

contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed 800 MHz SMR service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(3) Definitions. The terms affiliate, attributable interests, consortium of small businesses, gross revenues, small business used in this section are defined in § 90.912.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552 and 570

[APD 2800.12A, CHGE 70]

RIN 3090-AF86

General Services Administration Acquisition Regulation; Acquisition of Commercial Items

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to implement Items I and III of Federal Acquisition Circular 90-32 which amended the Federal Acquisition Regulation (FAR) to implement the portions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) dealing with the Truth in Negotiations Act and with the acquisition of commercial items. The GSAR is revised to conform to the FAR as revised by FAC 90-32 and to implement portions of the FAR where necessary to provide agency procedures. The Multiple Award Schedule (MAS) Policy Statement of October 1, 1982 (47

FR 50242, November 5, 1982) is canceled.

DATES: *Effective Date:* March 4, 1996. (See **SUPPLEMENTARY INFORMATION** for further guidance.)

Comment Date: Comments should be submitted in writing to the address shown below on or before April 16, 1996 to be considered in formulating the final rule.

ADDRESSES: Interested parties should submit written comments to the Office of Acquisition Policy (MV), General Services Administration, Room 4010, 18th & F Streets, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Les Davison, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION: All new solicitations for commercial items and open season solicitations issued under the multiple award schedule program issued after March 4, 1996 shall conform to this interim rule. To the maximum extent practical, solicitations for commercial items and open season solicitations, that have been issued but where no contract has been awarded shall be amended to conform to this interim rule. However, offerors shall not be required to resubmit information on commercial sales practices and any requests for additional information shall be limited to the minimum needed. Existing MAS contracts may be modified, at the discretion of contracting officers, to conform to all or part of this interim rule.

A. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. Federal Acquisition Circular 90-32 (60 FR 48206, September 18, 1995) revised the Federal Acquisition Regulation (FAR) to implement Title VIII of Public Law 103-355. Title VIII of Public Law 103-355 contained requirements for the acquisition of commercial items and required publication of implementing FAR revisions by October 1, 1995. The FAR rule became available for use on October 1, 1995, and is mandatory for use by all Federal agencies in commercial items solicitations issued after December 1, 1995. This GSAR rule implements GSA unique requirements and revises the GSAR to bring it into conformance with the FAR. Immediate GSAR coverage is needed to permit GSA contracting activities to comply with Pub. L. 103-355 and the implementing

FAR requirements pertaining to the acquisition of commercial items and Truth in Negotiations Act.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

This interim rule is expected to have a positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule simplifies procedures for GSA acquisition of commercial items. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated above. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments from small entities will be considered in accordance with Section 610 of the Act.

D. Paperwork Reduction Act

The Paperwork Reduction Act applies to this interim rule. The information collection requirements in 515.804-8 and related provisions and clauses have been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000-0013. The information collection requirements in 552.212-70, Preparation of Offer (Multiple Award Schedule), represent customary commercial practice and are approved under OMB Control Number 3090-0250.

List of Subjects in 48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552, and 570

Government procurement.

Accordingly, 48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, and 552 and 570 are amended as follows:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552 and 570 continues to read as follows:

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

501.105 [Amended]

2. Section 501.105 is amended by removing the following GSAR references and corresponding OMB control numbers: 510.004-70-3090-0203, 510.011(i)-3090-0246,

512.104(a)(2) and 512.104(a)(4)–3090–0204.

PART 504—ADMINISTRATIVE MATTERS

3. Section 504.803 is amended by revising paragraphs (a)(12) and (a)(25) to read as follows:

504.803 Contents of contract files.

(a) * * *

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

* * * * *

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

* * * * *

PART 507—ACQUISITION PLANNING

507.103 [Amended]

4. Section 507.103 is amended by removing “510.002” and inserting “48 CFR 511.002”.

5. Part 510 heading is revised to read as follows:

PART 10—MARKET RESEARCH

510.001 [Redesignated as 511.001]

6. Section 510.001 is redesignated as 511.001.

510.002 [Redesignated as 511.002 and amended]

7. Section 510.002 is redesignated as 511.002 and the first sentence is amended by removing “FAR 10.002(c)” and inserting “FAR 11.002(b).”

510.004 [Removed]

510.004–70 [Removed]

510.004–71 [Removed]

510.007 [Removed]

510.007–70 [Removed]

8. Sections 510.004, 510.004–70, 510.004–71, 510.007 and 510.007–70 are removed.

510.011 [Redesignated as 511.204 and amended]

9. Section 510.011 is redesignated as 511.204 and paragraph (a) is amended by removing “552.210–70” and inserting “48 CFR 552.211–711”; by removing “552.210–71” and inserting “48 CFR 552.211–72” in paragraph (b); by removing paragraphs (c) and (d); by redesignating paragraph (e) as (c) and in newly designated paragraph (c) removing “552.210–75” and inserting “48 CFR 552.211–73”; by redesignating paragraph (f) as (d), and in newly designated paragraph (d) removing “552.210–76” and inserting “48 CFR 552.211–74”, and by removing “552.210–75” and inserting “48 CFR 552.211–73”; by redesignating paragraph (g) as (e) and in newly designated paragraph (e), by removing “552.210–77” and inserting “48 CFR 552.211–75”; by redesignating paragraph (h) as (f) and in newly designated paragraph (f) removing “552.210–78” and inserting “48 CFR 552.211–76”; by redesignating paragraph (i) as (g), and in newly designated paragraph (g) removing “552.210–79” and inserting “48 CFR 552.211–77.”

