

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 570

[GSAR Case 2006–G508; Docket 2009–0017; Sequence 1]

RIN 3090–A196

General Services Administration Acquisition Regulation; GSAR Case 2006–G508; Rewrite of Part 570, Acquiring Leasehold Interests in Real Property

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

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the GSA Acquisition Regulation (GSAR) to revise sections of GSAR part 570 that provide requirements for acquiring leasehold interests in real property.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before February 2, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006–G508 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2006–G508” under the heading “Enter Key Word or ID”. Follow the instructions provided to “Submit a Comment”. Please include your name, company name (if any), and “GSAR Case 2006–G508” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services

Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006–G508 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: For clarification of content, contact Ms. Beverly Cromer at (202) 501–1448. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (MVPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G508.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is amending the GSAR to revise GSAR part 570, Acquiring Leasehold Interests in Real Property. This proposed rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative. The initiative was undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register**.

This proposed rule revises GSAR part 570 as follows: Overall changes were made throughout the text to change “you” to “contracting officer”, and to edit language for clarity.

GSAR 570.101(b) is revised to delete GSAR rules that are no longer applicable to the acquisition of leasehold interests in real property and to add current references to GSAR 522.805, 522.807, and 532.111.

GSAR 570.101(c) is revised to update the GSAR provisions that are applicable in leasing transactions. This section is revised to delete GSAM sections from the GSAR and move them to the GSAM, the non-regulatory portion of the manual. GSAR 570.101(d) is added to explain that the FAR does not apply to leasehold acquisitions of real property and to further explain that references to the FAR in GSAR part 570 are used as a matter of policy where the underlying statute behind the FAR provision applies to leasing or as matter of administrative convenience.

GSAR 570.102 is revised to add definitions for “lease acquisition”, “lease extension”, “lease renewal (option)”, “succeeding lease”, “superseding lease,” and “usable square feet”. The definition for “simplified lease acquisition threshold” is revised to delete the dollar value, and instead reference FAR 2.101 for information about the threshold. The definition for “small business” is revised to delete the dollar limit for annual average gross receipts and to reference the size standard established by the Small Business Administration. Further revisions were made to include where the size standards may be found on the Web. The definition for “space in buildings” is deleted because this

definition was only referenced at GSAR 570.105–3, which is also being deleted.

GSAR 570.103 is revised to update the statutory reference to leasing authority. In addition, GSAR 570.103 is revised, consistent with statute and regulation, to allow the contracting officer to designate a contracting officer’s representative.

GSAR 570.105–2 is re-titled Criteria for the use of two-phase design-build. GSAR 570.105–2 is revised to update the statutory reference to leasing authority. GSAR 570.105–2(c) is added to reference 570.305, where additional procedures can be found regarding two-phase design-build selections that apply to acquisition of leasehold interests. GSAR 570.105–3 is deleted in its entirety because sealed bidding is not used in GSA leasing transactions.

GSAR 570.106 is re-titled Advertising, Publicizing, and Notifications to Congress, and revised to incorporate advertising requirements from GSAR part 505, because most of the exceptions to advertising requirements contained in GSAR part 505 relate to the leasing program.

GSAR 570.106–1, Synopsis of lease awards, is added to incorporate synopsis requirements of lease awards from GSAR part 505.

GSAR 570.108 is revised to update reference to “Excluded Parties List System” (EPLS).

GSAR 570.109 is revised to add the language “representations and” for clarification.

GSAR 570.110 is revised to require the contracting officer to obtain two bids or cost and pricing data for price analysis of offered tenant improvement costs.

GSAR 570.111 is revised to require that the inspection and acceptance document contain the usable square footage accepted and the acceptance date.

GSAR 570.115, Novation and Change of Ownership, is added to include language stating that FAR subpart 42.12 applies in the event of a transfer of ownership of the leased premises or a change in the lessor’s legal name.

GSAR 570.116, Contract Format, is added to include language stating that the uniform contract format is not required for leases of real property.

GSAR 570.117, Sustainable requirements for lease acquisitions, is added to add a requirement for the contracting officer to include sustainable design requirements appropriate for the type of leasing action in solicitations for offers and to provide that the solicitation requirements and instructions are listed on <http://gsa.gov/leasing>.

GSAR 570.203–3(a), is revised to add a reference to “GSA Form 3626” for clarity and to require the contracting officer to include sustainable design requirements in offers.

GSAR 570.203–4 is revised to include a reference to the thresholds at FAR 15.403–4 and 19.702(a). It is further revised to require that the contracting officer make an affirmative determination of price reasonableness.

GSAR subpart 570.3 is renamed Acquisition Procedures for Leasehold Interests in Real Property Over the Simplified Lease Acquisition Threshold.

GSAR 570.303–1 is revised to add a requirement that each solicitation of offers (SFO) must include sustainable design requirements.

GSAR 570.303–2 is revised to allow electronic issuance of solicitations.

GSAR 570.303–4 is revised to require contracting officers to re-advertise and reissue a solicitation when a complete revision of a solicitation is required in accordance with GSAR 570.106.

GSAR 570.304 is revised to adequately distinguish between best value and low price technically acceptable acquisitions.

GSAR 570.305 is revised to require the contracting officer to consider planned subcontracting opportunities for small disadvantaged business concerns during phase one evaluations.

GSAR 570.306(b) is revised to require the contracting officer to review the elements of the lessor’s proposed rent to analyze whether the individual elements are realistic and reflect the lessor’s understanding of work to be performed.

GSAR 570.306(c) is revised to add information on past performance evaluations.

GSAR 570.306(f) is revised to direct the reader to important paragraphs in part 570 concerning the evaluation of offers.

GSAR 570.401 is revised to add language indicating that if a renewal option was not evaluated as part of the lease at award, then the addition of a renewal option during the lease term must satisfy the requirements of GSAM 506 regarding full and open competition.

GSAR 570.402–2 is revised to update the reference to publication and advertising requirements for leases.

GSAR 570.402–5(a) is revised to add language to emphasize that relocation costs are to be used in price evaluations.

GSAR 570.402–6 is revised to provide clarification on how to conduct a cost-benefit analysis.

GSAR 570.403 is revised for clarity to refer to the cost-benefit analysis in

570.402–6 when identifying other potentially suitable properties.

GSAR 570.404 is revised to clarify that a superseding lease may be used when market conditions warrant renegotiation of an existing lease, and to provide considerations of a cost-benefit analysis.

