e.g.*, FAR and GSAM) to ensure their existing acquisition policies, procedures and guidance are current. If changes are needed, the HCA shall

(A) Notify affected contracting activities; and

(B) Update the GSA Acquisition Policy Library.

501.371 Regulatory Agenda Reviews.

(a) The Office of Acquisition Policy conducts a review of existing acquisition policies issued by the SPE biannually as part of GSA's Regulatory Agenda. The purpose of the review is to prioritize resources for incorporating, as appropriate, active acquisition policies into the FAR or GSAM or for taking other actions, as necessary, to ensure currency of the existing acquisition policies.

(b) HCAs are encouraged to review GSA's Regulatory Agenda and existing acquisition policies issued by their respective contracting activities and to provide recommendations to the Office of Acquisition Policy for inclusion in GSA's Regulatory Agenda.

Subpart 501.4 - Deviations from the FAR and GSAR

501.401 Definition.

For purposes of determining whether an individual or class deviation is appropriate, as used in FAR subpart 1.4 and in this subpart—

"Contract action" means–

(1) Any oral or written action that results in:

(i) The purchase, rent, or lease of supplies, services, or construction;

(ii) The lease of real property; or

(iii) Modifications to these actions.

(2) Contract actions include, but are not limited to:

(i) Leases for real property;

(ii) Definitive contracts;

(iii) Any type of contract or agreement against which calls, orders, or purchases may be placed (*e.g.*, governmentwide acquisition contracts, multi-agency contract, multiple-award contract, and blanket purchase agreements); and

(iv) Any call, order, or purchase made under leases for real property, contracts, or agreements.

501.402 Policy.

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

(1) Develop and test new acquisition policies, procedures, methods or techniques.

(2) Adopt alternate acquisition policies, procedures, methods, or techniques to satisfy unique programmatic or managerial requirements.

(3) Change an

(i) Existing non-regulatory provision, or

(ii) Existing regulatory provision, including those implementing a statutory requirement provided the deviation does not violate the underlying statute.

(b) Deviations, as described by paragraph (a) of this section, must not be used to defeat the FAR or GSAM approval requirements.

(c) When an HCA believes that a deviation may be required on a permanent basis, the HCA should recommend an appropriate FAR or GSAM revision. Recommendations shall be submitted to the Office of Acquisition Policy.

501.403 Individual deviations.

(a) Individual deviations to the FAR may be approved by the HCA. This authority may not be delegated.

(b) Individual deviations to the GSAM may be approved by the HCA. HCAs may delegate approval authority for individual deviations to the GSAM to a level no lower than the Contracting Director.

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

(d) Copies of approved individual deviations shall be sent to the Office of Acquisition Policy within five business days after approval.

501.404 Class deviations.

(a) *General.* Class deviations to the FAR and the GSAM may be approved by the SPE, unless FAR 1.405(e) is applicable. A deviation to a multiple-award contract as defined in FAR 2.101 is considered to be a class deviation.

(b) *Submission requirements*. Class deviation requests shall be submitted through the contracting activity's respective policy organization (*e.g.*, FAS' Office of Policy and Compliance and PBS' Office of Acquisition) to spe.request@gsa.gov for SPE review and approval.

(c) *Expiration.* Unless otherwise specified in the deviation itself or extended, class deviations expire 12 months from the date of approval.

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

501.470 Content requirements.

(a) Deviation requests shall include the information in 501.304(b) as well as the following information—

(1) Identification of the type deviation (*i.e.*, an individual or class deviation);

(2) Identification of which paragraph(s) of FAR 1.401 best categorizes the request;

(3) Citations to the specific part or parts of the FAR or GSAM from which a deviation is needed;

(4) The proposed effective period of the deviation; and

(5) If the request is to support a new acquisition, provide a copy of the draft solicitation and acquisition plan.

Subpart 501.5 - Agency and Public Participation

501.501 Solicitation of agency and public views.

(a) A revision to the FAR or GSAM requires public participation through the rulemaking process if it is considered to be significant, as defined at FAR 1.501-1. For example, the revision—

(1) Contains a new certification requirement for contractors or offerors that is not imposed by statute (see FAR 1.107 and 501.107); or

(2) Will be used on a repetitive basis and imposes a new requirement for the collection of information from 10 or more members of the public (see FAR 1.106).

(b) A revision to the FAR or GSAM does not require public participation through rulemaking if it is not considered to be significant as defined at FAR 1.501-1. For example, the revision—

(1) Is for a single-use intended to meet the needs of an individual acquisition (*e.g.*, a clause developed as a result of negotiations and documented in the business clearance or similar document), except for clauses that constitute a deviation as defined at FAR 1.401; or

(2) Is used on a repetitive basis, but does not impose a new requirement for the collection of information from 10 or more members of the public (*e.g.* a requirement for a statement of work)(see FAR 1.106).

Subpart 501.6 - Career Development, Contracting Authority, and Responsibilities

501.601 General.

(a) Definitions.

"Acquisition Career Manager (ACM)" means the GSA Agency official located in the Office of Acquisition Policy, responsible for issuing and establishing GSA acquisition workforce certification policy, implementation procedures, internal

controls and conducting periodic reviews. The ACM represents GSA on the Interagency Acquisition Career Management Committee to ensure that workforce development policies and opportunities meet the needs of the acquisition workforce.

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

"Category Manager" means the individual(s) and/or agency(ies) responsible for areas of Governmentwide spend as described in OMB Memorandum Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings dated December 4, 2014 which can be found at https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf.

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

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

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

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

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

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

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

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

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

(iii) Program and project managers.

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

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

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

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

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

(e) *Maintaining FAC and contracting officer warrants*. All FAC-certified members of the GSA acquisition workforce and those appointed as contracting officers are required to earn Continuous Learning Points (CLPs) every two years from the

date of issuance of the certification and/or warrant. The requirements for CLP achievement can be found under the Career Management tab of GSA's Acquisition Portal (https://insite.gsa.gov/portal/category/534186). All CLPs must be in support of the competencies associated with the certification.

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

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

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

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

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

501.602 Contracting officers.

501.602-2 Responsibilities.

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

(b) *GSA revolving funds*. A requisition for indefinite delivery, indefinite quantity contracts requiring a guaranteed minimum quantity must specify enough funds to pay for the guaranteed minimum.

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

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

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

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

501.602-3 Ratification of unauthorized commitments.

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

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

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

(1) Why normal acquisition procedures were not followed.
(2) Why the contractor was selected.
(3) Other sources considered.
(4) Description of work or products.
(5) Estimated or agreed-upon contract price.
(6) Appropriation citation.
(7) Status of contract performance.

(d) *Documentation waivers*. Under exceptional circumstances, a contracting director may waive the requirement that the individual who made the unauthorized commitment must initiate and document the request for ratification. In such a case, the individual who does initiate the request for ratification must provide a written determination stating that an unauthorized commitment was made and identifying the individual who made it. For example, an exceptional circumstance may occur when the person who made the unauthorized commitment is no longer available to attest to the circumstances.

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

(2) Submit to the HCA all the following:

(i) Request for ratification,.

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

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

(iv) If applicable, recommendation for payment on a quantum meruit or quantum valebant basis (see 501.602-3(f)).

(v) Recommendation for corrective action to prevent recurrence.

(f) *Payment based on quantum meruit or quantum valebant*. (1) If ratification is not permissible due to legal improprieties, the contracting officer may recommend that payment be made under either:

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

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

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

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

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

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

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

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

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

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

501.603-1 General.

(a) *Definitions*.

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

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

(1) FAC-C Application Process:

(i) Applicants are responsible for preparing and submitting their FAC-C certification request in FAITAS for supervisor approval. The electronic application must include all supporting documentation such as transcripts, training

certificates, resume, and any other supporting documents (Refer to the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal (https://insite.gsa.gov/portal/category/534186).)

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

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

(2) FAC-C Certifications from other agencies.

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

(ii) *Other civilian agencies.* GSA will recognize FAC-C certification issued by another civilian agency, as long as the FAC-C is current in the FAITAS certification history and there is demonstrated proof that the CLP requirement was maintained.

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

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

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

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

(3) *Responsibilities*.

(i) GSA's SPE:

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

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

(ii) HCAs:

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

(B) Monitor contracting officers' performance.

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

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

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

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

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

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

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

(J) Regional HCAs retain acquisition career management responsibilities for both regional and national warrants, based on the contracting officer's FAITAS bureau.

(iii) ACM:

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

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

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

(i) Sign training authorizations for public course offerings.

(ii) Sign travel documents.

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

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

(v) Sign Government Bills of Lading.

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

(vii) Authorize interagency transfers of funds.

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

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

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

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

(5) *Warrant levels.*

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

(ii) Individual transactions include the following:

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

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

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

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

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

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

(G) The dollar value of a purchase order.

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

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

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

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

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

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

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

501.603-2 Selection.

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

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

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

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

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

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

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

(b) *Nominations for appointment*.

(1) Nominations for a regional appointment are submitted by the candidate's supervisor of record. to the regional bureau warrant manager (BWM). The regional BWM will invite the contracting officer candidate to apply for a warrant via FAITAS. In response to the invitation, the contracting officer candidate must provide–

(i) Unofficial college transcripts.

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

(iii) GSA Form 3410, Request for Appointment. The GSA Form 3410 must discuss the contracting activity's specific need for the warrant. Justify the need in Block 1 of the form.

(iv) Verification of candidate's training.

(2) National Warrant Nomination Process–

(i) Nominations for a national acquisition appointment are submitted by the candidate's HCA to the National Office of Acquisition Management.

(ii) Nominations for a national leasing appointment are submitted by the candidate's respective regional HCA to the National Office of Leasing.

(iii) Nominations for a national site acquisition appointment are submitted by the Director, Office of Real Property Valuation to the National Office of Acquisition Management.

(iv) The applicable BCM will invite the contracting officer candidate to apply for a warrant via FAITAS. In response to the invitation, the contracting officer candidate must provide-

(A) Unofficial college transcripts.

(B) Current resume detailing experience, education, and training relevant to the position or previous/current regional warrant certificate.

(C) Completed and signed national warrant nominee form.

(D) Verification of candidate's training.

(c) *Evaluation of candidates for contracting officer warrants.*

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

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

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

(2) Training requirements.

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

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

(iii) Refer to the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal (https://insite.gsa.gov/portal/category/534186) for the minimum training requirements for warrants.

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

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

(3) *Educational requirements*.

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

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

(iii) The designated educational fields are:

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

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

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

(4) Job classification requirements.

(i) PBS National Acquisition Warrants are limited to candidates within the GS-1102 job series.

(ii) PBS National Leasing Warrants are limited to candidates within the GS-1170 job series.

(iii) PBS National Site Acquisition Warrants are limited to candidates within the GS-1170 job series.

501.603-3 Appointment.

(a) *Certificate of Appointment*.

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

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

(3) Suggested language for the Certificate of Appointment may be found on the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal at https://insite.gsa.gov/topics/acquisition-purchases-and-

payments/acquisition-portal/acquisition-career-management/gsa-warrant-program/contracting-officer-warrant-program?term=suggested_language_for_certificate_of_appointment.

(4) PBS National Acquisition Warrants will be issued by the PBS Deputy Commissioner, the PBS Assistant Commissioner of Acquisition Management or their delegate in a centralized manner.

(5) PBS National Leasing Warrants will be issued by the PBS Deputy Commissioner or PBS Assistant Commissioner of Leasing or their delegate in a centralized manner.

(6) PBS National Site Acquisition Warrants will be issued by the PBS Deputy Commissioner, the PBS Assistant Commissioner of Portfolio Management and Customer Engagement or their delegate in a centralized manner.

(b) *Types of appointments*. Candidates are nominated for either an interim or permanent appointment. Candidates for a national warrant are nominated only for a permanent appointment. National appointments replace the need for a regional appointment. A contracting officer may only hold one warrant.

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

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

(3) Regional appointments. Regional appointments are for work specific to one region or portfolio. Regional appointments may be issued on either a permanent or interim basis.

(4) National appointments. National appointments are for work across GSA geographically.

(c) *Transferability of Warrants*.

(1) Regional warrants. Warrants may not transfer across contracting activities. Contracting officers that transfer to a new contracting activity must be invited to re-apply for a warrant in FAITAS.

(2) National warrants. PBS National Acquisition Warrants, National Leasing Warrants, and National Site Acquisition Warrants are issued for PBS-wide work, which allows the contracting officer to perform work for various entities within PBS. If a contracting officer with a PBS National Acquisition Warrant, National Leasing Warrant or National Site Acquisition Warrant transfers to another office within PBS, follow the requirements at 501.603-4(e).

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

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

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

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

(e) *Record Maintenance and Disposal*.

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

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

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

(4) In accordance with GSA Order OAS P 1820.1, GSA Records Management Program, dispose of expired contracting officer files and warrants by placing the contracting officer records in an inactive file following reassignment, termination

of employment or revocation of designation. The inactive file cutoff date is the end of the fiscal year. The files are to be destroyed two years after the cutoff.

501.603-4 Termination.

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

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

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

(1) Resigns.

(2) Transfers to another agency.

(3) Is reassigned to another office within GSA.

(4) Is terminated, or otherwise disciplined, for malfeasance or incompetence.

(5) Does not need the appointment.

(6) Fails to comply with experience, education or training requirements.

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

(1) There is reason to believe that the contracting officer failed to exercise sound business judgment.

(2) There is reason to believe that the contracting officer engaged in other improprieties in carrying out contracting officer responsibilities.

(3) Failure of the contracting officer to comply with continuous learning requirements.

(e) If a contracting officer with a PBS National Acquisition Warrant or PBS National Leasing Warrant–

(1) Transfers to another office within PBS, the gaining PBS office must validate the organizational need for the national warrant and issue a new national warrant via FAITAS. In the absence of validation, the warrant is terminated with no replacement.

(2) Transfers to an office outside of PBS, the warrant is terminated.

(f) If a contracting officer with a PBS National Site Acquisition Warrant transfers to another office outside of PBS Central Office, National Center for Site Acquisition, Real Property Valuation, the warrant is terminated.

501.603-70 Fulfillment of required FAC-C training.

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

501.604 Contracting Officer's Representative (COR).

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

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

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

(c) *Reciprocity of certifications*. As described in OMB memorandum, “Revisions to the Federal Acquisition Certification for Contracting Officers' Representatives,” of September 6, 2011, (http://www.fai.gov), individuals certified as Federal Acquisition Certification in Contracting (FAC-C) Levels I or II or Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) Mid-Level/Journeyman are considered to have met the FAC-COR requirements for Level II. Individuals certified as FAC-C Level III or FAC-P/PM Senior/Expert are considered to have met the FAC-COR requirements for Level III. These individuals must submit their FAC certificates and continuous learning documents to their BCMs for

FAC-COR certification in accordance with the procedures shown in the Acquisition Workforce Community of Practice accessible through GSA's Acquisition Portal (https://insite.gsa.gov/portal/category/534186).

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

(1) Manage and monitor their FAC-COR programs.

(2) Coordinate with the agency ACM to grant certifications.

(3) Evaluate candidate proficiencies and determine course equivalencies for certification, in accordance with FAI's required COR competencies.

(4) Resolve any certification-related disputes.

(e) *FAC-COR application process*. Applicants are responsible for preparing an application package for submission electronically through FAITAS (www.fai.gov) for supervisor approval. The application package must include the application form and copies of relevant training certificates. The supervisor is responsible for verifying the accuracy and completeness of the application package in FAITAS. After supervisory review, the certification request is routed electronically to the BCM. If the BCM recommends approval, the application is routed to the ACM, unless delegated, for final approval. After the ACM or designee approves, the FAC-COR certificate is generated through FAITAS.

(f) *Contracting officer's responsibilities*.

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

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

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

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

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

501.670 Category Managers.

(a) Category managers are responsible for identifying inefficient purchasing behavior and crafting smarter buying strategies within specific areas of spend as described in Government-wide Category Management, Guidance Document issued by the Office of Management Budget, available at https://hallways.cap.gsa.gov/information/Gov-wide_CM_Guidance_V1.pdf.

(b) *Transactional data.* Category managers should use transactional data collected via clauses 552.216-75 and 552.238-80 Alternate I in conjunction with commercial market benchmarks to identify potential areas for improvement in contracting methods, pricing, and terms or conditions.

Subpart 501.7 - Determinations and Findings

501.707 Signatory authority.

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

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

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

Appendix 501A - [Reserved]

PART 502 - DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 502.1 - Definitions

502.101 Definitions.

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PART 502 - DEFINITIONS OF WORDS AND TERMS

Subpart 502.1 - Definitions

502.101 Definitions.

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

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

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

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

"Commercial supplier agreements" means terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of "commercial item" set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. Commercial supplier agreements are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service. The term applies–

(a) Regardless of the format or style of the document. For example, a commercial supplier agreement may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order;

(b) Regardless of the media or delivery mechanism used. For example, a commercial supplier agreement may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.

"Contracting director" means:

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

(b) In FAS Central Office—

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

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

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

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

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

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

"Debarring official" or "suspending official" means GSA's Suspension & Debarment Official at https://insite.gsa.gov/portal/category/534198.

"GSA information technology" means information technology as defined in FAR 2 that is owned or operated by the U.S. General Services Administration or by a contractor or other organization on behalf of the U.S. General Services Administration.

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

"Senior procurement executive" means the Deputy Chief Acquisition Officer.

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PART 503 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 503.1 - Safeguards

503.101 Standards of conduct.
503.101-3 Agency regulations.
503.104 Procurement integrity.
503.104-2 General.
503.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
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503.570 Advertising.
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503.703 Authority.
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PART 503 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 503.1 - Safeguards

503.101 Standards of conduct.

503.101-3 Agency regulations.

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

503.104 Procurement integrity.

503.104-2 General.

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

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

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

(i) Requirements generators, including client agency representatives, and program and technical experts who develop statements of work, specifications or similar documents;

(ii) Contracting personnel supporting the contracting officer;

(iii) Personnel serving on technical evaluation boards or source selection evaluation boards;

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

(v) Secretarial, clerical and administrative personnel of the contracting activity responsible for the procurement;

(vi) Small Business Technical Advisors;

(vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under FAR 19.302, process applications for Certificates of Competency under FAR 19.6, review subcontracting plans, or award contracts under the 8(a) program;

(viii) Personnel in the Credit and Finance Section of Region 6 and other personnel who support the contracting officer in making contractor responsibility determinations;

(ix) Contract auditors in the Office of Inspector General and Regional Inspector General's offices;

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

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

(xii) Personnel involved in contract approval.

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

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

(4) The contracting officer must use the Conflict of Interest Acknowledgement and Nondisclosure Agreement referenced in 515.305-71 to maintain the identity of individuals authorized access to contractor bid or proposal information and source selection information.

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

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

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

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

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

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

503.104-7 Violations or possible violations.

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

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

(1) Refer the matter immediately to the Inspector General;

(2) Determine what action to take on the procurement under FAR 3.104-7 (b)–(g); and

(3) Notify the Administrator if he or she determines that urgent and compelling circumstances, or other Government interests, justify the award or modification.

(c) If a contracting officer has not been appointed, the contracting director performs the contracting officer actions defined in FAR 3.104-7.

Subpart 503.2 - Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

(a) Employees must report immediately a suspected violation of the Gratuities clause to each of the following:

(1) The contracting officer;

(2) Assistant Inspector General for Investigations or the Regional Special Agent in Charge; and

(3) Deputy Standards of Conduct Counselor.

(b) The report must describe the circumstances under which the Gratuities clause has been violated and include all pertinent documents.

(c) The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice, the Senior Procurement Executive, or the Office of General Counsel. See also 5 CFR 6701.107.

503.204 Treatment of violations.

(a) The Senior Procurement Executive, or designee, makes determinations under FAR3.204. The Senior Procurement Executive, or designee, takes all the following actions:

(1) Coordinates with legal counsel;

(2) Initiates proceedings under FAR3.204(a) by notifying the contractor that GSA is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner; and

(3) Presumes receipt if no return receipt is received within 10 calendar days after mailing the notice.

(b) The contractor has 30 calendar days to exercise its rights under FAR 3.204(b), unless the Senior Procurement Executive, or designee, grants an extension.

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

(1) Gives the contractor an opportunity to dispute material facts relating to the determinations under FAR 3.204(a)(1) and (2);

(2) Conducts proceedings under rules consistent with FAR 3.204(b);

(3) Schedules a hearing within 20 calendar days of receipt of the referral. The contractor or GSA may request an extension for good cause; and

(4) Delivers to the Senior Procurement Executive, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(d) The Senior Procurement Executive, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious.

(e) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Senior Procurement Executive, or designee, conducts the hearing required by FAR 3.204(b).

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

Subpart 503.3 - Reports of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

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

Subpart 503.4 - Contingent Fees

503.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

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

Subpart 503.5 - Other Improper Business Practices

503.570 Advertising.

503.570-1 Policy.

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

503.570-2 Contract clause.

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

Subpart 503.7 - Voiding and Rescinding Contracts

503.703 Authority.

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

503.705 Procedures.

(a) *Contracting officer's actions*:

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

(2) If the contractor has a final conviction for a violation under 18 U.S.C. 201-224, the contracting officer shall refer the matter to the Senior Procurement Executive under FAR 3.705 and shall—

(i) Identify in the referral the final conviction;

(ii) Include the information required by FAR 3.705(d)(2) through (5); and

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

(b) Senior Procurement Executive's actions:

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

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

(i) Issues the notice required by FAR 3.705; and

(ii) Conducts the hearing contemplated by FAR 3.705(c)(3).

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

(i) Contracts affected by the final conviction.

(ii) Amounts expended and property transferred by the Government under the affected contracts.

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

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

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

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

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

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

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

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

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

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

503.806 Processing suspected violations.

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

Subpart 503.10 - Contractor Code of Business Ethics and Conduct

503.1004 Contract clauses.

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

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

(i) Poster: GSA Office of Inspector General "FRAUDNET HOTLINE"; and

(ii) Obtain from: Contracting Officer.

PART 504 - ADMINISTRATIVE MATTERS

Sec.

Subpart 504.1 - Contract Execution

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

Subpart 504.2 - Contract Distribution

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PART 504 - ADMINISTRATIVE MATTERS

Subpart 504.1 - Contract Execution

504.101 Contracting officer's signature.

Contract, contract modifications, blanket purchase agreements, and task and/or delivery orders may be executed manually or electronically using a digital signature. In the absence of the original contracting officer, another contracting officer with appropriate warrant authority may sign. Always type or stamp the name and title of the contracting officer signing the contract on the document, unless it is electronically signed. An electronic contract which includes the name of the contracting officer satisfies the typed, stamped or printed requirement found in FAR 4.101. GSA Order CIO *2162.2 (GSA Digital Signature Policy*) is the guidance for the use of digital signatures as the preferred means of providing signatures for GSA documents, forms, correspondence, and emails.

504.103 [Reserved].

Subpart 504.2 - Contract Distribution

504.201 Procedures.

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

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

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

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

(1) Leases of real property.

(2) Schedule contracts.

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

504.203 Taxpayer identification information.

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

Subpart 504.4 - Safeguarding Classified Information Within Industry

504.402 General.

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

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

504.470 Acquisitions involving classified information.

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

504.470-1 [Reserved].

504.470-2 [Reserved].

504.471 Processing security requirements checklist (DD Form 254).

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

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

504.472 Periodic review.

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

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

(1) Issuance of a revised specification.

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

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

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

504.473 Recurring procurement.

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

(a) End item.

(b) Previous security classification.

504.474 Control of classified information.

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

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

504.475 Return of classified information.

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

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

(1) Bid opening or closing date for receipt of proposals by non-responding offerors.

(2) Contract award by unsuccessful offerors.

(3) Termination or completion of the contract.

(4) Notification that authorization to release classified information has been withdrawn.

(5) Notification that a facility:

(i) Does not have adequate means to safeguard classified information; or

(ii) Has had its security clearance revoked or inactivated.

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

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

504.476 Breaches of security.

GSA employees responsible for the protection of classified information must refer the facts of an unauthorized disclosure promptly to Security Branch Chief, Security and Emergency Management Division, Office of Mission Assurance (OMA).

Subpart 504.5 - Electronic Commerce in Contracting

504.500 [Reserved].

504.502 Policy.

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

504.570 [Reserved].

Subpart 504.6 - Contract Reporting

504.604 Responsibilities.

In accordance with FAR 4.604, the Senior Procurement Executive (SPE) has implemented the following policies to monitor and ensure the accurate and timely input of data into FPDS. Additional guidance is available on the GSA Acquisition Portal (https://insite.gsa.gov/fpdsvandv).

(a) *Contract writing systems*.

(1) The responsibility of the contracting officer to report awards in FPDS per FAR 4.604 may be accomplished by a contract writing system that reports the contract action directly to FPDS.

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

(3) Contract actions reported through contract writing systems shall be routinely examined and compared to data contained in FPDS to ensure that those actions have been reported accurately to FPDS.

(b) *Quarterly Reviews*. (1) The HCAs are responsible for the following:

(i) Establishing a selection methodology for an appropriate random sample of contract files for review that is representative of their Service's contract actions. The sample does not need to be statistically significant.

(ii) Verifying and validating the accuracy of contract action reports (CARs) entered into FPDS through the reviews.

(iii) Submitting a certification of the accuracy of the CAR data to the Chief Acquisition Officer (CAO). Certifications are due no later than 30 business days after the end of the quarter.

(2) Any data discrepancies identified in the contract file during the verification and validation process shall be corrected.

(3) File selection and review may begin immediately after the end of each quarter using the selection methodology determined by the HCA in paragraph (b)(1)(i) of this section.

(c) *Annual Reviews*. (1) In accordance with FAR 4.604(c), the CAO shall annually sample the GSA FPDS records and provide a list of transactions to each HCA for verification, validation, and certification.

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

(3) The process to verify and validate shall include comparisons of contract file data to FPDS data entries and comparisons of FPDS data to contract writing system data to determine completeness and accuracy, if applicable.

(4) HCAs shall provide certifications of the accuracy and validity of their FPDS data to the CAO based on the list of transactions provided to HCAs under paragraph (c)(1) of this section.

(5) Certifications to the CAO shall include a description of the means used to verify the accuracy and completeness of the data and a statement that all discrepancies found have been corrected.

504.605 Procedures.

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

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

(2) Applies to all contracting activities, except real property leasing.

(b) *Transition of procurement instrument identifier (PIID) numbering.*

(c) *Policy*. (1) Contracting officers shall use the uniform PIID numbering requirements for procurement instruments reported to FPDS.

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

(3) Each contracting office must maintain records to ensure continuity and control of PIID numbering.

(d) *Activity Address Codes (AACs).*

(1) AACs are made up of the following:

(i) The first two characters of the AAC must be "47" to identify GSA.

(ii) The third character must be the service/office code identified as follows:

Service/Office Code	**Letter Designation**
Office of the Administrator	A
Office of the Chief Financial Officer	B
Office of Human Resources Management	C
Office of Mission Assurance	D
Office of Small Business Utilization	E
Office of GSA IT	F
Civilian Board of Contract Appeals	G
Office of Administrative Services	H
Office of Inspector General	J
Office of General Counsel	L
Office of Governmentwide Policy	M
Public Buildings Service	P
Federal Acquisition Service	Q
Congressional & Intergovernmental Affairs	S
Technology Transformation Service	T
Office of Communications and Marketing	Z

(iii) The remaining characters are determined by each service organization, and can be found at https://insite.gsa.gov/aac.

(2) Central Service Point (CSP) individuals are responsible for establishing and updating AAC assignments in the Department of Defense Activity Address Directory (DoDAAD). Additional guidance on AAC assignments and updates can be found at https://insite.gsa.gov/aac.

504.605-70 Federal Procurement Data System Public–Access to Data.

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

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

504.606 Reporting Data.

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

(b) The GSA FPDS Sustainability Coding Guidelines at http://insite.gsa.gov/sustainableacquisition must be followed when selecting codes for the following sustainability data elements:

(1) Recovered Materials/Sustainability.

(2) Use of EPA Designated Products.

(c) FPDS reporting for acquisitions supporting customer agencies. (1) *GSA-funded acquisitions*. There are instances where GSA conducts an acquisition in support of a customer agency but also provides the predominance of funding for the contract award. In these instances, GSA's Activity Address Codes (AACs) must be used for the contracting agency codes (e.g. Contracting Office ID) and funding agency codes (*e.g.* Funding Office ID) in FPDS. Examples of GSA funded acquisitions may include those made in support of—

(i) Requisitions. These transactions are transfers of property conducted in accordance with the Federal Property Management Regulation (FPMR) (41 CFR 101-26). Examples of programs that facilitate requisitions from customer agencies include GSA stock supply programs and GSA motor vehicle purchasing. Customer agencies submit requisitions (sometimes referred to as "orders") to GSA for items under these programs in accordance with the FPMR. GSA then acquires these items from suppliers through contracts or orders in accordance with the FAR and GSAM.

(ii) Shared Services. Under this model, common administrative services-those activities that are common across all agencies-are conducted by an agency (*e.g.* shared service provider) with expertise in a particular area to reduce duplication and redundancy. In turn, the customer agency reimburses the shared service provider for its costs. Often, shared service providers must conduct acquisitions in order to provide services to other agencies. Accordingly, only the contract/order awarded by the shared service provider to a contractor is reported in FPDS.

(2) *Customer-funded acquisitions*. There are instances where GSA conducts an acquisition in support of a customer agency but the customer agency provides the predominance of funding for the contract action. In these instances, GSA's AACs must be used for the contracting agency codes (*e.g.* Contracting Office ID) but the customer agency's AACs must be used for funding agency codes (e.g. Funding Office ID) in FPDS. Examples of customer-funded acquisitions may include—

(i) Reimbursable Work Authorizations (RWAs). An RWA is an interagency agreement between GSA and a tenant (*e.g.* federal agency or non-federal source when authorized by statute) whereby GSA recovers its costs for altering, renovating, repairing, or providing services in GSA-managed space over and above the basic operations financed through rent paid by the tenant.

(ii) Assisted acquisitions (see definition at FAR 2.101). GSA regularly acts as the servicing agency in this type of interagency acquisition, where it performs acquisition activities on a customer (requesting) agency's behalf, such as awarding and administering a contract, while the requesting agency provides the required funding.

Subpart 504.8 - Government Contract Files

504.800 Scope of subpart.

(a) This subpart prescribes a contract file format standard for all contracts that exceed the micro-purchase threshold. This subpart may be applied to purchases at or below the micro-purchase threshold.

(b) The purpose of this standard is to ensure that the documentation in the file complies with FAR 4.801(b)(1) and FAR 4.802(c) requirements.

504.802 Contract files.

(a) Contract files shall be maintained electronically, unless otherwise determined, in writing, by the HCA to be prohibitively burdensome.

(b) The contracting officer must place all information and documentation required by FAR 4.802 and 4.803 in the contract file and organize the file in the format as set out in each individual contracting activity's contract file standard.

(c) Contracting officer responsibilities.

(1) The contracting officer is responsible for the official contract file. Individuals creating documents relating to the contract must provide those documents to the contracting officer for inclusion in the file. Other members of the acquisition team may be responsible for the maintenance and archival of any delegated responsibilities (*e.g.*, contract administration and delegated contract administration function) according to prescribed contracting activity policies and procedures.

(2) The contracting officer shall-

(i) Place all information and documentation required by the FAR (see FAR subpart 4.8), the GSAM, and any other policy and procedure in the contract file.

(ii) Include an index or checklist identifying the location of any documentation contained in the contract file when such identification is not already prescribed by policy. The index or checklist can be electronic.

(iii) Identify in a clear and logical manner, within the contract file, any documentation maintained in another location.

(iv) Comply with applicable file and document naming convention/nomenclature requirements.

(3) When responsibility for a contract transfer from one contracting officer to another contracting officer (*e.g.*, employee departure, transfer of assignments, or redelegation of contract administration authority (intraoffice or interoffice))-

(i) The successor contracting officer shall review the files being transferred. The purpose of the review is to identify any issues with the contract file (*e.g.*, missing or incomplete documentation or information).

(ii) The successor contracting officer shall attempt to resolve any issues identified during their review of the transferred files. The successor contracting officer should write a memo-to-file that documents any issues with the contract file that were not able to be resolved as part of the transfer.

(d) Head of contracting activity responsibilities. Head of contracting activities consistent with their delegated authorities are responsible for-

(1) Developing policies and procedures that discuss, at a minimum, the following:

(i) The different types of files identified in FAR 4.801(c) along with any other files that are to be established (*e.g.*, unsolicited proposals);

(ii) The location where file documentation is to be stored (*e.g.*, an electronic contract filing system, another official system of record, or some type of combination thereof). If file documentation must be stored in different locations, the policy and procedure shall discuss the rationale for the need (*e.g.*, separation of classified and unclassified documentation) and medium (*e.g.*, paper) to be used;

(iii) The approach used to identify the documents to be retained within a contract file (see FAR 4.803) and any other files established per paragraph (d)(1)(ii) of this section (*e.g.*, use of a checklist or index that includes the citation of the authority for retaining a document);

(iv) The organization(s) or individual(s) responsible for maintaining file documentation when such responsibility does not reside with the contracting officer (see 504.802(b));

(v) The filing and document convention/nomenclature to be used;

(vi) The content, access, and other applicable requirements for contracting officer representative (COR) contract files (see FAR 1.604) and any other files (see paragraph (a) of this section); and

(vii) The internal controls (*e.g.* quarterly review by the contracting activity) to be used for ensuring compliance with FAR, GSAM, and other requirements.

(2) Designating a point of contact within its organization for purposes of supporting file audits and reviews by internal and external organizations (*e.g.*, the Procurement Management Review (PMR) office). Support may include, but not be limited to:

(i) Providing copies of applicable policies and procedures;

(ii) Assisting in resolving issues (*e.g.*, locating a contract file) and questions;

(iii) Providing access to files and systems; and

(iv) Notifying the contracting officer of the status of the review or audit.

504.803 Contents of contract files.

In addition to the examples of contract file documents described in FAR 4.802 and listed in FAR 4.803, the contract file shall include, if applicable, the following:

(a) GSA Form 2689 (see 519.502-70 for applicability), and

(b) Checklist documenting review of the small business subcontracting plan (see 519.705-4 for applicability).

(c) Documents required by individual contracting activity in accordance with such activity's internal policies and procedures.

504.804 [Reserved]

504.804-5 Procedures for closing out contract files.

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

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

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

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

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

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

(d) Cancellation of open items with residual balances.

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

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

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

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

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

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

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

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

504.805 Storage, handling, and disposal of contract files.

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

(a) The files' retention period expires.

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

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

Subpart 504.9 - Taxpayer Identification Number Information

504.902 General.

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

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

504.904 Reporting contract information to the IRS.

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

Subpart 504.11 - System for Award Management

504.1103 Procedures.

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

(a) Verify that the prospective contractor's legal business name, Doing-Business-As (DBA) name (if any), physical street address, and Data Universal Number System (DUNS) number or DUNS+4 number, as found in the System for Award Management (SAM), match the information that will be included in the contract, order, or agreement resulting from the vendor's quote or proposal. Correct any mismatches by having the vendor amend the information in the SAM and/or the quote or proposal. The SAM information can be accessed through the SAM website (www.sam.gov) by creating a user account.

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

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

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

Subpart 504.13 - Personal Identity Verification of Contractor Personnel

504.1301 Policy.

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

504.1303 Contract clause.

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

504.1370 Credentials and Access Management.

(a) Procedures.

(1) The CIO P 2181.1 - GSA HSPD-12 Personal Identity Verification and Credentialing Handbook details the credentials and access management procedures for contracts or orders including FAR clause at 52.204-9, Personal Identity Verification of Contractor Personnel and GSAR clause at 552.204-9, Personal Identity Verification Requirements.

(2) The CIO P 2181.1 - GSA HSPD-12 Personal Identity Verification and Credentialing Handbook includes guidance for–

(i) Managing credentials;

(ii) Ensuring credentials are returned to the GSA Office of Mission Assurance when a contractor employee leaves the contract or when a contract ends; and

(iii) Ensuring access to information technology is disabled when a contractor employee leaves the contract or when a contract ends.

(3) The CIO P 2181.1 - GSA HSPD-12 Personal Identity Verification and Credentialing Handbook, as well as additional resources for implementing the credentials and access management requirements, can be found on the Acquisition Portal at: https://insite.gsa.gov/hspd12inprocurement.

(b) Delegating Responsibilities. Contracting officers must ensure any contracting officer's representative delegation letter includes language for credentials and access management responsibilities. Standard delegation language can be found on the Acquisition Portal at: https://insite.gsa.gov/hspd12inprocurement.

Subpart 504.16 - Unique Procurement Instrument Identifiers

504.1603 Procedures.

(a) *Elements of a PIID*. The PIID consists of 13 alphanumeric characters as follows:

Character(s)	Content	Content Description Location	Example
1-6	Activity Address Code	See 504.605(c)	47PA01
7-8	Last Two Digits of Fiscal Year of Number Assignment		15

Character(s)	Content	Content Description Location	Example
9	Instrument Code	See 504.1603(b)	F
10-13	Serial Number	See 504.1603(c)	0001

(b) *Procurement Instrument Type Codes*. Indicate the type of instrument consistent with the letter designation provided in FAR 4.1603(a)(3). The letter designations for the identified type of instruments unique to agency policy are identified as follows:

Instrument	Letter Designation
Purchase orders (open market simplified acquisition) - manual	M
Request for information	N
Standing price quote (SPQ)	T

(c) *Serial Number Codes*.

(1) A separate series of numbers may be used for each basic instrument type (see 504.1603(b)).

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

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

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

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

(i) 0001 through 9999;

(ii) A001 through A999, B001 through B999;

(iii) and so on to Z001 through Z999.

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

Subpart 504.70 - Supply Chain Risk Management

504.7000 Scope of subpart.

This subpart prescribes acquisition policies and procedures mitigating supply chain risks in the post-award phase of a procurement funded by GSA. Procedures in this subpart apply to all GSA funded contracts and orders. These procedures apply regardless of the estimated value of the contract.

504.7001 Definitions.

"Prohibited article" means any prohibited product, system, or service that the contractor provides that conflicts with the supply chain terms or conditions of the contract (e.g., GSA CIO Order, counterfeit items, or a FAR clause, including without limitation the FAR Clause at 52.204-23, Prohibition on Contracting for Hardware, Software, Products and Services Developed or Provided by Kaspersky Lab and Other Covered Entities).

"Supply chain" means a linked set of resources and processes between multiple tiers of developers that begins with the sourcing of products and services and extends through the design, development, manufacturing, processing, handling, and delivery of products and services to the acquirer.

504.7002 Policy.

(a) The Federal Information Security Modernization Act of 2014 and associated National Institute of Standards and Technology (NIST) guidance requires Federal agencies to manage supply chain risks for Federal information systems.

(b) OMB Circular A-130, "Managing Information as a Strategic Resource," directs agencies to implement supply chain risk management principles to protect against the insertion of counterfeits, unauthorized production, tampering, theft,

insertion of malicious software, as well as poor manufacturing and development practices throughout the system development life cycle.

(c) The SECURE Technology Act (Public Law 115-390) requires GSA to have a lead representative of the agency on the Federal Acquisition Security Council as well as address supply chain risks posed by the acquisition of covered articles.

504.7003 General procedures.

(a) Each service and staff office must provide a supply chain risk management point of contact to GSA's representative to the Federal Acquisition Security Council or designee to assist in providing recommended guidance to mitigate supply chain risks.

(b) GSA contracting activities may discuss supply chain concerns with the relevant Supply Chain Risk Management Point(s) of Contact listed on the GSA Acquisition Portal (http://insite.gsa.gov/scrm) at any time, including during acquisition planning and requirements development.

504.7004 [reserved]

504.7005 Post-award procedures.

(a) *Supply Chain Event Report*.

(1) If a prohibited article is discovered within the supply chain of a procurement, the contracting officer shall immediately submit a supply chain event report using the online form on the GSA Acquisition Portal (http://insite.gsa.gov/scrm) to ensure appropriate service and staff offices within GSA are notified.

(2) The supply chain event report must include the following information:

(i) Contract information, including contract number and contractor name;

(ii) GSA contracting office;

(iii) Prohibited article name; and

(iv) Reason why prohibited article is banned on contract.

(3) The contracting officer shall provide as much information as is available at the time of report submission.

(4) GSA's representative to the Federal Acquisition Security Council or designee will notify the contracting officer to confirm receipt of the report.

(b) *Supply Chain Event Risk Mitigation*. The contract administration procedures under FAR part 49 (*e.g.,* cure notice, termination for cause, past performance review) can be utilized as needed to address immediate or future supply chain event concerns. Additional guidance on contract administration procedures is available on the GSA Acquisition Portal (http://insite.gsa.gov/scrm).

(c) *Past Performance Evaluation*. The contracting officer shall report any contractor non-compliance with supply chain requirements within the "Other Areas" portion of any applicable past performance evaluation form.

Subpart 504.71 - Acquisition Reviews

504.7100 Scope of subpart.

This subpart prescribes policies and procedures concerning acquisition reviews. FAR part 18 acquisitions are exempt from this subpart.

504.7101 Purpose.

The purpose of this subpart is to–

(a) Support FAR parts 7, 10, and 11 to ensure requirements meet the needs of the customer, align and support the mission, are acquired efficiently and effectively, and comply with Federal and agency policies and procedures;

(b) Establish a requirement for acquisition reviews for various types of acquisitions and contract actions; and

(c) Promote early and frequent engagement by the SPE.

504.7102 General.

(a) An acquisition review is a type of internal control as well as a best practice that provides an opportunity for collaboration and meaningful conversation amongst members of the acquisition team and stakeholders. Acquisition reviews enable information to be shared early and often during the acquisition life cycle.

(b) The need for an acquisition review should be commensurate with the risk, complexity, and criticality of the acquisition or contract action. Criteria supporting the need for an acquisition review may include the criteria described in 507.105(c)(2).

(c) An acquisition may require more than one acquisition review. An acquisition review may occur at any time during the various phases of the acquisition life cycle:

(1) Market research phase;

(2) Acquisition planning phase;

(3) Pre-solicitation phase;

(4) Pre-award phase; and

(5) Post-award phase.

(d) The following are examples of topics that may be a part of an acquisition review:

(1) Requirement details (e.g., description of requirement, period of performance, estimated value);

(2) Market research (e.g., techniques to be used, historical data, commerciality, industry capabilities and practices, potential sources, existing contract vehicles, expected usage by other agencies);

(3) Acquisition strategy (e.g., degree of competition, small business consideration, contract type, category management, proposed evaluation factors);

(4) Business and procurement risks (e.g., project scope, funding, life cycle, compliance, alignment to agency mission, political interest, other external factors or circumstances);

(5) Important policies, procedures, and processes (e.g., IT requirements, customer agency requirements, class deviations, consolidation and bundling analyses, category management requirements);

(6) Pre-award milestones (e.g., existing contract expiration date, planned solicitation date, anticipated date of award);

(7) Debriefings, brief explanations, and other post-award communications;

(8) Contract administration requirements and key activities (e.g., post-award orientation, contractor performance, government property, option renewal or award term review, disposal requirements); and

(9) Post-award milestones, deliverables, and other important information.

504.7103 Head of the contracting activity responsibilities.

The head of the contracting activity consistent with their delegated authority shall establish acquisition policies, procedures and guidance concerning acquisition reviews for their respective organization(s) in support of this subpart.

(a) These acquisition policies, procedures and guidance shall include, but be not limited to:

(1) Commensurate with the risk, complexity, and criticality of the acquisition or contract action–

(i) Pre-award acquisition reviews (e.g., contract review board, peer reviews); and

(ii) Post-award acquisition reviews.

(2) A process for capturing best practices and innovative approaches to share with the acquisition workforce.

504.7104 Acquisitions and contract actions requiring SPE review and approval.

Acquisitions and contract actions requiring SPE review or approval must conduct an acquisition review, consistent with HCA policy established under 504.7103.

(a) *General*. The FAR, GSAM, Acquisition Letters, and other policies and procedures identify acquisitions and contracting actions that require SPE review or approval. The SPE may request review of any acquisition or contract action, in addition to those where SPE review or approval is required.

(1) An HCA may notify the SPE according to paragraph (b) of this section of acquisitions or contract actions that otherwise do not require SPE review or approval. A reason may be to seek assistance, advice, or guidance from the SPE about a potential or planned acquisition, a contract action, or an award.

(b) *Notification.* The SPE shall be notified of acquisitions and contract actions requiring SPE review or approval as early in the acquisition life cycle as possible. Notification shall be sent to spe.request@gsa.gov and include the following information:

(1) Description of the need for SPE involvement (e.g., SPE approval of a consolidation determination);

(2) Description of the requirement, including key dates (e.g., anticipated solicitation date, anticipated award date);
(3) Date(s) of acquisition review(s); and
(4) Any other important information.

(c) *Approval*. Acquisitions and contract actions requiring SPE review or approval shall be sent to spe.request@gsa.gov and include the following information;
(1) Description of the requirement, action required, and due date;
(2) The document(s) requiring SPE review or approval;
(3) Evidence of Service-level concurrences;
(4) Evidence of legal concurrence;
(5) Supporting attachments, if applicable; and
(6) Any other important information.

(d) *Participants*. Acquisition reviews involving the SPE are to include key members of the acquisition team as well as the following participants:
(1) SPE or authorized designee;
(2) Head of the contracting activity or authorized designee;
(3) Office of Small Business Utilization; and
(4) Other key stakeholders (e.g., GSA Office of Information Technology for GSA-funded technology acquisitions).

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SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING

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PART 505 - PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 505.1 - Dissemination of Information

505.101 Methods of disseminating information.

Subpart 505.2 - Synopses of Proposed Contract Actions

505.202 Exceptions.
505.203 Publicizing and response time.
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.
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PART 505 - PUBLICIZING CONTRACT ACTIONS

Subpart 505.1 - Dissemination of Information

505.101 Methods of disseminating information.

If the acquisition is for real property appraisal services estimated to cost $25,000 or more and is not exempt under FAR 5.202 or GSAR 505.202, then the contracting officer must publicize the proposed acquisition in FedBizOpps. (*Note: See part 570 for information regarding publicizing contracts actions for leasehold interests in real property.*)

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) Synopsizing in FedBizOpps is not always appropriate for acquisitions of real property appraisal services. The contracting officer must, publicize such contract actions following the procedures in 505.203.

(b) It is not appropriate or reasonable to publish an advance notice of acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program.

505.203 Publicizing and response time.

If publicizing in newspapers, ensure that the notice appears at least three calendar days before issuance of the solicitation. Allow at least these minimum response times:

(a) For real property appraisal services valued at less than the applicable Trade Agreements Act (TAA) threshold (see FAR 25.401(b), 10 calendar days prior to receipt of initial offers.

(b) For real property appraisal services valued at or over the applicable TAA threshold, 40 calendar days prior to receipt of initial offers. If the acquisition falls in a general category identified in an annual forecast, the period may be reduced to as few as 10 days.

505.270 Synopsis of amendments to solicitations.

Synopsize in the CBD FedBizOpps any solicitation amendment when the amendment either:

(a) Increases the value of the contract action above the threshold requiring synopsis, or

(b) Makes other non-cardinal changes to the solicitation, such as a new time and date for receipt of offers, minor changes or clarifications to the statement of work.

Subpart 505.3 - Synopses of Contract Awards

505.303 Announcement of contract awards.

Compliance with 505.303-70 fulfills the reporting requirements of FAR 5.303(a).

505.303-70 Notification of proposed substantial awards and awards involving congressional interest.

(a) *Applicability*. This section applies to any proposed award exceeding or estimated to exceed:

(1) $500,000 for a contract under the 8(a)program.

(2) $1,000,000 for a supply contract unless it involves any of the following:

(i) Motor vehicles.

(ii) Supplies with not readily identifiable points of origin.

(iii) Supplies with foreign production points.

(3) $3,500,000 for a design (Architect/Engineer) or construction contract.

(4) $500,000 for any other contract, or class of contract, if a Member of Congress has specifically requested notification of award to a contractor in his/her district or State.

(b) *Notification Procedures*.

(1) The Office of Congressional and Intergovernmental Affairs (OCIA) will provide in writing to the HCA the names of members of Congress (in whose district or State the contractor is located and the work is to be performed), who wish to be notified of any award under subparagraph (a)(4) of this subsection.

(2) Notify OCIA either by:

(i) Electronic mail to *OCIAContracts@gsa.gov*.

(ii) Facsimile to (202) 219-5742.

(iii) Hand delivery to 1800 F Street, NW, Room 6116, Washington, DC 20405.

(3) Except for awards under urgent and compelling circumstances, the contracting officer must provide the notice to OCIA on the day of award and 24 hours before telephonic or e-mail notice (if applicable) is provided to the contractor. If the contracting officer cannot meet this timeframe, the contracting director must notify OCIA by telephone or e-mail.

(4) For awards under subparagraph (a)(4) of this section, provide a copy of the notice to the Regional congressional liaison office.

(c) *Contents of notice*.

(1) Provide the information in accordance with the format at *http://www.gsa.gov/forms*.

(2) The notification to OCIA may contain sensitive preaward information. The notification must be labeled accordingly. OCIA and regional congressional liaison offices are responsible for the security of such information and will establish procedures governing its release before official notification of award. Unless otherwise authorized by the contracting officer, the release of such information before award is limited to members of Congress and their staff.

(d) *Release of awards*.

(1) The Associate Administrator for OCIA will identify notifications which require priority processing. OCIA will release such notices at the time and date specified by the Associate Administrator.

(2) Unless notified to the contrary, the contracting officer may release awards described in paragraph (a) of this section, or information related to them, after two full workdays (48 hours) from the time and date of notification to OCIA. This is done to ensure that the notification has occurred and contract award has actually taken place. The date/time stamp on the email, facsimile transmission, or hand delivery receipt establishes the time and date of notification.

Subpart 505.4 - Release of Information

505.403 Requests from Members of Congress.

(a) The contracting officer shall consult with legal counsel if the response would disclose any of the following:

(1) Classified material.

(2) Confidential business information.

(3) Contractor bid or proposal information or source selection information as defined in FAR 3.104-3.

(4) Information prejudicial to a competitive acquisition.

(b) If the response involves proprietary or source selection information, the contracting officer shall use the GSA Form 3611 for clarity and visibility.

(c) Refer the proposed response to the HCA and inform the OCIA of the action taken.

Subpart 505.5 - Paid Advertisements

505.502 Authority.

(a) *Newspapers*. The Senior Procurement Executive must approve publication of paid newspaper advertisements in accordance with FAR 5.502(a). Approval is not required if FAR 5.101 or GSAR 505.101 requires publication. 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 advertise in other media.

505.503 Procedures.

(a) *Substitute form*. Unless the contracting officer makes an award or order via electronic commerce or by using the Governmentwide commercial purchase card, use GSA Form 300, Order for Supplies and Services.

(b) *Invoice receipt by contracting officer*. After receiving an invoice and proof of advertising from a publisher, radio or television station, or advertising agency, the contracting officer shall take the following actions:

(1) Certify the invoice for payment.
(2) Submit the invoice to Finance.
(3) Retain the proof of advertising in the contract file.

(c) *Invoice receipt by receiving official*. If a receiving official receives an invoice from a publisher, radio or television station, or advertising agency, he or she takes all the following actions:

(1) Prepares a receiving report.
(2) Submits the invoice and receiving report to Finance for payment.
(3) Gives the contracting officer a copy of the receiving report for retention in the contract file.

505.504 Use of advertising agencies.

The services of commercial advertising agencies may be used only if the contracting officer determines that the services rendered by those agencies can either:

(a) Increase competition for contracts; or
(b) Improve the effectiveness of GSA advertising and marketing programs.

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PART 506 - COMPETITION REQUIREMENTS

Sec.

Subpart 506.2 - Full and Open Competition After Exclusion of Sources

506.202 Establishing or maintaining alternative sources.

Subpart 506.3 - Other than Full and Open Competition

506.303 Justifications.

506.303-1 Requirements.

Subpart 506.5 - Competition Advocates

506.501 Requirement.

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PART 506 - COMPETITION REQUIREMENTS

Subpart 506.2 - Full and Open Competition After Exclusion of Sources

506.202 Establishing or maintaining alternative sources.

An HCA signs determinations and findings required by FAR6.202.

Subpart 506.3 - Other than Full and Open Competition

506.303 Justifications.

506.303-1 Requirements.

(a) *Proposing a class justification*. If you determine that the facts supporting other than full and open competition would be present in other GSA contracting activities, you should propose a class justification. Recommend through appropriate channels that the Senior Procurement Executive approve a class justification for all GSA contracting activities. This does not apply to justifications based on the authority of 41 U.S.C. 253(c)(7), which does not permit class justifications.

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

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

Subpart 506.5 - Competition Advocates

506.501 Requirement.

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

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PART 507 - ACQUISITION PLANNING

Sec.

Subpart 507.1 - Acquisition Plans

507.101 Definitions.
507.103 Agency-head responsibilities.
507.104 General procedures.
507.105 Contents of acquisition plans.
507.107 Additional requirements for acquisitions involving consolidation, bundling or substantial bundling.
507.107-1 General.
507.107-5 Notifications.

Subpart 507.5 - Inherently Governmental Functions

507.503 Policy.

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

507.7000 Scope of subpart.
507.7001 Policy.

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PART 507 - ACQUISITION PLANNING

Subpart 507.1 - Acquisition Plans

507.101 Definitions.

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

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

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

507.103 Agency-head responsibilities.

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

507.104 General procedures.

(a) The planner shall:

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

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

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

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

(5) Coordinate with the Small Business Technical Advisor (SBTA) as necessary to fulfill the requirements of FAR 7.104(d) (See 519.202-1).

(6) Coordinate with the GSA Chief Information Officer (CIO) if the action involves GSA information technology and ensure acquisition plans are approved by the GSA CIO. Guidance for identifying the applicable GSA CIO point of contact is located on the Acquisition Portal at https://insite.gsa.gov/itprocurement. For interagency acquisitions involving information technology, see subpart 517.5.

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

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

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

(10) Follow sustainability policies and procedures specified in part 523 throughout the procurement.

(b) The contracting officer shall:

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

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

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

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

(2) Oral plans.

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

507.105 Contents of acquisition plans.

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

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

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

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

(5) *Software*. If procuring software, specify the result of any software requirement alternatives analysis that has been completed in accordance with 511.002(d).

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

(c) *Approval thresholds*. (1) The following are the dollar value thresholds and the level of the approving official for approving acquisition plans or waiving written plans. For purposes of leasing, the Simplified Leasing Acquisition Threshold (SLAT) is defined in part 570. The HCA may authorize higher level approving officials for the thresholds set out below.

Below the SAT	Contracting Officer

(SLAT for leases)	
SAT (SLAT for leases) to,	One Level above the Contracting Officer
and including, $6 million	
Over $6 million to,	Contracting Director
and including, $20 million	
Over $20 million	HCA
Threshold	**Approving Official**

Note: Thresholds shall include all options.

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

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

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

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

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

(v) Any acquisition that involves–

(A) Consolidation above $2 million (FAR 7.107-2); or

(B) Bundling at any dollar value (FAR 7.107-3)

(3) Acquisitions requiring additional transactional data reporting elements to those listed in subparagraph (b)(2) of clauses 552.216-75 and 552.238-80 Alternate I–

(i) Must be coordinated with the applicable category manager, and obtain approval by the HCA and SPE; and

(ii) Must provide the information at 501.304(b)(4) in the rationale for adding transactional data reporting elements.

(iii) The approval requirements in this subparagraph do not apply to additional data elements added to a task/delivery order or blanket purchase agreement. However, coordination with the applicable category manager is required.

507.107 Additional requirements for acquisitions involving consolidation, bundling or substantial bundling.

507.107-1 General.

(a) *Applicability* (1) The contracting officer must determine if the requirement is considered consolidation, bundling or substantial bundling per the definitions in FAR 2.101(b) and 7.107-4. Additional guidance on the definitions is available on the GSA Acquisition Portal (*http://insite.gsa.gov/consolidationbundling*).

(2) Construction Indefinite-Delivery, Indefinite-Quantity (IDIQ) Contracts.

(i) When establishing an IDIQ contract for construction and the number of discrete sites is unknown, the contracting officer has the discretion to assess the construction requirements for consolidation at either the IDIQ or task order (TO) level. A consolidation analysis should not be performed at both levels.

(ii) Each acquisition plan and GSA Form 2689, as applicable, must address if a consolidation determination was or will be made at an IDIQ or TO level.

(b) *Thresholds for Written Determination*. Notwithstanding exceptions per FAR 7.107-1(b), a written determination is required for—

(1) Consolidation requirements above $2 million; and

(2) Bundling requirements at any dollar value.

(c) *Approvals for Written Determination*.

(1) The contracting officer shall obtain approvals as required by the Service prior to the Associate Administrator, Office of Small Business Utilization (AA OSBU) and the Senior Procurement Executive (SPE).

(2) The contracting officer shall coordinate with the GSA Office of Small Business Utilization (OSBU) for AA OSBU's approval prior to the SPE's approval.

(3) Review and approval guidance can be found on the GSA Acquisition Portal (http://insite.gsa.gov/consolidationbundling/approvals).

(d) *Contents of Written Determination for Consolidation*.

(1) The contracting officer must provide the following information, which includes the requirements at FAR 7.107-2:

(i) Brief description of the acquisition history.

(ii) Description of the market research conducted.

(iii) Identification of any alternative contracting approaches that involve a lesser degree of consolidation of contract requirements.

(iv) Identification of the contracting approach selected.

(v) Identification of any negative impacts to small business concerns.

(vi) Description of steps taken to include small business concerns in the acquisition strategy.

(vii) Explanation of the substantial benefits.

(viii) Statement that the consolidation and/or bundling is necessary and justified.

(2) Additional consolidation and bundling guidance is available on the GSA Acquisition Portal (*http://insite.gsa.gov/consolidationbundling*).

(e) Additional Contents of Written Determination for Bundling.

(1) The contracting officer must provide the information required by paragraph (e)(2) of this subsection in addition to paragraph (d) of this subsection when the requirement is considered bundling (see FAR 2.101). The additional information listed in this paragraph includes the requirements at FAR 7.107-3.

(2) The contracting officer must use market research to determine prices the Government could have been or could be charged by a small business for the work previously performed by other than small business(es) (see FAR 7.107-3(g)).

(f) *Additional Contents of Written Determination for Substantial Bundling*.

(1) The contracting officer must provide the following information in addition to paragraphs (d) and (e) of this subsection when the requirement is considered substantial bundling (see FAR 7.107-4).

(2) The contracting officer must provide the following information, which includes the requirements at FAR 7.107-4(b):

(i) Explain the rationale for not selecting each alternative contracting approach with a lesser degree of consolidation.

(ii) Identify the specific impediments to participation by small business concerns as contractors, including any relevant socioeconomic subcategories.

(iii) Explain any actions designed to maximize small business participation through teaming.

(iv) Explain any actions designed to maximize small business participation through subcontracting, including suppliers.

(g) *Substantial Benefits Reporting*.

(1) The contracting officer must monitor and measure actual savings throughout the acquisition life cycle, and report realized substantial benefits to the SPE.

(2) Realized substantial benefits shall be reported:

(i) Within 14 calendar days after award of the contract.

(ii) Within 30 calendar days after completion of the contract.

(iii) During contract performance as requested by the SPE on a case by case basis.

(3) Reporting guidance is available on the GSA Acquisition Portal (*http://insite.gsa.gov/consolidationbundling*).

507.107-5 Notifications.

(a) Notification to public of rationale for consolidated, bundled or substantially bundled requirement.

(1) A summary notification of a determination that a consolidated, bundled or substantially bundled requirement is necessary and justified will be published by the SPE on the GSA public website at *http://insite.gsa.gov/consolidationbundling* . The notice will be posted within 7 days of the SPE approved determination.

(2) Any solicitation related to the consolidation, bundled or substantially bundled requirement can only be published after the summary notice from subparagraph (a)(1) of this section has been published for at least 7 days.

(3) The contracting officer is encouraged to provide the summary notification from subparagraph (a)(1) of this section to the Governmentwide Point of Entry (GPE) before issuance of the solicitation.

(4) The contracting officer shall publish the SPE approved determination with the publication of the solicitation, redacted as necessary.

(5) For bundled or substantially bundled requirements, in addition to the requirements of this subsection, the contracting officer must verify compliance with the notification requirements of FAR 7.107-5(b).

(b) Notification to SBA of follow-on consolidated or bundled requirements.

(1) The contracting officer shall coordinate with the designated SBTA (see 519.4) to provide follow-on notification to the SBA PCR in accordance with FAR 7.107-5(c). The designated SBTA will provide notification to the AA OSBU.

(2) The SBTA will submit the notification to SBA PCR within 5 business days of receiving the notification from the contracting officer or request an extension from the contracting officer.

Subpart 507.5 - Inherently Governmental Functions

507.503 Policy.

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

(b) The requirements office must also review the examples of functions listed under paragraph (d) of FAR 7.503. While these functions are not inherently governmental, they may restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using the contractor services or work products. If the services to be acquired may cause such restrictions, the acquisition plan must discuss the associated vulnerabilities, and address management controls to mitigate them.

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

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

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

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

507.7000 Scope of subpart.

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

507.7001 Policy.

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

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

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

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PART 508 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

Subpart 508.4 - Federal Supply Schedules

508.404 Use of Federal Supply Schedules.

Subpart 508.6 - Acquisition from Federal Prison Industries, Inc.

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

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

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

Subpart 508.8 - Acquisition of Printing and Related Supplies

508.802 Policy.

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PART 508 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 508.4 - Federal Supply Schedules

508.404 Use of Federal Supply Schedules.
Although FAR 19 (except for the requirement at 19.202-1(e)(1)(iii)) does not apply to BPAs or orders placed against Federal Supply Schedule (FSS) contracts, they are not exempt from part 519.

Subpart 508.6 - Acquisition from Federal Prison Industries, Inc.

508.604 Ordering procedures.

508.604-70 Delinquent delivery orders.
(a) Establish delivery schedules based on the lead time required by Federal Prison Industries (FPI).
(b) You may use delinquent orders as the reason for requesting clearance to procure from other sources until FPI can make deliveries.

508.605 Clearances.
Cite FPI clearance numbers in solicitations and award documents.

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

508.705 Procedures.

508.705-4 Compliance with orders.
(a) Until all deliveries are made on a delinquent order, take one of the following actions:
(1) For an excusable delay, extend the contract delivery schedule without obtaining consideration.
(2) For an inexcusable delay, review and adjust contract prices following normal procedures.
(b) If the central non-profit agency (CNA) delays acting on a request for, or refuses to grant, a purchase exception, refer the matter to the contracting director for resolution.

508.705-70 Adding items to the Procurement List.
(a) If a CNA expresses interest in adding an item to the Procurement List, provide the CNA with both:
(1) The most recent solicitations issued for the commodity or service.
(2) The award price(s) for the commodity or service.
(b) The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), at the CNA's request may assign the supply or service to the CNA for development by a workshop.
(c) Before issuing a solicitation, ask the CNA about the status of any item in which the Committee has expressed interest.
(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity must consult with the Office of Small Business Utilization (E) before rejecting such a request.

508.705-71 Central non-profit agency performance capability.
(a) Include on the purchase document both the annual requirement and the estimated monthly requirement.
(b) With the permission of the Committee, you may verify the workshop's ability to satisfy the Government's estimated monthly requirement by requesting a preaward survey. If the CNA cannot satisfy the Government's requirement, you may request a purchase exception only for those quantities the CNA cannot provide in a timely manner.

508.706 Purchase exceptions.
Cite CNA purchase exception numbers in solicitations and award documents.

Subpart 508.8 - Acquisition of Printing and Related Supplies

508.802 Policy.

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

(a) Central printing authority.

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

PART 509 - CONTRACTOR QUALIFICATIONS

Sec.

