

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 511, 517, 532, 536, 543, 546, and 552

[GSAR Case 2015–G503; Docket No. 2016–0015; Sequence No. 1]

RIN 3090–AJ63

General Services Administration Acquisition Regulation (GSAR); Construction Contract Administration

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

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is issuing a proposed rule amending the General Services Administration Acquisition Regulation (GSAR) coverage on construction contracts, including provisions and clauses for solicitations and resultant contracts, to clarify, update, and incorporate existing construction contract administration procedures.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division on or before November 8, 2016 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR case 2015–G503 by any of the following methods:

- *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2015–G503” under the heading “Comment or Submission”. Select the link “Comment Now” that corresponds with GSAR Case 2015–G503. Follow the instructions provided on the screen. Please include your name, company name (if any), and “GSAR Case 2015–G503” on all attached document(s).

• *Mail*: General Services Administration, Regulatory Secretariat Division, 1800 F Street NW., ATTN: Ms. Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2015–G503 in all correspondence related to this case. All comments received will generally be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms. Christina Mullins, General Services Acquisition Policy Division, GSA, by phone at 202–969–4066 or by email at Christina.Mullins@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division by mail at 1800 F Street NW., Washington, DC 20405, or by phone at 202–501–4755. Please cite the GSAR Case 2015–G503, Construction Contract Administration.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 536, Construction and Architect-Engineer Contracts, and related parts, to maintain consistency with the Federal Acquisition Regulation (FAR) and to clarify, update and incorporate existing construction contract administration guidance previously implemented through internal Public Building Service (PBS) policies.

The proposed rule changes fall into five categories: (1) Incorporating existing agency policy previously issued through other means, (2) reorganizing to better align with the FAR, (3) incorporating agency unique clauses, (4) incorporating supplemental material, and (5) editing for clarity. Bringing existing policy into the GSAR will allow for greater transparency and an opportunity for the public to comment on these longstanding procedures. The proposed rule includes a total of five new agency unique provisions and clauses, six new supplemental clauses, and revision and reorganization of eight existing provisions and clauses.

A GSAR rewrite initiative was undertaken by GSA to revise the GSAR starting in 2008. A proposed rule to update GSAR part 536, Construction and Architect-Engineer Contracts was initially published as GSAR Case 2008–G509 in the **Federal Register** at 73 FR 73199 on December 2, 2008. Due to the variety of issues addressed in the GSAR 536 rewrite, and internal stakeholder interest, the agency re-evaluated the implementation plan for the GSAR 536 rewrite and withdrew this initial proposed rule. The initial proposed rule withdrawal was published in the **Federal Register** at 80 FR 6944, on February 9, 2015. GSAR Case 2015–G503 is the second of several new GSAR cases to separately address the issues and update the GSAR 536 text.

II. Discussion and Analysis

The changes to the GSAR included in the proposed rule are summarized in this section.

1. Eight new clauses for construction contracts previously issued through other means are incorporated into GSAR parts 211, 232, and 236. The new clauses and a brief description are as follows:

Name and No.	Requirements	Prescription
552.211–10 Commencement, Prosecution, and Completion of Work.	Supplemental clause to FAR 52.211–10 to address notice to proceed, substantial completion, and phased work.	Same prescription as FAR clause.
552.211–12 Liquidated Damages—Construction.	Supplemental clause to FAR 52.211–12 to address substantial completion and phased work.	Same prescription as FAR clause.
552.211–13 Time Extensions	Supplemental clause to FAR 52.211–13 to address the project schedule as a baseline.	Same prescription as FAR clause.
552.211–70 Substantial Completion	Agency unique clause to define the term and address related requirements.	Prescription consistent with that for FAR 52.211–10.
552.232–5 Payments under Fixed-Price Construction Contracts.	Supplemental clause to FAR 52.232–5 to address pre-invoice payment meetings and clarify certification documentation required for payment.	Same prescription as FAR clause.
552.236–6 Superintendence by the Contractor	Supplemental clause to FAR 52.236–6 to address project management resources and responsibilities.	Clause prescription has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements.

Name and No.	Requirements	Prescription
552.236–15 Schedules for Construction Contracts.	Supplemental clause to FAR 52.236–15 to address milestone events, cost breakdown, and requirements for different project delivery methods.	Clause prescription has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements. The base clause provides guidance for any type of construction project. Alternate I of the clause provides guidance specific to a design-bid-build construction project. Alternate II of the clause provide guidance specific to a design-build construction project. A third alternate is contemplated for a construction-manager-as-constructor project delivery method and may appear in a separate case to update the GSAR 536 text.
552.236–71 Contractor Responsibilities	Agency unique clause to address requirements for different project delivery methods.	The base clause provides guidance for any type of construction project. Alternate I of the clause provides guidance specific to a design-build construction project. A second alternate is contemplated for a construction-manager-as-constructor project delivery method and may appear in a separate case to update the GSAR 536 text.

2. Seven existing clauses for construction contracts in GSAR parts 236 and 243 are revised and reorganized

to better align with the FAR and to streamline the GSAR. The clauses and a

brief description of the changes are as follows:

Name and No.	Requirements	Prescription
552.236–11 Use and Possession Prior to Completion.	Supplemental language to address unfinished work. Replaces previous GSAR 552.236–81, Use of Equipment by the Government, and is now better aligned with the FAR.	Clause prescription revised for general construction. Clause prescription also has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements.
552.236–21 Specifications and Drawings for Construction.	Supplemental language to address inconsistencies, and clarify definition of terms for different project delivery methods. Revised title and clause numbering to better align with the FAR, previously was GSAR 552.236–77, Specifications and Drawings.	Clause prescription has no dollar threshold, which is more inclusive than the FAR clause that is only required at above simplified, in order to satisfy GSA specific contracting requirements. The base clause provides guidance for any type of construction project. Alternate I of the clause provides guidance specific to a design-build construction project. A second alternate is contemplated for a construction-manager-as-constructor project delivery method and may appear in a separate case to update the GSAR 536 text.
552.236–70 (Existing) Definitions	Clause deleted as it is not necessary	Clause deleted as it is not necessary.
552.236–70 (Revised) Authorities and Limitations.	Clause renumbered to streamline GSAR part 536. Previously was GSAR 552.236–71, Authorities and Limitations. Revised text to address non-compliance.	Clause prescription revised to include simplified acquisitions in order to be more consistent with current contracting practices.
552.236–72 Submittals	Revised title and clause numbering to better align the content and to streamline GSAR part 536. Previously was GSAR 552.236–78, Shop Drawings, Coordination Drawings, and Schedules. Revised to provide a broader definition of the term and to address response times, notice to proceed, and deviations.	Clause prescription revised to include simplified acquisitions in order to be more consistent with current contracting practices.
552.236–73 Subcontracts	Clause renumbered to streamline GSAR part 536. Previously was GSAR 552.236–82, Subcontracts.	Clause prescription revised to include simplified acquisitions in order to be more consistent with current contracting practices.
552.243–71 Equitable Adjustments	Clause text remains unchanged	Prescription for this existing agency unique clause is revised to include the changes clause for simplified acquisitions and the differing site conditions clause.