510.070 [Removed]

510.070–1 [Removed]

510.070–2 [Removed]

510.070–3 [Removed]

510.070–4 [Removed]

510.071 [Removed]

PART 510—[RESERVED]

10. Sections 510.070, 510.070–1, 510.070–2, 510.070–3, 510.070–4 and 510.071 are removed and Part 510 is reserved.

11. Part 511 heading is revised to read as follows:

PART 511—DESCRIBING AGENCY NEEDS

511.003 [Removed]

511.070 [Removed]

12. Sections 511.003 and 511.070 are removed.

13. Subpart 511.1 consisting of sections 511.103 and 511.170 are added to read as follows:

Subpart 511.1—Selecting and Developing Requirements Documents

Sec.

511.103 Market acceptance.

511.170 Use of brand name or equal product descriptions.

Subpart 511.1—Selecting and Developing Requirements Documents

511.103 Market acceptance.

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

511.170 Use of brand name or equal product descriptions.

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

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

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

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

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

(b) *Solicitation provisions.* The solicitation—

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

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

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

Offering on:

Manufacturer's Name _____

Brand _____

Model or Part No. _____

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

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

(c) *Contract clause.* The contracting officer shall include a clause substantially the same as the clause at 48 CFR 552.211–70, Brand Name or Equal, when a brand name or equal

purchase description is used. When component parts or an end item are described by brand name or equal descriptions and application of the clause to some or all of the components is impracticable, either do not use the clause or limit its application to specified components.

14. Subpart 511.2 is added to read as follows:

Subpart 511.2—Using and Maintaining Requirements Documents

PART 512—ACQUISITION OF COMMERCIAL ITEMS

15. Part 512 heading is revised as set forth above.

Subpart 512.1 [Redesignated as Subpart 511.4]

512.101 [Redesignated as 511.401]

512.104 [Redesignated as 511.404 and amended]

15a. Subpart 512.1 is redesignated as subpart 511.4, section 512.101 is redesignated as 511.401, and section 512.104 is redesignated as 511.404.

16. Newly designated section 511.404 is amended by redesignating paragraph (a)(5) as paragraph (a)(6) and amending paragraph (a)(6) by removing “552.212–72” and inserting “48 CFR 552.211–83”; by redesignating paragraph (a)(4) as paragraph (a)(5), and amending paragraph (a)(5) by removing “552.212–71” and inserting “48 CFR 552.211–82”; by redesignating paragraph (a)(3) as paragraph (a)(4) and amending paragraph (a)(4) by removing “552.212–70” and inserting “48 CFR 552.211–81” and by removing “552.212–72” and inserting “48 CFR 552.211–83”; by removing “552.212–1(a)” in paragraph (a)(1) and inserting “48 CFR 552.211–1”; amending paragraph (b) by removing “552.212–74” and inserting “48 CFR 552.211–84”; and by revising paragraph (a)(2) and adding a new paragraph (a)(3) to read as follows:

511.404 Contract clauses.

(a) * * *

(2) 48 CFR 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule), in solicitations issued and contracts awarded under the multiple award schedule program.

(3) 48 CFR 552.211–79, Acceptable Age of Supplies, or 48 CFR 552.211–80, Age on Delivery, in solicitations and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See 101–27.206–2 of the Federal Property Management Regulation.) The

Acceptable Age of Supplies clause at 48 CFR 552.211–79 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, Alternate I to 48 CFR 552.211–79 must be substituted for the basic clause when required by the director of the 48 CFR 552.211–80 should be used when the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

* * * * *

17. Subpart 512.2 consisting of sections 512.203 and 512.209 is added to read as follows:

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

Sec.

512.203 Procedures for solicitation, evaluation, and award.

512.209 Pricing of commercial items when contracting by negotiation.

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

512.203 Procedures for solicitation, evaluation, and award.

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

512.209 Pricing of commercial items when contracting by negotiation.

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

18. Subpart 512.3 consisting of sections 512.301 and 512.302 is added to read as follows:

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

Sec.

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.

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

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

(1) The provision at 48 CFR 552.212–70, Preparation of Offer (Multiple

Award Schedule), in solicitations issued under the multiple award schedule program.

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

(3) The clause at 48 CFR 552.212–72, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisitions of Commercial Items when listed clauses apply and are incorporated by reference. The clause provides for the incorporation by reference of terms and conditions which are required to implement provisions of law or executive orders applicable to acquisitions of commercial items.

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

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

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

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

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

Requests for waivers shall be prepared in accordance with FAR 12.302(c) and submitted for approval by the chief of the contracting office (see 48 CFR

502.101) if an individual contract is involved or by the contracting director (see 48 CFR 502.101) if a class of contracts is involved.

PART 514—SEALED BIDDING

19. Section 514.201-70 is revised to read as follows:

514.201-70 GSA Forms.