Subpart 509.1 - Responsible Prospective Contractors

509.105 Procedures.
509.105-1 Obtaining information.
509.105-2 Determinations and documentation.

Subpart 509.3 - First Article Testing and Approval

509.302 General.
509.306 Solicitation requirements.

Subpart 509.4 - Debarment, Suspension, and Ineligibility

509.401 Applicability.
509.403 Definitions.
509.405 Effect of listing.
509.405-1 Continuation of current contracts.
509.405-2 Restrictions on subcontracting.
509.406 Debarment.
509.406-1 General.
509.406-3 Procedures.
509.407 Suspension.
509.407-1 General.
509.407-3 Procedures.

Subpart 509.5 - Organizational and Consultant Conflicts of Interest

509.503 Waiver.

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PART 509 - CONTRACTOR QUALIFICATIONS

Subpart 509.1 - Responsible Prospective Contractors

509.105 Procedures.

509.105-1 Obtaining information.

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

509.105-2 Determinations and documentation.

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

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

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

Subpart 509.3 - First Article Testing and Approval

509.302 General.

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

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

(2) Serve as the manufacturing standard.

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

509.306 Solicitation requirements.

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

Subpart 509.4 - Debarment, Suspension, and Ineligibility

509.401 Applicability.

This subpart applies to all the following:

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

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

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

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

509.403 Definitions.

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

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

509.405 Effect of listing.

509.405-1 Continuation of current contracts.

(a) When a contractor appears as a current exclusion in the System for Award Management (SAM), consider terminating a contract under any of the following circumstances:

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

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

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

(b) Before terminating a contract when a contractor appears as a current exclusion in the SAM, consider the following factors:

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

(2) Extent of contract performance.

(3) Potential costs of termination and reprocurement.

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

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

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

(c) The responsibilities of the agency head under FAR 9.405-1 are delegated to the Senior Procurement Executive.

509.405-2 Restrictions on subcontracting.

The responsibilities of the agency head under FAR 9.405-2(a) are delegated to the Senior Procurement Executive.

509.406 Debarment.

509.406-1 General.

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

509.406-3 Procedures.

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

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

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

(1) The recommendation and supporting rationale.

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

(3) A statement of facts.

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

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

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

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

(1) Initiate debarment action;

(2) Decline debarment action.;

(3) Request additional information; or

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

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

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

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

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

(2) A party proposed for debarment:

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

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

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

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

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

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

(ii) Grant extensions for good cause.

(iii) Provide notice of the scheduled hearing.

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

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

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

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

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

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

509.407 Suspension.

509.407-1 General.

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

509.407-3 Procedures.

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

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

(i) Based on an indictment.

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

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

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

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

Subpart 509.5 - Organizational and Consultant Conflicts of Interest

509.503 Waiver.

The Senior Procurement Executive is the designee under FAR 9.503.

PART 510 - MARKET RESEARCH

Sec.
510.002 Pre-Award Procedures

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PART 510 - MARKET RESEARCH

510.002 Pre-Award Procedures

(a) Market research must be conducted in accordance with 523.104(a)(1).

(b) Ensure statement of work includes sustainability requirements in accordance with 523.104(a)(2).

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PART 511 - DESCRIBING AGENCY NEEDS

Sec.
511.002 Policy.

Subpart 511.1 - Selecting and Developing Requirements Documents
511.102 Security of Information Technology Data
511.104 Use of brand name or equal purchase descriptions.
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PART 511 - DESCRIBING AGENCY NEEDS

511.002 Policy.

FAR 11.002(b) and GSA Order ADM 8000.1D, GSA Metric Program, establish policy for using the metric system in procurements. The GSA Construction Metrication Ombudsman, located in the PBS Office of Acquisition Management, can be found at http://www.gsa.gov/ombudsman.

Subpart 511.1 - Selecting and Developing Requirements Documents

511.102 Security of Information Technology Data

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

511.104 Use of brand name or equal purchase descriptions.

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

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

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

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

511.170 Information Technology Coordination and Standards.

(a) Standard Configurations. The contracting officer shall use standard configurations for GSA information technology procurements when feasible. A list of standard configurations for applicable information technology procurements can be found on the Acquisition Gateway Information Technology Hallway (login required) at https://hallways.cap.gsa.gov/app/#/gateway/information-technology.

(b) CIO Coordination. Requirements for GSA information technology must be coordinated with the GSA Chief Information Officer (CIO) in accordance with the Federal Information and Technology Acquisition Reform Act (FITARA) (Pub L. No. 113-291). Guidance for identifying the applicable GSA CIO point of contact is located on the Acquisition Portal at https://insite.gsa.gov/itprocurement. For interagency acquisitions involving information technology, see subpart 517.5.

(c) GSA IT Standards Profile. GSA information technology must also be approved for use pursuant to the GSA Order CIO 2160.1 GSA IT Standards Profile. More details about the formal GSA IT Standards Profile approval process can be found on the GSA IT Standards webpage at the following link: https://insite.gsa.gov/portal/content/500499.

(d) Internet Protocol Version 6 (IPv6).

(1) *Developing Requirements*.

(i) In accordance with FAR 11.002(g), contracting officers must include IPv6 requirements in all contracts and orders for information technology (IT) that will have the capability to access the Internet or any network utilizing Internet Protocol (IPv4 or IPv6).

(ii) Sample statement of work language to require IPv6 compliance can be found on the Acquisition Portal at https://insite.gsa.gov/itprocurement.

(iii) See 539.101 (d) for guidance on verifying contractor compliance with IPv6 requirements.

(2) *Waivers*

(i) The GSA Chief Information Officer (CIO) must approve any waiver from IPv6 requirements.

(ii) The waiver request must provide the following information–

(A) The product or service description;

(B) The purpose of the procurement;

(C) The requested duration of waiver; and

(D) Sufficient justification for why IPv6 should be waived.

(iii) A sample waiver request is located on the Acquisition Portal at https://insite.gsa.gov/itprocurement.

(iv) Waivers must be documented in the contract file.

(e) Software Code Development. An alternatives analysis must be completed to leverage existing Federal or commercial software prior to buying custom-developed software code. To comply with this process, software requirements must be developed using the following order of preference—

(1) Software that the Government already owns. For software that will be used by GSA, this requires review of the GSA IT Standards List within the GSA Enterprise Architecture Analytics & Reporting Database that can be accessed from the Acquisition Portal at https://insite.gsa.gov/itprocurement. The GSA IT Standards List shows software that has been approved for use within GSA by the Chief Technology Officer.

(2) Existing commercially-available software.

(3) Custom-developed software code in conjunction with existing Government or commercial software. See 511.170 (f) for requirements with procuring custom-developed code.

(4) Custom-developed software code only. See 511.170 (f) for requirements with procuring custom-developed code.

(f) Custom-Developed Software Code.

(1) Developing Requirements. Requirements for custom development of software code must include the establishment of enforceable rights sufficient to enable GSA to directly publish and publicly host all custom-developed code in accordance with GSA CIO IL-16-03, GSA Open Source Software Policy. To acquire open source software, the contracting officer must include the following–

(i) Any applicable FAR data rights clause; and

(ii) Sufficient data rights language in the statement of work. GSA Standard Open Source Code Statement of Work language can be found on the Acquisition Portal at https://insite.gsa.gov/itprocurement.

(2) *Waivers*.

(i) The GSA Chief Information Officer (CIO) must approve any waiver from the open source code requirements mandated in (1). If a waiver is approved, GSA must still acquire and enforce rights sufficient to enable GSA or Government-wide reuse of custom-developed code. FAR clause 52.227-17 - Rights in Data - Special Works may be used to acquire Government-wide reuse of custom-developed code.

(ii) The waiver request must provide the following information–

(A) The product or service description;

(B) The purpose of the procurement; and

(C) Sufficient justification for why open source code requirements should be waived.

(iii) A sample waiver form is located on the Acquisition Portal at https://insite.gsa.gov/itprocurement

(iv) Waivers must be documented in the contract file.

Subpart 511.2 - Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

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

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

(2) The contracting officer shall include the clause at 552.211-75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may

also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

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

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

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

(6) The contracting officer shall include the clause 552.211-87, Export Packing, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

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

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

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

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

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

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

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

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

Subpart 511.4 - Delivery or Performance Schedules

511.401 General.

(a) *Other than multiple award schedules*. Preferred practice is to state time of delivery in solicitations and contracts as "required" time of delivery or shipment, expressed in specific periods from receipt by the contractor of a notice of award or an order.

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

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

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

(1) Furniture is required to outfit quarters scheduled for occupancy on a specific date.
(2) Construction material is required to meet job progress schedules.
(3) Supplies are required at a port to meet scheduled ship departures.

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

(1) Require that portion by the early date and the balance later;
(2) Include the portion required early and the balance as separate items in the same solicitation; or
(3) Procure the two portions separately.

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

511.404 Contract clauses.

(a) *Supplies or services* (1) *Shelf-life items*. The contracting officer shall use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production:

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

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

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

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

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

(b) *Construction*. (1) The contracting officer shall insert the clause at 552.211-10, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated.

(2) The contracting officer shall insert the clause at 552.211-70, Substantial Completion in solicitations and contracts when a fixed-price construction contract is contemplated.

Subpart 511.5 - Liquidated Damages

511.504 Contract clauses.

(a) The contracting officer shall insert the clause at 552.211-12, Liquidated Damages-Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) The contracting officer shall insert the clause at 552.211-13, Time Extensions, in solicitations and contracts for construction that use the clause at 552.211-12, Liquidated Damages-Construction.

Subpart 511.6 - Priorities and Allocations

510.600 Scope of subpart.

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

511.601 [Reserved]

510.602 General.

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

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

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

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

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

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

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

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

511.603 Procedures.

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

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

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

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

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

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

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

PART 512 - ACQUISITION OF COMMERCIAL ITEMS

Sec.

Subpart 512.2 - Special Requirements for the Acquisition of Commercial Items

512.201 General.
512.203 Procedures for solicitation, evaluation, and award.
512.212 Computer software.
512.216 Unenforceability of unauthorized obligations.

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

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

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PART 512 - ACQUISITION OF COMMERCIAL ITEMS

Subpart 512.2 - Special Requirements for the Acquisition of Commercial Items

512.201 General.

See subpart 504.70 for guidance on identifying and mitigating supply chain risks.

512.203 Procedures for solicitation, evaluation, and award.

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

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

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

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

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

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

(4) Construction contracts in excess of $2,000 must include an applicable Construction Wage Rate Requirements statute wage determination found at http://www.wdol.gov. If the construction contract is greater than $30,000, then the SF 1442 should be used in lieu of the SF 1449 and the bonds or alternate payment protection provisions of FAR 28.102-1, 28.102-2 and 28.102-3 apply.

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

(d) *Acquisitions with Commercial Supplier Agreements*. For acquisitions with commercial supplier agreements, the deviated commercial items clause 552.212-4 as prescribed in 512.301 addresses common commercial terms that conflict with Federal law and makes the terms unenforceable against the Government. The contracting officer is responsible for:

(1) Identifying objectionable terms not covered by the deviated clause;

(2) Negotiating terms as necessary to meet the Government's needs; and

(3) Documenting the full commercial supplier agreement, including referenced terms, as addenda to the contract (see 504.803(b)(23)).

512.212 Computer software.

Common commercial supplier agreement terms that conflict with Federal law have been addressed in paragraphs (u) and (w) of the clause at 552.212-4.

512.216 Unenforceability of unauthorized obligations.

GSA has a deviation to FAR 12.216 for this section. For commercial contracts, supplier license agreements are referred to as commercial supplier agreements (defined in 502.101). Paragraph (u) of clause 552.212-4 prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341) for supplies or services acquired subject to a commercial supplier agreement.

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

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

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

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

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

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

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

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

(2) Consistent with customary commercial practice.

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

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

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

(e) GSA has a deviation to revise certain paragraphs of FAR clause 52.212-4. Use clause 552.212-4 Contract Terms and Conditions - Commercial Items (FAR DEVIATION), for acquisitions of commercial items in lieu of FAR 52.212-4 or 52.212-4 Alternate I. The contracting officer may tailor this clause in accordance with FAR 12.302 and GSAM 512.302.

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

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

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

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

(b) Paragraph (w) of 552.212-4, Contract Terms and Conditions - Commercial Items (FAR DEVIATION), implements statutory requirements, clarifies the application of statutory requirements to common terms and conditions in commercial supplier agreements, sets forth a list of such terms and conditions that do not meet the Government's needs, and shall not be tailored.

SUBCHAPTER C - CONTRACTING METHODS AND CONTRACTTYPES

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PART 513 - SIMPLIFIED ACQUISITION PROCEDURES

Sec.

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PART 513 - SIMPLIFIED ACQUISITION PROCEDURES

Subpart 513.1 - Procedures

513.101 General.

See subpart 504.70 for guidance on identifying and mitigating supply chain risks.

513.106 [Reserved]

513.106-1 Soliciting competition.

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

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

(1) Inviting prospective offerors to visit the site.

(2) Informing them orally of the exact requirements.

(3) Requesting them to prepare quotations.

513.106-3 Award and documentation.

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

Subpart 513.2 - Actions At or Below the Micro-Purchase Threshold

513.202 Unenforceability of unauthorized obligations in micro-purchases.

Clause 552.232-39, Unenforceability of Unauthorized Obligations (FAR DEVIATION), will automatically apply to any micro-purchase in lieu of FAR 52.232-39 for supplies and services acquired subject to a commercial supplier agreement (as defined in 502.101).

Subpart 513.3 - Simplified Acquisition Methods

513.301 Governmentwide commercial purchase card.

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

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

513.302 Purchase orders.

513.302-5 Clauses.

Where the supplies or services are offered under a commercial supplier agreement (as defined in 502.101), the purchase order or modification shall incorporate clause 552.232-39, Unenforceability of Unauthorized Obligations (FAR DEVIATION), in lieu of FAR 52.232-39, and clause 552.232-78, Commercial Supplier Agreements-Unenforceable Clauses.

513.302-70 Purchase order and related forms.

(a) GSA Form 300, Order for Supplies and Services, is a multipurpose form used for purchases of supplies or services, orders under existing contracts or agreements, and orders from required sources of supplies and services. All clauses, terms and conditions applicable to the type of order, which are not included in the underlying contract, shall be incorporated in

the order. Clauses can be incorporated by reference or in full text. See GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1), for forms required for purchase card actions.

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

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

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

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

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

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

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

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

513.303 Blanket purchase agreements (BPAs).

513.303-3 Preparation of BPAs.

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

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

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

(d) *Processing invoices*. The designated billing office must time-stamp invoices to indicate the date of receipt. The ordering office must forward an invoice to the appropriate Finance Division within 5workdays of its receipt or acceptance of the supplies or services. An exception applies if the BPA provides for the accumulation of invoices for a specified period. If this exception applies, the ordering office must forward the accumulated invoices within 5workdays after the specified period for accumulation. Mark all invoices to indicate that purchases were made under a BPA.

513.307 [Reserved]

513.370 Certified invoice procedure.

513.370-1 Applicability.

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

513.370-2 Limitations.

(a) Purchases are subject to FAR Part13 and part 513 and these limitations:

(1) The amount of any one purchase must not exceed the micro-purchase threshold.

(2) Neither the supplier nor the Government require a purchase order.

(3) The individual making the purchase does not have a Governmentwide commercial purchase card or the card is not accepted by the supplier.

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

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

(1) Verify price reasonableness using the conditions contained in FAR 13.202(a).

(2) Certify that the quality and quantity of items/services furnished comply with the verbal agreement made with the supplier.

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

513.370-3 Invoices.

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

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

(1) Time-stamp the invoice to indicate the date the invoice is received.

(2) Verify the accuracy of the invoiced amount.

(3) Verify that the supplies or services have been received and accepted. Whenever possible, require that inspection and acceptance or rejection occur within 7 calendar days of delivery or completion.

(c) Before certifying the invoice and forwarding it to the appropriate office, the contracting officer or a designated representative must obtain a certification of receipt and acceptance from the individual who actually inspected and accepted the supplies or services.

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

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

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

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

Signature of Contracting/Ordering Officer

Print name and telephone no. Date invoice received

Subpart 513.4 - Fast Payment Procedure

513.401 General.

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

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PART 514 - SEALED BIDDING

Sec.

Subpart 514.2 - Solicitation of Bids

514.201 Preparation of invitations for bids.
514.201-1 Uniform contract format.
514.201-2 Part I—The Schedule.
514.201-6 Solicitation provisions.
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514.202 General rules for solicitation of bids.
514.202-4 Bid samples.
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514.270 Aggregate awards.
514.270-1 Definition.
514.270-2 Justification for use.
514.270-3 Evaluation factors for award.
514.270-4 Grouping line items for aggregate award.
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514.270-6 Guidelines for using the weight factors method.
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Subpart 514.3 - Submission of Bids

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

Subpart 514.4 - Opening of Bids and Award of Contract

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

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PART 514 - SEALED BIDDING

Subpart 514.2 - Solicitation of Bids

514.201 Preparation of invitations for bids.

514.201-1 Uniform contract format.

Include the following notice in each solicitation:

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

514.201-2 Part I—The Schedule.

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

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

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

514.201-6 Solicitation provisions.

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

514.201-7 [Reserved]

514.201-70 GSA Form 1602.

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

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

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

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

(d) Include other special notices, as appropriate.

514.202 General rules for solicitation of bids.

514.202-4 Bid samples.

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

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

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

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

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

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

514.202-5 Descriptive literature.

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

514.211 Release of acquisition information.

Before award, the contracting officer and all other members of the acquisition team must limit access to information concerning the Government cost estimate to Government personnel whose official duties require knowledge of the estimate and to *non-Government* personnel with a need to know and who have signed a non-disclosure agreement (contracting officers may tailor the non-disclosure agreement at Figure 515.3-1 for these purposes). After award, the contracting officer may reveal the total amount of the Government estimate upon request. The contracting officer is not authorized to release the basis for calculating the estimate at any time.

514.270 Aggregate awards.

514.270-1 Definition.

"Aggregate award" means an arrangement whereby two or more separately priced line items are combined for award to that bidder whose bid will result in the lowest overall cost to the Government for the line items as a group. The individual price for each item does not have to be the lowest bid received. (See also the definition of a "line item" in FAR 3.302.)

514.270-2 Justification for use.

(a) GSA usually solicits prices and reserves the right to make award for individual line items. In some cases it serves GSA's best interest to combine two or more line items for an aggregate award. Such cases include when:

(1) Users desire uniformity of design, style, and finish, (*e.g.*,suites of household furniture).

(2) The articles will be assembled and used as a unit, and different manufacturers' components may not be interchangeable.

(3) Users have high demand for certain articles, but demand for related articles is insufficient to attract competitive bids (*e.g.*,various sizes of socket wrenches).

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

(5) One location (delivery point) has a large requirement, and another location has a requirement too small to individually attract competitive bids.

(6) Awarding and administering numerous small contracts for similar articles or services is impractical.

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

(1) The capability of bidders to furnish the types and quantities of supplies or services in the aggregate.

(2) How grouping delivery points will affect bidders.

(3) Which combinations will accurately project the lowest overall cost to the Government.

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

514.270-3 Evaluation factors for award.

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

514.270-4 Grouping line items for aggregate award.

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

(b) Effect on competition. Provide for full and open competition when grouping items for award. Grouping items for award may preclude a significant number of firms from bidding. This occurs if firms are unable to provide all the types or quantities of supplies or services, or make deliveries to the various delivery points included in the prospective aggregate group.

(c) Grouping different articles. Include only related articles in an aggregate group. Related articles are those normally manufactured or produced by a majority of prospective bidders. Grouping unrelated articles often restricts competition unnecessarily.

(d) Grouping geographic locations or delivery points. Consider the following guidelines before deciding to group different geographic locations or delivery points:

(1) A delivery point may have sufficient requirements so that individual shipments involve economic production runs and carload or truckload quantities. In this case, list it as a separate line item.

(2) The types of bidders (i.e.,small or large firms, manufacturers or distributors, etc.) who responded to previous solicitations can provide important information. For example, if previous bidders are distributors with franchises in certain territories, grouping different territories could tend to restrict competition.

(3) Transportation costs can affect competition and pricing. They may constitute a significant portion of the total delivered cost. Obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce competition or result in higher prices. It can cause the loss of "area pricing" advantages provided by a supplier with a single production point.

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

(iii) Tariff boundaries can also affect how manufacturers price deliveries to different areas.

514.270-5 Evaluation methodologies for aggregate awards.

(a) *Definite quantity contracts without options*. For definite quantity contracts without options, the evaluated bid price is the total bid price, as adjusted for any price-related factors identified in the solicitation. This reflects the actual cost to the Government and will identify the most advantageous bid.

(b) *Indefinite quantity contracts, requirements contracts, and options*. Indefinite quantity and requirements contracts use estimated quantities. Options involve the probability of whether and when the options will be exercised. These situations may result in unbalanced bids (see FAR 15.404-1(g)), leading to inaccurate evaluation of the projected cost and award to other than the most advantageous bid. To avoid unbalanced bids, GSA has two preferred methods for evaluating bids for aggregate awards: weight factors and price list.

(1) *Weight factors method*. Assign a weight to each item in a group. The weight is based on the portion of quantities that item represents. To evaluate bids, multiply each unit price by its weight factor, then total the results.

(2) *Price list method*. Establish prices for bidders to use as a base for preparing their bids. Prepare a list that identifies a base price for each item in a group. Bidders bid a percentage factor to add to or subtract from the base price.

514.270-6 Guidelines for using the weight factors method.

(a) Use the weight factors method when there are reliable estimates for the quantities needed in an acquisition. Reliable estimates of quantities form the foundation for:

(1) Accurate evaluation of the projected cost of each bid.

(2) An appropriate determination of which bid is most advantageous to the Government for the aggregate group.

(b) Assign a weight factor to each item in a group. Develop the weight factor by calculating the portion of the total quantity in a defined group that each item represents.

(c) To evaluate bid prices, first multiply the price bid for each item (unit price X quantity) by its weight factor. Then, add the subtotals together to project the cost for the aggregate group.

(d) Estimated quantities may be reduced to smaller numbers by a common denominator. This may help facilitate the computations involved in evaluating bids.

(e) Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder with the lowest evaluated overall cost to the Government for the aggregate group. This represents the most advantageous bid.

514.270-7 Guidelines for using the price list method.

(a) *General*. The price list method helps avoid unbalanced bidding when making aggregate awards, but lack accurate estimates of anticipated quantities. This method establishes base prices for bidders to use in preparing their bids.

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

(1) Include the price list.

(2) Include an estimate of requirements.

(3) Require the bidder to express its price as "net" or as a percentage added to or subtracted from the list prices for each group. Require the bidder to quote only one percentage factor for each group. This means that the bidder provides one percentage factor that applies to every item in a group; not a separate percentage for each item. "Net" indicates the bidder chooses to submit the list prices as its bid.

(4) Identify the percentage factor in (3) above as a price-related evaluation factor.

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

(1) Industry published prices.

(2) Industry surveys.

(3) Government cost estimates based on knowledge of the supplies or services and previous contract prices.

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

(e) *Balanced prices*. Ensure that the list prices for the grouped items bear a reasonable and balanced relationship to one another. Prices may be used from previous awards made using the weight factors method to develop price lists. Review those prices first to ensure they did not result from unbalanced bidding.

(f) *Evaluation and award*. Consider all price-related factors identified in the solicitation. Award to the responsive and responsible bidder whose percentage factor produces the most favorable price to the Government. This represents the most advantageous bid.

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

(h) *Special considerations for contracts for store stock items*. Show estimated quantities only if estimates of demand for each item within a group can be derived from Government records or verified contractor sales reports. Use only current estimates. If the Government's needs cannot be estimated, the solicitation may include past orders. (See CG Decision, B-209037, 82-2 CPD para 323 (1982).)

(i) *Special considerations for repair and alteration contracts*. In the solicitation:

(1) List the estimated quantities for work to be performed during both normal working hours and outside of normal working hours.

(2) State the percent of work anticipated to be performed during normal working hours.

(3) List the unit prices for work to be performed during both normal working hours and outside of normal working hours.

(4) Define "normal" in terms of hours and days of the week.

(5) Advise bidders of the previous year's total expenditures or portions of that total attributable to the listed items.

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

(7) Solicit two percentage factors for the line item unit prices listed: one for the unit prices for work performed during normal working hours and the second for the unit prices for work performed outside of normal working hours.

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

(9) For the evaluated bid price, add together (i) and (ii):

(i) The percentage of work performed during normal work hours multiplied by the total estimate adjusted by the bidder's percentage factor for that portion of the work, plus

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

(10) Consider other price-related factors identified in the solicitation. Make award to the responsible and responsive bidder submitting the lowest overall evaluated bid price for the aggregate group. This represents the most advantageous bid.

Drills, Twist, High Speed, under Federal Specification (no. and date)_ and Amendment (no. and date), Wiregauge sizes, straight shank, short length, Type C					
ItemNo.	**National Stock Number**	**Drill Size**	**Est. Quantity**	**Unit**	**List Price**
Group1 (Items 1 through 5)					
1	5133-00-189-9246	1	2,800	Pkg	$11.16
2	5133-00-189-9247	2	2,400	Pkg	$11.16
3	5133-00-189-9248	3	2,800	Pkg	$10.44
4	5133-00-189-9249	4	1,600	Pkg	$10.80
5	5133-00-189-9250	5	2,000	Pkg	$10.80
The bid on each item above is the list price shown minus/plus percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)					

Subpart 514.3 - Submission of Bids

514.302 Bid Submission.

GSA contracting officers shall not consider telegraphic bids communicated by telephone.

514.303 Modification or withdrawal of bids.

(a) A telegraphic modification or withdrawal of a bid by telephone under the circumstances in FAR 14.303(a) shall not be considered.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person should read:

I am a bona fide agent for or representative of _____ (*Bidder's name and address*). I am authorized to withdraw the bid on IFB No. _____scheduled for opening on_____, and acknowledge receipt of the unopened bid.

_____

Name and telephone no.

_____

Date

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

Upon receiving a late bid, the bid custodian records it on the duplicate copy of the list of bidders. The bid custodian then immediately notifies the responsible contracting officer of the bid. The contracting officer must arrange for pick-up or delivery of the bid.

514.370 Copies of bids required.

Require each bidder to submit an original and at least one copy of its bid. This requirement does not apply to bids transmitted and received through an electronic commerce method authorized by the solicitation.

Subpart 514.4 - Opening of Bids and Award of Contract

514.401 Receipt and safeguarding of bids.

(a) The specific location for receipt and safeguarding of bids and modifications shall be identified in the solicitation. Handle bids as follows:

(1) Authorized personnel mark the envelope (or other covering) of each package identified as a bid or modification with a time-stamp or the place, date, and time of receipt. They then deliver the bid by special handling to the bid custodian.

(2) Deposit hand-carried bids into the designated locked bid box, safe, or secured, restricted-access electronic bid box. At least once daily and immediately preceding the time scheduled for bid opening, the bid custodian removes and time stamps the bids. If a bidder hands a bid to the bid custodian or other GSA employee, the custodian or employee time stamps the bid immediately.

(3) When the solicitation authorizes telegraphic or facsimile bids and modifications, the bid custodian seals each in an envelope immediately upon receipt. The custodian labels the envelope with appropriate identification.

(4) For each invitation, the bid custodian prepares a bidders' list using GSA Form 1378, Record of, and Receipt for, Bids and Responses, or the appropriate bid abstract form. The list includes the name and address of all responses, including any bid modifications, received before bid opening time. The list also indicates withdrawn bids.

(5) The bid custodian records each bid and modification delivered before bid opening on the bidders' list on the day of receipt. The custodian stores bids and modifications in a suitable secured cabinet.

(b) At the scheduled bid opening time, the bid custodian delivers all bids received in response to the invitation, with the original and one copy of the bidders' list, to the bid opening official or designee. The bid opening official or designee acknowledges receipt of the bids by signing the copy of the form and returning it to the bid custodian. The original list becomes part of the contract file.

(c) When a regional Small Business Utilization Center (SBUC) is designated to receive bids, the regional SBUC Director may designate an individual(s) working at a Field Office as a bid custodian, provided all the following conditions are met:

(1) The Field Office has adequate space and facilities.

(2) The individual(s) designated as a bid custodian has been trained.

(3) The Field Office has a Small Business Technical Advisor.

(4) The bid custodian(s) must submit monthly reports to the regional SBUC Director. The regional SBUC Director forwards these reports to the Office of Small Business Utilization (E).

514.402 Opening of bids.

514.402-1 Unclassified bids.

(a) *Location of bid openings*. Public bid openings take place in the regional SBUC if the bid custodian is in the regional SBUC. If the bid opening occurs elsewhere, inform the regional SBUC. Give the regional SBUC the invitation number and the location of the bid opening.

(b) *Bid opening officer*. (1) The contracting officer may appoint a qualified employee of the contracting office as assistant bid opening officer as provided in FAR 14.402-1(b).

(2) The distance between the regional SBUC and the contracting office may make it impracticable for the contracting officer to conduct bid opening. In this case, the contracting officer may request the HCA and the Associate Administrator for Small Business Utilization (E) in Central Office, or the SBUC Director in the Region, to authorize a qualified regional SBUC employee to open, read, and record bids.

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

514.402-70 Preferred practices for conducting bid openings.

(a) To ensure that bid opening occurs at the exact time specified, verify the accuracy of the timepiece to be used.

(b) For the information of bidders present, provide an audible announcement approximately one minute prior to bid opening.

(c) Announce audibly when the exact time of opening arrives. In the announcement, identify the invitation(s) scheduled for opening.

(d) For construction contracts that provide for bid alternates, announce the amount of funds available for the award before opening bids.

(e) Open the bids in full view of the parties present.

(f) When practicable and feasible, announce the following information from each bid: the bidder's name, item and unit price bid, and other pertinent information, such as delivery and discount terms.

(g) For bids submitted in multiple copies, one copy remains in the bid opening room for public examination until the bid abstract is substituted. The contracting activity uses the original. For bids submitted in original only, see FAR 14.402-1(c). The contracting activity retains all supplemental financial forms or other information submitted with a bid. Do not provide supplemental information for public examination.

(h) Forward any negotiable instruments submitted as bid guarantees to the appropriate Finance Office following procedures established by the Chief Financial Officer. After award, cancellation of the solicitation, or rejection of all bids, direct the appropriate Finance Office to refund the amount of the bid guarantee to unsuccessful bidders. The contracting officer may authorize return of a bid guarantee before award when requested by a bidder who is not in contention for the award. Retain other forms of bid guarantees (*e.g.*, bid bonds, letters of credit, corporate and individual sureties, etc.) in the contract file.

(i) Prepare a record of the opening for the contract file. Include the names of persons attending the bid opening and the firms or organizations they represent.

(j) Verify the entries on all copies of a bid. Resolve any suspected mistake(s) following the procedures in FAR 14.407.

(k) Retain the envelopes in which bids and bid modifications are received until all awards are made. After award, retain those with notations concerning abnormal receipt or opening for identification in the solicitation file. The contracting officer may destroy the remainder.

514.403 Recording of bids.

(a) As soon as practicable, make a copy of the abstract of bids and any amendments available for public examination at the location of the bid opening. Make the abstract available for public examination for at least 30 calendar days. Include late bids determined eligible for consideration on the bid abstract or, if necessary, in an amendment.

(b) In abstracts for aggregate awards, record: unit prices, weight factors, totals for each aggregate group, and any other information required for bid evaluation.

(c) For building services, contracting activities in PBS may use GSA Form 3471, Abstract of Offers, instead of the Standard Form 1409, Abstract of Offers.

514.404 Rejection of bids.

514.404-1 Cancellation of invitations after opening.

The HCA, or designee, makes any determinations required by FAR 14.404-1.

514.404-2 Rejection of individual bids.

(a) The contracting officer may use the "Remarks" Item on GSA Form 1535, Recommendation for Award(s), or other appropriate documentation to record findings with respect to rejected bids.

(b) Document any bid rejected for nonresponsiveness, nonresponsibility, ineligibility, or because the bid after evaluation is no longer low. Examples of bids which may no longer be low after evaluation include aggregate bids, "all or none" bids, bids evaluated for freight costs, and bids evaluated using Buy American differentials.

(c) For sensitive or controversial bid rejections, include all supporting documentation to justify awards. This includes copies of the bid to be rejected and the proposed awardee, statements from or records of conversations with the requisitioning activity, plant facilities and financial responsibility reports, and other relevant correspondence or reports (Certificates of Competency, copies of Congressional correspondence or other high level interest, etc.).

514.407 Mistakes in bids.

514.407-3 Other mistakes disclosed before award.

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

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

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

514.407-4 Mistakes after award.

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

514.408 Award.

514.408-6 Equal low bids.

To determine the status of bidders in a tie-bid situation, use the bidders' status as of the date the bids were signed.

514.408-70 Forms for recommending award(s).

Contracting activities may use GSA Form l535, Recommendation for Award(s), and GSA Form 1535-A, Recommendation for Award(s), Continuation Sheet, to document proposed awards. One or more awards may be set forth on each form. Contracting activities have the discretion to use other means of documentation that meet their needs for information to support an award recommendation.

PART 515 - CONTRACTING BY NEGOTIATION

Sec.

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PART 515 - CONTRACTING BY NEGOTIATION

Subpart 515.2 - Solicitation and Receipt of Proposals and Information

515.201 Exchanges with industry before receipt of proposals.

(a) The contracting officer must communicate and collaborate with industry prior to receipt of proposal to the maximum extent practicable. Vendor engagement is key in providing sound solutions in support of the GSA mission and the missions of the customers served by GSA while promoting opportunities for small business. Communication and collaboration tools can be found in the Vendor Communication Plan (http://www.gsa.gov/portal/content/105199).

(b) The contracting officer should partner with representatives of the Office of Small Business Utilization (OSBU) to structure opportunities for communicating and collaborating with industry.

515.204 Contract format.

(a) The uniform contract format is not required for leases of real property (See GSAM 570.116).

(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e).

515.208 Submission, modification, revision, and withdrawal of proposals.

515.208-70 Restrictions on disclosure or use of data.

If the contracting officer receives a proposal with more restrictive conditions than those in the provision at FAR 52.215-1(e), then the contracting officer should ask whether the offeror is willing to accept the conditions of the paragraph at FAR 52.215-1(e). If the offeror refuses, then the contracting officer must consult with legal counsel before deciding whether to accept the proposal as marked or return it. See also FAR 3.104-4(d) and FAR 27.404-5.]

515.209 Solicitation provisions and contract clauses.

515.209-70 Examination of records by GSA clause.

Clause for other than multiple award schedules

(a) *Examination of records by GSA clause for other than multiple award schedule (MAS) contracts*. Insert the clause at 552.215-70, Examination of Records by GSA, in all solicitations and contracts above the simplified acquisition threshold, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

Involve the use or disposition of Government-furnished property.

Provide for advance payments, progress payments based on cost, or guaranteed loan.

Contain a price warranty or price reduction clause.

Involve income to the Government where income is based on operations under the control of the contractor.

Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

Are requirements, indefinite-quantity, or letter type contracts as defined in FAR Part 16.

Are subject to adjustment based on a negotiated cost escalation base.

Contain the provision at FAR 52.223-4, Recovered Material Certification.

The contracting officer may modify the clause at 552.215-70 to define the specific area of audit (*e.g.*, the use or disposition of Government-furnished property). Office of General Counsel or the Office of Regional Counsel and the Assistant Inspector General for Auditing or Regional Inspector General for Auditing, as appropriate, must concur in any modifications to the clause.

(b) Insert the clause at 552.215-73, Notice, in all solicitations for negotiated procurements above the simplified acquisition threshold in accordance with FAR part 15.

515.210 Forms.

515.210-70 GSA Form 1602.

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

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

(2) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer.

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

(4) Include other special notices as appropriate.

(b) If GSA Form 1602 is not used, the contracting officer shall place notices and mandated paragraphs in Section L of the solicitation.

Subpart 515.3 - Source Selection

515.303 Responsibilities.

The Head of the Contracting Activity (HCA) is the agency head designee that appoints someone other than the contracting officer as the source selection authority (see FAR 15.303(a)).

515.305 Proposal Evaluation.

(a) *Price Analysis.* See subpart 538.2 Establishing and Administering Federal Supply Schedules, for additional procedures when establishing Federal Supply Schedules.

(b) *Past performance evaluation.*

515.305-70 Use of nongovernment evaluators.

(a) *Conditions.* To use nongovernment evaluators, contracting officers must meet the restrictions in FAR 7.503, FAR 37.203 and GSAR 537.2. See also FAR subpart 3.11 and Office of Federal Procurement Policy Letter 11-1, Performance of Inherently Governmental and Critical Functions (http://www.whitehouse.gov/omb/procurement_index_policy/).

(b) *Limitations on disclosing proposal information*. The contracting officer may disclose proposal information outside the Government before the Government's decision as to contract award only to the extent authorized in this section. Disclosure and handling must comply with FAR 3.1 and GSAM 503.104-4.

(c) *Relationship to the Freedom of Information Act*. Release of a proposal outside the Government for evaluation does not constitute the release of information under the Freedom of Information Act (5 U.S.C. 552).

515.305-71 Actions before releasing proposals.

Before releasing any proposal to an evaluator, the contracting officer must take all of the following actions:

(a) Obtain the signed, original "Conflict of Interest Acknowledgment and Nondisclosure Agreement" from each Government and nongovernment individual serving as an evaluator. Use the Acknowledgment/Agreement in Figure 515.3-1. Conflict of Interest Acknowledgment and Nondisclosure Agreement.

(1) For employees of other Executive agencies, replace the reference in paragraph (c) of the Acknowledgment/Agreement to GSA's supplemental standards with a reference to the applicable agency.

(2) For nongovernment evaluators, substitute paragraph (c) of the Acknowledgment/Agreement with the language below and delete paragraph (h):

"(c) I have read and understand the requirements of 41 U.S.C. 2102."

(b) Attach to each proposal a cover page bearing the following notice:

Government Notice for Handling Proposals

To anyone receiving this proposal or proposal abstract–

(1) his proposal must be used and disclosed for evaluation purposes only.

(2) A copy of this Government notice must be applied to any reproduction or abstract of this proposal.

(3) This proposal must not be disclosed to any person outside the Government, unless it is only for evaluation purposes to the extent authorized by, and in accordance with, the procedures in 48 CFR 515.305-70.

FIGURE 515.3-1. CONFLICT OF INTEREST ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT

For proposals submitted in response to GSA solicitation no. _____, I agree to the following:

(a) To the best of my knowledge and belief, no conflict of interest exists that may either–

(1) Diminish my capacity to impartially review the proposals submitted; or

(2) Result in a biased opinion or unfair advantage.

(b) In making the above statement, I have considered all the following factors that might place me in a position of conflict, real or apparent, with the evaluation proceedings:

(1) All my stocks, bonds, other outstanding financial interests or commitments.

(2) All my employment arrangements (past, present, and under consideration).

(3) As far as I know, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household.

(c) I have read and understand the requirements of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and Supplemental Standards of Ethical Conduct for Employees of the General Services Administration (5 CFR 6701).

(d) I have a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the contracting officer. I will cease performing duties related to evaluating proposals until I receive instructions on the matter.

(e) I will use proposal information for evaluation purposes only. I understand that any authorized restriction on disclosure placed on the proposal by the prospective contractor, prospective subcontractor, or the Government applies to any reproduction or abstracted information of the proposal.

(f) I will use my best efforts to safeguard proposal information physically. I will not disclose the contents of, nor release any information about, the proposals to anyone other than–

(1) The Source Selection Evaluation Board or other panel assembled to evaluate proposals submitted in response to the solicitation identified above; and

(2) Other individuals designated by the contracting officer.

(g) After completing evaluation, I will return to the Government all copies of the proposals and any abstracts.

(h) GSA Appropriations Act restriction. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Codes, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq*.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.

_____

(Enter name of evaluator and organization)

_____

Date

515.306 Exchanges with offerors after receipt of proposals.

Limit access to Government cost estimates to Government personnel whose official duties require knowledge of the estimate. During negotiations, the contracting officer may disclose part or all of the Government estimate under FAR 15.306(e) when necessary to arrive at a fair and reasonable price. After award, the contracting officer may reveal the total amount of the independent Government estimate.

Subpart 515.4 - Contract Pricing

515.403 Obtaining certified cost or pricing data.

515.403-4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

To determine if a contract action meets the threshold at FAR 15.403-4 for requesting certified cost and pricing data, the contracting officer shall consider the value of the action plus any priced options. Exercise of a priced option is not a price adjustment and does not require submission of certified cost and pricing data.

515.404 [Reserved]

515.404-2 Information to support proposal analysis.

(a) "Field pricing assistance" is provided by the Assistant Inspector General for Auditing, or the Regional Inspector General for Auditing, as appropriate.

(b) Follow the procedures in GSA Order, Audit resolution and follow-up system, Ch. 3 (ADM P 2030.2C) for handling contract audit reports.

515.404-4 Profit.

515.404-70 Profit Analysis.

(a) *Structured approach for determining profit or fee objectives*. The contracting officer shall base the analysis of profit factors on information available to the Government before negotiations. The contracting officer may obtain such information from proposals, audit data, performance reports, preaward surveys and the like. The structured approach helps establish a profit objective. It also provides a basis for documenting the objective, including an explanation of any significant departure from this objective in reaching a final agreement. The contracting officer shall prepare documentation commensurate with the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach*.

(1) The following types of procurements are exempt from the structured approach:

(i) Management contracts for operation and/or maintenance of Government facilities.

(ii) Contracts primarily requiring delivery of material supplied by subcontractors.

(iii) Termination settlements.

(iv) Cost-plus-award-fee contracts.

(v) Contracts and contract modifications below the simplified acquisition threshold.

(vi) Architect-engineer and construction contracts.

(2) The contracting officer may request exemptions for other contracts having unusual pricing situations where the contracting officer determines that the structured approach is unsuitable. The contracting officer shall document the justification in writing. The HCA must approve all such exemptions.

(c) *Other methods for exempted procurements*. Under exempted procurements, the contracting officer shall use other methods for establishing profit objectives. In general, the contracting officer shall use methods supported in a manner similar to the structured approach (profit factor breakdown and documentation of profit objective). Exclude factors within the structured approach that do not apply to the procurement.

(d) *Profit-analysis factors*. The contracting officer shall consider the following factors when negotiating profit. Use the weight ranges listed after each factor when using the structured approach.

	Profit Factors	**Weight Ranges in Percent**
Contractor Effort	Material acquisition	1 to 4
	Conversion direct labor	4 to 12

	Profit Factors	**Weight Ranges in Percent**
	Conversion related indirect cost: Other costs General management	1 to 3 2 to 5
Other Factors	Contract cost risk	0 to 7
	Capital investments	-2 to +2
	Federal socioeconomic programs	-.5 to +.5
	Cost-control and other past accomplishments	-2 to +2
	Independent development and additional factors	-2 to +2

(e) GSA Form 1766. The contracting officer may use GSA Form 1766, Structured Approach Profit/Fee Objective, to help compute the profit objective. Measure the Contractor Effort by assigning a profit percentage within the designated weight ranges to each element of cost recognized.

(f) *Facilities capital cost of money*. If the contracting officer allows facilities capital cost of money as an item of cost, either as a part of the price/cost objective in a firm fixed price type contract or as an allowable cost in a flexibly priced type contract, *e.g.*,cost reimbursement or fixed price incentive type contract, reduce the profit/fee objective as follows. After a dollar profit/fee amount for the requirement is developed, subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder is the profit/fee objective.

(g) *Calculating profit dollars*. After computing a total dollar profit for Contractor Effort, calculate the specific profit dollars for the categories under Other Factors. Do this by multiplying the total Government cost objective, excluding any cost of money for facilities capital, by the specific weights assigned to the elements in Other Factors.

(h) *Common factors*. In determining the value of each factor, consider the definition, description, and purpose of the factors prescribed in FAR 15.404-4(d) and this subsection.

(1) *General management*. Management problems surface in various degrees. Consider the management expertise exercised to solve them as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may involve more problems and require more managerial time and abilities of a higher order than a follow-on contract. If an initial contract creates more problems and merits a higher profit weight, then a follow-on should merit a downward adjustment, as many of the problems should have been solved. Evaluate the underlying managerial effort involved on a case-by-case basis.

(2) *Other costs*. Include all other direct costs of contractor performance under this item (*e.g.*, travel and relocation, direct support, and consultants). When these costs are analyzed, consider–

(i) Their significance;

(ii) Their nature; and

(iii) How much they contribute to contract performance.

(3) *Contract cost risk*. When the contracting officer selects the proper contract type, the reward for risk by contract type will usually fall into the ranges below.

(i) *Cost-reimbursement type contracts*. 0–3 percent. A cost-plus-a-fixed-fee contract does not normally justify a reward for risk in excess of 0 percent. Only a contract that contains cost risk features such as ceilings on overhead might merit a higher weight. Such cases may justify up to 1percent. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range. For these, assign weightings based on such factors as confidence in target cost, share ratio of fee(s), etc.

(ii) *Fixed-price type contracts*. 3–7 percent. This weight range is wide enough to accommodate the many types of fixed-price arrangements. Assign weightings based on the cost risk assumed. Only firm fixed-price contracts should reach the top end of the range.

(iii) *Subcontracting program*. The contractor's subcontracting program may significantly impact the contractor's risk under a contract. It could affect risk in terms of both cost and performance. Consider this in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor. This merits a risk evaluation below the range

that would otherwise apply for the contract type proposed. However, the contracting officer should not evaluate risk lower when a substantial portion of the contract cost represents subcontracts, but without any substantial transfer of contractor's risk.

(iv) *Definitizing letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements*. Consider the effect on risk as a result of partial performance before definitization. Some circumstances may effectively reduce the contractor's total risk, while others may have no effect. Determine an equitable profit weight for all recognized costs, both those incurred and future costs. Consider all attendant circumstances, not just the portion of costs incurred or percentage of work completed before definitization.

(v) *Service contracts*. Apply a weight range of 0 to 4 percent for cost risk. A firm fixed-price contract, not priced on a labor-hour method, may warrant high consideration for contractor cost risk. It may merit a weight up to 4percent. Conversely, a cost-plus-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investments*. In evaluating this factor for profit weights, consider the following:

(i) *Facilities*. (A) To evaluate how this factor contributes to the profit objective, the contracting officer needs to know the level of facilities use needed for contract performance, the source of financing for the facilities, and the overall cost effectiveness of the facilities offered.

(B) Contractors who furnish their own facilities that significantly contribute to lower total contract costs, warrant additional profit. Contractors who rely on the Government to provide or finance facilities warrant less profit. Evaluate situations between the above examples on their merits and make either a positive or negative profit weight adjustment, as appropriate.

(C) The contracting officer is not required to adjust the profit when a contractor who owns a large quantity of facilities will perform a contract that does not benefit from these facilities, or when a contractor's use of its facilities has a minimum cost impact on the contract.

(ii) *Payments*. Consider the frequency of payments by the Government to the contractor. Assess the impact the contract will have on the contractor's cash flow. Generally, payments more frequent than monthly merit negative consideration, with maximum reduction as the contractor's working capital approaches zero. Payments less frequent than monthly merit positive consideration, with additional consideration for payments less frequent than the contractor's or the industry's normal practice.

(i) *Nonprofit organizations*. (1) The structured approach for determining profit or fee objectives was designed for other than nonprofit organizations. However, if modified as below, the contracting officer may use it to establish fee objectives for nonprofit organizations (See FAR 31.701). Do not apply the modifications as a deduction to historical fee levels. Instead apply them as a reduction in the fee objective calculated under the structured approach.

(2) For contracts with nonprofit organizations, subtract an adjustment of up to 3percent from the total profit-fee objective. In developing this adjustment, consider each of the following factors:

(i) Tax position benefits.

(ii) Granting of financing through letters of credit.

(iii) Facility requirements of the nonprofit organization.

(iv) Other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

515.408 Solicitation provisions and contract clauses.

MAS REQUESTS FOR INFORMATION OTHER THAN COST OR PRICING DATA

(a) Use Alternate IV of the FAR provision at 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, for MAS solicitations to provide the format for submission of information other than cost or pricing data for MAS solicitations. To provide uniformity in requests under the MAS program, you should insert the following in paragraph (b) of the provision:

(1) An offer prepared and submitted in accordance with the clause at 552.212-70, Preparation of Offer (Multiple Award Schedule).

(2) Commercial sales practices. When the solicitation contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, the Offeror must submit information in the format provided in this solicitation in accordance with the

instructions at Figure 515.4-2 of the GSA Acquisition Regulation (48 CFR 515.4-2), or submit information in the Offeror's own format.

(3) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) When the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation and resulting contract (see FAR 12.303).

COMMERCIAL SALES PRACTICES FORMAT

Name of Offeror _____ **SIN(s)** _____

NOTE: Please refer to Clause 552.212-71, Preparation of Offer (Multiple Award Schedule), for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or Sub SIN for which information is the same).

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: $_____. State beginning and ending of the 12 month period. Beginning _____ ending _____. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12months 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 Figure 515.4, 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.

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 Figure 515.4, 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) When the contract contains the basic clause 552.238-74 Industrial Funding Fee and Sales Reporting, include the instructions for completing the commercial sales practices format in Figure 515.4-2 in solicitations issued under the MAS program. Offerors are not required to complete the commercial sales practices disclosure for order-level materials (See subpart 538.72).

Figure 515.4 Instructions for Commercial Sales Practices Format

If you responded "yes" to question (3), on the Commercial Sales Practices Format in paragraph (b) of this section, 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 customers categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reductions clause at 552.238-81. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

Column 1—Identify the Applicable Customer or Category of Customer
A "customer" is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the Offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)
Column 2—Identify the Discount
The term "discount" is as defined in solicitation clause 552.212-70, Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.
Column 3—Identify the Quantity or Volume of Sales
Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn 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 552.12-70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.
If you respond "yes" to question 4(b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer, or the sales of prototype goods for testing purposes.
If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practices Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

(End of Figure)

(d) When the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, insert the clause at 552.212-72, Price Adjustment-Failure to Provide Accurate Information, in solicitations and contracts under the MAS program

(e) Use Alternate IV of FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, to provide for submission of information other than cost or pricing data for MAS contracts. To provide for uniformity in requests under the MAS program, insert the following in paragraph (b) of the clause:

(1) Information required by the clause at 552.238-81, Modifications (Multiple Award Schedule).

(2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

Subpart 515.6 - Unsolicited Proposals

515.601 Definitions.

"Coordinating office," as used in this subpart, means:

(a) The Senior Procurement Executive for all Central Office activities.

(b) The office designated in writing by the Regional Administrator in the Regions.

515.606 Agency procedures.

Coordinating offices serve as agency points of contact and establish procedures for controlling the receipt, evaluation, and timely disposition of proposals consistent with FAR subpart 15.6.

515.606-2 Evaluation.

Complete the evaluation as soon as practicable, normally within 45 calendar days. Communicate the results of the evaluation to the offeror.

515.609 Limited use of data.

When releasing an unsolicited proposal for evaluation, use the "Conflict of Interest Acknowledgment and Nondisclosure Agreement" in .

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PART 516 - TYPES OF CONTRACTS

Sec.

Subpart 516.2 - Fixed Price Contracts

516.203 Fixed-price contracts with economic price adjustment (EPA).
516.203-2 Application.
516.203-3 Limitations.
516.203-4 Contract clauses.

Subpart 516.4 - Incentive Contracts

516.403 [Reserved]
516.403-2 Fixed-price incentive contracts.
516.405 [Reserved]
516.405-1 Cost-reimbursement incentive contracts.

Subpart 516.5 - Indefinite-Delivery Contracts

516.505 Task-order and delivery-order ombudsman.
516.506 Solicitation provisions and contract clauses.

Subpart 516.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.
516.603-70 Additional limitations on the use of letter contracts for architect-engineer (A-E) services under the PBS Design Excellence Program.

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PART 516 - TYPES OF CONTRACTS

Subpart 516.2 - Fixed Price Contracts

516.203 Fixed-price contracts with economic price adjustment (EPA).

516.203-2 Application.

(a) Changes to a Government contract price that result from a change in the actual cost of labor based on Department of Labor wage determinations are addressed in FAR Subparts 22.4 and 22.10.

(b) Changes to a Government contract price that result from a change in designated indicators should be processed as follows:

(1) The contracting officer shall evaluate the reasonableness of the proposed market indicator. The indicator should:

(i) Be used only when general economic factors make the estimating of future costs unpredictable within a fixed-price contract;

(ii) Be considered before using an EPA including volatile labor and/or material cost and contractual length;

(iii) Be relevant to the service or product solicited;

(iv) Have an established history;

(v) Be published regularly;

(vi) Be reasonably available in the future; and

(vii) Should not provide for an adjustment beyond the original contract period of performance, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(2) Selection of the indicators to be used and determination of how they will be applied are negotiable and must be determined prior to award. For example, a broad-based market indicator, such as that issued by the Bureau of Labor Statistics, can be applied uniformly to all categories if the contractor routinely applies across the board wage increases. If a contractor's wage changes vary by skills, the economic price adjustment should be based on specific matched categories.

(3) The contracting officer and the contractor shall agree on the economic price adjustment prior to the completion of negotiations. The contracting officer shall document the file.

(c) If, during the course of the contract, the contractor proposes a change in price adjustment methods, the contracting officer should require appropriate consideration from the contractor for any lowering of the contractor's risk.

516.203-3 Limitations.

(a) When including an economic price adjustment clause, the contracting officer shall document, in the contract file, the determination required by FAR 16.203-3.

(b) The contracting director must approve any of the following actions:

(1) If an economic price adjustment clause provides for price increases during the first 12 months of a multiyear contract, a determination to include an economic price adjustment clause in a solicitation or contract of one year or less is needed.

(2) The use in a contract of any economic price adjustment clause that was not included in the initial solicitation. This includes any clause that provides for price adjustment during the first 12 months of a multiyear contract.

(c) The contracting director may raise the price ceiling (the aggregate of permitted price increases during a 12-month period) during the contract period when both of the following conditions are met:

(1) A supplier requests that the ceiling be raised.

(2) Analysis of current market conditions reveals that most suppliers of similar supplies or services are affected. If the price ceiling is raised, the contracting officer must modify the contract to reflect the revised ceiling.

516.203-4 Contract clauses.

(a) *Special Order Program Contracts*. In multiyear solicitations and contracts, after making the determination required by FAR 16.203-3, use 552.216-71, Economic Price Adjustment—Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the same as 552.216-71 with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternate II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of 552.216-71 are not appropriate, use an alternate clause following established procedures.

(b) *Adjustments based on cost indexes of labor or material.*

(1) If the contracting officer decides to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

(i) The type of labor and/or material subject to adjustment;

(ii) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased;

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

Subpart 516.4 - Incentive Contracts

516.403 [Reserved]

516.403-2 Fixed-price incentive contracts.

The formula specified in FAR 16.403-2(a)(1)(iii) does not apply for the life of the contract. Instead, it is used to fix the firm target profit for the contract. In order to provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

516.405 [Reserved]

516.405-1 Cost-reimbursement incentive contracts.

Appropriate weight shall be given to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(a) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets; and

(b) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

Subpart 516.5 - Indefinite-Delivery Contracts

516.505 Task-order and delivery-order ombudsman.

(a) In accordance with FAR subpart 16.5, the GSA Task-Order and Delivery-Order Ombudsman can be found at http://www.gsa.gov/ombudsman.

(b) The GSA Task-Order and Delivery Order Ombudsman shall review and resolve complaints from contractors concerning all task and delivery order actions made by GSA. Complaints regarding task and delivery order actions of other agencies using GSA contract vehicles shall be directed to the ordering agency's Task-Order and Delivery-Order Ombudsman.

(c) If any corrective action is needed after reviewing complaints from contractors, the GSA Task-Order and Delivery Order Ombudsman shall provide a written determination of such action to the contracting officer.

(d) Contracting officers shall be notified via the contractor of any complaints submitted to the GSA Task-Order and Delivery Order Ombudsman (see clause 552.216-74).

516.506 Solicitation provisions and contract clauses.

(a) In solicitations and contracts for Special Order Program items, when the contract authorizes FAS and other activities to issue delivery or task orders, insert the clause at 552.216-72, Placement of Orders. If only FAS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for multiple-award contracts where GSA is the only ordering activity, or for GSA orders placed against a GSA multiple-award contract, insert clause 552.216-74, GSA Task-Order and Delivery-Order Ombudsman. This clause shall not be included in GSA-awarded contracts available for multiple agency use (*i.e.*, Governmentwide Acquisition Contracts, Multi-Agency Contracts); instead, see (d) below.

(c) If the clause at 552.216-72 is prescribed, insert the provision at 552.216-73, Ordering Information, in solicitations for Special Order Program items and in other FAS Program solicitations.

(d) Insert clause 552.216-76, Ordering Agency Task-Order and Delivery-Order Ombudsman in all GSA-awarded contracts available for multiple agency use (*i.e.*, Governmentwide Acquisition Contracts, Multi-Agency Contracts).

(e) The Contracting Officer may insert clause 552.216-75 in solicitations and GSA-awarded IDIQ contracts, not including Federal Supply Schedule (FSS) contracts. This clause should be included in all GSA-awarded Governmentwide acquisition contracts and multi-agency contracts. See 538.273 for clauses applicable to FSS contracts.

Subpart 516.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

516.603-70 Additional limitations on the use of letter contracts for architect-engineer (A-E) services under the PBS Design Excellence Program.

(a) *Requirement for a price proposal*. The proposed A-E must provide a price proposal for the non-design effort before the award of a letter contract. In accordance with FAR 52.216-25, a complete price proposal is required before definitization.

(b) *Contents of each letter contract*. The contracting officer must include the following information in the letter contract:

(1) The scope. The scope of the letter contract must authorize only the A-E to perform those services that are independent of the design effort (for example, feasibility studies, existing facility surveys or site investigation, etc.). The A-E shall not begin any design effort before the letter contract is definitized for the entire scope of the project.

(2) A definitization schedule. Include dates for each of the following:

(i) Submission of the design fee proposal.

(ii) Start of negotiations.

(iii) Definitization. This date must be no later than 120 days after the date of the letter contract.

(3) The letter contract must comply with FAR 16.6.

(c) *Unilateral price decision*. If the contracting officer issues a unilateral price decision, the maximum contract amount must not exceed a reasonable price for the excludable items plus the six percent statutory fee limitation for the project.

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PART 517 - SPECIAL CONTRACTING METHODS

Sec.

Subpart 517.1 - Multi-year Contracting

517.101 Authority.
517.103 Definitions.
517.109 Contract clauses.

Subpart 517.2 - Options

517.200 Scope of subpart.
517.202 Use of options.
517.203 [Reserved]
517.204 Contracts.
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Subpart 517.5 - Interagency Acquisitions

517.502 Procedures.
517.502-70 Information Technology Procurements.

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PART 517 - SPECIAL CONTRACTING METHODS

Subpart 517.1 - Multi-year Contracting

517.101 Authority.

(a) In addition to the multi-year authority described in FAR 17.101, GSA is authorized to enter into contracts for periods not to exceed–

(1) Five years for the inspection, maintenance, and repair of fixed building equipment in federally owned buildings (40 U.S.C. 581(c)(6)); or

(2) Ten years for public utility services (40 U.S.C. 501(b)(1)(B)).

(b) Contracting officers may award contracts under the authority of paragraph (a)(1) or paragraph (a)(2) of this section without a cancellation clause.

517.103 Definitions.

"Fixed equipment in federally-owned buildings" means all GSA mechanical equipment, including heating/cooling (geothermal), ventilation, electrical (wind/photovoltaic), elevator, escalator, and fire safety systems, components, and devices.

517.109 Contract clauses.

Use of FAR 52.217-2, Cancellation Under Multi-year Contracts, is optional in multi-year contracts authorized by 40 U.S.C. 581(c)(6) for maintenance and repair of fixed equipment in federally-owned buildings and services and 40 U.S.C. 501(b)(1)(B) for public utility services.

Subpart 517.2 - Options

517.200 Scope of subpart.

(a) Except as provided in paragraph (b) of this section, this subpart applies to contracts for supplies and services, including architect-engineer services.

(b) Policies and procedures for the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property are prescribed in 536.270. FAR subpart 17.2 and this subpart do not apply to the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

517.202 Use of options.

(a) Options may be used when they meet one or more of the following objectives:

(1) Reduce procurement lead time and associated costs.

(2) Ensure continuity of contract support.

(3) Improve overall contractor performance.

(4) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(b) An option is normally in the Government's interest in the following circumstances:

(1) There is an anticipated need for additional supplies or services during the contract term.

(2) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

(3) There is a need for continuity of supply or service support.

(c) An option shall not be used if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

517.203 [Reserved]

517.204 Contracts.

(a) Telecommunication contracts may not exceed 10 years per GSA Order ADM P 5450.39D, GSA Delegations of Authority Manual.

(b) Public utility contracts are limited to 10 years (40 U.S.C. 501(b)(1)(B).

(c) *Requests to exceed 5-year limitation*. A deviation request to exceed the 5-year limitation specified in FAR 17.204(e) must provide all the following information:

(1) Clearly explain the contract(s) and organization(s) covered by the request.

(2) Support the need for and reasonableness of the extension. Consider factors such as the following:

(i) The results of market research.

(ii) Stability of the requirement(s).

(iii) Benefits to the Government.

(iv) Use of a performance-based contracting approach.

(v) Availability of funds to cover estimated cancellation costs as well as costs for the first contract period.

(vi) Customary commercial practice.

(vii) Mechanisms to adjust for economic fluctuations.

(d) *Approval authority*. Deviation requests to exceed the 5-year limitations specified in FAR 17.204(e) must be approved by–

(1) The head of the contracting activity for individual contracts; and

(2) GSA's Senior Procurement Executive for classes of contracts.

517.207 Exercise of options.

In addition to the requirements of FAR 17.207, the contracting officer must also:

(a) Document the contract file with the rationale for an extended contractual relationship if the contractor's performance rating under the contract is less than satisfactory.

(b) Determine that the option price is fair and reasonable.

517.208 Solicitation provisions and contract clauses.

(a) For solicitations under Federal Acquisition Service's Special Order Program, insert a provision substantially the same as the provision at 552.217-70, Evaluation of Options, if both of the following conditions apply:

(1) The solicitation contains an option to extend the term of the contract.

(2) The contract will be fixed price and contain an economic price adjustment clause.

(b) Insert the provision at 552.217-71, Notice Regarding Option(s), or a similar provision, in solicitations that include an option for increased quantities of supplies or services or an option to extend.

Subpart 517.5 - Interagency Acquisitions

517.502 Procedures.

517.502-70 Information Technology Procurements.

(a) The requesting agency is responsible for the required information technology coordination and approval outlined in Federal Information and Technology Acquisition Reform Act (FITARA) (Pub L. No. 113-291) if the procurement involves information technology for the use of the requesting agency and not for GSA use. This requirement for CIO coordination by the requesting agency should be confirmed by GSA as the servicing agency by ensuring this CIO coordination requirement is documented in the interagency agreement or a separate document.

(b) The requesting agency is responsible for identifying any special or higher level requirements for network connectivity (e.g. security, basic connectivity and communications) beyond the minimum Internet Protocol Version 6 (IPv6) requirements in FAR 11.002(g) for information technology that will have the capability to access the Internet or any network utilizing Internet protocol (IPv4 or IPv6). The special or higher level requirements as well as any deviation from the requirement in FAR 11.002(g) shall be documented in the interagency agreement.

PART 518 [RESERVED]

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SUBCHAPTER D - SOCIOECONOMIC PROGRAMS

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PART 519 - SMALL BUSINESS PROGRAMS

Sec.

519.001 Definitions.

Subpart 519.2 - Policies

519.201 General policy.
519.202 Specific policies.
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519.202-2 Locating small business sources.

Subpart 519.3 - Determination of Small Business Status for Small Business Programs

519.302 Protesting a small business representation.
519.305 Protesting a representation of disadvantaged business status.
519.306 Protesting a firm's status as a HUBZone small business concern.
519.307 Protesting a firm's status as a Service-Disabled Veteran-Owned small business concern.
519.308 Protesting a firm's status as an Economically Disadvantaged Women-Owned Small Business (EDWOSB) concern or Women-Owned Small Business (WOSB)) concern eligible under the WOSB Program.