3. GSAR section 536.270 is added to provide agency regulations for options in construction contracts, as required by FAR part 17.2, Options. GSAR subpart 517.2 is revised to move all construction contract option requirements to GSAR section 536.270. In addition, procedures from the existing GSAR section 536.213

for construction options are incorporated into GSAR section 536.270 and are revised to better align with the FAR and to provide general application to both negotiated procurements and sealed bidding. Bringing these instructions into one area ensures consistency and provides better

guidance to contracting officers when developing construction solicitations and contracts. As a result, one revised and three new provisions and clauses are incorporated into GSAR section 552.236. The provisions and clauses and a brief description are as follows:

Name and No.	Requirements	Prescription
552.236–74 Evaluation of Options	Agency unique provision for construction options.	Prescription written in plain language for ease of understanding.
552.236–75 Evaluation Exclusive of Options ..	Agency unique provision for construction options.	Prescription written in plain language for ease of understanding.
552.236–76 Basis of Award-Sealed Bidding Construction.	Revised title and provision numbering to better align the content. Previously was GSAR 552.236–73, Basis of Award-Construction Contracts.	Provision prescription revised to provide clarity.
552.236–77 Government's Right to Exercise Options.	Agency unique clause for construction options	Prescription written in plain language for ease of understanding.

4. GSAR section 546.704 is added to provide agency approval for use of FAR clause 52.246–21, Warranty of Construction.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 of September 30, 1993, Regulatory Planning and Review, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 6(b) of the E.O. requires the OMB Office of Information and Regulatory Affairs (OIRA) to review regulatory actions that have been identified as significant regulatory actions by the promulgating agency or OIRA. This proposed rule has not been determined to be a significant regulatory action and was therefore not subject to OIRA review. However, this rule is not a “major rule,” as defined by 5 U.S.C. 804.

E.O. 13563 of January 18, 2011, Improving Regulation and Regulatory Review, supplements and reaffirms the principles of E.O. 12866 of September 30, 1993. Section 1(c) of E.O. 13563 directs agencies to “use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” Accordingly, GSA offers the following summary of the costs and benefits associated with this proposed rule.

Construction Contract Administration Costs

The total costs associated with this rule are \$895 thousand per year for contractors and \$224 thousand per year for the Federal Government. These costs

are attributable to GSA contracts for construction, dismantling, demolition, or removal of improvements. The estimated costs for contractors affected by this rule are limited to the time needed to comply with clause requirements as follows:

GSA construction contracts will be subject to GSAR clause 552.236–72, Submittals. This clause provides guidance to contractors regarding preparation, submission and resubmission of required contract submittal documents such as shop drawings, coordination drawings, and schedules. Compliance costs include the time needed to research and identify the required information, perform quality assurance checks, and transmit the documents. However, contractors will not necessarily have to acquire information technology tools or hire additional personnel to comply as these have been longstanding procedures in use in GSA construction contracts and contractors are familiar with and are currently complying with these practices. In addition, the clause is simplified, including removing the requirement for a specific number of prints and copies of various submittals. GSA estimates the costs for vendors holding these contracts to be around \$895 thousand per year.

There are no other costs associated with this rule as no additional burden is imposed for other clause requirements.

Construction Contract Administration Benefits

This rule will save taxpayer dollars because it provides clarification on and consolidation of existing requirements for construction contracts that will allow for more consistency and

efficiency in contracting for both businesses and contracting officers.

Much of the content in GSAR part 536 has not been updated since the 1980s, and does not reflect current contracting practices. For example, sealed bidding as detailed in GSAR 536.213 is rarely used now. This rule provides several updates to clarify procedures relevant to today's construction administration practices. This will in turn provide greater consistency across contracts and lower administrative costs for contractors.

In addition, GSAR coverage does not currently include internal policy and guidance issued in other forms such as Procurement Instructional Bulletins (PIBs) and Procurement Informational Letters (PILs). This rule brings these longstanding practices into the GSAR, consolidating policy into one area. As a result, contractors can expend less time and fewer resources to read, reconcile, and understand all the regulations relevant to their contract in order to fully comply with the requirements.

IV. Regulatory Flexibility Act

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, at 5 U.S.C. 601, *et seq.*, because the proposed rule will incorporate clauses that are currently in use in GSA construction solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, since this is the first time these existing policies and procedures that impact the public are being published, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The IRFA has been prepared

consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

The proposed rule changes will apply to approximately 3,900 GSA construction contracts. Of these, approximately 3,500 (90 percent) construction contracts are held by small businesses. The proposed rule is unlikely to affect small businesses awarded GSA construction contracts as it implements clauses currently in use in construction solicitations and contracts. The proposed rule does not pose any new reporting, recordkeeping or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. The agency determined that supplemental language is necessary for eight FAR clauses. No alternatives were determined that will accomplish the objectives of the rule. Bringing these regulations into the GSAR provides for transparency and allows for public comment. Bringing these regulations into the GSAR also consolidates policy into one area, allowing for more consistency and efficiency in contracting for both businesses and contracting officers.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule 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 2015–G503), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the proposed rule contains information collection requirements. However, no additional burden is imposed on the public for most clauses, and there is some burden reduction.

One clause involves an existing information collection requirement that has never been previously recognized or vetted for public comment. Accordingly, the Regulatory Secretariat Division has submitted a request for approval of the existing information collection requirements to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The information collected is used by PBS to evaluate a contractor's proposals, negotiate contract modifications, review required submittals, evaluate a contractor's progress, and review payment requests during contract administration.

