

154(i), 157(a), 303(b), 303(f), 303(g), and 303(r).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532, 538, and 552

[GSAR Case No. 2002-G505]

RIN 3090-AH76

General Services Administration Acquisition Regulation; Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

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

ACTION: Proposed rule with request for comments; notice of public meeting.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement section 211 of the E-Government Act of 2002. Section 211 authorizes the Administrator of GSA to provide for the use by States or local governments of its federal supply schedule for “automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).” To facilitate an open dialogue between the Government and interested parties on the implementation of section 211, GSA will hold a public meeting on the proposed GSAR rule on February 4, 2003.

DATES: *Comment Date:* Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before March 24, 2003, to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be conducted at the address shown below starting at 10 a.m. to 12 p.m., local time, on February 4, 2003, to ensure an open dialogue between the government and interested parties on the proposed rule.

ADDRESSES: Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*GSARcase.2002-G505@gsa.gov*.

Please submit comments only and cite 2002-G505 in all correspondence related to this case.

Public Meeting: The location of the public meeting will be at the GSA Auditorium, 1800 F Street, NW., Washington, DC 20405.

If you wish to attend the meeting and/or make presentations on the proposed rule, please contact and submit a copy of your presentation by January 28, 2003, to—General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4033, Attn: Beverly Cromer, Washington, DC 20405. Telephone: (202) 208-6750.

Submit electronic materials via the Internet to—*meeting.2002-G505@gsa.gov*.

Please submit presentations only and cite Public Meeting 2002-G505 in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment on the proposed rule, the presentation must be submitted separately as a public comment as instructed above.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4225, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Beverly Cromer, Procurement Analyst, at (202) 208-6750. Please cite GSAR case 2002-G505.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Supply Schedule Program, which is directed and managed by GSA, is designed to provide Federal agencies with a simplified process of acquiring commonly used commercial supplies and services at prices associated with volume buying. Ordering activities conduct streamlined competitions among a number of schedule contractors, issue orders directly with the selected contractor, and administer orders.

Section 211 of the E-Government Act of 2002 (Pub. L. 107-347) amends the Federal Property and Administrative Services Act to allow for “cooperative purchasing,” where the Administrator of GSA provides States and localities access to certain items offered through GSA’s supply schedules. Specifically, section 211 amends 40 U.S.C. 502 by adding a new subsection “(c)” that

allows, to the extent authorized by the Administrator, a State or local government to use “Federal supply schedules of the General Services Administration for automated data processing equipment (ADPE)(including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).” “State or local government” includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

The proposed rule would establish a new GSAR subpart 538.70 and associated clauses to address cooperative purchasing from supply schedules by eligible non-federal organizations. Among other things, the rule would define the scope of cooperative purchasing, its usage, and applicable terms and conditions, including payment and the handling of disputes.

Limited scope. Because the law specifies that schedule access applies to offerings “contained in Federal supply classification code group 70,” the proposed GSAR changes would limit state and local purchases to the GSA’s Schedule 70 contracts. The rule would not authorize access to ADPE available through GSA schedules other than Schedule 70. In addition, the rule would not apply, nor otherwise affect, supply schedules operated by the Department of Veterans Affairs under a delegation provided by GSA.

Voluntary use. The authority provided in this rule would be available for use on a voluntary (*i.e.*, non-mandatory) basis. In other words, businesses with Schedule 70 contracts would have the option of deciding whether they will accept orders placed by State or local government buyers. Existing Schedule 70 contracts would be modified by mutual agreement of the parties. Even after an existing contract has been modified, a schedule contractor would retain the right to decline orders by State or local government buyers on a case-by-case basis. Future schedule contractors would also be able to decline orders on a case-by-case basis. (Schedule contractors would be able to decline to accept any order, for any reason, within a 5-day period of receipt of the order.) Similarly, the rule would place no obligation on State and local government buyers. They would have full discretion to decide if they wish to make a supply schedule purchase, subject, however, to any limitations that may be established under local law and procedures.

Defined terms and conditions. Under proposed GSAR clause 552.238–79, which would be incorporated into covered schedule contracts of participating contractors, a new contract would be formed when the schedule contractor accepted an order from a State or locality. However, with certain exceptions provided in this rule, terms and conditions of the underlying schedule contract would be incorporated by reference into the new contract between the State or locality and the contractor. Buyers would not be permitted to place additional requirements on schedule contractors.

