

adopted rules to address fraud, waste, and abuse in the Video Relay Service (VRS) industry.

DATES: Effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-7126 or e-mail Diane.Mason@fcc.gov.

SUPPLEMENTARY INFORMATION: This document makes the following corrections to the final rule published May 2, 2011, at 76 FR 24393:

[Corrected]

1. On page 24393, column 3, revise the **DATES** section to read as follows:

DATES: Effective June 1, 2011, except § 64.604(b)(4)(iii) of the Commission's rules, which shall become effective August 30, 2011, and the following new provisions §§ 64.604(c)(5)(iii)(C)(2),(3), (4), and (7); 64.604(c)(5)(iii)(M); 64.604(c)(5)(iii)(N)(1)(v); and 64.604(c)(5)(iii)(N)(2) of the Commission's rules; and the required submission for waiver request, which contains new information collection requirements subject to the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget (OMB). Written comments by the public on the modified and new information collections are due by July 1, 2011. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules and waiver requirement.

[Corrected]

2. On page 24397, column 2, correct paragraph 18 to read as follows:

18. Lastly, the Commission seeks to reduce the risk that marketing and outreach efforts will continue to be vehicles for manufacturing fraudulent minutes, such as those described above. To the extent an eligible VRS provider contracts with a third party to provide any services or functions related to marketing or outreach, and such services utilize VRS, the costs for such services cannot be compensated from the TRS Fund on a per-minute basis. In addition, all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, must be described in the providers' annual submissions to the TRS Fund administrator. The Commission recognizes that some companies currently offering VRS through an arrangement with an eligible provider may wish to continue providing this service on their own, yet may require additional time to make

adjustments to their operations in order to come into compliance with the new requirements adopted in this Order. To give these entities an opportunity to continue to provide VRS as a subcontractor with an eligible provider until such time as they obtain certification under new procedures to be adopted pursuant to the accompanying *FNPRM*, the Commission will consider requests for a temporary waiver of the new requirements. A company requesting a waiver of the rules adopted in document FCC 11-54 will have the burden of showing that the waiver is in the public interest, that grant of the waiver request will not undermine the purposes of the rules that we adopt today, and that it will come into compliance with those rules within a short period of time. Applicants requesting to receive a temporary waiver shall provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant's plan and ability to come into compliance with all of these requirements (other than the certification requirement) within a specified period of time, which shall not exceed three months from the date on which the rules become effective. Evidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements, along with submission of the following relevant documentation to support the waiver request:

- A copy of each deed or lease for each call center operated by the applicant;
- A list of individuals or entities that hold at least a 10 percent ownership share in the applicant's business and a description of the applicant's organizational structure, including the names of its executives, officers, partners, and board of directors;
- A list of all of the names of applicant's full-time and part-time employees;
- Proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, automatic call distribution (ACD) routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;
- Copies of employment agreements for all of the provider's executives and CAs;

- A list of all financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;

- Copies of all other agreements associated with the provision of Internet-based relay service; and
- A list of all sponsorship arrangements (e.g., those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.

[Corrected]

3. On page 24401, column 1, correct § 64.604 (c)(5)(iii)(L)(3) to read as follows: (3) If, the TRS provider submits additional justification for payment of the minutes of use in dispute within two months after being notified that its initial justification was insufficient, the Fund administrator or the Commission will review such additional justification documentation, and may ask further questions or conduct further investigation to evaluate whether to pay the TRS provider for the minutes of use in dispute, within eight months after submission of such additional justification.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011-12681 Filed 5-26-11; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 552, and 570

[GSAR Amendment 2011-01; GSAR Case 2006-G508 (Change 48) Docket 2009-0017; Sequence 1]

RIN 3090-A196

General Services Administration Acquisition Regulation; Rewrite of Part 570; Acquiring Leasehold Interests in Real Property

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

ACTION: Final rule.

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

DATES: *Effective Date:* June 27, 2011.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms.

Deborah Lague, Procurement Analyst, at (202) 694-8149. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1275 First Street, 7th Floor, Washington, DC 20417, (202) 501-4755. Please cite GSAR Case 2006-G508.

SUPPLEMENTARY INFORMATION:

A. Background

On December 4, 2009, GSA published in the **Federal Register** at 74 FR 63704, a Proposed Rule with a request for comments. As a result, public comments were received.

GSA is amending the GSAR subpart 501.106 by removing the reference to “570.702(c)” and adding “570.802(c)” and “570.802(d)” in their place.

GSA moved advertising requirements from Part 505 to section 570.106, Advertising, Publicizing, and Notifications to Congress, since most of the guidance on advertising requirements contained in Part 505 relate to the leasing program. The changes to Part 505 have already been implemented in GSAR case 2008-G503, published in the **Federal Register** at 75 FR 32860, June 10, 2010.

GSA is amending the GSAR to revise GSAR Part 570, Acquiring Leasehold Interests in Real Property. In summary, GSA is amending this part to update regulatory provisions that are applicable to lease transactions; to provide sustainability guidance on implementing Executive Order 13514 and Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings; to delete the dollar value of the simplified lease acquisition threshold and instead reference Federal Acquisition Regulation (FAR) 2.101 for information about the threshold; and to clarify the meaning and improve the readability of this part. In addition, GSA is moving advertising requirements from Part 505 to Part 570, since most of the guidance on advertising requirements contained in Part 505 relate to the leasing program.

