

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 536.1—General

536.101 Applicability.

If a requirement in this part is inconsistent with a requirement in another GSAR part, this part takes precedence.

Subpart 536.2—Special Aspects of Contracting for Construction

536.213 Special procedures for sealed bidding in construction contracting.

536.213-3 Invitations for bids.

536.213-370 Bids that include alternates.

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

(b) Before opening bids that include alternates, 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. The amount is the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to award to the low bidder if the following condition is met: the award amount of the base bid plus the combination of alternate items does not exceed the amount offered for the base bid and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the alternates to be used.

536.213-371 Bids that include options.

(a) Subject to the limitations in paragraph (c) of this section, you may include options in contracts if it is in the Government’s interest.

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

(1) If additional work is anticipated but funds are not expected to be available at the time of award, and it would

not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) If fixed building equipment, e.g., elevators or escalators, will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) You must not use options under any of the following conditions:

(1) the prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded.

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) Solicitations must state whether the basis of award is inclusive or exclusive of the options. Before issuing a solicitation that includes evaluated options, you must determine that there is reasonable certainty that funds will be made available to permit exercise of the option.

536.213-372 Bids that include both alternates and options.

(a) Solicitations may include both alternates and options if the conditions in 536.213-370, Bids that include alternates, and 536.213-371, Bids that include options, are satisfied. In these solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and the alternates, in the order of priority listed in the solicitation, that provide the most work features within the funds available at bid opening, plus all options designated to be evaluated.

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

(c) Before opening bids that include both alternates and options, determine, and record in the contract file, the amount of funds available for the project (*i.e.*, for the base bid and alternate work). The amount recorded must

be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options plus the alternate items does not exceed the amount offered for the base bid, the evaluated options, and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation.

536.270 Exercise of options.

(a) If exercising an option, notify the contractor, in writing, within the time period specified in the contract.

(b) Exercise options only after determining 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.

(c) Before exercising an option, you must determine that the action complies with the option's terms and this section's requirements. Include your written determination in the contract file.

(d) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. 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 and 517.207).

536.271 Project labor agreements.

(a) *Authority.* This subpart implements the Presidential memorandum of June 5, 1997, on using project labor agreements (PLAs) on Federal construction projects. The Presidential memorandum authorizes executive departments and agencies to require PLAs on large and significant construction projects for facilities to be owned by a Federal department or agency.

(b) *Applicability.* These policies and procedures apply to all GSA activities

authorized to award contracts for construction of facilities to be owned by a Federal department or agency. You may use a PLA in leasehold arrangement, Federally funded projects, and other appropriate circumstances.

(c) *Definitions. Construction* means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. The terms buildings, structures, or other real property are defined further in Federal Acquisition Regulation (FAR) 36.102.

Labor organization means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, and any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization (42 U.S.C. 2000e(d)).

Large and significant project means a Federal construction project with a total cost to the Federal Government of more than \$5 million.

Project Labor Agreement (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(d) *Policy.* (1) You may, on a project-by-project basis, use a PLA on a large and significant project when both of the following conditions apply:

(i) A PLA will advance the Government's procurement interests.

(ii) No laws that apply to the specific construction project preclude the use of the PLA.

(2) Do not require any contractor to enter into a PLA with any particular labor organization.

(3) The use of a PLA is not intended to create any right or benefit, substantive or procedural enforceable by a nonfederal party against the United States, its departments, and agencies, its officers or employees, or any other person.

(e) *Procedures.* (1) As part of procurement planning for construction projects with a total estimated cost to the Federal Government of more than \$5 million, you may consider requiring a PLA.

(2) To require a PLA, you must determine whether use of a PLA will advance the Government's procurement interests in all the following areas:

(i) Cost, efficiency, and quality.

(ii) Promoting labor-management stability.

(iii) Promoting compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters.

(3) In making the determination required by paragraph (b) of this section, consult with the agency project or program manager and obtain guidance from the Agency Labor Advisor and assigned legal counsel. You should consider the following factors:

(i) Whether past experience with construction projects in the location where the project will be performed indicates that a PLA will be effective.