With respect to payment, proposed GSAR clause 552.232–81 would provide that the terms and conditions of a State's prompt payment law apply to orders placed by eligible non-federal ordering activities. If the ordering activity is not otherwise subject to a State prompt payment law, the activity would be covered by the Federal Prompt Payment Act, 31 U.S.C. 3901, *et seq.*, as implemented in the FAR (*see* subpart 32.9), in the same manner as Federal ordering activities.

The Federal government would not be liable for the performance or nonperformance of contracts established under the authority of this rule between schedule contractors and eligible non-federal entities. Disputes that could not be resolved by the parties to the new contract could be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable and appropriate.

The prices of supplies and services available on schedule contracts include an administrative fee. The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee is periodically adjusted as necessary to recover the cost of operating the program.

Interested parties are encouraged to attend a public meeting that will be held on February 4, 2003, to discuss the contents of the proposed GSAR rule and other ideas regarding the implementation of section 211. GSA is developing a training plan to help acclimate parties with cooperative purchasing. Additional non-regulatory guidance will also be developed as necessary.

Finally, GSA intends to track the level of cooperative purchasing, including participation by small business schedule contractors. It will also monitor the effect of cooperative purchasing on Federal purchasing, including any changes in access for Federal customers and the impact on

GSA's ability to negotiate favorable pricing and terms and conditions.

As required by section 211(c) of the E-Government Act, a report will be submitted to Congress by December 31, 2004, on the implementation and effects of cooperative purchasing.

The following statutes and Executive orders do not apply to this rulemaking: Unfunded Mandates Reform Act of 1995; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; and Executive Order 13132, Federalism.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the IRFA are available from the Regulatory Secretariat. GSA will consider comments from small entities concerning the affected GSAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR 2002–G505), in correspondence. The IRFA indicates that the proposed rule will affect large and small entities including small businesses that are awarded Schedule 70 contracts under the GSA Federal supply schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts. The analysis is as follows:

Initial Regulatory Flexibility Analysis GSAR Case 2002–G505

Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

Implementation of Section 211, Authorization for Acquisition of Information Technology by States and Local Governments through Federal Supply Schedules

This Initial Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Description of the reasons why action by the agency is being considered.

To implement section 211, Authorization for Acquisition of Information Technology By States and Local Governments Through

Federal Supply Schedules, of the E-Government Act of 2002 (Pub. L. 107–347). Section 211 amends section 502 of title 40, United States Code, to authorize the Administrator to provide for use by State or local governments of Federal Supply Schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed rule will implement section 211 of the E-Government Act of 2002 with the objective of opening the Federal supply schedule 70 for use by other governmental entities to enhance intergovernmental cooperation. The goal of the new rule is to make "government" (considering all levels) more efficient by reducing duplication of effort and utilizing volume purchasing techniques for the acquisition of IT products and services.

3. Description of, and where feasible, estimate of the number of small entities to which the proposed rule will apply.

The proposed rule will affect large and small entities including small businesses, that are awarded Schedule 70 contracts under the GSA Federal supply schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts. Approximately sixty-eight percent (2,300) of GSA Schedule 70 contractors are small businesses. All of those small business Schedule 70 contractors will be allowed, at the schedule contractor's option, to accept orders from State and local governments. Obviously, the expanded authority to order from Schedule 70 contracts could increase the sales of small business schedule contractors. It is difficult to identify the number of non-schedule small businesses that currently sell directly to State and local governments. The ability of governmental entities to use Schedule 70 may affect the competitive marketplace in which those small businesses operate. State and local government agencies could realize lower prices on some products and services, less administrative burden and shortened procurement lead times. The rule does not affect or waive State or local government preference programs. Finally, small governmental jurisdictions will also be affected. The 50 states, 3139 counties, 19,365 incorporated municipalities, 30,386 minor subdivisions, 3,200 public housing authorities, 14,178 school districts, 1,625 public educational institutions of higher learning, and 550 Indian tribal governments would be among those affected if they chose to order from Schedule 70 contracts. Federal supply schedule contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small governmental entities to order from Schedule 70 holds out the potential for significant cost savings for those organizations.

4. Description of projected reporting, recordkeeping, and other compliance

requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed rule makes changes in certain provisions or clauses in order to recognize the fact that authorized non-federal ordering activities may place orders under the contract. The Office of Management and Budget under the Paperwork Reduction Act have previously approved these clauses and the changes do not impact the information collection or recordkeeping requirements.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlaps or conflict with the proposed rule.