This rule revises GSAR 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 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 “ANSI/BOMA Office Area (ABOA)”, “lease acquisition,” “lease extension,” “lease renewal (option),” “succeeding lease,” and “superseding lease.” 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 of “rent and related services” is deleted because it is not used within the subpart. The definition for “space in buildings” is deleted because this definition was only referenced at 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. Since negotiations or discussions are not allowed under sealed bidding, GSA has determined that the use of negotiated acquisition procedures in real property lease acquisitions enables GSA to clarify and explain SFO requirements to more effectively address the unique elements of each property and obtain better lease pricing.

GSAR 570.106 is re-titled Advertising, Publicizing, and Notifications to Congress, and revised to incorporate advertising requirements from Part 505, because most of the exceptions to

advertising requirements contained in 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 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 ANSI/BOMA Office Area (ABOA) square footage accepted and the acceptance date.

GSAR 570.115, Novation and Change of Ownership, is added to include language stating that FAR 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 the solicitations for offers, to identify the location of solicitation requirements and instructions on <http://www.gsa.gov/leasing>, and to include guidance on Executive Order 13514 and the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings.

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 for 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) was 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 570.404 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 referencing progress payments. This section is further revised to 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.

New section GSAR 570.6 Contracting for Overtime Services and Utilities in Leases is added to provide requirements

for when overtime services and utilities are needed.

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 the following additional FAR provisions or clauses that must be included in solicitations:

52.204-6, Data Universal Numbering system (DUNS) Number;

52.204-7, Central Contractor Registration;

52.219-28, Post-Award Small Business Program Rerepresentation (use if lease term exceeds five years),

52.232-33, Electronic Funds Transfer—Central Contractor Registration;

52.222-36, Affirmative Action for Workers with Disabilities;

52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards;

52.204-5, Women-Owned Business (Other than Small Business);

52.203-13, Contractor Code of Business Ethics and Conduct;

52.203-14, Display of Hotline Poster(s).

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;

552.270-32, Covenant Against

Contingent Fees.

GSAR 570.604 is renumbered as 570.704 and is revised to delete the reference to 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 (SF)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 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 552.270-3, Parties to Execute Leases, is revised to make it consistent with the instructions contained in FAR 4.102.

The clause at 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 552.270-14, Changes, is revised to change "usable square foot" to "ABOA square foot," and to specify the impact of the failure to assert a claim for a price adjustment.

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

The clause at 552.270-18, Default in Delivery—Time Extensions, is revised to update the terminology of "usable square footage" to "ABOA square footage."

The clause at 552.270-20, Payment, is revised to update the terminology of "usable square footage" to "ABOA square footage."

The clause at 552.270-29, Acceptance of Space, is revised to update the terminology of "usable square footage" to "ABOA square footage" and to simplify the reference to a section in the solicitation.

The following clauses were added to GSAR Part 570: 552.270-30, Price Adjustment for Illegal or Improper Activity; 552.270-31, Prompt Payment; and 552.270-32, Covenant Against Contingent Fees.

B. Discussion of Comments

Two public comments from one respondent were received in response to the proposed rule.

Comment: One comment recommended deleting the language "and delivery" at GSAR 552.270-1(e)(7), Instructions to Offerors.

Response: Do not concur. Execution and delivery in the legal sense are both necessary elements to effectuate the contract. Absent delivery, the offeror would not know that the contract was executed and that the offeror was bound to perform.

Comment: The second comment recommended at GSAM 570.106-1(c), for the posting of a justification for other than full and open competition on the FedBizOpps website, be revised to clarify when the justification is to be posted.

Response: Do not concur. Justifications for other than full and open are required to be posted after award by Section 844 of the National Defense Authorization Act for Fiscal Year 2008, "Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts". Parties receive notice of the opportunity to express interest in the leasing action by posting of the notice required by section GSAM 570.402-2 of the proposed regulation.

C. Executive Orders 12866 and 13563

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.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, GSA determined that this rule is not excessively burdensome to the public, and is consistent with amending the General Services Administration Acquisition Regulation (GSAR) to revise GSAR Part 570, Acquiring Leasehold Interests in Real Property.

D. 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 is not considered substantive. It clarifies existing language, deletes obsolete coverage, and edits existing language.

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090-0086.

The Paperwork Reduction Act applies because the rule contains information collection requirements. Accordingly, the Regulatory Secretariat has forwarded a request to receive approval of the new information collection requirement concerning GSAR Case 2006-G508, Acquiring Leasehold Interests in Real Property, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

At 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.

List of Subjects in 48 CFR Parts 501, 552, and 570

Government procurement.

Dated: May 12, 2011.

Rodney P. Lantier,

Deputy Director, Office of Acquisition Policy.