The impacts to the public for the following clauses are as follows:

The new clause at GSAR 552.211–13, Time Extensions, requires the contractor to submit a written request detailing an analysis to justify a time extension. However, the clause does not add burden to what is already estimated by a previous information collection for FAR clause 52.243–4, Changes (see OMB Control Number 9000–0026).

The new clause at GSAR 552.211–70, Substantial Completion, requires the contractor to submit a written notice of proposed substantial completion date for the construction work. However, the clause does not add burden to what is already estimated by a previous information collection for FAR clause 52.236–15, Schedules for Construction Contracts (see OMB Control Number 9000–0058).

The new clause at GSAR 552.232–5, Payments under Fixed-Price Construction Contracts, requires the contractor to use certain GSA forms to submit the information necessary for a complete payment request. However, the clause does not add burden to what is already estimated by previous information collections for GSAR 532.905–70, FAR clause 52.232–5, Payments under Fixed-Price Construction Contracts, and FAR clause 52.232–27, Prompt Payment for Construction Contracts (see OMB Control Numbers 3090–0080, 9000–0070, and 9000–0102).

The new clause at GSAR 552.236–15, Schedules for Construction Contracts, requires the contractor to identify a schedule of values, to provide updates specifically weekly or monthly, and to follow a critical path method in some cases. However, the clause does not add burden to what is already estimated by a previous information collection for FAR clause 52.236–15, Schedules (see OMB Control Number 9000–0058).

The new clause at 552.236–72, Submittals, represents a reduction in burden. The clause was previously GSAR 552.236–78, Shop Drawings, Coordination Drawings, and Schedules. The clause is simplified, including removing the requirement for a specific number of prints and copies of various submittals such as shop drawings, coordination drawings, and schedules. This simplification will ease the compliance burden for the contractor during contract administration. However, an information collection was never previously filed for this clause.

Public reporting burden for this collection of information is estimated to average 8 hours 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.

The annual reporting burden is estimated as follows:

Respondents: 3,758.

Responses per respondent: 1.

Total annual responses: 3,758.

Preparation hours per response: 8.

Total response burden hours: 30,064.

The new provision at GSAR 552.236–76, Basis of Award-Sealed Bidding Construction, removes the use of alternates in sealed bidding. The provision was previously GSAR 552.236–73, Basis of Award-Construction Contracts. The provision title and prescription are revised to provide clarity, and the provision regulations are simplified. This provision change will reduce the complexity to businesses during contract solicitation as bid sheet line items will be more clearly understood for pricing.

VI. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than November 8, 2016 to: GSAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405.

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

Requesters may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat Division (MVCB), Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 3090–00XX, Construction Contract Administration, in all correspondence.

List of Subjects in 48 CFR Parts 501, 511, 517, 532, 536, 543, 546, and 552.

Government procurement.

Dated: September 9, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Therefore, GSA proposes to amend 48 CFR parts 501, 511, 517, 532, 536, 543, 546, and 552 as set forth below:

- 1. The authority citation for 48 CFR part 501 continues to read as follows:

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

501.106 [Amended]

- 2. Amend section 501.106 in the table by—
 - a. Removing GSAR reference “532.111(c)” and its corresponding OMB control number “3090–0080”;
 - b. Removing from GSAR Reference “532.905–70” OMB control number “9000–0102” and adding “3090–0080” in its place;
 - c. Removing GSAR Reference “532.905–71” and its corresponding OMB control number “3090–0080”;
 - d. Adding, in numerical sequence, GSAR references “552.211–13(a)” and “552.211–70(b)” and their corresponding OMB control numbers “9000–0026” and “9000–0058”, respectively;
 - e. Adding, in numerical sequence, GSAR reference “552.232–5” and its corresponding OMB control numbers “3090–0080”, “9000–0070”, and “9000–0102”; and
 - f. Adding, in numerical sequence, GSAR references “552.236–15” and “552.236–72” and their corresponding OMB control numbers “9000–0058” and “3090–XXXX”, respectively.

PART 511—DESCRIBING AGENCY NEEDS

- 3. The authority citation for 48 CFR part 511 continues to read as follows:

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

- 4. Revise section 511.404 to read as follows:

511.404 Contract clauses.

(a) *Supplies or services*—(1) *Shelf-life items*. The contracting officer shall use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production:

(i) The contracting officer shall insert 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For

items having a limited shelf-life, substitute Alternate I when required by the program director.

(ii) The contracting officer shall insert 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(2) *Stock replenishment contracts*. The contracting officer shall insert 552.211–81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing, and Shipment/Delivery clause at 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, the contracting officer shall use Alternate I.

(3) *Indeterminate testing time*. The contracting officer shall insert 552.211–83, Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I.

(4) The contracting officer shall insert the clause at 552.211–94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither of the FAR delivery clauses (FAR 52.211–8 or 52.211–9) is suitable.

(b) *Construction*. (1) The contracting officer shall insert the clause at 552.211–10, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated.

(2) The contracting officer shall insert the clause at 552.211–70, Substantial Completion in solicitations and contracts when a fixed-price construction contract is contemplated.

- 5. Add subpart 511.5, consisting of section 511.504, to read as follows:

Subpart 511.5—Liquidated Damages

511.504 Contract clauses.

(a) The contracting officer shall insert the clause at 552.211–12, Liquidated Damages—Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see FAR 11.501(a)).

(b) The contracting officer shall insert the clause at 552.211–13, Time Extensions, in solicitations and contracts for construction that use the

clause at 552.211–12, Liquidated Damages—Construction.

PART 517—SPECIAL CONTRACTING METHODS

- 6. The authority citation for 48 CFR part 517 is revised to read as follows:

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

- 7. Revise section 517.200 to read as follows:

517.200 Scope of subpart.

(a) Except as provided in paragraph (b) of this section, this subpart applies to contracts for supplies and services, including architect-engineer services.

(b) Policies and procedures for the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property are prescribed in 536.270. FAR subpart 17.2 and this subpart 517.2 do not apply to the use of options in solicitation provisions and contract clauses for services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

- 8. Revise section 517.202 to read as follows:

517.202 Use of options.

(a) Options may be used when they meet one or more of the following objectives:

(1) Reduce procurement lead time and associated costs.