The proposed rule when finalized does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

There are no practical alternatives that will accomplish the objective of this rule.

D. Paperwork Reduction Act

The new provision at GSAR 552.232–82, Contractor's Remittance (Payment) Address, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The provision provides for the offeror to indicate the payment address to which checks should be mailed for payment of invoices and provides for the offeror to identify participating dealers and provide their addresses for receiving orders and payments on behalf of the contractor. This information is the same as is normally required in the commercial world and does not represent a Government-unique information collection. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The new clause at GSAR 552.232–83, Contractor's Billing Responsibilities, contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The clause provides for the contractor to require all dealers participating in the performance of the contract to agree to maintain certain records on sales made under the contract on behalf of the contractor. The records required are the same as those normally maintained by dealers in the commercial world and do not represent a Government-unique record keeping requirement. Therefore, the estimated burden for this clause

under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The revised clause at GSAR 552.238–75, Price Reductions, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that has previously been approved by the OMB under the Paperwork Reduction Act and assigned control number 3090–0235. The changes made to the clause by this rule do not have an impact on the information collection requirement, which was previously approved. Therefore, it has not been submitted to OMB for approval under the Act.

List of Subjects in 48 CFR Parts 532, 538, and 552

Government procurement.

Dated: January 16, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 532, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 532, 538, and 552 continues to read as follows:

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

PART 532—CONTRACT FINANCING

2. Amend section 532.206 by redesignating the existing paragraph as paragraph (a) and by adding paragraphs (b), (c), and (d) to read as follows:

532.206 Solicitation provisions and contract clauses.

(a) * * *

(b) The contracting officer shall insert the clause at 552.232–81, Payments by Non-Federal Ordering Activities, in solicitations and schedule contracts for Schedule 70.

(c) The contracting officer shall insert the provision at 552.232–82, Contractor's Remittance (Payment) Address, in solicitations and schedule contracts for Schedule 70.

(d) The contracting officer shall insert the clause at 552.232–83, Contractor's Billing Responsibilities, in solicitations and schedule contracts for Schedule 70.

532.7003 [Amended]

3. Amend section 532.7003 in paragraph (a) by removing "Payment by Governmentwide Commercial Purchase Card" and adding "Payment by Credit Card" in its place.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

538.272 [Amended]

4. Amend paragraph (a) of section 538.272 by removing "Government" each time it is used (twice) and adding "eligible ordering activities" in its place.

5. Add subpart 538.70 to read as follows:

Subpart 538.70—Cooperative Purchasing

Sec.

538.7000 Scope of subpart.

538.7001 Definitions.

538.7002 General.

538.7003 Policy.

538.7004 Solicitation provisions and contract clauses.

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use Schedule 70 contracts.

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 contracts, including products under Federal Supply Classification Code 70 of the Federal Supply Schedule program, services under Federal Supply Classification Code d3 (ADP & Telecommunication Services), and support items under both of these codes.

State and local government entities, as used in this subpart, means the States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act 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.*).

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal supply schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) State and local governments are authorized to procure only from the information technology Federal supply schedule (Schedule 70) as follows:

(1) Information technology products that fall under the Federal supply classification code group 70 (ADP equipment (including firmware), software, supplies and support equipment);

(2) Services that fall under Federal Supply Classification Code d3 (ADP and telecommunication services); and

(3) Support items for these classifications listed in paragraphs (c)(1) and (c)(2) of this section.

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70 for use by eligible non-federal

entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation 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. When such changes are made, the word “(VARIATION)” shall be added at the end of the title of the provision or clause.

(a) 52.212–4, Contract Terms and Conditions—Commercial Items.

(b) 52.216–19, Order Limitations.

(c) 52.216–22, Indefinite Quantity.

(d) 52.229–1, State and Local Taxes.

(e) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.

(f) 52.232–17, Interest.

(g) 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration.

(h) 52.232–36, Payment by Third Party.

(i) 52.246–2, Inspection of Supplies (Fixed Price).

(j) 52.246–4, Inspection of Services-Fixed Price.

(k) 52.246–6, Inspection-Time-and-Material and Labor-Hour.

(l) 52.246–16, Responsibility for Supplies.

(m) 52.247–1, Commercial Bill of Lading Notations.