Therefore, GSA amends 48 CFR parts 501, 552, and 570 as set forth below:

- 1. The authority citation for 48 CFR parts 501, 552, and 570 continues to read as follows:

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

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

- 2. Amend section 501.106 by removing from the table the entry "570.702(c)" and adding the entries "570.802(c)" and "570.802(d)" in its place to read as follows:

501.106 OMB Approval under the Paperwork Reduction Act.

GSAR reference	OMB control No.
* * *	* * *
570.802(c)	3090-0086
570.802(d)	3090-0086

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Amend section 552.270-1 by—
 - a. Removing from the introductory text "570.602" and adding "570.702" in its place;
 - b. Removing from the introductory text "MAR 1998" and adding "JUN 2011" in its place;
 - c. Removing from paragraph (a) in the definition heading, "In Writing or Written" and adding "In writing, writing or written" in its place, and removing "which" and adding "that" in its place;

- d. Removing from paragraph (c)(2)(i)(A) "5th" and adding "fifth" in its place;
- e. Adding in paragraph (c)(2)(i)(E) the word "that" before "the Contracting Officer";
- f. Revising paragraph (e)(7);
- g. Adding paragraph (f); and
- h. Removing from Alternates I and II "570.602" and adding "570.702" in their place.

The newly added and revised text reads as follows:

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

* * * * *

(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.

* * * * *

552.270-2 [Amended]

- 4. Amend section 552.270-2 by removing from the introductory text "570.602" and adding "570.702" in its place.
- 5. Amend section 552.270-3 by—
 - a. Removing from the introductory text "570.602" and adding "570.702" in its place;
 - b. Removing from the date of the provision "Sep 1999" and adding "JUN 2011" in its place;
 - c. Revising paragraph (a);
 - d. Removing from paragraph (b) "shall be signed with" and adding "must be signed in" in its place, and removing ", if requested by the government,";
 - e. Removing from paragraph (c) "shall be signed with" and adding "must be signed in" in its place; and
 - f. 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]."

* * * * *

(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 the power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

* * * * *

■ 6. Amend section 552.270-4 by—
 ■ a. Removing from the introductory text “570.603” and adding “570.703” in its place;
 ■ b. Removing paragraph (l); and
 ■ c. Redesignating paragraphs (a) through (k) as (b) through (l) respectively; and adding a new paragraph (a).

The newly added text reads as follows:

552.270-4 Definitions.

* * * * *

(a) *ANSI/BOMA Office Area (ABOA)* means the area “where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed,” as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1-1996.

* * * * *

552.270-5 [Amended]

■ 7a. Amend section 552.270-5 in the introductory text by removing “570.603” and adding “570.703” in their place.

552.270-6 [Amended]

■ 7b. Amend section 552.270-6 in the introductory text by removing “570.603” and adding “570.703” in their place.

552.270-7 [Amended]

■ 8. Amend section 552.270-7 by—
 ■ a. Removing from the introductory text “570.603” and adding “570.703” in its place;
 ■ b. Removing from the date of the clause “Sep 1999” and adding “JUN 2011” in its place; and
 ■ c. Removing “of the fire or other casualty” and adding “after such determination” in its place.

552.270-8 [Amended]

■ 9a. Amend section 552.270-8 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-9 [Amended]

■ 9b. Amend section 552.270-9 in the introductory text by removing

“570.603” and adding “570.703” in its place.

552.270-10 [Amended]

■ 9c. Amend section 552.270-10 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-11 [Amended]

■ 9d. Amend section 552.270-11 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-12 [Amended]

■ 9e. Amend section 552.270-12 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-13 [Amended]

■ 9f. Amend section 552.270-13 in the introductory text by removing “570.603” and adding “570.703” in its place.

■ 10. Amend section 552.270-14 by—

■ a. Removing from the introductory text “570.603” and adding “570.703” in its place, and removing “Sep 1999” and adding “Jun 2011” in its place;

■ b. Removing from paragraph (b)(4) “usable” and adding “ABOA” in its place; and

■ c. Adding a new sentence to paragraph (c) after the first sentence.

The added text reads as follows:

552.270-14 Changes.

* * * * *

(c) * * * 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. * * *

* * * * *

552.270-15 [Amended]

■ 11. Amend section 552.270-15 by removing “570.603” and adding “570.703” in its place.

■ 12. Revise section 552.270-16 to read as follows:

552.270-16 Adjustment for Vacant Premises.

As prescribed in 570.703, insert the following clause:

Adjustment for Vacant Premises (JUN 2011)

(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 ABOA 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)

552.270-17 [Amended]

■ 13. Amend section 552.270-17 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-18 [Amended]

■ 14. Amend section 552.270-18 in the introductory text by removing “570.603” and adding “570.703” in its place and removing from paragraph (c) “usable” and adding “ABOA” in its place.

552.270-19 [Amended]

■ 15. Amend section 552.270-19 by removing “570.603” and adding “570.703” in its place.

552.270-20 [Amended]

■ 16. Amend section 552.270-20 by—
 ■ a. Removing from the introductory text “570.603” and adding “570.703” in its place;

■ b. Removing from paragraphs (a), (b), and (c) “usable” and adding “ABOA” in its place five times; and

■ c. Removing from paragraph (c) “Usable” and adding “ABOA” in its place, and removing “USF” two times.