(2) Ensure continuity of contract support.

(3) Improve overall contractor performance.

(4) Facilitate longer term contractual relationships with those contractors that continually meet or exceed quality performance expectations.

(b) An option is normally in the Government's interest in the following circumstances:

(1) There is an anticipated need for additional supplies or services during the contract term.

(2) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

(3) There is a need for continuity of supply or service support.

(c) An option shall not be used if the market price is likely to change substantially and an economic price adjustment clause inadequately protects the Government's interest.

PART 532—CONTRACT FINANCING

■ 9. The authority citation for 48 CFR part 532 continues to read as follows:

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

■ 10. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 11. The authority citation for 48 CFR part 536 continues to read as follows:

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

■ 12. Revise subpart 536.2 to read as follows:

Subpart 536.2—Special Aspects of Contracting for Construction

536.270 Options in construction contracting.

536.270–1 Use of options.

536.270–2 Solicitations.

536.270–3 Evaluation.

536.270–4 Exercise of options.

536.270–5 Solicitation provisions and contract clauses.”

536.270 Options in construction contracting.**536.270–1 Use of options.**

(a) Subject to the limitations in this subsection, contracting officers may include options in contracts when it is in the Government's interest.

(b) The scope of work in the base contract at award shall require the contractor to provide a discrete and fully functional deliverable. Options shall not be used to incrementally deliver work required to fulfill the requirements of the scope of work for the base contract.

(c) Contracting officers shall justify in writing the use of options.

(d) Including an option may be in the Government's interest when, in the judgment of the contracting officer—

(1) Additional work beyond the base contract is reasonably foreseeable;

(2) It would not be advantageous to award a separate contract;

(3) It would not be advantageous to permit an additional contractor to work on the same site;

(4) Services arising out of or relating to the underlying construction contract may be required during or after substantial completion of the scope of work. For instance, if building

equipment (e.g., mechanical and electrical equipment) will be installed under the construction contract, it may be advantageous to have the construction contractor maintain and service the equipment. In such an instance, the services performed may be included as an option to the underlying construction contract. Contracting officers shall ensure that the applicable clauses are included in any such option (e.g., Service Contract Act); or

(5) It is otherwise justified.

(e) Options for construction work may provide for an economic price adjustment based on cost or price indexes of labor or materials (see FAR 16.203–4(d)). Subject to the approval of the HCA, the contracting officer may develop and insert a project-specific price adjustment clause into the solicitation.

536.270–2 Solicitations.

Solicitations containing options shall—

(a) Include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 536.270–5);

(b) State the period within which the options may be exercised; and

(c) State whether the basis of evaluation is inclusive or exclusive of the options (if exclusive, see 536.270–4(c)).

536.270–3 Evaluation.

For sealed bidding that includes options—

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and all options designated to be evaluated; and

(b) Before opening bids that include options, the contracting officer must determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options does not exceed the amount offered for the base bid, the evaluated options, and the same combination of items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the options to be used.

536.270–4 Exercise of options.

(a) The contracting officer shall exercise options in writing within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining, in writing, that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(4) The contractor is not listed in the System for Award Management Exclusions (see FAR 9.405–1).

(5) The contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship.

(6) Exercising the option is in accordance with the terms of the option.

(7) The option price is fair and reasonable, unless already determined as such (e.g., at time of award).

(c) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302).

(d) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

536.270–5 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 552.236–74, Evaluation of Options, in solicitations for fixed-price construction contracts when the solicitation contains an option clause and options will be included in the evaluation for award purposes.

(b) Insert a provision substantially the same as the provision at 552.236–75, Evaluation Exclusive of Options, in solicitations for fixed-price construction contracts when the solicitation includes an option clause and options will not be included in the evaluation for award purposes.

(c) Insert a provision substantially the same as the provision at 552.236–76, Basis of Award-Sealed Bidding Construction, in solicitations for fixed-price construction contracts when contracting by sealed bidding. Use the provision with its Alternate I when the solicitation contains an option clause.

(d) Insert a clause substantially the same as the clause at 552.236–77,

Government's Right to Exercise Options, in solicitations and contracts for construction that include options.

■ 13. Revise subpart 536.5 to read as follows:

Subpart 536.5—Contract Clauses

- 536.506 Superintendence by the contractor.
- 536.511 Use and possession prior to completion.
- 536.515 Schedules for construction contracts.
- 536.521 Specifications and drawings for construction.
- 536.570 Authorities and limitations.
- 536.571 Contractor responsibilities.
- 536.572 Submittals.
- 536.573 Subcontracts.

536.506 Superintendence by the contractor.

Insert the clause at 552.236–6, Superintendence by the Contractor, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.511 Use and possession prior to completion.

Insert the clause at 552.236–11, Use and Possession Prior to Completion, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.515 Schedules for construction contracts.

Insert the clause at 552.236–15, Schedules for Construction Contracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause—

(a) With its Alternate I when the contract amount is expected to be above the simplified acquisition threshold and a design-bid-build project delivery method will be followed; or

(b) With its Alternate II when the contract amount is expected to be above the simplified acquisition threshold and a design-build project delivery method will be followed.

536.521 Specifications and drawings for construction.

Insert the clause at 552.236–21, Specifications and Drawings for Construction, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.570 Authorities and limitations.

Insert the clause at 552.236–70, Authorities and Limitations, in

solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.571 Contractor responsibilities.

Insert the clause at 552.236–71, Contractor Responsibilities, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.572 Submittals.

Insert the clause at 552.236–72, Submittals, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated. Use the clause with its Alternate I when a design-build project delivery method will be followed.

536.573 Subcontracts.

Insert the clause at 552.236–73, Subcontracts, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

PART 543—CONTRACT MODIFICATIONS

■ 14. The authority citation for 48 CFR part 543 is revised to read as follows:

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

■ 15. 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, FAR 52.243–5, Changes and Changed Conditions, or FAR 52.236–2, Differing Site Conditions.

PART 546—QUALITY ASSURANCE

■ 16. The authority citation for 48 CFR part 546 continues to read as follows:

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

■ 17. Add section 546.704 to read as follows:

546.704 Authority for use of warranties.

FAR clause 52.246–21, Warranty of Construction, is approved by the agency for use in solicitations and contracts when a fixed-price construction contract is contemplated.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 18. The authority citation for 48 CFR part 552 continues to read as follows:

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

■ 19. Add section 552.211–10 to read as follows:

552.211–10 Commencement, Prosecution, and Completion of Work.