(ii) Whether delays in performance of the construction contract would have significant adverse impact on the mission of the agency or operation of the installation or facility.

(iii) Whether any law applies to the specific construction project that would impede use of a PLA.

(iv) Whether the labor organizations in the area can provide a reliable source of skilled, experienced building trades workers in all crafts needed on the job site for the project's duration (taking into consideration other major construction work in the area).

(v) Whether the Government can benefit from uniform work rules and working conditions and established procedures for resolving labor disputes, no strike/no lock-out protections.

(vi) Whether the Government can benefit from increased stability and

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labor peace that derives from greater labor-management cooperation.

(vii) Whether the requirements for a PLA will unreasonably restrict competition.

(viii) Other relevant information.

(4) Document the rationale supporting your decision to require a PLA in the contract file.

(5) Provide the following information to the Agency Labor Advisor (GSA Acquisition Policy Division (MVP)):

- (i) A brief description of the project.
- (ii) The estimated cost.
- (iii) A copy of the document supporting your decision to require a PLA.
- (iv) A copy of the solicitation.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.

536.570-1 Definitions.

Insert 552.236-70, Definitions, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-2 Authorities and limitations.

Insert 552.236-71, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-3 Specialist.

Insert 552.236-72, Specialist, in solicitations and contracts for construction if the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

536.570-4 Basis of award—construction contract.

(a) Insert a provision substantially the same as 552.236-73, Basis of Award—Construction Contract, in solicitations for fixed-price construction contracts except if any of the following conditions apply:

- (1) The solicitation requires the submission of a lump-sum bid only.
- (2) The solicitation is for an indefinite quantity contract.

(3) The contract amount is not expected to exceed the simplified acquisition threshold.

(b) *Instructions for use.*

If the solicitation requests the submission of a . . .	Then use the . . .
(1) Base bid and unit prices ..	Basic provision.
(2) Base bid and options	Provision with its Alternate I.
(3) Base bid and alternates ...	Provision with its Alternate II.
(4) Base bid, alternates, and options.	Provision with its Alternate III.

536.570-5 Working hours.

Insert 552.236-74, Working Hours, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-6 Use of premises.

Insert 552.236-75, Use of Premises, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-7 Measurements.

Insert 552.236-76, Measurements, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-8 Specifications and drawings.

Insert the clause at 552.236-77, Specifications and Drawings, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

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

Insert the clause at 552.236-78, Shop Drawings, Coordination Drawings, and Schedules, in solicitations and contracts if construction is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-10 Samples.

Insert the clause at 552.236-79, Samples, in solicitations and contracts for construction if the technical sections

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of the contract require the submission and approval of samples.

536.570-11 Heat.

Insert the clause at 552.236-80, Heat, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-12 Use of equipment by the Government.

Insert the clause at 552.236-81, Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings if it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570-13 Subcontracts.

Insert 552.236-82, Subcontracts, in solicitations and contracts for construction if the contract amount is expected to exceed the simplified acquisition threshold.

536.570-14 Requirement for a Project Labor Agreement.

Insert a clause substantially the same as 552.236-83, Requirement for a Project Labor Agreement, in solicitations and contracts that will require a project labor agreement.

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 5 percent of the total weight of all evaluation criteria. In order to receive maximum score for this factor, the architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based

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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 (Commerce Business Daily 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 (Commerce Business Daily 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.

[65 FR 11247, Mar. 2, 2000]

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.

537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Advisory and Assistance Services

537.201 Definitions.

537.270 Contract clause.

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

SOURCE: 64 FR 37226, July 9, 1999, unless otherwise noted.

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Subpart 537.1—Service Contracts—General

537.110 Solicitation provisions and contract clauses.

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 Ability One under the Javits-Wagner-O'Day Act:

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

(2) Insert 552.237-71, Qualifications of Employees, in the solicitation and contract. If needed, use supplemental provisions or clauses to describe specific requirements for employees performing work on the contract.

