

(b) A copy of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be reproduced by the Contractor.

(End of clause)

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 543 and 552

[GSAR Amendment 2005-04; GSAR Case 2008-G513 (Change 25); Docket 2009-0012; Sequence 2]

RIN 3090-A183

### General Services Administration Acquisition Regulation; GSAR Case 2008-G513; Rewrite of GSAR Part 543, Contract Modifications

**AGENCIES:** General Services Administration (GSA), Office of the Chief Acquisition Officer.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) to revise the language that provides requirements for contract modifications.

**DATES:** *Effective Date:* January 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeritta Parnell at (202) 501-4082, for clarification of content. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite Amendment 2005-04, GSAR case 2008-G513 (Change 25).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The GSA is amending the GSAR to revise GSAR 543.205, Contract clauses, and associated clauses in GSAR 552.243. The information in GSAR 543.205, Contract clauses, is revised to remove 543.205(a)(1) and 543.205(b) and be re-numbered accordingly. The information in 543.205(a)(1) is deleted. This clause prescription is no longer necessary. The information in 543.205(b) is relocated to part 538. The prescription for the clause at 552.243-71, Equitable Adjustment, is revised to include the clause title for FAR 52.243-4, Changes. The clause at 552.243-70, Pricing of Adjustments, is deleted. Information formerly contained in this clause is now contained in the revised clause at 552.243-71, Equitable Adjustments. The clause at 552.243-71,

Equitable Adjustments, is revised to clarify costs, overhead, profit, and proposal preparation costs. The clause at 552.243-72, Modifications, (Multiple Award Schedule) is relocated to GSAR part 538.

The GSA published a proposed rule with request for comments in the **Federal Register** at 73 FR 35614 on June 24, 2008. There were four public comments from two respondents. One respondent recommended adding the phrase "impacted by the change" to paragraph (e) of the clause at 552.243-71 to limit the equitable adjustment to only the work impacted by the change. The GSA agrees and the language was revised to include this recommendation. The second respondent made three suggestions regarding internal GSA procedures. These suggestions are outside the scope of the GSAR case as published. Additional editorial corrections were made in paragraphs (b), (d), and (j)(2) of the clause at 552.243-71.

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.

##### B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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 rule updates, clarifies, and reorganizes existing language.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C.3501, *et seq.*

##### List of Subjects in 48 CFR Parts 543 and 552

Government procurement.

Dated: December 8, 2008.

**David A. Drabkin,**

*Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

■ Therefore, GSA amends 48 CFR parts 543 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 543 and 552 continues to read as follows:

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

### PART 543—CONTRACT MODIFICATIONS

■ 2. Revise section 543.205 to read as follows:

#### 543.205 Contract clauses.

The contracting officer shall insert 552.243-71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243-4, Changes.

### PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 552.243-70 [Removed]

■ 3. Remove section 552.243-70.

■ 4. Revise section 552.243-71 to read as follows:

#### 552.243-71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

Equitable Adjustments

(JAN 2009)

(a) This clause governs the determination of equitable adjustments to which the Contractor may be entitled under the "Changes" clause prescribed by FAR 52.243-4, the "Differing Site Conditions" clause prescribed by FAR 52.236-2, and any other provision of this contract allowing entitlement to an equitable adjustment. This clause does not govern determination of the Contractor's relief allowable under the "Suspension of Work" clause prescribed by FAR 52.242-14.

(b) At the written request of the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements set forth herein, for an equitable adjustment to the contract for changes or other conditions that may entitle a Contractor to an equitable adjustment. If the Contractor deems an oral or written order to be a change to the contract, it shall promptly submit to the Contracting Officer a proposal for equitable adjustment attributable to such deemed change. The proposal shall also conform to the requirements set forth herein.

(c) The proposal shall be submitted within the time specified in the "Changes" clause, or such other time as may reasonably be required by the Contracting Officer. In the case of a proposal submitted based on the "Differing Site Conditions" clause, the notice requirement of that clause shall be met.

(d) Proposals for equitable adjustments, including no cost requests for adjustment of the contract's required

completion date, shall include a detailed breakdown of the following elements, as applicable:

(1) Direct Costs.

(2) Markups.

(3) Change to the time for completion specified in the contract.

(e) *Direct Costs*. The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work impacted by the change. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized);

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer's overhead, profit, and any labor cost burdens carried in employer's overhead rate);

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed;

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs (e)(1) and (e)(2) of this clause;

(5) Delivery costs, if not included in material unit costs;

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor's or subcontractors' overhead rates, as specified in paragraph (g) of this clause; and

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph (i) of this clause.

(g) *Extensions of Time and Time-Related Costs*. The Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor's project schedule.

(h) *Markups*. For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractor[s] shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth below in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only

fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h).

(j) *Proposal Preparation Costs*. If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to

entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o), or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the

Contracting Officer's diligent efforts to negotiate the equitable adjustment.

(End of clause)

#### 552.243-72 [Removed]

#### ■ 5. Remove section 552.243-72.

[FR Doc. E9-215 Filed 1-8-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XM47

#### Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2009 Bering Sea Pollock Total Allowable Catch Amount; Correction

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

**ACTION:** Correction to a temporary rule; inseason adjustment; request for comments.

**SUMMARY:** This document corrects the comment period and a date for a temporary rule that published in the **Federal Register** on January 2, 2009 (74 FR 38). That rule adjusted the 2009 total allowable catch amount (TAC) for the Bering Sea pollock fishery to ensure the Bering Sea pollock TAC does not exceed the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. One typographical error specifies that comments are due on the date of publication and another typographical error specifies that comments are due on January 13, 2008. The correct date is January 13, 2009. The date that data became available is also corrected.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2008, through 2400 hrs, A.l.t., December 31, 2009, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-XM47," by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

• Mail: P. O. Box 21668, Juneau, AK 99802.

• Fax: (907) 586-7557.

• Hand delivery to the Federal Building: 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Correction

The final rule, identified as FR Doc. E8-31224 that published in the **Federal Register** on January 2, 2009 (74 FR 38) is corrected by fixing three typographical errors as follows.

1. On page 38, in the second column, the second paragraph under the DATES caption is corrected to read:

"Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2009."

2. On page 39, column 2, in the last line the date "December 19, 2007" is corrected to read "December 19, 2008".

3. On page 40, in the first column, line 2, the date "January 13, 2008" is corrected to read "January 13, 2009".

##### Classification

This action corrects three typographical errors and does not otherwise change the requirements in the January 2, 2009 (74 FR 38) temporary rule.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is