Subpart 519.4 - Cooperation With the Small Business Administration

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519.502 Setting aside acquisitions.
519.502-1 Requirements for setting aside acquisitions.
519.502-70 Review of non-set-aside determinations.
519.503 Setting aside a class of acquisitions for small business.
519.506 Withdrawing or modifying small business set-asides.
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Subpart 519.6 - Certificates of Competency and Determinations of Responsibility

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519.705 Responsibilities of the contracting officer under the subcontracting assistance program.
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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).
519.803-71 Withdrawing or modifying 8(a) set-asides.
519.870 Direct 8(a)contracting.
519.870-1 Authority and applicability.
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Subpart 519.11 - [Reserved]

Subpart 519.12 - Small Disadvantaged Business Participation Program

519.1201 General.
519.1202 Evaluation factor or subfactor.
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Subpart 519.13 - [Reserved]

Subpart 519.14 - [Reserved]

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PART 519 - SMALL BUSINESS PROGRAMS

519.001 Definitions.

Subpart 519.2 - Policies

519.201 General policy.

(a) The Associate Administrator, Office of Small Business Utilization (AA OSBU) is the Director of Small and Disadvantaged Business Utilization in GSA.

(b) The AA OSBU delegates duties to Small Business Technical Advisors (SBTAs) for each region through written appointment. All references to SBTA in this part refer to the SBTA designated to support his/her service or region, whichever is applicable.

(c) Contracting officers shall work with the designated SBTA for their region or service.

519.202 Specific policies.

519.202-1 Encouraging small business participation in acquisitions.

When applicable, the following procedures shall be used to promote small business through acquisition.

(a) For any acquisition that requires a GSA Form 2689 per GSAM 519.502-70, an acquisition plan shall be submitted to the SBTA. The acquisition plan shall be submitted to the SBTA for approval after the GSA Form 2689 has been approved.

(b) The designated SBTA will provide the copy of the proposed acquisition package to the SBA PCR in accordance with FAR 19.202-1(e) and GSAM 519.4.

(c) When placing orders or establishing BPAs against multiple-award contracts (see FAR 2.101), small businesses should be given consideration prior to large businesses.

519.202-2 Locating small business sources.

(a) Queries using the "Dynamic Small Business Search," at *http://dsbs.sba.gov* are encouraged to locate small business sources.

(b) The designated SBTA may be contacted for assistance with identifying small business sources.

(c) The contracting officer must coordinate communications through the SBTA (see 519.4) when contacting the SBA Procurement Center Representative (PCR) in accordance with FAR 19.202-1.

Subpart 519.3 - Determination of Small Business Status for Small Business Programs

519.302 Protesting a small business representation.

If SBA determines that an offeror is not a small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

519.305 Protesting a representation of disadvantaged business status.

If SBA determines that an offeror is not a disadvantaged small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

519.306 Protesting a firm's status as a HUBZone small business concern.

If SBA determines that an offeror is not a HUBZone small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

519.307 Protesting a firm's status as a Service-Disabled Veteran-Owned small business concern.

If SBA determines that an offeror is not a service-disabled veteran-owned small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

519.308 Protesting a firm's status as an Economically Disadvantaged Women-Owned Small Business (EDWOSB) concern or Women-Owned Small Business (WOSB)) concern eligible under the WOSB Program.

If SBA determines that an offeror is not a women-owned small business or economically disadvantaged women-owned small business concern, and there is evidence that the offeror knowingly misrepresented itself as such, contracting activities must refer the matter to the Inspector General and should also refer the matter to the Suspension and Debarment Official.

Subpart 519.4 - Cooperation With the Small Business Administration

Subpart 519.5 - Set-asides for Small Business

519.502 Setting aside acquisitions.

519.502-1 Requirements for setting aside acquisitions.

(a) The contracting officer may make awards under the 8(a) Business Development Program (see FAR 19.8), or set aside for the Historically Underutilized Business Zone (HUB-Zone) Program (see FAR 19.13, Women-Owned Small Business (WOSB) Program (see FAR 19.15), or Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (see FAR 19.14).

(b) Once a contracting activity acquires a product or service successfully on the basis of a set-aside, the activity must acquire all future requirements for that product or service using set-aside procedures. If the contracting officer determines that he or she no longer can reasonably expect to receive offers from at least two responsible small business concerns and make awards at fair market prices, use the procedures in FAR 19.506 to withdraw or modify a set-aside. When market research reveals that any supplies or services from mandatory sources, such as Federal Prison Industries, Inc. and AbilityOne, that were not available at the time of the original requirement have become available, a contracting officer may discontinue setting aside a continuing requirement (see FAR 8.002 and 8.003). The contracting officer shall document the determination to discontinue setting aside a continuing requirement (see 519.502-70).

519.502-70 Review of non-set-aside determinations.

(a) *General*. GSA Form 2689, Small Business Analysis Record.

(1) The GSA Form 2689 is used to–

(i) Record evidence that consideration has been given to small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, women-owned small business, or 8(a) Business Development Program participants; and

(ii) Document that small businesses received maximum practicable opportunity to participate in a proposed acquisition.

(2) The GSA Form 2689 may be used in place of a "Memo to File" when documenting the requirement for market research and as a tool to assure maximum practicable small business opportunity.

(3) The contracting officer shall include all pertinent documents with the GSA Form 2689 to support the proposed acquisition strategy (i.e., Dynamic Small Business Search results, responses to Federal Business Opportunity sources sought notice, performance work statement, statement of work, sole source justification, consolidation or bundling determination, business case, etc.).

(4) The contracting officer shall record the justification and rationale for the determined acquisition strategy on the GSA Form 2689.

(b) *Consolidated or Bundled Acquisitions*. The GSA Form 2689 is required for acquisitions when consolidation, bundling or substantial bundling (FAR 2.101 and 7.107-4) is contemplated regardless of estimated total contract value.

(c) *Orders*.

(1) The GSA Form 2689 is required for orders and Blanket Purchase Agreements (BPAs), including BPA orders, against Multiple-award Contracts (see FAR 2.101) and expected to equal or exceed $6 million (see FAR 7.104(d)), unless the contract, order or BPA is set aside for one of the small business programs specified in FAR 19.203 (e.g. 8(a), HUB-Zone, WOSB, or SDVOSB).

(2) Orders or BPAs against Multiple-award Contracts (see FAR 2.101) that are less than $6 million do not require a GSA Form 2689, unless the acquisition is consolidation, bundling or substantial bundling.

(d) *Acquisitions at or below the Simplified Acquisition Threshold (SAT)*.

(1) The GSA Form 2689 is not required for acquisitions at or below the SAT, unless the acquisition is consolidation, bundling or substantial bundling. However, it may be used to document market research. Contracting officers are encouraged to use the GSA Form 2689 to document any determination to not use small business under the SAT in accordance with FAR 19.502-2(a).

(2) The GSA Form 2689 does not require SBTA or SBA PCR review or signature when documenting market research.

(e) *Acquisitions expected to exceed the Simplified Acquisition Threshold (SAT)*. The GSA Form 2689 is required for acquisitions expected to exceed the SAT when—

(1) A determination is made to set aside for small business but not one of the small business programs specified in FAR 19.203 (8(a), HUB-Zone, WOSB, or SDVOSB); or

(2) A determination is made to utilize full and open competition.

(f) *Exceptions*. The GSA Form 2689 is not required for—

(1) Acquisitions with mandatory sources (see FAR 8.002 and 8.003);

(2) Acquisitions, including contracts, orders, and BPAs, that have been set aside for a small business program specified in FAR 19.203 (*e.g*. 8(a), HUB-Zone, WOSB, or SDVOSB) unless consolidated, bundled or substantially bundled; or

(3) Orders or BPAs under $6 million, unless consolidated, bundled or substantially bundled (see paragraphs (b) and (c) of this subsection).

(g) *GSA Form 2689 Requirement Conditions*.

(1) *General*. The following table is a reference to determine when the GSA Form 2689 is required for completion and submission.

(2) *Instructions*. The table has an order of precedence.

(i) Review the "Contract Vehicle Conditions" column in numerical order.

(ii) Once a condition applies to the acquisition, the applicability of the form will be identified in the "GSA Form 2689 Required?" column.

(iii) Once a condition applies to the acquisition, further conditions down the table do not apply.

Contract Vehicle Conditions	GSA Form 2689 Required?	Rationale
(A) Any acquisition from mandatory sources	Not Required	GSAM 519.502-70(f)(1) Mandatory Sources FAR 8.002(a)(1)(iv) (Supplies) FAR 8.002(a)(2)(i) (Services) FAR 8.003
(B) Acquisitions, including contracts or orders that meet the definition of consolidation, bundling or substantial bundling (FAR 2.101 and 7.107-4).	Required at any estimated total contract value	GSAM 519.502-70(b)
(C) Acquisitions, including contracts, orders and BPAs, that have been set aside for a small business program as specified in FAR 19.203 (e.g. 8(a), HUB-Zone, WOSB, or SDVOSB)	Not Required	GSAM 519.502-70(f)(2)

Contract Vehicle Conditions	GSA Form 2689 Required?	Rationale
(D) Orders and BPAs, including BPA call orders, against Multiple-Award contracts (see FAR 2.101)	Required if valued at $6M or more, unless set-aside for small business programs as specified in FAR 19.203 (e.g. 8(a), HUB-Zone, WOSB, or SDVOSB) Not Required if under $6M	GSAM 519.502-70(c) Set-aside is discretionary FAR 8.405-5(a) FAR 16.505(b)(2)(i)(F)
(E) Contracts under the SAT	Not Required but encouraged to use the form as a market research tool	GSAM 519.502-70(d)
(F) Contracts over the SAT and set-aside for 8(a), HUB-Zone, WOSB, or SDVOSB	Not Required	GSAM 519.502-70(f)(2) FAR 19.203(a)
(G) Contracts over the SAT and set aside for small business, but NOT set-aside for 8(a), HUB-Zone, WOSB, or SDVOSB	Required	GSAM 519.502-70(e)(1) FAR 19.203(c)
(H) Contracts over the SAT and not set-aside (*i.e.* full and open competition	Required	GSAM 519.502-70(e)(2)

(h) *GSA Form 2689 Concurrence and Time-frames*.

(1) Use the guidance in paragraphs (c) through (g) to determine if a GSA Form 2689 is required. If a GSA Form 2689 is required, then follow the dollar value thresholds in the table below to determine the level of concurrence for the form.

Thresholds	SBTA Concurrence	SBA PCR Concurrence	AA OSBU Concurrence	Review Time-frame
Less than SAT	Not Required, unless an exception in 519.502-70(h)(2) applies	Not Required, unless an exception in 519.502-70(h)(2) applies	Not Required, unless an exception in 519.502-70(h)(2) applies	Not Applicable
Equal to or greater than SAT and less than $50M	Required	Required	Not Required, unless an exception in 519.502-70(h)(2) applies	Within 5 business days following the day of receipt
Equal to or greater than $50M	Required	Required	Required	Within 10 business days following the day of receipt (i.e. 5 business days total for the SBTA and SBA PCR and 5 business days for AA OSBU)

(2) If the acquisition meets one of the following criteria, the contracting officer must obtain all concurrences of the GSA Form 2689 regardless of the concurrence threshold:

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

(ii) Acquisitions that will be performed in more than one region.

(3) The SBTA is responsible to follow-up with the SBA PCR and inform the contracting officer.

(4) The SBTA must request from the contracting officer an extension if concurrence will not be met by the established time-frame as defined above in the table.

(5) If a response is not received from the SBA PCR, the SBTA must elevate within OSBU for resolution at osbu_review_concurrence@gsa.gov.

(6) If the contracting officer does not receive a response from the SBTA within the established time-frames and the SBTA has been unresponsive to the contracting officer's inquiries, the contracting officer should elevate within OSBU for resolution at osbu_review_concurrence@gsa.gov.

(7) If a "Non-Concur" is received on the GSA Form 2689, the contracting officer is required to re-submit for concurrence. The time-frame for review is reset when the form is re-submitted.

(i) Disagreements. If a reviewing official disagrees with the contracting officer's decision not to set aside an acquisition, the SBTA must provide the contracting officer the rationale for the disagreement or provide the contracting officer with additional small business sources that are interested in and capable of fulfilling the requirement. Review and consider any information provided by the SBTA before making a decision.

(j) Resolving disagreements. The HCA (see GSAM 502.101), as delegated, in the applicable Central Office and/or Regional Service resolves disagreements between the contracting officer and the SBTA. To resolve disagreements with the SBA PCR, see FAR 19.505.

519.503 Setting aside a class of acquisitions for small business.

(a) *Definition*. A class set-aside is an item (or service), a group of related items under a Federal Supply Class (FSC), or a whole FSC set aside for exclusive small business participation on more than a one-time basis. If the item or group of items constitute only a small portion of an FSC, this definition still applies.

(b) *Determinations*. If the contracting officer has procurement responsibility for the class of items or services involved, prepare the determination required by FAR 19.503. The determination can apply to either a total or partial set-aside.

519.506 Withdrawing or modifying small business set-asides.

If the contracting officer and the SBTA disagree over the withdrawal or modification of a set-aside, the SBTA must notify the AAOSBU at the same time the matter is referred to the SBA PCR.

519.508 Solicitation provisions and contract clauses.

Insert 552.219-70, Allocation of Orders—Partially Set-Aside Items, in solicitations and requirements type supply contracts that are partially set aside for small business.

Subpart 519.6 - Certificates of Competency and Determinations of Responsibility

519.602 Procedures.

519.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Within 5 business days after requesting the SBA Area Office to refer an intention to issue a Certificate of Competency to SBA Headquarters for review, the contracting officer shall forward the information in paragraphs (a)(1) and (a)(2) of this subsection to the AAOSBU through your designated SBTA. This period may be extended by mutual agreement.

(1) Copies of all correspondence between GSA and SBA concerning the case. Include the initial referral notice of nonresponsibility.

(2) Copies of all technical documents sent to SBA (for example, the solicitation, preaward surveys, or any abstract of offers). Include any new information and a justification of the contracting officer's decision to continue the appeal.

(b) After considering all the facts and conferring with the contracting officer, the AAOSBU will decide whether or not to file a formal appeal. Before deciding whether or not to appeal, the AAOSBU must notify the contracting officer.

(c) For decisions on cases over $25,000,000, the AAOSBU shall confer with the contracting activity before responding to SBA regarding either of the options in FAR 19.602-3(b)(1)(i) and (ii).

Subpart 519.7 - The Small Business Subcontracting Program

519.700 [Reserved]

519.700-70 Additional responsibilities.

In addition to FAR 19.705 responsibilities, the contracting officer's preaward responsibilities include:

(a) Developing target goals for sealed bid solicitations when practicable.

(b) Following FAR 15.306, conducting discussions with individual offerors, as appropriate, concerning the subcontracting plans submitted for a negotiated solicitation.

519.702 [Reserved]

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.

519.705-2 Determining the need for a subcontracting plan.

(a) When the contracting officer calculates the applicable threshold, consider the actual or estimated value of the contract for the entire term of the contract, including any option period(s). This also applies to schedule contracts and other indefinite delivery type contracts. Consider the estimated value of all orders expected to be placed during the term plus all options.

(b) FAR19.705-2(d) permits the contracting officer to require submission of subcontracting plans with initial offers under a negotiated acquisition. The contracting officer must require all offerors (other than small business concerns) to submit subcontracting plans with their initial offers when a negotiated acquisition meets all conditions:

(1) The contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

(2) The contracting officer will award on the basis of trade-offs among cost or price and technical and/or management factors under FAR 15.101-1.

(3) The acquisition is not a commercial item acquisition.

(4) The acquisition offers more than minimal subcontracting opportunities.

(5) An offeror's subcontracting plan is identified as an evaluation factor in the solicitation.

(c) Nothing in paragraph (b) above limits the contracting officer's ability to request subcontracting plans with initial offers under other negotiated acquisitions when he or she decides such action is appropriate under FAR 19.705-2(d). For example, such action may be appropriate for multiple award schedules where GSA may have responsibility for negotiating commercial plans.

(d) Notify the AAOSBU after receipt of offers if the contracting officer determines that an apparent successful offeror's proposal has no subcontracting opportunities.

(1) Coordinate the notice through the contracting officer's SBTA.

(2) Include justification documenting the rationale behind a determination of no subcontracting opportunities. The contracting officer may use the justification provided by the apparent successful offeror

(3) Obtain AAOSBU concurrence on the determination prior to contract award.

519.705-3 Preparing the solicitation.

(a) If an acquisition, excluding any multiple award schedule contract, will cover two or more Regions and is estimated to exceed $50 million (including options):

(1) In addition to the SBA PCR, the contracting officer shall provide the SBTA and OSBU a reasonable period of time (approximately 10 days) to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before issuing the solicitation. The contracting officer shall ensure that evaluation criteria contained in the solicitation do not unnecessarily limit subcontracting opportunities for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns.

(2) For a negotiated acquisition, if the contracting officer believes that the acquisition provides substantial subcontracting opportunities, consider including the offeror's subcontracting plan as an evaluation factor for award. This may be most appropriate in acquisitions when the contracting officer expects individual plans or master plans. The contracting officer should consult with his or her SBTA or regional SBUC to obtain any needed assistance with developing subcontracting plan evaluation criteria before incorporating the plan into the solicitation as an evaluation factor.

Target goals in sealed bidding

(b) Unrealistic target goals tend to inhibit competition or increase acquisition costs if goals are too high. Target goals that offer no challenge to potential contractors reflect poorly on GSA's commitment to ensure maximum practicable use of small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns as subcontractors.

(c) In establishing target goals for sealed bid solicitations, the contracting officer should avoid using mechanical formulas or similar approaches that may be considered arbitrary. Reviewing historical performance by contractors performing similar work is valid, but the contracting officer should consider each solicitation independently in terms of the potential for subcontracting. Use as many information sources as practical, including the contracting officer's own knowledge of the supplies or services. Factors to consider in setting targets include:

(1) Manufacturing processes involved.

(2) Availability and location of potential subcontractors.

(3) The basis for establishing subcontracting relationships.

(4) The diversity in prevailing economic conditions in the place of contract performance.

(d) If the contracting officer cannot establish realistic target goals, do not state specific targets in the solicitation.

(1) Establishing realistic target goals is likely to be a problem in contracting for supplies because the place of contract performance may not be known prior to contract award.

(2) Even if the contracting officer can predict the area of contract performance because a particular industry is concentrated there, the diversity of manufacturing processes may affect the amount of subcontracting and how subcontracting relationships are established. For example, some manufacturers may use formal teaming arrangements or long term relationships versus nonrepetitive purchase orders.

519.705-4 Reviewing the subcontracting plan.

(a) The contracting officer should provide offerors a model subcontracting plan when determined appropriate, *e.g.*, when it may facilitate evaluation or negotiation. The contracting officer may use the model plan developed by the Office of Small Business Utilization (E) as found at https://insite.gsa.gov/subcontracting. Include the following notice on the transmittal, if providing a model in response to a single request, or in the solicitation, if including it as an attachment:

Notice to Offerors: "GSA provides this model plan as a tool. The contracting officer must adapt this model plan to fit the subcontracting situation. The plan is NOT a fill-in-the-blank form and the contracting officer must remove instructional language. This model does not establish minimum requirements for an acceptable plan. The model reflects objectives GSA encourages contractors to adopt. GSA expects offerors to thoroughly review the requirements set forth in FAR 19.704, Subcontracting Plan Requirements and FAR Clause 52.219-9, Small Business Subcontracting Plan before submitting their subcontracting plans."

(b) Performance under other contracts is an indicator of an offeror's understanding of the reasons for the law and benefits of the program.

(1) If an offeror prepared a subcontracting plan for another contract, the contracting officer should contact the contracting officer responsible for administering the earlier plan to determine if the offeror met the plan's objectives and submitted required reports in a timely manner.

(2) The contracting officer shall consider overall compliance in the evaluation, not just whether or not the offeror met the goals established in the plan.

(3) Submission of timely reports is an indication the offeror takes its responsibilities seriously.

(c) The contracting officer shall use the Subcontracting Plan Evaluation Checklist found at https://insite.gsa.gov/subcontracting and GSAM 519.7 to evaluate an offeror's subcontracting plan.

(1) Remember that a positive goal is required to establish a gauge for measuring results and to provide an incentive for continuing efforts to increase the dollar value of subcontracts placed with small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns. Carefully scrutinize any subcontracting category (e.g., small business, HUBZone small business, etc.) where the offeror does not specify a goal and accept it only after assuring that no subcontracting opportunities exist. If any category with no goal is accepted, the contracting officer must:

(i) Document the file explaining why the goal was accepted; and

(ii) Ensure the subcontracting plan includes an assurance that the contractor will make every effort to continue seeking subcontracting opportunities in the category that lacks a goal.

(2) One measure of the adequacy of a subcontracting plan is that it provides a challenge to the offeror and then builds upon previous achievements in subsequent contracts.

(3) Include in the contract file a basis for determining the subcontracting plan's acceptability.

(d) A contracting officer cannot tell the offeror what its goals must be. The contracting officer may tell the offeror what GSA's national goals are. Ensure that an offeror's subcontracting plan reflects realistic goals and provides the maximum opportunity practicable to small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns to participate as subcontractors. If necessary, obtain information from the offeror to substantiate the offeror's proposed goals, past performance with respect to subcontracting, and the proposed good faith effort. This information may include the names of proposed subcontractors and other such data.

(e) When a contracting officer receives a subcontracting plan with initial offers, provide an opportunity for the SBTA to review the subcontracting plans of those offers in the competitive range. Allow the SBTA 5 workdays for review. Consider the SBTA's comments in developing a negotiation strategy.

Negotiating Goals and Other Aspects of Plans

(f) For complex or large dollar value procurements, when an offeror proposes miniscule or minimally acceptable goals for small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns, the contracting officer shall ensure that the offeror has included all subcontracts that contribute to contract performance (see FAR 52.219-9(d)(1)).

(g) The contracting officer shall develop a strategy for negotiating the subcontracting plan and goals just as you would for negotiating a contract. Be forceful in negotiating the subcontracting plan and, whenever possible, offer recommendations for subcontracting potential with small, HUBZone small, small disadvantaged, women-owned small, veteran-owned, and service-disabled veteran-owned small business concerns. The contracting officer should suggest organizations the offeror may contact to identify potential sources. For example, offerors may contact any of the following:

(1) Local SBA offices. These can provide an offeror assistance in accessing the System for Award Management (SAM) (www.sam.gov) database to conduct market research and confirm the eligibility for SBA's procurement preference programs.

(2) Department of Commerce, Minority Business Development Agencies (MBDAs) at http://www.mbda.gov.

(3) GSA SBUCs and SBTAs, as well as OSBU.

(4) State, county, and city government minority business offices.

(5) Small, minority, women-owned, and veteran business associations at www.gsa.gov/smallbusiness

(6) Local chambers of commerce.

(7) Trade associations, professional organizations, and Procurement Technical Assistance Centers.

(8) Department of Veterans Affairs for assistance in identifying Service Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) at www.vetbiz.gov.

(9) Dynamic Small Business Search (DSBS) at http://dsbs.sba.gov.

(h) In developing a negotiation strategy, the contracting officer shall consider whether the offeror's plan is realistic and does more than merely restate the elements required by FAR clause 52.219-9 and shall question aspects of the plan that do not appear to be realistic or do not demonstrate a serious attempt to address requirements.

Commercial plans

(i) Contracting officers shall obtain from the contractor copies of any commercial plan for the company's current fiscal year and approval document from another GSA contracting activity or another Federal agency. Incorporate these documents into the contract.

(j) If GSA is the first agency to enter into a contract with a company during the company's fiscal year, the contracting officer must approve the commercial plan on behalf of the Federal Government, acknowledge receipt of the Summary Subcontract Report (SSR), accept or reject the SSR in the Electronic Subcontracting Reporting System (eSRS), and evaluate compliance with the approved commercial plan. If contract administration is delegated, the Administrative Contracting Officer (ACO) generally is assigned responsibility for accepting or rejecting the SSR and evaluating compliance with the approved commercial plan. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the

previously approved commercial plan will only require the submission of the Summary Subcontract Report submitted at the end of the Government's fiscal year.

(k) If the commercial plan was approved by another agency, the first GSA contracting officer entering into a contract with the company during the company's same fiscal year in which the plan was approved, requires the contractor to submit the SSR report and monitors receipt of the report. GSA requires no other monitoring or evaluation of this plan.

519.705-5 Awards involving subcontracting plans.

(a) Subcontracting plans requiring SBTA and SBA PCR review.

(1) For each contract that requires a subcontracting plan, the contracting officer will submit electronically the apparent successful offeror's subcontracting plan to the SBTA who will coordinate review by the SBA PCR. When the contracting officer makes multiple awards under a solicitation, electronically submit the subcontracting plans of all apparent successful offerors.

(i) Except as noted in paragraph (b) of this section, provide the SBTA an electronic copy of the plan at least 5 workdays before the anticipated award date.

(ii) Consider any recommendations the SBTA or SBA PCR provides about whether to accept or reject a subcontracting plan. In the case of an unresolved disagreement, notify the AAOSBU and consider any subsequent advice the AAOSBU provides. Document the final decision in the contract file.

(iii) If the contracting officer does not receive review comments from the SBTA within 5 workdays, the contracting officer shall document the file and continue with the award process (see FAR 19.705-5(a)(3)).

(b) Subcontracting plans requiring AAOSBU review.

(1) The AAOSBU (through the contracting officer's designated SBTA or Regional SBUC) will review the SBTA's and SBA PCR's recommendations for contracts that meet either of these conditions:

(i) Contract performance will occur in two or more Regions and the estimated value of the acquisition exceeds $50 million (including options), excluding multiple award schedule contracts.

(ii) Based on political sensitivity or importance to GSA, the AAOSBU designates the procurement for review.

(2) The contracting officer shall provide the SBTA an electronic copy of the plan at least 10 days before the anticipated award date. The SBTA and SBA PCR have 5 workdays to review and comment on the plan, and the AAOSBU (through the contracting officer's designated SBTA or Regional SBUC) has 5 workdays to review their recommendations and respond. All reviews must be completed in 10 workdays unless the contracting officer grants an extension.

(3) The contracting officer shall consider any recommendations the SBTA, SBA PCR, or AAOSBU provides about whether to accept or reject a subcontracting plan. Document the final decision in the contract file.

(4) If the contracting officer does not receive review comments from the SBTA (inclusive of AAOSBU review) within 10 workdays, the contracting officer shall document the file and continue with the award process (see FAR 19.705-5(a)(3)).

(c) Notification letter for individual subcontracting plans.

(1) The contracting officer shall approve the subcontracting plan as part of the award. After approval of an individual subcontracting plan, using FORMAT A in paragraph (c) of this section, the contracting officer shall electronically send a notification letter to the contractor confirming the subcontracting plan effective dates and when a new or updated plan will be required. The contracting officer shall also inform the contractor of the reporting requirements and due dates for submitting their Individual Subcontract Report (ISR) and Summary Subcontract Report (SSR) through the eSRS.

(2) The contracting officer shall send the letter electronically with the award package or as soon as practicable after award.

FORMAT A

Name Address City, State, Zip Code

Re: Approved Subcontracting Plan and Required Reports for Contract

No. _____:

Dear _____:

Your individual subcontracting plan submitted for the subject contract has been approved for the base period [insert MM/DD/YY through MM/DD/YY] with goals that are subject to revision for each remaining option period (if any).

You must submit subcontracting reports through the Electronic Subcontracting Reporting System (www.esrs.gov) using the Individual Summary Report (semi-annually) and the Summary Subcontract Report (annually).

Use the Individual Summary Report (ISR) to report cumulative subcontracting activity under this contract. Submit the report semiannually by April 30 for the reporting period October 1-March 31 and by October 30 for the reporting period April 1-September 30. A separate report is required at contract completion. If requested by the Contracting Officer, you must furnish the name and size status of your subcontractor(s), and the dollar amount of the subcontract(s).

Use the Summary Subcontract Report (SSR) to report total subcontracting activity under all of your GSA contracts. Submit the report annually for the period October 1-September 30 (the Government fiscal year). The report is due on or before October 30th of each year. A new reporting cycle begins October 1st of each year. Include the Contracting Officer (CO), Administrative Contracting Officer (ACO), the Small Business Administration (SBA) Commercial Market Representative (CMR), the Small Business Technical Advisor (SBTA), and GSA's Subcontracting Plan Program Manager in the email distribution when submitting the ISR and SSR via eSRS.

[*Insert address of contracting office administering the contract], with a copy to: [insert address of SBTA in Region or Central Office service where contract was awarded*].

(d) *Notification letter for commercial plans*.

(1) The contracting officer shall approve the commercial plan as part of the award. After approval of a commercial plan, using FORMAT B in paragraph (d) of this section, electronically send a notification letter to the contractor informing them of requirements and due dates for submitting the SSR via eSRS and confirm the subcontracting plan effective dates and when a new or updated plan will be required.

(2) Send the letter with the award package or as soon as practicable after award.

FORMAT B

Name Address City, State, Zip Code

Re: Approved Subcontracting Plan and Required Reports for Contract

No. _____:

Dear _____:

Your commercial plan, submitted in connection with the subject contract has been approved for the period of [insert MM/DD/YY through MM/DD/YY], by [insert name, address, and telephone number of approving official]. You must submit your Summary Subcontract Report (SSR) via eSRS. The SSR is an annual report due on or before October 30th of each year. The reporting period is October 1-September 30, *i.e.*, the Government fiscal year. The report should summarize subcontracting activity under all contracts awarded during the current fiscal year that are covered by this commercial plan.

If at any time during contract performance you are unable to identify capable small, HUBZone small, small disadvantaged, women-owned small, veteran-owned small and service-disabled veteran-owned small business concerns, please contact your local Small Business Technical Advisor your local Small Business Technical Advisor found at https://insite.gsa.gov/osbucontacts or the Office of Small Business Utilization by telephone at (202) 501-1021.

In addition, please include the SBA Commercial Market Representative (CMR) in the email distribution on the SSR in eSRS, [insert email address of contracting office administering the contract].

Sincerely,

Contracting Officer.

519.705-6 Postaward responsibilities of the contracting officer.

In addition to responsibilities described in FAR 19.705-6, the contracting officer must give the SBA Area Director, SBTA and OSBU a copy of the notice of award and the successful offeror's subcontracting plan within five work days of contract award or contract modification when applicable. The notice of award must contain all the following:

(a) Contractor's name, address, and phone number.

(b) Subcontracting plan administrator's name, address, and phone number.

(c) Contract number.

(d) Place of performance.

(e) Dollar amount of contract award.

(f) Period of contract performance.

(g) Description of items/services (including FPDS Product/Service Code).

(h) Contracting Officer's name, address, and phone number.

(i) Administrative contracting office address and phone number.

(j) Type of plan and dates that plan will cover.

(k) Approved goals stated both as percentages of total subcontracting planned and in dollars.

(l) A notation, "Awarded under the Energy Policy Act of 1992", if the contract will be used to measure GSA achievements under Section 3021 of the Energy Policy Act of 1992.

519.705-7 Liquidated damages.

(a) *Initial assessment*. The contracting officer shall provide the SBTA an information copy of his or her initial assessment that the contractor did not make a good faith effort to comply with the plan.

(b) *Final decision*. Before making a final decision, the contracting officer shall consider all pertinent available information including the contractor's response, if any, to the contracting officer's notification letter required by FAR 19.705-7 that the contractor did not comply with the plan. Document the contracting officer's decision in a "final decision", which is appealable by the contractor under the "Disputes" clause of the contract. Provide the SBTA a copy of the contracting officer's final decision assessing liquidated damages. In addition to the FAR provisions, include in the final decision letter:

(1) A description of the contractor's failure.

(2) Reference to the appropriate contract terms.

(3) A statement of the factual areas of agreement and disagreement.

(4) A statement of the contracting officer's decision with supporting rationale.

(5) A demand for liquidated damages.

(6) An explanation of the contractor's appeal rights.

(c) *Funds withheld from payments*. If funds to collect liquidated damages are withheld from payments due, the funds may be returned to the applicable GSA account along with other funds that were obligated but not expended. If a commercial plan is involved, or if all payments have been made under a contract with an individual contract plan, instruct the contractor to submit a check to GSA. The GSA Office of Finance will transfer the funds to the Treasury Department for deposit in the general receipts account.

(d) The contracting officer shall submit to the SBTA his or her final decision assessing liquidated damages.

519.706 Responsibilities of the cognizant administrative contracting officer.

(a) If an ACO administers a contract with an individual subcontracting plan, the ACO must also monitor receipt of and accept or reject the ISRs in eSRS.

(b) On all contracts with a subcontracting plan (individual or commercial), the ACO must monitor receipt of the SSRs. ACO must monitor receipt of the SSR in eSRS, and the, Contracting Officers will review the reports to ensure they are submitted timely and accurately.

(c) Contracting officers shall review reports for progress in meeting subcontracting goals by comparing the applicable report with the approved plan. If percentage goals are not met, the contracting officer shall require the contractor to explain the shortfall in the "Remarks" block of the subcontracting report. The ACO may also require the contractor to submit evidence of its outreach efforts to locate and provide subcontracting opportunities to small business, HUBZone small business, small disadvantaged business, women-owned small, veteran-owned small, and service-disabled veteran-owned small business concerns.

(d) If the ISR or SSR has not been received by the due date, the contracting officer shall contact the contractor and request that the report be submitted immediately. For contracts with individual subcontracting plans, the contracting officer shall pay particular attention to the final ISR required at contract completion. Contracting officers shall issue to contractors who do not respond to the first notice a second notice by certified mail indicating that:

(1) The named report has not been received.

(2) The contractor's failure to submit the report is a material breach of its contract (see FAR 52.219-9, Small Business Subcontracting Plan).

(3) If the report is not received within 10 days from the date of the notice, the ACO will consider withholding payments until the report is received or terminating the contract for default. To ensure that the facts support a termination for default, the notice shall provide the contractor with the opportunity to show cause why the contract should not be terminated for default.

Note: These statements do not apply to leases of real property, unless the terms of the lease expressly provide for withholding of payment or termination under this circumstance.

(4) Failure to submit the report may affect the contractor's ability to receive future awards from GSA (see FAR 9.104-3(b) and willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government for a period of time (see FAR 9.406-2(b)).

(5) The ISR and SSR shall be submitted through eSRS.

Subpart 519.8 - Contracting With the Small Business Administration (The 8(a)Program)

519.803 Selecting acquisitions for the 8(a) program.

519.803-70 Contracting officer evaluation of recommendations for 8(a) set-aside(s).

(a) If the contracting officer disagrees with a recommendation by the AAOSBU or the SBTA to set aside a procurement for award under the 8(a) program, discuss the matter with the official who made the recommendation.

(b) If the contracting officer decides not to award the contract under the 8(a)program, forward a copy of the documentation required by FAR 19.202-1(e)(4) to the SBTA within 10 working days.

(c) Once a contracting activity acquires a product or service successfully on the basis of an 8(a) set-aside, the activity must acquire all future requirements for that product or service using 8(a) set-aside procedures.

(1) However, the availability of Federal Prison Industries, Inc. and Nonprofit Agencies Employing People Who Are Blind or Severely Disabled (AbilityOne), and other mandatory sources, which may not have existed at the time of the original requirement are sufficient reason to discontinue setting aside a continuing requirement.

(2) If the contracting officer determines that acquiring the product or service as an 8(a)set-aside is no longer in the Government's best interest, use the procedures in FAR 19.506 to withdraw a repetitive set-aside.

519.803-71 Withdrawing or modifying 8(a) set-asides.

If the contracting officer and the SBTA disagree over the withdrawal or modification of a set-aside, the SBTA must notify the AAOSBU at the same time the matter is referred to the SBA PCR.

519.870 Direct 8(a)contracting.

519.870-1 Authority and applicability.

(a) In accordance with FAR 19.800(f), GSA obtained a delegation from SBA permitting direct 8(a) contracting as documented through GSA's Partnership Agreement. The current Partnership Agreement is located on the GSA internal website at https://insite.gsa.gov/portal/category/529822. The Partnership Agreement includes the current terms and conditions.

(b) This authority applies to all 8(a)acquisitions conducted byGSA. It does not apply to the multiple award schedule program.

519.870-8 Contract clauses.

(a) Insert the following clauses in solicitations, contracts, and orders issued under the MOU:

(1) Insert the clause at 552.219-74, Section 8(a) Direct Award.

(2) Insert the clause at FAR 52.219-14, Limitation on Subcontracting.

(3) Insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns. Substitute the paragraph below for paragraph (c) of the clause. Add the word "Deviation" at the end of the clause title.

(4) "(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a)offeror selected through the evaluation criteria set forth in this solicitation."

(b) Do not use the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR52.219-12, Special 8(a) Subcontract Conditions, or FAR 52.219-17, Section 8(a) Award.

Subpart 519.10 - [Reserved]

Subpart 519.11 - [Reserved]

Subpart 519.12 - Small Disadvantaged Business Participation Program

519.1201 General.

A solicitation may separately contain source selection evaluation factors or subfactors for small and women-owned small business concerns. However, any factor or subfactor for SDB concerns must comply with FAR 19.12 and this subpart.

519.1202 Evaluation factor or subfactor.

519.1202-2 Applicability

In addition to the exceptions in FAR 19.1202-2, do not evaluate the extent of participation of SDB concerns in performance of multiple award schedule contracts when all fair and reasonable offers from responsible sources are accepted.

519.1202-4 Procedures.

An offeror may receive credit under the evaluation factor only for proposed SDB participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor in the authorized North American Industry Classification System (NAICS) Industry Subsectors.

519.1203 Incentive subcontracting with small disadvantaged business concerns.

(a) To include monetary incentives in a contract under FAR 19.1203, you must have funds available for the incentives and obligate these at the time of contract award.

(b) Do not provide for monetary incentives under FAR 19.1203 in a contract that includes an award fee.

Subpart 519.13 - [Reserved]

Subpart 519.14 - [Reserved]

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PART 520 [RESERVED]

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PART 521 [RESERVED]

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PART 522 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

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PART 522 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 522.1 - Basic Labor Policies

522.101 Labor relations.

522.101-1 General.

The Office of General Counsel (OGC) and the agency labor advisor shall—

(a) Serve as the GSA points of contact on all contractor labor relations matters;

(b) Initiate contact on contractor labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations. Contracting offices shall notify OGC and the agency labor advisor when they are contacted by such external organizations;

(c) Serve as a clearinghouse for information on labor laws applicable to Government acquisitions; and

(d) Respond to questions involving FAR 22, Application of Labor Laws to Government Acquisitions, or other contractor labor relations matters concerning GSA acquisition programs. OGC determines the agency's legal position.

522.101-3 Reporting labor disputes.

Written reports of contractor labor disputes shall be submitted to the agency labor advisor as soon as the circumstances surrounding a labor dispute are identified. Include in the report a description of the following: the nature of the labor dispute; location of the dispute and contracts affected; the potential or actual impact of the dispute on GSA operations or programs; and any actions taken to reduce the impact. The agency labor advisor will notify other GSA contracting offices that may be affected, and will determine further actions to be taken.

522.103 Overtime.

522.103-4 Approvals.

The contracting officer is the "agency approving official" under FAR 22.103-4.

522.103-5 Contract clauses.

Insert FAR 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts for DX rated orders under the Defense Priorities and Allocations System (DPAS). Information on the DPAS can be found at FAR Subpart 11.6, Priorities and Allocations.

Subpart 522.3 - Contract Work Hours and Safety Standards Act

522.302 Liquidated damages and overtime pay.

(a) *Contracting officer's responsibilities*. (1) Provide instructions to the appropriate Finance Office whether to withhold funds from contract payments pending final administrative determination.

(2) Notify the Finance Office of your final decision to assess liquidated damages.

(3) After final decision, provide instructions to either immediately release to the contractor any funds in excess of the amount specified in your decision or initiate the collection of additional funds (see paragraph (c) of this section).

(4) Advise the contractor in writing of any decision to withhold funds, including the reasons for the withholding, and the amount held to satisfy the contractor's liability for unpaid wages and liquidated damages. Coordinate all written communications with the contractor, including the notification of dispute resolution procedures under the Department of Labor's regulations at 29 CFR Parts 4 through 8, with the Office of Regional Counsel.

(b) *Procedures for the collection of liquidated damages*. (1) Initiate collection action by either:

(i) Withholding funds from payments due on the contract.

(ii) Issuing a demand for payment, if no funds were withheld or the amount withheld was less than the liquidated damages.

(2) Indicate in the demand letter the intent to offset from the contractor's other Government contracts if payment is not made.

(3) Provide the Finance Office with a:

(i) Copy of the demand letter.

(ii) Request that it initiate collection action under 41 CFR 105-55, Collection of Claims Owed the United States, if payment is not made in accordance with the demand letter.

(c) Consult the GSA Delegations of Authority Manual, ADM P 5450.39C, to determine who the agency head is for purposes of FAR 22.302(c) (Chapters 13(2)(f) and 17(5)(a)).

Subpart 522.4 - Labor Standards for Contracts Involving Construction

522.404 Construction Wage Rate Requirements wage determinations.

522.404-6 Modifications of wage determinations.

The contracting director shall serve as the agency head for purposes of requesting extensions under FAR 22.404-6(b)(6).

522.406 Administration and enforcement.

522.406-6 Payrolls and statements.

Weekly payrolls and statements of compliance with respect to payment of wages are not required from a prime contractor or a subcontractor that personally performs work.

522.406-7 [Reserved]

522.406-8 Investigations.

(a) If a compliance check uncovers information of possible violations, the contracting officer shall consult with OGC and, if warranted, submit a request to the appropriate Office of the Inspector General Field Office under FAR 22.406-8(a).

(b) The contracting officer shall consult the GSA Delegations of Authority Manual, ADM P 5450.39C, (Chapters 13(2)(f) and 17(5)(a)), to determine who the agency head is for purposes of FAR 22.406-8(d).

522.406-9 Withholding from or suspension of contract payments.

Contracting officers shall follow the procedures in 522.302 in order to assess liquidated damages.

522.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

Submit the information required by FAR 22.406-10(d) to the Administrator, Wage and Hour Division, Department of Labor and submit a copy to the agency labor advisor.

522.406-11 Contract terminations.

When a contract or subcontract is terminated for labor standards violations, the contracting officer shall submit the report required by FAR 22.406-11 to the Administrator, Wage and Hour Division, Department of Labor and submit a copy to the agency labor advisor.

522.406-13 Semiannual enforcement reports.

(a) PBS and FAS shall report through the Commissioners the semiannual enforcement reports required by FAR 22.406-13, in the format described in paragraph (d) of this section. The Commissioner will consolidate the regional and central office information and submit the report to the agency labor advisor, Office of Acquisition Policy. The report must identify the service submitting the report and the name, phone number, and email address of the official responsible for preparing the report.

(b) Central Office Contracting Offices outside of FAS and PBS must submit the reports directly to the agency labor advisor. Each report must identify the contracting office and the name, phone number, and e-mail address of the official responsible for preparing the report.

(c) The reports from the FAS and PBS and Central Office Contracting Offices must be submitted to the agency labor advisor within 15 calendar days after the end of the reporting periods. The ALA will consolidate the reports and submit an official agency report to the:

U.S. Department of Labor (DOL)
Wage and Hour Division
Office of Enforcement Policy
Government Contracts Team
Room S3018
200 Constitution Avenue, N.W.
Washington, DC 20210
E-Mail Address: *osp@fenix2.dol-esa.gov*.

(d) The official agency report shall include only the compliance or enforcement of the labor standards requirements for the time periods specified in FAR 22.406-13, and identify the responsible agency official, title, address, phone number, and email address. The report shall be submitted to DOL within 30 calendar days after the end of the reporting periods using the following instructions and format:

SEMI-ANNUAL ENFORCEMENT REPORT

FY ____

1. Enter the beginning and ending dates of the period covered by the semiannual report. _____

2. Enter the total number of prime contracts awarded subject to Construction Wage Rate Requirements statute or the Contract Work Hours and Safety Standards Act awarded during the period covered by this report. _____

3. Enter the total dollar value of the contracts listed on line 2. _____

4. Enter the total number of contractors/subcontractors against whom complaints were received. _____

5. Enter the total number of investigations completed. _____

6. Enter the total number of contractors/subcontractors found in violation as a result of the investigations reported on line 5. _____

7. Enter the total amount of back wages determined due employees by contractors/subcontractors under the:
a) Construction Wage Rate Requirements statute (prevailing wage violations). _____
b) Contract Work Hours and Safety Standards Act (overtime violations). _____

8. Enter the total amount of back wages paid employees by contractors/subcontractors reported on line 6, for the:
a) Construction Wage Rate Requirements statute (prevailing wage violations). _____
b) Contract Work Hours and Safety Standards Act (overtime violations). _____

9. Enter the total number of employees paid wage restitution as reported on line 8, under the Construction Wage Rate Requirements statute and/or Contract Work Hours and Safety Standards Act. _____

10. Enter the amount of liquidated damages assessed as a result of violations under the Contract Work Hours and Safety Standards Act. _____

Remarks: (Enter any explanation or comment considered necessary for proper understanding of the report.)

Subpart 522.6 - Walsh-Healey Public Contracts Act

522.608 Procedures.

Before notifying or furnishing information to DOL under FAR 22.608(b), coordinate with legal counsel.

Subpart 522.8 - Equal Employment Opportunity

522.803 Responsibilities.

Contracting officers should submit questions on the applicability of EO 11246 and implementing regulations to assigned legal counsel.

522.804 Affirmative action programs.

522.804-1 Nonconstruction.

(a) The requirements of FAR 22.804 also apply to each contractor and subcontractor with 50 or more employees that either:

(1) Serves as a depository of Government funds; or

(2) Is a financial institution serving as an issuing and paying agent for U.S. savings bonds and savings notes.

(b) The contractors, subcontractors, and financial institutions described in 522.804-1(a) must develop a written affirmative action compliance program for each of its establishments regardless of the contract or holding value, in accordance with 41 CFR 60-1.40.

522.804-2 Construction.

Goals for the employment of minorities and women in the construction industry are established by the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor. The current goal for the utilization of women is 6.9%, regardless of the location of the Federal contract. This goal was extended indefinitely by the Department of Labor in 1980. The current goals for minority participation vary by location and are listed in the Technical Assistance Guide for Construction Participation Goals for Minorities and Females. This guide can be accessed at http://www.dol.gov/ofccp/index.htm.

522.805 Procedures.

(a) To determine whether the contract meets the threshold in FAR 22.805(a), contracting officers shall include the value of the basic contract plus priced options. A contract modification exercising a priced option is not a contract award under FAR 22.805(a)(1)(ii) and does not require a preaward clearance.

(b) Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. A list of these offices can be found at http://www.dol.gov/ofccp/contacts/ofnation2.htm.

(c) The EEO poster required by FAR 22.805(b) can be found at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm. In addition to providing this poster to each non-exempt contractor, the contracting officer shall advise contractors to complete the Employer Information Report (EEO-1) at http://www.eeoc.gov/eeo1survey/index.html.

522.807 Exemptions.

The agency labor advisor submits a request for exemption.

Subpart 522.10 - Service Contract Labor Standards

522.1003 Applicability.

522.1003-3 Statutory exemptions.

The Service Contract Labor Standards statute applies to local office relocation moves if transportation costs are incidental to the principal purpose of the contract. Such contracts do not meet the statutory exemption cited in FAR 22.1003-3(c).

522.1003-4 Administrative limitations, variations, tolerances, and exemptions.

Contracting officers shall coordinate with assigned legal counsel before submitting a request under FAR 22.1003-4(a) to the agency labor advisor.

522.1003-7 Questions concerning applicability of the Act.

The contracting officer may submit a question regarding the applicability of the Act to assigned legal counsel. If the question cannot be answered, the agency labor advisor will forward it to the Administrator, Wage and Hour Division.

522.1021 Requests for hearing.

Contracting Officers who are considering requesting a substantial variance should coordinate with assigned legal counsel and the agency labor advisor. The agency labor advisor submits any request.

Subpart 522.13 - Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

522.1305 Waivers.

Submit each waiver request to the agency labor advisor. The agency labor advisor forwards the request to the appropriate office for concurrence and approval.

522.1308 Complaint procedures.

After consultation with OGC, the contracting officer shall forward complaints to the cognizant Department of Labor office, with a copy to the agency labor advisor and the appropriate Office of Inspector General Field Office.

Subpart 522.14 - Employment of Workers With Disabilities

522.1403 Waivers.

Submit each waiver request to the agency labor advisor. The agency labor advisor forwards the request to the appropriate office for concurrence and approval.

522.1406 Complaint procedures.

After consultation with OGC, forward complaints to the cognizant OFCCP office, with a copy to the agency labor advisor and the appropriate Office of Inspector General Field Office.

Subpart 522.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

522.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

Refer matters for investigation under FAR 22.1503(e) to the appropriate Office of Inspector General Field Office.

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PART 523 - ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.

Subpart 523.1 - Sustainable Acquisition Policy

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PART 523 - ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 523.1 - Sustainable Acquisition Policy

523.101 General.

FAR 23 requires GSA to purchase sustainable products and services. This subpart outlines the specific steps the contracting officer or designated acquisition team member must take throughout all procurements to comply with this requirement. In accordance with GSAM 523.404, this Subpart contains the GSA affirmative procurement program.

523.102 Definitions.

means a public website that identifies Federal sustainable acquisition requirements and provides other guidance for the purchase of sustainable products and services. A link to this website can be found at http://insite.gsa.gov/sustainableacquisition.

means a free, interactive website that helps the public identify and implement cost-effective green building and procurement strategies. A link to this website can be found at http://insite.gsa.gov/sustainableacquisition.

523.103 Applicability.

This policy applies to contract actions executed by GSA personnel, whether in support of GSA operations or on behalf of another agency.

523.104 Procedures.

(a) *Pre-Award Procedures*.

(1) *Market Research*. Use the Green Procurement Compilation to determine whether the intended contract action must include sustainable requirements in accordance with FAR 23.

(2) *Statement of Work/Solicitation*.

(i) If the procurement has sustainable requirements, confirm that all applicable provisions and clauses are included in the solicitation and that the statement of work or specification contains the minimum sustainable requirements.

(ii) When developing the statement of work or specification, consider including procedures for verifying compliance with sustainable requirements. Review the Verification Guide for Purchasers of Sustainable Products at http://insite.gsa.gov/sustainableacquisition for additional information.

(iii) If a procurement cannot comply with the minimum sustainable requirements as outlined in GSAM 523.104(a)(1) due to significant impact on cost, schedule, or performance, the contracting officer must document the exception used and supporting rationale as detailed in GSAM 523.105.

(b) *Award Procedures*. Review GSAM 504.606(b) for instructions on GSA FPDS sustainability coding. The GSA FPDS Sustainability Code Guidelines provides instructions on reporting sustainability data for individual procurements in FPDS and can be found at http://insite.gsa.gov/sustainableacquisition.

(c) *Post-Award Procedures.*

(1) *Receipt of Sustainable Products and Services.*

(i) The contracting officer must take reasonable steps to validate any required sustainable products and/or services were received. Review the best available evidence of compliance such as manufacturer product documentation, design submittals, and federal or third party ecolabels. Utilize random sampling techniques when reviewing documents/evidence to limit the time required for review. Staff/Service Offices may prioritize which products and/or services to focus on when performing compliance reviews.

(ii) The contracting officer must note any discrepancies with sustainable acquisition requirements in the contract and take the appropriate corrective action. For best practices in verifying evidence of compliance, review the Verification Guide for Purchasers of Sustainable Products at http://insite.gsa.gov/sustainableacquisition.

(2) *Contractor Sustainability Reports.* The contracting officer must confirm that any required sustainability reports are submitted by the contractor.

(i) *Biobased Report.* For service or construction contracts that include FAR Clause 52.223-2, the contractor must provide annual information on the USDA-designated biobased products (BioPreferred products) purchased each fiscal year by submitting a report in the System for Award Management. If this reporting is required by the contract, the contracting officer must take the following steps:

(A) Review the reports submitted by the contractor in SAM for reasonableness.

(B) Report any non-compliance by the contractor within the "Other Areas" portion of the CPARS evaluation form.

(ii) *Recycled Content Report.*

(A) FAR Clause 52.223-9 requires the contractor to submit a report to the contracting officer that estimates the percentage of the total recovered material content for the Environmental Protection Agency's Comprehensive Procurement Guidelines (CPG) designated products delivered and/or used in contract performance. Only include this clause when a contract meets both of the following criteria:

(1) The contract requires (CPG) products that are not commercial off-the-shelf items; and

(2) The value of the contract is over $150,000.

(B) If this reporting is required by the contract, the contracting officer must–

(1) Review the report submitted by the contractor for reasonableness.

(2) Report any non-compliance by the contractor within "Other Areas" portion of the CPARS evaluation form.

523.105 Sustainability Exceptions.

(a) *Allowable Exceptions*. An exception for acquiring sustainable products or services is available if any of the following conditions exist:

(1) Product or service cannot be acquired competitively within a reasonable performance schedule.

(2) Product or service cannot be acquired that meets reasonable performance requirements.

(3) Product or service cannot be acquired at a reasonable price.

(i) The price shall be deemed unreasonable when the total life cycle costs are significantly higher for the sustainable product or service versus the non-sustainable product or service. Life cycle costs are determined by combining the initial costs of a product or service with any additional costs or revenues generated from that product or service during its entire life.

(ii) For more information on conducting a life cycle cost analysis (LCCA), review the FEMP LCCA Guidance at http://insite.gsa.gov/sustainableacquisition.

(4) A specific statutory exemption applies.

(b) *Documentation Process.* If at any point during the acquisition the contracting officer determines that a contract action cannot comply with the sustainable requirements outlined in GSAM 523.104(a)(1) due to an allowable exception, the contracting officer must document within the contract file the exception being used under GSAM 523.105(a) and provide supporting rationale for using the exception. The exception can be documented in the Environmental and Energy Conservation Objectives section of the acquisition plan under FAR 7.105(b)(17) or in a separate memorandum that is included in the Acquisition Plan section of the contract file.

523.106 Compliance Monitoring and Reporting.

(a) *Review Process*. GSA Office of Acquisition Policy is responsible for monitoring and reporting sustainable acquisition activity to the GSA Chief Sustainability Officer in support of the agency's semiannual status report to Office of Management and Budget. This semiannual audit covers only applicable contract actions as defined in GSAM 523.103. This review will utilize existing GSA databases and processes to the maximum extent practicable in order to limit manual data collection. These reviews will focus on ensuring that GSA requires and receives sustainable products and services in all applicable acquisitions.

(b) *Determining Compliance.* See the GSA Sustainable Acquisition Review Criteria document at http://insite.gsa.gov/sustainableacquisitionfor the specific criteria that will be used to determine compliance with sustainable acquisition reviews.

Subpart 523.3 - Hazardous Material Identification and Material Safety Data

523.303 Contract clauses.

(a) Insert 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) Insert 552.223-71, Nonconforming Hazardous Materials, in solicitations and contracts for supplies that contain hazardous materials.

(c) Insert 552.223-73, Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) for Shipments, in solicitations and contracts for packaged items containing hazardous materials.

523.370 Solicitation provision.

Insert 552.223-72, Hazardous Material Information, in any solicitation that provides for delivery of hazardous materials on an f.o.b. origin basis.

Subpart 523.4 - Use of Recovered Materials and Biobased Products

523.403

523.404 Agency affirmative procurement programs.

GSA's affirmative procurement program is located within subpart 523.1, Sustainable Acquisition Policy.

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APPENDIX 523A -[REMOVED]

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APPENDIX 523B -[REMOVED]

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APPENDIX 523C -[REMOVED]

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APPENDIX 523D -[REMOVED]

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PART 524 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

Subpart 524.1 - Protection of Individual Privacy

524.103 Procedures.

Subpart 524.2 - Freedom of Information Act

524.203 Policy.

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PART 524 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 524.1 - Protection of Individual Privacy

524.103 Procedures.

(a) See 41 CFR 105-64, GSA Order, Privacy Act Program (CPO 1878.1), and Privacy Act Program information available on Insite, when contracting for the design, development, or operation of a system of records on individuals.

(b) The Office of the Chief Acquisition Officer (OCAO) will review every two years a random sample of contracts that provide for the maintenance of a system of records pursuant to OMB Circular A-130, Appendix 1.

Subpart 524.2 - Freedom of Information Act

524.203 Policy.

(a) See 41 CFR 105-60 and GSA FOIA procedures available on Insite, for requirements on making records available under FOIA.

(b) The contracting officer shall notify the appropriate FOIA officer of the request.

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PART 525 - FOREIGN ACQUISITION

Sec.

Subpart 525.1 - Buy American Act—Supplies

525.103 Exceptions

Subpart 525.2 - Buy American Act—Construction Materials

525.202 Exceptions.

525.206 Noncompliance.

Subpart 525.10 - Additional Foreign Acquisition Regulations

525.1070 Purchases Using Department of Defense (DoD) Appropriated Funds.

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PART 525 - FOREIGN ACQUISITION

Subpart 525.1 - Buy American Act—Supplies

525.103 Exceptions

(a) *Public Interest*.

(1) Only the head of the agency may make the determination required by FAR 25.103(a). The head of the agency may not redelegate this authority.

(2) The determination must consider the cost advantages of any foreign sourced steel, iron, or manufactured goods.

(b) *Nonavailability*.

(1) *Class Determination*s. FAR 25.103(b)(1)(i) does not allow for class determinations to be made at the agency level

(2) *Class Determination*s– *Notice of Availability*. Regarding FAR 25.103(b)(1)(iii)(C), documentation supporting removal of an item from the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the Senior Procurement Executive (SPE) in the Office of the Chief Acquisition Officer. The SPE will determine whether the documentation should be forwarded to the Civilian Agency Acquisition Council (CAAC).

(3) *Individual Determinations*. Only the HCA may make the determination required by FAR 25.103(b)(2)(i). The HCA may not redelegate this authority.

(4) *Individual Determinations—Notice of Nonavailability*. Regarding when the contracting officer considers that non-availability of an item will affect future acquisitions (see FAR 25.103(b)(2)(ii)), documentation supporting the addition of articles to the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the SPE. The SPE will determine whether the documentation should be forwarded to the CAAC.

Subpart 525.2 - Buy American Act—Construction Materials

525.202 Exceptions.

(a) *Public Interest*.

(1) Only the head of the agency may make the determination required by FAR 25.202(a)(1). The head of the agency may not redelegate this authority.

(2) The determination described in FAR 25.202(b) must consider the cost advantages of any foreign sourced steel, iron, or manufactured goods.

(b) *Nonavailability*. Only the HCA may make the determination required by FAR 25.202(a)(2). The HCA may not redelegate this authority.

525.206 Noncompliance.

Regarding potentially fraudulent noncompliance under FAR 25.206(c)(4), refer the matter to the appropriate Office of Inspector General Office.

Subpart 525.10 - Additional Foreign Acquisition Regulations

525.1070 Purchases Using Department of Defense (DoD) Appropriated Funds.

(a) The Berry Amendment, 10 U.S.C. 2533a, applies domestic-source requirements to certain food, clothing, fabrics, specialty metals, and hand or measuring tools when purchased with DoD appropriated funds. The Berry Amendment, as applicable to purchases using DoD appropriated funds, is implemented at DFARS Subpart 225.70 and in clauses prescribed there.

(b) GSA acquisition personnel are responsible for reviewing requests for purchases using DoD appropriated funds to ensure that all special funding and procurement requirements, e.g., Berry Amendment applicability, have been disclosed to GSA.

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PART 526 - OTHER SOCIOECONOMIC PROGRAMS

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SUBCHAPTER E - GENERAL CONTRACTING REQUIREMENTS

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PART 527 - PATENTS, DATA, AND COPYRIGHTS

Sec.

Subpart 527.4 - Rights in Data and Copyrights

527.409 Solicitation provisions and contract clauses.

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PART 527 - PATENTS, DATA, AND COPYRIGHTS

Subpart 527.4 - Rights in Data and Copyrights

527.409 Solicitation provisions and contract clauses.

Architect-engineer services and construction contracts involving architect-engineer services. Insert the following in solicitations and contracts for architect-engineer services and construction contracts involving architect-engineer services:

(a) Insert 552.227-70, Government Rights (Unlimited), instead of FAR 52.227-17, Rights in Data-Special Works, in contracts, except if 552.227-71 is prescribed.

(b) If the Government requires sole property rights and exclusive control over the design and data, insert 552.227-71, Drawings and Other Data to Become Property of Government, instead of FAR 52.227-17.

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PART 528 - BONDS AND INSURANCE

Sec.

Subpart 528.1 - Bonds and Other Financial Protections

528.101 Bid guarantees.
528.101-1 Policy on use.
528.102 Performance and payment bonds and alternative payment protections for construction contracts.
528.102-1 General.
528.103 Performance and payment bonds for other than construction contracts.
528.103-2 Performance bonds.
528.103-3 Payment bonds.
528.106 Administration.
528.106-6 Furnishing information.

Subpart 528.2 - Sureties and Other Security for Bonds

528.202 Acceptability of corporate sureties.
528.202-70 Acceptability of bonds and sureties.
528.203 Acceptability of individual sureties.
528.203-7 Exclusion of individual sureties.
528.204 Alternatives in lieu of corporate or individual sureties.

Subpart 528.3 - Insurance

528.301 Policy.
528.310 Contract clause for work on a Government installation.
528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
528.311-1 Contract clause.

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PART 528 - BONDS AND INSURANCE

Subpart 528.1 - Bonds and Other Financial Protections

528.101 Bid guarantees.

528.101-1 Policy on use.

(a) *Construction contracts*. The bid guarantee requirements in FAR 28.101-1(a) apply to contracts over $150,000awarded under Section 8(a)of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) *Building service contracts*. The contracting officer may require bid guarantees for building service contracts over $150,000 if it is determined under 528.103-2 that a performance bond is essential to protect the Government's interest.

(c) *All other contracts*. Refer to FAR 28.101 for guidance on the use of bid guarantees.

528.102 Performance and payment bonds and alternative payment protections for construction contracts.

528.102-1 General.

(a) The performance and payment bond requirements in FAR 28.102-1 a apply to contracts over $150,000 awarded under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) The payment protection requirements in FAR 28.102-1(b) apply to contracts greater than $35,000, but not greater than the $150,000, awarded under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

528.103 Performance and payment bonds for other than construction contracts.

528.103-2 Performance bonds.

(a) The contracting officer shall not require performance bonds for building service contracts unless a written determination is made explaining why the bond is essential to protect the Government's interest and justifying the additional cost of the bonding requirement.

(b) The contracting officer may require a performance bond for building service contracts over $150,000 awarded under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) if it is determined under 528.103-2(a) that a performance bond is essential to protect the Government's interest.

(c) The contracting officer shall not require a performance bond for building service contracts awarded to workshops for the blind or other severely handicapped under the Javits-Wagner-O'Day Act, as amended (41 U.S.C. 8501-8506)

(d) Consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

528.103-3 Payment bonds.

(a) The contracting officer may require payment bonds for other than construction contracts if the contracting director determines, under FAR 28.103-3, that such a requirement is in the Government's interest.

(b) Consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

528.106 Administration.

528.106-6 Furnishing information.

The HCA or designee performs the functions outlined in FAR 28.106-6(c).

Subpart 528.2 - Sureties and Other Security for Bonds

528.202 Acceptability of corporate sureties.

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. The contracting officer may waive failure of the surety to affix the corporate seal as a minor informality. (See B-184120, July 2, 1975, 75-2 CPD 9.)

528.202-70 Acceptability of bonds and sureties.

Verify the acceptability of the surety on a bond by placing the words "Acceptability of Bond Verified," and sign immediately thereunder, on the bond or on a properly identified attachment. Retain the bond with the original of the contract. The contracting officer may use the Notice to Proceed to notify the contractor that the bond(s) has been accepted.