GSAR 570.405 is revised to provide examples of situations where lease extensions may be appropriate.

GSAR 570.501(a) is revised to explain that the procedures in 570.502 apply to alterations acquired directly from a lessor by modification or supplemental lease agreement.

GSAR 570.502 is deleted because this information is addressed in 570.501(a).

GSAR 570.502–1 is revised to tie the threshold to the FAR definition of the micro-purchase threshold.

GSAR 570.502–2 is revised to delete language that refers to an obsolete form, GSA Form 300, and allow the lease contracting officer to delegate alteration contracting authority to a warranted contracting officer’s representative in GSA or the tenant agency.

GSAR 570.503 is revised to delete paragraph (b) from the GSAM and incorporate it into the GSAR.

GSAR subpart 570.6 is renumbered as GSAR subpart 570.7 and a new GSAR Subpart 570.6, Contracting for Overtime Services and Utilities in Leases is added to provide requirements for when overtime services and utilities.

GSAR 570.601 is renumbered as 570.701 and is revised to delete the reference to the dollar value of the thresholds, and to instead provide the FAR reference because the thresholds may change.

GSAR 570.601 is revised to include additional FAR provisions or clauses that must be included in solicitations.

GSAR 570.602 and 570.603 are renumbered as 570.702 and 703, respectively, and are revised to require the contracting officer to document the file when deleting or substantially changing a clause. GSAR 570.603 is further revised to number the paragraphs (a) and (b), and to include language in paragraphs (a) and (b) to require the contracting officer to include the following additional clauses in leaseholds for real property:

552.215–70, Examination of Records by GSA;

552.270–28, Mutuality of Obligation;

552.270–29, Acceptance of Space;

552.270–30, Price Adjustment for

Illegal or Improper Activity;

552.270–31, Prompt Payment; and

552.270–32, Covenant Against

Contingent Fees.

GSAR 570.604 is renumbered as 570.704 and is revised to delete the

reference to GSAR clause 552.203–5, Covenant Against Contingent Fees, because the updated clause number is now referenced in 570.703.

GSAR 570.701 is renumbered as 570.801 and is revised to delete the instructions to omit the reference to Standard Form 2–A.

GSAR 570.802(d) is added to allow the use of the GSA Form 1217, Lessor’s Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

The clause at GSAR 552.270–1, Instructions to Offerors-Acquisition Leasehold Interest in Real Property, is revised to add language requiring execution and delivery of a lease to effectuate contract formation. It also adds paragraph (f) to address paperwork collection information.

The provision at GSAR 552.270–3, Parties to Execute Leases, is revised to make it consistent with the instructions contained in FAR 4.102.

The clause at GSAR 552.270–7, Fire and Casualty Damage, is revised to permit the government to assess a property’s condition before giving notice of termination.

The clause at GSAR 552.270–14, Changes, is revised to specify the impact of the failure to assert a claim for a price adjustment.

The clause at GSAR 552.270–16, Adjustment for Vacant Premises, is revised to clarify when and how adjustments for vacant premises will be made.

The clause at GSAR 552.270–29, Acceptance of Space, is revised to simplify the reference to a section in the solicitation.

The clause at GSAR 552.203.70, Price Adjustment for Illegal or Improper Activity, is relocated from GSAR part 503 to GSAR part 570 and, as a result, is renumbered as GSAR 552.270–30.

The clause at GSAR 552.232–75, Prompt Payment, is relocated from GSAR part 532 to GSAR part 570 and, as a result, is renumbered as GSAR 552.270–31. This clause is also revised to add paragraph (d) Overpayments, to give instructions to the contractor in cases where the Government has overpaid.

The clause at GSAR 552.203–5, Covenant Against Contingent Fees, is relocated from GSAR part 503 to GSAR part 570 and, as a result, is renumbered as GSAR 552.270–32.

Discussion of Comments

There were no public comments received in response to the “Advanced Notice of Proposed Rulemaking” pertaining to this GSAR part.

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 does not expect this proposed rule to 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 revisions are not considered substantive. The revisions delete obsolete coverage, clarify existing coverage, and edit current language. An "Initial Regulatory Flexibility Analysis" has therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small businesses concerning the affected GSAR part 570 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 case 2006-G508), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) applies because the proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning GSAR Case 2006-G508 to the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

Annual Reporting Burden

At GSAR 570.702(d), the contracting officer may use GSA Form 1217, Lessor's Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

The annual reporting burden is estimated as follows:
Respondents: 5,733.
Responses per respondent: 1.
Total annual responses: 5,733.
Preparation hours per response: 1 hour.

Total response burden hours: 5,733.
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An existing OMB clearance, OMB Control No. 3090-0086, covers the information contained in GSAR 570.702(c), GSA Form 1364, Proposal

To Lease Space. In this instance, the PRA does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than February 2, 2010 to: GSAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (MVPR), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 3090-00XX, GSAR Case 2006-G508, Acquiring Leasehold Interests in Real Property, in all correspondence.

List of Subjects in 48 CFR Parts 552 and 570

Government procurement.

Dated: November 5, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 552 and 570 as set forth below:

1. The authority citation for 48 CFR parts 552 and 570 continues to read as follows:

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

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Amend section 552.270-1 by—
a. Removing from the clause heading "(MAR 1998)" and adding "([DATE])" in its place;

- b. Revising in paragraph (a) the definition "In writing or written";
- c. Removing from paragraph (c)(2)(i)(A) "the 5th" and adding "the fifth" in its place;
- d. Removing from paragraph (c)(2)(i)(E) "the Contracting" and adding "that the Contracting" in its place;
- e. Revising paragraph (e)(7); and
- f. Adding paragraph (f).

The revised and added text reads as follows:

552.270-1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

* * * * *
(a) * * *

In writing, writing, or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

* * * * *
(e) * * *

(7) The execution and delivery of the Lease contract by the Government establishes a valid award and contract.

* * * * *

(f) *Paperwork collection.* The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

3. Amend section 552.270-3 by—
a. Removing from the clause heading "(SEP 1999)" and adding "([DATE])" in its place;

- b. Revising paragraphs (a) and (b);
- c. Removing from paragraph (c) "shall be signed with" and adding "must be signed in" in its place; and
- d. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

552.270-3 Parties to Execute Lease.

* * * * *

(a) If the lessor is an individual, that individual shall sign the lease. A lease with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, "an individual doing business as _____ [insert name of firm]".