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

- (a) Describe the type of contract, the duration of the contract, and the type of supplies or services being procured;
- (b) Direct the attention of prospective offerors to special requirements which if overlooked, may result in rejection of the offer;
- (c) Highlight significant changes from previous solicitations covering the same supplies and services; and
- (d) Include other special notices as appropriate.

PART 515—CONTRACTING BY NEGOTIATION

20. Section 515.106-70 is revised to read as follows:

515.106-70 Examination of records by GSA clause.

The contracting officer shall insert the clause at 48 CFR 552.215-70, Examination of Records by GSA or at 48 CFR 552.215-71 Examination of Records by GSA (Multiple Award Schedule), in solicitations and contracts that

- (a) Involve the use or disposition of Government-furnished property,
- (b) Provide for advance payments, progress payments based on cost, or guaranteed loan,
- (c) Contain a price warranty or price reduction clause,
- (d) Involve income to the Government where income is based on operations that are under the control of the contractor,
- (e) Include an economic price adjustment clause,
- (f) Are requirements, indefinite-quantity or letter type contracts as defined in FAR Part 16,
- (g) Are subject to adjustment based on a negotiated cost escalation base or
- (h) Contain the provision at FAR 52.223-4, Recovered Material Certification. The clause at 48 CFR 552.215-71 shall be used for solicitations issued and contracts awarded under the multiple award schedule program. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price

reduction clause). Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

515.412 [Removed]

21. Section 515.412 is removed.
22. Section 515.414-70 is revised to read as follows:

515.414-70 GSA Forms.

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

23. The section heading for 515.804 is revised to read as follows:

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

515.804-3 [Reserved]

24. Section 515.804-3 is removed and reserved.
25. Section 515.804-6 is revised to read as follows:

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

(a) Contracting officers should use Alternate IV of the FAR provision at 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, to provide the format for submission of information other than cost or pricing data for multiple award schedule (MAS) contracts. To provide for uniformity in request under the MAS program, contracting officers should insert the following in paragraph (b) of the provisions:

- (1) An offer prepared and submitted in accordance with the provision at 552.212-70, Preparation of Offer (Multiple Award Schedule);
- (2) Commercial sales practices submitted in the format provided in this solicitation in accordance with the instructions at Table 515-1 of the GSA Acquisition Regulation (48 CFR 515-1); and
- (3) Any additional supporting information requested by the Contracting Officer to determine whether the price(s) offered is fair and reasonable.

(4) By submission of an offer in response to this solicitation or a request for modification, the Offeror grants the Contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, papers, and other directly pertinent records to verify any request for and exception to the requirement for cost or pricing data, and the reasonableness of prices(s) and for two years after award or modification of this contract to verify that the information submitted was complete, current and accurate. Access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the

prices to be offered in the catalog or marketplace.

(b) Contracting officers shall insert the following format for commercial sales practices in the exhibits or attachments section of the solicitation (see FAR 12.303). Paragraph (5) may be included when the contracting officer, based on market research, anticipates receipt of offers from dealers without significant commercial sales.

Commercial Sales Practices

Name of Offeror _____
SIN _____

Note: Please refer to provision 552.212-70, PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE), for additional information concerning your offer.

- (1) Request for exception to the requirement for cost and pricing data.
 - (a) Do you request an exception to the requirement for submission of cost or pricing data [Check applicable item]
 - (i) _____ based on the fact that you have sold substantial quantities of the commercial items offered to the general public at or based on an established catalog or market price (see FAR 15.804-1(b)(2)(iv)); or
 - (ii) _____ under the authority of FAR 15.804-1(a)(2) for commercial items.
 - (b) 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. \$_____. 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 (FAR 15.804-1(b)(2)(iv)). You may qualify for an exception under the authority of FAR 15.804-1(a)(2), even though substantial sales have not been made, although that exception requires that special post award access to records be included in the contract (see 52.215-43, Audit-Commercial Items).

(2) Show total estimated sales to the Government for the contract term, excluding options, for the SIN offered. \$_____

(3) Are the discounts which you offer the Government equal to or better than your best discount to any customer acquiring the same items offered for this SIN regardless of quantity or terms and conditions? YES _____ NO _____. See definition of "discount" in 552.212-70.

(4)(a) Provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at 48 CFR Table 515-1 which is provided in this solicitation for your convenience. The information should be provided in the chart below. 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—additional discounts or concessions

(b) Do any deviations from the discounting practices disclosed ever result in better discounts (lower prices) than indicated? YES _____ NO _____. If YES, explain deviations in accordance with the instructions at 48 CFR Table 515-1 which is provided in this solicitation for your convenience.

(5) If the Offeror is a dealer/reseller, the sales information relative to the

manufacturer's pricing to the dealer required by paragraph (b)(1) through (4) above together with written access to the manufacturer's records in accordance with 52.215-41 (Alt IV), should be provided separately by the offeror for each item/SIN from a single manufacturer whose total sales under any resulting contract are expected to exceed \$500,000. 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 the dealer/reseller submitting the offer 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, the dealer/reseller submitting the

offer shall submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

- (a) Manufacturer's Name
 - (b) Manufacturer's Part Number
 - (c) Dealer's/Reseller's Part Number
 - (d) Product Description
 - (e) Manufacturer's List Price
 - (f) Dealer's/Reseller's percentage discount from List Price or net prices
- (End of Format)

(c) The contracting officer should include the instructions for completing the commercial sales practices format in Table 515-1 in solicitations issued under the multiple award schedule program.