528.203 Acceptability of individual sureties.

Refer evidence of possible criminal or fraudulent activities by an individual surety first to the Assistant Inspector General for Investigations or to the appropriate Regional Special Agent in Charge. The Office of Inspector General may conduct an investigation and, when appropriate, refer the matter to the Senior Procurement Executive. Include in referrals the information required by 528.203-7.

528.203-7 Exclusion of individual sureties.

(a) The Senior Procurement Executive or designee excludes individuals from acting as a surety on bonds under FAR 28.203-7.

(b) Include the following, as a minimum, in referrals for consideration of exclusion:

(1) The basis for exclusion (see FAR 28.203-7(b)).

(2) A statement of facts.

(3) Copies of supporting documentary evidence.

(4) The individuals' names and current or last known home and or business addresses, including zip codes.

(5) A statement of GSA's history with such individuals, if any.

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

(c) In accordance with GSA Order ADM 5000.4A Legal Services, legal review shall be obtained for the proposed exclusion.

528.204 Alternatives in lieu of corporate or individual sureties.

Security deposited instead of corporate or individual sureties on bonds must be safeguarded immediately after they are received, as provided in procedures issued by the Office of the Chief Financial Officer (see GSA Order, Accounts Receivable Policy Handbook (CFO P 4253.1)). United States bonds or notes received in the District of Columbia must be deposited with the Treasurer of the United States, as provided in FAR 28.204-1.

Subpart 528.3 - Insurance

528.301 Policy.

Insurance requirements must be adequate, just, and reasonable. They should be predicated on potential loss or damage, not necessarily on the value of the contract.

528.310 Contract clause for work on a Government installation.

Insert the clause at 552.228-5, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold; and

(b) The contract will require work to be performed on Government property.

528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

528.311-1 Contract clause.

Use the clause at FAR 52.228-7, Insurance–Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

PART 529 - TAXES

Sec.

Subpart 529.1 - General

529.101 Policy.

Subpart 529.3 - State and Local Taxes

529.302 Application of State and local taxes to the Government.

Subpart 529.4 - Contract Clauses

529.401 Domestic contracts.

529.401-70 Purchases at or under the simplified acquisition threshold.

529.401-71 Contracts for supplies and services usable by the DC Government.

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PART 529 - TAXES

Subpart 529.1 - General

529.101 Policy.

Action may not be taken on any matters involving taxes on Federal purchases or contracts without obtaining legal review. See ADM 5000.4A for the requirement to obtain legal review by the Office of General Counsel (OGC) for agency actions. See FAR 29.101 (b) through (d) for the type of tax-related issues that require legal review.

Subpart 529.3 - State and Local Taxes

529.302 Application of State and local taxes to the Government.

If it has been determined that evidence of tax exemption is required, contracting officers shall follow the guidance as outlined on GSA Insite. Contracting officers shall input "Tax Exemption Information" in the search tool and then select "Tax Exemption Information" from the results list for point of contact information and GSA's tax exemption number.

Subpart 529.4 - Contract Clauses

529.401 Domestic contracts.

529.401-70 Purchases at or under the simplified acquisition threshold.

Insert 552.229-70, Federal, State, and Local Taxes, in purchases and contracts estimated to exceed the micropurchase threshold, but not the simplified acquisition threshold.

529.401-71 Contracts for supplies and services usable by the DC Government.

Insert 552.229-71, Federal Excise Tax—DC Government, in solicitations and contracts that permit the District of Columbia Government to place orders.

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PART 530 - COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.

Subpart 530.2 - CAS Program Requirements
530.202 [Reserved]
530.201-5 Waiver.

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PART 530 - COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 530.2 - CAS Program Requirements

530.202 [Reserved]

530.201-5 Waiver.

Submit waiver requests to the Senior Procurement Executive.

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PART 531 - CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

Subpart 531.1 - Applicability

531.101 Objectives.

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PART 531 - CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 531.1 - Applicability

531.101 Objectives.

The Senior Procurement Executive is the designee under FAR31.101.

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PART 532 - CONTRACT FINANCING

Sec.

Subpart 532.1 - Non-Commercial Item Purchase Financing

532.111 Contract clauses for non-commercial purchases.
532.112 Payment of subcontractors under contracts for non-commercial items.
532.112-1 Subcontractor assertions of nonpayment.

Subpart 532.4 - Advance Payments for Non-Commercial Items

532.402 General.
532.407 Interest.

Subpart 532.5 - Progress Payments Based on Costs

532.501 General.
532.501-2 Unusual progress payments.
532.502 Preaward matters.
532.502-2 Contract finance office clearance.
532.503-5 Administration of progress payments.
532.503-6 Suspension or reduction of payments.
532.503-9 Liquidation rates—alternate method.

Subpart 532.6 - Contract Debts

532.606 Debt determination and collection.

Subpart 532.7 - Contract Funding

532.700 Scope of subpart.
532.702 Policy.
532.703 Contract funding requirements.
532.705 Unenforceability of unauthorized obligations.
532.706 Contract clauses.
532.706-3 Clause for unenforceability of unauthorized obligations.

Subpart 532.8 - Assignment of Claims

532.805 Procedure.
532.806 Contract clauses.

Subpart 532.9 - Prompt Payment

532.904 Determining payment due dates.
532.905 Payment documentation and process.
532.905-70 Final payment—construction and building service contracts.
532.908 Contract clauses.

Subpart 532.11 - Electronic Funds Transfer

[Reserved]

Subpart 532.70 - Authorizing Payment by Government Charge Card

532.7002 Solicitation requirements.
532.7003 Contract clause.

Subpart 532.71 - [Reserved]

Subpart 532.72 - Payments Under Contracts Subject to Audit

532.7201 General.
532.7202 Submission and processing of invoices or vouchers.
532.7203 Action upon receipt of an audit report.
532.7204 Suspension and disapproval of amounts claimed.

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PART 532 - CONTRACT FINANCING

Subpart 532.1 - Non-Commercial Item Purchase Financing

532.111 Contract clauses for non-commercial purchases.
Insert the clause at 552.232-5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

532.112 Payment of subcontractors under contracts for non-commercial items.

532.112-1 Subcontractor assertions of nonpayment.
If the contracting officer determines under FAR 32.112-1 that a contractor's certification of payment is inaccurate in any material respect, the contracting officer shall report the matter to the Office of Inspector General.

Subpart 532.4 - Advance Payments for Non-Commercial Items

532.402 General.
The contracting officer shall prepare the findings and determinations required by FAR 32.402(e) in coordination with the contract finance office. The HCA approves the findings, determinations and authorization for advance payments.

532.407 Interest.
The contract finance office will give the contracting officer the interest rate to be charged on the unliquidated balance of advance payments.

Subpart 532.5 - Progress Payments Based on Costs

532.501 General.

532.501-2 Unusual progress payments.
The HCA must approve or disapprove requests for "unusual" progress payments.

532.502 Preaward matters.

532.502-2 Contract finance office clearance.
Before providing for progress payments based on costs, the contracting officer shall request the Office of the Chief Financial Officer to provide advice and assistance about a contractor's financial condition and the adequacy of its accounting system and controls.

532.503-5 Administration of progress payments.
The contracting officer shall ensure that the contract finance office provides to the contracting office:
(a) The date and amount of each progress payment to a contractor; and
(b) Written recommendations if findings warrant action by the Government.

532.503-6 Suspension or reduction of payments.
The HCA must approve any action recommended under FAR 32.503-6. Upon approval, the contracting officer shall request the contract finance office to suspend or reduce payments.

532.503-9 Liquidation rates—alternate method.

Reduction of the liquidation rates specified in paragraph (b) of FAR 52.232-16 may be made only with the contracting officer's approval after coordination with the contract finance office. Upon approval, the contracting officer shall request the finance office to reduce the rate.

Subpart 532.6 - Contract Debts

532.606 Debt determination and collection.

(a) The contract finance office is responsible for the administration of debt collection pursuant to GSA directives, currently found in the Accounting Operations—Accounts Receivable and Credit and Finance Operations, and Related Activities Handbook (PFM P 4253.1).

(b) If the contracting officer determines that a debt in excess of $100 is delinquent, he/she shall notify the applicable finance office for collection in accordance with the Debt Collection Improvement Act of 1996, and possibly forward the information to the Department of the Treasury's Financial Management Service for administrative offset and cross-servicing.

(c) If the contractor appeals the demand for payment pursuant to the Disputes clause of its contract, the contracting officer shall advise the Finance Office whether to suspend collection efforts pending resolution of the dispute.

Subpart 532.7 - Contract Funding

532.700 Scope of subpart.

GSA fiscal regulations are in the Budget Administration Handbook (CFO 4251.4), Accounting Classification Handbook (CFO P 4240.1), and Accounting Operations—Voucher Examination Payment Handbook (CFO P 4252.1).

532.702 Policy.

GSA's contract funding policies are in compliance with the full funding policy at 2, Section 31.6, OMB-C A-11, published June 26, 2008.

532.703 Contract funding requirements.

(a) "Severable services" means services that are continuing and ongoing in nature—such as help-desk support, maintenance, or janitorial services—for which benefit is received each time the service is rendered.

(b) "Non-severable services" means work that results in a final product or end-item and for which benefit is received only when the entire project is complete, such as systems design, building conversion, or environmental study.

(c) Contracts for severable services may cross fiscal years as long as the period of performance (excluding options) is no more than 12 months. Contracts for goods or non-severable services are not similarly limited.

532.705 Unenforceability of unauthorized obligations.

Supplier license agreements defined in FAR 32.705 are equivalent to commercial supplier agreements defined in 502.101.

532.706 Contract clauses.

532.706-3 Clause for unenforceability of unauthorized obligations.

(a) The contracting officer shall utilize the clause at 552.232-39, Unenforceability of Unauthorized Obligations (FAR DEVIATION) in all solicitations and contracts in lieu of FAR 52.232-39.

(b) The contracting officer shall utilize the clause at 552.232-78, Commercial Supplier Agreements - Unenforceable Clauses, in all solicitations and contracts (including orders) when not using FAR 12.

Subpart 532.8 - Assignment of Claims

532.805 Procedure.

(a) When acknowledging receipt of the notice of assignment, the contracting officer shall notify the contractor that all future invoices or other requests for payment under the contract must specify the name and address of the assignee and

include a notation that payments due thereunder have been duly assigned. The contracting officer must send a copy of the acknowledgment to the contract finance office.

(b) When payments under requirements or indefinite quantity contracts that are for the sole use of GSA have been assigned, the contracting officer shall provide all GSA offices that will place orders against the contract the name and address of the assignee that will receive amounts due under the contract. The notification should also state that the contracting officer requested the contractor to specify the name and address of the assignee on future invoices.

532.806 Contract clauses.

Insert the clause at 552.232-23, Assignment of Claims, in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.9 - Prompt Payment

532.904 Determining payment due dates.

Payment due dates for construction contracts are addressed at FAR 32.904(d). The following procedures apply to construction and building service contracts:

(a) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

(5) The agreed-upon dollar amount in a Deficiency Report, which is included in all applicable Operation and Maintenance (O&M) service contracts.

(b) When the contract is for the performance of building services, the contracting officer shall include the clause at 552.232-72, Final Payment Under Building Services Contracts.

532.905 Payment documentation and process.

(a) Contractors are to submit invoices or vouchers to the contracting officer for approval. Invoices must be annotated with the date of receipt, as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The contracting officer or designee must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer must make the required deduction, except as provided in 532.7203. Subject to 532.7201, the contracting officer must note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor and forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

(b) See GSAM 532.7203 for the handling of audit findings.

532.905-70 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts:

(a) The Government shall pay the final amount due the Contractor under this contract after the documentation in the payment clauses of the contract is submitted. This includes the final release prescribed for construction at FAR 52.232-5, and for building services at GSAR 552.232-72.

(b) Contracting officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, except as provided in paragraph (c) of this section

(c) In cases where, after 60 days from the initial attempt, the contracting officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel.

(d) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.
(3) Amount withheld for improper payment of labor wages.
(4) The amount of unilateral change orders covering defects and omissions.

532.908 Contract clauses.

(a) GSA has a FAR deviation that allows this agency to use the clause at 552.232-1, Payments, in lieu of the clause at FAR 52.232-1, Payments.

(b) *General*. Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in paragraph (a)(5)(i) of the clause at FAR 52.232-25, Prompt Payment, the contracting officer must prepare a written justification explaining why a longer period is necessary. An official one level above the contracting officer must approve the justification. The time needed should be determined on a case-by-case basis, but the specified constructive acceptance period shall not exceed 30 days.

(c) *Stock, Special Order, and Schedules Programs*. (1) GSA has obtained a FAR Deviation to authorize payment within 10 days of receipt of a proper invoice. The authority applies only to:

(i) Orders placed by GSA under the referenced programs;
(ii) That include FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment; and
(iii) For which the order is placed, and the contractor submits invoices, using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is for commercial items and will include FAR 52.212-4, use the clause with its Alternate II. If the contract is not for commercial items, use the clause at 552.232-25, Prompt Payment, instead of FAR 52.232-25.

Subpart 532.11 - Electronic Funds Transfer

[Reserved]

Subpart 532.70 - Authorizing Payment by Government Charge Card

532.7002 Solicitation requirements.

(a) In solicitations for supplies and services, except FSS schedule solicitations, request offerors to indicate if they will accept payment by Governmentwide commercial purchase card. Identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract, on the cover page or in SectionL of the solicitation.

(b) For FSS schedule contracts, identify the card brand(s) under the GSA SmartPay program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Governmentwide commercial purchase card only for orders that do not exceed $100,000 (see GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1)).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Governmentwide commercial purchase card, for example:

"If awarded a contract under this solicitation, the offeror agrees to accept payment by Governmentwide commercial purchase card for orders of:

_____ $2,500 or less
_____ $25,000 or less
_____ $50,000 or less
_____ $100,000 or less

532.7003 Contract clause.

For indefinite-delivery, indefinite-quantity (IDIQ) contracts other than Schedules, insert the clause at 552.232-77, Payment By Government Charge Card, if the contract will provide for payment by Government charge card as an alternative method of payment for orders. For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at part 538.

Subpart 532.71 - [Reserved]

Subpart 532.72 - Payments Under Contracts Subject to Audit

532.7201 General.

(a) The contracting officer should not approve an initial invoice or voucher before having consulted with the Assistant Inspector General for Auditing or the Field Audit Office regarding cost or other supporting data as required under:

(1) Cost-reimbursement type contracts.

(2) The cost-reimbursement portion of fixed-price type contracts.

(3) Time and materials or labor-hour contracts.

(4) Fixed-price contracts providing for any of the following:

(i) Progress payments based on costs.

(ii) Advance payments.

(iii) Guaranteed loans.

(iv) Cost-based Incentives or redetermination.

(b) Except for fixed-price contracts with redetermination where no price revision (upward or downward) is to be made, the contracting officer shall not approve the final payment invoice or voucher for contracts specified in 532.7201(a) or the final payment or settlement of other contracts subject to audit prior to:

(1) Receipt and review of the contract audit report; or

(2) Consultation with the Assistant Inspector General for Auditing or the Field Audit Office if no audit is to be conducted.

532.7202 Submission and processing of invoices or vouchers.

(a) Contractors should be required to submit invoices or vouchers to the contracting officer. The date on which the contracting officer receives the invoice or voucher will be used to determine interest penalties for late payments. The contracting officer, or designee, must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer is responsible for making the required deduction, except as provided in 532.7203.

(b) Subject to 532.7201, the contracting officer should note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor, then forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

532.7203 Action upon receipt of an audit report.

Audit reports will be furnished to the contracting officer and Field Audit Office, with a copy to the appropriate contract finance office. Upon receipt of an audit report, pursuant to contract terms, the contracting officer is responsible for determining the allowability of all costs covered by audit. While the auditor's recommendations should be given full consideration, the contracting officer must make an independent business judgment before taking any action based on the audit report. If there is doubt or question about the auditor's recommendations, the contracting officer is required to follow the audit resolution procedures in GSA Order ADM P 2030.2C, Audit Resolution and Followup System, Chapter 4, paragraph 3.

532.7204 Suspension and disapproval of amounts claimed.

(a) The contracting officer shall notify the appropriate contract finance office in writing when amounts claimed for payment are—

(1) Suspended;

(2) Disapproved as not being allowable according to contract terms; or

(3) Not allocable to the contract.

(b) The contracting officer's notice forms the basis for the contract finance office to issue GSA Form 533, Administrative Difference Statement. Finance will attach a copy of GSA Form 533 to each copy of the invoice or voucher from which the deduction has been made, and will include an explanation of the deduction.

PART 533 - PROTESTS, DISPUTES, AND APPEALS

Sec.

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PART 533 - PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1 - Protests

533.101 Definitions.

"Agency Protest Official for GSA" means the Central Office official in the Office of the Chief Acquisition Officer (OCAO) designated to independently review and decide procurement protests filed with GSA when the protester requests an agency review by other than the contracting officer.

"Deciding official" means the person chosen by the protester to decide the agency protest; it may be either the contracting officer or the Agency Protest Official for GSA.

533.102 General.

Unless otherwise authorized by the Office of General Counsel (OGC), OGC contacts anyone outside of GSA involved in protests of GSA contract actions filed with the Comptroller General or in a Federal court.

533.103 Protests to the agency.

533.103-1 Filing a protest.

(a) Any protester filing an agency protest has the choice of requesting either that the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest. If a party requests a review at a level above the contracting officer, the Agency Protest Official will decide the protest. The decision by the Agency Protest Official for GSA is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official for GSA will not consider an appeal of the contracting officer's decision on an agency protest.

(b) If an agency protest is filed, the deciding official uses the procedures in FAR 33.103 and this section to resolve the protest. The deciding official will provide a fair and quick review of any protest filed with the agency.

(c) The filing timeframes in FAR 33.103(e) apply. An agency protest is filed when the complete protest is received at the location the solicitation designates for serving protests. GSA's hours of operation are 8 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

(d) The protest must meet all the following conditions:

(1) Include the information required by FAR 33.103(d)(2).

(2) Indicate that it is a protest to the agency.

(3) Be filed in writing with the contracting officer.

(4) State whether the protester chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest does not include the protester's choice, then the contracting officer will decide the protest (see paragraph (a) of this subsection).

(e) The following procedures apply to information submitted in support of or in response to an agency protest:

(1) GSA procedures do not provide for any discovery.

(2) The deciding official has discretion to request additional information from either the agency or the protester, orally or in writing, as may be necessary to render a timely decision on the protest. However, protests are normally decided on the basis of information initially provided by the protester and the agency.

(3) To the extent permitted by law and regulations, the parties may exchange relevant information.

(4) The agency must make a written response to the protest within ten days unless another date is set by the deciding official.

(5) The agency must also provide the protester with a copy of the response on the same day it files the protest response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it should identify and provide the information to the deciding official for *in camera* review.

(f) A protester may represent itself or be represented by legal counsel. GSA will not reimburse the protester for any legal fees related to the agency protest.

(g) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest forum outside of GSA.

533.103-2 Deciding a protest.

(a) When the Agency Protest Official is the deciding official:

(1) The contracting officer must ensure that the Agency Protest Official and assigned legal counsel receive a copy of the materials served on the contracting officer within one business day after the filing date.

(2) The Agency Protest Official must conduct a scheduling conference with the protester and assigned agency legal counsel as soon as practicable after the protest is filed. The scheduling conference will establish the Agency Protest Official's plan to develop an appropriate record to assist his/her decision making. The Agency Protest Official, in his/her discretion, may ask the parties to participate in an oral presentation and/or to submit other written material related to the protest issues. In the event the Agency Protest Official deems it necessary to have an oral presentation following submission of the agency's written response, it should be limited to resolving remaining issues of material fact necessary for resolution of the protest, as identified in advance by the Agency Protest Official. In such a case, the Agency Protest Official will determine whether a further written response from both parties is required following the oral conference. Other parties (*e.g.*, representatives of the program office) may attend at the discretion of the Agency Protest Official.

(3) If the Agency Protest Official sustains a protest, the contracting officer must, within thirty (30) days after receiving the protest decision, fully implement the recommended relief.

(b) Conferences and presentations may take place either by telephone or in person.

(c) If GSA receives an agency protest before contract award, the contracting officer shall not make award unless the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if GSA receives an agency protest within ten (10) days after award or within five (5) days after a debriefing date offered to the protester under a timely debriefing request under FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend contract performance unless the HCA makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(d) The deciding official must obtain legal review of all draft protest decisions as required by GSA Order, Legal Services (ADM 5000.4A).

(e) The decision of the deciding official must be in writing, dated, and include the following information:

(1) Whether the protest was denied, sustained, or dismissed; and

(2) The rationale for the decision.

(f) If the deciding official sustains the protest, relief may consist of any of the following recommendations:

(1) Terminating the contract.

(2) Recompeting the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Reevaluating the offers or bids and awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(6) Other action determined appropriate by the deciding official.

533.104 Protests to GAO.

(a) *General procedures*. (1) The expeditious and timely handling of Government Accountability Office (GAO) protests is a GSA priority.

(2) As soon as GAO receives a protest filed against GSA, it informs the GSA Office of General Counsel (OGC). OGC will —

(i) Formally request a Statement of Fact and Position and compilation of documents (see FAR 33.104(a)(3)) from the contracting officer;

(ii) Notify the contracting officer of the designated protest counsel (the GSA attorney responsible for handling the case);

(iii) Provide GAO with the name, title, and telephone number of one or more GSA officials who may be contacted by GAO regarding the protest.

(3) If the contracting activity receives a protest before being informed of it by OGC, he/she must immediately forward it to OGC.

(4) The designated protest counsel is responsible for preparing a report to GAO, based upon the Contracting Officer's Statement of Fact and Position.

(5) The Contracting Officer's Statement of Fact and Position shall be reviewed by designated protest counsel and the contracting director.

(6) The Contracting Officer's Statement of Fact and Position and the compilation of documents under FAR 33.104(a)(3)(ii) are due to the designated protest counsel within 10 business days after receipt of the protest by the contracting officer. The time period may be reduced if the GAO so decides. If the contracting officer cannot complete the Statement of Fact and Position and the compilation of documents within the time, the contracting officer must promptly telephone the designated protest counsel with the reason for the delay. The designated protest counsel has the discretion to authorize or disapprove the request; if the extension would delay submission of GSA's report to GAO beyond 30 days from receipt of the protest, the designated protest counsel must first consult with GAO.

(7) Once the Statement of Fact and Position has been sent to the designated protest counsel, the contracting officer and Regional Counsel are responsible for promptly informing the designated protest counsel of any later developments that may affect the case.

(8) The contracting officer is responsible for informing all interested parties that a GAO protest has been filed. (See FAR 33.104(a)(2).) This should be done in writing using a method that provides evidence of receipt.

(b) *Competition in Contracting Act (CICA) stay overrides*. GSA requires the contracting officer to prepare the written determination and findings (D&F) under FAR 33.104(b) and (c) and obtain the concurrence of the Associate General Counsel (and Regional Counsel if a regional procurement) before submitting the D&F for the HCA's approval and signature. Once the D&F is signed, the designated protest counsel must inform GAO of the findings and intention to award, or authorize contract performance, before GSA can actually take the intended action. Copies of the decision must be distributed in accordance with FAR 33.104(d).

(c) *Content of Report to GAO*. (1) *All reports*. In addition to the requirements of FAR 33.104(a)(3), the GSA report contains all the following:

(i) GAO protest number (GAO case file number).

(ii) Solicitation or contract number.

(iii) Full corporate name of the protesting organization and other firms involved.

(iv) Statement indicating if the protest was filed before or after award.

(2) *Report for protest after award*. If the protest is filed after award, the report also includes:

(i) Identity of the awardee.

(ii) Date of award.

(iii) Contract number.

(iv) Date and time of bid opening (including a statement if the date of bid opening was extended by amendments).

(v) Total number of offerors.

(vi) Complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken).

(vii) Other relevant documents believed helpful in determining the validity of the protest. This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, *e.g.*, Tab A, Exhibit 1, etc.

(d) *Notice to GAO*. OGC concurs on the HCA's report to the Comptroller General if GSA has decided not to comply with GAO's recommendation.

533.105 Court of Federal Claims Protests.

(a) Upon receipt of either a copy of a protest filed in the Court of Federal Claims (COFC) or a telephone call from the Department of Justice (DOJ) advising of the filing of a COFC protest, the contracting officer shall immediately notify and/or send a copy of any filed documents received to OGC.

(b) OGC is responsible for communicating and coordinating with DOJ regarding defense of any COFC protest. The contracting officer shall provide information and support as directed by OGC, including compilation of necessary documents and other materials.

Subpart 533.2 - Disputes and Appeals

533.209 Suspected fraudulent claims.

In GSA, the agency official responsible for investigating fraud is the Office of Inspector General.

533.211 Contracting officer's decision.

The contracting officer's written decision must include the paragraph at FAR 33.211(a)(4)(v). The contracting officer shall state in the decision that a contractor's notice of appeal to the Civilian Board of Contract Appeals (CBCA) should include a copy of the contracting officer's decision.

533.212 Contracting officer's duties when an appeal is filed.

533.212-1 General.

(a) The contractor may elect to appeal the contracting officer's decision by filing a notice of appeal with the Civilian Board of Contract Appeals (CBCA) or by filing suit in the United States Court of Federal Claims (COFC). In cases brought before the CBCA, GSA is represented by the GSA Office of General Counsel (OGC). In cases brought before the COFC, GSA is represented by the Department of Justice (DOJ), with the assistance of OGC.

(b) When a case is brought before the CBCA or the COFC, OGC will notify the contracting officer of the designated litigation counsel (the GSA attorney responsible for handling the case). The contracting officer shall provide assistance to designated litigation counsel as specified in this section or as otherwise requested by designated litigation counsel.

(c) Notwithstanding the filing of an appeal, the contracting officer retains existing authorities with respect to the administration of the contract. However, the contracting officer is not authorized to represent GSA before the CBCA or the COFC or to an attorney representing the contractor. If the contracting officer is contacted by an attorney for the contractor, the contractor's attorney must be referred to GSA's designated litigation counsel.

(d) If a contractor appeals a decision that has been deemed to be denied in accordance with the Contract Disputes Act (CDA), the CBCA or COFC may require the contracting officer to issue a decision in accordance with the CDA at 41 U.S.C. §605.

533.212-2 Procedures when an appeal is filed.

(a) Timeliness. If the contracting officer believes that the appeal is untimely filed, either at the CBCA or COFC, the contracting officer shall immediately transmit to designated litigation counsel copies of documentary evidence related to timeliness, including a copy of the final decision and certified mail receipt.

(b) CBCA Appeal File.

(1) When an appeal is filed before the CBCA, the contracting officer shall prepare the file of documentary exhibits required in the Board's Rules of Procedure at http://www.cbca.gsa.gov, in accordance with the Board's rules governing the Appeal File.

(2) Generally, the Appeal File shall include all documents referenced in and supporting the agency's position, including, the contract, the claim, and the contracting officer's decision.

(3) The contracting officer should consult with the counsel to obtain general assistance in preparing the Appeal File, and consult with designated litigation counsel to determine requirements specific to the appeal, including possible electronic submission of the Appeal File. If the contract is voluminous and the dispute pertains only to a discrete portion of the contract, the contracting officer should consult with designated litigation counsel to determine whether inclusion of a portion of the contract is acceptable.

(4) In preparing the Appeal File, the contracting officer must adhere to the following particular requirements:

(i) The exhibits must be placed in a 3-ring binder(s), with numbered tabbed division sheets separating each exhibit.

(ii) The exhibits must be assembled in chronological order, with the oldest exhibit coming first.

(iii) If a multi-page exhibit lacks internal pagination, page numbering must be added, by hand, label, stamp or other means.

(iv) An index must be prepared including a brief description of each exhibit, the date of the exhibit, and the tab number corresponding to the exhibit.

(5) The contracting officer shall submit the proposed Appeal File, together with an electronic version of the index, to designated litigation counsel within 20 days of receiving notice of appeal, or shorter, if notified that accelerated procedures apply. Should the volume of exhibits or other factors require additional time for preparation of the Appeal File, the contracting officer should immediately notify designated litigation counsel in order that an extension may be obtained.

(6) After designated litigation counsel has reviewed the proposed Appeal File and index, the contracting officer shall make revisions as requested. Unless otherwise requested, the contracting officer shall produce five copies of the Appeal File and transmit four copies to designated litigation counsel.

(c) COFC Litigation Report.

(1) When a case is filed at the COFC, the agency is required to furnish a litigation report to DOJ. The contracting officer shall furnish all necessary information to designated litigation counsel for preparation of the litigation report.

(2) At a minimum, the information to be furnished shall include—

(i) A narrative of the factual background underlying the dispute;

(ii) A copy of the claim and the contracting officer's decision;

(iii) Copies of documents related to the dispute, including copies of documents referenced in the claim or contracting officer's decision;

(iv) Name and contact information for GSA and other personnel involved in the dispute.

(d) *Answer to Complaint.* When an appeal is filed at the CBCA or COFC, the contractor is required to file a formal pleading called a Complaint, which sets forth the allegations of fact upon which the claim is based. The Government, except for the situation discussed below, is obligated to respond to the Complaint by admitting, denying, or otherwise responding to the contractor's allegations in a formal pleading called the Answer. The contracting officer shall assist designated litigation counsel in the drafting of the Answer by advising whether the contractor's allegations of fact should be admitted or denied. If a response to an allegation in the complaint requires information in the possession of other GSA personnel, the contracting officer shall conduct sufficient research reasonably necessary in order to form a belief as to the truth of the allegation. If the information necessary to form a belief as to the truth of the allegation is not in GSA's possession, the contracting officer shall so advise designated litigation counsel. In some cases, the Government may respond to the Complaint by filing a motion to dismiss in lieu of filing an Answer. Designated litigation counsel will advise the contracting officer if a motion to dismiss will be filed.

(e) *Discovery*. After the complaint and answer are filed with the CBCA or COFC, each party will usually commence discovery. The contracting officer shall assist designated litigation counsel in responding to all discovery requests, including providing information in response to interrogatories, identifying and locating requested documents, and assisting with production of witnesses for depositions.

533.212-3 Preservation of Evidence.

When an appeal is filed, the contracting officer is required to ensure that evidence in his or her control related to a dispute is preserved. In addition to physical documentation, such evidence includes electronic data stored on agency computer systems. The contracting officer shall assist designated litigation counsel with preservation of evidence by identifying relevant files containing physical documentation, including not only the contract file but files containing information related to the dispute that are maintained by other GSA organizations. The contracting officer shall also assist designated litigation counsel in identifying other GSA personnel whose electronic data, including email, word processing documents, spreadsheets, and other electronic files may include information relating to the dispute.

533.212-4 Settlement.

Notwithstanding the contracting officer's claim of settlement authority, the contracting officer is not authorized to settle a case brought before the CBCA or COFC. Only OGC may authorize settlement of a case before the CBCA or concur on behalf of GSA to the settlement of a case before the COFC, subject to internal OGC approval requirements. The contracting officer shall provide requested assistance to designated litigation counsel in the negotiation, review, and approval of settlements.

533.214 Alternative dispute resolution (ADR).

It is GSA's policy to use ADR to effect the prompt, efficient and just resolution of disputes. The contracting officer should refer to GSA Order CSL P 5050.1A, Using Alternative Dispute Resolution Techniques, and consult with designated litigation counsel on the use of ADR.

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SUBCHAPTER F - SPECIAL CATEGORIES OF CONTRACTING

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PART 534 - MAJOR SYSTEM ACQUISITION

Sec.

Subpart 534.2 - Earned Value Management Systems.

534.201 Policy.

534.201-70 Procedures.

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PART 534 - MAJOR SYSTEM ACQUISITION

Subpart 534.2 - Earned Value Management Systems.

534.201 Policy.

(a) *Policy*. This Subpart provides policies and procedures for incorporating an Earned Value Management System (EVMS) (see FAR 2.101) in GSA contracts, for the exclusive use of GSA, pursuant to OMB Circular A-11, 7. It is a results-based tool that can also provide for the preclusion of possible problems or concerns during the project.

(b) *Definition of major acquisition*. OMB Circular A-11, 7, Capital Planning Guide Supplement, refers to the definition of "major acquisition" as a capital project that requires special management attention because of its: (1) importance to an agency's mission; (2) high development, operating, or maintenance costs; (3) high risk; (4) high return; or (5) significant role in the administration of an agency's programs, finances, property, or other resources.

(c) *Applicability*. It is GSA policy to define major acquisition for the purposes of EVMS as follows:

(1) *GSA acquisitions valued at $20 million or more*. Cost-reimbursement or incentive contracts and orders (see FAR subparts 16.3 and 16.4) shall require a formally validated EVMS (in accordance with ANSI/EIA-748-A Earned Value Management System Acceptance Guide (see 534.201(d) below)). EVMS requirements shall be included in commercial and non-commercial contracts, MAS orders, and GWAC orders when the requirements entail developmental or modernization work, as defined by OMB's definition of Developmental/Modernization/Enhancement in A-11, 7. Firm-fixed price, time-and-materials, and labor hour contracts and orders that are solely for commercial items or services, as defined at FAR 2.101, should not normally include EVMS.

(2) *GSA acquisitions valued at less than $20 million*. EVMS requirements apply for contracts and orders of any type valued at less than $20 million if the program manager and contracting officer determine that EVMS is needed in that instance. This rationale shall be documented in the acquisition plan for the procurement.

(d) *Industry Guides*. Earned Value Management is based upon the application of an international standard, ANSI/EIA-748-A (June 2007). Specific EVMS Guides approved for use by industry and U.S. Government for implementation of various aspects of ANSI/EIA-748-A are maintained by the National Defense Industrial Association (NDIA). These Guides include:

(1) EVMS Application Guide.
(2) EVMS Surveillance Guide.
(3) EVMS Intent Guide.
(4) EVMS System Acceptance Guide.
(5) Program Managers' Guide to the Integrated Baseline Review Process.
(6) Integrating Risk Management with Earned Value Management.

(e) The Guides can be found at *http://www.ndia.org/evm*.

534.201-70 Procedures.

(a) *General*. Major acquisitions are designated by agency planners in coordination with OMB. All major acquisitions should have a complete and approved acquisition plan, a performance-based work statement, and a performance-based management system. The contracting officer should coordinate with the program manager to determine whether the program has been designated a major acquisition and, if so, to ensure that the following have been adequately addressed in order to apply EVMS properly.

(b) *Adequate funding*. Before proceeding with the procurement, the contracting officer should verify that the program budget contains sufficient funding to conduct required EVMS reviews and the Integrated Baseline Review (IBR) (see FAR 34.202 and appropriate NDIA Guide).

(c) *Contract work breakdown structure*. The program manager is responsible for preparing the Contract Work Breakdown Structure (CWBS) to be included in the work statement. The reporting of progress, performance, and engineering evaluations, as well as financial data and variance analysis, is based on the CWBS.

(d) *Requirements Package language*. When a proposed acquisition meets the requirements for EVM applicability, the requirements package must address the Contract Work Breakdown Structure (CWBS) and the performance schedule, and it

must include in the work statement the requirement for EVMS. Sample language is provided below and should be modified to fit particular program requirements.

(1) *EVMS statement for work statement*.

"The Contractor must utilize an EVMS for planning, controlling, and integrating project scope, schedule, and resources. The Contractor must provide documentation that its EVMS is compliant with the Standard. If the Contractor proposes to use an EVMS or similar system that is not compliant, the Contractor must submit with its proposal a comprehensive plan to develop and implement a compliant EVMS."

(2) *Contract Work Breakdown Structure (CWBS)*. The program manager is responsible for preparing a preliminary CWBS that is compatible with the Program Work Breakdown Structure (PWBS) and for including the CWBS in the requirements package. When determining the appropriate reporting level, the program manager should extend the CWBS only to the level that allows visibility into those high-cost, high-risk, or specific areas critical to the success of the program. The CWBS should not specify an excessive number of lower-level elements because it may impinge on the contractor's normal method of operations or result in excessive reporting. Sample CWBS language follows:

"The Contractor must extend the preliminary CWBS specified in the solicitation to meaningful management or product-oriented lower levels that reflect the way it does business. The Contractor must prepare and deliver a CWBS Index and Dictionary. The Contractor has complete flexibility in extending the CWBS, but it must ensure that the CWBS is reconcilable with the Program WBS and that reporting of progress, performance, and engineering evaluations, as well as financial data and variance analysis, is based on the CWBS. The CWBS must be extended to the necessary level to support development of a logical and efficient sequence of tasks designed to accomplish the effort described in the Contract."

(3) *Performance Schedule*. To ensure that the management control system is integrated, the program manager is required to define requirements in the work statement for a schedule showing the sequence of events and the critical path for program milestones or deliverables. Offerors should be required to use this schedule in preparing their proposals, and the performance schedule will ultimately result in an Integrated Master Schedule after completion of the IBR. Sample work statement language follows:

"The Contractor must establish a performance schedule that describes in sufficient detail the sequence of events needed to accomplish the requirements of the contract. The performance schedule must also reflect congruent CWBS elements. The Contractor must ensure the performance schedule portrays an integrated schedule plan to meet the milestones and delivery requirements of the contract. The performance schedule also must identify the program's critical path. The performance schedule is to be constructed using a software tool compatible with standard scheduling software. The Contractor must submit the performance schedule at the post-award conference and an updated version monthly in program status reviews."

(e) *Acquisition planning*. See FAR 7.105(b)(3) and (b)(10) for required acquisition planning for EVMS.

(f) *Reporting*. Contractors are required to submit EVM reports on a monthly basis. These reporting requirements shall be included as contract data deliverables. The work statement should require the contractor to use appropriately tailored value information as the basis for preparing the monthly EVM reports and to integrate and present cost, schedule, and technical performance reviews.

534.202 Integrated Baseline Reviews (IBR).

GSA policy prohibits the conduct of pre-award Integrated Baseline Reviews (IBR). Therefore, when an Integrated Baseline Review is conducted, it shall be conducted after award.

PART 535 - RESEARCH AND DEVELOPMENT CONTRACTING

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PART 536 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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PART 536 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 536.1 - General

536.101 Applicability.

This part supplements FAR 36 policies and procedures applicable to contracting for construction and architect engineer services. Contracts for construction management services are covered by FAR 37 and GSAM part 537. part 536 shall take precedence when the acquisition involves (1) construction or architect-engineer services, and (2) when the requirement is inconsistent with another part of the GSAR.

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.

"Construction-Manager-as-Constructor" (CMc) means the project delivery method where design and construction are contracted concurrently through two separate contracts and two separate contractors. Unlike the traditional design-bid-build delivery method, under the CMc delivery method, the Government awards a separate contract to a designer *(i.e.*, architect-engineer contractor) and to a construction contractor (*i.e.*, CMc contractor) prior to the completion of the design documents. The Government retains the CMc contractor during design to work with the architect-engineer contractor to provide constructability reviews and cost estimating validation. The CMc contract includes design phase services at a firm-fixed-price and an option for construction at a guaranteed maximum price.

"Statutory cost limitations" means the cost limits included in the agency's statutory authorization or annual appropriations act (by law).

536.103 Methods of Contracting.

(a) Except as provided in paragraph (b) of this subsection, although CMc contracts are considered incentive-type contracts (see 536.207), contracting officers are authorized to use the CMc project delivery method without completing a determination and finding as required by FAR 16.401(d). Contracting officers shall discuss the CMc project delivery method as part of the acquisition plan (see FAR 7.105).

(b) To the extent the contracting officer incorporates an award-fee component into the CMc (in addition to the shared savings incentive), then the determination and finding required by FAR 16.401(d) is required to support any such award-fee.

(c) The contracting officer shall use the tradeoff process as described in FAR 15.101-1, unless a different source selection approach is approved in writing by the HCA, for selecting a construction contractor under the CMc project delivery method, and select sources in accordance with subpart 536.7103.

Subpart 536.2 - Special Aspects of Contracting for Construction

536.201 [Reserved]

536.202 [Reserved]

536.203 Government estimate of construction cost.

(a) *Preparation of the Government Estimate*.

(1) A copy of the independent Government estimate shall be submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals.

(2) Before releasing a solicitation amendment that may affect price, a revised Government estimate shall be provided.

(b) *Release of the Government Estimate*.

(1) Prior to award, the Government may disclose budget (*e.g.* prospectus) information in addition to the information required under FAR 36.204 and GSAM 536.204.

(2) During negotiations, the Government may disclose specific cost figures, but only to the extent considered necessary for arriving at a fair and reasonable price (also see 536.7103(c) and FAR 15.306(e)(3)).

(3) Prior to award and during negotiations, the overall amount of the independent Government estimated price may not be disclosed.

(c) *Use of the Government estimate.* The contracting officer may use the Government estimate. to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness or realism of prices.

536.204 Disclosure of the magnitude of construction projects.

(a) For construction projects over $10,000,000, show the magnitude in ranges having increments of $10,000,000 (e.g., $25,000,000 to $35,000,000). The contracting officer may show the magnitude in ranges using a multiple of $10,000,000 (*e.g.*, $70,000,000 to $100,000,000), but the lower figure shall be at least half of the higher figure.

(b) For the CMc project delivery method:

(1) The range maximum is the total evaluated price, as described at 536.7103(b)(3), that the Government will accept, inclusive of the design phase services, guaranteed maximum price option(s), and other separately priced line items.

(2) Advanced notices and solicitations may state Government budget (*e.g.* prospectus) information for the guaranteed maximum price, as described at 536.7102, for construction services.

536.207 Pricing Fixed-Price Construction Contracts.

For the CMc project delivery method, the construction contract is a variation of the fixed-price incentive (successive target) contract type, described in FAR 16.403-2, that is tailored for construction. The profit adjustment formula is accomplished via a shared savings ratio specified in the contract, as described at 536.7105-5.

536.208 Concurrent Performance of Firm-Fixed-Price and Other Types of Construction Contracts.

The prohibition at FAR 36.208 does not apply to construction contracts under the CMc project delivery method.

536.270 Options in construction contracting.

536.270-1 Use of options.

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

(b) The scope of work in the base contract at award shall require the contractor to provide a discrete and fully functional deliverable. Options shall not be used to incrementally deliver work required to fulfill the requirements of the scope of work for the base contract.

(c) Contracting officers shall justify in writing the use of options.

(d) Including an option may be in the Government's interest when, in the judgment of the contracting officer:

(1) Additional work beyond the base contract is reasonably foreseeable

(2) It would not be advantageous to award a separate contract;

(3) It would not be advantageous to permit an additional contractor to work on the same site;

(4) Services arising out of or relating to the underlying construction contract may be required during or after substantial completion of the scope of work. For instance, if building equipment (*e.g.*, mechanical and electrical equipment) will be installed under the construction contract, it may be advantageous to have the construction contractor maintain and service the equipment. In such an instance, the services performed may be included as an option to the underlying construction contract. Contracting officers shall ensure that the applicable clauses are included in any such option (*e.g.*, Service Contract Act); or

(5) It is otherwise justified.

(e) Options for construction work may provide for an economic price adjustment based on cost or price indexes of labor or materials (see FAR 16.203-4(d)). Subject to the approval of the Head of the Contracting Activity (HCA), the contracting officer may develop and insert a project-specific price adjustment clause into the solicitation.

536.270-1 Solicitations.

Solicitations containing options shall:

(a) Include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 536.270-5);

(b) State the period within which the options may be exercised; and

(c) State whether the basis of evaluation is inclusive or exclusive of the options (if exclusive, see 536.270-4(c)).

536.270-3 Evaluation.

For sealed bidding that includes options:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and all options designated to be evaluated.

(b) Before opening bids that include options, the contracting officer must 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. This amount may be increased later when determining the items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options does not exceed the amount offered for the base bid, the evaluated options, and the same combination of items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the options to be used.

536.270-4 Exercise of options.

(a) The contracting officer shall exercise options in writing within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining, in writing, that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(4) The contractor is not listed in the System for Award Management Exclusions (see FAR 9.405-1).

(5) The contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.

(6) Exercising the option is in accordance with the terms of the option.

(7) The option price is fair and reasonable, unless already determined as such (*e.g.*, at time of award).

(c) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302).

(d) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

536.270-5 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 552.236-74, Evaluation of Options, in solicitations for fixed-price construction contracts when the solicitation contains an option clause and options will be included in the evaluation for award purposes.

(b) Insert a provision substantially the same as the provision at 552.236-75, Evaluation Exclusive of Options, in solicitations for fixed-price construction contracts when the solicitation includes an option clause and options will not be included in the evaluation for award purposes.

(c) Insert a provision substantially the same as the provision at 552.236-76, Basis of Award-Sealed Bidding Construction, in solicitations for fixed-price construction contracts when contracting by sealed bidding. Use the provision with its Alternate I when the solicitation contains an option clause.

(d) Insert a clause substantially the same as the clause at 552.236-77, Government's Right to Exercise Options, in solicitations and contracts for construction that include options.

Subpart 536.5 - Contract Clauses

536.506 Superintendence by the contractor.

Insert the clause at 552.236-6, Superintendence by the Contractor, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.511 Use and possession prior to completion.

Insert the clause at 552.236-11, Use and Possession Prior to Completion, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.515 Schedules for construction contracts.

Insert the clause at 552.236-15, Schedules for Construction Contracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause-

(a) With its Alternate I when the contract amount is expected to be above the simplified acquisition threshold and a design-bid-build project delivery method will be followed; or

(b) With its Alternate II when the contract amount is expected to be above the simplified acquisition threshold and a design-build project delivery method will be followed.

(c) With its Alternate III when the contract amount is expected to be above the simplified acquisition threshold and a construction-manager-as-constructor project delivery method will be followed.

536.521 Specifications and drawings for construction.

Insert the clause at 552.236-21, Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed—

(a) With its Alternate I when a design-build project delivery method will be followed.

(b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

536.570 Authorities and limitations.

Insert the clause at 552.236-70, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.571 Contractor responsibilities.

Insert the clause at 552.236-71, Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

(a) With its Alternate I when a design-build project delivery method will be followed.

(b) With its Alternate II when a construction-manager-as-constructor project delivery method will be followed.

536.572 Submittals.

Insert the clause at 552.236-72, Submittals, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.573 Subcontracts.

Insert the clause at 552.236-73, Subcontracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

Subpart 536.6 - Architect-Engineer Services

536.602 Selection of firms for architect-engineer contracts.

536.602-1 Selection criteria.

(a) FAR 36.602-1 requires that agencies include "location in the general geographical area of the project and knowledge of locality of the project" as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5percent of the total weight of all evaluation criteria. In order to receive the maximum score for this factor, the architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602-1(a)(5), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(b) The public announcement (FedBizOpps notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure.

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program must apply the geographical evaluation criteria in the second phase.

(d) The public announcement (FedBizOpps notice) must provide the number of calendar days the architect-engineer of record has to establish a production capability within the general geographical area of the project. You may allow the architect-engineer of record up to 45 calendar days after contract award to establish this production capability.

536.602-2 Evaluation boards.

(a) Architect-engineer evaluation board members must be experts in the fields of architecture, engineering or related design professions, such as landscape architecture, urban design and interior design, except as provided in 536.602-2(c)(5). Board members must also collectively have expertise in construction, government, and related acquisition matters.

(b) The majority of board members must be GSA employees. Other members may include other Federal agency employees or members of the GSA National Register of Peer Professionals who are private sector practitioners of architecture, engineering or related design professions.

(c) Evaluation boards must not exceed five (5) voting members. If fewer, the board must have an odd number of voting members. The voting members of the evaluation board shall include:

(1) One (1) highly qualified architect or a related design professional employed by GSA.

(2) One (1) highly qualified engineer employed by GSA.

(3) One (1) representative of the Chief Architect of GSA.

(4) For new construction and prospectus level modernization projects, one (1) private sector practitioner of architecture designated from the GSA National Register of Peer Professionals. For other types of projects this slot may be filled by another GSA design professional.

(5) One (1) representative of the client organization(s), at the client's option. GSA's policy is to afford the client organization(s) the opportunity to participate in the architect-engineer selection process. Although not mandatory, GSA strongly recommends that this voting member be a highly qualified design professional.

(d) A maximum of two (2) non-voting advisors may participate in all activities of the evaluation board except voting. The client organization(s) may have only one (1) non-voting advisor to the board. The GSA may also have one non-voting advisor.

(e) Other than you and the individuals appointed under paragraphs (c) and (d) of this subsection, there must be no other advisors, or participants in the official activities of the board.

(f) The selection authority officially appoints the evaluation board members. For new construction and prospectus level modernization projects, the selection authority must obtain the concurrence of the Chief Architect of GSA on the appointment of board members.

(g) Each board member (voting and non-voting) must sign a "Conflict of Interest Acknowledgement and Nondisclosure Agreement" (Figure 515-1) before the activities of the board commence. No person may serve as a board member if that person or any member of that person's family has any direct financial or employment interest in any of the firms being evaluated. The board member is responsible for identifying any possible conflict of interest once you identify the competing architect-engineer firms. You determine whether to disqualify the member from the board.

536.602-3 Evaluation board functions.

(a) The evaluation board performs the functions described in FAR 36.602-3.

(b) Evaluation board members who are private sector design professionals from the GSA National Register of Peer Professionals may participate in all activities of the board, including deliberations and voting. However, they must provide their individual and independent evaluation of each competing architect-engineer firm to you.

(c) Evaluation boards recommend, in order of preference, the most highly qualified architect-engineer firms for the specific project to the selection authority.

(1) Each board member is responsible individually for evaluating and rating the qualifications of each firm being considered following the established evaluation criteria.

(2) The Chairperson of the board must maintain the integrity of the evaluation process and ensure that the final selection report is prepared and submitted to the selection authority.

(3) The selection authority concurs with the recommendations from the evaluation board which lists in order of preference the most highly qualified firms. If the selection authority does not concur with the recommendation from the evaluation board, the selection authority must provide for the contract file a written explanation of the reason.

Subpart 536.70 - [Reserved]

Subpart 536.71 - Construction-Manager-as-Constructor Contracting

536.7101 Scope of Subpart.

This subpart describes policies and procedures for the use of the CMc project delivery method.

536.7102 Definitions.

As used in this subpart—

"CMc Contingency Allowance (CCA)" means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

"Cost" means allowable costs in accordance with FAR Part 31.

"Cost of Performance" means the final sum of cost of the construction work and fee for the construction work.

"Early Work Package" means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

"Estimated Cost of the Work (ECW)" means the estimated cost of the construction work, not including home office overhead.

"Fee for the Construction Work" means the amount established in the construction contract for the contractor's profit and home office overhead costs, as described in FAR part 31, for the construction work.

"Guaranteed Maximum Price (GMP)" means the sum of the ECW, CCA, and the fee for the construction work.

536.7103 Construction Contract Solicitation Procedures.

(a) *Procurement Timing.* The request for proposals should be issued only when the project design requirements have been developed to a sufficient degree of specificity to permit competition with meaningful pricing for the ECW. The contracting officer should obtain written documentation for the contract file from the project manager that the project design requirements satisfy the condition stated in this section.

(b) *Proposal Evaluation.*

(1) *Evaluation Factors.*

(i) Except as provided in paragraph (ii) of this subsection, the solicitation shall provide that the technical evaluation factors, when combined, shall be considered significantly more important than cost or price.

(ii) Subject to the approval of the HCA, the weighting of the technical evaluation factors and cost or price may be different than that required under paragraph (i) of this subsection. Any such written approval shall be documented in the contract file.

(2) *Price Realism.* The contracting officer shall provide for a price realism analysis in the solicitation for the purpose of assessing, among others, whether an offeror's price reflects a lack of understanding of the contract requirements or risk inherent in an offeror's proposal. The solicitation shall provide offerors with notice that the agency intends to perform a price realism analysis.

(3) *Total Evaluated Price.* For purposes of evaluation, the total evaluated price shall include the firm-fixed-price for design phase services, the construction work GMP option(s), and any other fixed-priced line items. If advance pricing elements such as extended overhead rates and daily delay rates are proposed, those shall also be evaluated as part of the total evaluated price.

(c) *Government Budget (e.g. Prospectus) Information.* Subject to the approval of the contracting director, the solicitation may include information contained or referenced within a prospectus submission to Congress for a project.

536.7104 Construction Contract Award.

In accordance with FAR 4.1001, the contracting officer shall use the SF 1442 to identify the services or items to be acquired as separately identified line items on a unit price or lump sum basis including the design phase services, the construction work GMP option(s), and any other work not included in the previously identified items.

536.7105 Construction Contract Administration.

536.7105-1 Responsibilities.

(a) During all phases of the project, the architect-engineer contractor that is providing design services under a separate contract with GSA is contractually responsible for the design in the same manner as under a traditional, design-bid-build project delivery method.

(b) The design phase services provided by the construction contractor can include, but are not limited to, scheduling, systems analysis, subcontractor involvement, cost-estimating, constructability reviews, cost-reconciliation services, and market analysis.

(c) The scope of work should task the construction contractor with reviewing the design documents and providing pricing information at various defined milestones during the design phase.

(d) During the design phase, the architect-engineer contractor and the construction contractor shall collaborate on the design and constructability issues. The goal of this collaboration is to establish a final ECW that does not exceed the original target ECW.

(e) No discussions between the architect-engineer contractor and the construction contractor shall be considered as a change to the construction contract or design contract unless incorporated by the contracting officer through a modification.

536.7105-2 Guaranteed Maximum Price.

(a) *General.*

(1) *GMP.*

(i) The GMP is the ceiling price described by FAR 16.403-2.

(ii) The GMP is established at contract award. The GMP may be established as one option or as multiple options through separate line items, with a separate GMP amount for each line item.

(iii) The GMP is subject to adjustment under various standard contract clauses, including the changes clause, differing site conditions clause, and suspensions clause.

(iv) The contract file shall contain all documents to support any scope changes including a separate analysis to document the rationale for any upward or downward adjustment to the GMP.

(2) *ECW.*

(i) The proposed ECW incorporated at construction contract award is the target ECW.

(ii) The final ECW should be established prior to completion of the design (i.e. 100 percent construction documents), generally no earlier than completion of 75 percent construction documents.

(iii) The contracting officer shall negotiate the final ECW and incorporate it into the construction contract through a bilateral modification prior to exercising the GMP option.

(3) *CCA.*

(i) The CCA type of allowance may only be used as part of the CMc project delivery method and should not be confused with other types of allowances that may be used with other construction project delivery methods.

(ii) The CCA provides for a contingency relative to a fixed percentage of the ECW, except for the requirements at paragraph (c)(3) of this subsection. The CCA at time of GMP option exercise is subject to negotiation between the contractor and the contracting officer and may be different than the amount at time of contract award.

(iii) The amount of the CCA will depend on the status of design and construction, as well as the complexity and uncertainties of the project. Early phase designs usually include less defined scope and, accordingly, may require a higher initial CCA at time of contract award. Later phase designs may remove uncertainties and reduce risk, allowing for a lower CCA at time of GMP option exercise.

(iv) The CCA shall not exceed 3 percent of the ECW, unless approved in writing by the HCA for a higher amount not to exceed 5 percent of the ECW.

(4) *Fee for the Construction Work.*

(i) The fee may be proposed per phase of construction if each phase is a separate option.

(ii) At time of proposal submission, the offeror shall submit a list of the items included within the offeror's home office overhead.

(iii) At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(iv) The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. The fee may, however be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays.

(v) Any fee for the construction work associated with a change order shall not be driven by a fixed percentage. The contracting officer should determine whether the profit included, if any, in a contractor's proposal is reasonable, see FAR 15.404-4 for additional guidance. The limitations of GSAR 552.243-71, especially markups, still apply for any changes.

(b) *Design Phase.*

(1) The GMP may be bilaterally modified upward during the design phase only for approved additions to the scope of work.

(2) The GMP may be bilaterally modified downward during the design phase for deletions to the scope of work.

(c) *Exercising the GMP Option.*

(1) The GMP option shall not be exercised until the final ECW is established.

(2) If the sum of the final ECW, CCA, and fee for construction work is less than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer shall adjust the GMP downward accordingly through a bilateral modification to exercise the GMP option.

(3) If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the contracting officer should work with the contractor to identify measures to reduce the overall GMP. Such measures may include reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project.

(4) The GMP option shall not be exercised if the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43.

(d) *Construction Phase.*

(1) After award of the GMP option, changes in scope may be issued as an adjustment to the GMP or as a stand-alone firm-fixed-price line item.

(2) Any changes in scope after award of the GMP option shall be reflected by a written modification to the construction contract in accordance with FAR Part 43.

(e) *Early Work Package.*

(1) Early work packages (see 536.7105-7) may be used in the procurement that are priced separately or included in the GMP option.

(2) If any early work package exercised reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(f) *GMP Adjustment.*

(1) Any changes to the total GMP or individual parts of the GMP must be incorporated in the contract through a modification.

(2) Any modification that changes the GMP, including modifications for early work packages and fixed price conversions, must clearly state that it includes a change to the GMP and describe the changes to the individual parts of the GMP components in the modification.

(3) Any modification that changes the total GMP, or individual parts of the GMP, is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(4) The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify any adjustments to the total GMP, or individual parts of the GMP.

536.7105-3 Accounting and Auditing Requirements.

(a) *Cost Accounting Standards.*

(1) Except as provided in paragraph (a)(2) of this subsection or through an exemption at FAR 30.201-1, construction contracts under the CMc project delivery method are subject to the cost accounting standards (CAS) identified in FAR Part 30.

(2) The contracting officer may request a CAS waiver in accordance with the requirements at FAR 30.201-5 and 530.201-5.

(3) If CAS applies, the contract clauses identified at FAR 30.201-4 shall be included in the contract.

(4) If a CAS waiver is granted or if CAS does not apply, the contract clause identified at 536.7107(b) shall be included in the contract.

(b) *GMP Option Accounting.*

(1) Open Book Accounting. Open book accounting shall be followed for financial tracking of all contract line items that are awarded on a GMP basis. Such financial tracking may be accomplished through an audit in accordance with paragraph (c) of this section.

(2) Payments and Reconciliation. All payments shall be reconciled with the open book accounting records and the schedule of values adjusted, as appropriate. Reconciliation shall occur each month and should be coordinated with monthly progress payments. The reconciliation shall be documented in the contract file.

(c) Auditing Requirements. In accordance with GSAM 542.102(a), for any audit services required by this Subpart 536.71, the contracting officer shall first request such services be performed by or through the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing. If the Office of Inspector General declines to perform such an audit, the contracting officer may obtain audit services from a certified public accountant.

536.7105-4 Value Engineering.

In accordance with FAR 48.202, the clause at FAR 52.248-3 Value Engineering-Construction does not apply to incentive contracts. Accordingly, value engineering, as that term is used and described in FAR Part 48, shall not apply to the CMc project delivery method described in this subpart.

536.7105-5 Shared Savings Incentive.

(a) General. The incentive is a shared portion of the difference between the final GMP and the final cost of performance. Cost reductions may be realized by the construction contractor as a result of innovations and efficiencies during the construction phase, such as increased labor productivity or strong material subcontract negotiations.

(b) Share Ratio.

(1) Except as provided in paragraph (2) of this subsection, the share ratio for the construction contractor shall range from 30 percent to 50 percent. The share ratio for the construction contractor shall not exceed 50 percent. The complexity of

the project and the amount of risk to the construction contractor should be considered when determining the ratio. A project with greater risk to the construction contractor should reflect a greater share ratio for the construction contractor.

(2) Subject to the approval of the HCA, the share ratio may be different than that required under paragraph (b)(1) of this subsection. Any such written approval shall be documented in the contract file.

(c) Incentive Calculation. The incentive amount is calculated in accordance with the clause at 552.236-79 Construction-Manager-As-Constructor.

536.7105-6 Allowances.

(a) Establishing a separate allowance in addition to the CCA is only permitted pursuant to a written determination approved by the contracting director supporting the use of any such allowance.

(b) The written determination for a separate allowance in addition to the CCA shall consider the following:

(1) Alternative contracting structures, such as a separate GMP line item or performing the work as part of the GMP option, and

(2) Ensuring conformance with all applicable rules and procedures relating to allowances, including FAR 11.702.

536.7105-7 Early Work Packages.

(a) Construction services for an early work package must be within the scope of the overall contract.

(b) Early work packages may be part of the initial procurement as a separately priced line item, or the Government and the construction contractor may agree to develop an early work package after award, typically identified toward the beginning of the project.

(c) *Early Work Packages Developed After Award.*

(1) The parties shall bilaterally agree to the scope, schedule, and pricing for any such early work package, and the contract shall be modified in accordance with FAR Part 43.

(2) If any such early work package reduces the scope of the construction services under the GMP option, the ECW shall be reduced, and the CCA, fee for the construction work, and GMP shall be adjusted accordingly.

(3) Any modification to the contract for an early work package is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(d) Early work packages that are firm-fixed-price are not subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7105-8 Conversion to Firm-Fixed-Price.

(a) At any time after completion of 100 percent construction documents, the Government and the construction contractor may bilaterally convert the whole contract to firm-fixed-price.

(b) Conversion to firm-fixed-price may occur after the contingency risks, to be covered by the CCA, have been sufficiently reduced in the best interest of the Government. See FAR 16.103(b) for additional guidance for assessing risk management, profit motive, and timing considerations.

(c) Conversion to firm-fixed-price is only permitted pursuant to a written determination from the contracting officer to the contract file supporting the conversion. The contracting officer should consult other members of the acquisition team, including the project manager, to analyze and justify the conversion.

(d) The contracting officer shall not agree to a firm-fixed-price in excess of the GMP.

(e) In accordance with 536.7105-3(c), the contracting officer shall obtain an independent audit of the construction contractor's costs incurred in the performance of the contract to date.

(f) When evaluating the construction contractor's proposal for firm-fixed-price definitization, the contracting officer should compare the anticipated final cost to the firm-fixed-price being proposed. It may be reasonable for the construction contractor to include a contingency for assuming the risk associated with agreeing to the firm-fixed-price. The contracting officer should evaluate this contingency to ensure that the proposed amount reasonably reflects the remaining risks being assumed by the construction contractor. This evaluation may be informed by the history of the project, the balance of the CCA, and other factors.

(g) The modification to convert to a firm-fixed-price is subject to the requirement to obtain cost and pricing data unless one of the exceptions in FAR 15.403-1 applies.

(h) The modification to convert to a firm-fixed-price is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(i) Upon converting to a firm-fixed-price, the contract is no longer subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7106 Construction Contract Closeout.

Unless the contract has been converted to a standard firm-fixed-price contract (see 536.7105-8)—

(a) The contracting officer shall ensure that the construction contractor's proposal for final settlement is accurate and reliable in accordance with the open book accounting practices of the contract.

(b) In accordance with 536.7105-3(c), the contracting officer shall obtain an independent audit of the construction contractor's costs.

536.7107 Contract Clauses.

(a) Insert a clause substantially the same as the clause at 552.236-79, Construction-Manager-As-Constructor, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed. This clause is in lieu of the clause at FAR 52.216-17 Incentive Price Revision-Successive Targets.

(b) Insert a clause substantially the same as the clause at 552.236-80, Accounting Records and Progress Payments, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed and cost accounting standards do not apply. This clause is used when the clauses at FAR 52.230-2 Cost Accounting Standards, FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230-6 Administration of Cost Accounting Standards do not apply.

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PART 537 - SERVICE CONTRACTING

Sec.

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537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.
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PART 537 - SERVICE CONTRACTING

Subpart 537.1 - Service Contracts—General

537.101 Definitions.

"Contracts for building services" means contracts for services relating to the operation and maintenance of a building (e.g., janitorial, window washing, snow removal, trash removal, lawn and grounds care), inspection, maintenance, repair or replacement of building systems or equipment (e.g., elevators, air-conditioning, heating systems, and protection or guard service).

537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.

GSA contracting activities are not required to use PBA methods for leases and leasehold interests in real property. However, contracting activities are not precluded from using PBA methods when contracting for leases or leasehold interests in real property if using PBA best meets the Government's needs.

537.106 Funding and term of service contracts.

517.101 identifies GSA-specific statutory authority for multiyear contracts for certain services.