552.270-21 [Amended]

■ 17a. Amend section 552.270-21 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-22 [Amended]

■ 17b. Amend section 552.270-22 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-23 [Amended]

■ 17c. Amend section 552.270-23 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270-24 [Amended]

■ 17d. Amend section 552.270-24 in the introductory text by removing

“570.603” and adding “570.703” in its place.

552.270–25 [Amended]

■ 17e. Amend section 552.270–25 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270–26 [Amended]

■ 17f. Amend section 552.270–26 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270–27 [Amended]

■ 17g. Amend section 552.270–27 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270–28 [Amended]

■ 17h. Amend section 552.270–28 in the introductory text by removing “570.603” and adding “570.703” in its place.

552.270–29 [Amended]

■ 18. Amend section 552.270–29 by—
 ■ a. Removing from the introductory text “570.603” and adding “570.703” in its place;
 ■ b. Removing from date of the clause “Sep 1999” and adding “Jun 2011” in its place; and
 ■ c. Amending paragraph (b) by removing “usable square footage as indicated in Paragraph 1.1, Amount and Type of Space, of this solicitation” and adding “ABOA square footage as indicated in the solicitation paragraph, Amount and Type of Space” in its place.

■ 19. Add new sections 552.270–30, 552.270–31, and 552.270–32 to read as follows:

552.270–30 Price Adjustment for Illegal or Improper Activity.

As prescribed in 570.703, insert the following clause:

Price Adjustment for Illegal or Improper Activity (JUN 2011)

(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 thereof. 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)

552.270–31 Prompt Payment.

As prescribed in 570.703, insert the following clause:

Prompt Payment (JUN 2011)

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 subline 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 as (b).

552.270–32 Covenant Against Contingent Fees.

As prescribed in 570.703, insert the following clause:

Covenant Against Contingent Fees (JUN 2011)

(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

- 20. Amend section 570.101 by—
 - a. Removing from paragraph (b), from the table, “504.5”, “505”, “514.201–7(b)”, “515.204–1”, “522.8”, “532.1”, and “532.908” and adding, in numerical order, “522.805”, “522.807”, and “532.111”, respectively; and
 - b. Adding a paragraph (d).

The added text reads as follows:

570.101 Applicability.

* * * * *

(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.

- 21. Amend section 570.102 by—
 - a. Removing the definition “Acquisition”;
 - b. Adding, in alphabetical order, the definition “ANSI/BOMA Office Area (ABOA)”;
 - c. Adding, in alphabetical order, the definition “Lease acquisition”;
 - d. Adding, in alphabetical order, the definition “Lease extension”;
 - e. Adding, in alphabetical order, the definition “Lease renewal (option)”;
 - f. Removing the definition “Rent and related services”;
 - g. Revising the definition “Simplified lease acquisition threshold”;
 - h. Revising the definition “Small business”;
 - i. Revising the definition “Solicitation for Offers (SFO)”;
 - j. Removing the definition “Space in buildings”;
 - k. Removing from the definition “Substantially as follows” or “substantially the same as,” the word “you” and adding “the contracting officer” in its place.
 - l. Adding, in alphabetical order, the definition “Succeeding lease”;
 - m. Adding, in alphabetical order, the definition “Superseding lease”.

The added and revised text reads as follows:

570.102 Definitions.

ANSI/BOMA Office Area (ABOA) means the area “where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed,” as stated by the American National Standards Institute/ Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1–1996.

* * * * *

Lease acquisition means the acquiring by lease of an interest in improved real property for use by the 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://www.sba.gov/size/sizetable_2002.html. For most lease procurements, the NAICS code is 531190.

Solicitation for Offers (SFO) means a request for 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.

- 22. 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 the certificate of appointment as a contracting officer. Nothing in this paragraph is intended to limit the

contracting officer's authority to designate, consistent with statute and regulation, a contracting officer's representative.

570.104 [Amended]

- 23. Amend section 570.104 by removing "you use" and adding "the contracting officer uses" in its place.
- 24. 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.

- 25. Amend section 570.105-2 by—
- a. Revising the section heading;
- b. Revising the introductory text;
- c. Removing from paragraph (a) "You anticipate" and adding "The contracting officer anticipates that" in its place, and removing "public";
- d. Removing from the introductory text of paragraph (b) "You determine" and adding "The contracting officer determines whether" in its place;
- e. Removing from paragraph (b)(1) "You expect" and adding "The contracting officer expects" in its place;
- f. Removing from paragraph (b)(4) "You consider" and adding "The contracting officer considers" in its place;
- g. Redesignating paragraphs (b)(4)(iv) through (b)(4)(vi) as paragraphs (b)(4)(v) through (b)(4)(vii), respectively, and adding a new paragraph (b)(4)(iv); and
- h. 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 (a) and (b) below are met:

* * * * *

- (b) * * *
- (4) * * *

(iv) The past performance of potential contractors.

* * * * *

(c) See 570.305 for additional information.

570.105-3 [Removed]

- 26. Remove section 570.105-3.
- 27a. 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 square feet, then the contracting officer must publicize the proposed acquisition in <http://www.FBO.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 <http://www.FBO.gov> regardless of size or value.