(n) 52.247–34, F.O.B. Destination.

(o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

(p) 52.247–53, Freight Classification Description.

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 schedule contracts for Schedule 70.

(b) The contracting officer shall insert the clause at 552.238–78, Eligible Ordering Activities, in solicitations and contracts for Schedule 70.

(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 Schedule 70 contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211–75 [Amended]

6. Amend section 552.211–75 by revising the date of the clause to read “(Date)” and removing from the last sentence of the clause “ordering agency” and adding “ordering activity” in its place.

552.211–77 [Amended]

7. Amend section 552.211–77 by—

a. Revising the date of the clause to read “(Date)”;

b. Removing from paragraph (a)(3) the word “Government” and adding the words “Ordering activity” in its place; and

c. Removing from the introductory text of paragraph (b) the word “Government” and adding the words “ordering activity” in its place.

552.216–72 [Amended]

8. Amend section 552.216–72 by—

a. Revising the date of the clause to read “(Date)”;

b. Removing from the last sentence of paragraph (c) of the clause “other agencies” and adding “other ordering activities” in its place; and

c. Removing from the first sentence of paragraph (d) “Federal agency” and adding “ordering activity” in its place, and removing from the last sentence “Federal agencies” and adding “Ordering activities” in its place.

552.232–8 [Amended]

9. Amend section 552.232–8 by revising the date of the clause to read “(Date)”;

and removing paragraph (d) and redesignating paragraphs (e), (f), and (g) as (d), (e), and (f), respectively.

10. Amend section 552.232–77 by revising the section and clause headings and paragraphs (a) and (b); and in paragraphs (b) and (c) of Alternate I by removing “Governmentwide commercial purchase card” and adding “credit card” in its place. The revised text reads as follows:

552.232–77 Payment by Credit Card.

Payment by Credit Card (Date)

(a) *Definitions.* *Credit card* means any credit card used to pay for purchases, including the Governmentwide Commercial Purchase Card.

Governmentwide commercial purchase card means a uniquely numbered credit card issued by a Contractor under GSA’s Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

Oral order means an order placed orally either in person or by telephone.

(b) At the option of the ordering activity and if agreeable to the Contractor, payments of * * * or less for oral or written orders may be made using the credit card.

* * * * *

11. Add sections 552.232–81, 552.232–82, and 552.232–83 to read as follows:

552.232–81 Payments by Non-Federal Ordering Activities.

As prescribed in 532.206(b), insert the following clause:

Payments by Non-Federal Ordering Activities (Date)

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible nonfederal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in Federal Acquisition Regulation clause 52.232–25, Prompt Payment, or 52.212–4, Contract Terms and Conditions—Commercial Items, apply to such activities in the same manner as to Federal ordering activities. (End of clause)

552.232–82 Contractor's Remittance (Payment) Address.

As prescribed in 532.206(c), insert the following provision:

Contractor's Remittance (Payment) Address (Date)

(a) The offeror shall indicate below the payment address to which checks should be mailed for payment of proper invoices submitted under a resultant contract.

Payment Address:

(b) Offeror shall furnish by attachment to this solicitation, the remittance (payment) addresses of all authorized participating dealers receiving orders and accepting payment in the name of the Contractor in care of the dealer, if different from their ordering address(es) specified elsewhere in this solicitation. If a dealer's ordering and remittance address differ, both must be furnished and identified as such.

(c) All offerors are cautioned that if the remittance (payment) address shown on an actual invoice differs from that shown in paragraph (b) of this provision or on the attachment, the remittance address (es) in paragraph (b) of this provision or attached will govern. Payment to any other address will require an administrative change to the contract.

Note: All delivery orders placed against a Federal Supply Schedule contract are to be paid by the individual ordering activity placing the order. Each delivery order will cite the appropriate ordering activity payment address, and proper invoices should be sent to that address. Proper invoices should be sent to GSA only for orders placed by GSA. Any other ordering activity's

invoices sent to GSA will only delay your payment.

(End of provision)

552.232–83 Contractor's billing responsibilities.

As prescribed in 532.206(d), insert the following clause:

Contractor's Billing Responsibilities (Date)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

(1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

- (i) The date of sale;
- (ii) The ordering activity to which the sale was made;
- (iii) The service or product/model sold;
- (iv) The quantity of each service or product/model sold;
- (v) The price at which it was sold, including discounts; and
- (vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government. Price reductions made by a participating dealer on sales under this contract will result in an overall price reduction being assessed against the Contractor as provided for in the Price Reduction clause. (End of clause)

552.238–71 [Amended]

12. Amend section 552.238–71 by revising the date of the clause to read “(Date)” and by removing from paragraph (a) “Federal Government” and adding “ordering activity” in its place.