TABLE 515-1.—INSTRUCTIONS FOR COMMERCIAL SALES PRACTICES FORMAT

If you responded "YES" to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart for the customer(s) who receive your best discount. If you responded "NO" to question (3), complete the chart for all customers or customer categories to whom you sell at a discount which equals or exceeds the discount(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. The Offeror shall also disclose any changes to discount(s) and discount policies which occur after the offer is submitted, but before the close of negotiations. If the Offeror's discount practices vary by model or product line, the discount information should be by model or product line as appropriate. The offeror may limit the number of models or product lines reported to those which in total anticipated sales exceed 75% of the estimated 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 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 or customer if the offeror's discount policies 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 provision 552.212-70 Preparation of Offer (Multiple Award Schedule). Indicate the best discount at which the Offeror customarily or repetitively sells 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 they are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis for your offer. If the 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 of 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.

Pricing information need be provided only on customary or repetitive sales. Information need not include erratic, ad hoc discounting; however, the existence of such discounting shall be disclosed. This disclosure should include a discussion of ad hoc discounting practices, including the types of circumstances when ad hoc discounts are given and the frequency of occurrence: i.e., a statement "the ad hoc sales do not exceed \$_____ per year" or "the ad hoc sales do not exceed _____% of total sales." To be considered "ad hoc discounting" the practice shall not: (a) represent a significant pricing practice: that is, accounting for more than a marginal portion of the total commercial sales; (b) establish a preferred customer: e.g., discounts to state and local governments, or repetitive discounts received by a single customer; (c) include other than low value, extraordinary price reductions due to unique situations.

Column 3—Identify the quantity or volume of sales. Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. Specify the period of relevant sales accumulation.

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 additional discounts or concessions regardless of quantity granted to the identified customer or category of customer. The additional discounts may include per order quantity discount; aggregate discount, prompt payment discount. Concessions are defined in solicitation provision 552.212-70 Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

(d) The contracting officer shall insert the clause at 48 CFR 552.215-72, Price Adjustment for Incomplete, Not Current or Inaccurate Information Other Than Cost or Pricing Data, in solicitations and

contracts to be awarded under the multiple award schedule program.

PART 538—FSS SCHEDULE CONTRACTING

26. Part 538 heading is revised as set forth above.

538.000 [Removed]

27. Section 538.000 is removed.

28. Section 538.270 is added to read as follows:

538.270 Evaluation of multiple award schedule offers.

(a) The Government will seek to obtain the offeror's best discount (most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and that there may be legitimate reasons why the best discount is not achieved.

(b) The contracting officer will establish negotiation objectives and determine price reasonableness subject to the requirements of paragraphs (c) through (e) of this section.

(c) The contracting officer will establish negotiation objectives based on a review of relevant data. If an exception may apply pursuant to FAR 15.804-1(a)(2), then information to be acquired pursuant to FAR 15.804-5(b) (1) and (2) shall be limited to that which is reasonably available and quantifiable.

(d) When establishing negotiation objectives and determining price reasonableness, contracting officers will compare the terms and conditions of agreements with customers. The contracting officer will consider the following factors to determine the Government's price negotiation objectives:

- (1) Aggregate volume of anticipated purchases;
- (2) The purchase of a minimum quantity or a pattern of historic purchases;
- (3) Discounts/prices offered;
- (4) Length of the contract period;
- (5) Warranties, training, maintenance included in the purchase price or provided at additional cost to the product prices;
- (6) Ordering and delivery practices; and

(7) Any other relevant information including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the best customers. In cases where the best discount is not offered to the Government, the offeror is responsible for identifying, substantiating and valuating any asserted differences.

(e) The contracting officer may not award a contract containing pricing which is less favorable than the best discount the offeror extends to any commercial customer purchasing under circumstances comparable to the Government, unless the contracting officer makes a written determination that

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated, and

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

29. Section 538.271 is added to read as follows:

538.271 MAS contract awards.

(a) MAS awards will, to the maximum extent practicable, be commercial items negotiated as a discount from established catalog prices for items sold in substantial quantities to the general public.

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

PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES—RESERVED

30. Part 539 is reserved.

539.000 [Removed]

31. Section 539.000 is removed

PART 543—CONTRACT MODIFICATIONS

32. Section 543.205 is amended by adding paragraph (c) to read as follows:

543.205 Contract clauses.

* * * * *

(c) The contracting officer shall insert the clause at 48 CFR 552.243-72, Modifications (Multiple Award Schedule), in solicitations and multiple award schedule contracts. Alternate I should be used when stable technology is involved and few changes are expected.

PART 546—QUALITY ASSURANCE

33. Section 546.710 is amended by revising paragraph (a)(2) to read as follows:

546.710 Contract Clauses.

(a) * * *

(2) If commercial products or items are being acquired under a program other than Multiple Award Schedules, the contracting officer shall use the clause at 48 CFR 552.247.17 with its Alternate I.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**552.209-73 [Amended]**

34. The clause at section 552.209-73 is amended by revising the date of the clause to read "(FEB 1996)" and by inserting a period after the word "default" and removing all remaining text beginning with the word "under."