(c) For leasehold acquisitions not subject to a square foot measurement (e.g., antennas, piers, parking), contracting officers must publicize the proposed acquisition in <http://www.FBO.gov> when the contract action is expected to exceed \$25,000, unless an exception under FAR 5.202 applies.

(d) Other than as identified in paragraphs (a) through (c) of this section, 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 <http://www.FBO.gov> or local newspapers if, in the opinion of the contracting officer, doing so is necessary to promote competition.

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

(f) Except as otherwise provided in paragraph (b) of this section, where publicizing of the proposed acquisition is required, the notice shall be published in <http://www.FBO.gov> not less than three calendar days prior to issuance of a solicitation.

(g) Except as otherwise provided in paragraph (b) of this section and as set forth in paragraphs (g) and (h) of this section, 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.

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

- 27b. 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 <http://www.FBO.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 <http://www.FBO.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 <http://www.FBO.gov>. Information exempt from public disclosure must be redacted.

570.107 [Amended]

- 28. Amend section 570.107 by removing "You may use" and adding "The contracting officer may require" in its place.

570.108 [Amended]

- 29. Amend section 570.108 by—
- a. Removing from paragraph (a) "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" and adding "Excluded Parties List System (EPLS)" in its place;
- b. Removing from paragraph (b) "Your" and adding "The contracting officer's" in its place;
- c. Removing from paragraph (c) "you find" and adding "the contracting officer finds" in its place; and
- d. Removing from paragraph (d) "you find" and adding "the contracting officer finds" in its place.

570.109 [Amended]

- 30. Amend section 570.109 by removing from the introductory text

“certifications” and adding “representations and certifications” in its place.

■ 31. 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 offers or cost and pricing data.

* * * * *

■ 32. Revise section 570.111 to read as follows:

570.111 Inspection and acceptance.

Before accepting the space, the contracting officer 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 square footage accepted and the acceptance date. Include the inspection and acceptance in the contract file. When space such as piers, antennas, and parking are leased, square footage may not be the manner in which the amount of space is specified; therefore, document that the space complies with the Government’s written requirements.

570.112 [Amended]

■ 33. Amend section 570.112 by removing “you receive” and adding “the contracting officer receives” in its place.

■ 34. 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 514.407–4.

■ 35. Add sections 570.115, 570.116, 570.117, 570.117–1, and 570.117–2 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.

570.116 Contract format.

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

570.117 Sustainable requirements for lease acquisition.

Contracting officers must include sustainable design requirements appropriate for the type of leasing action in the solicitations for offers. Contracting officers can find solicitation requirements and instructions on <http://www.gsa.gov/leasing> under Leasing Policies and Procedures, Green Leasing, and in the Leasing Desk Guide to assist them in complying with GSA’s sustainable requirements identified in this part.

570.117–1 Federal leadership in environmental, energy, and economic performance.

In order to create a clean energy economy that will increase our Nation’s prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment, GSA will accomplish all requirements of E.O. 13514 that apply to lease acquisition.

570.117–2 Guiding principles for federal leadership in high performance and sustainable buildings.

GSA is committed to the design, construction, operation, and maintenance of leased space that comply with all of the following Guiding Principles:

- (a) Employ Integrated Design Principles;
- (b) Optimize Energy Performance;
- (c) Protect and Conserve Water;
- (d) Enhance Indoor Environmental Quality; and
- (e) Reduce the Environmental Impact of Building Materials.

■ 36. Amend section 570.203–2 by—

- a. Revising paragraph (a); and
- b. Removing from paragraph (b) “you solicit” and adding “the contracting officer solicits” in its place.

The revised text reads as follows:

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.

* * * * *

■ 37. Revise section 570.203–3 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:

(1) Describe the Government’s requirements.

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

(3) State the relative importance of the evaluation factors and subfactors.

(4) State whether all evaluation factors other than cost or price, when combined, are either:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(5) Include either in full text or by reference, applicable FAR provisions and contract clauses required by 570.6.

(6) Include sustainable design requirements.

(b) As necessary, review with prospective offerors the Government’s requirements, pricing matters, evaluation procedures and submission of offers.

■ 38. Revise section 570.203–4 to read as follows:

570.203–4 Negotiation, evaluation, and award.

(a) If the contracting officer needs to conduct negotiations, use the procedures in 570.307.

(b) Evaluate offers in accordance with the solicitation. Evaluate prices and document the lease file to demonstrate whether the proposed contract prices are fair and reasonable. See 570.110.

(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.

(e) If the total contract value of the lease, including options, will exceed the amount established by FAR 19.702(a), the proposed awardee must provide an acceptable small business subcontracting plan. This requirement does not apply if the proposed awardee is a small business concern.

(f) Make award to the responsible offeror whose proposal represents the best value to the Government considering price and other factors included in the solicitation.

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

■ 39. Revise the heading of subpart 570.3 to read as set forth above.

■ 40. Amend section 570.303–1 by removing from the introductory text “provide all the following”, removing from paragraph (h) “570.7” and adding “570.8” in its place, and adding a new paragraph (i) to read as follows:

570.303–1 Preparing the SFO.

* * * * *

(i) Include sustainable design requirements.

■ 41. 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.

■ 42. 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.