(b) If the Lessor is a partnership, the lease must be signed in the partnership name, followed by the name of the legally authorized partner signing the same, and a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany the lease.

* * * * *

(d) If the Lessor is a joint venture, the lease must be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) of this provision for each type of participant. When a corporation is participating in the joint venture, the corporation shall provide evidence that the corporation is authorized to participate in the joint venture.

(e) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his/her power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

552.270-7 [Amended]

4. Amend section 552.270-7 by removing from the clause heading "(SEP 1999)" and adding "[DATE]" in its place, and removing from the second sentence of the clause "days of the fire or other casualty;" and adding "days after such determination;" in its place.

5. Amend section 552.270-14 by removing from the clause heading "(SEP 1999)" and adding "[DATE]" in its place, and revising paragraph (c) to read as follows:

552.270-14 Changes.

* * * * *

(c) The Lessor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and must submit a proposal for adjustment. The Lessor's failure to assert its right for adjustment within the time frame specified herein shall be a waiver of the Lessor's right to an adjustment under this paragraph. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the lessor from proceeding with the change as directed.

* * * * *

6. Revise section 552.270-16 to read as follows:

552.270-16 Adjustment for Vacant Premises.

As prescribed in 570.603, insert the following clause:

Adjustment for Vacant Premises ([DATE])

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part before the lease term expires, the rental rate will be reduced. The reduction shall occur after the Government gives 30 calendar days' notice to the Lessor, and shall continue in effect until the Government occupies or reoccupies the vacant premises or the lease expires or is terminated.

(b) The rate will be reduced by that portion of the costs per usable square foot of operating expenses not required to maintain the space. In addition, at the first operating

cost adjustment after the notice of reduction to the rent, the base cost of services subject to escalation will be reduced by said amount. In the event that the Government occupies or reoccupies the vacant premises on the lease anniversary date following the occupation of the vacant premises, the base cost of services subject to escalation will be increased by said amount.

(c) The reduction in operating costs shall be negotiated and stated in the lease.
(End of clause)

7. Amend section 552.270-29 by removing from the clause heading "(SEP 1999)" and adding "[DATE]" in its place, and revising paragraph (b) to read as follows:

552.270-29 Acceptance of Space.

* * * * *

(b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required usable square footage as indicated in the solicitation paragraph, Amount and Type of Space.

8. Add section 552.270-30 to read as follows:

552.270-30 Price Adjustment for Illegal or Improper Activity.

As prescribed in 570.603, insert the following clause:

Price Adjustment for Illegal or Improper Activity ([DATE])

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not

exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of clause)

9. Add section 552.270-31 to read as follows:

552.270-31 Prompt Payment.

As prescribed in 570.603, insert the following clause:

Prompt Payment (Sep 1999)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) Payment due date.

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest Penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than one year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in

accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number;

(iii) Affected lease line item or subtitle item, if applicable; and

(iv) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

Alternate I (Sep 1999). If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

10. Add section 552.270-32 to read as follows:

552.270-32 Covenant Against Contingent Fees.

As prescribed in 570.603, insert the following clause:

Covenant Against Contingent Fees ([DATE])

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion,

to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

Bona fide employee, as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

11. Amend section 570.101 by revising the table in paragraph (b), and adding paragraphs (c) and (d) to read as follows:

570.101 Applicability.

* * * * *

(b) * * *

GSAR RULES APPLICABLE TO ACQUISITIONS OF LEASEHOLD INTERESTS IN REAL PROPERTY

501	515.209-70	519.12	536.271
502	515.305	522.805	537.2
503	517.202	522.807	552
509.4	517.207	532.111	553
514.407	519.7	533	

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in

addition to the GSAR requirements identified in 570.101(b).

GSAM APPLICABLE TO ACQUISITIONS OF LEASEHOLD INTERESTS IN REAL PROPERTY

501	506	519.6	530
503	507	519.7	532.6
504.2	515.305-70	519.12	532.8
504.9	515.305-71	522.13	532.9
504.606	515.6	522.14	533
504.11	519.3	523.4	537.2

(d) The FAR does not apply to leasehold acquisitions of real property. Where referenced in this part, FAR provisions have been adopted based on a statutory requirement applicable to such lease acquisitions or as a matter of policy, including, but not limited to “Federal agency procurement” as defined at FAR 3.104.

12. Amend section 570.102 by—

a. Removing the definition “Acquisition”;

b. Adding, in alphabetical order, the definitions “Lease acquisition”, “Lease extension”, and “Lease renewal (option)”;

c. Revising the definitions “Simplified lease acquisition threshold”, “Small business”, and “Solicitation for Offers (SFO)”;

d. Removing the definition “Space in buildings”;

e. Removing from the first sentence of the definition “Substantially as follows” or “substantially the same as,” the word “you” and adding “the contracting officer” in its place; and

f. Adding, in alphabetical order, the definitions “Succeeding lease”, “Superseding lease”, and “Usable square feet”.

The added and revised text reads as follows:

570.102 Definitions.

* * * * *

Lease acquisition means the acquiring by lease of an interest in improved real property for use by the Federal Government, whether the space already exists or must be constructed.

Lease extension means extension of the expiration date of a lease to provide for continued occupancy on a short term basis.

Lease renewal (option) means the right, but not the obligation of the Government to continue a lease upon specified terms and conditions, including lease term and rent.

* * * * *

Simplified lease acquisition threshold means the simplified acquisition threshold (see FAR 2.101), when applied to the average annual amount of rent for the term of the lease, including option periods and excluding the cost of services.

Small business means a concern including affiliates, which is organized for profit, is independently-owned and operated, is not dominant in the field of leasing commercial real estate, and that has annual average gross receipts for the preceding three fiscal years which are less than the size standard established by the Small Business Administration pursuant to 13 CFR Part 121. The size standards may be found at [http://](http://www.sba.gov/size/sizetable2002.html)

www.sba.gov/size/sizetable2002.html. For most lease procurements, the NAICS code is 531190.

Solicitation for Offers (SFO) means a request for negotiated proposals.

* * * * *

Succeeding lease means a lease whose effective date immediately follows the expiration date of an existing lease for space in the same building.

Superseding lease means a lease that replaces an existing lease, prior to the scheduled expiration of the existing lease term.

Usable square feet means the American National Standards Institute/ Building Owners and Managers Association (ANSI/BOMA) Office Area where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed.