As prescribed in 511.404, insert the following clause:

Commencement, Prosecution, and Completion of Work (DATE)

FAR 52.211–10, Commencement, Prosecution, and Completion of Work, is supplemented as follows:

(a) The Contractor shall not commence work until the Contracting Officer issues a notice to proceed.

(b) Notwithstanding paragraph (a) above, the Contractor must submit any required safety plans before commencing any construction work.

(c) The Contractor shall diligently prosecute the work so as to achieve substantial completion of the work within the time specified in the contract. If the contract specifies different completion dates for different phases or portions of the work, the Contractor shall diligently prosecute the work so as to achieve substantial completion of such phases or portions of the work within the times specified.

(End of clause)

■ 20. Add sections 552.211–12 and 552.211–13 to read as follows:

552.211–12 Liquidated Damages—Construction.

As prescribed in 511.504, insert the following clause:

Liquidated Damages (DATE)

FAR 52.211–12, Liquidated Damages—Construction, is supplemented as follows:

(a) If the Contractor fails to achieve substantial completion of the work within the time specified in the contract, the Contractor shall be liable to the Government for liquidated damages at the rate specified for each calendar day following the required completion date that the work is not substantially complete.

(b) If the contract requires different completion dates for different phases or portions of the work, the Contractor shall be liable for liquidated damages at the specified rate for each calendar day following the required completion date that the phase or portion of work is not substantially complete. If a single rate is specified, the specified rate shall be apportioned between the different phases or portions of the work.

(c) If the Government elects to accept any portion of the work not specifically designated as a phase or portion of work with its own required completion date, the liquidated damage rate shall be apportioned between accepted work and uncompleted work, and the Contractor's liability for liquidated damages shall be computed accordingly.

(End of clause)

552.211–13 Time Extensions.

As prescribed in 511.504, insert the following clause:

Time Extensions (DATE)

FAR 52.211–13, Time Extensions, is supplemented as follows:

(a) If the Contractor requests an extension of the time for substantial completion, the Contractor shall base its request on an analysis of time impact using the project schedule as its baseline, and shall propose as a new substantial completion date to account for the impact. The Contractor shall submit a written request to the Contracting Officer setting forth facts and analysis in sufficient detail to enable the Contracting Officer to evaluate the Contractor's entitlement to an extension of time.

(b) The Contractor shall only be entitled to an extension of time to the extent that—

(1) Substantial completion of the work is delayed by causes for which the Contractor is not responsible under this contract; and

(2) The actual or projected substantial completion date is later than the date required by this contract for substantial completion.

(c) The Contractor shall not be entitled to an extension of time if the Contractor has not updated the project schedule in accordance with the contract.

(d) The Government shall not be liable for any costs to mitigate time impacts incurred by the Contractor that occur less than 30 calendar days after the date the Contractor submits a request for extension of time in compliance with this clause.

(End of clause)

■ 21. Add section 552.211–70 to read as follows:

552.211–70 Substantial Completion.

As prescribed in 511.404, insert the following clause:

Substantial Completion (DATE)

(a) *General.* (1) For the purposes of FAR 52.211–10, Commencement, Prosecution and Completion of Work, and FAR 52.211–12, Liquidated Damages-Construction, the work shall be deemed complete when it is “substantially complete.”

(2) There may be different completion dates required for different phases or portions of the work, as established in the contract. However, the work shall be deemed “substantially complete” if and only if the Contractor has completed the work and related contract obligations in accordance with the contract documents, such that the Government may enjoy the intended access, occupancy, possession, and use of the entire work without impairment due to incomplete or deficient work, and without interference from the Contractor's completion of remaining work or correction of deficiencies in completed work.

(3) In no event shall the work be deemed “substantially complete” if all fire and life safety systems are not tested and accepted by the authority having jurisdiction, where such acceptance is required under the contract.

(4) Unless otherwise specifically noted, or otherwise clear from context, all references in the contract to “acceptance” shall refer to issuance of a written determination of substantial completion by the Contracting Officer.

(b) *Notice of Substantial Completion.* (1) With reasonable advance notice, the Contractor shall submit to the Contracting Officer a written proposal recommending a substantial completion date.

(2) If the Contracting Officer takes exception to the notice of substantial completion, the Contractor shall be entitled to a written notice of conditions precluding determination of substantial completion. The Contractor shall only be entitled to an extension of time to address such conditions if, and to the extent that, the Contracting Officer provides notice of such conditions more than 30 calendar days after receipt of the notice of substantial completion.

(c) *Acceptance of Substantial Completion.*

(1) The Contracting Officer shall conduct inspections and make a determination of substantial completion within a reasonable time.

(2) Substantial Completion shall be established by the Contracting Officer's issuance of a written determination specifying the date upon which the work is substantially complete.

(d) *Contract Completion.* (1) The Contract is complete if and only if the Contractor has completed all work and related contract obligations, corrected all deficiencies and all punch list items, and complied with all conditions for final payment.

(2) The Contractor shall not be entitled to final payment or release of any retainage held by the Government until after contract completion. If the Contractor does not achieve contract completion within the time required by this contract, the Government shall be entitled, after providing notice to the Contractor, to complete any work remaining unfinished. The Contractor shall be liable to the Government for all costs incurred by the Government to complete such work.

(End of clause)

■ 22. Add sections 552.232–5 and 552.232–6 to read as follows:

552.232–5 Payments under Fixed-Price Construction Contracts.

As prescribed in 532.111, insert the following clause:

Payments Under Fixed-Price Construction Contracts (DATE)

FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, is supplemented as follows:

(a) Before submitting a request for payment, the Contractor shall, unless directed otherwise by the Contracting Officer, attend pre-invoice payment meetings, as scheduled, with the designated Government representative for the purpose of facilitating review and approval of payment requests. Payment meetings will be conducted and may be in person. The Contractor shall provide documentation to support the prospective payment request.

(b) The Contractor shall submit its invoices to the Contracting Officer, unless directed otherwise by the Contracting Officer. Separate payment requests shall be submitted for progress payments, payments of retainage, and partial or final payments.