537.110 Solicitation provisions and contract clauses.

Contracts for Building Services

The following provision and clauses apply to contracts for building services:

(a) If the contract is expected to exceed the simplified acquisition threshold and it is not initiated with AbilityOne under the Javits-Wagner-O'Day Act insert 552.237-71, Qualifications of Employees, in the solicitation and contract. If needed, use supplemental provisions or clauses to describe specific requirements for employees performing work on the contract.

(b) Insert 552.237-72, Prohibition Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

Subpart 537.2 - Advisory and Assistance Services

537.201 Definitions.

As used in this subpart—

Evaluation or analysis of a proposal means proposal evaluation as described in FAR 15.305. It includes: Cost or price evaluation using cost or price analysis, as defined in FAR 15.404.

Proposal means a proposal submitted for an initial contract award. (See FAR 37.203(d)). It does not include proposals submitted after contract award, such as value engineering proposals, proposals related to contract modifications, claims, or other contract administration actions.

Readily available means that employees with the requisite training and capability are employed by the agency, capable of handling additional work relating to other duties as assigned by management, and that the travel and other costs associated with using covered personnel does not exceed the projected cost of a contract for evaluation and analysis services.

Requisite training and capability means training and capability necessary to successfully perform the task or contract at issue in the time and in the manner required. It may include relevant experience, recent performance of work of similar size and scope, specific training and other factors that the contracting officer determines are necessary to the successful performance of the task or contract at issue.

537.204 Guidelines for determining availability of personnel.

(a) *Authority*. The contracting officer is authorized to make the determinations required by FAR 37.204 unless the HCA designates another agency official.

(b) *Policy*. The contracting officer, or the HCA's designee, must make the determination whether GSA personnel with the requisite training and capabilities are readily available to perform the evaluation or analysis before issuing a solicitation which includes evaluation and analysis services (see FAR 37.205).

(c) *Identifying qualified personnel*. The contracting officer, or the HCA's designee, must base the determination on information received in response to a survey conducted as follows:

(1) If the estimated cost of evaluation and analysis services to be obtained under a contract or order is less than the micropurchase threshold, the administrative cost and time associated with conducting the search and other costs, such as travel, will likely exceed the cost of providing the services under the contract or order. In this case, the survey need only include the appropriate Assistant Commissioner, Assistant Regional Administrator, or designee within the contracting organization at the location where the services are to be performed.

(2) If the estimated cost of the evaluation and analysis services to be obtained under a contract or order is expected to exceed the micropurchase threshold, the survey must include all of the following:

(i) The appropriate Assistant Commissioner, Assistant Regional Administrator, or designee at the location where the services are to be performed, and managers within other GSA Regions and Central Office of the contracting organization.

(ii) Other Federal agencies that are reasonably expected to have covered personnel with the requisite training and capability at the location where the services are to be performed.

(d) *Decisions on availability of personnel*. The contracting officer, or the HCA's designee, should request that decisions on availability be made by a management official at a level higher than the employee's immediate supervisor.

(e) *Documentation*. The determination required by FAR 37.204 may be incorporated in the acquisition plan or made a part of another document prepared in the normal course of a procurement action. The file should, at a minimum, describe:

(1) *Who was surveyed and a summary of the responses received;*

(2) *The circumstances requiring the use of outside evaluators;*

(3) *Actions GSA will take to avoid organizational or other conflicts of interest under FAR 9.5; and*

(4) *The competitive relationship between prospective offerors, including proposed subcontractors, and the prospective evaluator(s).*

(f) *Indefinite delivery contracts for evaluation and analysis services*. You may issue an indefinite delivery contract for evaluation and analysis services if there is a reasonable expectation that there will be occasions when personnel with the requisite training and capabilities will not be readily available to perform the evaluation and analysis services covered by the contract.

(1) Before issuing a solicitation for an indefinite delivery contract, the appropriate agency official should first assess the ability of the Federal Supply Schedule Program to support the need and consider manpower and workload projections over the proposed contract period. This should help avoid unnecessarily incurring the cost of soliciting offers and awarding a contract. Document the acquisition file accordingly.

(2) The appropriate agency official should establish procedures for making determinations regarding particular evaluations before orders are placed under the contract.

537.270 Contract clause.

Insert the clause at 552.237-73, Restriction on Disclosure of Information, in solicitations and contracts for proposal evaluation and analysis services.

Subpart 537.6 - Performance-based Acquisition

537.601 General.

GSA Contracting Activities are encouraged to use the Seven Steps to Performance–Based Acquisition (PBA) Guide. This guide may be accessed at http://www.acquisition.gov/comp/seven_steps/home.html.

PART 538 - FEDERAL SUPPLY SCHEDULE CONTRACTING

Sec.

Subpart 538.2 - Establishing and Administering Federal Supply Schedules

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PART 538 - FEDERAL SUPPLY SCHEDULE CONTRACTING

Subpart 538.2 - Establishing and Administering Federal Supply Schedules

538.270 Evaluation of Federal Supply Schedule (FSS) offers.

538.270-1 Evaluation of offers without access to transactional data.

(a) *Applicability*. Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is included in the solicitation (see 515.408).

(b) When offerors have commercial catalogs, negotiate concessions from established catalogs, including price and non-price terms and conditions.

(c) The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(d) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(e) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

(1) Aggregate volume of anticipated purchases.

(2) The purchase of a minimum quantity or a pattern of historic purchases.

(3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.

(4) Length of the contract period.

(5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices

(6) Ordering and delivery practices.

(7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the customer (*e.g.*, dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(f) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

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

(g) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) upon which the award is based.

538.270-2 Evaluation of offers with access to transactional data.

(a) *Applicability.* Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is not included in the solicitation (see 515.408).

(b) Contracting Officers shall utilize the techniques in FAR 15.404 when evaluating pricing for MAS offers.

(c) Order of preference. When evaluating MAS offers and establishing negotiation objectives, Contracting Officers shall–

(1) Use the following data that is already readily available in accordance with FAR 15.404-1(b)(2)(ii):

(i) Prices paid information on contracts for the same or similar items.

(ii) Contract-level prices on other MAS contracts or other government-wide contracts for the same or similar items.

(iii) Commercial data sources that consolidate and normalize prices offered by commercial vendors to the general public to compare prices for the same or similar items.

(2) If the Contracting Officer cannot determine the prices offered to be fair and reasonable based on the data described in 538.270-2(c)(1), perform market research to compare prices for the same or similar items in accordance with FAR 15.404-1(b)(2)(vi).

(3) If the Contracting Officer cannot determine the prices offered to be fair and reasonable based on the data described in 538.270-2(c)(1) or (2), perform an analysis of data other than certified cost or pricing data (as defined at FAR 2.101) provided by the offeror in accordance with FAR 15.404-1(b)(2)(vii).

538.271 FSS contract awards.

(a) FSS awards will be for commercial items as defined in FAR 2.101. Negotiate contracts as a discount from established catalog prices.

(b) Before awarding any FSS awards determine that the offered prices are fair and reasonable (see FAR Subpart 15.4 and 538.270). Document the negotiation and your determination using FAR 15.406-3 as guidance.

538.272 MAS price reductions.

(a) *Applicability*. This section applies when the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting.

(b) The basic clause and Alternate I of 552.238-81, Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities and the offeror's customer or category of customers on which the contract award was predicated (see 538.271). If a change occurs in the contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the eligible ordering activities and this customer or category of customers, the change constitutes a "price reduction."

(c) Ensure that the contractor understands the requirements of section 552.238-75 and agrees to report all price reductions to the Contracting Officer as provided for in the clause.

538.273 FSS solicitation provisions and contract clauses.

(a) As prescribed in this paragraph, insert the following provisions in the beginning of FSS solicitations:

(1) 552.238-70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations. Use Alternate I for single award Federal Supply Schedules.

(2) 552.238-71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238-72, Information Collection Requirements. Use in all FSS solicitations.

(b) As prescribed in this paragraph, insert the following clause and provision as an addendum to 52.212-1, Instructions to Offerors–Commercial Items:

(1) 552.238-73, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped. Use only in FSS solicitations for electronic office equipment.

(2) 552.238-74, Introduction of New Supplies/Services (INSS). Use only in FSS solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) As prescribed in this paragraph, insert the following provisions as an addendum to 52.212-2, Evaluation—Commercial Items:

(1) 552.238-75, Evaluation – Commercial Items (Federal Supply Schedules). Use in FSS standing solicitations.

(2) 552.238-76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) As prescribed in this paragraph, insert the following clauses as an addendum to Clause 52.212-4, Contract Terms and Conditions-Commercial Items:

(1) 552.238-77, Submission and Distribution of Authorized FSS Price Lists. Use in all FSS solicitations and contracts.

(2) 552.238-78, Identification of Products that have Environmental Attributes. Use only in FSS solicitations and contracts that contemplate items with environmental attributes.

(3) 552.238-79, Cancellation. Use in all FSS solicitations and contracts.

(4) 552.238-80, Industrial Funding Fee and Sales Reporting. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. Clause 552.238-81 Alternate I should also be used when vendors agree to include clause 552.238-80 Alternate I in the contract.

(5) 552.238-81, Price Reductions. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.

(6) 552.238-82, Modifications (Federal Supply Schedules). Use in all FSS solicitations and contracts.

(i) Use Alternate I for Federal Supply Schedules that only accept eMod.

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.

(7) 552.238-83, Examination of Records by GSA (Federal Supply Schedules). Use in all FSS solicitations and contracts. With the Senior Procurement's Executive approval, the contracting officer may modify this clause to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(i) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(ii) Before modifying the clause, the contracting officer must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(iii) The determinations under paragraph (9)(ii) must be made on a schedule-by-schedule basis.

(8) 552.238-84, Discounts for Prompt Payment. Use in all FSS solicitations and contracts.

(9) 552.238-85, Contractor's Billing Responsibilities. Use in all FSS solicitations and contracts.

(10) 552.238-86, Delivery Schedule. Use only in FSS solicitations and contracts for supplies

(11) 552.238-87, Delivery Prices. Use in all FSS solicitations and contracts.

(12) 552.238-88, GSA Advantage!®. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238-89, Deliveries to the U.S. Postal Service. Use only in FSS solicitations and contracts for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238-90, Characteristics of Electric Current. Use only in FSS solicitations and contracts when the supply of equipment which uses electrical current is contemplated.

(15) 552.238-91, Marking and Documentation Requirements for Shipping. Use only in FSS solicitations and contracts for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238-92, Vendor Managed Inventory (VMI) Program. Use only in FSS solicitations and contracts for supplies when a VMI Program is contemplated.

(17) 552.238-93, Order Acknowledgement. Use only in FSS solicitations and contracts for supplies.

(18) 552.238-94, Accelerated Delivery Requirements. Use only in FSS solicitations and contracts for supplies.

(19) 552.238-95, Separate Charge for Performance Oriented Packaging (POP). Use only in FSS solicitations and contracts for items defined as hazardous under Federal Standard No. 313.

(20) 552.238-96, Separate Charge for Delivery within Consignee's Premises. Use only in FSS solicitations and contracts for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238-97, Parts and Service. Use in all FSS solicitations and contracts.

(22) 552.238-98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The following clauses and provisions shall also be inserted in full text, when applicable.

(i) 52.214-34 Submission of Offers in the English Language.

(ii) 52.214-35 Submission of Offers in U.S. Currency.

(iii) 552.238-90 Characteristics of Electric Current.

(iv) 552.238-91 Marking and Documentation Requirements Per Shipment.

(v) 552.238-97 Parts and Service.

(vi) 552.238-99 Delivery Prices Overseas.

(vii) 552.238-100 Transshipments.

(viii) 552.238-101 Foreign Taxes and Duties.

(ix) 52.247-34 FOB Destination.

(x) 52.247-38 FOB Inland Carrier, Country of Exportation.

(xi) 52.247-39 FOB Inland Point, Country of Importation.

(23) 552.238-99, Delivery Prices Overseas. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(24) 552.238-100, Transshipments. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(25) 552.238-101, Foreign Taxes and Duties. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(26) 552.238-102, English Language and U.S. Dollar Requirements. Use in all FSS solicitations and contracts.

(27) 552.238-103, Electronic Commerce. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238-104, Dissemination of Information by Contractor. Use in all FSS solicitations and contracts.

(29) 552.238-105, Deliveries Beyond the Contractual Period-Placing of Orders. Use only in FSS solicitations and contracts for supplies.

(30) 552.238-106, Interpretation of Contract Requirements. Use in all FSS solicitations and contracts.

(31) 552.238-107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies, except vehicles.

(32) 552.238-108, Spare Parts Kit. Use only in FSS solicitations and contracts for items requiring spare part kits. This information is to be specified at the order level.

(33) 552.238-109, Authentication Supplies and Services. Use in Federal Supply Schedule 70 solicitations only, and only contracts awarded Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive 12 (HSPD-12).

(34) 552.238-110, Commercial Satellite Communication (COMSATCOM) Services. Use only in FSS solicitations and contracts for COMSATCOM services.

(35) 552.238-111, Environmental Protection Agency Registration Requirement. Use only in FSS solicitations and contracts for supplies when items may require registration with the Environmental Protection Agency.

Subpart 538.70 - Purchasing by Non-Federal Entities

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use—

(a) Federal Supply Schedule 70;

(b) The Consolidated Schedule contracts containing information technology Special Item Numbers (SINs);

(c) Federal Supply Schedule 84; and

(d) Other Federal Supply Schedules as authorized in this subpart.

538.7001 Definitions

"Ordering activity" (also called "ordering agency" and "ordering office") means an eligible ordering activity (see 552.238-112) authorized to place orders under Federal Supply Schedule contracts.

"Preparedness" means actions that may include, but are not limited to planning, resourcing, training, exercising, and organizing to build, sustain, and improve operational disaster response capabilities. Preparedness also includes the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction-specific plans for delivering capabilities when needed for an incident.

"Recovery" means actions including, but not limited to, the development, coordination, and execution of service- and site-restoration plans; the reconstitution of Government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post-incident reporting; and development of initiatives to mitigate the effects of future incidents.

"Relief" means disaster "response" and "recovery." Please see full definitions for these terms.

"Response" means immediate actions taken during a disaster, or in its immediate aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery.

"Schedule 70," as used in this subpart, means Schedule 70 information technology contracts, and Consolidated Products and Services Schedule contracts containing information technology SINs. The Consolidated Products and Services Schedule is a compilation of multiple individual Federal Supply Schedules; therefore, only the SINs that fall under Schedule 70 of the Consolidated Products and Services Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and Consolidated Products and Services Schedule contracts containing Schedule 70 SINs, will apply.

"Schedule 84" means the Federal Supply Schedule for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal Supply Classification Code Group 84 or any amended or subsequent version of that Federal supply classification group).

"State and local government entities," as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) "Local educational agency" has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C.7713).

(2) "Institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of1965 (20 U.S.C.1001(a)).

(3) "Tribal government" means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.1601 *et seq*.).

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal Supply Schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) Pub. L. 110-248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

(d) Pub. L. 109-364, the John Warner National Defense Authorization Act for Fiscal Year 2007 authorizing state and local governments, to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq*.) or to facilitate for recovery from terrorism or nuclear, biological, chemical, or radiological attack. Public Law 111-263, the Federal Supply Schedules Usage Act of 2010 authorizing state and local governments to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate disaster preparedness or response.

(e) Public Law 111-263, the Federal Supply Schedules Usage Act of 2010, authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter (36 U.S.C. 300102).

(f) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency. Other qualified organizations must meet the requirements of 42 U.S.C. 5152.

(g) A listing of the participating contractors and SINs for the goods and services that are available under these authorized Federal Supply Schedules, is available in GSA's e-Library at www.gsa.gov/elibrary.

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening authorized Federal Supply Schedules for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under authorized Federal Supply Schedules. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

(a) 52.212-4, Contract Terms and Conditions—Commercial Items.
(b) 52.216-18, Ordering.
(c) 52.216-19, Order Limitations.
(d) 52.229-1, State and Local Taxes.
(e) 52.229-3, Federal, State, and Local Taxes.
(f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
(g) 52.232-17, Interest.
(h) 52.232-19, Availability of Funds for the Next Fiscal Year.
(i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
(j) 52.232-36, Payment by Third Party.
(k) 52.237-3, Continuity of Services.
(l) 52.246-4, Inspection of Services-Fixed Price.
(m) 52.246-6, Inspection—Time-and-Material and Labor-Hour.
(n) 52.247-34, F.O.B. Destination.
(o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238-112 , Definition (Federal Supply Schedules)–Non-Federal Entity, in solicitations and contracts for all Federal Supply Schedules.

(b) The contracting officer shall insert the clause at 552.238-113 , Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.

(c) The contracting officer shall insert the clause at 552.238-114 , Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.

(d) See 552.101-70 for authorized FAR deviations.

Subpart 538.71 - [Reserved]

Subpart 538.72 - Order-level Materials

538.7200 Definitions.

As used in this subpart—

"Order-level materials" means supplies and/or services acquired in direct support of an individual task or delivery order placed against an authorized (see GSAR 538.7201(b)) Federal Supply Schedule (FSS) contract or FSS Blanket Purchase Agreement (BPA)), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. However, order-level materials are purchased under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

538.7201 Applicability.

(a) The GSA Senior Procurement Executive authorizes the use of order-level materials on Federal Supply Schedules.

(b) The list of Federal Supply Schedules authorized to allow for order-level materials is available at https://www.gsa.gov/olm.

(c) HCAs may request additions or deletions to the list in paragraph (b) by submitting a GSA Form 1649 for SPE approval. Justifications to add this authority to a Federal Supply Schedule must address the need for the authority, including why it is impractical to price the items at the contract level, and a description of the market research conducted (see FAR 10.002(e)).

538.7202 Awarding Order-Level Materials in FSS contracts.

(a) Federal Supply Schedules authorizing order-level materials must include a separate Special Item Number (SIN) with the following scope:

(1) Order-level materials are supplies or services acquired in direct support of a contractor's offerings and which are unknown before a task or delivery order is placed against the FSS contract or FSS BPA); including, direct materials, subcontracts for supplies and incidental services for which there is not a labor category specified in the FSS contract, other direct costs, and indirect costs. Order-level materials are subject to a negotiated price ceiling that the contractor exceeds at its own risk.

(2) Items awarded under ancillary supplies or other direct cost (ODC) SINs are not order-level materials.

(b) The order-level materials SIN cannot be the only awarded SIN on a FSS contract or FSS BPA.

(c) Price Pricing analysis for order-level materials is not conducted when awarding the Federal Supply Schedule FSS contract or FSS BPA; therefore, sections 538.270 and 538.271 do not apply to order-level materials.

538.7203 Administering Order-Level Materials in FSS contracts

(a) Federal Supply Schedule Contracting Officers should consider requesting the assistance of members of the acquisition team responsible for contract administration functions (e.g., Administrative Contracting Officers, Industrial Operations Analysts) when evaluating the use of order-level materials at the FSS contract-level.Task or delivery orders including order-level materials placed against FSS contracts should be monitored to ensure special ordering procedures are being followed at GSAR 552.238-115(d).

(b) Except as stated in 552.238-115(d)(10)(11), all terms and conditions that otherwise apply to the FSS contract also apply to order-level materials. For example, order-level materials must comply with the Trade Agreements Act clauses, the Environmental Attributes clause, and the Industrial Funding Fee and Sales Reporting clauses.

538.7204 Contract clauses.

(a) Use FAR clause 52.212-4 Alternate I in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7201(b)). Use the following language for the clause fill-in—

(1) Insert "Each order must list separately subcontracts for services excluded from the FSS Hourly Rates" in paragraph (e)(1)(iii)(D).

(2) Insert "Each order must list separately the elements of other direct costs for that order" in paragraph (i)(1)(ii)(D)*(1)*.

(3) Insert "Each order must list separately the fixed amount for the indirect costs and payment schedule; if no indirect costs are approved," insert "None" in (i)(1)(ii)(D)*(2)*.

(b) Use 552.238-115, Special Ordering Procedures for the Acquisition of Order-Level Materials, in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7201).

PART 539 - ACQUISITION OF INFORMATION TECHNOLOGY

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539.001 Applicability.

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PART 539 - ACQUISITION OF INFORMATION TECHNOLOGY

539.001 Applicability.

Subpart 539.1 - General

539.101 Policy.

(a) *Standard Configurations*. See section 511.170 for any applicable standard configurations for GSA information technology procurements.

(b) *CIO Coordination*. See sections 507.104, 511.170, and 543.102 for required coordination and approval by the GSA Chief Information Officer (CIO) for procurements involving GSA information technology. For interagency acquisitions, see section 517.502-70.

(c) *GSA IT Standards Approval*. See section 511.170 for any necessary GSA IT Standards Profile approvals.

(d) Internet Protocol Version 6 (IPv6).

(1) See 511.170(d) for guidance on developing requirements to ensure information technology that will have the capability to access the Internet or any network complies with Internet Protocol Version 6 (IPv6).

(2) The Contracting Officer or Contracting Officer's Representative must validate contractor compliance with IPv6 contract requirements as part of the review and acceptance process when products or systems are delivered. Evidence may include any of the following:

(i) The Supplier's Declaration of Conformity (SDOC). The template for the SDOC can be found on the National Institute of Standards and Technology (NIST) Information Technology Lab website that is included on the Acquisition Portal at https://insite.gsa.gov/itprocurement;

(ii) Laboratory Certification. The product being acquired has been tested and shown to be IPv6 compliant by an accredited laboratory. A listing of tested/certified products can be found on the NIST Information Technology Lab website that is included on the Acquisition Portal at https://insite.gsa.gov/itprocurement; or

(iii) Practical Demonstration. The product can be shown to the GSA Contracting Officer or Contracting Officer's Representative to be IPv6 compliant via practical demonstration, or by an otherwise credible validation of technical support.

(e) Software Code. See 511.170(e) and 511.170(f) for guidance on procuring software code.

(f) Supply Chain Risk Management. See subpart 504.70 for guidance on identifying and mitigating supply chain risks.

Subpart 539.70 - Additional Requirements for Purchases Not in Support of National Security Systems

539.7000 Scope of subpart.

This subpart prescribes acquisition policies and procedures for use in acquiring information technology supplies, services and systems not in support of national security systems, as defined by FAR 39.

539.7001 Policy.

(a) GSA must provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act (FISMA) describes Federal agency security responsibilities as including "information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency."

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

(c) Contracting activities shall coordinate with requiring activities and program officials to ensure that the solicitation documents include the appropriate information security requirements. The information security requirements must be

sufficiently detailed to enable service providers to fully understand the information security regulations, mandates, and requirements that they will be subject to under the contract or task order.

(d) GSA's Office of the Senior Agency Information Security Officer issued CIO IT Security Procedural Guide 09-48, "Security Language for Information Technology Acquisitions Efforts," to provide IT security standards, policies and reporting requirements that shall be inserted in all solicitations and contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at http://www.gsa.gov/portal/category/25690 .

539.7002 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.239-70, Information Technology Security Plan and Security Authorization, in solicitations that include information technology supplies, services or systems in which the contractor will have physical or electronic access to government information that directly supports the mission of GSA.

(b) The contracting officer shall insert the clause at 552.239-71, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision at 552.239-70. The provision and clause shall not be inserted in solicitations and contracts for personal services with individuals.

PART 540 [RESERVED]

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PART 541 - ACQUISITION OF UTILITY SERVICES

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541.204 GSA areawide contracts.
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541.501 Solicitation provision and contract clauses.

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PART 541 - ACQUISITION OF UTILITY SERVICES

Subpart 541.1 - General

541.100 Scope of part.

(a) This part applies to the acquisition of utility services from regulated utilities with the exception of section 541.202-1, which covers acquisition planning for deregulated utilities.

(b) Acquisitions from deregulated suppliers for natural gas and/or electricity shall use the competitive policies and procedures as prescribed in GSAM part 512.

541.101 Definitions.

As used in this part—

"Independent regulatory body" means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority that has the power to fix, establish, or control the rates and services of utility suppliers.

"Local regulated utility" means a utility controlled by a body that regulates a utility which is owned or operated by the same entity that created the regulatory body, *e.g.*, a municipal utility.

"Tariff regulated utility" means a utility regulated by an independent regulatory body.

Subpart 541.2 - Acquiring Utility Services

541.201 Policy.

(a) GSA purchases utility services in a manner that is consistent with the regulations, rulings and franchise or service territories. Rates are established by independent regulatory bodies. These Tariff rates:

(1) Are considered "prices set by law or regulation"; and

(2) Are sufficient to set prices without obtaining cost or pricing data (see FAR 15.403-1(c) (2)).

541.202 Procedures.

(a) Contracting officers shall perform market research and create acquisition plans in accordance with FAR 41.202 (a), (b), and (e).

(b) Acquisition plans for utility acquisitions over the simplified acquisition threshold are required for separate contracts and orders against GSA areawide contracts; this does not apply to the basic areawide contract.

(c) In accordance with 40 U.S.C. § 501(b)(1)(B) and FAR § 41.103(a), a GSA order or contract for utility service cannot exceed a 10 year performance period.

(d) The statement of work for a utility contract must include the building number(s) and the specified period of performance.

(e) The Independent Government Cost Estimate for a utility contract must include all of the following information:

(1) A cost estimate for all individual months up to the thirteenth month;

(2) The known tariff rate increases in months beyond the 13 month; and

(3) Total estimated award amount for the entire period of performance.

(f) *Federal Procurement Data System reporting for utility contact actions*. (1) The award amount in the Federal Procurement Data System must align with any independent government cost estimate. The "Action Obligation" field must cover the first year of performance, and the "Base and All Options Value" field must cover the entire period of performance.

(2) The contracting officer must update the award amount for the contract and report the actual values in FPDS to match the new anticipated award amount based on actual costs previously obligated and any changes to the estimated value for future years halfway through the period of performance whenever the period of performance is five years or greater. The update must include actual payments to date, and a revised projection for the duration of the performance period.

(3) The contracting officer must update the award amount at the end of the entire period of performance to match the actual costs.

(g) A GSA purchase card must not be used as a payment method for any utility contract unless there are unusual circumstances or emergency situations that exist. If a GSA purchase card is used, you must inform your designated GSA budget office.

(h) Utility accounts and invoices must be monitored in accordance with the GSA Utility Program Standard Operating Procedures at https://insite.gsa.gov/utilityacquisition.

541.202-1 Procedures for acquisition planning for deregulated utility supplies.

Acquisition plans are not required for delivery orders under deregulated (competitive) acquisitions for natural gas and/or electricity when all of the following criteria are met:

(a) The basic contract was entered into pursuant to a written acquisition plan.

(b) The delivery address (including the associated account number) of the order is listed in the requirements type contract.

(c) The order is issued only as a funding mechanism for the location awarded in the basic contract.

541.204 GSA areawide contracts.

The existence of a GSA areawide contract for the required service and location does not necessarily mean that the subject utility provider is the only source capable of meeting the requirement (see FAR 41.202(a) and 41.204(c)(1)). When market research and acquisition planning support ordering the entire requirement under an area-wide contract, the contracting officer may do so, but shall utilize the annual reviews required by FAR 41.401 to determine the feasibility of later entering into a competitive contract for a portion of the requirement.

541.206 Interagency agreements format.

When acquiring utility services for another agency the following format shall be used in accordance with 40 U.S.C. 501 (b) which clearly delineates the roles and responsibilities of the servicing and requesting agencies. (See http://www.gsa.gov/energy_library).

Subpart 541.4 - Administration

541.401 Monthly and annual review.

(a) *Monthly reviews*. As an alternative to the requirements outlined in FAR 41.401, which requires monthly reviews of all invoices with annual values exceeding the simplified acquisition threshold, the Comptroller General decision, B-227682.2, August 16, 1989, 68 Comp. Gen. 618 (GAO) authorized GSA to use an alternative methodology to meet this requirement. The GAO decision allows for the use of statistical sampling techniques to pay and audit utility invoices. Specifically, the GAO decision requires analysis and review of any problems discovered through 3% random sampling, 15% out-of-tolerance reports and historical data of utility invoices. Contract files shall include documentation of any corrective actions taken.

(b) *Annual reviews*. In addition to the requirements of FAR 41.401, the Public Buildings Service (PBS) will provide further guidance for conducting annual reviews.

Subpart 541.5 - Solicitation Provisions and Contract Clauses

541.501 Solicitation provision and contract clauses.

In addition to the solicitation terms, provisions and contract clauses at FAR 41.501(c), the contracting officer shall include the following clauses—

(a) 552.241-70, *Availability of Funds for the Next Fiscal Year or Quarter*. As prescribed in 541.501, insert the clause 552.241-70, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232-19, in all utility acquisitions; and

(b) 552.241-71, *Disputes (Utility Contracts)*. As prescribed in 541.501, insert clause 552.241-71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

SUBCHAPTER G - CONTRACT MANAGEMENT

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PART 542 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

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PART 542 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

542.001 Definitions.

Subpart 542.1 - Contract Audit Services

542.102 Assignment of contract audit services.

(a) The contracting officer shall request all audit services through the Assistant Inspector General for Auditing or the Regional Inspector General for Auditing, as appropriate.

(b) The contracting officer must follow the procedures set out in GSA Order, Audit Resolution and Follow-Up System (ADM P 2030.2C), for handling contract audit reports.

Subpart 542.2 - Contract Administration Services

542.202 Assignment of contract administration.

(a) Assignment of contract administration is the process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to either a contract administration office (CAO) or an administrative contracting officer (ACO) within a contracting office.

(b) Each contracting director must establish procedures that ensure that qualified personnel perform contract administration activities in an effective manner. Usually, the PCO or the ACO in the contracting office performs these activities (but see paragraphs (c) – (d) of this section).

(c) If it is more efficient, management may establish a separate CAO. Consider each of the following:

(1) The nature and complexity of the contract.

(2) The need to perform contract administration at or near the contractor's facility or the place of performance.

(3) The availability of resources.

(d) The contracting officer may designate one or more representatives to perform specified functions such as quality assurance, production, price analysis, finance and various engineering and technical specialties. The contracting officer's representatives (CORs) may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer (except see 543.202 for construction contracts).

(e) If the contracting officer delegates contract administration to an ACO or designates a contracting officer's technical representative (COTR) or contracting officer's representative (COR), then provide the contractor with the name of the ACO and any representative and identify the functions each is authorized to perform.

(f) The contracting officer may provide or make available to the ACO a complete copy of the contract file. The contracting officer may provide each COR and COTR with the contract file information they need to perform their duties

(g) The contracting officer may delegate to an ACO functions other than those listed in FAR 42.302 and 542.302(b) after obtaining approval from the Senior Procurement Executive. The contracting officer may submit requests through the HCA. If approved, the contracting officer should follow FAR 42.202(c).

Subpart 542.3 - Contract Administration Office Functions

542.302 Contract administration functions.

(a) Assignment of contract administration office functions is the process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to a contract administration office (CAO) or an administrative contracting officer (ACO) within a contracting office.

(b) Usually, the CO or the ACO in the contracting office performs these activities (but see paragraphs (c) - (g) of this section).

(c) If it is more efficient, management may establish a separate CAO. Consider each of the following:

(1) The nature and complexity of the contract.

(2) The need to perform contract administration at or near the contractor's facility or the place of performance.

(3) The availability of resources.

(d) The contracting officer may designate one or more representatives to perform specified functions such as quality assurance, production, price analysis, finance and various engineering and technical specialties. The contracting officer's representative (COR or COTR) may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer (except see 543.202). However, the authority to issue in-scope change orders not exceeding $25,000 may be delegated to a COTR assigned to construction contracts. See 543.202 and 501.603-2(d).

(e) If the contracting officer delegates contract administration to an ACO or designates a contracting officer's technical representative (COTR) or contracting officer's representative (COR), then the contracting officer must provide the contractor with the name of the ACO and any representative and identify the functions each is authorized to perform.

(f) The contracting officer shall provide or make available to the ACO a complete copy of the contract file and provide each COR and COTR with the contract file information needed to perform assigned duties.

(g) ACO functions other than those listed in FAR 42.302 may be delegated if the Senior Procurement Executive approves. Such requests must be submitted through the HCA. If approved, follow FAR 42.202(c).

(h) Credentials and Access Management. See section 504.1370 for credentials and access management contract administration requirements on contracts or orders including FAR clause at 52.204-9, Personal Identity Verification of Contractor Personnel and GSAR clause at 552.204-9, Personal Identity Verification Requirements.

Subpart 542.11 - Production Surveillance and Reporting

542.1107 Contract clause.

The contracting officer shall insert 552.242-70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for Stock or Special Order Program items. The clause may be used in indefinite-delivery definite-quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

Subpart 542.12 - Novation and Change-of-Name Agreements

542.1203 Processing agreements.

Contracting officers should process agreements as soon as a complete package has been received from the contractor. If the proposed successor is a large business and the contract was originally awarded under a small business set-aside, the contracting officer shall—

(a) Notify and solicit comments from the SBTA (see FAR 42.1203(b) and (c)); and

(b) Not recognize the proposed successor if—

(1) The conclusion is that the transaction is intended to circumvent the requirements and objectives of the small business program; or

(2) If a MAS contract is involved and other MAS small business contracts exist for the same special item number(s); and

(c) Cancel the set-aside items if a MAS contract is involved and the contract has both set-aside and non-set-aside special item numbers, then process the novation request for the non-set-aside items.

Subpart 542.15 - Contractor Performance Information

542.1503 Procedures.

(a) *Heads of Services*. (1) Consistent with FAR 42.1500 and this Subpart, the Head of each Service must take all the following actions:

(i) Establish mechanisms for systematically collecting and maintaining positive and negative information on contractor performance.

(ii) Identify pertinent performance data elements for collection.

(iii) Ensure that contractor performance information is readily available to contracting officials and other individuals with procurement-related responsibilities.

(iv) Clearly identify the officials responsible for collecting, disseminating, and applying this information in the acquisition process.

(2) The system for collecting contractor performance data should include, as appropriate:

(i) Timeliness of delivery or performance (for example: Adherence to contract delivery schedules; resolution of delays, number of "show cause" letters and "cure notices" issued, number of delinquent deliveries, number of contract extensions resulting from contractor-caused delays, and/or timely submission or performance or required tests).

(ii) Conformance of product or service to contract requirements (for example: Quality of workmanship, reliability, adequacy of correction of defects, number of safety defects, number of product rejections, results of laboratory tests, number and extent of warranty problems).

(iii) Customer comments (for example: Number and quality of positive comments, number and nature of complaints, and adequacy of resolving customer complaints).

(iv) Terminations for default.

(v) On-the-job safety performance record, including the number of lost or restricted workdays due to occupational injuries in comparison to the national average.

(vi) Adequacy of contractor's quality assurance system.

(vii) Compliance with other key contract provisions (forexample: Subcontracting program, labor standards, safety standards, and reporting requirements).

(viii) Exhibiting customer-oriented behavior.

(ix) Other performance elements identified by the Service.

(b) *Senior Procurement Executive*. The Senior Procurement Executive is responsible for ensuring the evaluation of each Service's system for collecting and applying contract performance information for compliance with the FAR and GSAM.

(c) *Contracting directors*. The contracting director shall review and consider any disagreement between GSA and the contractor regarding GSA's evaluation of the contractor. Based on the review, the contracting director makes the final determination on the performance evaluation.

(d) *Contracting officers* . (1) The contracting officer shall promptly provide a copy of the contracting director's final determination to the contractor.

(2) When responding to another department or agency request for past performance information, the contracting officer shall include a copy of any related contractor comments and contracting director's final determination.

Subpart 542.70 - Audit of Contractor's Records

542.7001 General.

The OIG Office of Audits audits a contractor's records if required by law, regulation, or sound business judgment. These audits include periodic or special request audits necessary to determine a contractor's financial condition, adequacy of its accounting system, and integrity and reliability. The contracting officer should coordinate with technical specialists, finance and audit personnel to achieve the maximum benefits from these audits.

542.7002 Purpose of audit.

The contracting officer may obtain from audits advice or recommendations on the:

(a) Propriety of amounts paid, or to be paid, by GSA to a contractor when such amounts are based on a cost or time determination or on variable features related to the results of the contractor's operations.

(b) Adequacy of a contractor's measures to safeguard Government property in its custody or under its control.

(c) Contractor's compliance with contractual obligations concerning progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments.

(d) Reasonableness of a contractor's termination settlement proposals.

542.7003 Additional internal controls.

(a) The contracting officer should not rely solely on contractual audit rights. The contracting officer should establish internal controls or procedures for any flexible or variable features of these contracts:

(1) Cost-reimbursement.

(2) Time-and-materials or labor-hour.

(3) Requirements or indefinite-quantity.

For example, for a time-and-materials or labor-hour contract performed at a Government facility or elsewhere, the contracting officer should provide for the review of time records. The contracting officer should provide for this review even if the contractor is subject to supervision by Government personnel.

(b) The contracting officer should establish these internal controls or procedures prior to the commencement of contract performance. Use any reasonable and reliable method or procedure that will enable the Government to determine the correctness of the charges for such matters as the time spent on the job and materials or supplies received. If needed, obtain assistance from the Assistant Inspector General for Auditing or the Regional OIG Audit Office.

542.7004 Releasing or withholding of audit reports.

The Freedom of Information Act requires the disclosure of Government records subject to certain exceptions. The contracting officer should consult with both the Assistant Inspector General for Auditing and the GSA Office of General Counsel before releasing or withholding a contract audit report.

PART 543 - CONTRACT MODIFICATIONS

Sec.

Subpart 543.1 - General

543.102 Policy.

543.170 Changes in designated subcontractors, inspection and/or production points.

543.171 Changes in commercial supplier agreements.

Subpart 543.2 - Change Orders

543.202 Authority to issue change orders.

543.205 Contract clauses.

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PART 543 - CONTRACT MODIFICATIONS

Subpart 543.1 - General

543.102 Policy.

(a) In accordance with the Federal Information and Technology Acquisition Reform Act (FITARA) (Pub L. No. 113-291), the contracting officer must ensure any modification that makes substantial changes to the scope of a contract or order for GSA information technology that is inconsistent with the approved acquisition plan receives approval from the GSA Chief Information Officer (CIO). See section 511.170 for any necessary GSA IT Standards Profile approvals. For interagency acquisitions, the requesting agency is responsible for CIO coordination and approval for any modifications that make substantial changes to the scope of a contract or order.

543.170 Changes in designated subcontractors, inspection and/or production points.

(a) Before executing a contract modification authorizing changes in either a designated subcontractor or inspection or production point, the contracting officer must consider the impact of the change on the contractor's ability to satisfy contract requirements. Employ the same standards that were used to determine that the contractor was responsible (see FAR 9.1 and GSAM 509.1).

(b) The modification must identify the nature of the change and the effective date. In establishing an effective date, consider the time necessary for affected offices to take required actions.

543.171 Changes in commercial supplier agreements.

(a) Commercial supplier agreements must be modified if the updated terms are material as defined in 552.212-4(w)(1)(iv) or 552.232-78(a)(6).

(b) When authorizing a contract modification to update commercial supplier agreement terms, the contracting officer must consider the impact to the Government's rights and negotiate the terms if necessary.

(c) The contracting officer is responsible for maintaining a current copy of the commercial supplier agreement in the contract file.

Subpart 543.2 - Change Orders

543.202 Authority to issue change orders.

This section applies to construction contracts.

(a) *COR authority*. The contracting officer may authorize a warranted COR to issue change orders. Authorization must be in writing, on a contract-by-contract basis, and must identify any limitations. For example, identify dollar limitations or specify that authority is only valid in emergency situations.

(b) *Additional restrictions*. The Contracting Officer should provide the following instruction to the COR as part of the written authorization:

(1) For any single change order, the COR may perform some or all of these actions:

(i) Determining the need for a change.

(ii) Preparing the Government's cost estimate.

(iii) Conducting negotiations.

(iv) Issuing the change order.

(v) Inspecting the work.

(2) For an unpriced change order, if the COR personally performs all the actions in paragraph (1) of this section, the change order must be reviewed by a designated official before issuance or definitization.

(c) *Review change orders*. For unpriced change orders when the COR personally performs all actions, the contracting officer must either personally review each change order or designate a capable official to perform the review. Consider designating the COR's immediate supervisor or a higher-level official within the organization. Avoid designating more than one official to review change orders issued under an individual contract.

(d) *Coordination of change orders*. Issue change orders only after coordination, as appropriate, with quality control, finance, audit or other technical personnel.

543.205 Contract clauses.

The contracting officer shall insert 552.243-71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243-4, Changes, FAR 52.243-5, Changes and Changed Conditions, or FAR 52.236-2, Differing Site Conditions.

PART 544 - SUBCONTRACTING POLICIES AND PROCEDURES

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PART 546 - QUALITY ASSURANCE

Sec.

Subpart 546.3 - Contract Clauses

546.302 Fixed-price supply contracts.
546.302-70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts.
546.302-71 Source inspection.
546.302-72 Destination Inspection.
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546.704 Authority for use of warranties.
546.705 Limitations.
546.708 Warranties of data.
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PART 546 - QUALITY ASSURANCE

Subpart 546.3 - Contract Clauses

546.302 Fixed-price supply contracts.

546.302-70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts.

(a) For solicitations issued and contracts awarded by FAS that will exceed the simplified acquisition threshold and include the clause at 52.246-2, Inspection of Supplies– Fixed-Price:

(1) The contracting officer shall insert the clause at 552.246-70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection for the Stock and Special Order Programs.

(2) The contracting officer may authorize inspection and testing at manufacturing plants or other facilities located outside the United States, Puerto Rico, or the U.S. Virgin Islands, under paragraph (a)(1) of the clause at 552.246-70 under any of the circumstances listed below after coordinating the authorization with QVOC and documenting the authorization in the file.

(i) Inspection services are available from another Federal agency with primary inspection responsibility in the geographic area.

(ii) An inspection interchange agreement exists with another agency for inspection at a contractor's plant.

(iii) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

(b) When the estimated value of the acquisition is below the simplified acquisition threshold and will include the clause at 52.246-2, Inspection of Supplies—Fixed-Price, insert the clause at 552.246-70, Source Inspection by Quality Approved Manufacturer only:

(1) In solicitations and contracts that support the Wildfire program.

(2) In contracts when a pattern of acquisitions demonstrates an ongoing relationship with the contractor.

546.302-71 Source inspection.

For solicitations and contracts issued by FAS, if Government personnel at the source will perform inspection, insert 552.246-71, Source Inspection by Government.

546.302-72 Destination Inspection.

The contracting officer shall include the clause at 552.246-78, Inspection at Destination (July 2009) in supply contracts that require inspection at destination.

546.312 Construction contracts.

Insert the clause at 552.246-72, Final Inspection and Tests, in solicitations and contracts for construction that include FAR 52.246-12, Inspection of Construction.

Subpart 546.7 - Warranties

546.704 Authority for use of warranties.

FAR clause 52.246-21, Warranty of Construction, is approved by the agency for use in solicitations and contracts when a fixed-price construction contract is contemplated.

546.705 Limitations.

The contracting director must approve the use of warranties in cost reimbursement contracts, except those in FAR clauses 52.246-3 and 52.246-8.

546.708 Warranties of data.

(a) The contracting officer shall use warranties of data only when both of the following conditions are applicable:

(1) Use of a warranty is in the Government's interest and is documented; and
(2) The contracting director concurs with the decision.

(b) The contracting officer shall consult with the technical or specification manager responsible for developing any warranties of data.

546.710 Contract clause.

The Contracting officer shall insert the clause at 552.246-77, Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature, when using the clause at 52.246-17 in solicitations and contracts.

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PART 548 - VALUE ENGINEERING

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Subpart 548.1 - Policies and Procedures

548.101 General.

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PART 548 - VALUE ENGINEERING

Subpart 548.1 - Policies and Procedures

548.101 General.

GSA Order, Public Buildings Service Value Engineering Program (PBS 8050.1C) provides guidance on using value engineering.

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PART 549 - TERMINATION OF CONTRACTS

Sec.

Subpart 549.1 - General Principles

549.111 Review of proposed settlements.

Subpart 549.4 - Termination for Default

549.402 Termination of fixed–price contracts for default.

549.402-6 Repurchase against contractor's account.

549.402-7 Other damages.

Subpart 549.5 - [Reserved]

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PART 549 - TERMINATION OF CONTRACTS

Subpart 549.1 - General Principles

549.111 Review of proposed settlements.

The HCA may establish procedures for the review and approval of settlement agreements at a level above the contracting officer.

Subpart 549.4 - Termination for Default

549.402 Termination of fixed–price contracts for default.

549.402-6 Repurchase against contractor's account.

The contracting officer shall—

(a) Place a brief explanation for the repurchase in the contract file.

(b) If practical, use the original contract terms, conditions, and specification for the repurchase. Whether or not the original terms are used, obtain the advice of assigned legal counsel before issuing a solicitation for similar supplies or work (services and construction).

(c) If the reprocurement is delayed, protect the Government's rights to recover reprocurement costs by documenting the file to explain the circumstances of the delay.

549.402-7 Other damages.

(a) Even if the repurchase price does not exceed the price of the terminated supplies or work (services and construction), the contracting officer shall include administrative costs incurred for the repurchase when determining the final purchase price. The contracting officer shall include all reprocurement costs in a single demand letter (see FAR 49.402-6(c)). The contracting officer shall include detailed documentation in the contract file to support the Government's position that the additional administrative costs were a direct result of the default. The contracting officer shall provide a summary of the additional administrative costs in the demand letter.

(b) Administrative costs include, but are not limited to, the following:

(1) Salaries and fringe benefits paid to Government employees who perform work as a result of the default.

(2) Preaward survey expenses incurred by qualifying reprocurement contractors.

(3) Printing and distribution costs of the reprocurement solicitation and repurchase contract.

(4) Travel and per diem.

(c) For administrative labor costs, record each of the following:

(1) Name, position, and organization of each employee performing work activities as a consequence of the default.

(2) Date(s) of work and time(s) spent by each employee on the repurchase.

(3) Description of specific tasks performed (for example, solicitation preparation or clerical).

(4) Hourly rate of pay (straight time or overtime).

(5) Applicable fringe benefits.

(6) Explanation of how the time spent by the employees during the reprocurement would have been used on other projects but for the default.

(d) For other incurred administrative costs, the contracting officer shall include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

Subpart 549.5 - [Reserved]

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PART 550 - EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.

550.001 Definitions.

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PART 550 - EXTRAORDINARY CONTRACTUAL ACTIONS

550.001 Definitions.

"Approving authority," as used in FAR 50, means GSA's Administrator.

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PART 551 - USE OF GOVERNMENT SOURCES BY CONTRACTORS

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SUBCHAPTER H - CLAUSES AND FORMS

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PART 552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

552.000 Scope of part.

Subpart 552.1 - Instructions for Using Provisions and Clauses

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552.101-70 Using Part 552.
552.102 Incorporating provisions and clauses.
552.103 Identification of provisions and clauses.
552.104 Procedures for modifying and completing provisions and clauses.
552.105 Procedures for using alternates.
552.107 [Reserved]
552.107-70 Provisions and clauses prescribed in .

Subpart 552.2 - Text of Provisions and Clauses

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552.203-5 [Reserved]
552.203-70 [Reserved]
552.203-71 Restriction on Advertising.
552.204 [Reserved]
552.204-9 Personal Identity Verification Requirements.
552.211 [Reserved]
552.211-8 [Reserved]
552.211-10 Commencement, Prosecution, and Completion of Work.
552.211-12 Liquidated Damages-Construction.
552.211-13 Time Extensions.
552.211-70 Substantial Completion.
552.211-71 [Reserved]
552.211-72 Reference to Specifications in Drawings.
552.211-73 Marking.
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552.211-75 Preservation, Packaging and Packing.
552.211-76 Charges for Packaging, Packing, and Marking.
552.211-77 Packing List.
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552.211-79 Acceptable Age of Supplies.
552.211-80 Age on Delivery.
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552.211-90 Small Parts.
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552.211-93 [Reserved]
552.211-94 Time of Delivery.
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552.212-70 [Reserved]
552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.
552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.
552.212-73 [Reserved]
552.214 [Reserved]
552.214-70 “All or None” Bids.
552.214-71 [Reserved]
552.214-72 Bid Sample Requirements.
552.215 [Reserved]
552.215-70 Examination of Records by GSA.
552.215-71 [Reserved]
552.215-72 Price Adjustment—Failure to Provide Accurate Information.
552.215-73 Notice.
552.216 [Reserved]
552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
552.216-71 Economic Price Adjustment—Special Order Program Contracts.
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552.216-74 GSA Task-Order and Delivery-Order Ombudsman.
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552.223-70 Hazardous Substances.
552.223-71 Nonconforming Hazardous Materials.
552.223-72 Hazardous Material Information.
552.223-73 Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) For Shipments.

552.227 [Reserved]
552.227-70 Government Rights (Unlimited).
552.227-71 Drawings and Other Data to Become Property of Government.
552.228 [Reserved]
552.228-5 Government as Additional Insured.
552.229 [Reserved]
552.229-70 Federal, State, and Local Taxes.
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552.232-1 Payments.
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552.232-23 Assignment of Claims.
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552.232-70 [Reserved]
552.232-71 [Reserved]
552.232-72 Final Payment Under Building Services Contracts.
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552.232-77 Payment By Government Charge Card.
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552.237-71 Qualifications of Employees.
552.237-72 Prohibition Regarding “Quasi-Military Armed Forces.”
552.237-73 Restriction on Disclosure of Information.
552.238 [Reserved]
552.238-70 Cover Page for Worldwide Federal Supply Schedules.
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552.238-74 Introduction of New Supplies/Services (INSS).
552.238-75 Evaluation-Commercial Items (Federal Supply Schedule).
552.238-76 Use of Non-Government Employees to Review Offers.
552.238-77 Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.
552.238-78 Identification of Products that Have Environmental Attributes.
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552.238-80 Industrial Funding Fee and Sales Reporting.
552.238-81 Price Reductions.
552.238-82 Modifications (Federal Supply Schedules).
552.238-83 Examination of Records by GSA (Federal Supply Schedules).
552.238-84 Discounts for Prompt Payment.
552.238-85 Contractor's Billing Responsibilities.
552.238-86 Delivery Schedule.
552.238-87 Delivery Prices.
552.238-88 GSA Advantage!®.
552.238-89 Deliveries to the U.S. Postal Service.
552.238-90 Characteristics of Electric Current.
552.238-91 Marking and Documentation Requirements for Shipping.
552.238-92 Vendor Managed Inventory (VMI) Program.
552.238-93 Order Acknowledgment.
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552.238-95 Separate Charge for Performance Oriented Packaging (POP).
552.238-96 Separate Charge for Delivery within Consignee's Premises.
552.238-97 Parts and Service.
552.238-98 Clauses for Overseas Coverage.
552.238-99 Delivery Prices Overseas.
552.238-100 Transshipments.
552.238-101 Foreign Taxes and Duties.
552.238-102 English Language and U.S. Dollar Requirements.
552.238-103 Electronic Commerce.
552.238-104 Dissemination of Information by Contractor.
552.238-105 Deliveries Beyond the Contractual Period-Placing of Orders.
552.238-106 Interpretation of Contract Requirements.
552.238-107 Export Traffic Release (Supplies).
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552.238-111 Environmental Protection Agency Registration Requirement.
552.238-112 Definition (Federal Supply Schedules) - Non-Federal Entity.
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552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.

552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials.
552.239 [Reserved]
552.239-70 Information Technology Security Plan and Security Authorization.
552.239-71 Security Requirements for Unclassified Information Technology Resources.
552.240 [Reserved]
552.241 [Reserved]
552.241-70 Availability of Funds for the Next Fiscal Year or Quarter.
552.241-71 Disputes (Utility Contracts).
552.242 [Reserved]
552.242-70 Status Report of Orders and Shipments.
552.243 [Reserved]
552.243-71 Equitable Adjustments.
552.246 [Reserved]
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552.252-5 Authorized Deviations in Provisions.
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552.270 [Reserved]
552.270-1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.
552.270-2 Historic Preference.
552.270-3 Parties to Execute Lease.
552.270-4 Definitions.
552.270-5 Subletting and Assignment.
552.270-6 Maintenance of Building and Premises—Right of Entry.
552.270-7 Fire and Casualty Damage.
552.270-8 Compliance with Applicable Law.
552.270-9 Inspection—Right of Entry.
552.270-10 Failure in Performance.
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552.270-21 Effect of Acceptance and Occupancy.
552.270-22 Default by Lessor During the Term.
552.270-23 Subordination, Nondisturbance and Attornment.
552.270-24 Statement of Lease.
552.270-25 Substitution of Tenant Agency.
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552.270-27 Integrated Agreement.
552.270-28 Mutuality of Obligation.
552.270-29 Acceptance of Space.
552.270-30 Price Adjustment for Illegal or Improper Activity.
552.270-31 Prompt Payment.
552.270-32 Covenant Against Contingent Fees.

Subpart 552.3 - Provision and Clause Matrixes

552.300 Scope of subpart.

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PART 552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.000 Scope of part.

Subpart 552.1 - Instructions for Using Provisions and Clauses

552.101 [Reserved]

552.101-70 Using Part 552.

(a) *Definition*. "Clause," as used in this subpart, means provision or clause as defined in FAR 52.101(a).

(b) *Numbering*. (1) Clauses which are "substantially" the same as FAR clauses and clauses to be used instead of FAR clauses are identified as follows:

(i) The clause has the same title as a clause in the FAR.

(ii) The number 5 precedes the clause.

(iii) The clause appears under the same subsection number and caption as in the FAR.

(2) Supplemental clauses are numbered in the same manner as the FAR, except:

(i) The chapter number precedes the clause.

(ii) The subsection numbers begin with 70.

(iii) The clauses are sequentially numbered, *e.g.*, 552.232-70, 552.232-71, etc.

(c) *Matrixes*. Matrixes provide a guide to locating clauses. Matrixes are included for:

(1) Simplified acquisitions.

(2) Supply, service, construction, and architect-engineer solicitations and contracts.

(3) FAR and GSAR clauses for utility contracts (sole-supplier-regulated rates).

(4) Leases of real property.

(d) Individuals drafting solicitations must research pertinent regulations or make other determinations to ensure that:

(1) The clauses selected fit the procurement.

(2) There are no restrictions on their use.

(3) When one clause depends on the use of another clause, the solicitation includes all necessary clauses.

552.102 Incorporating provisions and clauses.

You may incorporate clauses prescribed in the GSAR for solicitations and contracts by reference.

552.103 Identification of provisions and clauses.

Deviations. If the GSAR prescribes a class deviation from a FAR clause, identify the clause by the GSAR citation (e.g., *Prompt Payment Discount (Nov 1987) (Deviation FAR 52.232-8)*).

552.104 Procedures for modifying and completing provisions and clauses.

(a) The procedures in FAR 52.104 apply when you modify or complete a GSAR provision or clause. Provisions and clauses shall not be modified unless the GSAR authorizes their modification.

(b) You do not need to identify modifications of clauses which result from negotiations unless you issue an amendment to the solicitation.

(c) In general, you should modify FAR or GSAR clauses only for individual cases. If a contracting activity develops a modification for repeated use, furnish a copy to the Office of GSA Acquisition Policy (MV) for potential inclusion in the GSAR.

552.105 Procedures for using alternates.

The procedures in FAR 52.105 apply to GSAR part 552.

552.107 [Reserved]

552.107-70 Provisions and clauses prescribed in .

(a) Insert the provision at 552.252-5, Authorized Deviations in Provisions, in solicitations that include any FAR or GSAR clause with an authorized deviation. You must use this provision in lieu of the FAR provision at 52.252-5.

(b) Insert the clause at 552.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation. You must use this clause in lieu of the FAR clause at 52.252-6.

Subpart 552.2 - Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses. It also cross-references the location in the GSAR that prescribes the use of each provision and clause.

552.203 [Reserved]

552.203-5 [Reserved]

552.203-70 [Reserved]

552.203-71 Restriction on Advertising.

As prescribed in 503.570-2, insert the following clause:

RESTRICTION ON ADVERTISING (SEP 1999)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

552.204 [Reserved]

552.204-9 Personal Identity Verification Requirements.

As prescribed in 504.1303, insert the following clause:

PERSONAL IDENTITY VERIFICATION REQUIREMENTS (OCT 2012)

(a) The contractor shall comply with GSA personal identity verification requirements, identified at http://www.gsa.gov/hspd12, if contractor employees require access to GSA controlled facilities or information systems to perform contract requirements.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have access to a GSA-controlled facility or access to a GSA-controlled information system.

(End of clause)

552.211 [Reserved]

552.211-8 [Reserved]

552.211-10 Commencement, Prosecution, and Completion of Work.

As prescribed in 511.404, insert the following clause:

COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (MAR 2019)

FAR 52.211-10, Commencement, Prosecution, and Completion of Work, is supplemented as follows:

(a) The Contractor shall not commence work until the Contracting Officer issues a notice to proceed.

(b) Notwithstanding paragraph (a) of this clause, the Contractor must submit any required safety plans before commencing any construction work.

(c) The Contractor shall diligently prosecute the work so as to achieve substantial completion of the work within the time specified in the contract. If the contract specifies different completion dates for different phases or portions of the work, the Contractor shall diligently prosecute the work so as to achieve substantial completion of such phases or portions of the work within the times specified.

(End of clause)

552.211-12 Liquidated Damages-Construction.

As prescribed in 511.404, insert the following clause:

LIQUIDATED DAMAGES-CONSTRUCTION (MAR 2019)

FAR 52.211-12, Liquidated Damages-Construction, is supplemented as follows:

(a) If the Contractor fails to achieve substantial completion of the work within the time specified in the contract, the Contractor shall be liable to the Government for liquidated damages at the rate specified for each calendar day following the required completion date that the work is not substantially complete.

(b) If the contract requires different completion dates for different phases or portions of the work, the Contractor shall be liable for liquidated damages at the specified rate for each calendar day following the required completion date that the phase or portion of work is not substantially complete. If a single rate is specified, the specified rate shall be apportioned between the different phases or portions of the work.

(c) If the Government elects to accept any portion of the work not specifically designated as a phase or portion of work with its own required completion date, the liquidated damage rate shall be apportioned between accepted work and uncompleted work, and the Contractor's liability for liquidated damages shall be computed accordingly.

(End of clause)

552.211-13 Time Extensions.

As prescribed in 511.504, insert the following clause:

TIME EXTENSIONS (MAR 2019)

FAR 52.211-13, Time Extensions, is supplemented as follows:

(a) If the Contractor requests an extension of the time for substantial completion, the Contractor shall base its request on an analysis of time impact using the project schedule as its baseline, and shall propose as a new substantial completion date to account for the impact. The Contractor shall submit a written request to the Contracting Officer setting forth facts and analysis in sufficient detail to enable the Contracting Officer to evaluate the Contractor's entitlement to an extension of time.

(b) The Contractor shall only be entitled to an extension of time to the extent that-

(1) Substantial completion of the work is delayed by causes for which the Contractor is not responsible under this contract; and

(2) The actual or projected substantial completion date is later than the date required by this contract for substantial completion.

(c) The Contractor shall not be entitled to an extension of time if the Contractor has not updated the project schedule in accordance with the contract.

(d) The Government shall not be liable for any costs to mitigate time impacts incurred by the Contractor that occur less than 30 calendar days after the date the Contractor submits a request for extension of time in compliance with this clause.

(End of clause)

552.211-70 Substantial Completion.

As prescribed in 511.404, insert the following clause:

SUBSTANTIAL COMPLETION (MAR 2019)

FAR 52.211-13, Time Extensions, is supplemented as follows:

(a) *General*. (1) For the purposes of FAR 52.211-10, Commencement, Prosecution and Completion of Work, and FAR 52.211-12, Liquidated Damages-Construction, the work shall be deemed complete when it is "substantially complete."

(2) There may be different completion dates required for different phases or portions of the work, as established in the contract. However, the work shall be deemed "substantially complete" if and only if the Contractor has completed the work and related contract obligations in accordance with the contract documents, such that the Government may enjoy the intended access, occupancy, possession, and use of the entire work without impairment due to incomplete or deficient work, and without interference from the Contractor's completion of remaining work or correction of deficiencies in completed work.

(3) In no event shall the work be deemed "substantially complete" if all fire and life safety systems are not tested and accepted by the authority having jurisdiction, where such acceptance is required under the contract.

(4) Unless otherwise specifically noted, or otherwise clear from context, all references in the contract to "acceptance" shall refer to issuance of a written determination of substantial completion by the Contracting Officer.

(b) *Notice of Substantial Completion*. (1) With reasonable advance notice, the Contractor shall submit to the Contracting Officer a written proposal recommending a substantial completion date.

(2) If the Contracting Officer takes exception to the notice of substantial completion, the Contractor shall be entitled to a written notice of conditions precluding determination of substantial completion. The Contractor shall only be entitled to an extension of time to address such conditions if, and to the extent that, the Contracting Officer provides notice of such conditions more than 30 calendar days after receipt of the notice of substantial completion.

(c) *Acceptance of Substantial Completion*. (1) The Contracting Officer shall conduct inspections and make a determination of substantial completion within a reasonable time.

(2) Substantial Completion shall be established by the Contracting Officer's issuance of a written determination specifying the date upon which the work is substantially complete.

(d) *Contract Completion*.

(1) The Contract is complete if and only if the Contractor has completed all work and related contract obligations, corrected all deficiencies and all punch list items, and complied with all conditions for final payment.

(2) The Contractor shall not be entitled to final payment or release of any retainage held by the Government until after contract completion. If the Contractor does not achieve contract completion within the time required by this contract, the Government shall be entitled, after providing notice to the Contractor, to complete any work remaining unfinished. The Contractor shall be liable to the Government for all costs incurred by the Government to complete such work.

(End of clause)

552.211-71 [Reserved]

552.211-72 Reference to Specifications in Drawings.

As prescribed in 511.204(a), insert the following clause:

REFERENCES TO SPECIFICATIONS IN DRAWINGS (FEB 1996)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal specifications or standards will be considered to be a reference to the date of such Federal specification or standard identified in the contract. If the date of the Federal specification or standard is not identified in the contract, the edition, including revisions thereto, in effect on the date the solicitation is issued will apply.

(End of clause)

552.211-73 Marking.

As prescribed in 511.204(b)(1), insert the following clause:

MARKING (FEB1996)

(a) *General requirements*. Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards:

(1) *Deliveries to civilian activities*. Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities*. Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material*. When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required marking, by contract or otherwise, and charge the Contractor therefore at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

552.211-74 [Reserved]

552.211-75 Preservation, Packaging and Packing.

As prescribed in 511.204(b)(2), insert the following clause:

PRESERVATION, PACKAGING, AND PACKING (FEB1996)

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

Alternate I (May2003). As prescribed at 511.204(b)(2), insert the following sentence in place of the last sentence of the clause:

Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

552.211-76 Charges for Packaging, Packing, and Marking.

As prescribed in 511.204 Solicitation provisions and contract clauses.(b)(3), insert a clause substantially as follows:

CHARGES FOR PACKAGING, PACKING, AND MARKING (JAN2010)

If supplies shipped to a GSA wholesale distribution center are not packaged, packed and marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking/remarking, by contract or otherwise, and charge the Contractor therefore at the rate of *$ * per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

*The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Acquisition Service, or a designee.

(End of clause)

552.211-77 Packing List.

As prescribed in 511.204(c) insert the following clause:

PACKING LIST (FEB 1996)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate:

(1) Name and address of the consignor;

(2) Name and complete address of the consignee;

(3) Government order or requisition number;

(4) Government bill of lading number covering the shipment (if any); and

(5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

(1) Cardholder name and telephone number and

(2) The term "Credit Card."

(End of clause)

Alternate I (May 2003). As prescribed at 511.204(2), substitute the following paragraphs (a)(3) and (b) for (a)(3) and (b) of the basic clause:

(a)(3) Ordering activity order or requisition number;

(b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

(c) Cardholder name and telephone number; and

(d) The term "Credit Card."

552.211-78 [Reserved]

552.211-79 Acceptable Age of Supplies.