13. Revise section 570.103 to read as follows:

570.103 Authority to lease.

(a) The Administrator of General Services is authorized by 40 U.S.C. 585 to enter into a lease agreement for the accommodation of a Federal agency in a building (or improvement) which is in existence or being erected by the lessor for the accommodation of the Federal agency. The lease agreement may not bind the Government for more than 20 years.

(b) The contracting officer has exclusive authority to enter into and administer leases on the Government's behalf to the extent provided in his/her certificate of appointment as a contracting officer. Nothing in this subsection is intended to limit the contracting officer's authority to designate, consistent with statute and regulation, a contracting officer's representative.

570.104 [Amended]

14. Amend section 570.104 by removing “Unless use” and adding “Unless the contracting officer uses” in its place.

15. Revise section 570.105–1 to read as follows:

570.105–1 Contracting by negotiation.

Contracting by negotiation is appropriate for acquiring space in a building through a lease contract. The contracting officer will usually need to conduct discussions with offerors about their proposals and consider factors other than price in making the award.

16. Amend section 570.105–2 by—

a. Revising the section heading;

b. Revising the introductory paragraph and paragraph (a);

c. Removing from paragraph (b) “You determine” and adding “The

contracting officer determines whether” in its place;

d. Removing from paragraph (b)(1) “You expect” and adding “The contracting officer expects” in its place;

e. Removing from paragraph (b)(4) “You consider” and adding “The contracting officer considers” in its place;

f. Redesignating paragraphs (b)(iv) through (b)(vi) as paragraphs (b)(v) through (b)(vii) and adding new paragraph (b)(iv); and

g. Adding paragraph (c).

The revised and added text reads as follows:

570.105–2 Criteria for the use of two-phase design-build.

The contracting officer may use the two-phase design-build selection procedures in 41 U.S.C. 253m for lease construction projects. This includes lease construction projects with options to purchase the real property leased. Use the procedures in 41 U.S.C. 253m and FAR 36.3 when the conditions in paragraphs (a) and (b) of this section are met:

(a) The contracting officer anticipates that the lease will involve the design and construction of a building, facility, or work for lease to the Government.

(b) * * *

(4) * * *

(iv) The past performance of potential contractors.

* * * * *

(c) See 570.305 for additional information.

570.105–3 [Removed]

17. Remove section 570.105–3.

18. Revise section 570.106 to read as follows:

570.106 Advertising, Publicizing, and Notifications to Congress.

(a) If a proposed acquisition is not exempt under FAR 5.202 or GSAR 570.106(e), and is for a leasehold interest in real property estimated to exceed 10,000 usable square feet, then the contracting officer must publicize the proposed acquisition in *FedBizOpps.gov*.

(b) For leasehold acquisitions where the solicitation requires the construction of a new building on a preselected site, the contracting officer, in accordance with the timeframes established in FAR 5.203, must publicize the proposed acquisition in *FedBizOpps.gov* regardless of size or value.

(c) Other than as identified above, the contracting officer need not publicize the proposed acquisition of a leasehold interest in real property, including expansion requests within the scope of

a lease (see 570.403), lease extensions under the conditions defined in 570.405, and building alterations within the scope of a lease (see 570.5). However, the contracting officer may publicize proposed lease acquisitions of any dollar value or square footage in *FedBizOpps.gov* or local newspapers if, in the opinion of the contracting officer, doing so is necessary to promote competition.

(d) The contracting officer may issue a consolidated advertisement for multiple, leasing actions.

(e) Except as otherwise provided in paragraph (b) above, where publicizing of the proposed acquisition is required, the notice shall be published in *FedBizOpps.gov* not less than three calendar days prior to issuance of a solicitation.

(f) Except as otherwise provided in paragraph (b) of this section and as set forth below, the contracting officer shall provide offerors not less than 20 calendar days between solicitation issuance and the date established for receipt of initial offers.

(1) For a proposed acquisition using simplified lease acquisition procedures (see 570.2), consider the individual acquisition and establish a reasonable response time.

(2) In cases of unusual and compelling urgency (FAR 6.303–2), provide as much time as reasonably possible under the circumstances and document the contract file.

(g) If a Member of Congress has specifically requested notification of award, the contracting officer must provide award notifications in accordance with 505.303.

19. Add section 570.106–1 to read as follows:

570.106–1 Synopsis of lease awards.

(a) Except for lease actions described in paragraph (b) of this section, contracting officers must synopsise in *FedBizOpps.gov* awards exceeding \$25,000 total contract value that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required if—

(1) The notice would disclose the occupant agency's needs and the disclosure of such needs would compromise the national security; or

(2) The lease—

(i) Is for an amount not greater than the simplified lease acquisition threshold;

(ii) Was made through a means where access to the notice of proposed lease

action was provided through *FedBizOpps.gov*; and

(iii) Permitted the public to respond to the solicitation electronically.

(c) Justifications for other than full and open competition must be posted in *FedBizOpps.gov*. Information exempt from public disclosure must be redacted.

570.107 [Amended]

20. Amend section 570.107 by removing “You may use” and adding “The contracting officer may require” in its place.

570.108 [Amended]

21. Amend section 570.108 by—

a. Removing from the third sentence in paragraph (a) “the List of Parties Excluded from Federal Procurement and Nonprocurement Programs” and adding “the Excluded Parties List System (EPLS)” in its place;

b. Removing from paragraph (b) “Your signature” and adding “the contracting officer's signature” in its place; and

c. Removing from paragraphs (c) and (d) “you find” and adding “the contracting officer finds” in its place.

570.109 [Amended]

22. Amend section 570.109 by removing “applicable certifications” and adding “applicable representations and certifications” in its place.

23. Amend section 570.110 by revising paragraph (b) to read as follows:

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

* * * * *

(b) FAR 15.403–1 defines exceptions to and waivers for submitting cost or pricing data. Most leasing actions will have adequate price competition. For price analysis of offered rental rates, the contracting officer may use a market survey, an appraisal conducted using accepted real property appraisal procedures to establish a market price for comparison, or other relevant market research data. For price analysis of offered tenant improvement costs, obtain two bids or cost and pricing data.

* * * * *

24. Revise section 570.111 to read as follows:

570.111 Inspection and acceptance.

Before contracting officers accept space they must verify that the space complies with the Government's requirements and specifications and document this in an inspection report. The inspection and acceptance document must contain the usable square footage accepted and the acceptance date. Include the inspection and acceptance in the contract file.