552.210-70 [Redesignated as 552.211-71 and amended]

35. Section 552.210-70 is redesignated as 552.211-71, the introductory paragraph is amended by removing "510.011(a)" and inserting "48 CFR 511.204(a)", and the date of the clause is revised to read "(FEB 1996)".

552.210-71 [Redesignated as 552.211-72 and amended]

36. Section 552.210-71 is redesignated as 552.211-72, the introductory paragraph is amended by removing "510.011(b)" and inserting "48 CFR 511.204(b)", and the date of the clause is revised to read "(FEB 1996)".

552.210-72 [Redesignated as 552.211-79]

37. Section 552.210-72 is redesignated as 552.211-79, the introductory paragraph is amended by removing "510.011(c)" and inserting "48 CFR 511.404(a)", by revising the date of the basic clause and the Alternate I to read "(FEB 1996)" and by removing all the text in the last sentence in the basic clause after the phrase "reject the supplies" and inserting a period after "supplies".

552.210-73 [Redesignated as 552.211-80 and amended]

38. Section 552.210-73 is redesignated as 552.211.80, the introductory paragraph is amended by removing "510.011(c)" and inserting "48 CFR 511.404(a)", by revising the date of the clause to read "(FEB 1996)" and by removing all the text in the last sentence after the phrase "reject the supplies" and inserting a period after the word "supplies".

552.210-74 [Redesignated as 552.211-70]

39. Section 552.211-70 is removed, section 552.210-74 is redesignated as 552.211-70, the introductory paragraph is amended by removing "510.011(d)" and inserting "48 CFR 511.170(c)" and by revising the date of the clause to read "(FEB 1996)".

552.210-75 [Redesignated as 552.211-73]

40. Section 552.210-75 is redesignated as 552.211-73, the introductory paragraph is amended by removing "510.011(e)" and inserting

“48 CFR 511.204(c)” and by revising the date of the clause to read “(FEB 1996)”.

552.210-76 [Redesignated as 552.211-74 and amended]

41. Section 552.210-76 is redesignated as 552.211-74, the introductory paragraph is amended by removing “510.011(f)” and inserting “48 CFR 511.204(d)”, by revising the date of the clause to read “(FEB 1996)”, and by removing “552.210-75” from the text of the clause and inserting “48 CFR 552.211-73”.

552.210-77 [Redesignated as 552.211-75 and amended]

42. Section 552.211-77 is redesignated as 552.211-75, the introductory paragraph is amended by removing “510.011(g)” and inserting “48 CFR 511.204(e)” and by revising the date of the clause to read “(FEB 1996)”.

552.210-78 [Redesignated as 552.211-76 and amended]

43. Section 552.210-78 is redesignated as 552.211-76, the introductory paragraph is amended by removing “510.011(h)” and inserting “48 CFR 511.204(f)” and by revising the date of the clause to read “(FEB 1996)”.

552.210-79 [Redesignated as 552.211-77 and amended]

44. Section 552.210-79 is redesignated as 552.211-77, the introductory paragraph is amended by removing “510.011(i)” and inserting “48 CFR 511.204(g)” and by revising the date of the clause to read “(FEB 1996)”.

45. Section 552.211-78 is added to read as follows:

552.211-78 Commercial Delivery Schedule (Multiple Award Schedule).

As prescribed in 48 CFR 511.404(a)(2), insert the following clause:

Commercial Delivery Schedule (Multiple Award Schedule) (Feb 1996)

(a) *Time of Delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the “Time of Delivery (days ARO)” column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor’s normal commercial practice. The Government requires the Contractor’s normal commercial delivery time, as long as it is less than the “stated” delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government’s stated delivery time, as stated below:

Items or group of items (special item No. or nomenclature)	Government’s stated delivery time (days ARO)	Contractor’s normal commercial delivery time

(b) *Expedited Delivery Times.* For those items that can be delivered quicker than the delivery times in paragraph (a), above, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Item or group of items (special item No. of nomenclature)	Expedited delivery time (hours/days ARO)

(c) *Overnight and 2-Day Delivery Times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.
(End of Clause)

§ 552.212-1 [Redesignated as 552.211-1 and amended]

46. Section 552.212-1 is redesignated as 552.211-1, paragraph (a) is amended by removing the paragraph designation “(a)” and by removing “512.104(a)(1)” and inserting “48 CFR 511.404(a)(1)”, by revising the date of the clause and the Alternate I to read “(FEB 1996)” and by removing paragraph (b).

§ 552.212-70 [Redesignated as 552.211-81 and amended]

47. Section 552.212-70 is redesignated as 552.211-81, the introductory paragraph is amended by removing “512.104(a)(3)” and inserting “48 CFR 511.404(a)(4)” and by revising the date of the basic clause and the Alternate I clause to read “(FEB 1996)”.

§ 552.212-71 [Redesignated as 552.211-82 and amended]

48. Section 552.212-71 is redesignated as 552.211-82, the introductory paragraph is amended by removing “512.104(a)(4)” and inserting “48 CFR 511.404(a)(5)” and by revising the date of the clause to read “(FEB 1996)”.