(c) The Contractor shall use GSA Form 2419 *Certification of Progress Payments Under Fixed-Price Construction Contracts* to provide the certification required under FAR 52.232–5(c).

(d) The Contractor shall use GSA Form 1142 *Release of Claims* to provide the certification required under FAR 52.232–5(h).

(e) If an invoice does not meet the requirements of FAR 52.232–27 and GSAM 552.232–27, the Contracting Officer may return the invoice to the Contractor without payment for correction. If the Contracting Officer disputes the requested payment amount, the Government may pay the portion of the requested payment that is undisputed.

(f) GSA will not be obligated to issue final payment unless the Contractor has furnished to the Contracting Officer a release of claims against the Government relating to the contract, and submitted all required product warranties, as-built drawings, operating manuals, and other items as specified in the contract. The Contractor may reserve from the release specific claims only if such claims are explicitly identified with stated claim amounts.

(End of clause)

552.236–6 Superintendence by the Contractor.

As prescribed in 536.506, insert the following clause:

Superintendence by the Contractor (DATE)

The requirements of the clause entitled “Superintendence by the Contractor” at FAR 52.236–6, are supplemented as follows:

(a) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the contract. The Contractor shall designate a principal of the firm or other senior management official to provide executive oversight and problem resolution resources to the project for the life of the contract.

(b) The Contractor shall employ, and require its subcontractors to employ, qualified personnel to perform the contract. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest.

(c) The Contractor shall be responsible for coordinating all activities of subcontractors, including all of the following activities:

(1) Preparation of shop drawings produced by different subcontractors where their work interfaces or may potentially conflict or interfere.

(2) Scheduling of work by subcontractors.

(3) Installation of work by subcontractors.

(4) Use of the project site for staging and logistics.

(d) Repeated failure or excessive delay to meet the superintendence requirements by the Contractor may be deemed a default for the purposes of the termination for default clause.

(End of clause)

■ 23. Add section 552.236–11 to read as follows:

552.236–11 Use and Possession Prior to Completion.

As prescribed in 536.511, insert the following clause:

Use and Possession Prior to Completion (DATE)

Exercise by the Government of the right conferred by FAR 52.236–11 shall not relieve the Contractor of responsibility for completing any unfinished components of the work.

(End of clause)

■ 24. Add section 552.236–15 to read as follows:

552.236–15 Schedules for Construction Contracts.

As prescribed in 536.515, insert the following clause:

Schedules for Construction Contracts (DATE)

The requirements, of the clause entitled “Schedules for Construction Contracts” at FAR 52.236–15, are supplemented as follows:

(a) *Purpose.* The project schedule shall be a rational, reasonable, and realistic plan for completing the work, and conform to the requirements specified in this clause and elsewhere in the contract. The Contractor understands and acknowledges that the preparation and proper management of the project schedule is a material component of the contract.

(b) *Use of the schedule.* The Contracting Officer shall be entitled, but not required, to rely upon the project schedule to evaluate the Contractor’s progress, evaluate entitlement to extensions of time, and determine the criticality or float of any activities described in such project schedule.

(c) *Submission.* Prior to notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule.

(d) *Milestones.* The project schedule shall incorporate milestone events specified in the contract, including, as applicable, notice to proceed, substantial completion, and milestones related to specified work phases and site restrictions. The project schedule shall also include Contractor-defined milestones to identify target dates for critical events, based upon the Contractor’s chosen sequence of work.

(e) *Activities.* The project schedule shall depict all major activities necessary to complete the work.

(f) *Schedule of values.* (1) The Contractor shall prepare and submit for approval a cost breakdown of the Contract price, to be referred to as the “schedule of values”, assigning values to each major activity necessary to complete the work.

(2) Values must include all direct and indirect costs, although a separate value for bond costs may be established.

(3) The schedule of values must contain sufficient detail to enable the Contracting Officer to evaluate applications for payment.

(g) *Conflicting terms.* (1) If at any time the Contracting Officer finds that the project schedule does not comply with any contract requirement, the Contracting Officer will provide written notice to the Contractor.

(2) Within 30 calendar days of written notice, or such other time as may be specified, from the Contracting Officer, the Contractor shall take one of the following actions:

(i) Revise the project schedule.

(ii) Adjust activity progress.

(iii) Provide sufficient information demonstrating compliance.

(3) If the Contractor fails to sufficiently address the Contracting Officer’s exceptions to the project schedule, the Contracting Officer may—

(i) Withhold retainage until the project is substantially complete or until such time as the Contractor has complied with project schedule requirements; or

(ii) Terminate the contract for default.

(h) *Revisions to the schedule.* If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule weekly to reflect actual progress in completing the work, and submit the updated project schedule by the following Monday.

(End of clause)

Alternate I (DATE). As prescribed in 536.515(a), substitute the following paragraphs (c), (e), (h), and (i) for paragraphs (c), (e), (h), and (i) of the basic clause:

(c) *Submission.* Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) The project schedule shall depict all activities necessary to complete the work,

including, as applicable, all submittal and submittal review activities, all procurement activities, and all field activities, including mobilization, construction, start-up, testing, balancing, commissioning, and punchlist.

(3) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(4) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(h) *Revisions to the schedule.* (1) The Contractor should anticipate that the initial submittal of the project schedule will be subject to review and may require revision. The Contractor shall devote sufficient resources for meetings, revisions, and resubmissions of the project schedule to address any exceptions taken to the initial submittal. The Contractor understands and acknowledges that the purpose of the initial review and resolution of exceptions is to maximize the usefulness of the project schedule for contract performance.

(2) If the Contractor revises the project schedule after initial approved submission, the Contractor shall provide in writing a narrative describing the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities. The addition of detail to prospective activities shall not be deemed a revision if the overall duration of the detailed activity does not change.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

Alternate II (DATE). As prescribed in 536–515(b), substitute the following paragraphs (c), (e), and (i) for paragraphs (c), (e), and (i) of the basic clause:

(c) *Submission.* (1) Within 30 calendar days of notice to proceed, or such other time as may be specified in the contract, the Contractor shall submit the project schedule, together with a written narrative describing the major design and construction activities. The project schedule may indicate construction activities in summary form prior to completion of final design documents.