■ 43. Amend section 570.304 by revising the introductory text of paragraph (a), and revising paragraphs (c) and (d), to read as follows:

570.304 General source selection procedures.

(a) These procedures apply to acquisitions of leasehold interests except if the contracting officer uses one of the following:

* * * * *

(c) In a 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:

(1) FAR 15.101–1 if the contracting officer will use the tradeoff process.

(2) FAR 15.101–2 if the contracting officer will use the lowest price technically acceptable source selection process.

■ 44. Amend section 570.305 by—

■ a. Removing from paragraph (a) “you use” and adding “the contracting officer uses” in its place, and adding “Follow FAR 36.3.” to the end of the paragraph;

■ b. Redesignating paragraph (c)(1)(iv) as paragraph (c)(1)(v), and adding a new paragraph (c)(1)(iv); and

■ c. Revising paragraphs (c)(2) and introductory text of paragraph (d).

The revised and added text reads as follows:

570.305 Two-phase design-build selection procedures.

* * * * *

(c) * * *

(1) * * *

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

* * * * *

(2) The contracting officer shall not require offerors to submit detailed design information or cost or price information in phase one. The contracting officer shall not use cost related or price related evaluation factors.

(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 determines that a number greater than five is both:

* * * * *

■ 45. 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 a 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.

■ 46. Revise section 570.308 to read as follows:

570.308 Award.

(a) Make award to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the SFO.

(b) Make award in writing and in the timeframe specified in the SFO.

(1) If the contracting officer cannot make an award in that time, request in writing from each offeror an extension of the acceptance period through a specific date.

(2) If time is critical, the contracting officer may request the extensions orally. The contracting officer must make a record of the request and confirm it promptly in writing.

(c) Notify unsuccessful offerors in writing or electronically in accordance with FAR 15.501 and 15.503(b).

(d) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

■ 47. 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.

■ 48. Revise section 570.402–1 to read as follows:

570.402–1 General.

(a) If a succeeding lease for the continued occupancy of space in a building does not exceed the simplified lease acquisition threshold, the contracting officer may use the simplified procedures in 570.2. Explain the absence of competition in the contract file.

(b) If a succeeding lease will exceed the simplified lease acquisition threshold, the contracting officer may enter into the lease under either of the following conditions:

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

(2) The contracting officer identifies potential acceptable locations, but a cost-benefit analysis 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.

■ 49. Amend section 570.402–2 by revising the introductory text, and paragraphs (a) through (c) to read as follows:

570.402–2 Publicizing/Advertising.

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

(a) Indicate that the Government’s lease is expiring.

(b) Describe the requirements in terms of type and quantity of space.

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

* * * * *

■ 50. Amend section 570.402–4 by removing “you do” and adding “the contracting officer does” in its place,

and removing “you may prepare a” and adding “prepare a written” in its place.

570.402–5 [Amended]

■ 51. Amend section 570.402–5 by removing from the introductory text “you identify” and adding “the contracting officer identifies” in its place, and removing from paragraph (b)(1) “you” and adding “the contracting officer” in its place.

570.403 [Amended]

■ 52. Amend section 570.403 by—
■ a. Removing from paragraph (a) “you” and adding “the contracting officer” in its place;

■ b. Removing from the introductory text of paragraph (b) “determine” and adding “the contracting officer must determine” in its place, and removing “or to satisfy” and adding “or to meet the expansion requirement and existing tenancy to” in its place;

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

570.404 [Amended]

■ 53. Amend section 570.404 by removing from paragraph (a), “.” and adding “or when market conditions warrant renegotiation of an existing lease.” in its place; and removing from paragraph (b) “you” and adding “the contracting officer” in its place.

■ 54. Amend section 570.405 by—
■ a. Removing from paragraph (b) “you” and adding “the contracting officer” in its place;

■ b. Removing from the introductory text of paragraph (c) “such as the” and adding “such as, but not limited to, the” in its place;

■ c. Removing from paragraph (c)(3) “agencies occupying the leased space and you need” and adding “agencies and the contracting officer needs” in its place; and

■ d. Adding paragraph (c)(4).

The added text reads as follows:

570.405 Lease extensions.

* * * * *

(c) * * *

(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.

■ 55. Amend section 570.501 by—

■ a. Revising the introductory text of paragraph (a), and paragraph (a)(1);

■ b. Removing from the introductory text of paragraph (b) “general”; and

■ c. 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 fairly and reasonably as part of the original lease requirement.

* * * * *

■ 56. Revise sections 570.502, 570.502–1, and 570.502–2 to read as follows:

570.502 Alterations by the lessor.

570.502–1 Justification and approval requirements.

If the proposed alterations are outside the general scope of the lease and the contracting officer plans to acquire them from the lessor without competition, the following justification and approval requirements apply:

(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.

570.502–2 Procedures.

(a) *Scope of work.* The contracting officer must prepare a scope of work for each alteration project.

(b) *Independent Government estimate.* The contracting officer must obtain an independent Government estimate for each alteration project, including changes to existing alteration agreements with the lessor.

(c) *Request for proposal.*

(1) The contracting officer must provide the scope of work to the lessor, including any plans and specifications, and request a proposal.