(b) Insert 552.237-72, Prohibition Regarding “Quasi-Military Armed Forces,” in solicitations and contracts for guard service.

[65 FR 41379, July 5, 2000, as amended at 74 FR 20606, May 5, 2009]

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 nec-

essary 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.

[74 FR 20606, May 5, 2009]

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.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

Subpart 538.2—Establishing and Administering Federal Supply Schedules

Sec.

538.270 Evaluation of multiple award schedule (MAS) offers.

538.271 MAS contract awards.

538.272 MAS price reductions.

538.273 Contract clauses.

Subpart 538.70—Cooperative Purchasing

538.7000 Scope of subpart.

538.7001 Definitions.

538.7002 General.

538.7003 Policy.

538.7004 Solicitation provisions and contract clauses.

Subpart 538.71—Recovery Purchasing

538.7100 Scope of subpart.

538.7101 Definitions.

538.7102 General.

538.7103 Policy.

538.7104 Solicitation provisions and contract clauses.

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

SOURCE: 64 FR 37227, July 9, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 538 appear at 69 FR 28065, May 18, 2004.

Subpart 538.2—Establishing and Administering Federal Supply Schedules

538.270 Evaluation of multiple award schedule (MAS) offers.

(a) The Government will seek to obtain the offeror's best price (the best

price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(b) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(c) 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.

(d) 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.

538.271 MAS contract awards.

(a) MAS 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 MAS contract, 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.

(c) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) on which the award is predicated.

538.272 MAS price reductions.

(a) Section 552.238-75, 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(c)). 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."

(b) Make sure that the contractor understands the requirements of section 552.238-75 and agrees to report to you all price reductions as provided for in the clause.

[64 FR 37227, July 9, 1999, as amended at 68 FR 24378, May 7, 2003]

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538.273 Contract clauses.

(a) *Multiple award schedules*. Insert in solicitations and contracts:

(1) 552.238-70, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped, if you include electronic office equipment items.

(2) 552.238-71, Submission and Distribution of Authorized FSS Schedule Pricelists.

(i) Use Alternate I, in solicitations and contracts for—

(A) Federal Supply Schedule 70;

(B) The Consolidated Schedule contracts containing information technology Special Item Numbers;

(C) Federal Supply Schedule 84; and

(D) Federal Supply Schedules for recovery purchasing (see 538.7102), use Alternate I.

(ii) If GSA is not prepared to accept electronic submissions for a particular schedule delete—

(A) The paragraph identifier “(i)” in (b)(1) and the word “and” at the end of paragraph (b)(1)(i); and

(B) Paragraphs (b)(1)(ii) and (b)(3).

(3) 552.238-72, Identification of Products That Have Environmental Attributes.

(4) 552.238-73, Cancellation.

(b) *Multiple and single award schedules*. Insert in solicitations and contracts:

(1) 552.238-74, Industrial Funding Fee and Sales Reportings.

(2) 552.238-75, *Price Reductions*. Use Alternate I in solicitations and contracts for—

(i) Federal Supply Schedule 70;

(ii) The Consolidated Schedule containing information technology Special Item Numbers;

(iii) Federal Supply Schedule 84; and

(iv) Federal Supply Schedules for recovery purchasing (see 538.7102).

(3) 552.238-81, *Modifications (Federal Supply Schedule)*. Use Alternate I for Federal Supply Schedules that only accept electronic modifications.

[64 FR 37227, July 9, 1999, as amended at 68 FR 24378, May 7, 2003; 68 FR 41288, July 11, 2003; 68 FR 52128, Sept. 2, 2003; 72 FR 4652, Feb. 1, 2007; 73 FR 54338, Sept. 19, 2008; 79 FR 14184, Mar. 13, 2014]

Subpart 538.70—Cooperative Purchasing

SOURCE: 68 FR 24378, May 7, 2003, unless otherwise noted.

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); and

(c) Federal Supply Schedule 84.