(2) Within 30 calendar days of completion of final design documents, the Contractor shall submit a revised project schedule depicting all activities necessary to complete construction work activities, together with a written narrative describing the major work

activities, activities on the critical path, and major constraints underlying the sequence and logic of the project schedule.

(e) *Activities.* (1) The Contractor shall use a critical path method project schedule to plan, coordinate, and perform the work.

(2) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the work, effective evaluation of the reasonableness and realism of the project schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(3) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the project schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.

(i) *Updates.* Unless a different period for updates is specified elsewhere, the Contractor shall update the project schedule monthly to reflect actual progress in completing the work, and submit the updated project schedule within 5 working days of the end of each month.

■ 25. Add section 552.236–21 to read as follows:

552.236–21 Specifications and Drawings for Construction.

As prescribed in 536.521, insert the following clause:

Specifications and Drawings for Construction (DATE)

The requirements of the clause entitled “Specifications and Drawings for Construction” at FAR 52.236–21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern.

(b) Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing.

(c) On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(d) Where the word “similar” occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(e) Standard details or specification drawings are applicable when listed, bound with the specifications, noted on the drawings, or referenced elsewhere in the specifications.

(1) Where notes on the specification drawings indicate alterations, such alterations shall govern.

(2) In case of difference between standard details or specification drawings and the

specifications, the specifications shall govern.

(3) In case of difference between the standard details or specification drawings and the drawings prepared specifically for this contract, the drawings prepared specifically for this contract shall govern.

(f) Different requirements within the contract documents shall be deemed inconsistent only if compliance with both cannot be achieved.

(g) Unless otherwise noted, the drawings shall be interpreted to provide for a complete construction, assembly, or installation of the work, without regard to the detail with which material components are shown in the drawings.

(End of clause)

Alternate I (DATE). As prescribed in 536.521, add the following paragraph to the basic clause:

(h) For the purposes of this clause, specifications and drawings refer only to those included among the contract documents, and not to those produced by the Contractor pursuant to its responsibilities under the contract.

552.236–70 [Removed]

■ 26. Remove section 552.236–70.

552.236–71 [Redesignated as 552.236–70]

■ 27. Redesignate section 552.236–71 as section 552.236–70 and revise it to read as follows:

552.236–70 Authorities and Limitations.

As prescribed in 536.570, insert the following clause:

Authorities and Limitations (DATE)

(a) All work shall be performed under the general direction of the Contracting Officer. The Contracting Officer alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents. The Contracting Officer may designate contracting officer's representatives (CORs) to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the COR under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such COR additional power and authority to act for him or designate additional CORs, specifying the extent of their authority to act for him. A copy of each document vesting additional authority in a COR or designating an additional COR shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by a COR in accordance with his

authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(c) If the Contractor receives written notice from the Contracting Officer of non-compliance with any requirement of this contract, the Contractor must initiate action as may be appropriate to comply with the specified requirement as defined in the notice. In the event the Contractor fails to initiate such action within a reasonable period of time as defined in the notice, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of clause)

■ 28. Add new section 552.236–71 to read as follows:

552.236–71 Contractor Responsibilities.

As prescribed in 536.571, insert the following clause:

Contractor Responsibilities (DATE)

(a) The Contractor shall be responsible for compliance with applicable codes, standards and regulations pertaining to the health and safety of personnel during performance of the contract.

(b) Unless expressly stated otherwise in the contract, the Contractor shall be responsible for all means and methods employed in the performance of the contract.

(c) The Contractor shall immediately bring to the Contracting Officer's attention any hazardous materials or conditions not disclosed in the contract documents discovered by or made known to the Contractor during the performance of the contract.

(d) The Contractor shall be responsible for providing professional design services in connection with performance of the work or portions of the work only if this responsibility is expressly stated in the contract, and the contract documents provide the performance and design criteria that such services will be required to satisfy. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) Where installation of separate work components as shown in the contract will result in conflict or interference between such components or with existing conditions, including allowable tolerances, it is the Contractor's responsibility to bring such

conflict or interference to the attention of the Contracting Officer and seek direction before fabrication, construction, or installation of any affected work. If the Contractor fabricates, constructs, or installs any work prior to receiving such direction, the Contractor shall be responsible for all cost and time incurred to resolve or mitigate such conflict or interference.

(f) Where drawings show work without specific routing, dimensions, locations, or position relative to other work or existing conditions, and such information is not specifically defined by reference to specifications or other information supplied in the contract, the Contractor is responsible for routing, dimensioning, and locating such work in coordination with other work or existing conditions in a manner consistent with contract requirements.

(g) It is not the Contractor's responsibility to ensure that the contract documents comply with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(End of clause)

Alternate I (DATE). As prescribed in 536.571, delete paragraphs (d), (e), (f), and (g) of the basic clause, and insert paragraphs (d), (e), (f), and (g) as follows:

(d) The Contractor shall be responsible for providing professional design services unless this responsibility is expressly excluded from the contract. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under the contract.

(e) The Contractor's responsibilities include the responsibilities of the Architect-Engineer Contractor, as specified in FAR 52.236-23.

(f) The Contractor shall include in all subcontracts that require professional design services express terms establishing GSA as a third party beneficiary. No other person shall be deemed a third party beneficiary of the contract.

(g) The Contractor shall determine whether the information contained in the contract documents complies with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the contract documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the work prior to notifying and receiving direction from the Contracting Officer, the

Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

■ 29. Add section 552.236-72 to read as follows:

552.236-72 Submittals.

As prescribed in 536.572, insert the following clause:

Submittals (DATE)

(a) The Contractor shall prepare and submit all submittals as specified in the contract or requested by the Contracting Officer.

(1) Submittals may include: safety plans, schedules, shop drawings, coordination drawings, samples, calculations, product information, or mockups.

(2) Shop drawings may include fabrication, erection and setting drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(b) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, submittals shall be submitted to the Contracting Officer.

(c) The Contractor shall be entitled to receive notice of action on submittals within a reasonable time, given the volume or complexity of the submittals and the criticality of the affected activities to substantial completion as may be indicated in the project schedule.

(d) Review of submittals will be general and shall not be construed as permitting any departure from the contract requirements.