25. Revise section 570.112 to read as follows:

570.112 Awards to Federal employees.

If contracting officers receive an offer from an officer or employee of the Government, they must follow the procedures in FAR 3.6.

26. Revise section 570.113 to read as follows:

570.113 Disclosure of mistakes after award.

If a mistake in a lessor's offer is discovered after award, the contracting officer should process it substantially in accordance with FAR 14.407–4 and GSAM 514.407.

27. Add section 570.115 to read as follows:

570.115 Novation and Change of Ownership.

In the event of a transfer of ownership of the leased premises or a change in the lessor's legal name, FAR 42.12 applies.

28. Add section 570.116 to read as follows:

570.116 Contract format.

The uniform contract format is not required for leases of real property.

29. Add section 570.117 to read as follows:

570.117 Sustainable requirements for lease acquisition.

Contracting officers must include sustainable design requirements appropriate for the type of leasing action in solicitations for offers. Solicitation requirements and instructions are listed on <http://gsa.gov/leasing> under Leasing Policies and Procedures, Green Leasing. Sustainable design requirements support improving the quality of the environment by—

(a) Controlling pollution;

(b) Managing energy and water use efficiently;

(c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable products, products containing recovered materials, and biobased products; and

(e) Requiring lessors to identify hazardous materials.

30. Amend section 570.203–2 by revising paragraph (a) and removing from paragraph (b) “you solicit” and adding “the contracting officer solicits” in its place.

570.203–2 Competition.

(a) To the maximum extent practicable, the contracting officer must solicit at least three sources to promote competition. If there are repeated

requirements for space in the same market, invite two sources, if practicable, that are not included in the most recent solicitation to submit offers.

* * * * *

- 31. Amend section 570.203-3 by—
 - a. Revising introductory paragraph (a);
 - b. Removing from paragraph (a)(1) “A description of” and adding “Describe” in its place;
 - c. Revising paragraph (a)(2);
 - d. Removing from paragraphs (a)(3) and (a)(4) “A statement of” and adding “State” in its place; and
 - e. Adding paragraph (a)(6) to read as follows:

570.203-3 Soliciting offers.

(a) The contracting officer must solicit offers by providing each prospective offeror a proposed short form lease GSA Form 3626 or SFO. The short form lease or SFO must:

* * * * *

(2) List all award factors, including price or cost, and any significant subfactors that the contracting officer will consider in awarding the lease.

* * * * *

(6) Include sustainable design requirements.

* * * * *

- 32. Amend section 570.203-4 by—
 - a. Removing from paragraph (a) “you need” and adding “the contracting officer needs” in its place;
 - b. Removing from paragraph (b) “reasonable.” and adding “reasonable. See 570.110.” in its place;
 - c. Revising paragraph (c);
 - d. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding new paragraph (d); and
 - e. Removing from the newly designated paragraph (e) “\$500,000” and adding “the amount established by FAR 19.702(a)” in its place.

The revised and added text reads as follows:

570.203-4 Negotiation, evaluation, and award.

* * * * *

(c) If the total price, including options, exceeds the amount established by FAR 15.403-4, consider whether the contracting officer needs cost and pricing data to determine that the price is fair and reasonable. In most cases, the exceptions at FAR 15.403-1 will apply.

(d) Regardless of the process used, the contracting officer must determine whether the price is fair and reasonable.

* * * * *

33. Revise the heading in subpart 570.3—to read as follows:

Subpart 570.3—Acquisition Procedures for Leasehold Interests in Real Property Over the Simplified Lease Acquisition Threshold

570.303-1 [Amended]

34. Amend section 570.303-1 by removing from the last sentence of the introductory paragraph “provide all the following”; removing from paragraph (h) “570.7” and adding “570.8” in its place; and adding paragraph (i) to read as follows:

570.303-1 Preparing the SFO.

* * * * *

(i) Include sustainable design requirements.

35. Revise section 570.303-2 to read as follows:

570.303-2 Issuing the SFO.

Release the SFO to all prospective offerors at the same time. The SFO may be released electronically.

36. Amend section 570.303-4 by revising paragraph (d), and adding paragraph (e) to read as follows:

570.303-4 Changes to SFOs.

* * * * *

(d) If an amendment is so substantial that it requires a complete revision of the SFO, cancel the SFO, readvertise if required by 570.106, and issue a new SFO.

(e) If there are changes to the Government’s requirements for amount of space, delineated area, occupancy date, and/or other major aspects of the requirements, the contracting officer shall consider whether there is a need to readvertise, and to document the file accordingly.

37. Amend section 570.304 by removing from introductory paragraph (a) “you use either” and adding “the contracting officer uses one of the following”; revising paragraph (c) and introductory paragraph (d); and removing from paragraphs (d)(1) and (d)(2) “if you” and adding “if the contracting officer” in its place.

The revised text reads as follows:

570.304 General source selection procedures.

* * * * *

(c) In a best value trade off procurement, the contracting officer must include price or cost to the Government, past performance, the planned participation of small disadvantaged business concerns in performance of the contract, and other factors as required by FAR 15.304 as evaluation factors. The contracting officer may include other evaluation factors as needed.

(d) The evaluation factors and significant subfactors must comply with FAR 15.304 and either one of the following:

* * * * *

- 38. Amend section 570.305 by—
 - a. Revising paragraph (a);
 - b. Redesignating paragraph (c)(1)(iv) as paragraph (c)(1)(v), and adding a new paragraph (c)(1)(iv);
 - c. Removing from paragraph (c)(2) “Do not” and adding “The contracting officer shall not” (twice) in its place; and
 - d. Revising paragraph (d).
 The revised text reads as follows:

570.305 Two-phase design-build selection procedures.

(a) These procedures apply to acquisitions of leasehold interests if the contracting officer uses the two-phase design-build selection procedures authorized by 570.105-2. Follow FAR 36.3.

* * * * *

(c) * * *
(1) * * *

(iv) The planned participation of small disadvantaged business concerns in performance of the contract.

* * * * *

(d) The contracting officer shall set the maximum number of offerors to be selected for phase-two to not exceed five unless the contracting officer determine that a number greater than five is both:

* * * * *

- 39. Amend section 570.306 by—
 - a. Removing from paragraph (a) “You” and adding “The contracting officer” in its place;
 - b. Revising paragraphs (b) and (c);
 - c. Redesignating paragraph (d) as paragraph (e); and adding new paragraph (d); and
 - d. Adding paragraph (f).
 The revised and added text reads as follows:

570.306 Evaluating offers.

* * * * *

(b) Evaluate prices and document the lease file to demonstrate that the proposed contract price is fair and reasonable. The contracting officer must review the elements of the offeror’s proposed rent to analyze whether the individual elements are realistic and reflect the offeror’s clear understanding of the work to be performed. The contracting officer must discuss any inconsistencies with the offeror. If the offeror refuses to support or make any changes to the rent proposed, consider the risk to the Government prior to making any lease award.