As prescribed in 511.404 Contract clauses.(a)(1), insert the following clause:

ACCEPTABLE AGE OF SUPPLIES (FEB1996)

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 (Feb1996). For items having a limited shelf-life, the sentence below should be substituted for the first sentence of the basic clause when authorized:

The supplies furnished under this contract shall not be more than _____ days old, beginning with the date of manufacture (month, day, year) marked on the container.

552.211-80 Age on Delivery.

As prescribed in 511.404(a)(2) insert the following clause:

AGE ON DELIVERY (FEB1996)

Included in the description of each shelf-life item is a statement regarding the "age on delivery." The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies.

(End of clause)

552.211-81 Time of Shipment.

As prescribed in 511.404 Contract clauses.(b), insert the following clause:

TIME OF SHIPMENT (FEB1996)

Shipment is required within _____ calendar days after receipt of order.

(End of clause)

Alternate I (Feb1996). If the contract will require shipment more than 45calendar 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 15calendar days less than the first number.)

552.211-82 [Reserved]

552.211-83 Availability for Inspection, Testing, and Shipment/Delivery.

As prescribed in 511.404 Contract clauses.(c), insert the following clause:

AVAILABILITY FOR INSPECTION, TESTING, AND SHIPMENT/DELIVERY (FEB1996)

(a) The Government requires that the supplies be made avail-able 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)

AlternateI (Feb1996). If the contract is for stock items, the Contracting Officer shall insert "shipped" or "ship" in the basic clause, add the following paragraph(b) and redesignate paragraph(b) of the basic clause as paragraph(c).

(b)If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before _____* calendar days after receipt of the *[Insert "Notice of Award" or "order"]* , receipt of such notice shall be deemed to be received on the _____* calendar day after receipt of *[Insert "Notice of Award" or "order"]* . Shipments shall not be made before the _____* calendar day after receipt of the *[Insert "Notice of Award" or "order"]* unless authorized in writing by the Contracting Officer.

**Entries are normally the same number of days specified for availability.*

552.211-84 [Reserved]

552.211-85 Consistent Pack and Package Requirements.

As prescribed in 511.204(b)(4), insert the following clause:

CONSISTENT PACK AND PACKAGE REQUIREMENTS (JAN2010)

The Contractor is advised that the Government will, where possible, order in full shipping containers and/or unitized loads. If volume warrants, the Government may also order in truckload or carload quantities provided such quantities do not exceed the maximum order limitation of this contract.

When the number of items per unit container, intermediate container and/or shipping container is not specified for an item, the offeror will state, in the spaces provided in the schedule of items, the number of items to be provided in each container. The quantities which are accepted at the time of award shall remain in effect throughout the term of the contract unless the Contracting Officer approves in writing a request by the Contractor to change the package quantities. Requests for changes shall be directed to the Contracting Officer or Administrative Contracting Officer, whichever is applicable.

(End of clause)

552.211-86 Maximum Weight per Shipping Container.

As prescribed in 511.204(b)(5), insert the following clause:

MAXIMUM WEIGHT PER SHIPPING CONTAINER (JAN2010)

In no instance shall the weight of a shipping container and its contents exceed 23 kilograms (51 pounds), except when caused by—

(a) The weight of a single item within the shipping container;
(b) A prescribed quantity per pack for an item per shipping container; or
(c) A definite weight limitation set forth in the purchase description.

(End of clause)

552.211-87 Export Packing.

As prescribed in 511.204(b)(6), insert the following clause:

EXPORT PACKING (JAN2010)

(a) Offerors are requested to quote, in the pricelist accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial or military export packing. Military export packing, if offered, shall be in accordance with Mil-Std-2073-1 Level A or B as specified. If commercial export packing is offered, the offer or pricelist shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to utilize the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export packed when such packing is specified on the purchase order.

(End of clause)

552.211-88 Vehicle Export Preparation.

As prescribed in 511.204(b)(7), insert the following clause:

VEHICLE EXPORT PREPARATION (JAN2010)

Vehicles shall be prepared for export on wheels, unboxed, unless otherwise specified in the Schedule of Items. All parts and equipment easily removable (subject to pilferage) shall be enclosed in a box substantially secured to the vehicle (inside body if feasible) in such a manner as to minimize the possibility of loss or damage while in transit to ultimate destination.

(End of clause)

552.211-89 Non-Manufactured Wood Packaging Material for Export.

As prescribed in 511.204(b)(8), insert the following clause:

NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JUL 2016)

(a) Definitions:

IPPC Country: Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) "Guidelines for Regulating Wood Packaging Material in International Trade," approved March 15, 2002. A listing of countries participating in the IPPC is found athttp://www.aphis.usda.gov/import_export/plants/plant_exports/wpm/country/index.shtml.

Non-manufactured wood, is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a combination thereof.

Packaged material, and solid wood packing material (SWPM), for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLAD 47.305-1 (available at http://farsite.hill.af.mil/archive/Dlad/Rev5/PART47.htm),and MIL-STD-2073-1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery to the countries endorsing the IPPC Guidelines will comply with DLAD 47.305-1, and MIL-STD-2073-1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide

appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

(End of clause)

552.211-90 Small Parts.

As prescribed in 511.204(b)(9), insert the following clause:

SMALL PARTS (JAN2010)

All small parts required to be furnished with machines covered by contracts resulting from this solicitation shall be packed in envelopes, sealed, identified with part numbers and quantity on outside of envelopes. Larger parts must be individually tagged and identified with part number on face of tag.

(End of clause)

552.211-91 Vehicle Decals, Stickers, and Data Plates.

As prescribed in 511.204(b)(10), insert the following clause:

VEHICLE DECALS, STICKERS, AND DATA PLATES (JAN2010)

Unless otherwise specified, caution plates/decals shall be conspicuously installed for all equipment requiring such notices. Vehicles for civil agencies shall be provided with the manufacturer's current warranty legend imprinted on decalcomania, and applied in a visible area of the engine compartment. In addition, a decal or sticker shall provide at least the following information: contract number; purchase order number; date of delivery, month and year; and the warranty time, in month and miles.

(End of clause)

552.211-92 Radio Frequency Identification (RFID) Using Passive Tags.

As prescribed in 511.204(b)(11), insert the following clause:

RADIO FREQUENCY IDENTIFICATION (RFID) USING PASSIVE TAGS (JAN2010)

Radio Frequency Identification shall be required on all non-bulk shipments to the Defense Logistics Agency (DLA) or Department of Defense (DoD) destinations. Shipments shall be tagged in accordance with 48 CFR clause 252.211-7006. Shipments to GSA Distribution Centers with final destinations to DLA and DoD shall be in compliance to 48 CFR 252.211-7006. Copies may be obtained from http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.

(End of clause)

552.211-93 [Reserved]

552.211-94 Time of Delivery.

As prescribed at 511.404 Contract clauses.(d), insert the following clause:

TIME OF DELIVERY (JAN2010)

An "X" mark in the left hand block shall be considered a mandatory requirement to be fulfilled by the contractor.

	The Contractor will ship contract item(s) to the Federal Acquisition Service (FAS) stocking points identified in the delivery order at its discretion in order to maintain the required stock levels within the minimum and maximum requirements provided in the weekly status report.
	Delivery is required to be made at destination within *_____* calendar days after receipt of order for deliveries to a GSA facility.
	Orders under this contract may require direct delivery to other agencies. Orders for direct delivery must be shipped and delivered within the time specified in blocks below.
	Shipment must be made with *_____* days after receipt of order.
	In addition to block above the Contractor must also ensure that delivery will be made within *_____* days after receipt of order.

(End of clause)

552.212 [Reserved]

552.212-4 Contract Terms and Conditions—Commercial Items (FAR DEVIATION).

As prescribed in 512.301(e), replace subparagraph (g)(2), paragraph (s), and paragraph (u) of FAR clause 52.212-4. Also, add paragraph (w) to FAR clause 52.212-4:

CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS. (FAR DEVIATION) (FEB 2018)

(g)(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10*th* day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10*th* day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10*th* day after Government acceptance of supplies delivered or services performed by the Contractor.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements - Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements -Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(w) *Commercial supplier agreements unenforceable clauses.*When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability*. This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR 12).

(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes*. This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance*. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) Updating terms.

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms: if they are not material. A material change is defined as:

(1) Terms that change Government rights or obligations;

(2) Terms that increase Government prices;

(3) Terms that decrease overall level of service; or

(4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement license terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals*. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits*. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with subparagraph (d) (Disputes) through the Disputes clause at 552.212-4(d); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges*. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment*. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) *Confidential information*. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

(End of clause)

552.212-70 [Reserved]

552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.(a)(1), insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (MAY 2019)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The clauses in paragraph (b) of this section are incorporated by reference:

[The Contracting Officer should check the clauses that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity.]

(b) *Clauses*.

___ 552.203-71 Restriction on Advertising.	Restriction on Advertising
___ 552.211-73 Marking.	Marking
___ 552.215-70 Examination of Records by GSA.	Examination of Records by GSA
___ 552.215-72 Price Adjustment—Failure to Provide Accurate Information.	Price Adjustment—Failure to Provide Accurate Information

___ 552.219-70 Allocation of Orders—Partially Set-aside Items.	Allocation of Orders—Partially Set-Aside Items
___ 552.228-70	Workers' Compensation Laws
___ 552.229-70 Federal, State, and Local Taxes.	Federal, State, and Local Taxes
___ 552.232-23 Assignment of Claims.	Assignment of Claims
___ 552.232-71 [Reserved]	Adjusting Payments
___ 552.232-72 Final Payment Under Building Services Contracts.	Final Payment
___ 552.232-73 [Reserved]	Availability of Funds
___ 552.232-78 Commercial Supplier Agreements–Unenforceable Clauses.	Payment Information
___ 552.237-71 Qualifications of Employees.	Qualifications of Employees
___ 552.242-70 Status Report of Orders and Shipments.	Status Report of Orders and Shipments
___ 552.246-76	Warranty of Pesticides

(End of clause)

552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

As prescribed in 512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.(a)(2), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIALITEMS (MAY 2019)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions*.

___ 552.223-72 Hazardous Material Information.	Hazardous Material Information

(b) *Clauses*.

___ 552.223-70 Hazardous Substances.	Hazardous Substances
___ 552.223-71 Nonconforming Hazardous Materials.	Nonconforming Hazardous Material

___ 552.223-73 Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) For Shipments.	Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) for Shipments.
___ 552.238-73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.
___ 552.238-78 Identification of Products that Have Environmental Attributes.	Identification of Products That Have Environmental Attributes.

(End of clause)

552.212-73 [Reserved]

552.214 [Reserved]

552.214-70 "All or None" Bids.

As prescribed in 514.201-6, insert the following provision:

"ALL OR NONE" BIDS (OCT2009)

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

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

(End of provision)

552.214-71 [Reserved]

552.214-72 Bid Sample Requirements.

As prescribed in 514.202-4 Bid samples.(a)(3), insert the following provision:

BID SAMPLE REQUIREMENTS (OCT2009)

This provision supplements FAR52.214-20, which is incorporated by reference. Samples shall be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

_____

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable Representative Samples

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

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective Characteristics	Objective Characteristics

(d) Forward samples addressed to the Sample Room indicated below. Except for samples delivered by U.S. Mail, deliveries will be accepted between the hours of _____ Mondays through Fridays, official holidays excluded.

CAUTION: *USE PROPER ADDRESS FOR METHOD OF SHIPMENT SELECTED.*

Mail and Parcel Post ***[Insert Address of Bid Sample Room]***	**Freight or Express** ***[Insert address of Bid Sample Room]***

(e) Contracting Officer insert address.

(End of provision)

552.215 [Reserved]

552.215-70 Examination of Records by GSA.

As prescribed in 515.209-70(a) insert the following clause:

EXAMINATION OF RECORDS BY GSA (JUL 2016)

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 the simplified acquisition threshold and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of clause)

552.215-71 [Reserved]

552.215-72 Price Adjustment—Failure to Provide Accurate Information.

As prescribed in 515.408(d), insert the following clause:

PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATEINFORMATION (AUG1997)

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) Submit information that was current, accurate, and complete; or

(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States —

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

552.215-73 Notice.

As prescribed in 515.209-70(b), insert the following clause:

NOTICE (JUL 2016)

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

(b) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for pre-award debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for post-award debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

(End of clause)

552.216 [Reserved]

552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

As prescribed in 516.203-4 Contract clauses.(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP1999)

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 30days of the contract period and prior to the last 60days of the contract period.

(4) At least 30days 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.

**Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.*

(End of clause)

Alternate I (Sep 1999). As prescribed by 516.203-4 Contract clauses.(a)(2), substitute the following for paragraphs (b) and (c) of the clause:

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract.(For succeeding contract periods of less than 12months, up to three increases will be considered subject to the other conditions of this paragraph (b)).

(3) Increases are requested before the last 60days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) Any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed _____* percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

**Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10percent must be approved by the Contracting Director.*

552.216-71 Economic Price Adjustment—Special Order Program Contracts.

As prescribed in 516.203-4 Contract clauses.(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—SPECIAL ORDER PROGRAM CONTRACTS (AUG2010)

(a) "Producer Price Index" (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor (Labor) for product code _____ found under Table _____

(b) During the term of the contract, the award price may be adjusted once during each 12-month period upward or downward. However, if an upward adjustment, a maximum of _____* percent shall apply. Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is—

$$\text{ACP} = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Labor designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formula in paragraph (b) of this clause is received by the Contracting Officer within 30calendar days of the release of the updated index, the Contractor shall have waived its right to an upward price adjustment for the balance of the contract. Alternatively, the Contracting Officer will unilaterally adjust the award price downward when appropriate using the updated index defined in paragraph (b) of this clause.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 31*st*— day following the release of the updated index, whichever is later, shall indicate the updated index and percent of change as well as the ACP, and shall not apply to delivery orders issued before the effective date.

(End of clause)

Alternate I (Aug 2010). As prescribed in 516.203-4 Contract clauses.(a)(1) and (2), substitute the following paragraphs (b), (e), and (f) for paragraphs (b), (e), and (f) of the basic clause:

(b) Once during each 12-month period, the contract price may be adjusted upward or downward a maximum of _____* percent.

(1) For the first option period, any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period stated in the solicitation (the updated index). This initial contract period may be less than 12months. 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 12months 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—

$$\text{ACP} = \frac{\text{Most Recent Updated Index}}{\text{New Base Index}} \times CCP$$

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formulas in paragraphs (b)(1) or (2) of this clause is received by the Contracting Officer within 30 calendar days of the date of the Government's preliminary written notice of its intent to exercise the option, the Contractors shall have waived its right to an upward price adjustment for that option period. Alternatively, the Contracting Officer in its written notice shall exercise the option at the CCP or at a reduced price when appropriate using the formulas in paragraphs (b)(1) or (2) of this clause.

(f) Price adjustments shall be effected by execution of a contract modification by the Government indicating the most recent updated index and percent of change and shall apply to delivery orders placed on or after the first day of the option period.

Alternate II (Aug2010). As prescribed in 516.203-4 Contract clauses.(a)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least _____* percent.

The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

552.216-72 Placement of Orders.

As prescribed in 516.506 Solicitation provisions and contract clauses.(a), insert the following clause:

PLACEMENT OF ORDERS (JAN 2016)

(a) Delivery orders (orders) will be placed by:

[Contracting Officer insert names of Federal agencies]

(b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, General Services Administration's Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other agencies may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for

implementation. Federal agencies may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

(e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.

(f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.

(g) The basic content and format of the TPA will be provided by: General Services Administration, Office of the Chief Information Officer (I). Contact information can be found at: http://www.gsa.gov/portal/category/21404.

(End of clause)

Alternate I (Aug2010). As prescribed in 516.506 Solicitation provisions and contract clauses.(a), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration's Federal Acquisition Service (FAS). The Contractor is not authorized to accept orders from any other agency. Violation of this restriction may result in termination of the contract pursuant to the default clause of this contract.

(b) All orders shall be placed by Electronic Data Interchange (EDI) using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, transmission will be computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into a Trading Partner Agreement (TPA) with FAS in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

552.216-73 Ordering Information.

As prescribed in 516.506 Solicitation provisions and contract clauses.(c), insert the following provision:

ORDERING INFORMATION (AUG2010)

(a) In accordance with the Placement of Orders clause of this solicitation, the offeror elects to receive orders placed by GSA's Federal Acquisition Service (FAS) by either □ facsimile transmission or □ computer-to-computer Electronic Data Interchange (EDI).

(b) An offeror electing to receive computer-to-computer EDI is requested to indicate below the name, address, and telephone number of the representative to be contacted regarding establishment of an EDI interface.

_____

_____

(c) An offeror electing to receive orders by facsimile transmission is requested to indicate below the telephone 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.

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

YES ____ NO ____

If "yes" is checked, ordering information to be inserted above shall reflect that in addition to offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule pricelist.

(End of provision)

Alternate I (Sep1999). As prescribed in 516.506 Solicitation provisions and contract clauses.(c), delete paragraph(d) of the basic provision.

552.216-74 GSA Task-Order and Delivery-Order Ombudsman.

As prescribed in 516.506(b), insert the following provision:

Task-Order and Delivery-Order Ombudsman (Jan2017)

(a) GSA has designated a Task-Order and Delivery-Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consisten with the procedures in the contract. Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer.

(b) In the case that the contractor is not satisfied with the resolution of the complaint by the GSA Task-Order and Delivery-Order Ombudsman, the contractor may follow the procedures outlined in subpart 33.1.

(c) The GSA Task-Order and Delivery-Order Ombudsman is located at the General Services Administration (GSA), Office of Government-wide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Task-Order and Delivery-Order Ombudsman can be found at: http://www.gsa.gov/ombudsman.

(End of provision)

552.216-75 Transactional Data Reporting.

As prescribed in 516.506 Solicitation provisions and contract clauses.(e), insert the following provision:

Transactional Data Reporting (Jun2016)

(a) *Definition.* "Transactional data" encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) *Reporting of Transactional Data*. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, https://vsc.gsa.gov. The reporting system website address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.
(vii) Unit Measure (each, hour, case, lot).
(viii) Quantity of Item Sold.
(ix) Universal Product Code.
(x) Price Paid per Unit.
(xi) Total Price.

Note to paragraph (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM Actions using significantly changed methods (e.g., methods of procurement such as lease versus purchase, or methods of performance such as contractor versus Government personnel). .

(3) The Contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(6) *Reporting Points*. (i) The acceptable points at which transactional data may be reported include–

(A) Issuance of an invoice; or
(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(7) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order issued against the contract.

(8) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other information that would compromise national security are exempt from this reporting requirement.

(9) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(10) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) Contract Access Fee (CAF). (1) GSA's operating costs are reimbursed through a CAF charged on orders placed against this contract. The CAF is paid by the ordering activity but remitted to GSA by the Contractor. GSA has the unilateral right to change the fee structure at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change.

(2) Within 60 calendar days of award or inclusion of this clause in the contract, a GSA representative will provide the Contractor with specific written procedural instructions on remitting the CAF, including the deadline by which the Contractor must remit the CAF. The deadline specified in the written procedural instructions will be no less than 30 calendar days after the last calendar day of the month. GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(3) The Contractor must remit the CAF to GSA in U.S. dollars.

(4) The Contractor's failure to remit the full amount of the CAF within the specified deadline constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required sales reports, falsifies them, or fails to timely pay the CAF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

(End of provision)

552.216-76 Ordering Agency Task-Order and Delivery-Order Ombudsman

As prescribed in 516.506(d), insert the following provision:

Ordering Agency Task-Order and Delivery-Order Ombudsman (Jan2017)

(a) *Ordering Agency Task-Order and Delivery-Order Ombudsman.* The Ordering Agency shall designate a Task-Order and Delivery-Order Ombudsman to review complaints from contractors and ensure that they are afforded a fair opportunity

for consideration in the award of task or delivery orders placed against GSA Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. The contact information for the Ordering Agency Task-Order and Delivery-Order Ombudsman shall be made available to contractors.

(b) *Submission of Complaints*. When a contractor submits a complaint to the Ordering Agency's designated Task-Order and Delivery-Order Ombudsman, the contractor shall also send a copy of the complaint to the GSA Procurement Ombudsman, for informational purposes. The GSA Procurement Ombudsman is located at the General Services Administration, Office of Governmentwide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Procurement Ombudsman can be found at: http://www.gsa.gov/ombudsman.

(End of provision)

552.217 [Reserved]

552.217-70 Evaluation of Options.

As prescribed in 517.208(a), insert the following provision:

EVALUATION OF OPTIONS (JUL2016)

(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)

552.217-71 Notice Regarding Option(s).

As prescribed in 517.208 Solicitation provisions and contract clauses.(b), insert the following provision:

NOTICE REGARDING OPTION(S) (NOV1992)

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 48CFR517.207.

(End of provision)

552.219 [Reserved]

552.219-70 Allocation of Orders—Partially Set-aside Items.

As prescribed in 519.508, insert the following clause:

ALLOCATION OF ORDERS—PARTIALLY SET-ASIDE ITEMS (SEP1999)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than the one receiving the award on the corresponding non-set-aside portion, the Government will divide the requirements to be ordered between the two

Contractors with the objective of achieving, as nearly as possible, a 50/50 division of the total value of orders placed after the award of the set-aside portion. In no case will this division vary by more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion) from the time of the award of the set-aside portion.

(End of clause)

552.219-74 Section8(a)Direct Award.

As prescribed in 519.870-8 Contract clauses., insert the following clause:

SECTION 8(A) DIRECT AWARD (SEP 1999)

(a) This contract is issued as a direct award between the contracting activity and the 8(a)Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a)certifications, 8(a)eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a)contractor under the 8(a)program. The cognizant SBA district office is:

[Complete at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a)regulations), when the owner or owners upon whom 8(a)eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To the requirements of 52.219-14, Limitations on Subcontracting.

(End of clause)

552.223 [Reserved]

552.223-70 Hazardous Substances.

As prescribed in 523.303(a), insert the following clause:

HAZARDOUS SUBSTANCES (MAY1989)

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Materials Act, as amended (15 U.S.C.1261-1276), implementing regulations thereof (16CFRChapterII), 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 Parts171 through 178 of 49CFRand the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49CFR173.

(End of clause)

552.223-71 Nonconforming Hazardous Materials.

As prescribed in 523.303(b), insert the following clause:

NONCONFORMING HAZARDOUS MATERIALS (SEP1999)

(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 10days 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 FAR9.104-3(b) and 9.406-2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

(End of clause)

552.223-72 Hazardous Material Information.

As prescribed in 523.370 Solicitation provision., insert the following provision:

HAZARDOUS MATERIAL INFORMATION (SEP1999)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT Shipping Name	DOT Hazard Class	DOT Label Required
			Yes[]No[]
			Yes[]No[]
			Yes[]No[]

(End of provision)

552.223-73 Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) For Shipments.

As prescribed in 523.303(c), insert the following clause:

PRESERVATION, PACKAGING, PACKING, MARKING, AND LABELING
OF HAZARDOUS MATERIALS (HAZMAT) FOR SHIPMENTS (JUN2015)

(a) *Definition*. "United States," as used in this clause, means the 48 adjoining U.S. States, Alaska, Hawaii, and U.S. territories and possessions, such as Puerto Rico.

(b) Preservation, packaging, packing, marking, and labeling of hazardous materials for export shipment outside the United States in all transport modes shall comply with the following, as applicable:

(1) International Maritime Dangerous Goods (IMDG) Code as established by the International Maritime Organization (IMO).

(2) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180. (Note: Classifications permitted by the HMR, but not permitted by the IMDG code, such as Consumer Commodities classed as ORM-D, shall be packaged in accordance with the IMDG Code and dual-marked with both Consumer Commodity and IMDG marking and labeling.)

(3) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR 1910.1200.

(4) International Air Transport Association (IATA), Dangerous Goods Regulation and/or International Civil Aviation Organization (ICAO), Technical Instructions.

(5) AFMAN 24-204, Air Force Inter-Service Manual, Preparing Hazardous Materials For Military Air Shipments.

(6) Any preservation, packaging, packing, marking, and labeling requirements contained elsewhere in this solicitation and contract.

(c) Preservation, packaging, packing, marking, and labeling of hazardous materials for domestic shipments within the United States in all transport modes shall comply with the following; as applicable:

(1) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180.

(2) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR 1910.1200.

(3) Any preservation, packaging, packing, marking, and labeling requirements contained elsewhere in this solicitation and contract.

(d) Hazardous Material Packages designated for outside the United States destinations through Forwarding Points, Distribution Centers, or Container Consolidation Points (CCPs) shall comply with the IMDG, IATA, ICAO or AFMAN 24-204 codes, as applicable.

(e) The test certification data showing compliance with performance-oriented packaging or UN-approved packaging requirements shall be made available to GSA contract administration/management representatives or regulatory inspectors upon request.

(End of clause)

552.227 [Reserved]

552.227-70 Government Rights (Unlimited).

As prescribed in 527.409(a), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAY1989)

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 threeyears 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 PROPERTYOFGOVERNMENT (MAY1989)

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 Section201(b) of Title17, 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 threeyears 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 [Reserved]

552.228-5 Government as Additional Insured.

As prescribed in 528.310, insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (JAN2016)

(a) This clause supplements the requirements set forth in FAR clause 52.228-5, Insurance–Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

552.229 [Reserved]

552.229-70 Federal, State, and Local Taxes.

As prescribed in 529.401-70, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (APR1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of clause)

552.229-71 Federal Excise Tax—DC Government.

As prescribed in 529.401-71, insert the following clause:

FEDERAL EXCISE TAX—DC GOVERNMENT (SEP1999)

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)

552.232 [Reserved]

552.232-1 Payments.

As prescribed in 532.908(a), insert the following clause:

PAYMENTS (NOV2009) (DEVIATION FAR 52.232-1)

(a) The Government shall pay the Contractor, without submission of invoices or vouchers, 30days after the service period, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

(b) Unless otherwise specified in this contract, the Government will make payment on partial deliveries accepted by the Government if either:

(1) The amount due on the deliveries warrants it.

(2) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50percent of the total contract price.

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the PDN assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 2007). The PDN appears on the contract award document.

(End of clause)

552.232-5 Payments under Fixed-Price Construction

As prescribed in 532.111, insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION (MAR 2019)

FAR 52.232-5, Payments under Fixed-Price Construction Contracts, is supplemented as follows:

(a) Before submitting a request for payment, the Contractor shall, unless directed otherwise by the Contracting Officer, attend pre-invoice payment meetings, as scheduled, with the designated Government representative for the purpose of facilitating review and approval of payment requests. Payment meetings will be conducted and may be in person. The Contractor shall provide documentation to support the prospective payment request.

(b) The Contractor shall submit its invoices to the Contracting Officer, unless directed otherwise by the Contracting Officer. Separate payment requests shall be submitted for progress payments, payments of retainage, and partial or final payments.

(c) The Contractor shall use GSA Form 2419 *Certification of Progress Payments Under Fixed-Price Construction Contracts* to provide the certification required under FAR 52.232-5(c).

(d) The Contractor shall use GSA Form 1142 *Release of Claims* to provide the certification required under FAR 52.232-5(h).

(e) If an invoice does not meet the requirements of FAR 52.232-27 and GSAM 552.232-27, the Contracting Officer may return the invoice to the Contractor without payment for correction. If the Contracting Officer disputes the requested payment amount, the Government may pay the portion of the requested payment that is undisputed.

(f) GSA will not be obligated to issue final payment unless the Contractor has furnished to the Contracting Officer a release of claims against the Government relating to the contract, and submitted all required product warranties, as-built drawings, operating manuals, and other items as specified in the contract. The Contractor may reserve from the release specific claims only if such claims are explicitly identified with stated claim amounts.

(End of clause)

552.232-23 Assignment of Claims.

As prescribed in 532.806, insert the following clause:

ASSIGNMENT OF CLAIMS (SEP1999)

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 (FAR52.232-23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act,

as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to $1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

(End of clause)

552.232-25 Prompt Payment.

As prescribed in 532.908 Contract clauses.(c)(2), insert the following clause:

PROMPT PAYMENT (NOV2009) (DEVIATIONFAR52.232-25)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph Certain food products and other payments. of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) I*nvoice payments*. (1) The due date for making invoice payments by the designated payment office is:

(i) For orders placed electronically by the General Services Administration (GSA) Federal Acquisition Service (FAS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(A) The 10*th* day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10*th* day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 10*th* day after Government acceptance of supplies delivered or services performed by the Contractor.

(ii) For all other orders, the later of the following two events:

(A) The 30*th* day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30*th* day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 30*th* day after Government acceptance of supplies delivered or services performed by the Contractor.

(iii) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(2) The General Services Administration will issue payment on the due date in paragraph (a)(1)(i) of this clause if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(i) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(ii) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810) or submit invoices through the GSA Finance Center Internet-based invoice process. Internet-based invoices must be submitted using procedures provided by GSA.

(iii) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(iv) The EDI transaction sets in paragraphs (a)(2)(i) through (a)(2)(iii) of this clause must adhere to implementation conventions provided by GSA.

(3) If any of the conditions in paragraph (a)(2) of this clause do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(4) *Certain food products and other payments*. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub.L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7*th*day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7*th*day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10*th* 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 of1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10*th* day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*,periodic lease payments), the due date will be as specified in the contract.

(5) *Contractor's invoice*. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. Notwithstanding paragraph (g) of the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required. A proper invoice must include the items listed in paragraphs (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in paragraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*,shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(6) *Interest penalty*. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(6)(i) through (a)(6)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(7) *Computing penalty amount*. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (*e.g.*,tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in paragraph Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. Notwithstanding paragraph (g) of the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required. A proper invoice must include the items listed in paragraphs (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in paragraph (a)(5) of this clause. of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7*th* 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; 5days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(8) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in paragraph Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g.,tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments

inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in paragraph Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. Notwithstanding paragraph (g) of the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items, if the Contractor submits hard-copy invoices, submit only an original invoice. No copies of the invoice are required. A proper invoice must include the items listed in paragraphs (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in paragraph (a)(5) of this clause. 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. of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(9) *Additional interest penalty*. (i) If this contract was awarded on or after October 1,1989, a penalty amount, calculated in accordance with paragraph (a)(9)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of $1 or more;

(B) Is not paid the interest penalty within 10days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(9)(ii) of this clause, postmarked not later than 40days after the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40*th* day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40*th* day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40*th* day after payment was made.

(iii)

(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(1) The additional penalty shall not exceed $5,000;

(2) The additional penalty shall never be less than $25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in paragraph (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g.,payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments*. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the *[insert day as prescribed by Agency head; if not prescribed, insert 30 th day]* day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

552.232-39 Unenforceability of Unauthorized Obligations (FAR DEVIATION).

As prescribed in 513.302-5 and 532.706-3, insert the following clause:

UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS. (FAR DEVIATION) (FEB 2018)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such language, provision, or clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such language, provision, or clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(b) Paragraph (a) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

552.232-70 [Reserved]

552.232-71 [Reserved]

552.232-72 Final Payment Under Building Services Contracts.

As prescribed in 532.904(b), insert the following clause:

FINAL PAYMENT UNDER BUILDING SERVICES CONTRACTS (MAR2012)

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the

contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)

552.232-73 [Reserved]

552.232-74 [Reserved]

552.232-75 [Reserved]

552.232-76 [Reserved]

552.232-77 Payment By Government Charge Card.

As prescribed in 532.7003 Contract clause., insert the following clause:

PAYMENT BY GOVERNMENT CHARGE CARD (NOV 2009)

(a) *Definitions*. "Governmentwide commercial purchase card" means a uniquely numbered charge card issued by a contractor under the GSA SmartPay® program contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

"Oral order" means an order placed orally either in person or by telephone.

(b) At the option of the Government and if agreeable to the Contractor, payments of _____* or less for oral or written orders may be made using the Governmentwide commercial purchase card.

(c) The Contractor shall not process a transaction for payment using the charge card until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(d) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

**Enter amount not to exceed $100,000.*

(End of clause)

552.232-78 Commercial Supplier Agreements–Unenforceable Clauses.

As prescribed in 513.302-5 and 532.706-3 insert the following clause:

COMMERCIAL SUPPLIER AGREEMENTS–UNENFORCEABLE CLAUSES (FEB 2018)

When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(a) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(1) *Applicability*. This agreement is part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR Parts 13, 14 or 15).

(2) *End user*. This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(3) *Law and disputes*. This agreement is governed by Federal law.

(i) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(ii) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(iii) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(4) *Continued performance*. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in FAR 52.233-1, Disputes.

(5) *Arbitration; equitable or injunctive relief*. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(6) Updating terms. (i) After award, the contractor may unilaterally revise commercial supplier agreement terms provided: if they are not material. A material change is defined as:

(A) Terms that significantly change Government rights or obligations;

(B) Terms that increase Government prices;

(C) Terms that decrease overall level of service; or

(D) Terms that limit any other Government right addressed elsewhere in this contract.

(ii) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(iii) Any license agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(7) *No automatic renewals*. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(8) *Indemnification*. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(9) *Audits*. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(i) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(ii) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52.233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(iii) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(10) *Taxes or surcharges*. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(11) *Non-assignment*. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under the clause at FAR 52.232-23, Assignment of Claims.

(12) *Confidential information*. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the Federal Supply Schedule contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of

Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(b) If any language, provision or clause of this agreement conflicts or is inconsistent with the preceding paragraph (a), the language, provisions, or clause of paragraph (a) shall prevail to the extent of such inconsistency.

552.236 [Reserved]

552.236-6 Superintendence by the Contractor.

As prescribed in 536.506, insert the following clause:

SUPERINTENDENCE BY THE CONTRACTOR (MAR 2019)

The requirements of the clause entitled "Superintendence by the Contractor" at FAR 52.236-6, are supplemented as follows:

(a) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the contract. The Contractor shall designate a principal of the firm or other senior management official to provide executive oversight and problem resolution resources to the project for the life of the contract.

(b) The Contractor shall employ, and require its subcontractors to employ, qualified personnel to perform the contract. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest.

(c) The Contractor shall be responsible for coordinating all activities of subcontractors, including all of the following activities:

(1) Preparation of shop drawings produced by different subcontractors where their work interfaces or may potentially conflict or interfere.

(2) Scheduling of work by subcontractors.

(3) Installation of work by subcontractors.

(4) Use of the project site for staging and logistics.

(d) Repeated failure or excessive delay to meet the superintendence requirements by the Contractor may be deemed a default for the purposes of the termination for default clause.

(End of clause)

552.236-11 Use and Possession Prior to Completion.

As prescribed in 536.511, insert the following clause:

USE AND POSSESSION PRIOR TO COMPLETION. (MAR 2019)

Exercise by the Government of the right conferred by FAR 52.236-11 shall not relieve the Contractor of responsibility for completing any unfinished components of the work.

(End of clause)

552.236-15 Schedules for Construction Contracts.

As prescribed in 536.515, insert the following clause:

SCHEDULES FOR CONSTRUCTION CONTRACTS (MAR 2019)

The requirements, of the clause entitled "Schedules for Construction Contracts" at FAR 52.236-15, are supplemented as follows:

(a) *Purpose*. The project schedule shall be a rational, reasonable, and realistic plan for completing the work, and conform to the requirements specified in this clause and elsewhere in the contract. The Contractor understands and acknowledges that the preparation and proper management of the project schedule is a material component of the contract.

(b) *Use of the schedule*. The Contracting Officer shall be entitled, but not required, to rely upon the project schedule to evaluate the Contractor's progress, evaluate entitlement to extensions of time, and determine the criticality or float of any activities described in such project schedule.

(c) Submission. Prior to notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule.

(d) *Milestones*. The project schedule shall incorporate milestone events specified in the contract, including, as applicable, notice to proceed, substantial completion, and milestones related to specified work phases and site restrictions. The project schedule shall also include Contractor-defined milestones to identify target dates for critical events, based upon the Contractor's chosen sequence of work.

(e) *Activities*. The project schedule shall depict all major activities necessary to complete the work.

(f) *Schedule of values*. (1) The Contractor shall prepare and submit for approval a cost breakdown of the Contract price, to be referred to as the "schedule of values", assigning values to each major activity necessary to complete the work.

(2) Values must include all direct and indirect costs, although a separate value for bond costs may be established.

(3) The schedule of values must contain sufficient detail to enable the Contracting Officer to evaluate applications for payment.

(g) *Conflicting terms*. (1) If at any time the Contracting Officer finds that the project schedule does not comply with any contract requirement, the Contracting Officer will provide written notice to the Contractor.

(2) Within 30 calendar days of written notice, or such other time as may be specified, from the Contracting Officer, the Contractor shall take one of the following actions:

(i) Revise the project schedule.

(ii) Adjust activity progress.

(iii) Provide sufficient information demonstrating compliance.

(3) If the Contractor fails to sufficiently address the Contracting Officer's exceptions to the project schedule, the Contracting Officer may-

(i) Withhold retainage until the project is substantially complete or until such time as the Contractor has complied with project schedule requirements; or

(ii) Terminate the contract for default.

(h) *Revisions to the schedule*. If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates*. Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule weekly to reflect actual progress in completing the work, and submit the updated project schedule by the following Monday.

(End of clause)

Alternate I (*Mar* 2019). As prescribed in 536.515(a), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission*. Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities*. (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) The project schedule shall depict all activities necessary to complete the work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(3) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(4) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the initial submittal of the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken to the initial submittal. The Contractor understands and acknowledges that the purpose of the initial review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates*. Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate II (*Mar* 2019). As prescribed in 536.515(b), substitute the following paragraphs (c), (e), and (i) for paragraphs (c), (e), and (i) of the basic clause:

(c) *Submission*. Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities*. (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) The project schedule shall depict all activities necessary to complete the work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist. (3) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts. (4) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule*. (1) The Contractor should anticipate that the initial submittal of the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken to the initial submittal. The Contractor understands and acknowledges that the purpose of the initial review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) Updates. Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate II (*Mar* 2019). As prescribed in 536.515(b), substitute the following paragraphs (c), (e), and (i) for paragraphs (c), (e), and (i) of the basic clause:

(c) *Submission*. (1) Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major design and construction activities. The project schedule may indicate construction activities in summary form prior to completion of final design documents

(2) Within 30 calendar days of completion of final design documents, the Contractor shall submit a revised project schedule depicting all activities necessary to complete construction work activities, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities*. (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(3) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(i) *Updates*. Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate III (*Jan* 2020). As prescribed in 536.515(c), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission.* (1) Within 30 calendar days of contract award, or such other time as may be specified in the contract, the Contractor shall submit the design phase project schedule.

(2) Within 30 calendar days after establishing the final estimated cost of work, the Contractor shall submit the construction phase project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The design phase project schedule shall depict all activities necessary to complete the design work, including, as applicable, all submittal and submittal review activities, cost reconciliation, and establishing the estimated cost of work for the construction phase.

(2) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the construction phase work.

(3) The construction phase project schedule shall depict all activities necessary to complete the construction work, including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(4) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(5) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken. The Contractor understands and acknowledges that the purpose of the review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor proposes a revision to the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

552.236-21 Specifications and Drawings for Construction.

As prescribed in 536.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (MAR 2019)

The requirements of the clause entitled "Specifications and Drawings for Construction" at FAR 52.236-21, are supplemented as follows

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern.

(b) Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing.

(c) 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.

(d) 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.

(e) Standard details or specification drawings are applicable when listed, bound with the specifications, noted on the drawings, or referenced elsewhere in the specifications.

(1) Where notes on the specification drawings indicate alterations, such alterations shall govern.

(2) In case of difference between standard details or specification drawings and the specifications, the specifications shall govern.

(3) In case of difference between the standard details or specification drawings and the drawings prepared specifically for this contract, the drawings prepared specifically for this contract shall govern.

(f) Different requirements within the contract documents shall be deemed inconsistent only if compliance with both cannot be achieved.

(g) Unless otherwise noted, the drawings shall be interpreted to provide for a complete construction, assembly, or installation of the work, without regard to the detail with which material components are shown in the drawings.

(End of clause)

Alternate I (*Mar* 2019). As prescribed in 536.521, add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to those included among the contract documents, and not to those produced by the Contractor pursuant to its responsibilities under the contract.

Alternate II (*Jan* 2020). As prescribed in 536.521(b), add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to the construction documents, meaning the 100 percent complete specifications and construction drawings developed during the design phase.

552.236-70 Authorities and Limitations.

As prescribed in 536.570, insert the following clause:

AUTHORITIES AND LIMITATIONS (MAR 2019)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector

or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the ion) of anyone not authorized to issue such order.

(End of clause)

552.236-71 Contractor Responsibilities.

As prescribed in 536.571, insert the following clause:

CONTRACTOR RESPONSIBILITIES (MAR 2019)

(a) The Contractor shall be responsible for compliance with applicable codes, standards and regulations pertaining to the health and safety of personnel during performance of the contract.

(b) Unless expressly stated otherwise in the contract, the Contractor shall be responsible for all means and methods employed in the performance of the contract.

(c) The Contractor shall immediately bring to the Contracting Officer's attention any hazardous materials or conditions not disclosed in the contract documents discovered by or made known to the Contractor during the performance of the contract.

(d) The Contractor shall be responsible for providing professional design services in connection with performance of the work or portions of the work only if this responsibility is expressly stated in the contract, and the contract documents provide the performance and design criteria that such services will be required to satisfy. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(f) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(g) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(End of clause)

Alternate I (*Mar* 2019). As prescribed in 536.571, delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), and (g) as follows:

(d) The Contractor shall be responsible for providing professional design services unless this responsibility is expressly excluded from the contract. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) The Contractor's responsibilities include the responsibilities of the Architect-Engineer Contractor, as specified in FAR 52.236-23.

(f) The Contractor shall include in all subcontracts that require professional design services express terms establishing GSA as a third party beneficiary. No other person shall be deemed a third party beneficiary of the contract.

(g) The Contractor shall determine whether the information contained in the contract documents complies with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

Alternate II (*Jan* 2020). As prescribed in 536.571(b), delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), (g), (h), (i), and (j) as follows:

(d) The Contractor shall be responsible for performing the design phase services in accordance with the statement of work. The Contractor shall submit all deliverables and reports in accordance with the statement of work.

(e) The Contractor shall be responsible to review all design information (e.g. draft specifications and drawings) provided. The Contractor shall be responsible for determining that the project as described in the design information is constructible using commercially practicable means and methods; that the construction work is described in the design documents with sufficient completeness to enable pricing of a complete project within the guaranteed maximum price; and that the manner of presentation and organization of information in the design documents enables accurate estimation of the cost of the work.

(f) Prior to establishment of the final estimated cost of work, the Contractor shall bring to the Contracting Officer's attention all instances that it has discovered or has been made aware of where design errors and omissions affect the Contractor's ability to accurately estimate the cost of the work.

(g) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(h) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(i) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(j) The Contractor is responsible to construct the project in accordance with the drawings and specifications. The final Estimated Cost of the Construction Work (ECW) may be determined based upon incomplete design documents. In those instances in which the drawings and specifications are not complete at the time the final ECW is established, the Contractor shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the final ECW on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources.

552.236-72 Submittals.

As prescribed in 536.572, insert the following clause:

SUBMITTALS (MAR 2019)

(a) The Contractor shall prepare and submit all submittals as specified in the contract or requested by the Contracting Officer.

(1) Submittals may include: safety plans, schedules, shop drawings, coordination drawings, samples, calculations, product information, or mockups.

(2) Shop drawings may include fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(b) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, submittals shall be submitted to the Contracting Officer.

(c) The Contractor shall be entitled to receive notice of action on submittals within a reasonable time, given the volume or complexity of the submittals and the criticality of the affected activities to substantial completion as may be indicated in the project schedule

(d) Review of submittals will be general and shall not be construed as permitting any departure from the contract requirements.

(e) The Contractor shall not proceed with construction work or procure products or materials described or shown in submittals until the submittal is reviewed. Any work or activity undertaken prior to review shall be at the Contractor's risk. Should the Contracting Officer subsequently determine that the work or activity does not comply with the contract, the Contractor shall be responsible for all cost and time required to comply with the Contracting Officer's determination. The Contracting Officer shall have the right to order the Contractor to cease execution of work for which submittals have not been reviewed. The Government shall not be liable for any cost or delay incurred by the Contractor attributable to the proper exercise of this right.

(f) The Contractor shall identify, in writing, all deviations or changes in resubmitted submittals. In the absence of such written notice, review of a resubmission shall not include or apply to such deviations or changes.

(End of clause)

Alternate I (*Mar* 2019). As prescribed in 536.572 add the following paragraph to the basic clause:

(g) The Contractor shall submit design documents for review in accordance with PBS-P100. The Government shall review submittals for the limited purpose of verifying that the documents conform to the design criteria expressed in the contract documents.

552.236-73 Subcontracts.

As prescribed in 536.573, 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)

552.236-74 Evaluation of Options.

As prescribed in 536.270-5(a), insert the following clause:

EVALUATION OF OPTIONS (MAR 2019)

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

552.236-75 Evaluation Exclusive of Options.

As prescribed in 536.270-5(b), insert the following clause:

EVALUATION EXCLUSIVE OF OPTIONS (MAR 2019)

The Government will evaluate offers for award purposes by including only the price for the basic requirement. Options will not be included in the evaluation for award purposes.

(End of provision)

552.236-76 Basis of Award - Sealed Bidding Construction.

As prescribed in 536.270-5(c), insert the following clause:

BASIS OF AWARD - SEALED BIDDING CONSTRUCTION (MAR 2019)

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 (*Mar*2019). As prescribed in 536.270-5(c), designate the basic provision as paragraph (a) and add the following paragraph to the basic provision:

(b)(1) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for:

(i) The base requirement; plus

(ii) All options designated to be evaluated.

(2) The evaluation of options will not obligate the Government to exercise the options.

552.236-77 Government's Right to Exercise Options.

As prescribed in 536.270-5 Solicitation provisions and contract clauses.(d), insert the following clause:

GOVERNMENT'S RIGHT TO EXERCISE OPTIONS. (MAR 2019)

(a) The Government may exercise any option in writing in accordance with the terms and conditions of the contract within _____ *[insert the period of time within which the Contracting Officer may exercise the option]*. Unless otherwise specified, options may be exercised within 90 calendar days of contract award.

(b) If the Government exercises the option, the contract shall be considered to include this option clause.

(End of clause)

552.236-79 Construction-Manager-As-Constructor.

As prescribed in 536.7107 Contract Clauses.(a), insert the following clause:

CONSTRUCTION-MANAGER-AS-CONSTRUCTOR. (JAN 2020)

(a) *General.* Pricing for the Guaranteed Maximum Price (GMP) for the option for construction services shall be subject to the requirements below.

(b) *Definitions.* The following definitions shall apply to this clause:

"Construction-Manager-as-Constructor (CMc) Contingency Allowance (CCA)" means an allowance for the exclusive use of the construction contractor to cover reimbursable costs during construction that are not the basis of a change order. These costs could include estimating, scheduling, and planning errors in the final Estimated Cost of the Work (ECW) or other contractor errors.

"Cost" means allowable costs in accordance with FAR Part 31.

"Cost of Performance" means the final sum of cost of the construction work and fee for the construction work.

"Early Work Package" means a set of construction activities that can be clearly defined and separately performed from the remainder of the construction work. Demolition is an example of an early work package.

"Estimated Cost of the Work (ECW)" means the estimated cost of the construction work, not including home office overhead.

"Fee for the Construction Work" means the amount established for the contractor's profit and home office overhead costs, as described in FAR Part 31, for the construction work.

"Guaranteed Maximum Price (GMP)" means the sum of the ECW, CCA, and the fee for the construction work.

(c) *Guaranteed Maximum Price.* This contract at award includes a GMP.

(d) *Estimated Cost of the Work.* The proposed ECW incorporated into the contract at award is a target ECW. A final ECW is negotiated during the design phase and is incorporated into the contract prior to exercise of the GMP option.

(e) *Final Estimated Cost of the Work.*

(1) *Submission Requirements for Final ECW Proposal.* During the design phase, and at a time agreed by the Contracting Officer, the Contractor shall submit the following:

(i) A detailed statement of all construction costs, including early work packages in the performance of the construction work to date;

(ii) A detailed breakdown of home office overhead costs and a statement that the accounting practices used for the allocation of home office overhead on this contract is in accordance with the Contractor's established cost accounting practices;

(iii) A proposed final ECW;

(iv) Sufficient data to support the accuracy and reliability of the estimate;

(v) An explanation of the difference between the proposed final ECW and the target ECW used to establish the GMP; and

(vi) The Contractor's affirmation that:

(A) The Contractor is satisfied that the project as described in the specifications and construction drawings is constructible using commercially practicable means and methods;

(B) The Contractor is satisfied that the construction work has been sufficiently described to enable it to estimate the cost of the work with reasonable accuracy;

(C) The Contractor has disclosed to the Contracting Officer all of its actual knowledge relating to design errors and omissions that may affect the cost of the work; and

(D) The Contractor acknowledges that the final ECW and time established for completion shall not be adjusted on account of cost or time attributable to known design errors and omissions disclosed by the Contractor pursuant to paragraph (e)(1)(v)(C) of this clause. Unknown design errors and omissions that form the basis for a change order may still be settled in accordance with GSAR 552.243-71 Equitable Adjustments. Equitable Adjustments.

(2) *Establishment of the Final ECW*. The parties shall negotiate a final ECW based on the data provided under paragraph (e)(1) of this clause. The final ECW shall be established and incorporated into the Contract by bilateral modification. The Contracting Officer will not accept a final ECW proposal that does not include the written affirmation described in this clause. The Contracting Officer will not exercise the GMP option for construction work unless the final ECW has been incorporated into the contract.

(f) *CMc Contingency Allowance.* The CCA shall be ____ percent of the ECW [*Contracting Officer insert percentage amount*].

(g) *Shared Savings Incentive.* The Contractor shall be entitled to ____ percent of the difference between the final GMP and the final cost of performance [*Contracting Officer insert percentage amount*].

(h) *Adjustment of ECW and GMP.* The ECW and GMP shall be subject to adjustment for changes and any other conditions giving rise to entitlement to an adjustment under this contract. The ECW and GMP may be adjusted down for deletions to the scope of the construction services through a bilateral modification.

(i) *Adjustment of CCA.* If the sum of the final ECW, CCA, and fee for the construction work is greater than the GMP as established at contract award or as adjusted in accordance with FAR Part 43, then the Contractor should work with the Contracting Officer to identify measures to reduce the overall GMP, including reducing the CCA, reducing the fee, or as a last resort, reducing the scope of the project. At any time, the parties may agree to a different CCA than the amount expressed at time of contract award. Prior to the use of the CCA, the Contractor shall coordinate approval following the procedures identified in the contract. For approved CCA uses, the CCA shall be reduced and the ECW shall be adjusted accordingly.

(j) *Adjustment of the Fee for the Construction Work.* The fee for the construction work may be adjusted for changes that are the basis for a change order, including scope changes, differing site conditions, and Government-caused delays. The fee for the construction work associated with a change order shall not be driven by a fixed percentage. The fee for the construction work is not increased or decreased based on fluctuations in the actual costs of the work. At time of proposal submission, the fee elements may be expressed as a percentage of the ECW, but shall be converted to a fixed amount prior to executing the GMP option.

(k) *Conversion to Firm-Fixed-Price Prior to Final Settlement.*

(1) *Submission Requirements for Conversion to Firm-Fixed Price.* If the parties agree to negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option, or at the request of the Contracting Officer, the Contractor shall submit the following:

(i) A proposed firm-fixed-price proposal for the completion of the construction work, which shall include all markups, including profit.

(ii) A detailed statement of any costs incurred in the performance of the contract work to date.

(2) *Establishment of Firm-Fixed-Price.*

(i) *Prior to Exercise of GMP Option.* The parties may negotiate and establish a firm-fixed-price for construction work prior to the exercise of the GMP option based on the data provided under paragraph (k)(1) of this clause; provided that the firm-fixed-price shall not exceed the GMP. The Contracting Officer shall have the right, but not the obligation, to bilaterally exercise the GMP option at the firm-fixed-price within 120 calendar days of the establishment of such price.

(ii) *After Exercise of the GMP Option.* At any time prior to final settlement, the Contracting Officer may request that the Contractor provide a firm-fixed-price proposal for the completion of construction work in accordance with paragraph (k)(1) of this clause. Within 60 calendar days of such request, the Contractor shall provide such data. Within 60 calendar days of receipt of the Contractor's proposal, the Contracting Officer shall have the right, but not the obligation, to convert the contract to a firm-fixed-price contract through a bilateral modification at the proposed fixed-price or as otherwise negotiated by the parties; provided that the firm-fixed-price, plus any costs incurred in the performance of the construction work, shall not exceed the GMP.

(iii) If any portion of the contract is converted to a firm-fixed-price, then that portion of the contract is no longer subject to open book accounting, a shared savings incentive, or the need for final settlement. If the contract is not converted to a firm-fixed-price contract, then the final settlement of the Contractor's compensation shall be determined in accordance with paragraph (l) of this clause.

(3) *Payments.* If this contract is converted to a firm-fixed-price contract, the Contractor shall submit a revised schedule of values for the construction work allocating the unpaid balance of the fixed price to the itemized work activities remaining uncompleted, which shall be the basis for remaining progress payments.

(l) *Final Settlement.* The final settlement amount shall consist of the cost of performance and the Contractor's shared savings incentive, if any, provided that in no event shall the final settlement exceed the GMP. The final settlement amount shall be the Contractor's total compensation due under the contract.

(1) *Submission Requirements for Final Settlement Proposal.* The Contractor shall submit a final settlement proposal within 120 days of substantial completion to determine the cost of the construction work, which shall include the following:

(i) A detailed statement of all costs incurred by the Contractor in performing the construction work;

(ii) A firm-fixed-price proposal for the performance of the remaining work, if any, that may be necessary to complete performance of the construction work;

(iii) An executed release of claims, which shall describe any and all exceptions, including a description of any outstanding claims; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) *Determination of the Cost of the Work.* The cost of the construction work shall be the sum of all costs incurred by the Contractor in performing the construction work, the proposed fixed price for performance of remaining work, if any, less the residual value of any Contractor retained inventory. In order to determine the cost of the construction work, the Contractor shall be subject to an audit of the Contractor's records and/or the Contractor's proposal. Establishment of the cost of the construction work shall be subject to negotiation between the Government and the Contractor. In the event that the parties are unable to reach agreement, the Contracting Officer may unilaterally determine the cost of the construction work, and such determination shall be subject to FAR Clause 52.233-1 Disputes.

(3) *Determination of the Shared Savings Incentive.* If the final cost of performance is equal to or greater than the final GMP, the Contractor is not entitled to any additional compensation. If the final cost of performance is less than the final GMP, the Contractor is entitled to the percentage specified in paragraph (g) of this clause, of the difference between the final GMP and the final cost of performance, as the shared savings incentive.

(m) *Subcontracts.* No subcontract placed under this contract may provide for cost-plus-a-percentage of cost. Any costs incurred by the Contractor as a result of such a subcontract shall not be included in the cost of the construction work or the final settlement.

(n) *Open Book Access.* (1) At any time prior to converting to firm-fixed-price, the Government and its representatives, including designated auditors and accountants, shall have the right, but not the obligation, to attend any and all project meetings and shall have access to any and all records maintained by the Contractor relating to the contract. The Contractor shall include this requirement for open book access by the Government in its subcontracts for the contract.

(2) After converting to firm-fixed-price, the Government maintains the right to examine records under GSAR Clause 552.215-70 Examination of Records by GSA..

(o) *Termination.* If this Contract is terminated, the Contractor shall not be entitled to a shared savings incentive.

(p) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

(End of clause)

552.236-80 Accounting Records and Progress Payments.

As prescribed in 536.7107(b), insert the following clause:

ACCOUNTING RECORDS AND PROGRESS PAYMENTS (JAN 2020)

(a) The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this contract. The Contractor's accounting and control systems shall meet Generally Accepted Accounting Principles (GAAP) and provide for the following:

(1) There is proper segregation of direct costs and indirect costs.

(2) There is proper identification and accumulation of direct costs by contract.

(3) There is a labor time distribution system that charges direct and indirect labor appropriately.

(b) The Contractor shall afford access to and shall permit any authorized representatives of the Government to audit, examine and copy any records, documents, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this contract. Records subject to audit, examination, and copying shall include those records necessary to evaluate and verify all direct and indirect costs, including overhead and payroll tax and fringe benefit allocations, as they may apply to costs associated with the contract. The Contractor shall preserve these records for a period of three years after the final payment, or for such longer period as may be required by law.

(c) The records identified in paragraphs (b) of this clause shall be subject to inspection and audit by the Government or its authorized representative for, but not limited to, evaluating and verifying:

(1) Contractor compliance with contract requirements;

(2) Compliance with pricing change orders, invoices, applications for payment, or claims submitted by the contractor or any of its subcontractors at any tier, including vendors and suppliers.

(d) If requested by the Government, the Contractor shall promptly deliver to the Government or its designee copies of all records related to the contract, in a form acceptable to the Government. The Contractor shall provide to the Government or

its authorized representative such records maintained in an electronic format in a computer readable format on data disks or suitable alternative computer data exchange formats.

(e) The Government shall have access to the Contractor's facilities, shall be allowed to interview all current and former employees to discuss matters pertinent to the contract, and shall be provided adequate work space, in order to conduct audits and examinations.

(f) If any audit or examination of the Contractor's records discloses total findings resulting in overpricing or overcharges by the Contractor to the Government in excess of one-quarter percent of the total contract billings, the Contractor shall immediately reimburse the Government for the overcharges. The Contractor shall also reimburse the Government for the costs of the audit unless otherwise agreed to by the Government and the Contractor.

(g) The Government shall be entitled to audit all modifications, including lump-sum modifications, to determine whether the proposed costs, as represented by the Contractor and any of its subcontractors, are in compliance with the contract. If it is determined that the costs proposed under a modification, including lump-sum modifications, are not in compliance with the contract, the Government reserves the right to adjust the amount previously approved and included in the modification.

(h) If the Contractor fails to comply with any conditions in this clause, the Contracting Officer may retain a maximum of 10 percent of the amount of each payment request submitted until such deficiencies are corrected.

(i) These requirements regarding accounting records shall not mitigate, lessen nor change any other requirements in the contract regarding audits, payment submissions, records, or records retention.

(j) The contractor agrees to incorporate the substance of this clause in all subcontracts under this contract.

(End of clause)

552.237 [Reserved]

552.237-70 [Reserved]

552.237-71 Qualifications of Employees.

As prescribed in 537.110(a), insert the following clause:

QUALIFICATIONS OF EMPLOYEES (MAY 1989)

(a) The contracting officer or a designated representative may require the Contractor to remove any employee(s) from GSA controlled buildings or other real property should it be determined that the individual(s) is either unsuitable for security reasons or otherwise unfit to work on GSA controlled property.

(b) The Contractor shall fill out and cause each of its employees performing work on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor and its employees shall be fingerprinted.

(c) Each employee of the Contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or, who presents other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

(End of clause)

552.237-72 Prohibition Regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(b), insert the following clause:

PROHIBITION REGARDING "QUASI-MILITARY ARMEDFORCES" (SEP 1999)

The Contractor must not, during the term of this contract, offer for hire "Quasi-Military Armed Forces" within the meaning of the court decision in United States ex. rel. Weinberger v. Equifax, 557 F.2d 456 (5*th* Cir., 1977).

(End of clause)

552.237-73 Restriction on Disclosure of Information.

As prescribed in 537.270, insert the following clause:

RESTRICTION ON DISCLOSURE OF INFORMATION (JUNE2009)

(a) The Contractor shall, in the performance of this contract, keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor shall not publish or otherwise divulge such information in whole or in part, in any manner or form, nor authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to such information, while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e.,on a "need to know" basis. The Contractor shall immediately notify, in writing, the Contracting Officer in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor shall not disclose any information concerning the work under this contract to any persons or entity unless the Contractor obtains prior written approval from the Contracting Officer.

(c) The Contractor shall insert the substance of this clause in any consultant agreement or subcontract under this contract.

(d) Any unauthorized disclosure of information may result in termination of this contract for cause.

(End of clause)

552.238 [Reserved]

552.238-70 Cover Page for Worldwide Federal Supply Schedules.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(a)(1), insert the following provision:

COVER PAGE FOR WORLDWIDE FEDERAL SUPPLY SCHEDULES (MAY 2019)

For All Geographic Areas

Solicitation No. *[The contracting officer should insert the solicitation number here]*_____*

Federal Supply Schedule Contract for All Geographic Areas

[For supplies, the Contracting Officer should complete the information required by paragraph (a) and delete paragraph (b) in its entirety. For services, the Contracting Officer should complete the information required by paragraph (b) and delete (a) in its entirety. For solicitations containing both supplies and services, the Contracting Officer should complete paragraphs (a) and (b).]

(a) Federal Supply Classification (FSC) GROUP: *_____* PART: *_____* SECTION: *_____* SUPPLY: *_____* FSC CLASS(ES)/PRODUCT CODE(S)/NAICS: *_____*

(b) STANDARD INDUSTRY GROUP: *_____* SERVICE: *_____* SERVICE CODE(S)/NAICS: *_____*

(End of provision)

Alternate I (May 2019): As prescribed at 538.273 FSS solicitation provisions and contract clauses.(a)(1)(i), add the following paragraph (c) to the basic provision.

(c) PERIOD: *_____* THROUGH *_____*

552.238-71 Notice of Total Small Business Set-Aside.

As prescribed in 538.273(a)(2), insert the following provision:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (MAY 2019)

FAR clause 52.219-6, Notice of Total Small Business Set-Aside applies to the following: [The contracting officer should insert the special item numbers (SINs) set aside for small businesses] *_____*.

(End of provision)

552.238-72 Information Collection Requirements.

As prescribed in 538.273(a)(3), insert the following provision:

INFORMATION COLLECTION REQUIREMENTS (MAY 2019)

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

(End of provision)

552.238-73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.273(b)(1), insert the following clause:

IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT PROVIDING ACCESSIBILITY FOR THE HANDICAPPED (MAY 2019)

(a) *Definitions*.

"Electronic office equipment accessibility" means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities (*i.e.*, handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

"Handicapped individuals" mean qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

"Special peripheral" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

(End of clause)

552.238-74 Introduction of New Supplies/Services (INSS).

As prescribed in 538.273(b)(2), insert the following provision:

INTRODUCTION OF NEW SUPPLIES/SERVICES (INSS) (MAY 2019)

(a) *Definition*.

"Introduction of New Supplies/Services Special Item Number (INSS SIN)" means a new or improved supply or service - within the scope of the Federal Supply Schedule (FSS), but not currently available under any Federal Supply Schedule contract- that provides a new service, function, task, or attribute that may provide a more economical or efficient means for ordering activities to accomplish their missions. It may significantly improve an existing supply or service. It may be a supply or service existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new or improved supplies or services via INSS SIN at any time by clearly identify the INSS SIN item in the offer.

(c) The Contracting Officer has the sole discretion to determine whether a supply or service will be accepted as an INSS SIN item. The Contracting Officer will evaluate and process the offer and may perform a technical review. The INSS SIN provides temporary placement until the Contracting Officer formally categorizes the new supply or service.

(d) If the Contractor has an existing schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSS SIN item in accordance with 552.238-81, Modifications (Federal Supply Schedules).

(End of provision)

552.238-75 Evaluation-Commercial Items (Federal Supply Schedule).

As prescribed in 538.273(c)(1), insert the following provision:

EVALUATION-COMMERCIAL ITEMS (FEDERAL SUPPLY SCHEDULE) (MAY 2019)

(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)

552.238-76 Use of Non-Government Employees to Review Offers.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(c)(2), insert the following provision:

USE OF NON-GOVERNMENT EMPLOYEES TO REVIEW OFFERS (MAY 2019)

(a) The Government may employ individual technical consultants/advisors/contractors from the below listed organizations to review limited portions of the technical, management and price proposals to assist the government in both pre-award and post-award functions. [The contracting officer should insert a list of organizations used to review solicitation responses and execute a non-disclosure and organizational conflict of interest statement for all individuals conducting reviews.]