13. Amend section 552.238–75 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (c)(2) “Government” and adding “eligible ordering activities” in its place;
- c. Removing from the end of paragraph (d)(2) “or”; and
- d. Redesignating paragraph (d)(3) as (d)(4), and adding a new paragraph (d)(3) to read as follows:

552.238–75 Price Reductions.

* * * * *

Price Reductions (Date)

* * * * *

(d) * * *

(3) To eligible ordering activities under this contract; or

* * * * *

(End of clause)

14. Add sections 552.238–77 through 552.238–79 to read as follows:

552.238–77 Definition (Federal Supply Schedules).

As prescribed in 538.7004(a), insert the following clause:

Definition (Federal Supply Schedules) (Date)

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. (End of clause)

552.238–78 Eligible Ordering Activities.

As prescribed in 538.7004(b), insert the following clause:

Eligible Ordering Activities (Date)

(a) The following activities are authorized to place orders under this contract on an optional basis:

(1) Executive agencies (as defined in 48 CFR 2.1), including nonappropriated fund activities as prescribed in 41 CFR 101–26.000.

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1.

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act).

(4) Federal agencies, including establishments in the legislative or judicial branch of Government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia.

(6) Tribal governments when authorized under 25 U.S.C. 450j(k).

(7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b).

(8) Organizations, other than those identified in paragraph (b) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) The following activities may place orders against Schedule 70 contracts to include Schedule 70 products (ADP equipment (including firmware), software, supplies and support equipment; Schedule 70 services and Schedule 70 support items), on an optional basis; *provided*, the Contractor accepts order(s) from such activities: State and 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). Tribal government means 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 any Alaska Native regional or village corporation established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). (End of clause)

552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing (Date)

(a) If an entity identified in paragraph (b) of the clause at 552.238-78, Eligible Ordering Activities, elects to place a delivery order under this contract, such order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA that shall mean the individual responsible for placing the order for the ordering activity (e.g. FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may not modify, delete or add to the terms and conditions of the Schedule contract. To the extent that orders placed by such ordering activities may include additional terms and conditions not found in the Schedule contract, those terms and conditions are null, void, and of no effect. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the

ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (b) of the clause at 552.238-78, Eligible Ordering Activities, the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities which are not declined within the 5-day period. (End of clause)

15. Amend section 552.246-73 by revising the date of the clause to read "(Date)"; removing from paragraph (b)(1) "Government" and adding "ordering activity" in its place; and removing from paragraph (b)(3) "The Government" and adding "the ordering activity" in its place.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030114012-3012-01; I.D. 121902F]

RIN 0648-AQ46

Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Area Closure to Trawl, Pot, and Hook-and-Line Fishing in Waters off Cape Sarichef

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to seasonally prohibit directed fishing

for groundfish by vessels using trawl, pot, or hook-and-line gear in waters located near Cape Sarichef in the Bering Sea subarea. This action is necessary to support NMFS research on the effect of fishing on the localized abundance of Pacific cod and to further the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments on the proposed rule must be received on or before February 7, 2003.

ADDRESSES: Comments should be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or delivered to room 413-1 in the Federal Building at 709 W 9th St., Juneau, AK. Comments also may be faxed to 907-586-7557, marked Attn: Lori Durall. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the same address or by calling the Alaska Region, NMFS, at (907) 586-7228.

FOR FURTHER INFORMATION CONTACT: Melanie Brown at (907) 586-7228, or melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

In October 2002, the Council adopted a proposed regulatory amendment to seasonally prohibit directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in a portion of the waters off Cape Sarichef in the Bering Sea subarea. The purpose of this action is to support a NMFS research project investigating the effect of commercial fishing on Pacific cod abundance in localized areas. This study is an integral part of a NMFS comprehensive research program designed to evaluate effects of fishing on the foraging behavior of Steller sea lions. The western distinct population segment (DPS) of Steller sea lions is listed as an endangered species under the Endangered Species Act and is likely to be adversely affected by the Atka mackerel, pollock, and Pacific cod fisheries. Steller sea lion protection