(c) Evaluate past performance on previous lease projects in accordance

with 515.305 and FAR 15.305(a)(2). Obtain information through:

- (1) Questionnaires tailored to the circumstances of the acquisition;
- (2) Interviews with program managers or contracting officers;
- (3) Other sources; or
- (4) Past performance information collected under FAR 42.15 and available through the Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov>.

(d) The contracting officer may obtain information to evaluate an offeror's past performance on subcontracting plan goals and small disadvantaged business participation, monetary targets, and notifications under FAR 19.1202-4(b) from the following sources:

- (1) The Small Business Administration;
- (2) Information on prior contracts from contracting officers and administrative contracting officers;
- (3) Offeror's references; and
- (4) Past performance information collected under FAR 42.15 and available through PPIRS.

* * * * *

(f) Also see the requirements in 570.108, 570.109, and 570.111.

570.308 [Amended]

40. Amend section 570.308 by—
a. Removing from paragraph (b)(1) and the first sentence of paragraph (b)(2) "you" and adding "the contracting officer" (two times) in its place; and

b. Removing from the second sentence of paragraph (b)(2) "You" and adding "The contracting officer" in its place.

41. Revise section 570.401 to read as follows:

570.401 Renewal options.

(a) *Exercise of options.* Before exercising an option to renew, follow the procedures in 517.207. The contract must first provide the right to renew the lease. If a renewal option was not evaluated as part of the lease at award, then the addition of a renewal option during the lease term must satisfy the requirements of GSAM 506 regarding full and open competition.

(b) *Market information review.* Before exercising an option to renew a lease, review current market information to determine that the rental rate in the option is fair and reasonable.

570.402-1 [Amended]

42. Amend section 570.402-1 by—
a. Removing from paragraphs (a) and (b) "you" and adding "the contracting officer" (twice) in its place;

b. Removing from paragraph (b)(1) "You do" and adding "The contracting officer does" in its place; and

c. Removing from paragraph (b)(2) "You identify" and adding "The contracting officer identifies" in its place.

43. Amend section 570.402-2 by—
a. Revising the introductory paragraph;

b. Removing from paragraph (a) "the" and adding "that the" in its place;

c. Removing from paragraph (b) "requirement" and adding

"requirements" in its place; and
d. Revising paragraphs (c) and (d).

The revised text reads as follows:

570.402-2 Publicizing/Advertising.

The contracting officer must publish a notice if required by 570.106. The notice should:

* * * * *

(c) Indicate that the Government is interested in considering alternative space if economically advantageous, or otherwise the Government intends to pursue a sole source acquisition.

(d) Advise prospective offerors that the Government will consider relocation costs (such as moving, alterations, and telecommunications) when deciding whether it should relocate or pursue a sole source acquisition.

* * * * *

44. Amend section 570.402-4 by revising the first sentence to read as follows:

570.402-4 No potential acceptable locations.

If the contracting officer does not identify any potential acceptable locations through the advertisement or the market survey, s/he may prepare a justification to negotiate directly with the present lessor. * * *

45. Amend section 570.402-5 by—
a. Removing from the introductory paragraph "you identify" and adding "the contracting officer identifies" in its place;

b. Revising paragraph (a); and

c. Removing from paragraph (b)(1) "you" and adding "the contracting officer" in its place.

The revised text reads as follows:

570.402-5 Potential acceptable locations.

* * * * *

(a) If the cost-benefit analysis indicates that the Government will recover relocation costs and duplication of costs through competition, develop an SFO and negotiate with all interested parties following 570.3. Disclose in the SFO Price Evaluation paragraph the Government's estimate of relocation costs that will be used in the price evaluation. Relocation costs should include, but are not limited to, costs to duplicate tenant improvements,

furniture and equipment move, breakdown and setup of systems furniture and other equipment, telecommunications costs, and administrative time.

* * * * *

46. Revise section 570.402-6 to read as follows:

570.402-6 Cost-benefit analysis.

The contracting officer must compare the costs and prices for a lease at potentially suitable properties to the costs and prices for a succeeding lease at the current location. The analysis must summarize the total present value of the costs and prices for the firm term of the lease and incorporate the elements in paragraphs (a) through (d) of this section:

(a) *Lease prices.* Establish the lease prices by requesting an informational quotation from each prospective offeror and the present lessor. Provide a general description of the Government's needs without a formal SFO.

(1) Adjust the prices quoted to reflect GSA's standard space at the potentially suitable properties to cover any special requirements.

(2) Document quotations with the following information:

(i) Name and address of the firm solicited.

(ii) Name of the firm's representative providing the quote.

(iii) Price(s) quoted.

(iv) Description of the space and services for which the quote is provided.

(v) Name of the Government employee soliciting the quotation.

(vi) Date quote was received.

(b) *Full costs to duplicate tenant improvements.* (1) Estimate the full cost to duplicate alterations at potentially suitable properties. Estimate the cost of new tenant improvements, if required, at the current location.

(2) Estimate the cost of lump sum tenant improvement at potentially suitable properties. Estimate the cost of new lump sum tenant improvements, if required, at the current location.

(c) *Relocation costs.* Estimate the relocation costs to potentially suitable properties, including, but not limited to, the costs associated with furniture and equipment move, breakdown and setup of systems furniture and other equipment, telecommunications costs, and administrative time.

(d) Other appropriate considerations.

(e) *Summary of firm term costs and prices.* Total the costs and prices for the elements in paragraphs (a) through (d) of this section, compare the potentially suitable properties to a succeeding lease, and conclude whether the

Government will recover relocation costs and duplication of costs through competition.

47. Amend section 570.403 by—

a. Removing from paragraph (a) “you” and adding “the contracting officer” in its place;

b. Revising paragraph (b)(2); and

c. Removing from paragraph (c) “you determine” and adding “the contracting officer determines” in its place.

The revised text reads as follows:

570.403 Expansion requests.

* * * * *

(b) * * *

(2) If the contracting officers identify other potentially suitable properties for the total requirement, they must perform a cost-benefit analysis to determine whether it is in the Government’s best interest to relocate.