(e) The Contractor shall not proceed with construction work or procure products or materials described or shown in submittals until the submittal is reviewed. Any work or activity undertaken prior to review shall be at the Contractor's risk. Should the Contracting Officer subsequently determine that the work or activity does not comply with the contract, the Contractor shall be responsible for all cost and time required to comply with the Contracting Officer's determination. The Contracting Officer shall have the right to order the Contractor to cease execution of work for which submittals have not been reviewed. The Government shall not be liable for any cost or delay incurred by the Contractor attributable to the proper exercise of this right.

(f) The Contractor shall identify, in writing, all deviations or changes in resubmitted submittals. In the absence of such written notice, review of a resubmission shall not include or apply to such deviations or changes.

(End of clause)

Alternate I (DATE). As prescribed in 536.572, add the following paragraph to the basic clause:

(g) The Contractor shall submit design documents for review in accordance with PBS-P100. The Government shall review submittals for the limited purpose of verifying that the documents conform to the

design criteria expressed in the contract documents.

552.236-73 through 81 [Removed]

■ 30. Remove sections 552.236-73 through 81.

552.236-82 [Redesignated as 552.236-73]

■ 31. Redesignate section 552.236-82 as section 552.236-73 and revise the introductory text to read as follows:

552.236-73 Subcontracts.

As prescribed in 536.573, insert the following clause:

* * * * *

■ 32. Add new sections 552.236-74 through 552.236-77 to read as follows:

552.236-74 Evaluation of Options.

As prescribed in 536.270-5(a), insert the following provision:

Evaluation of Options (DATE)

The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

552.236-75 Evaluation Exclusive of Options.

As prescribed in 536.270-5(b), insert the following provision:

Evaluation Exclusive of Options (DATE)

The Government will evaluate offers for award purposes by including only the price for the basic requirement. Options will not be included in the evaluation for award purposes.

(End of provision)

552.236-76 Basis of Award—Sealed Bidding Construction

As prescribed in 536.270-5(c), insert the following provision:

Basis of Award—Sealed Bidding Construction (DATE)

A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I (DATE). As prescribed in 536.270-5(c), designate the basic provision as paragraph (a) and add the following paragraph to the basic provision:

(b) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base requirement plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options.

552.236–77 Government's Right to Exercise Options.

As prescribed in 536.270–5(d), insert the following clause:

Government's Right to Exercise Options (DATE)

(a) The Government may exercise any option in writing in accordance with the terms and conditions of the contract within _____ [insert the period of time within which the Contracting Officer may exercise the option]. Unless otherwise specified, options may be exercised within 90 calendar days of contract award.

(b) If the Government exercises the option, the contract shall be considered to include this option clause.

(End of clause)

■ 33. Amend section 552.243–71 by—

■ a. Revising the date of the clause,

■ b. Removing from paragraph (a) “FAR 52.243–4” and adding “FAR 52.243–4, the “Changes and Changed Conditions” clause prescribed by FAR 52.243–5,” in its place; and

■ c. Revising paragraph (c).

The revisions read as follows:

552.243–71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

Equitable Adjustments (DATE)

* * * * *

(c) The proposal shall be submitted within the time specified in the “Changes”, “Changes and Changed Conditions”, or “Differing Site Conditions” clause, as applicable, or such other time as may reasonably be required by the Contracting Officer.

* * * * *

[FR Doc. 2016–21629 Filed 9–8–16; 8:45 am]

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GENERAL SERVICES ADMINISTRATION**48 CFR Parts 515, 538, and 552**

[GSAR Case 2016–G506; Docket No. 2016–0016; Sequence No. 1]

RIN 3090–AJ75

General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule, Order-Level Materials

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify the authority to acquire order-level materials when

placing a task order or establishing a Blanket Purchase Agreement (BPA) against a Federal Supply Schedule (FSS) contract. This proposed rule seeks to provide clear and comprehensive implementation of the ability to acquire order-level materials through the FSS program to create parity between FSS contracts and commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts, reduce the need to conduct less efficient procurement transactions, lower barriers of entry to the federal marketplace and make it easier to do business the federal government.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addressees shown below on or before November 8, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2016–G506 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments by searching for “GSAR Case 2016–G506.” Select the link “Comment Now” that corresponds with GSAR Case 2016–G506. Follow the instructions provided on the screen. Please include your name, company name (if any), and “GSAR Case 2016–G506” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2016–G506, in all correspondence related to this case. All comments received will generally be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Leah Price, Procurement Analyst, at 703–605–2558, or Mr. Curtis Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2016–G506.

SUPPLEMENTARY INFORMATION:**I. Background**

GSA is proposing to amend the General Services Administration

Acquisition Regulation (GSAR) to establish special ordering procedures (per FAR 8.403(b)). These special ordering procedures clarify the authority to acquire order-level materials when placing an order or establishing a BPA against an FSS contract. Currently, most commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts provide the flexibility to easily acquire order-level materials; however the FSS program does not. This proposed rule aims to create parity between the FSS program and other commercial IDIQs while also ensuring an appropriate set of controls or safeguards are put in place.

Improving the acquisition of order level materials through the FSS program was expressly cited in the Office of Federal Procurement Policy's roadmap for simplifying the federal procurement process. (See Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings, available at <https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf>.) Providing the same flexibilities in the FSS program that are currently authorized for commercial IDIQ vehicles will help to reduce contract duplication and the associated administrative costs and inefficiencies for agencies. Simultaneously, it will reduce transaction costs for contractors, including small businesses, by eliminating the need for FSS contract holders to compete for and enter into additional contracts for this ancillary work. The Government Accountability Office (GAO) reports the costs of being on multiple contract vehicles ranged from \$10,000 to \$1,000,000 due to increased bid and proposal, and administrative costs.

This proposed rule would achieve parity for the FSS program by providing further clarification in the GSAR of regulatory changes made by the Federal Acquisition Regulatory Council in years past to overcome the holdings in a Court of Federal Claims decision, *ATA Defense Industries, Inc. v. United States*, 38 Fed. Cl. 489 (1997) and a GAO opinion, *Pyxis Corporation, B–282469; B–282469.2*. These decisions were issued at a time when there was no guidance in the FAR about open market items and served as impetus for opening Federal Acquisition Regulation (FAR) Case 1999–614, bringing the guidance from the FSS Contractor Guide into the FAR. The FAR Case stated: