

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
GE's Former RCA del Caribe .....	Barceloneta, PR .....	<p>Wastewater treatment plant (WWTP) sludges from chemical etching operation (EPA Hazardous Waste No. F006) and contaminated soil mixed with sludge. This is a one-time exclusion for a range of 5,000 to 15,000 cubic yards of WWTP sludge on condition of disposal in a Subtitle D landfill. This exclusion was published on February 1, 2007. 1. Reopener Language—(a) If, anytime after disposal of the delisted waste, GE discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then GE must report any information relevant to that condition or assumption, in writing, to the Director of the Division of Environmental Planning and Protection in Region 2 within 10 days of first of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Director will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment.</p> <p>2. Notifications—GE must provide a one-time written notification to any State or Commonwealth Regulatory Agency in any State or Commonwealth to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the waste exclusion and a possible revocation of the decision.</p>

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 511, 516, 532, 538, 546, and 552

[Amendment 2007-01; GSAR Case 2006-G522; Change 18 Docket 2007-0003, Sequence 1]

RIN 3090-A132

### General Services Acquisition Regulation; Federal Supply Schedule Contracts-Recovery Purchasing by State and Local Governments Through Federal Supply Schedules

**AGENCY:** Office of the Chief Acquisition Officer, Contract Policy Division, General Services Administration (GSA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 833 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be

used to facilitate recovery from a major disaster, terrorism or nuclear, biological, chemical, or radiological attack.

**DATES:** *Effective Date:* February 1, 2007.

*Comment Date:* Interested parties should submit comments in writing to the Regulatory Secretariat at the address shown below on or before April 2, 2007 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by Amendment 2007-01, GSAR case 2006-G522, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "General Services Administration" as the agency of choice. At the "Keyword" prompt, type in the GSAR case number (for example, GSAR case 2006-G522) and click on the "Submit" button. Please include any personal and/or business information inside the document.

You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "General Services Administration," and typing the GSAR case number in the keyword field. Select the "Submit" button.

- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite GSAR case 2006-G522, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Clark, Procurement Analyst, at (202) 219-1813, for clarification of content. Please cite Amendment 2007-01, GSAR case 2006-G522. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755.

#### 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.

This interim rule amends GSAR Parts 511, 516, 532, 538, 546, and 552 to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 833 amends 40 U.S.C. 502

to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. House Report 109-452 of the Committee on Armed Services indicates that Section 833 builds on the implementation of the Cooperative Purchasing Program authorized in Section 211 of the E-Government Act of 2002 (Pub. L. 107-347), which opened GSA's information technology schedule, Schedule 70, for use by State and local governments.

"State and local government entities," 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.*).

Eligible state or local government ordering activities are encouraged to use the ordering procedures outlined in Federal Acquisition Regulation (FAR) Subpart 8.4 (48 CFR Chapter 1, Subpart 8.4) when placing an order against Federal Supply Schedules contracts.

This interim rule establishes a new GSAR Subpart 538.71 and amends associated clauses to address recovery purchasing from supply schedules by eligible non-federal organizations. Among other things, the rule defines the scope of recovery purchasing, its usage, and applicable terms and conditions, including payment and the handling of disputes.

*Scope.* State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. This authority is limited to GSA's Multiple Award Schedule contracts and does not include any other GSA programs. A listing of the Federal Supply Schedules for the products and services is available in GSA's Schedules e-Library at Web site <http://www.gsaelibrary.gsa.gov>. The State or local government ordering activity is responsible for ensuring that only authorized representatives of their governments place orders and that purchased products or services are used to facilitate recovery from major disasters or attacks for the purposes stated in Section 833.

*Voluntary use.* The authority provided in this rule is available for use on a voluntary (*i.e.*, non-mandatory) basis. In other words, businesses with schedule contracts which contain items for recovery purchasing have the option of deciding whether they will accept orders placed by State or local government buyers. Existing schedule contracts which contain items for recovery purchasing may be modified only by mutual agreement of the parties. After an existing contract has been modified, a schedule contractor still retains the right to decline orders by State or local government buyers on a case-by-case basis. Future schedule contractors will also be able to decline orders on a case-by-case basis. Schedule contractors may decline any order, for any reason, within a 5-day period of receipt of the order (See GSAR 552.238-78). Similarly, the rule places no obligation on State and local government buyers. They will have full discretion to decide if they wish to make a Federal Supply Schedule purchase, subject, however, to any limitations that may be established

under State and local law and procedures.

*Defined terms and conditions.* Under new GSAR clause 552.238-80, Use of Federal Supply Schedule Contracts by Certain Entities-Recovery Purchasing, which will be incorporated into covered schedule contracts of participating contractors, a new contract will be formed when the schedule contractor accepts an order from a State or local government. However, with certain exceptions provided in this rule, terms and conditions of the underlying schedule contract will be incorporated by reference into the new contract between the State or local government and the contractor. A State and local government ordering activity may include terms and conditions required by statute, ordinance, regulation, or order to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract.

With respect to payment, this rule amends the GSAR to make the clause at 552.232-81, Payments by Non-Federal Ordering Activities, applicable to Federal Supply Schedules for recovery purchasing. The clause provides 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 FAR Subpart 32.9, in the same manner as Federal ordering activities.

The Federal Government will 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 cannot be resolved by the parties to the new contract can 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 industrial funding fee. The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee will be periodically adjusted as necessary to recover the cost of operating the program.

*Advance Purchasing.* State and local governments may use the Federal Supply Schedule contracts to purchase products or services in advance of a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

(42 U.S.C. 5121 *et seq.*) or terrorist, nuclear, biological, chemical, or radiological attack. In the aftermath of emergency events, State or local governments' systems may be disrupted. Thus, use of Federal Supply schedule contracts prior to these events to acquire products or services to be used to facilitate recovery is authorized. The State or local government will be responsible for ensuring that purchased products or services are to be used to facilitate recovery.

*Transactional data.* GSA anticipates a need for specific information regarding recovery purchasing. Quality transactional data will allow for effective program measurement and improvement. GSA is interested in comments on the schedule contractors' ability to report data elements such as items and quantities sold, prices, and State or local government placing the order. GSA also is interested in hearing industry's perspective on the best way to capture this data.

#### **B. Unfunded Mandates Reform Act and Executive Order 13132**

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.

#### **C. Regulatory Flexibility Act**

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the interim rule will affect large and small entities including small businesses that are awarded schedule contracts for recovery purchasing, 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 contracts for recovery purchasing.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

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

To implement section 833, Use of Federal Supply Schedules by State and Local Governments for Goods and Services for Recovery from Natural Disasters, Terrorism, or Nuclear, Biological, Chemical, or Radiological Attack, of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364). Section 833 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 products or services that are to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. The rule opens Federal Supply Schedule contracts for recovery purchasing, for use by other governmental entities to enhance intergovernmental cooperation.

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

The interim rule will implement section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) with the objective of opening Federal Supply Schedule contracts 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 products and services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster, terrorism, or nuclear, biological, chemical, or radiological attack.

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

The rule will affect large and small entities including small businesses that are awarded schedule contracts for recovery purchasing, 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 contracts for recovery purchases. Approximately 80 percent (12,494) of GSA Schedule contractors are small businesses and they accounted for 37 percent of the sales under the Schedules program for Fiscal Year 2005. All of the small business contractors under the Schedules for recovery purchasing 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 contracts for recovery purchasing 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 contracts for recovery purchasing, 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 Counties, incorporated municipalities, minor subdivisions, public housing authorities, school districts, public educational institutions of higher learning, and Indian tribal governments would be among those affected if they chose to order

from Schedule contracts for recovery purchasing. 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 contracts for recovery purchasing holds out the potential for significant cost savings for those organizations as well as providing alternative sources of goods and services in case their usual and customary sources of supply are interrupted in the aftermath of the disaster.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the 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 interim 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 has 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, overlap or conflict with the rule.

The interim rule does not duplicate, overlap, or conflict with any other Federal rules.

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

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

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils will consider comments from small entities concerning the affected GSAR Parts 511, 516, 532, 538, and 552 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.* (Amendment 2007-01, GSAR case 2006-G522), in correspondence.

#### **D. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104-13) applies because the interim rule contains information collection requirements. The new clause at 552.238-80, Use of Federal Supply Schedule Contracts by Certain Entities-Recovery Purchasing, provides for the contractor to report the quarterly dollar value of all sales under the contract to State and local governments, which includes any State, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning). The records required

for reporting are the same as those normally maintained by a contractor in the commercial world and do not represent a Government-unique recordkeeping requirement. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under OMB Control Number 3090-0250 from Office of Management and Budget for information collections with a zero burden estimate.

**E. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Administrator of General Services (GSA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), signed by the President on October 17, 2006. The law requires the Administrator of General Services to establish procedures to implement Section 833 not later than 30 days after the date of the enactment of the Act. GSA wishes to obtain public comments on the changes. Due to the statutory deadline, the rule is being issued as an interim rule rather than as a proposed rule.

Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Parts 511, 516, 532, 538, 546, and 552**

Government procurement.

Dated: January 29, 2007.

**Roger D. Waldon,**

*Acting Senior Procurement Executive, Office of the Chief Acquisition Officer.*

■ Therefore, GSA amends 48 CFR parts 511, 516, 532, 538, 546, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511, 516, 532, 538, 546, and 552 continues to read as follows:

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

**PART 511—USING AND MAINTAINING REQUIREMENTS DOCUMENTS**

■ 2. Revise paragraphs (c)(3) and (d) of section 511.204 to read as follows:

**511.204 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(c) \* \* \*

(3) Include the clause at 552.211-75, Preservation, Packaging and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. You may also

include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. Use Alternate I in solicitations and contracts for—

(i) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(ii) Federal Supply Schedules for recovery purchasing (See 538.7102).

\* \* \* \* \*

(d) *Supply contracts.* Include the clause at 552.211-77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

**PART 516—INDEFINITE-DELIVERY CONTRACTS**

- 3. Amend section 516.506 by—
- a. Redesignating paragraph (d) as (e);
- b. Adding a new paragraph (d); and
- c. Amending the newly designated paragraph (e) by revising the last sentence.

The added and revised text reads as follows:

**516.506 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(d) In solicitations and contracts for Federal Supply Schedules for recovery purchasing (See 538.7102), use 552.216-72, Placement of Orders, Alternate IV, instead of Alternate II.

(e) \* \* \* Use 552.216-73 Alternate II when 552.216-72 Alternate II, Alternate III, or Alternate IV are prescribed.

**PART 532—CONTRACT FINANCING**

■ 4. Amend section 532.206 by revising paragraphs (a) and (b) to read as follows:

**532.206 Solicitation provisions and contract clauses.**

(a) *Discounts for prompt payment.* Include 552.232-8, Discounts for Prompt Payments, in multiple award schedule solicitations and contracts instead of the clause at Federal Acquisition Regulation 52.232-8. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers (SINs); or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

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

(1) FSS Schedule 70 and Consolidated Products and Services Schedule contracts containing information technology SINs; or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

\* \* \* \* \*

■ 5. Amend section 532.7003 by revising paragraphs (b) and (c) to read as follows:

**532.7003 Contract clause.**

\* \* \* \* \*

(b) Federal Supply Schedule contracts. Use Alternate I of the clause at 552.232-77 for all FSS schedule solicitations and contracts, except for—

(1) Federal Supply Schedule 70, Information Technology, and the Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers; or

(2) Federal Supply Schedule contracts for recovery purchasing (See 538.7102).

(c) *Federal Supply Schedule contracts for information technology Special Item Numbers or Federal Supply Schedules for recovery purchasing (See 538.7102).*

In solicitations and contracts for (1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or (2) Federal Supply Schedule contracts for recovery purchasing (See 538.7102), use 552.232-79 instead of 552.232-77.

**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING**

■ 6. Amend section 538.273 by revising paragraphs (a)(2) and (b)(2) to read as follows:

**538.273 Contract clauses.**

(a) \* \* \*

(2) 552.238-71, Submission and Distribution of Authorized FSS Schedule Pricelists. In solicitations and contracts for:

(i) FSS Schedule 70 and the Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers; or

(ii) Federal Supply Schedule contracts for recovery purchasing (See 538.7102), use Alternate I. If GSA is not prepared to accept electronic submissions for a particular schedule delete—

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

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

\* \* \* \* \*

(b) \* \* \*

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

(i) FSS Schedule 70 and the Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers; or

(ii) Federal Supply Schedule contracts for recovery purchasing (See 538.7102).

■ 7. Add Subpart 538.71, consisting of sections 538.7100 thru 538.7104, to read as follows:

Sec.

538.7100 Scope of subpart.

538.7101 Definitions.

538.7102 General.

538.7103 Policy.

538.7104 Solicitation provisions and contract clauses.

### Subpart 538.71—Recovery Purchasing

#### 538.7100 Scope of subpart.

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

#### 538.7101 Definitions.

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

#### 538.7102 General.

(a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. Use of Federal supply schedules by State and local governments is voluntary. Agreement of a schedule contractor to offer recovery purchasing under the contract and

acceptance of any order for recovery purchasing from a State or local government is voluntary.

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

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

#### 538.7103 Policy.

*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation (FAR) and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/ clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of

the provision or clause. These clauses include but are not limited to—

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

(b) 52.216–18, Ordering.

(c) 52.216–19, Order Limitations.

(d) 52.229–1, State and Local Taxes.

(e) 52.229–3, Federal, State, and Local Taxes.

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

(g) 52.232–17, Interest.

(h) 52.232–19, Availability of Funds for the Next Fiscal Year.

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

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

(k) 52.237–3, Continuity of Services.

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

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

(n) 52.247–34, F.O.B. Destination.

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

#### 538.7104 Solicitation provisions and contract clauses.

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

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

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

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

**PART 546—QUALITY ASSURANCE**

- 8. Amend section 546.710 by revising paragraph (b) to read as follows:

**546.710 Contract clauses.**

\* \* \* \* \*

(b) *Multiple award schedules.* Insert the clause at 552.246-73, Warranty—Multiple Award Schedule, in solicitations and contracts. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

\* \* \* \* \*

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 9. Amend section 552.216-72 by—  
 (a) Removing from the introductory text of Alternate II “516.506(c)” and adding “516.506(b)” in its place; and  
 (b) Adding Alternate IV.  
 The added text reads as follows:

**552.216-72 Placement of orders.**

\* \* \* \* \*

*Alternate IV (FEB 2007).* As prescribed in 516.506(d), substitute the following paragraphs (a), (c), and (d) for paragraphs (a), (c), and (d) of the basic clause:

(a) See 552.238-78, Scope of Contract (Eligible Ordering Activities)—Alternate I, for who may order under this contract.

(c) If the Contractor agrees, GSA’s Federal Acquisition Service (FAS) will place orders for eligible ordering activities, as defined in paragraph (a) of the clause at 552.238-78-Alternate I, by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor’s agreement, other eligible ordering activities, as defined in paragraphs (a) and (d) of the clause at 552.238-78-Alternate I, may also place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

**552.216-73 [Amended]**

- 10. Amend section 552.216-73 by—  
 ■ (a) Removing from the introductory text “516.506(c)” and adding “516.506(e)” in its place; and  
 ■ (b) Removing from the introductory text of Alternates I and II “516.506(b)” and adding “516.506(e)” in its place, respectively.  
 ■ 11. Add section 552.238-76 to read as follows:

**552.238-76 Definition (Federal Supply Schedules)—Recovery Purchasing.**

As prescribed in 538.7104(a), insert the following clause:

**Definition (Federal Supply Schedules)—Recovery Purchasing (FEB 2007)**

*Ordering activity* (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see 552.238-78, Alternate I) authorized to place orders under Federal Supply Schedule contracts.  
 (End of clause)

- 12. Amend section 552.238-78 by adding Alternate I to read as follows:

**552.238-78 Scope of Contract (Eligible Ordering Activities).**

\* \* \* \* \*

*Alternate I (FEB 2007).* As prescribed in 538.7104(b), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic clause:

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic delivery.

(1) Executive agencies (as defined in Federal Acquisition Regulation Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to Federal Acquisition Regulation Subpart 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); and  
 (8) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(d) The following activities may place orders against Federal Supply Schedules for products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack, on an optional basis; PROVIDED, the

Contractor accepts order(s) from such activities: State and local government entities, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

*State and local government entities*, 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.*).

- 13. Add new section 552.238-80 to read as follows:

**552.238-80 Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing.**

As prescribed in 538.7104(c), insert the following clause:

**Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing (FEB 2007)**

(a) If an entity identified in paragraph (d) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities)—Alternate I, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies “Compliance with laws unique to Government contracts” (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and

conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

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

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

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

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

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

(7) The state or local government ordering activity will be responsible for purchasing products or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

(42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

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

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

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

(c) In accordance with clause 552.238-74, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number—

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities)—Alternate I; and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-78, Alternate I.

(d) A listing of the Federal Supply Schedule contracts for the products and services available for disaster recovery purchasing is accessible in GSA's Schedules e-Library at Web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating Contractors and the products and services available for disaster recovery purchasing will be labeled with the Disaster Recovery Purchasing icon. (End of clause)

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 192 and 195

[Docket No. PHMSA-05-21253; Amdt. Nos. 192-103 and 195-86]

RIN 2137-AD68

### Pipeline Safety: Update of Regulatory References to Technical Standards

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** PHMSA is amending a final rule published in the **Federal Register** on June 9, 2006, which updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

**DATES:** The final rule takes effect on March 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Hurliaux, Director, Technical Standards at (202) 366-4565, by fax at (202) 366-4566, or by e-mail at [richard.hurliaux@dot.gov](mailto:richard.hurliaux@dot.gov). Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System's home page at <http://dms.dot.gov>.

General information on the pipeline safety program is available at PHMSA's Web site at <http://phmsa.dot.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 9, 2006, PHMSA published a final rule in the **Federal Register** entitled "Pipeline Safety: Update of Regulatory References to Technical Standards" (71 FR 33402). Amendment Nos. 192-103, 193-19, and 195-86 updated references to pipeline-related technical standards and made a number of editorial corrections. We subsequently identified several omissions and editorial corrections in parts 192 and 195. In this correction notice we make the following corrections and edits:

- Three editorial corrections are necessary in § 192.1. The spelling of the word "apply" is corrected in the introductory text of paragraph (b), the comma is replaced by a ";" at the end of paragraph (b)(2), and the comma is replaced by ";" or " at the end of paragraph (b)(4)(iii). We are restating these entire paragraphs for clarity.

- In Part 192, the restatement of the table of standards incorporated by reference inadvertently deleted API Recommended Practice 80 (API RP 80), "Guidelines for the Definition of Onshore Gas Gathering Lines" (1st edition, April 2000). We are restating the list of API standards at § 192.7(c)(2) to properly include API RP 80.

- Paragraph 192.227(a) incorrectly references "Appendix A." We are correcting this to refer to "§ 192.7" and restating the entire paragraph for clarity.

- Paragraphs 192.727(g)(2) and 195.59(a) are updated to correctly reference the NPMS homepage at <http://www.npms.phmsa.dot.gov>. We are restating these entire paragraphs for clarity.