(i) Follow the procedure in 570.402–6. (ii) Add the total present value cost of the unexpired portion of the firm term of the current lease.

* * * * *

48. Amend section 570.404 by—

a. Removing from paragraph (a) “present lease.” and adding “or when market conditions warrant renegotiation of an existing lease.” in its place;

b. Redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c), respectively;

c. Removing from the newly designated paragraph (d) “you” and adding “the contracting officer” in its place; and

d. Adding paragraph (e).

The added text reads as follows:

570.404 Superseding leases.

* * * * *

(b) If contracting officers plan to renegotiate a lease and the superseding lease will exceed the simplified lease acquisition threshold, they may do so under either one of the following conditions:

(1) The Government does not identify any potential acceptable locations.

(2) The Government identifies potential acceptable locations, but a cost-benefit analysis as described in 570.402–6 indicates that award to an offeror other than the present lessor will result in substantial relocation costs or duplication of costs to the Government, and the Government cannot expect to recover such costs through competition.

(c) If contracting officers plan to renegotiate a lease they should publish a notice if required by 570.106. The notice should:

(1) Indicate that the Government is considering renegotiating an existing lease.

(2) Describe the requirement in terms of type and quantity of space.

(3) Indicate that the Government is interested in considering alternative space if economically advantageous, or that otherwise the Government intends to pursue a sole source acquisition.

(4) Advise prospective offerors that the Government will consider relocation costs (which may include but are not limited to costs to duplicate tenant improvements, move furniture and equipment, breakdown and setup systems furniture and other equipment, telecommunications, and administrative time) and the cost of terminating its existing lease when deciding whether it should relocate or pursue a sole source lease.

(5) Provide a contact person for those interested in providing space to the Government.

* * * * *

(e) If the contracting officer identifies other potentially suitable properties, s/he must perform a cost-benefit analysis to determine whether it is in the Government’s best interest to relocate.

(1) Follow the procedure in 570.402–6.

(2) Add the total present value cost of the unexpired portion of the firm term of the current lease.

49. Amend section 570.405 by removing from paragraph (b) “you” and adding “the contracting officer” in its place; revising introductory paragraph (c) and paragraph (c)(3); and adding paragraph (c)(4).

The revised text reads as follows:

570.405 Lease extensions.

* * * * *

(c) FAR 6.302–1 permits contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may apply to lease extensions in situations such as, but not limited to, the following:

* * * * *

(3) The Government is consolidating various agencies and the contracting officer needs to extend the terms of some leases to establish a common expiration date.

(4) The agency occupying the space has encountered delays in planning for a potential relocation to other Federally controlled space due to documented organizational, financial, or other uncertainties.

50. Amend section 570.501 by revising introductory paragraph (a) and paragraph (a)(1); removing from introductory paragraph (b) “general”; and removing from paragraph (b)(1)

“justified” and adding “as justified” in its place.

The revised text reads as follows:

570.501 General.

(a) The procedures in 570.502 apply to alterations acquired directly from a lessor by modification or supplemental lease agreement. This is allowed if the following conditions are met:

(1) The alterations fall within the scope of the lease. Consider whether the work can be regarded as fairly and reasonably as part of the original lease requirement.

* * * * *

51. Revise section 570.502 to read as follows:

570.502 Alterations by the lessor.

52. Amend section 570.502–1 by removing from the introductory paragraph “you plan” and adding “the contracting officer plans” in its place; and revising paragraphs (a), (b), and (c) to read as follows:

570.502–1 Justification and approval requirements.

* * * * *

(a) If the alteration project will not exceed the micro-purchase threshold identified in FAR 2.101(b), no justification and approval is required.

(b) If the alteration project will exceed the micro-purchase threshold identified in FAR 2.101(b), but not the simplified lease acquisition threshold, the contracting officer may use simplified acquisition procedures and explain the absence of competition in the file.

(c) If the alteration project will exceed the simplified lease acquisition threshold, the justification and approval requirements in FAR 6.3 and 506.3 apply.

53. Amend section 570.502–2 by—

a. Removing from paragraph (a) “Prepare” and adding “The contracting officer must prepare” in its place;

b. Removing from paragraph (b) “Obtain” and adding “The contracting officer must obtain” in its place;

c. Removing from paragraph (c)(1) “Provide” and adding “The contracting officer must provide” in its place;

d. Removing from paragraph (c)(2) “Request” and adding “The contracting officer must request” in its place;

e. Revising paragraph (d);

f. Revising introductory paragraph (e) and paragraph (e)(2), and removing from paragraph (e)(4) “your analysis” and adding “the analysis” in its place;

g. Revising introductory paragraph (f), removing from paragraph (f)(1) “You may make reasonable” and adding “Make reasonable” in its place, and removing from paragraph (f)(2) “The

negotiated price should provide the” and adding “Provide the” in its place;

- h. Revising paragraph (g); and
- i. Removing from introductory paragraph (h) “Do not” and adding “The contracting officer must not” in its place.

570.502-2 Procedures.

* * * * *

(d) *Audits.* If the contracting officer requires cost or pricing data and the alteration project will exceed the threshold identified in FAR 15.403-4, request an audit.

(e) *Proposal evaluation.* The contracting officer must—

* * * * *

(2) Analyze price or cost information. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit results received.

* * * * *

(f) *Price negotiations.* The contracting officer must—

* * * * *

(g) *Order.* For modifications not exceeding the simplified acquisition threshold, lease contracting officers may delegate alteration contracting authority to a warranted contracting officer’s representative in GSAR or the tenant

agency. Alterations awards must reference the lease number.

* * * * *

54. Amend section 570.503 by revising paragraph (a)(2), and removing paragraph (b).

The revised text reads as follows:

570.503 Alterations by the Government or through a separate contract.

(a) * * *

(2) Contract out the work using standard contracting procedures that apply to a construction contract performed on Federal property. If the Government decides to contract for the work, invite the lessor, as well as all other prospective contractors, to submit offers for the project.

55. Redesignating subpart 570.6 (consisting of sections 570.601 through 570.604) and subpart 570.7 (consisting of 570.701 and 570.702) as subpart 570.7 and subpart 570.8, respectively; and adding new subpart 570.6.

The added text reads as follows:

Subpart 570.6—Contracting for Overtime Services and Utilities in Leases

Sec. 570.601 General.