§ 552.212-72 [Redesignated as 552.211-83 and amended]

50. Section 552.212-72 is redesignated as 552.211-83, the introductory paragraph is amended by removing “512.104(a)(5)” and inserting “48 CFR 511.404(a)(6)” and by revising the date of the basic and alternate clause to read “(FEB 1996)”.

§ 552.212-74 [Redesignated as 552.211-84 and amended]

51. Section 552.212-74 is redesignated as 552.211-84, the introductory paragraph is amended by removing “512.104(b)” and inserting 48

CFR 511.404(b)” and by revising the date of the clause to read “(FEB 1996)”.

52. Section 552.212-70 is added to read as follows:

552.212-70 Preparation of Offer (Multiple Award Schedule)

As prescribed in 48 CFR 512.301(a)(1), insert the following clause:

552.212-70 Preparation of Offer (Multiple Award Schedule) (Feb 1996)

(a) *Definitions. Concession,* as used in this solicitation, means a benefit, enhancement or privilege (other than a discount), which either reduces the overall costs of a customer’s acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to freight allowance, extended warranty, extended price guarantees, free installation and bonus goods.

Discount, as used in this solicitation, means a reduction to catalog prices (published or unpublished). Discounts include, but are not limited to, rebates, quantity discounts, purchase option credits, and any other terms or conditions which reduce the amount of money a customer ultimately pays for goods or services ordered or received. Any net price lower than the list price is considered a “discount” by the percentage difference from the list price to the net price.

(b) For each Special Item Number (SIN) included in an offer, the Offeror shall provide the information outlined in paragraph (c). Offerors may provide a single response

covering more than one SIN, if the information disclosed is the same for all products under each SIN. If discounts and concessions vary by model or product line, offerors shall ensure that information is clearly annotated as to item or items referenced.

(c) Provide information described below for each SIN:

(1) Two copies of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered. Special catalogs or price lists printed for the purpose of this offer, showing only net prices to the Government or references to previous submissions, are not acceptable.

(2) Next to each offered item in the commercial catalog and/or price list, the Offeror shall write the special item number under which the item is being offered. All other items shall be marked "excluded," lined out, and initialed by the offeror.

(3) The discount(s) offered under this solicitation.

(4) A description of any additional discounts offered, such as prompt payment discounts, quantity/dollar volume discounts (indicate whether models/products can be combined within the SIN or whether SINs can be combined to earn discounts, blanket purchase agreement discounts, or purchase option credits. If the terms of sale appearing in the commercial catalogs or price list on which an offer is based are in conflict with the terms of this solicitation the latter shall govern.

(5) A description of concessions offered under this solicitation which are not granted to other customers. Such concessions may include, but are not limited to, an extended warranty, a return/exchange goods policy, or enhanced or additional services.

(6) If the Offeror is a dealer/reseller or the Offeror will use dealers to perform any aspect of contract awarded under this solicitation, describe the functions, if any, that the dealer/reseller will perform.

(End of Provision)

53. Section 552.212-71 is added to read as follows:

§ 552.212-71 Contract terms and conditions applicable to GSA acquisition of commercial items.

As prescribed in 48 CFR 512.301(a)(2), insert the following provision:

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Feb 1996)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial times or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The contracting officer should either check the clauses that apply or delete the clauses

that do not apply from the list. The contracting officer may add the date of the clause if desired for clarity.]

- 552.203-70 Restriction on Advertising
 - 552.211-73 Marking
 - 552.215-70 Examination of Records by GSA
 - 552.212-71 Examination of Records by GSA (Multiple Award Schedule)
 - 552.25-72 Price Adjustment for Incomplete, Not Current or Inaccurate Information Other Than Cost or Pricing Data
 - 552.219-71 Allocation of Orders—Partially Set-Aside Items
 - 552.228-75 Workmen's Compensation
 - 552.229-70 Federal, State, and Local Taxes
 - 552.232-8 Discounts for Prompt Payment
 - 552.232-23 Assignment of Claims
 - 552.232-70 Payments by Electronic Funds Transfer
 - 552.232-77 Availability of Funds
 - 552.232-78 Adjusting Payments
 - 552.232-79 Final Payment
 - 552.237-70 Qualifications of Offerors
 - 552.237-71 Qualifications of Employees
 - 552.238-72 Contractor's Report of Sales
 - 552.238-74 Submission and Distribution of Authorized FSS Schedule Price List
 - 552.238-76 Price Reductions
 - 552.242-70 Status Report of Orders and Shipments
 - 552.243-72 Modifications (Multiple Award Schedule)
 - 552.246-73 Warranty—Multiple Award Schedule
 - 552.246-76 Warranty of Pesticides
- (End of Provision)

54. Section 552.212-72 is added to read as follows:

552.212-73 Contract terms and conditions required to implement statutes or Executive Orders applicable to GSA acquisition of commercial items.

As prescribed in 48 CFR 512.301(a)(3), insert the following provision:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Feb 1996)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The contracting officer should either check the clauses that apply or delete the clauses that do not apply from the list. The contracting officer may add the date of the clause if desired for clarity.]