(2) The contracting officer must request sufficient cost or price information to permit a price analysis.

(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—

- (1) Determine if the proposal meets the Government's requirements.
- (2) Analyze price or cost information. At a minimum, compare the proposed cost to the independent estimate and, if applicable, any audit results received.
- (3) Analyze profit following FAR 15.404-4.
- (4) Document the analysis under this paragraph and the resulting negotiation objectives.

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

- (1) Exercise sound judgment. Make reasonable compromises as necessary.
- (2) Provide the lessor with the greatest incentive for efficient and economical performance.
- (3) Document negotiations in the contract file, including discussions regarding restoration cost or waiver of restoration cost.

(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 GSA or the tenant agency. Alterations awards must reference the lease number. If the modification does not exceed the simplified acquisition threshold, the contracting officer may use GSA Form 300, Order for Supplies or Services. Reference the lease on the form.

(h) *Inspection and payment.* The contracting officer must not make final

payment for alterations until the work is:

- (1) Inspected by a qualified Government employee or independent Government contractor.
- (2) Confirmed as completed in a satisfactory manner.

■ 57. Revise section 570.503 to read as follows:

570.503 Alterations by the Government or through a separate contract.

If the Government chooses to exercise its right to make the alterations rather than contracting directly with the lessor, the Government may either:

- (a) Have Federal employees perform the work.
- (b) 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.

■ 58a. Redesignate Subparts 570.6 (consisting of 570.601 through 570.604) and 570.7 (consisting of 570.701 through 570.702) as Subparts 570.7 (consisting of 570.701 through 570.704) and 570.8 (consisting of 570.801 through 570.802), respectively;

■ 58b. Add a new Subpart 570.6 to read 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.

■ 59. Revise the newly redesignated section 570.701 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.
(b) the estimated value of the acquisition exceeds \$10,000	52.219-1 Small Business Program Representations. 52.219-28 Post-Award Small Business Program Rerepresentation (use if lease term exceeds five years). 52.232-23 Assignment of Claims. 52.232-33 Electronic Funds Transfer—Central Contractor Registration.
(c) the estimated value of the acquisition is \$25,000 or more (not applicable to individuals).	52.233-1 Disputes.
(d) the estimated value of the acquisition exceeds the threshold identified in FAR 9.409(b).	52.222-21 Prohibition of Segregated Facilities.
(e) the estimated value of the acquisition exceeds \$100,000	52.222-22 Previous Contracts and Compliance Reports. 52.222-25 Affirmative Action Compliance. 52.222-26 Equal Opportunity.
(f) the estimated value of the acquisition exceeds the simplified lease acquisition threshold.	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.
	52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.
	52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
	52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
	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.

If . . .	Then include . . .
(g) the estimated value of the acquisition exceeds the threshold identified in FAR 19.708(b).	52.215-2 Audit and Records—Negotiation.
(h) the estimated value of the acquisition 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.	52.219-8 Utilization of Small Business Concerns.
	52.223-6 Drug-Free Workplace.
	52.233-2 Service of Protest.
	52.219-9 Small Business Subcontracting Plan.
	52.219-16 Liquidated Damages—Subcontracting Plan.
	52.219-24 Small Disadvantaged Business Participation Program—Targets.
	52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
(i) the value of the contract is expected to exceed \$5 million and the performance period is 120 days or more.	52.203-13 Contractor Code of Business Ethics and Conduct.
	52.203-14 Display of Hotline Poster(s).
(j) the estimated value of the acquisition exceeds \$10 million	52.222-24 Pre-award On-site Equal Opportunity Compliance Review.
(k) 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
	52.215-12 Subcontractor Cost or Pricing Data.
(l) the contracting officer authorizes submission of facsimile proposals	52.215-5 Facsimile Proposals.
(m) a negotiated acquisition provides monetary incentives based on actual achievement of small disadvantaged business subcontracting targets under FAR 19.1203 and 519.1203.	52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

570.702 [Amended]

■ 60. Revise the introductory text 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.

* * * * *

■ 61. Revise the newly redesignated section 570.703 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 section 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.
- 552.270-4 Definitions. You must use this clause if you use 552.270-28.
- 552.270-5 Subletting and Assignment.
- 552.270-6 Maintenance of Building and Premises—Right of Entry.
- 552.270-7 Fire and Casualty Damage.
- 552.270-8 Compliance with Applicable Law.
- 552.270-9 Inspection—Right of Entry.
- 552.270-10 Failure in Performance.

- 552.270-11 Successors Bound.
- 552.270-12 Alterations.
- 552.270-13 Proposals for Adjustment.
- 552.270-14 Changes.
- 552.270-15 Liquidated Damages.
Insert this clause in solicitations and contracts if you have a critical requirement to meet the delivery date and you cannot establish an actual cost for the loss to the Government resulting from late delivery.
- 552.270-16 Adjustment for Vacant Premises.
- 552.270-17 Delivery and Condition.
- 552.270-18 Default in Delivery—Time Extensions.
- 552.270-19 Progressive Occupancy.
- 552.270-20 Payment.
- 552.270-21 Effect of Acceptance and Occupancy.
- 552.270-22 Default by Lessor During the Term.
- 552.270-23 Subordination, Nondisturbance and Attornment
- 552.270-24 Statement of Lease.
- 552.270-25 Substitution of Tenant Agency.
- 552.270-26 No Waiver.
- 552.270-27 Integrated Agreement.
- 552.270-28 Mutuality of Obligation.
- 552.270-29 Acceptance of Space.
(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.

