

General Services Administration

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manager, to analyze and justify the conversion.

(d) The contracting officer shall not agree to a firm-fixed-price in excess of the GMP.

(e) In accordance with 536.7105-3(c), the contracting officer shall obtain an independent audit of the construction contractor's costs incurred in the performance of the contract to date.

(f) When evaluating the construction contractor's proposal for firm-fixed-price definitization, the contracting officer should compare the anticipated final cost to the firm-fixed-price being proposed. It may be reasonable for the construction contractor to include a contingency for assuming the risk associated with agreeing to the firm-fixed-price. The contracting officer should evaluate this contingency to ensure that the proposed amount reasonably reflects the remaining risks being assumed by the construction contractor. This evaluation may be informed by the history of the project, the balance of the CCA, and other factors.

(g) The modification to convert to a firm-fixed-price is subject to the requirement to obtain cost and pricing data unless one of the exceptions in FAR 15.403-1 applies.

(h) The modification to convert to a firm-fixed-price is subject to the requirement for a prenegotiation objectives memo and price negotiation memo, including fair and reasonable price determination, per FAR 15.406.

(i) Upon converting to a firm-fixed-price, the contract is no longer subject to open book accounting, a shared savings incentive, or the need for determination of final settlement.

536.7106 Construction contract close-out.

Unless the contract has been converted to a standard firm-fixed-price contract (see 536.7105-8)—

(a) The contracting officer shall ensure that the construction contractor's proposal for final settlement is accurate and reliable in accordance with the open book accounting practices of the contract.

(b) In accordance with 536.7105-3(c), the contracting officer shall obtain an

independent audit of the construction contractor's costs.

536.7107 Contract clauses (FAR DEVIATION).

(a) *FAR deviation.* GSA has a deviation from FAR 52.216-17 that allows use of the clause 552.236-79 in lieu of the FAR clause at 52.216-17. Insert a clause substantially the same as the clause at 552.236-79, Construction-Manager-As-Constructor, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed in lieu of the FAR clause at 52.216-17.

(b) Insert a clause substantially the same as the clause at 552.236-80, Accounting Records and Progress Payments, in solicitations and contracts if construction, dismantling, or removal of improvements is contemplated when a CMc project delivery method will be followed and cost accounting standards do not apply. This clause is used when the clauses at FAR 52.230-2 Cost Accounting Standards, FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230-6 Administration of Cost Accounting Standards do not apply.

[84 FR 69633, Dec. 19, 2019, as amended at 86 FR 55520, Oct. 6, 2021; 89 FR 55086, July 3, 2024]

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.
537.110 Contract clauses.

Subpart 537.2—Advisory and Assistance Services

537.201 Definitions.
537.270 Contract clause.

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

SOURCE: 64 FR 37226, July 9, 1999, unless otherwise noted.

Subpart 537.1—Service Contracts—General

537.110 Contract clauses.

(a) *Contracts for building services.* Except for solicitations and contracts for

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building services placed under FAR subpart 8.7, insert the clause at 552.237-71, Qualifications of Employees, in solicitations and contracts for building services that are anticipated to exceed the simplified acquisition threshold.

(b) *Contracts for guard services.* Insert the clause at 552.237-72, Prohibition Regarding “Quasi-Military Armed Forces,” in solicitations and contracts for guard services.

[86 FR 55521, Oct. 6, 2021]

Subpart 537.2—Advisory and Assistance Services

537.201 Definitions.

As used in this subpart—

Evaluation or analysis of a proposal means proposal evaluation as described in FAR 15.305. It includes: Cost or price evaluation using cost or price analysis, as defined in FAR 15.404.

Proposal means a proposal submitted for an initial contract award. (See FAR 37.203(d)). It does not include proposals submitted after contract award, such as value engineering proposals, proposals related to contract modifications, claims, or other contract administration actions.

Readily available means that employees with the requisite training and capability are employed by the agency, capable of handling additional work relating to other duties as assigned by management, and that the travel and other costs associated with using covered personnel does not exceed the projected cost of a contract for evaluation and analysis services.

Requisite training and capability means training and capability necessary to successfully perform the task or contract at issue in the time and in the manner required. It may include relevant experience, recent performance of work of similar size and scope, specific training and other factors that the contracting officer determines are necessary to the successful performance of the task or contract at issue.

[74 FR 20606, May 5, 2009]

537.270 Contract clause.

Insert the clause at 552.237-73, Restriction on Disclosure of Information,

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in solicitations and contracts for proposal evaluation and analysis services.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

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538.000 Scope of part.
538.001 General.

Subpart 538.2—Establishing and Administering Federal Supply Schedules

538.201 Coordination requirements.
538.270 Solicitation, evaluation, and award of Federal Supply Schedule (FSS) contracts.
538.270-1 Evaluation of offers without access to transactional data.
538.271 FSS contract awards.
538.272 FSS price reductions.
538.273 FSS solicitation provisions and contract clauses.

Subpart 538.70—Purchasing by Non-Federal Entities

538.7000 Scope of subpart.
538.7001 Definitions.
538.7002 General.
538.7003 Policy.
538.7004 Solicitation provisions and contract clauses.

Subpart 538.71 [Reserved]

Subpart 538.72—Order-Level Materials

538.7200 Definitions.
538.7201—538.7202 [Reserved]
538.7204 Contract clauses.

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

SOURCE: 64 FR 37227, July 9, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 538 appear at 69 FR 28065, May 18, 2004.

538.000 Scope of part.

(a) This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule (FSS) program. GSA may delegate certain responsibilities for other agency acquisition programs as they relate to the establishment of individual federal supply schedules.

(b) The authority of other agencies to award FSS contracts can only be accomplished through delegation from GSA. An agency delegated authority by GSA to award contracts under the