- 552.223-70 Hazardous Substances
- 552.223-71 Hazardous Material Information
- 552.223-72 Nonconforming Hazardous Material

- 552.225-70 Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware
 - 552.225-71 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware
 - 552.238-70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
 - 552.238-75 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes
 - 552.238-77 Industrial Funding Fee
- (End of Clause)

55. Section 552.212-73 is added to read as follows:

552.212-73 Evaluation—Commercial Items (Multiple Award Schedule).

As prescribed in 48 CFR 512.301(a)(4), insert the following provision:

552.212-73 Evaluation—Commercial Items (Multiple Award Schedule) (Feb 1996)

(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. Award is to be based upon a catalog or market price exception (FAR 15.804-1(a)(i) and (ii)) to the requirement for cost or pricing data or if other exceptions are not available, an exception for commercial items (FAR 15.804-1(a)(2)), without submission of cost or pricing data. 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. In exceptional circumstances, if an item does not qualify for an exception from cost or pricing data requirements, the contracting officer may consider cost or pricing data if pricing cannot be reasonably evaluated without it, and procurement of the item is the best interest of the Government.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

Alternate I (FEB 1996)

When anticipating competition of identical items, add the following paragraph after paragraph (b) of the basic provision.

(c) The Government reserves the right to award only one contract for all or part of a manufacturer's product line. When two or more offerors (e.g., dealer/resellers) offer the identical product, award may be made competitively to only one offeror on the basis of the lowest price. (Discounts for early payment will not be considered as an evaluation factor in determining the low offeror). During initial open season for an option period, any offers that are equal to or lower than the current contract price received for identical items will be considered. Current contractors will also be allowed to submit offers for identical items during this initial open season. The current contractor which has the identical item on contract will be included in the evaluation process. The Government will evaluate all offers and may award only one contract for each specified product or aggregate group.

56. Section 552.215-70 is amended by revising the date of the clause and the last sentence of the clause to read as follows:

552.215-70 Examination of records by GSA.

* * * * *

Examination of Records by GSA (Feb 1996)

* * * * *

The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

57. Section 552.215-71 is added to read as follows:

552.215-71 Examination of records by GSA (Multiple Award Schedule).

As prescribed in 48 CFR 515.106-70, insert the following clause:

Examination of Records by GSA (Multiple Award Schedule) (Feb 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 2 years after the end of the basic contract period or after the end of the option period for any option periods, have access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this contract for overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee clause of this contract. This right is in addition to the right to examine information provided by FAR 52.215-41 (Alt IV) and FAR 52.215-43, if applicable)

(End of Clause)

58. Section 552.215-72 is added to read as follows:

552.215-72 Price adjustment for incomplete, not current or inaccurate information other than cost or pricing data.

As prescribed in 48 CFR 515.804-6(d), insert the following clause:

Price Adjustment for Incomplete, not Current or Inaccurate Information Other Than Cost or Pricing Data (Feb 1996)

(a) If, subsequent to the award of any contract resulting from this solicitation or modification of this contract, it is found that any price negotiated in this contract was increased by a significant amount because of the occurrence of (1), (2) or (3) below, the contract price shall be reduced by such amount of the increase.

(i) The information requested by the Government and submitted by the offeror (contractor) was not complete; or

(2) The information submitted was not current and accurate; or

(3) Changes in the Contractor's commercial prices, discounts or discount policies which occurred after the original submission were not disclosed 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 solicitation closing date or the date it is submitted whichever is later. Failure to agree on the amount of the decrease shall be resolved as a dispute.

(End of Clause)

552.216-71 [Amended]

59. Section 552.216-71 is amended by revising the date of the clause to read "FEB 1996" and amending paragraph (d)(2) by removing "Discount Schedule and Marketing Data" and inserting "Commercial Sales Price format."

552.238-74 [Amended]

60. Section 552.238-74 is amended by removing "GSA" in the section heading, clause heading, paragraphs (b), (c)(1)(i), (c)(1)(ii), (c)(2)(i) and (e) and inserting "FSS" and by revising the date of the clause to read "(FEB 1996)".

61. Section 552.243-72 is added to read as follows:

552.243-72 Modifications (Multiple Award Schedule).

As prescribed in 48 CFR 543.205(c), insert the following clause:

552.243-72 MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (FEB 1996)

(a) General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (e) of this clause. A separate request should be submitted for each type of proposed modification. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) Types of Modifications.

(1) Additional items/additional SIN's. When requesting additions, the following information must be submitted:

(i) A request for an exemption from the requirement to submit cost and pricing data as required by 52.215-41 (ALT IV) shall be provided. To add items, submit the information requested in paragraph 1(a) of the Commercial Sales Format. To add SIN's provide the information requested in paragraph (1) and (2) of the Commercial Sales Practice Format.

(ii) Discount information for the new item(s) or new SIN(s) as required by 52.215-41 (ALT IV) must be provided. 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 new SIN(s) as described in 552.212-70, Preparation of Offer (Multiple Award Schedule) is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with 552.211-78, Commercial Delivery Schedule (Multiple Award Schedules).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215-20, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by 52.223-3 (ALT I), Hazardous Material Identification and Material Safety Data; and 552.223-71, Hazardous Material Information; and as requested by the Separate Charge for Performance Oriented Packaging clause of this contract, if applicable.