■ 62. Revise section 570.704 to read as follows:

570.704 Deviations to provisions and clauses.

(a) The contracting officer needs a deviation approved under Subpart 501.4

to omit any required provision or clause.

(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.

(c) Certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them. For example, FARs 52.222-26, Equal Opportunity; 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222-36, Affirmative Action for Workers with Disabilities, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease.

■ 63. Revise the newly redesignated 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).

■ 64. Revise the newly redesignated section 570.802 to read 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 Subpart 570.2 or if the contracting officer determines it advantageous to use the form.

(b) The contracting officer may use GSA Form 276, Supplemental Lease

Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) The contracting officer may use GSA Form 1364, Proposal To Lease Space to obtain offers from prospective offerors.

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

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA-2006-26173; Notice No. 4]

RIN 2130-AB82

Accident/Incident Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration related to FRA's November 9, 2010, final rule revising FRA's regulations addressing accident/incident reporting and recording, the FRA Guide for Preparing Accident/Incident Reports (FRA Guide), its accident/incident recording and reporting forms in addition to its Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods (Companion Guide). The final rule, which becomes effective June 1, 2011, was intended to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. This document amends and clarifies the final rule based on FRA's review of the petitions for reconsideration and in order to make necessary technical and clarifying changes.

DATES: This rule is effective July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Beth Butts, IT Specialist, U.S. Department of Transportation, Federal Railroad Administration, Office of

Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-306, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-6296); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-204, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-1381).

SUPPLEMENTARY INFORMATION:

I. The FRA Guide and the Companion Guide

FRA has revised the FRA Guide based upon its review of the petitions for reconsideration submitted in response to the final rule and to make necessary technical amendments that are addressed in the "Section-by-Section" analysis. The FRA Guide is posted on FRA's website at <http://safetydata.fra.dot.gov/officeofsafety>. Hard copies of the FRA Guide will be available upon request. Information on requesting hard copies of the FRA Guide can be found in § 225.21, "Forms," of this final rule. FRA has also revised its Companion Guide containing instructions for electronically submitting monthly reports to FRA based upon its review of the petitions for reconsideration and to make necessary technical amendments that are addressed in the "Section-by-Section" analysis. The Companion Guide is posted on FRA's website at <http://safetydata.fra.dot.gov/officeofsafety>.

II. Background

On September 9, 2008, FRA published a Notice of Proposed Rulemaking (NPRM), which proposed miscellaneous amendments to FRA's accident/incident reporting regulations in order to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. See 73 FR 52496. The NPRM also proposed revisions to the 2003 FRA Guide for Preparing Accident/Incident Reports (2003 FRA Guide) and FRA's accident/incident recording and reporting forms.

On September 10, 2008, during the 36th Railroad Safety Advisory Committee (RSAC) meeting, RSAC Task No. 2008-02 was presented for acceptance. The task offered to the RSAC for consideration was to review comments received on FRA's NPRM and would have allowed the RSAC to make recommendations for the content of the final rule. The task was withdrawn at the meeting without RSAC acceptance.

Following publication of the NPRM in the **Federal Register**, FRA held a public

hearing in Washington, DC on December 18, 2008, and extended the comment period for an additional thirty (30) days following the hearing. The hearing was attended by a number of railroads, organizations representing railroads, and labor organizations. FRA received oral and written testimony at the hearing as well as written comments during the extended comment period. A copy of the hearing transcript was placed in Docket No. FRA-2006-26173 on <http://www.regulations.gov>. During the initial and extended comment period, FRA received comments and heard testimony from the following organizations, in addition to comments from individuals, listed in alphabetical order:

- American Association for Justice;
- Association for American Railroads (AAR);
- American Train Dispatchers Association;
- BNSF Railway Company;
- Brotherhood of Locomotive Engineers and Trainmen;
- Brotherhood of Maintenance of Way Employes Division;
- Brotherhood of Railroad Signalman;
- California Public Utilities Commission;
- U.S. Department of Labor;
- Illinois Commerce Commission/Transportation Bureau/Rail Safety Section;
- Kansas City Southern Railway Company;
- Metro-North Commuter Railroad Company;
- National Railroad Passenger Corporation (Amtrak);
- New York State Metropolitan Transportation Authority;
- NJ Transit Rail Operations;
- Norfolk Southern Corporation;
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- Union Pacific Railroad Company (UP); and
- United Transportation Union.

On November 9, 2010, FRA issued a final rule, entitled Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements; Final Rule, clarifying and amending FRA's accident/incident reporting and recording standards and guidance. See 75 FR 68862. Following the publication of the final rule, FRA received one formal petition for reconsideration from SEPTA, which was entered into the docket on January 28, 2011. FRA also received an informal request from UP to revise the FRA Guide by adding additional circumstance codes. FRA opted to treat UP's comments as an informal petition for reconsideration