_____

(b) These representatives will be used to advise on specific technical, management, and price matters and shall not, under any circumstances, be used as voting evaluators. However, the Government may consider the advice provided in its evaluation process. In addition, Contractor personnel may be used in specific contract administration tasks (*e.g.*, administrative filing, review of deliverables, etc.).

(c) If individual technical consultants/advisors/contractors are utilized as described in (b) above, they will be required to execute a non-disclosure and organizational conflict of interest statements.

(End of provision)

552.238-77 Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(1), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE (FSS) PRICE LISTS (MAY 2019)

(a) Definition. For the purposes of this clause, the Mailing List is *[Contracting officer shall insert either: "the list of addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its Federal Government customers"]*.

(b) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium. The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either;

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the on-line Multiple Award Schedule electronic data base.

(c) The Contractor shall make all of the distributions required in this paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(d) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of clause)

Alternate I(*May* 2019). As prescribed in 538.273 FSS solicitation provisions and contract clauses.(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Definition. For the purposes of this clause, the Mailing List is *[Contracting officer shall insert either: "the list of addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its ordering activity customers"]*.

552.238-78 Identification of Products that Have Environmental Attributes.

As prescribed in 538.273(d)(2), insert the following clause:

IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES (MAY 2019)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (*e.g.*, publications and electronic formats).

(b) Definitions. As used in this clause—

"Energy-efficient product" means a product that–.

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

"GSA Advantage!" is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

"Other environmental attributes" refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

"Post-consumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and http://www.epa.gov/cpg/).

"Recovered materials" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and http://www.epa.gov/cpg/). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

"Remanufactured" means factory rebuilt to original specifications.

"Renewable energy" means energy produced by solar, wind, geothermal, and biomass power.

"Renewable energy technology" means–

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) *Identification Requirements*. (1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (http://www.epa.gov/cpg/);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and http://www.epa.gov/cpg/);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at http://www.energystar.gov/ and FEMP at http://www.eere.energy.gov/femp/procurement/);

(iv) Are water-efficient

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program (*e.g.*, the EPA and DOE ENERGY STAR® product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

552.238-79 Cancellation.

As prescribed in 538.273(d)(3), insert the following clause:

CANCELLATION (MAY 2019)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

(End of clause)

552.238-80 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(d)(4) insert the following clause:

INDUSTRIAL FUNDING FEE AND SALES REPORTING (MAY 2019)

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include–

(i) Receipt of order;

(ii) Shipment or delivery, as applicable;

(iii) Issuance of an invoice; or

(iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including “zero” sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including “zero” sales, by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA)’s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the “Treasury Reporting Rates of Exchange” issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm.

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at https://72a.gsa.gov/ or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(4), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) Definition. “Transactional data” encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) Reporting of Transactional Data. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, https://vsc.gsa.gov. The reporting system website address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.
(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).
(iii) Non Federal Entity.
(iv) Description of Deliverable.
(v) Manufacturer Name.
(vi) Manufacturer Part Number.
(vii) Unit Measure (each, hour, case, lot).
(viii) Quantity of Item Sold.
(ix) Universal Product Code.
(x) Price Paid per Unit.
(xi) Total Price.

Note to paragraph (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) Reporting Points.

(i) The acceptable points at which transactional data may be reported include-

(A) Issuance of an invoice; or

(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other or information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) *Industrial Funding Fee (IFF)*.

(1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current IFF on the Vendor Support Center website at https://vsc.gsa.gov.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

552.238-81 Price Reductions.

As prescribed in 538.273(d)(5), insert the following clause:

PRICE REDUCTIONS (MAY 2019)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238-113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238-113 is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Alternate I (Apr 2014). As prescribed in 538.273(d)(5), substitute the following paragraph (a) and (b) for paragraphs (a), (b), (c), (d), (e), (f) and (g) of the basic clause:

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

552.238-82 Modifications (Federal Supply Schedules).

As prescribed in 538.273(d)(6), insert the following clause:

MODIFICATIONS (FEDERAL SUPPLY SCHEDULES) (MAY 2018)

(a) *General*. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of modifications*— (1) Additional items/additional SINs. When requesting additions, the following information must be submitted:

(i) *Information requested in paragraphs* (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) *Deletions*. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price reduction*. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-81. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates*. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) Electronic file updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-81.

(e) *Amendments to paper Federal Supply Schedule Price Lists*.

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(6)(i), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (http://eOffer.gsa.gov), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (http://vsc.gsa.gov). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

Alternate II (May 2019). As prescribed in 538.273(d)(6)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) Types of Modifications.

(1) Additional items/additional SINs. When requesting additions, the Contractor must submit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) Deletions. The Contractor must 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 determines that the higher price is unreasonable compared to the price of the deleted item.

552.238-83 Examination of Records by GSA (Federal Supply Schedules).

As prescribed in 538.273(d)(7) insert the following clause:

EXAMINATION OF RECORDS BY GSA (FEDERAL SUPPLY SCHEDULES) (MAY 2019)

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 contract clauses 552.238-81, Price Reductions and 552.238-74, Industrial Funding Fee and Sales Reporting. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

(End of clause)

552.238-84 Discounts for Prompt Payment.

As prescribed in 538.273(d)(8) insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (MAY 2019)

(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 and Federal non-schedule 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) 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 ordering activity if payment is made within the discount period specified.

(e) 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.

(f) 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)

552.238-85 Contractor's Billing Responsibilities.

As prescribed in 538.273(d)(9) insert the following clause:

CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2019)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to

(1) Comply with the same terms and conditions as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes

(i) The date of sale;

(ii) The ordering activity to which the sale was made;

(iii) The service or supply/model sold;

(iv) The quantity of each service or supply/model sold;

(v) The price at which it was sold, including discounts; and

(vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

(End of clause)

552.238-86 Delivery Schedule.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(10) insert the following clause:

DELIVERY SCHEDULE (MAY 2019)

(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 business practice. The Government requires the Contractor's normal 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 [The contracting officer shall insert the solicited items or Special Item Numbers (SIN) as well as a reasonable delivery time that corresponds with each item or SIN, if known]:

Items or group of items (special item no. or nomenclature)

_____

_____

_____

Government's stated delivery time (days ARO)

_____

_____

_____

Contractor's delivery time

_____

_____

_____

(b) *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Items or group of items (special item no. or 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)

552.238-87 Delivery Prices.

As prescribed in 538.273(d)(11) insert the following clause:

DELIVERY PRICES (MAY 2019)

(a) Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.

(1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall place the notation “Delivery Service Requested” on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.

(2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.

(3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) The Offeror shall indicate in the offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(c) When deliveries are made to destinations outside the contiguous 48 States; i.e., Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b), above, the following conditions will apply:

(1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247-38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.

(2) The right is reserved to ordering agencies to furnish Government bills of lading.

(End of clause)

552.238-88 GSA Advantage!®.

As prescribed in 538.273(d)(12) insert the following clause:

GSA ADVANTAGE!® (MAY 2019)

(a) The Contractor shall participate in the GSA Advantage!® online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238-103, Electronic Commerce.

(b) The Contractor shall refer to contract clauses 552.238-77, Submission and Distribution of Authorized FSS Price Lists (which provides for submission of price lists on a common-use electronic medium), and 552.238-82, Modifications (which addresses electronic file updates).

(End of clause)

552.238-89 Deliveries to the U.S. Postal Service.

As prescribed in 538.273(d)(13) insert the following clause:

DELIVERIES TO THE U.S. POSTAL SERVICE (MAY 2019)

(a) *Applicability.* This clause applies to orders placed for the U.S. Postal Service (USPS) and accepted by the Contractor for the delivery of supplies to a USPS facility (consignee).

(b) *Mode/method of transportation.* Unless the Contracting Officer grants a waiver of this requirement, any shipment that meets the USPS requirements for mailability (*i.e.*, 70 pounds or less, combined length and girth not more than 108 inches, etc.) delivery shall be accomplished via the use of the USPS. Other commercial services shall not be used, but this does not preclude the Contractor from making delivery by the use of the Contractor's own vehicles.

(c) *Time of delivery.* Notwithstanding the required time for delivery to destination as may be specified elsewhere in this contract, if shipments under this clause are mailed not later than five (5) calendar days before the required delivery date, delivery shall be deemed to have been made timely.

(End of clause)

552.238-90 Characteristics of Electric Current.

As prescribed in 538.273(d)(14) insert the following clause:

CHARACTERISTICS OF ELECTRIC CURRENT (MAY 2019)

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

(End of clause)

552.238-91 Marking and Documentation Requirements for Shipping.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(15) insert the following clause:

MARKING AND DOCUMENTATION REQUIREMENTS FOR SHIPPING (MAY 2019)

(a) Responsibility. It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b) Documentation. In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c) Direct shipments. The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

(1) Traffic Management or Transportation Officer at FINAL destination.
(2) Ordering Supply Account Number.
(3) Account number.
(4) Delivery Order or Purchase Order Number.
(5) National Stock Number, if applicable; or Contractor's item number.
(6) Box _____ of _____ Boxes.
(7) Nomenclature (brief description of items).

(End of clause)

552.238-92 Vendor Managed Inventory (VMI) Program.

As prescribed in 538.273(d)(16) insert the following clause:

VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAY 2019)

(a) The term "Vendor Managed Inventory" describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

(End of clause)

552.238-93 Order Acknowledgment.

As prescribed in 538.273(d)(17) insert the following clause:

ORDER ACKNOWLEDGMENT (MAY 2019)

Contractors shall acknowledge only those orders which state "Order Acknowledgment Required." These orders shall be acknowledged within 10 calendar days after receipt. Such acknowledgment shall be sent to the ordering activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

(End of clause)

552.238-94 Accelerated Delivery Requirements.

As prescribed in 538.273(d)(18) insert the following clause:

ACCELERATED DELIVERY REQUIREMENTS (MAY 2019)

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

(End of clause)

552.238-95 Separate Charge for Performance Oriented Packaging (POP).

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(19) insert the following clause:

SEPARATE CHARGE FOR PERFORMANCE ORIENTED PACKAGING (POP) (MAY 2019)

(a) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this paragraph or on a separate attachment. The final price shall be quoted separately at the order level and, if considered reasonable, will be accepted as part of the order.

ITEMS	
SINS or Descriptive Name of Articles (as appropriate)	Charge for Performance Oriented

(b) Ordering activities will not be obligated to utilize the Contractor's services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor's contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

(End of clause)

552.238-96 Separate Charge for Delivery within Consignee's Premises.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(20) insert the following clause:

SEPARATE CHARGE FOR DELIVERY WITHIN CONSIGNEE'S PREMISES (MAY 2019)

(a) Offerors are requested to insert, in the spaces provided below or by attachment hereto, a separate charge for “Delivery Within Consignee's Premises” applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.

(b) Ordering activities are not obligated to issue orders on the basis of “Delivery Within Consignee's Premises,” and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish “Delivery Within Consignee's Premises” at the additional charge awarded. When an ordering activity issues an order on the basis of “Delivery Within Consignee's Premises” at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery “F.o.b. Destination, Within Consignee's Premises” in accordance with FAR 52.247-35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify “Delivery Within Consignee's Premises” on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for “Delivery Within Consignee's Premises” will be shown as separate entries on the order..

ITEMS

(NSNs or Special Item Numbers or Descriptive Name of Articles)	Additional Charge (Per shipping container) FOR "DELIVERY WITHIN CONSIGNEE'S PREMISES"

(End of clause)

552.238-97 Parts and Service.

As prescribed in 538.273(d)(21) insert the following clause:

PARTS AND SERVICE (MAY 2019)

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

(End of clause)

552.238-98 Clauses for Overseas Coverage.

As prescribed in 538.273(d)(22) insert the following clause:

CLAUSES FOR OVERSEAS COVERAGE (MAY 2019)

(a) 52.214-34 Submission of Offers in the English Language
(b) 52.214-35 Submission of Offers in U.S. Currency
(c) 552.238-90 Characteristics of Electric Current
(d) 552.238-91 Marking and Documentation Requirements Per Shipment
(e) 552.238-97 Parts and Service
(f) 552.238-99 Delivery Prices Overseas
(g) 552.238-100 Transshipments
(h) 552.238-101 Foreign Taxes and Duties
(i) 52.247-34 FOB Destination
(j) 52.247-38 FOB Inland Carrier, Point of Exportation
(k) 52.247-39 FOB Inland Point, Country of Importation

(End of clause)

552.238-99 Delivery Prices Overseas.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(23) insert the following clause:

DELIVERY PRICES OVERSEAS (MAY 2019)

(a) Prices offered must cover delivery to destinations as provided as follows:

(1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247-39). *(Offeror should indicate countries where direct delivery will be provided.)*

(2) Delivery to overseas assembly point for transshipment when specified by the ordering activity, if delivery is not covered under paragraph (1), above.

(3) Delivery to the overseas port of entry when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) Geographic area(s)/countries/zones which are intended to be covered must be identified in the offer.

(End of clause)

552.238-100 Transshipments.

As prescribed in 538.273(d)(24) insert the following clause:

TRANSSHIPMENTS (MAY 2019)

(a) The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387-2, Special Handling/Data Certification-used when shipping chemicals, dangerous cargo, etc.

(1) Two copies of the DD Form 1387 will be attached to each shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2) These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387-2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c) Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d) Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e) Failure to include DD Form 1387, and DD Form 1387-2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

(End of clause)

552.238-101 Foreign Taxes and Duties.

As prescribed in 538.273(d)(25) insert the following clause:

FOREIGN TAXES AND DUTIES (MAY 2019)

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a) The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

(End of clause)

552.238-102 English Language and U.S. Dollar Requirements.

As prescribed in 538.273(d)(26) insert the following clause:

ENGLISH LANGUAGE AND U.S. DOLLAR REQUIREMENTS (MAY 2019)

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the "Treasury Reporting Rates of Exchange" in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

(End of clause)

552.238-103 Electronic Commerce.

As prescribed in 538.273(d)(27) insert the following clause:

ELECTRONIC COMMERCE (MAY 2019)

(a) *General background.* The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (e.g. procurement, finance, logistics) into a fully electronic environment and fundamentally changes the way organizations operate.

(b) *Trading partners and Value-Added Networks (VAN's).*

(1) Within the electronic commerce architecture, electronic documents (*e.g.*, orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as "trading partners"). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c) *Registration instructions.* To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) http://www.sam.gov. Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d) *Implementation conventions.* All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at http://www.nist.gov/itl. ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) *Additional information.* GSA has additional information available for Contractors who are interested in using EC/EDI on its website, http://www.gsa.gov.

(f) *GSA Advantage!®.* (1) GSA Advantage!® uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!® enables customers to:

(i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.

(ii) Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.

(iii) Use the credit card.

(2) GSA Advantage!® may be accessed via the GSA Home Page. The Internet address is: http://www.gsa.gov.

(End of clause)

552.238-104 Dissemination of Information by Contractor.

As prescribed in 538.273(d)(28) insert the following clause:

DISSEMINATION OF INFORMATION BY CONTRACTOR (MAY 2019)

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

(End of clause)

552.238-105 Deliveries Beyond the Contractual Period-Placing of Orders.

As prescribed in 538.273(d)(29) insert the following clause:

DELIVERIES BEYOND THE CONTRACTUAL PERIOD-PLACING OF ORDERS (MAY 2019)

In accordance with Clause 552.238-113, Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other 7 means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

(End of clause)

552.238-106 Interpretation of Contract Requirements.

As prescribed in 538.273(d)(30) insert the following clause:

INTERPRETATION OF CONTRACT REQUIREMENTS (MAY 2019)

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

(End of clause)

552.238-107 Export Traffic Release (Supplies).

As prescribed in 538.273(d)(31) insert the following clause:

EXPORT TRAFFIC RELEASE (SUPPLIES) (MAY 2019)

Supplies ordered by GSA for export will not be shipped by the Contractor until shipping instructions are received from GSA. To obtain shipping instructions, the Contractor shall forward completed copies of GSA Form 1611, Application for Shipping Instructions and Notice of Availability, to the GSA office designated on the purchase order at least 15 days prior to the anticipated shipping date. Copies of GSA Form 1611 will be furnished to the Contractor with the purchase order. Failure to comply with this requirement could result in nonacceptance of the material by authorities at the port of exportation. When supplies for export are ordered by other Government agencies the Contractor should obtain shipping instructions from the ordering agency.

(End of clause)

552.238-108 Spare Parts Kit.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(32) insert the following clause:

SPARE PARTS KIT (MAY 2019)

(a) The Contractor will be required to offer a spare parts kit conforming, generally, to the following requirements for each item awarded under this solicitation: *[The Ordering Activity contracting officer should insert the specifications for a spare parts kit specific to the solicited items.]*

(b) The Contractor shall furnish prices for spare parts kits as follows:

(1) Price of kit unpackaged.

(2) Price of kit in domestic pack.

(3) Price of kit in wooden case, steel-strapped.

(c) The Contractor will be required to furnish a complete description of spare parts kit offered, a list of parts included, and the price of the kit delivered f.o.b. destination to any point within the conterminous United States within 15 days after receipt of a request from the Ordering Activity Contracting Officer. If the kit offered is acceptable to the Ordering Activity, awards covering requirements will be made by supplemental agreement to this contract.

(End of clause)

552.238-109 Authentication Supplies and Services.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(33) insert the following clause:

AUTHENTICATION SUPPLIES AND SERVICES (MAY 2019)

(a) *General background.* (1) The General Services Administration (GSA) established the "Identity and Access Management Services" (IAMS) Program to clearly define the kinds of digital certificates and PKI services that meet the requirements for service providers and supplies that support FISMA-compliant IAM systems deployed by Federal agencies.

(2) Homeland Security Presidential Directive 12 (HSPD-12), "Policy for a Common Identification Standard for Federal Employees and Contractors" establishes the requirement for a mandatory Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and Contractor employees assigned to Government contracts in order to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Further, the Directive requires the Department of Commerce to promulgate a Federal standard for secure and reliable forms of identification within six months of the date of the Directive. As a result, the National Institute of Standards and Technology (NIST) released Federal Information Processing Standard (FIPS) 201-2: Personal Identity Verification of Federal Employees and Contractors August 2013. FIPS 201-2 requires that the digital certificates incorporated into the Personal Identity Verification (PIV) identity credentials comply with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework. In addition, FIPS 201-2 requires that Federal identity badges referred to as PIV credentials, issued to Federal employees and Contractors comply with the Standard and associated NIST Special Publications 800-73, 800-76, 800-78, and 800-79.

(b) Special item numbers. GSA has established the e-Authentication Initiative (see URL: http://www.idmanagement.gov) to provide common infrastructure for the authentication of the public and internal Federal users for logical access to Federal e-Government applications and electronic services. To support the government-wide implementation of HSPD-12 and the Federal e-Authentication Initiative, GSA has established Special Item Numbers (SINs) pertaining to Authentication Products and Services, including Electronic Credentials, Digital Certificates, eAuthentication, Identify and Access Management, PKI Shared Service Providers, and HSPD-12 Product and Service Components.

(c) *Qualification information.* (1) All Authentication supplies and services must be qualified as being compliant with Government-wide requirements before they will be included on a GSA Information Technology (IT) Schedule contract. The Qualification Requirements and associated evaluation procedures against the Qualification Requirements for each SIN and the specific Qualification Requirements for HSPD-12 implementation components are presented at the following URL: http://www.idmanagement.gov.

(2) In addition, the National Institute of Standards and Technology (NIST) has established the NIST Personal Identity Verification Program (NPIVP) to evaluate integrated circuit chip cards and supplies against conformance requirements contained in FIPS 201. GSA has established the FIPS 201Evaluation Program to evaluate other supplies needed for agency implementation of HSPD-12 requirements where normative requirements are specified in FIPS 201 and to perform card and reader interface testing for interoperability. Products that are approved as FIPS-201 compliant through these evaluation

and testing programs may be offered directly through HSPD-12 Supplies and Services Components SIN under the category "Approved FIPS 201-Compliant Products and services.

(d) *Qualification requirements*. Offerors proposing Authentication supplies and services under the established SINs are required to provide the following:

(1) Proposed items must be determined to be compliant with Federal requirements for that SIN. Qualification Requirements and procedures for the evaluation of supplies and services are posted at the URL: http://www.idmanagement.gov. GSA will follow these procedures in qualifying offeror's supplies and services against the Qualification Requirements for applicable to SIN. Offerors must submit all documentation certification letter(s) for Authentication Supplies and Services offerings at the same time as submission of proposal. Award will be dependent upon receipt of official documentation from the Acquisition Program Management Office (APMO) listed below verifying satisfactory qualification against the Qualification Requirements of the proposed SIN(s).

(2) After award, Contractor agrees that certified supplies and services will not be offered under any other SIN on any Federal Supply Schedule

(3) (i) If the Contractor changes the supplies or services previously qualified, GSA may require the Contractor to resubmit the supplies or services for re-qualification.

(ii) If the Federal Government changes the qualification requirements or standards, Contractor must resubmit the supplies and services for re-qualification.

(4) Immediately prior to making an award, Contracting Officers MUST consult the following website to ensure that the supplies and/or services recommended for award under any Authentication Supplies and Services SINs are in compliance with the latest APL qualification standards: www.idmanagement.gov. A dated copy of the applicable page should be made and included with the award documents.

(e) *Demonstrating conformance.*

(1) The Federal Government has established Qualification Requirements for demonstrating conformance with the Standards. The following websites provide additional information regarding the evaluation and qualification processes

(i) For Identify and Access Management Services (IAMS) and PKI Shared Service Provider (SSP) Qualification Requirements and evaluation procedures: http://www.idmanagement.gov;

(ii) For HSPD-12 Product and Service Components Qualification Requirements and evaluation procedures: http://www.idmanagement.gov;

(iii) For FIPS 201 evaluation program testing and certification procedures: https://www.idmanagement.gov/fips201/.

(f) *Acquisition Program Management Office (APMO).* GSA has established the APMO to provide centralized technical oversight and management regarding the qualification process to industry partners and Federal agencies. Contact the following APMO for information on the eAuthentication Qualification process. Technical, APMO, FIPS 201, and HSPD-12 Points of Contact can be found below, or in an additional attachment to the solicitation.

[*The contracting officer should insert the points of contact information below, unless otherwise included elsewhere in the solicitation.*]

_____

(End of clause)

552.238-110 Commercial Satellite Communication (COMSATCOM) Services.

As prescribed in 538.273(d)(34) insert the following clause:

COMMERCIAL SATELLITE COMMUNICATION (COMSATCOM) SERVICES (MAY 2019)

(a) General background. Special Item Numbers (SINs) have been established for Commercial Satellite Communications (COMSATCOM) services, focused on transponded capacity (SIN 132-54) and fixed and mobile subscription services (SIN 132-55), to make available common COMSATCOM services to all Ordering Activities.

(b) *Information assurance.* (1) The Contractor shall demonstrate, to the maximum extent practicable, the ability to meet:

(i) The Committee on National Security Systems Policy (CNSSP) 12, "National Information Assurance Policy for Space Systems used to Support National Security Missions," or

(ii) Department of Defense Directive (DoDD) 8581.1, "Information Assurance (IA) Policy for Space Systems Used by the Department of Defense."

(2) The Contractor shall demonstrate the ability to comply with the Federal Information Security Management Act of 2002 as implemented by Federal Information Processing Standards Publication 200 (FIPS 200), "Minimum Security Requirements for Federal Information and Information Systems." In response to ordering activity requirements, at a minimum, all services shall meet the requirements assigned against:

(i) A low-impact information system (per FIPS 200) that is described in the current revision of National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, "Recommended Security Controls for Federal Information Systems and Organizations," or

(ii) A Mission Assurance Category (MAC) III system that is described in the current revision of DoD Instruction (DoDI) 8500.2, "Information Assurance Implementation."

(3) The Contractor's information assurance boundary is where the Contractor's services connect to the user terminals/equipment (i.e., includes satellite command encryption (ground and space); systems used in the Satellite Operations Centers (SOCs), Network Operations Centers (NOCs) and teleport; and terrestrial infrastructure required for service delivery).

(c) *Delivery schedule.* The Contractor shall deliver COMSATCOM services in accordance with 552.238-86.

(d) *Portability.* The Contractor shall have the capability to redeploy COMSATCOM services, subject to availability. Portability shall be provided within the COMSATCOM Contractor's resources at any time as requested by the ordering activity. When portability is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor.

(e) *Flexibility/optimization.* The Contractor shall have the capability to re-groom resources for spectral, operational, or price efficiencies. Flexibility/optimization shall be provided within the COMSATCOM Contractor's resources at any time as requested by the ordering activity. When flexibility/optimization is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor. The Contractor is encouraged to submit re-grooming approaches for ordering activity consideration that may increase efficiencies for existing COMSATCOM services.

(f) *Net ready (interoperability).* COMSATCOM services shall be consistent with commercial standards and practices. Services shall have the capability to access and/or interoperate with Government or other Commercial teleports/gateways and provide enterprise service access to or among networks or enclaves. Interfaces may be identified as interoperable on the basis of participation in a sponsored interoperability program.

(g) *Network monitoring (Net OPS).* The Contractor shall have the capability to electronically collect and deliver near real-time monitoring, fault/incident/outage reporting, and information access to ensure effective and efficient operations, performance, and availability, consistent with commercial practices. Consistent with the Contractor's standard management practices, the Net Ops information will be provided on a frequency (example: every 6 hours, daily) and format (example: SNMP, XML) as defined in a requirement to a location/entity/electronic interface defined by the ordering activity. Specific reporting requirements will be defined by the Ordering Activity.

(h) *EMI/RFI identification, characterization, and geo-location.* The Contractor shall have the capability to collect and electronically report in near real-time Electro Magnetic Interference (EMI) / Radio Frequency Interference (RFI) identification, characterization, and geo-location, including the ability to identify and characterize sub-carrier EMI/RFI being transmitted underneath an authorized carrier, and the ability to geo-locate the source of any and all EMI/RFI. The Contractor shall establish and use with the ordering activity a mutually agreed upon media and voice communications capability capable of protecting "Sensitive, but Unclassified" data.

(i) *Security.* (1) The Contractor may be required to obtain/possess varying levels of personnel and facility security clearances up to U.S. Government TOP SECRET/Sensitive Compartmented Information (TS/SCI) or equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally.

(2) For incident resolution involving classified matters, the Contractor shall provide appropriately cleared staff who can affect COMSATCOM services operations (example: satellite payload operations, network operations). The Contractor shall provide a minimum of one operations staff member AND a minimum of one person with the authority to commit the company if resolution requires business impacting decisions (example: Chief Executive Officer, Chief Operations Officer, etc.).

(3) When Communications Security or Transmission Security equipment or keying material is placed in the equipment/terminal shelter, the Contractor shall ensure compliance with applicable physical security directives/guidelines and that all deployed equipment/terminal operations and maintenance personnel shall possess the appropriate clearances, equal to or higher than the classification level of the data being transmitted. Where local regulations require use of foreign personnel

for terminal operations and maintenance, then the Contractor shall ensure compliance with applicable security directives/ guidelines and document to the U.S. Government's satisfaction that protective measures are in place and such individuals have equivalent clearances granted by the local host nation.

(4) For classified operations security (OPSEC), the Contractor shall ensure that all personnel in direct contact with classified OPSEC indicators (example: the unit, location, and time of operations) have U.S. SECRET or higher personnel security clearances, or, as appropriate, equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally, in accordance with applicable security directives and guidelines.

(5) For classified requirements, cleared satellite operator staff must have access to secure voice communications for emergency purposes. Communications security equipment certified by the National Security Agency (NSA) to secure unclassified and up to and including SECRET communication transmissions at all operations centers is preferred. If a Contractor is unable to have access to NSA-approved communications security equipment at its operations centers, then a combination of a “Sensitive but Unclassified” (SBU) cryptographic module approved by the U.S. National Institute for Standards and Technology and pre-arranged access to National Security Agency-approved communications security equipment at an agreed alternate facility is acceptable.

(6) The Contractor shall have the capability to “mask” or “protect” users against unauthorized release of identifying information to any entity that could compromise operations security. Identifying information includes but is not limited to personal user and/or unit information including tail numbers, unit names, unit numbers, individual names, individual contact numbers, street addresses, etc.

(j) T*hird party billing for COMSATCOM subscription services.*The Contractor shall identify authorized network infrastructure for the ordering activity. In some cases, the user of the terminal may access network infrastructure owned or operated by a third party. In the event a terminal is used on a third party's network infrastructure, the Contractor shall provide to the ordering activity, invoices and documentation reflecting actual usage amount and third party charges incurred. The ordering activity shall be billed the actual third party charges incurred, or the contract third party billing price, whichever is less.

(End of clause)

552.238-111 Environmental Protection Agency Registration Requirement.

As prescribed in 538.273 FSS solicitation provisions and contract clauses.(d)(35) insert the following clause:

ENVIRONMENTAL PROTECTION AGENCY REGISTRATION REQUIREMENT (MAY 2019)

(a) With respect to the products described in this solicitation which require registration with the Environmental Protection Agency (EPA), as required by the Federal Insecticide, Fungicide, and Rodenticide Act, Section 3, Registration of Pesticides, awards will be made only for such products that have been assigned an EPA registration number, prior to the time of bid opening.

(b) The offeror shall insert in the spaces provided in this section, the manufacturer's and/or distributor's name and the “EPA Registration Number” for each item offered. Any offer which does not specify a current “EPA Registration Number” in effect for the duration of the contract period, and including the manufacturer's and/or distributor's name will be rejected.

Items			
Item Numbers	Name of Manufacturer / Distributor	EPA Registration Number	Date of Expiration

(c) If, during the performance of a contract awarded as a result of this solicitation, the EPA Registration Number for products being furnished is terminated, withdrawn, canceled, or suspended, and such action does not arise out of causes beyond the control, and with the fault or negligence of the Contractor or subcontractor, the Government may terminate the contract pursuant to either the Default Clause or Termination for Cause Paragraph (contained in the clause 52.212-4, Contract Terms and Conditions-Commercial Items), whichever is applicable to the resultant contract.

(End of clause)

552.238-112 Definition (Federal Supply Schedules) - Non-Federal Entity.

As prescribed in 538.7004(a) insert the following clause:

DEFINITION (FEDERAL SUPPLY SCHEDULES) - NON-FEDERAL ENTITY (MAY 2019)

Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see 552.238-113), authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

552.238-113 Scope of Contract (Eligible Ordering Activities).

As prescribed in 538.7004(b) insert the following clause:

SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (MAY 2019)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For Special Item Number 132-53, Wireless Services ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 USC 450j(k);

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

(8) Qualified Nonprofit Agencies as authorized under 40 USC 502(b); and

(9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions.*

"Domestic delivery" is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

"Overseas delivery" is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories

(c) Offerors are requested to check one of the following boxes:

□ Contractor will provide domestic and overseas delivery.

□ Contractor will provide overseas delivery only.

□ Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f) (1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232-36 Payment by Third Party. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232-36 Payment by Third Party.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of $2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

(End of clause)

552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.

As prescribed in 538.7004(c) insert the following clause:

USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY NON-FEDERAL ENTITIES (MAY 2019)

(a) If an entity identified in paragraph (d) of the clause at 552.238-113, Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies “Compliance with laws unique to Government contracts” (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new

contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238-113, Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238-80, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238-113, Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-113 Scope of Contract (Eligible Ordering Activities).

(End of clause)

552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials.

As prescribed in 538.7204(b) insert the following clause:

SPECIAL ORDERING PROCEDURES FOR THE ACQUISITION OF ORDER-LEVEL MATERIALS (MAY 2019)

(a) *Definition.*

"Order-level materials" means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. Order-level materials acquired following the procedures in paragraph (d) of this section are done so under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

(b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS.

(c) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS BPA.

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders that include order-level materials.

(2) Order-level materials are included in the definition of the term "material" in FAR clause 52.212-4 Alternate I, and therefore all provisions of FAR clause 52.212-4 Alternate I that apply to "materials" also apply to order-level materials. The ordering activity shall follow procedures under the Federal Travel Regulation and FAR Part 31 when order-level materials include travel.

(3) Order-level materials shall only be acquired in direct support of an individual task or delivery order and not as the primary basis or purpose of the order.

(4) The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract shall not exceed 33.33%.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the Ordering Activity shall follow procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials–

(i) The contractor proposing order-level materials as part of a solution shall obtain a minimum of three quotes for each order-level material above the simplified acquisition threshold.

(A) One of these three quotes may include materials furnished by the contractor under FAR 52.212-4 Alt I (i)(1)(ii)(A).

(B) If the contractor cannot obtain three quotes, the contractor shall maintain its documentation of why three quotes could not be obtained to support their determination.

(C) A contractor with an approved purchasing system per FAR 44.3 shall instead follow its purchasing system requirement and is exempt from the requirements in paragraphs (d)(7)(i)(A)-(B) of this clause.

(ii) The Ordering Activity Contracting Officer must make a determination that prices for all order-level materials are fair and reasonable. The Ordering Activity Contracting Officer may base this determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

(iii) If indirect costs are approved per FAR 52.212-4(i)(1)(ii)(D)(2) Alternate I), the Ordering Activity Contracting Officer must make a determination that all indirect costs approved for payment are fair and reasonable. Supporting data shall be submitted in a form acceptable to the Ordering Activity Contracting Officer.

(8) Prior to an increase in the ceiling price of order-level materials, the Ordering Activity Contracting Officer shall follow the procedures at FAR 8.404(h)(3)(iv).

(9) In accordance with GSAR clause 552.238-83, Examination of Records by GSA, GSA has the authority to examine the Contractor's records for compliance with the pricing provisions in FAR clause 52.212-4 Alternate I, to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the IFF and the Sales Reporting clauses of the contract.

(10) OLMs are exempt from the following clauses:

(i) 552.216-70 Economic Price Adjustment - FSS Multiple Award Schedule Contracts.

(ii) 552.238-77 Submission and Distribution of Authorized FSS Schedule Pricelists.

(iii) 552.238-81 Price Reductions.

(11) *Exceptions for travel.* (i) Travel costs are governed by FAR 31.205-46 and therefore the requirements in paragraph (d)(7) do not apply to travel costs.

(ii) Travel costs do not count towards the 33.33% limitation described in paragraph (d)(4) of this section.
(iii) Travel costs are exempt from clause 552.238-80 Industrial Funding Fee and Sales Reporting.

(End of clause)

552.239 [Reserved]

552.239-70 Information Technology Security Plan and Security Authorization.
As prescribed in 539.7002(a), insert the following provision:

INFORMATION TECHNOLOGY SECURITY PLAN AND SECURITY AUTHORIZATION (JUN2011)

All offers/bids submitted in response to this solicitation must address the approach for completing the security plan and certification and security authorization requirements as required by the clause at 552.239-71, Security Requirements for Unclassified Information Technology Resources.

(End of clause)

552.239-71 Security Requirements for Unclassified Information Technology Resources.
As prescribed in 539.7002(b), insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2012)

(a) *General*. The Contractor shall be responsible for information technology (IT) security, based on General Services Administration (GSA) risk assessments, for all systems connected to a GSA network or operated by the Contractor for GSA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to GSA's information that directly supports the mission of GSA, as indicated by GSA. The term information technology, as used in this clause, means any equipment, including telecommunications equipment that is used in the automatic acquisition, storage, manipulation, management, control, display, switching, interchange, transmission, or reception of data or information. This includes major applications as defined by OMB Circular A-130. Examples of tasks that require security provisions include:
(1) Hosting of GSA e-Government sites or other IT operations;
(2) Acquisition, transmission, or analysis of data owned by GSA with significant replacement cost should the Contractors copy be corrupted;
(3) Access to GSA major applications at a level beyond that granted the general public; e.g., bypassing a firewall; and
(4) Any new information technology systems acquired for operations within the GSA must comply with the requirements of HSPD-12 and OMB M-11-11. Usage of the credentials must be implemented in accordance with OMB policy and NIST guidelines (*e.g.*, NIST SP 800-116). The system must operate within the GSA's access management environment. Exceptions must be requested in writing and can only be granted by the GSA Senior Agency Information Security Officer.
(b) *IT Security Plan*. The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractors IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and GSA policies and procedures. GSA's Office of the Chief Information Officer issued "CIO IT Security Procedural Guide 09–48, Security Language for Information Technology Acquisitions Efforts," to provide IT security standards, policies and reporting requirements. This document is incorporated by reference in all solicitations and contracts or task orders where an information system is contractor owned and operated on behalf of the Federal Government. The guide can be accessed at http://www.gsa.gov/portal/category/25690. Specific security

requirements not specified in "CIO IT Security Procedural Guide 09–48, Security Language for Information Technology Acquisitions Efforts" shall be provided by the requiring activity.

(c) *Submittal of IT Security Plan*. Within 30 calendar days after contract award, the Contractor shall submit the IT Security Plan to the Contracting Officer and Contracting Officers Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractors proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer and COR, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) *Submittal of a Continuous Monitoring Plan*. The Contractor must develop a continuous monitoring strategy that includes:

(1) A configuration management process for the information system and its constituent components;

(2) A determination of the security impact of changes to the information system and environment of operation;

(3) Ongoing security control assessments in accordance with the organizational continuous monitoring strategy;

(4) Reporting the security state of the information system to appropriate GSA officials; and

(5) All GSA general support systems and applications must implement continuous monitoring activities in accordance with this guide and NIST SP 800-37 Revision 1, *Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach*.

(e) *Security authorization*. Within six (6) months after contract award, the Contractor shall submit written proof of IT security authorization for acceptance by the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. The security authorization must be in accordance with NIST Special Publication 800-37. This security authorization will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This security authorization, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted security authorization documentation.

(f) *Annual verification*. On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security plan remains valid.

(g) *Warning notices*. The Contractor shall ensure that the following banners are displayed on all GSA systems (both public and private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

WARNINGWARNING**WARNING**

Unauthorized access is a violation of U.S. law and General Services Administration policy, and may result in criminal or administrative penalties. Users shall not access other users or system files without proper authority. Absence of access controls IS NOT authorization for access! GSA information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

WARNINGWARNING**WARNING**

(h) *Privacy Act notification*. The Contractor shall ensure that the following banner is displayed on all GSA systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93-579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to $5,000, or both.

(i) *Privileged or limited privileges access*. Contractor personnel requiring privileged access or limited privileges access to systems operated by the Contractor for GSA or interconnected to a GSA network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(j) *Training*. The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB Circular A-130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on the rules of behavior.

(k) *GSA access*. The Contractor shall afford GSA access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases, IT systems and devices, and personnel used in performance of the contract, regardless of the location. Access shall be provided to the extent required, in GSA's judgment, to conduct an inspection, evaluation, investigation or audit, including vulnerability testing to safeguard against threats and hazards to the integrity, availability and confidentiality of GSA data or to the function of information technology systems operated on behalf of GSA, and to preserve evidence of computer crime. This information shall be available to GSA upon request.

(l) *Subcontracts*. The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(m) *Notification regarding employees*. The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to GSA information systems or data. If an employee's employment is terminated, for any reason, access to GSA's information systems or data shall be immediately disabled and the credentials used to access the information systems or data shall be immediately confiscated.

(n) *Termination*. Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

552.240 [Reserved]

552.241 [Reserved]

552.241-70 Availability of Funds for the Next Fiscal Year or Quarter.

As prescribed in 541.501 Solicitation provision and contract clauses., insert the clause 552.241-70 Availability of Funds for the Next Fiscal Year or Quarter., Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232-19, in all utility acquisitions.

Availability of Funds for the Next Fiscal Year or Quarter (Sep2010)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

552.241-71 Disputes (Utility Contracts).

As prescribed in 541.501, insert clause 552.241-71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

Disputes (Utility Contracts) (Sep2010)

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

552.242 [Reserved]

552.242-70 Status Report of Orders and Shipments.

As prescribed in 542.1107 Contract clause., insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (FEB2009)

(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 GSAForm1678, Status Report of Orders and Shipments, in accordance with instructions on the form. The information required by the GSAForm1678 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

. Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) A copy of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be reproduced by the Contractor.

(End of clause)

552.243 [Reserved]

552.243-71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

EQUITABLE ADJUSTMENTS (MAR 2019)

(a) This clause governs the determination of equitable adjustments to which the Contractor may be entitled under the "Changes" clause prescribed by FAR 52.243-4, the "Changes and Changed Conditions" clause prescribed by FAR 52.243-5, the "Differing Site Conditions" clause prescribed by FAR 52.236-2, and any other provision of this contract allowing entitlement to an equitable adjustment. This clause does not govern determination of the Contractor's relief allowable under the "Suspension of Work" clause prescribed by FAR 52.242-14.

(b) At the written request of the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements set forth herein, for an equitable adjustment to the contract for changes or other conditions that may entitle a Contractor to an equitable adjustment. If the Contractor deems an oral or written order to be a change to the contract, it shall promptly submit to the Contracting Officer a proposal for equitable adjustment attributable to such deemed change. The proposal shall also conform to the requirements set forth herein.

(c) The proposal shall be submitted within the time specified in the "Changes", "Changes and Changed Conditions", or "Differing Site Conditions" clause, as applicable, or such other time as may reasonably be required by the Contracting Officer.

(d) Proposals for equitable adjustments, including no cost requests for adjustment of the contract's required completion date, shall include a detailed breakdown of the following elements, as applicable:

(1) Direct Costs.

(2) Markups.

(3) Change to the time for completion specified in the contract.

(e) *Direct Costs*. The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work impacted by the change. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized);

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer's overhead, profit, and any labor cost burdens carried in employer's overhead rate);

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed;

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs (e)(1) and (e)(2) of this clause;

(5) Delivery costs, if not included in material unit costs;

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor's or subcontractors' overhead rates, as specified in paragraph (g) of this clause; and

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph (i) of this clause.

(g) *Extensions of Time and Time-related Costs.* The Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor's project schedule.

(h) *Markups*. For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractor[s] shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth below in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h).

(j) *Proposal Preparation Costs*. If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o), or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in 31 of the Federal Acquisition Regulation (48 CFR 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment.

(End of clause)

552.246 [Reserved]

552.246-70 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302-70 Source inspection by Quality Approved Manufacturer for fixed-price supply contracts., insert the following clause:

SOURCE INSPECTION BY QUALITY APPROVED MANUFACTURER (JULY 2009)

(a) *Inspection system and inspection facilities*. (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246-2) of this contract shall be maintained throughout the contract period. Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall comply with all requirements of editions in effect on the date of the solicitation of either Federal Standard 368 or the International Organization for Standardization (ISO) Standard 9001:2000 (Quality Management Systems—Requirements). A documented description

of the inspection system shall be made available to the Government before contract award. At the sole discretion of the Contracting Officer, he/she may authorize in writing exceptions to the quality assurance standards identified above. The Contractor shall immediately notify the Administrative Contracting Officer (ACO) of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the U.S. Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, ISO 9001:2000 or as otherwise approved by the Government, records shall include the date inspection and testing were performed. These records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) The Contractor shall provide the Administrative Contracting Officer ACO with the name(s) of the individual and an alternate responsible for the inspection system. In the event that the designated individual(s) becomes unavailable to oversee the inspection system, the Contractor, within 10 calendar days of such event, shall provide the ACO with the names of the replacement individual(s).

(b) *Inspection by the Contractor*.The Contractor is required to demonstrate that the supplies in the shipment have been subject to and have passed all inspections and tests required by the contract and meet the requirements of the contract.

(c) *Inspection by Government personnel*. (1) Although the Government will normally rely upon the Contractor's representation as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) The offeror shall indicate, in the spaces provided below, the location(s) at which the supplies will be inspected or made available for inspection.

INSPECTION POINT

ITEM NO(S)	NAME OF MANUFACTURER	NAME, ADDRESS (Including County), and	TELEPHONE NUMBER
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NOTE: If additional space is needed, the offeror may furnish the requested information by an attachment to the offer.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification, inspection, and testing. Samples selected for testing will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies*. (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of _____* months after

acceptance shall, at the Government's option, be replaced, repaired, or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its own expense, supplies rejected or required to be replaced, repaired, or corrected. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies, and reducing the contract price by an equitable amount under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) The Contractor may be issued a Quality Deficiency Notice (QDN) if:

(i) Supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or

(ii) deficiencies in either plant quality or process controls are found. Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the Government representative, within 5 workdays, of the action plan or the corrective action taken. The Government may elect to verify the corrective action at the Contractor location(s). Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination of the contract. Delays due to the insurance of a QDN do not constitute excusable delay under the default clause of this contract. Failure to complete corrective action in a timely manner may result in termination of the contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies that do not meet the requirements of the contract are being shipped, or if the contractor fails to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing*. The Contractor shall be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246-2, Inspection of Supplies-Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $ _____* per man-hour or fraction thereof if the inspection is at a GSA distribution center; $ _____* per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $ _____* per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies*. When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph(d) of this clause, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246-2, supplies may be—

(1) *Stored and charged against the Contractor's account;*

(2) *Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return shall also be charged against the Contractor's account);*

(3) *Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale; or*

(4) *Otherwise disposed of by the Government.*

(g) *Subcontracting requirements*. The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

** Normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, you should use the shelf-life period, or in the instance where you reasonably expect a longer period to be available, you should use the longer period.*

*** The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.*

(End of clause)

552.246-71 Source Inspection by Government.

As prescribed in 546.302-71 Source inspection., insert the following clause:

SOURCE INSPECTION BY GOVERNMENT (JUNE 2009)

(a) *Inspection by Government personnel*.

(1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by the Government.

(b) *Inspection and receiving reports*. For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Inspection facilities*. (1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246-2, Inspection of Supplies—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the U.S. Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records*. (1) In addition to any other requirement of this contract, the Contractor shall maintain records showing the following information for each order received under the contract:

(i) Order number;
(ii) Date order received by the Contractor;
(iii) Quantity ordered;
(iv) Date scheduled into production;
(v) Batch or lot number, if applicable;
(vi) Date inspected and/or tested;
(vii) Date available for shipment;
(viii) Date shipped or date service completed; and
(ix) National Stock Number (NSN), or if none is provided in the contract, the applicable item number or other contractual identification.

(2) These records should be maintained at the point of source inspection and shall be available to the Contracting Officer, or an authorized representative, for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(e) *Additional cost for inspection and testing*. The Contractor will be charged for any additional cost for inspecting/ testing or reinspection/ retesting supplies for the reasons stated in paragraph (e) of FAR 52.246-2, Inspection of Supplies —Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____* per man-hour or fraction thereof if the inspection is at a GSA distribution center; $ _____* per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____* per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies*. When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246-2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246-2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

**The rates to be inserted are established by the Commissioner of the Federal Acquisition Service or a designee.*

(End of clause)

552.246-72 Final Inspection and Tests.

As prescribed in 546.312, insert the following clause:

FINAL INSPECTION AND TESTS (SEP1999)

The Contractor shall give written notice to the Contracting Officer at least 10calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within 10calendar days after the date specified in the Contractor's notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of clause)

552.246-77 Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature.

As prescribed in 546.710, insert the following clause in solicitations and contracts that include FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature.

ADDITIONAL CONTRACT WARRANTY PROVISIONS FOR SUPPLIES OF A NONCOMPLEX NATURE (JUNE2009)

(a) *Definitions*. *Correction*, as used in this clause, means the elimination of a defect.

(b) *Contractor's obligations*. When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction, or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense.

(c) *Remedies available to the Government*. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(End of clause)

552.246-78 Inspection at Destination.

As prescribed in 546.302-72 insert the following clause:

INSPECTION AT DESTINATION (JUNE2009)

Inspection of all purchases under this contract will be made at destination by an authorized Government representative.

552.252 [Reserved]

552.252-5 Authorized Deviations in Provisions.

As prescribed in 552.107-70(a), insert the following provision:

AUTHORIZED DEVIATIONS IN PROVISIONS (DEVIATION FAR 52.252-5) (SEP 1999)

(a) *Deviations to FAR provisions*. (1) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) provision by the addition of "(DEVIATION)" after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) provision that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR provision no.))" after the date of the provision.

(b) *Deviations to GSAR provisions*. This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation provision by the addition of "(DEVIATION)" after the date of the provision.

(c) *"Substantially the same as" provisions*. Changes in wording of provisions prescribed for use on a "substantially the same as" basis are not considered deviations.

(End of clause)

552.252-6 Authorized Deviations in Clauses.

As prescribed in 552.107-70(b), insert the following clause:

AUTHORIZED DEVIATIONS IN CLAUSES (DEVIATION FAR 52.252-6) (SEP 1999)

(a) *Deviations to FAR clauses*. (1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of "(DEVIATION)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR clause no.))" after the date of the clause.

(b) *Deviations to GSAR clauses*. This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of "(DEVIATION)" after the date of the clause.

(c) *"Substantially the same as" clauses*. Changes in wording of clauses prescribed for use on a "substantially the same as" basis are not considered deviations.

(End of clause)

552.270 [Reserved]

552.270-1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

As prescribed in 570.702, insert the following provision:

INSTRUCTIONS TO OFFERORS—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY (JUN2011)

(a) *Definitions*. As used in this provision—

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing, writing or written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations*. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals*. (1) Unless other methods (*e.g.*,electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages Offers must be:

(i) Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and

(ii) Signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) *Late proposals and revisions*. (i) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers unless it is received before the Government makes award and it meets at least one of the following conditions:

(A) It was sent by registered or certified mail not later than the calendar day before the date specified for receipt of offers (e.g.,an offer submitted in response to a solicitation requiring receipt of offers by the 20*th* of the month must have been mailed by the 15*th*).

(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 5:00p.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 5:00p.m. one working day prior to the date specified for receipt of proposals.

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and that the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in paragraphs(c)(2)(i)(A) through (c)(2)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph(c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph(c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30p.m., local time, for the designated Government office.

(3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(5) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(6) The Government will construe an offer to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) *Restriction on disclosure and use of data*. An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, must meet both of the following conditions:

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this

offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets *[insert numbers or other identification of sheets]*.

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(e) *Lease award*. (1) The Government intends to award a lease resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a lease after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(6) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(7) The execution and delivery of the Lease contract by the Government establishes a valid award and contract.

(8) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection; and

(iii) A summary of the rationale for award.

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

(End of clause)

Alternate I (Mar 1998). As prescribed in 570.702, substitute the following paragraph for paragraph (c)(2)(i) of the basic provision:

(a) (i) Any offer received at the office designated in the solicitation after the exact time specified for receipt of final proposal revisions will not be considered unless it is received before award is made and it meets one of the following conditions—

Alternate II (Mar 1998). As prescribed in 570.702, substitute the following paragraph for paragraph (e)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a lease without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The 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.

552.270-2 Historic Preference.

As prescribed in 570.702, insert the following provision:

HISTORIC PREFERENCE (SEPT 2004)

(a) The Government will give preference to offers of space in historic properties following this hierarchy of consideration: Historic properties within historic districts.

(1) Non-historic developed and non-historic undeveloped sites within historic districts.

(2) Historic properties outside of historic districts.

(b) *Definitions*. (1) "Determination of eligibility" means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed in the National Register (36 CFR 60.3(c)).

(2) "Historic district" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history (36 CFR 60.3(d)). The historic district must be included in or be determined eligible for inclusion in the National Register of Historic Places.

(3) "Historic property" means any pre-historic or historic district, site, building, structure, or object included in or been determined eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior (36 CFR 800.16(l)).

(4) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of the Interior is authorized to expand and maintain under the National Historic Preservation Act (36 CFR 60.1).

(c) The offer of space must meet the terms and conditions of this solicitation. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of an historic building, such as high ceilings and wooden floors, or to maintain the integrity of an historic district, such as setbacks, floor-to-ceiling heights, and location and appearance of parking.

(d) When award will be based on the lowest price technically acceptable source selection process, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(e) When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within a historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(f) The Government will compute price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in this provision. The price evaluation preference will be used for price evaluation purposes only. The Government will award a contract in the amount of the actual price(s) proposed by the successful offeror and accepted by the Government.

(g) To qualify for a price evaluation preference, offerors must provide satisfactory documentation in their offer that their property qualifies as one of the following:

(1) An historic property within an historic district.

(2) A non-historic developed or undeveloped site within an historic district.

(3) An historic property outside of an historic district.

(End of provision)

552.270-3 Parties to Execute Lease.

As prescribed in 570.702, insert the following provision:

PARTIES TO EXECUTE LEASE (JUN2011)

(a) If the lessor is an individual, that individual shall sign the lease. A lease with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, "an individual doing business as _____ [insert name of firm]."

(b) If the Lessor is a corporation, the lease must be signed in the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, evidence of this authority to so act shall be furnished.

(c) If the Lessor is a corporation, the lease must be signed in the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to so act shall be furnished.

(d) If the Lessor is a joint venture, the lease must be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) of this provision for each type of participant. When a corporation is participating in the joint venture, the corporation shall provide evidence that the corporation is authorized to participate in the joint venture.

(e) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of the power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(End of provision)

552.270-4 Definitions.

As prescribed in 570.703, insert the following clause:

DEFINITIONS (SEP1999)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) "ANSI/BOMA Office Area (ABOA)" means the area "where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed," as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1-1996.

(b) "Commencement Date" means the first day of the term.

(c) "Contract" and "Contractor" means "Lease" and "Lessor," respectively.

(d) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(e) "Delivery Date" means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

(f) "Delivery Time" means the number of days provided by this lease for delivery of the premises to the Government, as such number may be modified in accordance with the provisions of this lease.

(g) "Excusable Delays" mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation:

(1) acts of God or of the public enemy,

(2) acts of the United States of America in either its sovereign or contractual capacity,

(3) acts of another contractor in the performance of a contract with the Government,
(4) fires,
(5) floods,
(6) epidemics,
(7) quarantine restrictions,
(8) strikes,
(9) freight embargoes,
(10) unusually severe weather, or
(11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(h) "Lessor" means the sub-lessor if this lease is a sublease.

(i) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's expense.

(j) "Notice" means written notice sent by certified or registered mail, Express Mail or Comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.

(k) "Premises" means the space described in this lease.

(l) "Substantially complete" and "substantial completion" means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(m) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

(End of clause)

552.270-5 Subletting and Assignment.

As prescribed in 570.703, insert the following clause:

SUBLETTING AND ASSIGNMENT (SEP1999)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

(End of clause)

552.270-6 Maintenance of Building and Premises—Right of Entry.

As prescribed in 570.703, insert the following clause:

MAINTENANCE OF BUILDING AND PREMISES—RIGHTOFENTRY (SEP1999)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building and all equipment, fixtures, and appurtenances furnished by the lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(End of clause)

552.270-7 Fire and Casualty Damage.

As prescribed in 570.703, insert the following clause:

FIRE AND CASUALTY DAMAGE (JUN2011)

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 15calendar days after such determination; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of clause)

552.270-8 Compliance with Applicable Law.

As prescribed in 570.703, insert the following clause:

COMPLIANCE WITH APPLICABLE LAW (SEP1999)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of clause)

552.270-9 Inspection—Right of Entry.

As prescribed in 570.703, insert the following clause:

INSPECTION—RIGHT OF ENTRY (SEP1999)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

(1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;

(2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;

(3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and

(4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

(End of clause)

552.270-10 Failure in Performance.

As prescribed in 570.703, insert the following clause:

FAILURE IN PERFORMANCE (SEP1999)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the

Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

(End of clause)

552.270-11 Successors Bound.

As prescribed in 570.703, insert the following clause:

SUCCESSORS BOUND (SEP1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of clause)

552.270-12 Alterations.

As prescribed in 570.703, insert the following clause:

ALTERATIONS (SEP1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

(End of clause)

552.270-13 Proposals for Adjustment.

As prescribed in 570.703, insert the following clause:

PROPOSALS FOR ADJUSTMENT (OCT2016)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $100,000. The proposal, including all subcontractor work, will contain at least the following detail—

(1) Material quantities and unit costs;
(2) Labor costs (identified with specific item or material to be placed or operation to be performed);
(3) Equipment costs;
(4) Worker's compensation and public liability insurance;
(5) Overhead;
(6) Profit; and
(7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $750,000 in cost —

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48CFR15.403-4); and
(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $750,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48CFR15.406-2).

(d) Lessors shall also refer to 48CFRPart31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of clause)

552.270-14 Changes.

As prescribed in 570.703, insert the following clause:

CHANGES (JUN2011)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs).
(2) Work or services.
(3) Facilities or space layout.
(4) Amount of space, provided the Lessor consents to the change.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date.
(2) An equitable adjustment in the rental rate.
(3) A lump sum equitable adjustment.
(4) An equitable adjustment of the annual operating costs per ABOA square foot specified in this lease.

(c) The Lessor must assert its right to an adjustment under this clause within 30days from the date of receipt of the change order and must submit a proposal for adjustment. The Lessor's failure to assert its right for adjustment within the time frame specified herein shall be a waiver of the Lessor's right to an adjustment under this paragraph. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government is not liable to Lessor under this clause.

(End of clause)

552.270-15 Liquidated Damages.

As prescribed in 570.703 GSAR contract clauses., insert the following clause:

LIQUIDATED DAMAGES (SEP1999)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of $ _____ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law.

(End of clause)

552.270-16 Adjustment for Vacant Premises.

As prescribed in 570.703, insert the following clause:

ADJUSTMENT FOR VACANT PREMISES (JUN2011)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part before the lease term expires, the rental rate will be reduced. The reduction shall occur after the Government gives 30 calendar days notice to the Lessor, and shall continue in effect until the Government occupies or reoccupies the vacant premises or the lease expires or is terminated.

(b) The rate will be reduced by that portion of the costs per ABOA square foot of operating expenses not required to maintain the space. In addition, at the first operating cost adjustment after the notice of reduction to the rent, the base cost of services subject to escalation will be reduced by said amount. In the event that the Government occupies or reoccupies the vacant premises on the lease anniversary date following the occupation of the vacant premises, the base cost of services subject to escalation will be increased by said amount.

(c) The reduction in operating costs shall be negotiated and stated in the lease.

(End of clause)

552.270-17 Delivery and Condition.

As prescribed in 570.703, insert the following clause:

DELIVERY AND CONDITION (SEP1999)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

(End of clause)

552.270-18 Default in Delivery—Time Extensions.

As prescribed in 570.703, insert the following clause:

DEFAULT IN DELIVERY—TIME EXTENSIONS (SEP1999)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date, time is of the essence. If the Lessor fails to work diligently to ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease. Such termination is effective when received by Lessor. The Lessor and the Lessor's sureties, if any, are jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government is entitled to the following damages:

(1) The Government's aggregate rent, estimated real estate tax, and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term. If the Government procures replacement premises for a term (including all option terms) in excess of this lease term, the Lessor is not liable for excess Government rent or adjustments during such excess lease term.

(2) All administrative and other costs the Government incurs in procuring a replacement lease or leases.

(3) Other, additional relief provided for in this lease, at law, or in equity.

(b) Damages to which the Government is entitled to under this clause are due and payable thirty (30) days following the date Lessor receives notice from the Contracting Officer specifying such damages.

(c) Delivery by Lessor of less than the minimum ABOA square footage required by this lease shall in no event be construed as substantial completion, except as the Contracting Officer permits.

(d) The Government shall not terminate this lease under this clause nor charge the Lessor with damages under this clause, if (1)the delay in substantially completing the work arises from excusable delays, and (2)the Lessor within 10days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If the facts warrant, the Contracting Officer shall extend the delivery date, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of clause)

552.270-19 Progressive Occupancy.

As prescribed in 570.703, insert the following clause:

PROGRESSIVE OCCUPANCY (SEP1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

(End of clause)

552.270-20 Payment.

As prescribed in 570.703, insert the following clause:

PAYMENT (SEP1999)

(a) When space is offered and accepted, ABOA square footage delivered will be confirmed by either:

(1) The Government's measurement of plans submitted by the successful offeror as approved by the Government, and an inspection of the space to verify that the delivered space conforms with such plans.

(2) A mutual on-site measurement of the space if the Contracting Officer determines it necessary.

(b) The Government will not pay for space in excess of the amount of ABOA square footage stated in the lease.

(c) If the amount of ABOA square footage delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is:

$$(1 + CAF) \times \text{Rate per RSF} = \text{Reduction in Annual Rent}$$

(End of clause)

552.270-21 Effect of Acceptance and Occupancy.

As prescribed in 570.703, insert the following clause:

EFFECT OF ACCEPTANCE AND OCCUPANCY (SEP1999)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

(End of clause)

552.270-22 Default by Lessor During the Term.

As prescribed in 570.703, insert the following clause:

DEFAULT BY LESSOR DURING THE TERM (SEP1999)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

(End of clause)

552.270-23 Subordination, Nondisturbance and Attornment.

As prescribed in 570.703, insert the following clause:

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (SEP1999)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

(End of clause)

552.270-24 Statement of Lease.

As prescribed in 570.703, insert the following clause:

STATEMENT OF LEASE (SEP1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1)the lease is in full force and effect; (2)the date to which the rent and other charges have been paid in advance, if any; and (3)whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of clause)

552.270-25 Substitution of Tenant Agency.

As prescribed in 570.703, insert the following clause:

SUBSTITUTION OF TENANT AGENCY (SEP1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

(End of clause)

552.270-26 No Waiver.

As prescribed in 570.703, insert the following clause:

NO WAIVER (SEP1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of clause)

552.270-27 Integrated Agreement.

As prescribed in 570.703, insert the following clause:

INTEGRATED AGREEMENT (SEP1999)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

(End of clause)

552.270-28 Mutuality of Obligation.

As prescribed in 570.703, insert the following clause:

MUTUALITY OF OBLIGATION (SEP1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of clause)

552.270-29 Acceptance of Space.

As prescribed in 570.703, insert the following clause:

ACCEPTANCE OF SPACE (JUN2011)

(a) When the lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the lessor shall notify the Contracting Officer. The Contracting Officer or designated representative shall promptly inspect the space.

(b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required ABOA square footage as indicated in the solicitation paragraph, Amount and Type of Space.

(End of clause)

552.270-30 Price Adjustment for Illegal or Improper Activity.

As prescribed in 570.703, insert the following clause:

PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN2011)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis thereof. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of clause)

552.270-31 Prompt Payment.

As prescribed in 570.703 insert the following clause:

PROMPT PAYMENT (JUN2011)

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 seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty*. (1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than one year. Interest penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments*. If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number;

(iii) Affected lease line item or subline item, if applicable; and

(iv) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

AlternateI (Sep1999). If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated as (b).

552.270-32 Covenant Against Contingent Fees.

AS PRESCRIBED IN 570.703, INSERT THE FOLLOWING CLAUSE:

COVENANT AGAINST CONTINGENT FEES (JUN2011)

(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)

Subpart 552.3 - Provision and Clause Matrixes

552.300 Scope of subpart.

This subpart consists of a series of matrixes:

(a) One matrix each for supply, service, construction, architect-engineer and simplified acquisition contracts which lists the applicable GSAR provisions and clauses.