(vii) Recovered Material estimate(s) and certification (if applicable) must be submitted as required by 52.223-8 (or 52.223-8 (ALT I) or 52.223-8 (ALT II), Estimate of Percentage of Recovered Material for Designated Items to be used in the Performance of the Contract; and 52.223-9, Certification of Recovered Material Content for EPA Designated Items used in Performance of the Contract.

(viii) A statement that the request for additional item(s) or item(s) under the new SIN(s) is in compliance with 552.225-9, Trade Agreements Act, and 552.225-8, Trade Agreements Act Certificate is required.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of subparagraph (c)(1) of the Price Reduction clause at 552.238-76. If the price reduction falls under item (i) or (ii), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (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.

(4) Revision of Commercial Price List. The Contractor may request a modification to substitute a new catalog or price list for the one originally submitted if, after award and no later than 30 calendar days before the start of the schedule contract period, the Contractor changes its established commercial catalog or price list on which the contract was awarded. The new catalog or price list shall be submitted to the Contracting Officer along with a statement that (i) the new commercial price list is or will be in effect prior to the start of the contract period, and (ii) the discount(s) offered to the Government remain at the same ratio to those available to the customer (or category of customer) which was the basic of award.

(c) Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reduction clause at 552.238-76.

(d) Electronic file updates. The Contractor shall update electronic file submissions to reflect all modifications. Except for price reductions and corrections, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until updates to electronic files are received. Price reductions and correction may be transmitted without prior approval. However, the contracting officer shall be notified as set forth in the Price Reduction clause at 552.238-76.

(e) Amendments to paper Federal Supply Schedule Price Lists. The Contractor shall distribute a supplemental paper Federal Supply Schedule Price List reflecting accepted changes within 15 days after the effective date of the modification. At a minimum, distribution shall be made to these ordering activities that previously received the basic document. In addition, two copies of the supplemental price list shall be submitted to the contracting officer, and one copy shall be submitted to the FSS Schedule Information Center.

(End of Clause)

Alternate I (Feb 1996)

Substitute the following introductory text in subparagraph (1) for the introductory text in subparagraph (1) of the basic clause.

(1) Additional items/additional SIN's. Consideration for adding new items or new SIN's will be given 3 months into the contract period. After then, the contractor may request additions at any time. When requesting additions the following information must be submitted.

62. Section 552.246-73 is amended by revising the date of the clause and the basic clause to read as follows:

552.246-73 Warranty—Multiple Award Schedule.

* * * * *

Warranty—Multiple Award Schedule (Feb 1996)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list will apply to this contract.

(End of Clause)

552.253-70 [Removed]

63. Section 552.253-70 is removed.

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

570.308-2 [Amended]

64. Section 570.308-2 is amended in paragraph (c) by removing "and 515.804-3" at the end of the sentence.

570.602-2 [Amended]

65. Section 570.602-2 is amended in paragraphs (c)(3) and (d) by removing "and 515.804-3".

Dated: February 6, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 96-3593 Filed 2-15-96; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-3; Notice 6]

RIN 2127-AF63

Federal Motor Vehicle Safety Standards; Air Brake Systems; Air Compressor Cut-In

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

ACTION: Final rule.

SUMMARY: This document concludes a rulemaking proceeding begun in response to a petition for rulemaking submitted by the Truck Trailer Manufacturers Association (TTMA). It amends Standard No. 121, *Air Brake Systems*, to require the automatic activation of the air compressor on a powered vehicle whenever the pressure in the air brake system drops below 100 pounds per square inch (psi). The agency has concluded that the amendment will ensure that new truck tractors provide trailers with sufficient air pressure for release of the trailer parking brakes and provide adequate service braking. In addition, the amendment will provide greater air reserves on all air braked vehicles.

DATES: *Effective date.* The amendment becomes effective March 18, 1996. *Compliance date.* Compliance with the amendment will be required on and after March 1, 1997.

Petitions for reconsideration. Any petitions for reconsideration of this rule must be received by NHTSA no later than April 1, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Richard Carter, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366-5274.

For legal issues: Mr. Marvin L. Shaw, NCC-20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-366-2992).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems*, specifies performance and equipment requirements for braking systems on vehicles equipped with air brakes, including a requirement specifying the minimum air pressure at which a towing vehicle's air compressor governor must automatically activate the compressor. The governor maintains reservoir air pressure between predetermined minimum and maximum pressures. Under the current requirement in S5.1.1.1, the governor must automatically activate the air compressor when air pressure in the reservoir falls to 85 pounds per square inch (psi). Currently manufactured air brake systems typically operate between 100 psi and 120 psi.

NHTSA adopted the air compressor governor minimum cut-in requirement on October 8, 1991. (56 FR 50666) In adopting the requirement, the agency explained that the requirement will ensure, in the event of an air leak in a tractor's brake supply system, the air compressor for the system will be activated to restore or maintain pressure in the system until the air leak is detected and corrected. The agency further stated that since most vehicles already complied with the cut-in requirement, it would not result in an undue burden for manufacturers.

The October 1991 final rule also amended Standard No. 121 by deleting the requirement for each trailer to have a separate protected reservoir for the purpose of releasing the parking brake. Under the rule, air pressure from the tractor supply lines may be used to