

paperwork burden previously approved under OMB Control Number 3090-0027.

List of Subjects in 48 CFR Parts 542 and 552

Government procurement.

Dated: June 18, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 542 and 552 as set forth below:

1. The authority citation for 48 CFR parts 542 and 552 revised to read as follows:

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

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Revise section 542.1107 to read as follows:

542.1107 Contract clause.

The contracting officer shall insert 552.242-70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for Stock or Special Order Program items. The clause may be used in indefinite delivery definite quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

542.1503-71 [Removed]

3. Remove section 542.1503-71.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 552.242-70 by—
a. Revising the date of the clause;
b. Removing from paragraph (a) “FQC” and adding “QVOC” in its place, respectively; and
c. Revising paragraph (b).

The revised text reads as follows:

552.242-70 Status Report of Orders and Shipments.

* * * * *

STATUS REPORT OF ORDERS AND SHIPMENTS (DATE)

* * * * *

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

(End of clause)

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 543 and 552

[GSAR Case 2008-G513; Docket 2008-0007; Sequence 10]

RIN 3090-AI55

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

AGENCY: Office of the Chief Acquisition Officer, General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise GSAM language pertaining to requirements for contract modifications.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before August 25, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008-G513 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2008-G513” under the heading “Comment or Submission.” Select the link “Send a Comment or Submission” that corresponds with GSAR Case 2008-G513. Follow the instructions provided to complete the “Public Comment and Submission Form.” Please include your name, company name (if any), and “GSAR Case 2008-G513” on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat Division (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2008-G513 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification regarding content, please contact Ms. Jeritta Parnell at (202) 501-4082. For information pertaining to the status or publication schedules, please contact the Regulatory Secretariat Division (VPR), Room 4041, GS Building, Washington, DC 20405, (202)

501-4755. Please cite GSAR Case 2008-G513.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the General Services Administration Acquisition Regulation (GSAR) to revise the prescriptions for clauses included in 543.205, Contract clauses. The associated clauses located in 552.243 are amended to delete the clause at 552.243-70, Pricing of Adjustments, to revise the clause at 552.243-71, Equitable Adjustments, and to relocate the clause at 552.243-72, Modifications (Multiple Award Schedule) to GSAR 552.238.

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

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

This proposed rule revises GSAR 543.205, Contract clauses, and associated clauses in GSAR 552.243. The information in GSAR 543.205, Contract clauses, is revised to remove 543.205(a)(1) and 543.205(b) and re-numbered accordingly. The information in 543.205(a)(1) is deleted. This clause prescription is no longer necessary. The information in 543.205(b) is relocated to Part 538. The prescription for the clause at 552.243-71, Equitable Adjustment, is revised to include the clause title for FAR 52.243-4, Changes. The clause at 552.243-70, Pricing of Adjustments, is deleted. Information formerly contained in this clause is now contained in the revised clause at 552.243-71, Equitable Adjustments. The clause at 552.243-71, Equitable Adjustments, is revised to clarify costs, overhead, profit, and proposal preparation costs. The clause at 552.243-72, Modifications, (Multiple Award Schedule) is relocated to GSAR Part 538.

Discussion of Comments

There were three public comments received in response to the “Advanced Notice of Proposed Rulemaking.” One commenter requested that the “Overhead, Profit, and Commission”

section needed to be "reworded to be clearer about the breakdown and distinctions between Subcontractor and Prime Commission, and Overhead and Profit, and the maximum allowable amounts for each." The Agency agreed and the clause at 552.243-71, Equitable Adjustments, was revised to reflect this suggested change. The second commenter recommended that the "Changes" clause should be applicable to orders. The GSAM was never intended to be a stand-alone document; it merely supplements the FAR. The term "order" is defined in FAR 2.101, and therefore, should not be repeated in the GSAM. The third commenter recommended that GSA reconsider the timing of solicitation refreshes and associated modifications to existing contract terms and conditions. This issue will be addressed in the rewrite of GSAR Part 538.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update, clarify, and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The GSA will consider comments from small entities concerning the affected GSAR Part 543 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008-G513), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 543 and 552

Government procurement.

Dated: June 13, 2008

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 543 and 552 as set forth below:

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

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

PART 543—CONTRACT MODIFICATIONS

2. Revise section 543.205 to read as follows:

543.205 Contract clauses.

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

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.243-70 [Removed]

3. Remove section 552.243-70.
4. Revise section 552.243-71 to read as follows:

552.243-71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

EQUITABLE ADJUSTMENTS (DATE)

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

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

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

(d) Proposals for equitable adjustments, including no costs requests for adjustment of the contract's required completion date, shall include a detailed breakdown of the following elements, as applicable:

- (1) Direct Costs.
- (2) Markups.
- (3) Change to the time for completion specified in the contract.
- (e) *Direct Costs.* The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:
 - (1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized).
 - (2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer's overhead, profit, and any labor cost burdens carried in employer's overhead rate).
 - (3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed.
 - (4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs (e)(1) and (e)(2) of this clause.
 - (5) Delivery costs, if not included in material unit costs.
 - (6) Time-related costs not separately identified as direct costs, and not included in the Contractor's or subcontractors' overhead rates, as specified in paragraph (g).
 - (7) Other direct costs.
 - (f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph (i) of this clause.
 - (g) *Extensions of time and time-related costs.* The Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:
 - (1) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.
 - (2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.
 - (3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work.

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

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

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

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

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

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

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

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

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

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

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

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

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

(j) *Proposal preparation costs*. If performed by the firm claiming them, proposal

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

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

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

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

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

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

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

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

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

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

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

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

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

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

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment. (End of clause)

552.243-72 [Removed]

5. Remove section 552.243-72.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA-2008-0116; Notice 1]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule; notice of initial determination.

SUMMARY: The Commonwealth of Virginia has petitioned for approval of alternate requirements governing certain aspects of the Federal odometer law. NHTSA has initially determined that Virginia's proposed alternate requirements are generally consistent with the purposes of the applicable portion of the federal odometer disclosure law. Accordingly, NHTSA preliminarily grants Virginia's petition. This is not a final agency action.

DATES: Comments are due no later than July 24, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA-2008-0116] by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.