(b) One matrix each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

Matrix of Provisions and Clauses

KEY:	Sup	= Supply	Leas	=	Acquisitions of leasehold interests in real property
	Serv	= Service Contract (excluding construction and A-E services)	P	=	Provision
	Const	= Construction Services	C	=	Clause
	A-E	= Architect-Engineer Services	R	=	Required
	SAT	= Acquisitions at or under the simplified acquisition threshold	WR	=	When required
	Util	= Utility services, sole supplier-regulated rate	O	=	Optional

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.203-71	503.570-2	Restriction on Advertising	R	R	R	R			R
C	552.204-9	504.1303	Personal Identity Verification Requirements	WR	WR	WR	WR	WR		
C	552.211-10	511.404	Commencement, Prosecution, and Completion of Work			WR		WR		
C	552.211-12	511.404	Liquidated Damages-Construction			WR		WR		
C	552.211-13	511.404	Time Extensions			WR		WR		
C	552.211-70	511.404	Substantial Completion			WR		WR		
C	552.211-72	511.204(a)	Reference to Specifications in Drawings	WR	WR	WR		WR		

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.211-73	511.204(b)(1)	Marking	WR						
C	552.211-75	511.204(b)(2)	Preservation, Packaging and Packing	WR				O		
C	552.211-76	511.204(b)(3)	Charges for Packaging, Packing, and Marking	WR				WR		
C	552.211-77	511.204(c)	Packing List	WR				WR		
C	552.211-79	511.404(a)(1)	Acceptable Age of Supplies	WR				WR		
C	552.211-80	511.404(a)(2)	Age on Delivery	WR				WR		
C	552.211-81	511.404(b)	Time of Shipment	WR				WR		
C	552.211-83	511.404(c)	Availability for Inspection, Testing, and Shipment/ Delivery	WR				WR		
C	552.211-85	511.204(b)(4)	Consistent Pack and Package Requirements	WR				WR		
C	552.211-86	511.204(b)(5)	Maximum Weight Per Shipping Container	WR				WR		
C	552.211-87	511.204(b)(6)	Export Packing	WR				WR		
C	552.211-88	511.204(b)(7)	Vehicle Export Preparation	WR				WR		
C	552.211-89	511.204(b)(8)	Non-Manufactured Wood Packaging Material for Export	WR				WR		
C	552.211-90	511.204(b)(9)	Small Parts	WR				WR		
C	552.211-91	511.204(b)(10)	Vehicle Decals, Stickers, and Data Plates	WR				WR		
C	552.211-92	511.204(b)(11)	Radio Frequency Identification (RFID) Using Passive Tags	WR				WR		
C	552.211-94	511.404(d)	Time of Delivery	WR				WR		
C	552.212-71	512.301(a)(1)	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
C	552.212-72	512.301(a)(2)	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
P	552.214-70	514.201-6	“All or None” Bids	WR	WR			WR		
P	552.214-72	514.202-4(a)(3)	Bid Sample Requirements	WR	WR			WR		
C	552.215-71	515.209-70(c)	Examination of Records by GSA (Multiple Award Schedule)	WR	WR					

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.215-72	515.408(d)	Price Adjustment—Failure to Provide Accurate Information	WR	WR					
C	552.216-70	516.203-4(a)	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	WR	WR					
C	552.216-71	516.203-4(a)	Economic Price Adjustment—Special Order Program Contracts	WR				WR		
C	552.216-72	516.506(a)	Placement of Orders	WR				WR		
P	552.216-73	516.506(c)	Ordering Information	WR	WR			WR		
C	552.216-74	516.506(b)	Task-Order and Delivery-Order Ombudsman	R	R	R	R	R	R	R
C	552.216-75	516.506(e)	Transactional Data Reporting	WR	WR					
P	552.217-70	517.208(a)	Evaluation of Options	WR				WR		
P	552.217-71	517.208(b)	Notice Regarding Option(s)	WR	WR	WR	WR	WR		
C	552.219-70	519.508	Allocation of Orders—Partially Set-aside Items	WR						
C	552.219-74	519.870-8(a)	Section 8(a) Direct Award	WR	WR	WR	WR	WR		WR
C	552.223-70	523.303(a)	Hazardous Substances	WR				WR		
C	552.223-71	523.303(b)	Nonconforming Hazardous Materials	WR				WR		
P	552.223-72	523.370	Hazardous Material Information	WR				WR		
C	552.227-70	527.409(a)	Government Rights (Unlimited)				WR			
C	552.227-71	527.409(b)	Drawings and Other Data to Become Property of Government				WR			
C	552.228-5	528.310	Government as Additional Insured	WR	R	WR	WR			WR
C	552.229-70	529.401-70	Federal, State, and Local Taxes		WR	WR	WR	R		
C	552.229-71	529.401-71	Federal Excise Tax—DC Government	WR	WR			WR		
C	552.232-1	532.908(a)	Payments		WR					
C	552.232-5	532.111	Payments under Fixed-Price Construction Contracts			WR		WR		
C	552.232-23	532.806	Assignment of Claims	WR	WR					
C	552.232-25	532.908(c)(2)	Prompt Payment	WR	WR			WR		
C	552.232-72	532.904(b)	Final Payment Under Building Services Contracts		WR					
C	552.232-77	532.7003	Payment By Government Charge Card	WR	WR			WR		
C	552.236-6	536.506	Superintendence by the Contractor			R		R		

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.236-11	536.511	Use and Possession Prior to Completion			R		R		
C	552.236-15	536.515	Schedules for Construction Contracts			R		R		
C	552.236-21	536.521	Specifications and Drawings for Construction			R		R		
C	552.236-70	536.570	Authorities and Limitations			R		R		
C	552.236-71	536.571	Contractor Responsibilities			R		R		
C	552.236-72	536.572	Submittals			R		R		
C	552.236-73	536.573	Subcontracts			R		R		
C	552.236-74	536.270-5(a)	Evaluation of Options			WR		WR		
C	552.236-75	536.270-5(b)	Evaluation Exclusive of Options			WR		WR		
C	552.236-76	536.270-5(c)	Basis of Award-Sealed Bidding Construction			WR		WR		
C	552.236-77	536.270-5(d)	Government's Right to Exercise Options			WR		WR		
C	552.237-71	537.110(a)	Qualifications of Employees		WR					
C	552.237-72	537.110(b)	Prohibition Regarding “Quasi-Military Armed Forces”		WR			WR		
C	552.237-73	537.270	Restriction on Disclosure of Information		WR			WR		
C	552.238-70	538.273(a)(1)	Cover Page for Worldwide Federal Supply Schedules	R	R	WR	WR	WR	WR	WR
C	552.238-71	538.273(a)(2)	Notice of Total Small Business Set-Aside	R	R					
C	552.238-72	538.273(a)(3)	Information Collection Requirements	R	R					
C	552.238-73	538.273(b)(1)	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped	WR						
C	552.238-74	538.273(b)(2)	Introduction of New Supplies/Services (INSS)	WR	WR					
C	552.238-75	538.273(c)(1)	Evaluation - Commercial Items (Federal Supply Schedules)	R	R					
P	552.238-76	538.273(c)(2)	Use of Non-Government Employees to Review Offers	WR	WR					
C	552.238-77	538.273(d)(1)	Submission and Distribution of Authorized FSS Schedule Price List	R	R					
C	552.238-78	538.273(d)(2)	Scope of Contract (Eligible Ordering Activities)	WR	WR					

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.238-79	538.273(d)(3)	Use of Federal Supply Schedule Contracts by Non-Federal Entities	R	R					
C	552.238-80	538.273(d)(4)	Industrial Funding Fee and Sales Reporting	WR	WR					
C	552.238-81	538.273(d)(5)	Price Reductions	WR	WR					
C	552.238-82	538.273(d)(6)	Modification (Federal Supply Schedule)	R	R	WR	WR	WR		
C	552.238-83	538.273(d)(7)	Examination of Records by GSA (Federal Supply Schedules)	R	R	WR	WR	WR		
C	552.238-84	538.273(d)(8)	Discounts for Prompt Payment	R	R					
C	552.238-85	538.273(d)(9)	Contractor's Billing Responsibilities	R	R					
C	552.238-86	538.273(d)(10)	Delivery Schedule	R						
C	552.238-87	538.273(d)(11)	Delivery Prices	R	R					
C	552.238-88	538.273(d)(12)	GSA *Advantage!*™	WR	WR					
C	552.238-89	538.273(d)(13)	Deliveries to the U.S. Postal Service	WR	WR					
C	552.238-90	538.273(d)(14)	Characteristics of Electric Current	WR	WR					
C	552.238-91	538.273(d)(15)	Marking and Documentation Requirements for Shipping	WR	WR					
C	552.238-92	538.273(d)(16)	Vendor Managed Inventory (VMI) Program	WR	WR					
C	552.238-93	538.273(d)(17)	Order Acknowledgement	R						
C	552.238-94	538.273(d)(18)	Accelerated Delivery Requirements	R						
C	552.238-95	538.273(d)(19)	Separate Charge for Performance Oriented Packaging (POP)	WR	WR					
C	552.238-96	538.273(d)(20)	Separate Charge for Delivery within Consignee's Premises	WR						
C	552.238-97	538.273(d)(21)	Parts and Services	R	R					
C	552.238-98	538.273(d)(22)	Clauses for Overseas Coverage	WR	WR					
C	552.238-99	538.273(d)(23)	Delivery Prices Overseas	WR	WR					
C	552.238-100	538.273(d)(24)	Transshipments	WR	WR					
C	552.238-101	538.273(d)(25)	Foreign Taxes and Duties	WR	WR					
C	552.238-102	538.273(d)(26)	English Language and U.S. Dollar Requirements	R	R					
C	552.238-103	538.273(d)(27)	Electronic Commerce	WR	WR					
C	552.238-104	538.273(d)(28)	Dissemination of Information by Contractor	R	R					

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.238-105	538.273(d)(29)	Deliveries Beyond the Contractual Period – Placing of Orders	R						
C	552.238-106	538.273(d)(30)	Interpretation of Contract Requirements	R	R					
C	552.238-107	538.273(d)(31)	Export Traffic Release (Supplies)	R						
C	552.238-108	538.273(d)(32)	Spare Parts Kit	WR						
C	552.238-109	538.273(d)(33)	Authentication Supplies and Services	WR						
C	552.238-110	538.273(d)(34)	Commercial Satellite Communication (COMSATCOM) Services		WR					
C	552.238-111	538.273(d)(35)	Environmental Protection Agency Registration Requirement	WR						
C	552.238-112	538.7004(a)	Definition (Federal Supply Schedules)– Non-Federal Entity	WR	WR					
C	552.238-113	538.7004(b)	Scope of Contract (Eligible Ordering Activities)	WR	WR					
C	552.238-114	538.7004(c)	Use of Federal Supply Schedule Contracts by Non-Federal Entities	WR	WR					
P	552.239-70	539.7002(a)	Information Technology Security Plan and Security Authorization		WR		WR	WR		
C	552.239-71	539.7002(b)	Security Requirements for Unclassified Information Technology Resources		WR		WR	WR		
C	552.241-70	541.501(a)	Availability of Funds for the Next Fiscal Year or Quarter						R	
C	552.241-71	541.501(b)	Disputes (Utility Contracts)						R	
C	552.242-70	542.1107	Status Report of Orders and Shipments	WR				WR		
C	552.243-71	543.205	Equitable Adjustments			WR				
C	552.246-70	546.302-70	Source Inspection by Quality Approved Manufacturer	WR				WR		
C	552.246-71	546.302-71	Source Inspection by Government	WR				WR		
C	552.246-72	546.312	Final Inspection and Tests			WR		O		
C	552.246-77	546.710	Additional Contract Warranty Provisions for Supplies of a Noncomplex Nature	WR						
C	552.246-78	546.302-72	Inspection at Destination	WR						
P	552.252-5	552.107-70(a)	Authorized Deviations in Provisions	WR	WR	WR	WR	WR	WR	
C	552.252-6	552.107-70(b)	Authorized Deviations in Clauses	WR	WR	WR	WR	WR	WR	

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
P	552.270-1	570.702	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property							R
P	552.270-2	570.702	Historic Preference							R
P	552.270-3	570.702	Parties to Execute Lease							R
C	552.270-4	570.703	Definitions							R[1]
C	552.270-5	570.703	Subletting and Assignment							R
C	552.270-6	570.703	Maintenance of Building and Premises—Right of Entry							R
C	552.270-7	570.703	Fire and Casualty Damage							R
C	552.270-8	570.703	Compliance with Applicable Law							R
C	552.270-9	570.703	Inspection—Right of Entry							R
C	552.270-10	570.703	Failure in Performance							R
C	552.270-11	570.703	Successors Bound							R
C	552.270-12	570.703	Alterations							R
C	552.270-13	570.703	Proposals for Adjustment							R
C	552.270-14	570.703	Changes							R
C	552.270-15	570.703	Liquidated Damages							R
C	552.270-16	570.703	Adjustment for Vacant Premises							R
C	552.270-17	570.703	Delivery and Condition							R
C	552.270-18	570.703	Default in Delivery—Time Extensions							R
C	552.270-19	570.703	Progressive Occupancy							R
C	552.270-20	570.703	Payment							R
C	552.270-21	570.703	Effect of Acceptance and Occupancy							R
C	552.270-22	570.703	Default by Lessor During the Term							R
C	552.270-23	570.703	Subordination, Nondisturbance and Attornment							R
C	552.270-24	570.703	Statement of Lease							R
C	552.270-25	570.703	Substitution of Tenant Agency							R
C	552.270-26	570.703	No Waiver							R
C	552.270-27	570.703	Integrated Agreement							R

[1] Clauses prescribed in GSAR 570.703 are optional for acquisitions that do not exceed the simplified lease acquisition threshold.

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.270-28	570.703	Mutuality of Obligation							R
C	552.270-29	570.703	Acceptance of Space							R
C	552.270-30	570.703	Price Adjustment for Illegal or Improper Activity							WR
C	552.270-31	570.703	Prompt Payment.							WR
C	552.270-32	570.703	Covenant Against Contingent Fees.							WR
P	52.203-2	570.701(f)	Certificate of Independent Price Determination							WR
C	52.203-7	570.701(f)	Anti-Kickback Procedures							WR
P	52.203-11	570.701(e)	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions							WR
C	52.203-13	570.701(i)	Contractor Code of Business Ethics and Conduct							WR
C	52.204-14	570.701(i)	Display of Hotline Poster(s)							WR
P	52.204-3	570.701(a)	Taxpayer Identification							WR
P	52.204-5	570.701(f)	Women-Owned Business (Other Than Small Business)							WR
P	52.204-6	570.701(a)	Data Universal Numbering System Number							WR
P	52.204-7	570.701(a)	System for Award Management							WR
C	52.204-10	570.701(c)	Reporting Executive Compensation and First-Tier Subcontract Awards							WR
P	52.209-5	570.701(f)	Certification Regarding Responsibility Matters							WR
C	52.209-6	570.701(d)	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment							WR
C	52.215-2	570.701(f)	Audit and Records—Negotiation							WR
P	52.215-5	570.701(l)	Facsimile Proposals							WR
C	52.215-10	570.701(k)	Price Reduction for Defective Certified Cost or Pricing Data							WR
C	52.215-12	570.701(k)	Subcontractor Certified Cost or Pricing Data							WR
P	52.219-1	570.701(a)	Small Business Program Representations							WR
C	52.219-8	570.701(f)	Utilization of Small Business Concerns							WR

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	52.219-9	570.701(g)	Small Business Subcontracting Plan,							WR
C	52.219-16	570.701(g)	Liquidated Damages—Subcontracting Plan							WR
P	52.219-24	570.701(h)	Small Disadvantaged Business Participation Program—Targets							WR
C	52.219-25	570.701(h)	Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting							WR
C	52.219-26	570.701(m)	Small Disadvantaged Business Participation Program—Incentive Subcontracting							WR
C	52.219-28	570.701(a)	Post-Award Small Business Program Representation							WR
C	52.222-21	570.701(b)	Prohibition of Segregated Facilities							WR
P	52.222-22	570.701(b)	Previous Contracts and Compliance Reports							WR
P	52.222-24	570.701(i)	Preaward On-site Equal Opportunity Compliance Evaluation							WR
P	52.222-25	570.701(b)	Affirmative Action Compliance							WR
C	52.222-26	570.701(b)	Equal Opportunity							WR
C	52.222-35	570.701(b)	Equal Opportunity for Veterans							WR
C	52.222-36	570.601(a)	Equal Opportunity for Workers with Disabilities							WR
C	52.222-37	570.701(b)	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era							WR
C	52.223-6	570.701(f)	Drug-Free Workplace							WR
C	52.232-23	570.701(a)	Assignment of Claims							WR
C	52.232-33	570.701(a)	Payment by Electronic Funds Transfer-System for Award Management							WR
C	52.233-1	570.701(a)	Disputes							WR
P	52.233-2	570.701(f)	Service of Protest							WR

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PART 553 - FORMS

Sec.

Subpart 553.1 - General

553.101 Requirements for use of forms.
553.102 Current editions.
553.170 Establishing and revising GSA Forms.

Subpart 553.3 - Illustrations of Forms

553.300 Scope of subpart.
553.300-70 Forms not illustrated.

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PART 553 - FORMS

Subpart 553.1 - General

553.101 Requirements for use of forms.

Parts 501–552 and 570 prescribe the requirements for use of GSA forms illustrated or referenced in this part. You may identify the prescription as follows:

(a) *Forms available on-line*. The list of forms available on-line in 553.370-1 identifies the basic prescription for each referenced form.

(b) *Illustrated forms*. The prescription for each illustrated form is identified by a cross-reference shown on the illustration. When a form is mentioned in more than one place in this regulation, the section referenced on the illustration is the section that contains the basic prescription.

553.102 Current editions.

You must use the current edition of the forms identified in subpart 553.3 unless otherwise authorized under this regulation.

553.170 Establishing and revising GSA Forms.

(a) If two or more GSA Services or Offices use a GSA form, the Office of Acquisition Policy maintains the form.

(b) If only one GSA Service or Office uses a GSA form or if the form is used for a contract type unique to one Service or Office (e.g.,construction contracts), that Service or Office is responsible for maintaining the form.

(c) Any proposed new or revised GSA acquisition related form must be submitted to the Office of Acquisition Policy for review and concurrence.

Subpart 553.3 - Illustrations of Forms

553.300 Scope of subpart.

This subpart illustrates standard and GSA forms prescribed or referenced in Parts 501–551 and 570. Instructions on completing a form, if included, are identified by the suffix "I" after the GSAR section number.

553.300-70 Forms not illustrated.

This subpart does not illustrate either:

(a) Standard forms illustrated in the FAR.

(b) Forms available on-line. You can access the forms listed below at the location indicated.

FormNo.	Title	Reference	On-line Location
Standard Form 2	U.S. Government Lease for Real Property	570.801	https://gsa.gov/portal/forms/download/116150
GSA Form 72A	Contractor's Report of Sales	552.238-80	http://vsc.gsa.gov
GSA Form 276	Supplemental Lease Agreement	570.802(b)	https://gsa.gov/portal/forms/download/114618
GSA Form300	Order for Supplies and Services	513.302-70(b)	https://gsa.gov/portal/forms/download/114682
GSA Form300A	Order for Supplies and Services (Continuation)	513.302-70(a)(3)	https://gsa.gov/portal/forms/download/114686

FormNo.	Title	Reference	On-line Location
GSA Form 527	Contractor's Qualifications and Financial Information	509.105-1(a)	https://gsa.gov/portal/forms/download/115238
GSA Form1142	Release of Claims	532.905-70(b)	https://gsa.gov/portal/forms/download/114470
GSA Form 1364	Proposal to Lease Space	570.802(c)	https://gsa.gov/portal/forms/download/113998
GSA Form 1217	Lessor's Annual Cost Statement	570.802(d)	https://www.gsa.gov/portal/forms/download/114506
GSA Form 1378	Record of, and Receipt For, Bids and Responses	514.401(a)(4)	https://gsa.gov/portal/forms/download/114006
GSA Form 1458	Motor Vehicle Maintenance, Repair and Service Purchase Order	513.302-70(c)	https://gsa.gov/portal/forms/download/114046
GSA Form 1602	Notice Concerning Solicitation	514.201-70, 515.210-70	https://gsa.gov/portal/forms/download/114114
GSA Form 1678	Status Report of Orders and Shipments	552.242-70(a)	https://gsa.gov/portal/forms/download/114154
GSA Form 1766	Structured Approach Profit/Fee Objective	515.404-70(e)	https://www.gsa.gov/portal/forms/download/114218
GSA Form 2010	Small Purchase Tabulation Source List/ Abstract	513.106-3	https://gsa.gov/portal/forms/download/114266
GSA Form 2419	Certification of Progress Payments Under Fixed-Price Construction Contracts	532.111	https://gsa.gov/portal/forms/download/114386
GSA Form 2689	Small Business Analysis Record	519.502-70	https://gsa.gov/portal/forms/download/114598
GSA Form 3186	Order for Supplies or Services	513.302-70(d)	https://gsa.gov/portal/forms/download/252423
GSA Form3409	Personal Qualifications Statement for Appointment as Contracting Officer	501.603-2(e)(1)	https://gsa.gov/portal/forms/download/114850
GSA Form 3410	Request for Appointment	501.603-2	https://gsa.gov/portal/forms/download/114854
GSA Form 3471	Abstract of Offers	514.403(c)	https://gsa.gov/portal/forms/download/114898
GSA Form 3611	Source Selection Information Cover Page	503.104(b)(1)	https://gsa.gov/portal/forms/download/116730
GSA Form 3626	U.S. Government Lease for Real Property (Short Form)	570.802(a)	https://gsa.gov/portal/forms/download/115078

FormNo.	Title	Reference	On-line Location
GSA Form 3695	Mentor-Protégé Program Application	519.7009(a)	https://gsa.gov/portal/forms/download/117254
GSA Form 8002A	Motor Vehicle Requisition Status	513.302-70(d)	https://gsa.gov/portal/forms/download/119718

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SUBCHAPTER I - SPECIAL CONTRACTING PROGRAMS

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PART 570 - ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

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PART 570 - ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

Subpart 570.1 - General

570.101 Applicability.

(a) This part applies to acquisitions of leasehold interests in real property except:

(1) Leasehold interests acquired by the power of eminent domain or by donation.

(2) Acquisition of leasehold interests in bare or unimproved land.

(b) In addition, the GSAR rules in the table below apply. Other provisions of 48 CFR Chapter 5 (GSAR) do not apply to leases of real property unless specifically cross-referenced in this part 570.

GSAR Rules Applicable to Acquisitions of Leasehold Interests in Real Property			
501	515.209-70	519.12	536.271
502	515.305	522.805	537.2
503	517.202	522.807	552
509.4	517.207	538.270	553
514.407	519.7	533	

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in addition to the GSAR requirements identified in 570.101(b).

GSAM Applicable to Acquisitions of Leasehold Interests in Real Property

501	506	522.13	532.6
503	507	522.14	532.8
504.2	519.3	523.4	532.9
504.8	519.6	530	532.11
504.9	519.7	532.1	533
504.71	519.12	532.4	537.2
505			

(d) The FAR does not apply to leasehold acquisitions of real property. Where referenced in this part, FAR provisions have been adopted based on a statutory requirement applicable to such lease acquisitions or as a matter of policy, including, but not limited to "Federal agency procurement" as defined at FAR 3.104.

570.102 Definitions.

"ANSI/BOMA Office Area (ABOA)" means the area "where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed," as stated by the American National Standards Institute/Building Owners and ManagersAssociation(ANSI/BOMA)publication Z65.1-1996.

"Contract" means lease.

"Contractor" means lessor.

"Landlord" or "lessor" means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

"Lease" or "leasehold interest in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include operational services provided by the landlord.

"Lease acquisition" means the acquiring by lease of an interest in improved real property for use by the Government, whether the space already exists or must be constructed.

"Lease extension" means extension of the expiration date of a lease to provide for continued occupancy on a short term basis.

"Lease renewal" (option) means the right, but not the obligation of the Government to continue a lease upon specified terms and conditions, including lease term and rent.

"Lessee" or "tenant" means the United States of America.

"Operational services" means services that support use of a leased property, such as heating, ventilation, air conditioning, utilities, and custodial services.

"Simplified lease acquisition procedures" mean the procedures for awarding leases at or below the simplified lease acquisition threshold.

"Simplified lease acquisition threshold" means the simplified acquisition threshold (see FAR 2.101), when applied to the average annual amount of rent for the term of the lease, including option periods and excluding the cost of services.

"Small business" means a concern including affiliates, which is organized for profit, is independently-owned and operated, is not dominant in the field of leasing commercial real estate, and that has annual average gross receipts for the preceding three fiscal years which are less than the size standard established by the Small Business Administration pursuant to 13 CFR 121. The size standards may be found at https://www.sba.gov/content/small-business-size-standards. For most lease procurements, the NAICS code is 531190.

"Solicitation for Offers (SFO)" means a request for proposals.

"Substantially as follows" or "substantially the same as," when used in prescribing a provision or clause, means that the contracting officer may prepare and use a variation of that provision or clause to accommodate requirements peculiar to an individual acquisition. The variation must include the salient features of the FARor GSAR provision or clause. It must also be consistent with the intent, principle, and substance of the FARor GSAR provision or clause and related coverage on the subject matter.

"Succeeding lease" means a lease whose effective date immediately follows the expiration date of an existing lease for space in the same building.

"Superseding lease" means a lease that replaces an existing lease, prior to the scheduled expiration of the existing lease term.

570.103 Authority to lease.

(a) .The Administrator of General Services is authorized by 40 U.S.C. §585 to enter into a lease agreement for the accommodation of a Federal agency in a building (or improvement) which is in existence or being erected by the lessor for the accommodation of the Federal agency. The lease agreement may not bind the Government for more than 20 years.

(b) The contracting officer has exclusive authority to enter into and administer leases on the Government's behalf to the extent provided in the certificate of appointment as a contracting officer. Nothing in this paragraph is intended to limit the contracting officer's authority to designate, consistent with statute and regulation, a contracting officer's representative.

570.104 Competition.

Unless the contracting officer uses the simplified procedures in subpart 570.2, the competition requirements of FARPart6 apply to acquisition of leasehold interests in real property.

570.105 Methods of contracting.

570.105-1 Contracting by negotiation.

Contracting by negotiation is appropriate for acquiring space in a building through a lease contract. The contracting officer will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.

570.105-2 Criteria for the use of two-phase desgin-build.

The contracting officer may use the two-phase design-build selection procedures in 41 U.S.C. 253m for lease construction projects. This includes lease construction projects with options to purchase the real property leased. Use the procedures in 41 U.S.C. 253m and FAR 36.3 when the conditions in (a) and (b) below are met:

(a) The contracting officer anticipates that the lease will involve the design and construction of a building, facility, or work for lease to the Government.

(b) The contracting officer determines whether the procedures are appropriate for entering into a lease construction contract based on the following:

(1) The contracting officer expects to receive three or more offers.
(2) Offerors will need to perform design work before developing a price.
(3) Offerors will incur a substantial amount of expense in preparing offers.
(4) The contracting officer considers criteria such as the following:
(i) The extent to which the project requirements have been adequately defined.
(ii) The time constraints for delivery of the project.
(iii) The capability and experience of potential contractors.
(iv) The past performance of potential contractors.
(v) The suitability of the project for use of the two-phase selection procedures.
(vi) The capability of the agency to manage the two-phase selection process.
(vii) Other criteria established by the HCA.

(c) See 570.305 for additional information.

570.106 Advertising, publicizing, and notifications to Congress.

(a) If a proposed acquisition is not exempt under FAR 5.202 or GSAR 570.106(e), and is for a leasehold interest in real property estimated to exceed 10,000 square feet, then the contracting officer must publicize the proposed acquisition in http://www.FBO.gov.

(b) For leasehold acquisitions where the solicitation requires the construction of a new building on a preselected site, the contracting officer, in accordance with the timeframes established in FAR 5.203, must publicize the proposed acquisition in http://www.FBO.gov regardless of size or value.

(c) For leasehold acquisitions not subject to a square foot measurement (*e.g.*, antennas, piers, parking), contracting officers must publicize the proposed acquisition in http://www.FBO.gov when the contract action is expected to exceed $25,000, unless an exception under FAR 5.202 applies.

(d) Other than as identified in paragraphs (a) through (c) of this section, the contracting officer need not publicize the proposed acquisition of a leasehold interest in real property, including expansion requests within the scope of a lease (see 570.403), lease extensions under the conditions defined in 570.405, and building alterations within the scope of a lease (see 570.5). However, the contracting officer may publicize proposed lease acquisitions of any dollar value or square footage in http://www.FBO.gov or local newspapers if, in the opinion of the contracting officer, doing so is necessary to promote competition.

(e) The contracting officer may issue a consolidated advertisement for multiple leasing actions.

(f) Except as otherwise provided in paragraph (b) of this section, where publicizing of the proposed acquisition is required, the notice shall be published in http://www.FBO.gov not less than three calendar days prior to issuance of a solicitation.

(g) Except as otherwise provided in paragraph (b) of this section and as set forth in paragraphs (g) and (h) of this section, the contracting officer shall provide offerors not less than 20 calendar days between solicitation issuance and the date established for receipt of initial offers.

(1) For a proposed acquisition using simplified lease acquisition procedures (see 570.2), consider the individual acquisition and establish a reasonable response time.

(2) In cases of unusual and compelling urgency (FAR 6.303-2), provide as much time as reasonably possible under the circumstances and document the contract file.

(h) If a Member of Congress has specifically requested notification of award, the contracting officer must provide award notifications in accordance with 505.303.

570.106-1 Synopsis of lease awards.

(a) Except for lease actions described in paragraph (b) of this section, contracting officers must synopsize in http://www.FBO.gov awards exceeding $25,000 total contract value that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required if—

(1) The notice would disclose the occupant agency's needs and the disclosure of such needs would compromise the national security; or

(2) The lease—

(i) Is for an amount not greater than the simplified lease acquisition threshold;

(ii) Was made through a means where access to the notice of proposed lease action was provided through http://www.FBO.gov; and

(iii) Permitted the public to respond to the solicitation electronically.

(3) Justifications for other than full and open competition must be posted in http://www.FBO.gov. Information exempt from public disclosure must be redacted.

570.107 Oral presentations.

The contracting officer may require oral presentations for acquisitions of leasehold interests in real property. Follow the procedures in FAR15.102.

570.108 Responsibility determination.

(a) Determine that the prospective awardee is responsible with respect to the lease under consideration. The standards in FAR9.104 apply. As part of the determination that a prospective contractor is otherwise qualified and eligible for award, review exclusions in the System for Award Management (SAM).

(b) The contracting officer's signature on the contract is deemed an affirmative determination.

(c) If the contracting officer finds an offeror nonresponsible, sign and place in the contract file a determination of nonresponsibility. State the basis for the determination.

(d) If the contracting officer finds a small business concern nonresponsible, the procedures at FAR19.6 apply. Place all documents and reports supporting a determination of responsibility or nonresponsibility in the lease file.

570.109 Certifications.

Before awarding a lease, review applicable representations and certifications for compliance with statute and regulations.

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

(a) The policies and procedures of FAR15.403 apply to lease contract actions.

(b) FAR 15.403-1 defines exceptions to and waivers for submitting cost or pricing data. Most leasing actions will have adequate price competition. For price analysis of offered rental rates, the contracting officer may use a market survey, an appraisal conducted using accepted real property appraisal procedures to establish a market price for comparison, or other relevant market research data. For price analysis of offered tenant improvement costs, obtain two offers or cost and pricing data.

(c) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived under FAR15.403-1(c)(4).

(d) If cost or pricing data are required, follow the procedures in FAR15.403-4 and 15.406-2.

570.111 Inspection and acceptance.

Before accepting the space, the contracting officer must verify that the space complies with the Government's requirements and specifications and document this in an inspection report. The inspection and acceptance document must contain the square footage accepted and the acceptance date. Include the inspection and acceptance in the contract file. When space such as piers, antennas, and parking are leased, square footage may not be the manner in which the amount of space is specified; therefore, document that the space complies with the Government's written requirements.

570.112 Awards to Federal employees.

If the contracting officer receives an offer from an officer or employee of the Government, follow the procedures in FAR3.6.

570.113 Disclosure of mistakes after award.

If a mistake in a lessor's offer is discovered after award, the contracting officer should process it substantially in accordance with FAR 14.407-4 and GSAM 514.407-4.

570.114 Protests.

FAR 33.1 and 533.1 apply to protests of lease acquisitions.

570.115 Novation and change of ownership.

In the event of a transfer of ownership of the leased premises or a change in the lessor's legal name, FAR 42.12 applies.

570.116 Contract format.

The uniform contract format is not required for leases of real property.

570.117 Sustainable requirements for lease acquisition.

Contracting officers must include sustainable design requirements appropriate for the type of leasing action in the solicitations for offers. Contracting officers can find solicitation requirements and instructions on http://www.gsa.gov/leasing under Leasing Policies and Procedures, Green Leasing, and in the Leasing Desk Guide to assist them in complying with GSA's sustainable requirements identified in this part.

(a) *Pre-Award Procedures*. The contracting officer must ensure that the sustainable requirements within the lease templates are included in the awarded lease as specified by the PBS Leasing Desk Guide. Review Chapter 18 of the PBS Leasing Desk Guide at http://insite.gsa.gov/sustainableacquisition for guidance on ensuring sustainable requirements are included in leases.

(b) *Post-Award, Pre-Occupancy Procedures.*

(1) *Sustainability Procedures.* For specific post-award sustainability procedures, review Chapter 18 of the PBS Leasing Desk Guide at http://insite.gsa.gov/sustainableacquisition.

(2) *Receipt of Sustainable Products and Services.*

(i) The contracting officer must take reasonable steps to validate any required sustainable products and/or services are received. Review the best available evidence of compliance such as manufacturer product documentation, design submittals, or green lease submittals to ensure the lessor is providing required sustainable products and services.

(ii) The contracting officer must note any discrepancies with sustainable requirements in the lease and provide feedback to the lessor.

(iii) When choosing what documents to review during sustainability compliance reviews, random sampling techniques can be utilized to limit the number of documents/evidence being reviewed. Staff/Service Offices may prioritize which products and/or services to focus on in their compliance reviews. For specific best practices in verifying evidence of compliance, review the Verification Guide for Purchasers of Sustainable Products at http://insite.gsa.gov/sustainableacquisition.

(c) *Post-Occupancy Procedures.* The contracting officer must take reasonable steps to validate the lessor complies with all post-occupancy sustainable requirements in the lease. Review the Lease Management Desk Guide at http://insite.gsa.gov/sustainableacquisition for guidance on monitoring and documenting lessor compliance with all post-occupancy sustainable requirements.

(d) *Sustainability Exceptions.* If at any point during a real property lease acquisition the contracting officer determines that one of the mandatory sustainable requirements should not be included in the lease due to an allowable exception, the contracting officer must follow any applicable procedures as stated within the PBS Leasing Desk Guide at http://insite.gsa.gov/sustainableacquisition.

(e) *Compliance Monitoring and Reporting.*

(1) *Review Process.* The PBS Leasing Office is responsible for lease compliance monitoring to determine compliance with the sustainable acquisition criteria specified in . The PBS Leasing Office is responsible for coordinating these reviews with the GSA Office of Acquisition Policy. PBS Leasing Office is required to submit the results of these reviews to the GSA Office of Acquisition Policy. GSA Office of Acquisition Policy is required to monitor and report sustainable acquisition activity to the GSA Chief Sustainability Officer in support of the agency's semiannual status report to Office of Management and Budget.

(2) *Determining Compliance*. See the GSA Sustainable Acquisition Review Criteria document at http://insite.gsa.gov/sustainableacquisition for the specific criteria that will be used to determine compliance with sustainable acquisition reviews.

570.117-1 Federal leadership in environmental, energy, and economic performance.

In order to create a clean energy economy that will increase our Nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, GSA will accomplish all requirements of E.O. 13514 that apply to lease acquisition.

570.117-2 Guiding principles for federal leadership in high performance and sustainable buildings.

GSA is committed to the design, construction, operation, and maintenance of leased space that comply with all of the following Guiding Principles:

(a) Employ Integrated Design Principles;
(b) Optimize Energy Performance;
(c) Protect and Conserve Water;
(d) Enhance Indoor Environmental Quality; and
(e) Reduce the Environmental Impact of Building Materials.

Subpart 570.2 - Simplified Lease Acquisition Procedures

570.201 Purpose.

This subpart prescribes simplified procedures for small leases. These procedures reduce administrative costs, while improving efficiency and economy, when acquiring small leasehold interests in real property.

570.202 Policy.

Use simplified lease acquisition procedures to the maximum extent practicable for actions at or below the simplified lease acquisition threshold.

570.203 Procedures.

570.203-1 Market survey.

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations that will meet the Government's requirements.

570.203-2 Competition.

(a) To the maximum extent practicable, the contracting officer must solicit at least three sources to promote competition. If there are repeated requirements for space in the same market, invite two sources, if practicable, that are not included in the most recent solicitation to submit offers.

(b) If the contracting officer solicits only one source, document the file to explain the lack of competition.

570.203-3 Soliciting offers.

(a) The contracting officer must solicit offers by providing each prospective offeror a proposed short form lease GSA Form 3626 or SFO. The short form lease or SFO must:

(1) Describe the Government's requirements.
(2) List all award factors, including price or cost, and any significant subfactors that the contracting officer will consider in awarding the lease.
(3) State the relative importance of the evaluation factors and subfactors.
(4) State whether all evaluation factors other than cost or price, when combined, are either:
(i) Significantly more important than cost or price.
(ii) Approximately equal in importance to cost or price.
(iii) Significantly less important than cost or price.
(5) Include either in full text or by reference, applicable FAR provisions and contract clauses required by 570.6.
(6) Include sustainable design requirements.

(b) As necessary, review with prospective offerors the Government's requirements, pricing matters, evaluation procedures and submission of offers.

570.203-4 Negotiation, evaluation, and award.

(a) If the contracting officer needs to conduct negotiations, use the procedures in 570.307.

(b) Evaluate offers in accordance with the solicitation. Evaluate prices and document the lease file to demonstrate whether the proposed contract prices are fair and reasonable. See 570.110.

(c) If the total price, including options, exceeds the amount established by FAR 15.403-4, consider whether the contracting officer needs cost and pricing data to determine that the price is fair and reasonable. In most cases, the exceptions at FAR 15.403-1 will apply.

(d) Regardless of the process used, the contracting officer must determine whether the price is fair and reasonable.

(e) If the total contract value of the lease, including options, will exceed the amount established by FAR 19.702(a), the proposed awardee must provide an acceptable small business subcontracting plan. This requirement does not apply if the proposed awardee is a small business concern.

(f) Make award to the responsible offeror whose proposal represents the best value to the Government considering price and other factors included in the solicitation.

Subpart 570.3 - Acquisition Procedures for Leasehold Interests in Real Property Over the Simplified Lease Acquisition Threshold

570.301 Market survey.

Conduct a market survey to identify potential sources. Use information available in GSA or from other sources to identify locations capable of meeting the Government's requirements.

570.302 Description of requirements.

(a) The description of requirements depends on the nature of the space the agency needs and the market available to satisfy that need.

(b) The description of requirements must include all the following:

(1) A statement of the purpose of the lease.

(2) Functional, performance, or physical requirements.

(3) Any special requirements.

(4) The delivery schedule.

(c) The description must promote full and open competition. Include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs or as authorized by law.

570.303 Solicitation for offers.

570.303-1 Preparing the SFO.

The SFO forms the basis for the lease negotiation process and becomes part of the lease. Document each SFO in writing or electronically. Include the information necessary to enable prospective offerors to prepare proposals. Each SFO, at a minimum, must:

(a) Describe the Government's requirements.

(b) State the method the Government will use to measure space.

(c) Explain how to structure offers.

(d) Specify a date, time, and place for submission of offers.

(e) Explain how the Government will evaluate offers.

(f) Describe the source selection procedures the Government will use.

(g) Include a statement outlining the information the Government may disclose in debriefings.

(h) Include appropriate forms prescribed in Subpart 570.8.

(i) Include sustainable design requirements.

570.303-2 Issuing the SFO.

Release the SFO to all prospective offerors at the same time. The SFO may be released electronically.

570.303-3 Late offers, modifications of offers, and withdrawals of offers.

Follow the procedures in FAR15.208.

570.303-4 Changes to SFOs.

(a) If the Government's requirements change, either before or after receipt of proposals, issue an amendment. Document the amendment using the same method as for the SFO, written or electronic.

(b) If time is critical, you may provide information on SFO amendments orally.

(1) Make a record of the information provided.

(2) Provide, or attempt to provide, the notice to all offerors or prospective offerors on the same day.

(3) Promptly confirm the information provided orally in a written amendment.

(c) Distribute an amendment as follows:

(1) If before the proposal due date, send the amendment to all prospective offerors who were sent a copy of the SFO.

(2) If after proposal receipt, send the amendment to each offeror who submitted a proposal.

(d) If an amendment is so substantial that it requires a complete revision of the SFO, cancel the SFO, readvertise if required by 570.106, and issue a new SFO.

(e) If there are changes to the Government's requirements for amount of space, delineated area, occupancy date, and/or other major aspects of the requirements, the contracting officer shall consider whether there is a need to readvertise, and to document the file accordingly.

570.304 General source selection procedures.

(a) These procedures apply to acquisitions of leasehold interests except if the contracting officer uses one of the following:

(1) Simplified lease acquisition procedures authorized by 570.2.

(2) Two-phase design-build selection procedures authorized by 570.105-2.

(b) The contracting officer is designated as the source selection official unless the HCA appoints another individual for a particular leasing action or group of leasing actions.

(c) In a trade off procurement, the contracting officer must include price or cost to the Government, past performance, the planned participation of small disadvantaged business concerns in performance of the contract, and other factors as required by FAR 15.304 as evaluation factors. The contracting officer may include other evaluation factors as needed.

(d) The evaluation factors and significant subfactors must comply with FAR 15.304 and either one of the following:

(1) FAR 15.101-1 if the contracting officer will use the tradeoff process.

(2) FAR 15.101-2 if the contracting officer will use the lowest price technically acceptable source selection process.

570.305 Two-phase design-build selection procedures.

(a) These procedures apply to acquisitions of leasehold interests if the contracting officer uses the two-phase design-build selection procedures authorized by 570.105-2. Follow FAR 36.3.

(b) The SFO must include all the following information:

(1) The Scope of Work.

(2) The evaluation factors and subfactors to be used in evaluating phase-one proposals and their relative importance.

(3) The maximum number of offerors to be selected to submit competitive proposals in phase-two.

(4) The evaluation factors, including cost or price, and subfactors to be used in evaluating phase-two proposals and selecting the successful offeror, and their relative importance.

(c) The following procedures apply to phase-one evaluation factors:

(1) Phase one factors include:

(i) Specialized experience and technical competence.

(ii) Capability to perform.

(iii) Past performance of the offeror's team (including architect-engineer and construction members of the team).

(iv) The planned participation of small disadvantaged business concerns in performance of the contract.

(v) Other appropriate factors, such as site or location.

(2) The contracting officer shall not require offerors to submit detailed design information or cost or price information in phase one. The contracting officer shall not use cost related or price related evaluation factors.

(d) The contracting officer shall set the maximum number of offerors to be selected for phase-two to not exceed five unless the contracting officer determines that a number greater than five is both:

(1) In the government's interest.

(2) Consistent with the purpose and objectives of the two-phase selection process.

(e) In phase-two, require detailed technical and price proposals. Evaluate the proposals using the procedures in 570.306.

570.306 Evaluating offers.

(a) The contracting officer must evaluate offers solely in accordance with the factors and subfactors stated in the SFO.

(b) Evaluate prices and document the lease file to demonstrate that the proposed contract price is fair and reasonable. The contracting officer must review the elements of the offeror's proposed rent to analyze whether the individual elements are realistic and reflect the offeror's clear understanding of the work to be performed. The contracting officer must discuss any inconsistencies with the offeror. If the offeror refuses to support or make any changes to the rent proposed, consider the risk to the Government prior to making any lease award.

(c) Evaluate past performance on previous lease projects in accordance with 515.305 and FAR 15.305(a)(2). Obtain information through:

(1) Questionnaires tailored to the circumstances of the acquisition;

(2) Interviews with program managers or contracting officers;

(3) Other sources; or

(4) Past performance information collected under FAR 42.15 and available through the Past Performance Information Retrieval System (PPIRS) at http://www.ppirs.gov.

(d) The contracting officer may obtain information to evaluate an offeror's past performance on subcontracting plan goals and small disadvantaged business participation, monetary targets, and notifications under FAR 19.1202-4(b) from the following sources:

(1) The Small Business Administration;

(2) Information on prior contracts from contracting officers and administrative contracting officers;

(3) Offeror's references; and

(4) Past performance information collected under FAR 42.15 and available through PPIRS.

(e) Document the evaluation of award factors other than price listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings.

(f) Also see the requirements in 570.108, 570.109 and 570.111.

570.307 Negotiations.

(a) Follow the procedures in FAR15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, discussions, and revisions).

(b) Place a written record of all exchanges in the lease file.

(c) Provide prompt written notice to any offeror excluded from the competitive range or otherwise eliminated from the competition in accordance with FAR15.503(a).

570.308 Award.

(a) Make award to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the SFO.

(b) Make award in writing and in the timeframe specified in the SFO.

(1) If the contracting officer cannot make an award in that time, request in writing from each offeror an extension of the acceptance period through a specific date.

(2) If time is critical, the contracting officer may request the extensions orally. The contracting officer must make a record of the request and confirm it promptly in writing.

(c) Notify unsuccessful offerors in writing or electronically in accordance with FAR 15.501 and 15.503(b).

(d) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

570.309 Debriefings.

The procedures of FAR15.505 and 15.506 apply to leasing actions.

Subpart 570.4 - Special Aspects of Contracting for Continued Space Requirements

570.401 Renewal options.

(a) *Exercise of options*. Before exercising an option to renew, follow the procedures in 517.207. The contract must first provide the right to renew the lease. If a renewal option was not evaluated as part of the lease at award, then the addition of a renewal option during the lease term must satisfy the requirements of GSAM 506 regarding full and open competition.

(b) *Market information review*. Before exercising an option to renew a lease, review current market information to determine that the rental rate in the option is fair and reasonable.

570.402 Succeeding leases.

570.402-1 General.

(a) If a succeeding lease for the continued occupancy of space in a building does not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified procedures in 570.2. Explain the absence of competition in the contract file.

(b) If a succeeding lease will exceed the simplified lease acquisition threshold, the contracting officer may enter into the lease under either of the following conditions:

(1) The contracting officer does not identify any potential acceptable locations.

(2) The contracting officer identifies potential acceptable locations, but a cost-benefit analysis indicates that award to an offeror other than the present lessor will result in substantial relocation costs or duplication of costs to the Government, and the Government cannot expect to recover such costs through competition.

570.402-2 Publicizing/Advertising.

The contracting officer must publish a notice if required by 570.106. The notice should:

(a) Indicate that the Government's lease is expiring.

(b) Describe the requirements in terms of type and quantity of space.

(c) Indicate that the Government is interested in considering alternative space if economically advantageous, and that otherwise the Government intends to pursue a sole source acquisition.

(d) Advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate.

(e) Provide a contact person for those interested in providing space to the Government.

570.402-3 Market survey.

Conduct a market survey following 570.301.

570.402-4 No potential acceptable locations.

If the contracting officer does not identify any potential acceptable locations through the advertisement or the market survey, prepare a written justification to negotiate directly with the present lessor. Fully document the efforts to locate alternative sources. Prepare the justification and obtain approval following FAR6.3 and 506.3.

570.402-5 Potential acceptable locations.

If the contracting officer identifies potential acceptable locations through the advertisement or market survey, conduct a cost-benefit analysis following the procedures 570.402-6. Based on the results of the cost-benefit analysis, take appropriate action as follows:

(a) If the cost-benefit analysis indicates that the Government will recover relocation costs and duplication of costs through competition, develop an SFO and negotiate with all interested parties following 570.3.

(b) If the cost-benefit analysis indicates that the Government cannot expect to recover relocation costs and duplication of costs through competition, prepare a justification for approval in accordance with FAR6.3 and 506.3. Explain both:

(1) How the contracting officer performed the cost-benefit analysis.

(2) That the cost-benefit analysis indicates that award to any other offeror will likely result in substantial costs to the Government that the Government cannot expect to recover through competition.

570.402-6 Cost-benefit analysis.

(a) The cost-benefit analysis must consider all the following:

(1) The prices of other potentially available properties.

(2) Relocation costs, including estimated costs for moving, telecommunications, and alterations, amortized over the firm term of the lease.

(3) Duplication of costs to the Government.

(4) Other appropriate considerations.

(b) Establish the prices for other potentially available properties by requesting each prospective offeror to provide an informational quotation for standard space for comparison purposes.

(1) Adjust the prices quoted for standard space for any special requirements.

(2) You do not need a formal SFO to obtain the informational quotation. However, you must provide a general description of the Government's needs.

(3) If you obtain oral quotations, document the following information, as a minimum:

(i) Name and address of the firm solicited.

(ii) Name of the firm's representative providing the quote.

(iii) Price(s) quoted.

(iv) Description of the space and services for which the quote is provided.

(v) Name of the Government employee soliciting the quotation.

(vi) Date of the conversation.

(4) Compare the informational quotations to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease.

570.403 Expansion requests.

(a) If the expansion space is in the general scope of the lease, the contracting officer may acquire the space through a modification without further justification under FAR6.3.

(b) If the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to meet the expansion requirement and existing tenancy to the requirement by competitive means.

(1) Conduct a market survey to determine the availability of suitable alternative locations.

(2) If you identify alternate locations that can satisfy the total requirement, perform a cost-benefit analysis to determine whether it is in the Government's best interest to relocate. Consider, as appropriate:

(i) The cost of the alternate space compared to the cost of expanding at the existing location.

(ii) The cost of moving.

(iii) The cost of duplicating existing improvements.

(iv) The cost of the unexpired portion of the firm lease term. If a termination is possible, use the actual cost of such an action.

(v) The cost of disruption to the agency's operation.

(c) If the contracting officer determines not to use competitive procedures and the expansion space is outside the general scope of the lease:

(1) If the estimated value of the acquisition does not exceed the simplified lease acquisition threshold, document the file as required by 570.203-2.

(2) If the estimated value of the acquisition exceeds the simplified lease acquisition threshold, prepare a justification for approval under FAR6.3 and 506.3.

570.404 Superseding leases.

(a) Consider executing a superseding lease to replace an existing lease when the Government needs numerous or detailed modifications to the space that would cause complications or substantially change the present lease or when market conditions warrant renegotiation of an existing lease.

(b) If the value of the superseding lease exceeds the simplified lease acquisition threshold, the justification and approval requirements in FAR6.3 and 506.3 apply. If the cost does not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified procedures in 570.2 and explain the absence of competition in the file.

570.405 Lease extensions.

(a) This subsection applies to extension of the term of a lease to provide for continued occupancy on a short term basis.

(b) If the value of a lease extension will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR6.3 and 506.3 apply. For extensions that will not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified procedures in 570.2 and explain the absence of competition in the file.

(c) FAR6.302-1 permits contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may apply to lease extensions in situations such as, but not limited to, the following:

(1) The agency occupying the leased space is scheduled to move into other Federally controlled space, but encounters unexpected delays in preparing the new space for occupancy.

(2) The Government encounters unexpected delays outside of its control in acquiring replacement space.

(3) The Government is consolidating various agencies and the contracting officer needs to extend the terms of some leases to establish a common expiration date.

(4) The agency occupying the space has encountered delays in planning for a potential relocation to other federally controlled space due to documented organizational, financial, or other uncertainties.

Subpart 570.5 - Special Aspects of Contracting for Lease Alterations

570.501 General.

(a) The procedures in 570.502 apply to alterations acquired directly from a lessor by modification or supplemental lease agreement. This is allowed if the following conditions are met:

(1) The alterations fall within the scope of the lease. Consider whether the work can be regarded fairly and reasonably as part of the original lease requirement.

(2) The lessor is willing to perform the proposed alterations at a fair and reasonable price.

(3) It is in the Government's interest to acquire the alterations from the lessor.

(b) If proposed alterations are outside the scope of the existing lease, decide whether to acquire the alterations through either:

(1) A supplemental lease agreement, as justified and approved under 570.502-1.

(2) Government performance or a separate contract. The lease must first provide the Government with the right to perform alterations to the leased space.

570.502 Alterations by the lessor.

570.502-1 Justification and approval requirements.

If the proposed alterations are outside the general scope of the lease and the contracting officer plans to acquire them from the lessor without competition, the following justification and approval requirements apply:

(a) If the alteration project will not exceed the micro-purchase threshold identified in FAR 2.101(b), no justification and approval is required.

(b) If the alteration project will exceed the micro-purchase threshold identified in FAR 2.101(b), but not the simplified lease acquisition threshold, the contracting officer may use simplified acquisition procedures and explain the absence of competition in the file.

(c) If the alteration project will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply.

570.502-2 Procedures.

(a) *Scope of work*. The contracting officer must prepare a scope of work for each alteration project.

(b) *Independent Government estimate*. The contracting officer must obtain an independent Government estimate for each alteration project, including changes to existing alteration agreements with the lessor.

(c) *Request for proposal*.

(1) The contracting officer must provide the scope of work to the lessor, including any plans and specifications, and request a proposal.

(2) The contracting officer must request sufficient cost or price information to permit a price analysis.

(d) *Audits*. If the contracting officer requires cost or pricing data and the alteration project will exceed the threshold identified in FAR 15.403-4, request an audit.

(e) *Proposal evaluation*.The contracting officer must—

(1) Determine if the proposal meets the Government's requirements.

(2) Analyze price or cost information. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit results received.

(3) Analyze profit following FAR 15.404-4.

(4) Document the analysis under this paragraph and the resulting negotiation objectives.

(f) *Price negotiations*. The contracting officer must—

(1) Exercise sound judgment. Make reasonable compromises as necessary.

(2) Provide the lessor with the greatest incentive for efficient and economical performance.

(3) Document negotiations in the contract file, including discussions regarding restoration cost or waiver of restoration cost.

(g) *Order*. For modifications not exceeding the simplified acquisition threshold, lease contracting officers may delegate alteration contracting authority to a warranted contracting officer's representative in GSA or the tenant agency. Alterations awards must reference the lease number. If the modification does not exceed the simplified acquisition threshold, the contracting officer may use GSA Form 300, Order for Supplies or Services. Reference the lease on the form.

(h) *Inspection and payment*. The contracting officer must not make final payment for alterations until the work is:

(1) Inspected by a qualified Government employee or independent Government contractor.

(2) Confirmed as completed in a satisfactory manner.

570.503 Alterations by the Government or through a separate contract.

If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:

(a) Have Federal employees perform the work.

(b) Contract out the work using standard contracting procedures that apply to a construction contract performed on Federal property. If the Government decides to contract for the work, invite the lessor, as well as all other prospective contractors, to submit offers for the project.

Subpart 570.6 - Contracting for Overtime Services and Utilities in Leases

570.601 General.

(a) Lease tenant agencies may need overtime services and utilities on a regular or intermittent basis. Lease contracting officers may negotiate overtime rates for services and utilities and include those rates in leases where a need is projected. Only lease contracting officers may negotiate overtime rates.

(b) An independent government estimate is required in support of the negotiated rate.

(c) *Order*. To order overtime services and utilities, if the order does not exceed the simplified acquisition threshold, a warranted contracting officer's representative, in GSA or the tenant agency, may place an order. The order must reference the lease number.

(d) *Payment*. Do not make final payment for services and utilities until confirmed as delivered in a satisfactory manner.

Subpart 570.7 - Solicitation Provisions and Contract Clauses

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

If…	Then include…
the estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101	52.204-3 Taxpayer Identification. 52.204-6 Data Universal Numbering System (DUNS) Number. 52.204-7 System for Award Management. 52.219-1 Small Business Program Representations. 52.219-28 Post-Award Small Business Program Rerepresentation (use if lease term exceeds. five years). 52.232-23 Assignment of Claims. 52.232-33 Payment by Electronic Funds Transfer-System for Award Management. 52.233-1 Disputes.
the estimated value of the acquisition exceeds $10,000	52.222-21 Prohibition of Segregated Facilities. 52.222-22 Previous Contracts and Compliance Reports. 52.222-25 Affirmative Action Compliance. 52.222-26 Equal Opportunity. 52.222-35 Equal Opportunity for Veterans. 52.222-36 Equal Opportunity for Workers with Disabilities. 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
the estimated value of the acquisition is $25,000 or more (not applicable to individuals)	52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.
the estimated value of the acquisition exceeds the threshold identified in FAR 9.409(b)	52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
the estimated value of the acquisition exceeds $100,000	52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
The estimated value of the acquisition exceeds the simplified lease acquisition threshold.	52.203-2 Certificate of Independent Price Determination. 52.203-7 Anti-Kickback Procedures. 52.204-5 Women-Owned Business (Other than Small Business). 52.209-5 Certification Regarding Responsibility Matters. 52.215-2 Audit and Records-Negotiation. 52.219-8 Utilization of Small Business Concerns. 52.223-6 Drug-Free Workplace. 52.233-2 Service of Protest.
the estimated value of the acquisition exceeds the threshold identified in FAR 19.708(b)	52.219-9 Small Business Subcontracting Plan. 52.219-16 Liquidated Damages-Subcontracting Plan.

If…	Then include…
the estimated value of the acquisition the estimated value of the acquisition exceeds the threshold identified in FAR 19.1202-2(a) and the contracting officer is using a best value trade off analysis in an acquisition includes an evaluation factor that considers the extent of participation of small disadvantaged business concerns in accordance with FAR 19.12.	52.219-24 Small Disadvantaged Business Participation Program-Targets. 52.219-25 Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting.
the value of the contract is expected to exceed $5 million and the performance period is 120 days or more.	52.203-13 Contractor Code of Business Ethics and Conduct. 52.203-14 Display of Hotline Poster(s).
the estimated value of the acquisition exceeds $10 million.	52.222-24 Pre-award On-site Equal Opportunity Compliance Evaluation.
the contracting officer requires cost or pricing data for work or services exceeding the threshold identified in FAR 15.403-4	52.215-10 Price Reduction for Defective Certified Cost or Pricing Data. 52.215-12 Subcontractor Certified Cost or Pricing Data.
the contracting officer authorizes submission of facsimile proposals	52.215-5 Facsimile Proposals.
negotiated acquisition provides monetary incentives based on actual achievement of small disadvantaged business subcontracting targets under FAR 19.1203 and 519.1203.	52.219-26 Small Disadvantaged Business Participation Program-Incentive Subcontracting.

570.702 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless the contracting officer determines that the provision is not appropriate. However, document the file with the basis for deleting or substantially changing a clause.

552.270-1	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property. Use Alternate I if you decide that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for award. Use Alternate II if the Government intends to award without discussions. These two alternates are not exclusive.
552.270-2	Historic Preference.
552.270-3	Parties to Execute Lease.

570.703 GSAR contract clauses.

(a) Insert clauses substantially the same as the following in solicitations and contracts for leasehold interests in real property that exceed the simplified lease acquisition threshold, unless the contracting officer determines that a clause is not appropriate. However, document the file with the basis for deleting or substantially changing a clause. A deviation is not required under section 570.704 to determine that a clause in this section is not appropriate. Use the clauses at your discretion in actions at or below the simplified lease acquisition threshold.

552.215-70	Examination of Records by GSA.
552.270-4	Definitions. You must use this clause if you use 552.270-28.
552.270-5	Subletting and Assignment.
552.270-6	Maintenance of Building and Premises—Right of Entry.
552.270-7	Fire and Casualty Damage.
552.270-8	Compliance with Applicable Law.
552.270-9	Inspection—Right of Entry.
552.270-10	Failure in Performance.
552.270-11	Successors Bound.
552.270-12	Alterations.
552.270-13	Proposals for Adjustment.
552.270-14	Changes.
552.270-15	Liquidated Damages. Insert this clause in solicitations and contracts if you have a critical requirement to meet the delivery date and you cannot establish an actual cost for the loss to the Government resulting from late delivery.
552.270-16	Adjustment for Vacant Premises.
552.270-17	Delivery and Condition.
552.270-18	Default in Delivery—Time Extensions.
552.270-19	Progressive Occupancy.
552.270-20	Payment.
552.270-21	Effect of Acceptance and Occupancy.
552.270-22	Default by Lessor During the Term.
552.270-23	Subordination, Nondisturbance and Attornment.
552.270-24	Statement of Lease.
552.270-25	Substitution of Tenant Agency.
552.270-26	No Waiver.
552.270-27	Integrated Agreement.
552.270-28	Mutuality of Obligation.
552.270-29	Acceptance of Space.

(b) Include the following provisions and clauses in leasehold interests in real property.

552.270-30	Price Adjustment for Illegal Improper Activity.
552.270-31	Prompt Payment.
552.270-32	Covenant Against Contingent Fees.

570.704 Deviations to provisions and clauses.

(a) The contracting officer needs a deviation approved under Subpart 501.4 to omit any required provision or clause.

(b) The contracting officer also needs an approved deviation to modify the language of a provision or clause mandated by statute *(e.g.*, FAR 52.215-2, Audit and Records—Negotiation). The authorizing statute must allow for a waiver.

(c) Certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them. For example, FARs 52.222-26, Equal Opportunity; 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222-36, Affirmative Action for Workers with Disabilities, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease.

Subpart 570.8 - Forms

570.801 Standard forms.

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless the contracting officer uses GSA Form 3626 (see 570.802).

570.802 GSA forms.

(a) The contracting officer may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if using the simplified leasing procedures in Subpart 570.2 or if the contracting officer determines it advantageous to use the form.

(b) The contracting officer may use GSA Form 276, Supplemental Lease Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) The contracting officer may use GSA Form 1364, Proposal To Lease Space, to obtain offers from prospective offerors.

(d) The contracting officer may use GSA Form 1217, Lessor's Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

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PART 571 - PILOT PROGRAM FOR INNOVATIVE COMMERCIAL ITEMS

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PART 571 - PILOT PROGRAM FOR INNOVATIVE COMMERCIAL ITEMS

Subpart 571.1 - General

571.101 Scope.

(a) This part establishes a pilot program to competitively procure innovative commercial items, including products, technologies, and services using the commercial solutions opening (CSO) procedure authorized by section 880 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L.114-328).

(b) The competitive selection from a general solicitation and the peer review of such solution briefs by scientific, technological, or other subject matter experts within the U.S. Government is considered to be a competitive procedure.

(c) Procurements under the CSO Pilot Program must be compliant with the requirements in this part and the requirements in the GSA Procurement Innovation Resource Center (PIRC) CSO Guide available at https://www.gsa.gov/pirc.

571.102 Purpose.

GSA has developed this pilot program to be implemented outside the normal Federal Acquisition Regulations requirements to engage traditional and non-traditional Government contractors, including start-up companies. This program is intended to promote competition with a streamlined approach to address specific needs for innovative commercial items. This program offers a range of advantages to start-up companies and others who may not have significant work experience with the U.S. Government, including—

(a) Streamlined solicitation requiring only minimal corporate and technical information;

(b) Fast track vendor selection timelines;

(c) Simplified contract administration procedures and requirements; and

(d) Preference for the vendor retaining core intellectual property, as appropriate.

571.103 Definitions.

As used in this part—

"Agency Acquisition Innovation Advocates" are the GSA Acquisition Officials nominated by the Senior Procurement Executive and serving on the Office of Management and Budget Acquisition Innovation Council.

"Commercial solutions opening (CSO)" is a competitive procedure for acquiring innovative commercial items, including products, technologies, and services through a competitive selection of solution briefs resulting from a general solicitation and peer review of such solution briefs.

(a) "Innovative" —

(1) Means any item that is—

(i) A new technology, process, or method as of the date of submission of a solution brief; or

(ii) A new application or adaptation of an existing technology, process, or method as of the date of submission of a solution brief.

(2) Includes existing items within the production/commercialization phase (i.e. after design or development, and before widespread government or commercial adoption) as well as new adaptations of existing commercial items.

"Peer Review" means a process where scientific, technological, or other subject matter experts within the U.S. Government evaluate solution briefs submitted against specified selection criteria.

"Solution Brief" means a solution proposed by an offeror in response to a solicitation issued using the CSO procedure.

Subpart 571.2 - Pilot Program

571.201 Approval Process.

GSA contracting officers must receive approval in accordance with the procedures provided within the GSA PIRC CSO Guide to utilize the CSO procedure under this part to enter into contracts to fulfill requirements, capability gaps, or procure potential technological advancements. Only those acquisitions approved by an Agency Acquisition Innovation Advocate may be conducted under the CSO procedure.

571.202 Restrictions.

(a) The CSO procedure shall only be used when procuring innovative commercial items, including products, technologies, and services.

(b) Any contract using this authority must not exceed $10,000,000, inclusive of all options.

(c) No contracting officer or employee of the government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, https://www.law.cornell.edu/uscode/text/31/1341), unless otherwise authorized by law.

(d) GSA employees must be appointed as a contracting officer, consistent with GSAM 501.603, and must have a Federal Acquisition Certification in Contracting (FAC-C) at Level III to award a contract using the CSO procedure in accordance with this part.