Subpart 570.6—Contracting for Overtime Services and Utilities in Leases

570.601 General.

(a) Lease tenant agencies may need overtime services and utilities on a regular or intermittent basis. Lease contracting officers may negotiate overtime rates for services and utilities and include those rates in leases where a need is projected. Only lease contracting officers may negotiate overtime rates.

(b) An independent government estimate is required in support of the negotiated rate.

(c) *Order.* To order overtime services and utilities, if the order does not exceed the simplified acquisition threshold, a warranted contracting officer’s representative, in GSA or the tenant agency, may place an order. The order must reference the lease number.

(d) *Payment.* Do not make final payment for services and utilities until confirmed as delivered in a satisfactory manner.

56. Amend the newly designated section 570.701 by revising paragraphs (a) through (j); and adding paragraph (l) to read as follows:

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below:

If—	Then include—
(a) The estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101.	52.204-3 Taxpayer Identification.
	52.204-6 Data Universal Numbering System (DUNS) Number.
	52.204-7 Central Contractor Registration.
	52.219-1 Small Business Program Representations.
	52-219-28 Post-Award Small Business Program Rerepresentation (use if lease term exceeds five years).
	52.222 52.232-23 Assignment of Claims.
	52.232-33 Electronic Funds Transfer—Central Contractor Registration.
	52.233-1 Disputes.
(b) The estimated value of the acquisition exceeds \$10,000	52.222-21 Prohibition of Segregated Facilities.
	52.222-22 Previous Contracts and Compliance Reports.
	52.222-25 Affirmative Action Compliance.
	52.222-26 Equal Opportunity.
	52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
	52.222-36 Affirmative Action for Workers with Disabilities
	52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
(c) The estimated value of the acquisition exceeds the threshold identified in FAR 9.409(b).	52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(d) The estimated value of the acquisition exceeds \$100,000	52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(e) The estimated value of the acquisition exceeds the simplified lease acquisition threshold.	52.203-2 Certificate of Independent Price Determination.
	52.203-7 Anti-Kickback Procedures.
	52.204-5 Women-Owned Business (Other than Small Business).
	52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
	52.215-2 Audit and Records—Negotiation.
	52.219-8 Utilization of Small Business Concerns.
	52.222-54 Employment Eligibility Verification.
	52.223-6 Drug-Free Workplace.
	52.233-2 Service of Protest.

If—	Then include—
(f) The estimated value of the acquisition exceeds the threshold identified in FAR 19.708(b).	52.219–9 Small Business Subcontracting Plan
(g) The estimated value of the acquisition exceeds the threshold identified in FAR 19.1202–2(a) and the contracting officer is using a best value trade off analysis in an acquisition includes an evaluation factor that considers the extent of participation of small disadvantaged business concerns in accordance with FAR 19.12.	52.219–16 Liquidated Damages—Subcontracting Plan. 52.219–24 Small Disadvantaged Business Participation Program—Targets.
(h) The value of the contract is expected to exceed \$5 million and the performance period is 120 days or more.	52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting. 52.203–13 Contractor Code of Business Ethics and Conduct.
(i) The estimated value of the acquisition exceeds \$10 million	52.203–14 Display of Hotline Poster(s). 52.222–24 Pre-award On-site Equal Opportunity Compliance Review.
(j) The contracting officer requires cost or pricing data for work or services exceeding the threshold identified in FAR 15.403–4.	52.215–10 Price Reduction for Defective Cost or Pricing Data.
(k) The contracting officer authorizes submission of facsimile proposals	52.215–12 Subcontractor Cost. 52.215–10 Price Reduction for Defective Cost or Pricing Data.
(l) A negotiated acquisition provides monetary incentives based on actual achievement of small disadvantaged business subcontracting targets under FAR 19.1203 and 519.1203.	52.215–5 Facsimile Proposals. 52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

57. Revise the undesignated introductory paragraph of the newly designated section 570.702 to read as follows:

570.702 GSAR solicitation provisions.

Each SFO must include provisions substantially the same as the following, unless the contracting officer determines that the provision is not appropriate. However, document the file with the basis for deleting or substantially changing a clause.

* * * * *

58. Amend the newly designated section 570.703 by designating the introductory paragraph as introductory paragraph (a) and revising the newly designated introductory paragraph (a); adding new entry 552.215–70 under introductory paragraph (a), in numerical order; and adding new paragraph (b) to read as follows:

570.703 GSAR contract clauses.

(a) Insert clauses substantially the same as the following in solicitations and contracts for leasehold interests in real property that exceed the simplified lease acquisition threshold, unless the contracting officer determines that a clause is not appropriate. However, document the file with the basis for deleting or substantially changing a clause. A deviation is not required under 570.704 to determine that a clause in this section is not appropriate.

Use the clauses at your discretion in actions at or below the simplified lease acquisition threshold.

552.215–70 Examination of Records by GSA

* * * * *

(b) Include the following provisions and clauses in leasehold interests in real property.

552.270–30 Price Adjustment for Illegal Improper Activity

552.270–31 Prompt Payment

552.270–32 Covenant Against Contingent Fees

59. Amend section 570.704 by removing from paragraph (a) “You need” and adding “The contracting officer needs” in its place; revising paragraph (b); and removing from paragraph (c) “you can” and adding “the contracting officer can” in its place. The revised text reads as follows:

570.704 Deviations to provisions and clauses.

* * * * *

(b) The contracting officer also needs an approved deviation to modify the language of a provision or clause mandated by statute (e.g., FAR 52.215–2, Audit and Records—Negotiation). The authorizing statute must allow for a waiver.

* * * * *

60. Revise the newly designated section 570.801 to read as follows:

570.801 Standard forms.

Use Standard Form 2, U.S. Government Lease for Real Property, to award leases unless the contracting officer uses GSA Form 3626 (see 570.802).

61. Amend the newly designated section 570.802 by revising paragraph (a); removing from paragraphs (b) and (c) “You may” and adding “The contracting officer may” in its place; and adding paragraph (d).

The revised and added text reads as follows:

570.802 GSA forms.

(a) The contracting officer may use GSA Form 3626, U.S. Government Lease for Real Property (Short Form), to award leases if using the simplified leasing procedures in 570.2 or if they determine it advantageous to use the form.

* * * * *

(d) The contracting officer may use GSA Form 1217, Lessor’s Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

[FR Doc. E9–28246 Filed 12–3–09; 8:45 am]

BILLING CODE 6820–61–P