[73 FR 54338, Sept. 19, 2008]

538.7001 Definitions.

Ordering activity (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see 552.238-78) authorized to place orders under Federal supply schedule contracts.

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, fire-fighting 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

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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 of 1965 (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.*).

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

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 Co-

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lumbia, 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) State and local governments are authorized to procure from Schedule 70 contracts, Consolidated Schedule contracts containing information technology SINS, and Schedule 84 contracts. A listing of the participating contractors and SINS for the products and services that are available through Schedule 70 contracts, the Consolidated Schedule contracts containing information technology SINS, and Schedule 84 contracts, is available in GSA's Schedules e-Library at www.gsa.gov/elibrary. Click on Schedules e-Library, and under Cooperative Purchasing, click on "View authorized vendors." The contractors and the products and services available for Cooperative Purchasing will be labeled with the Cooperative Purchasing icon.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70, the Consolidated Schedule containing information technology SINS, and Schedule 84, for use by eligible non-federal entities, the contracting officer must make minor

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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 Schedule 70, and the Consolidated Schedule containing information technology SINs, and Schedule 84. 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.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

538.7004 Solicitation provisions and contract clauses.

- (a) The contracting officer shall insert the clause at 552.238-77, Definition

(Federal Supply Schedules), in solicitations and contracts for—

- (1) Schedule 70;
 - (2) The Consolidated Schedule containing information technology SINs; and
 - (3) Schedule 84.
- (b) The contracting officer shall insert the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for—
- (1) Schedule 70; and
 - (2) The Consolidated Schedule containing information technology SINs; and
 - (3) Schedule 84.
- (c) The contracting officer shall insert the clause at 552.238-79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and contracts for—
- (1) Schedule 70;
 - (2) The Consolidated Schedule containing information technology SINs; and
 - (3) Schedule 84.
- (d) See 552.101-70 for authorized FAR deviations.

[73 FR 54339, Sept. 19, 2008]

Subpart 538.71—Recovery Purchasing

SOURCE: 72 FR 4653, Feb. 1, 2007, unless otherwise noted.

538.7100 Scope of subpart.

This subpart prescribes policies and procedures to implement the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) authorizing non-federal organizations to use Federal Supply Schedule contracts to purchase products and services to be used for recovery from major disasters, terrorism or nuclear, biological, chemical, or radiological attack.

538.7101 Definitions.

The definitions in subsection 538.7001 shall apply for purposes of this subpart.

538.7102 General.

- (a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) amends 40 U.S.C. 502 to authorize the

Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of 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 recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. Use of Federal supply schedules by State and local governments is voluntary. Agreement of a schedule contractor to offer recovery purchasing under the contract and acceptance of any order for recovery purchasing from a State or local government is voluntary.

(b) State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to be used to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. A listing of the Federal Supply Schedules for the products and services is available in GSA's Schedules e-Library at Web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating contractors and the products and services available for recovery purchasing will be labeled with the Disaster Recovery Purchasing ICON.

(c) State and local governments that wish to use the Federal Supply Schedules to facilitate recovery from major disasters or attacks are responsible for ensuring that only authorized representatives of their governments place orders against these schedules and that procured products and services are used only for the purposes authorized by Section 833 of Public Law 109–364.

538.7103 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening the Federal Supply Schedules for products and services determined by the Secretary of Homeland

Security, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation (FAR) 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 the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security. 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.

General Services Administration

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538.7104 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238-76, Definition (Federal Supply Schedules)—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(b) The contracting officer shall insert the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities), with Alternate I in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(c) The contracting officer shall insert the clause at 552.238-80, Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security that facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(d) See 552.101-70 for authorized Federal Acquisition Regulation deviations.

PART 539—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 539.70—Additional Requirements for Purchases Not in Support of National Security Systems

Sec.

539.7000 Scope of subpart.

539.7001 Policy.

539.7002 Solicitation provisions and contract clauses.

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

SOURCE: 76 FR 34888, June 15, 2011, unless otherwise noted.

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 part 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

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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 tech-

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nology 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.