

General Services Administration  
Washington, DC 20405

APD 2800.12B, CHGE 13  
January 4, 2005

## GSA ORDER

Subject: Amendment 2004-05, GSAR Case 2004-G501, Disputes and Appeals

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).

2. Background. Federal Acquisition Regulation (FAR) Subpart 33.2 (48 CFR subpart 33.2) implements the requirements of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act), which establishes procedures and requirements for asserting and resolving claims subject to the Act. The Act provides for Agencies Boards of Contract Appeals (Boards) and the United States Court of Federal Claims (Court) to resolve appeals of a contracting officer's decision. However, the Boards and Court do not have authority to interpret tariffs or tariff-related matters established through public hearings in each jurisdiction for regulated utilities. The authority pertaining to these matters lie with state public utility commissions.

FAR 33.215 requires that the clause at 52.233-1, Disputes, be inserted in all solicitations and contracts, except those with a foreign government or agency of that government, or an international organization or subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest. GSA's Public Buildings Service awards contracts for public utility services, and from time-to-time, disputes may arise from those contracts that involve tariffs and tariff-related matters.

Therefore, GSAM Subparts 533.2 and 552.2 are being amended to add requirements that provide GSA contracting officers and contractors, acting under a utility service contract, with specific guidance regarding the resolution of disputes involving tariffs and tariff-related matters.

3. Effective date. January 4, 2005.

4. Explanation of changes. To provide GSA contracting officers and contractors, acting under a utility service contract, with specific guidance regarding the resolution of disputes involving tariffs and tariff-related matters, this change will—

a. Amend GSAM Part 533 to add GSAR section 533.215 to prescribe requirements for the use of clause 552.233-71, Disputes (Utility Contracts), in solicitations and contracts for utility services;

b. Amend GSAM Part 552 to add GSAR section 552.233-71, Disputes (Utility Contracts); and

c. Amend GSAM 552.300 to add GSAR section 552.233-71 to the Matrix of Provisions and Clauses.

5. Filing Instructions. Remove and insert the following pages to the GSAM:

Remove page(s)

533-i and 533-ii  
533-3 thru 533-6

552-i and 552-ii  
552-31 thru 552-34  
552-65 and 552-66

Insert page(s)

533-i and 533-ii  
533-3 thru 533-6

552-i and 552-ii  
552-31 thru 552-34  
552-65 and 552-66



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# AMENDMENT 2004-05 JANUARY 4, 2005

## PART 533—PROTESTS, DISPUTES, AND APPEALS

*Sec.*

### **Subpart 533.1—Protests**

533.101 Definitions.  
533.102 General.  
533.103 Protests to the agency.  
533.103-70 Policy.  
533.103-71 Procedures.  
533.103-72 Solicitation provisions.  
533.104 Protests to GAO.

### **Subpart 533.2—Disputes and Appeals**

533.211 Contracting officer's decision.  
533.214 Alternative dispute resolution (ADR).  
533.215 Contract clause.

### **Subpart 533.70—Processing Contract Appeals**

533.7001 Notice of appeal.  
533.7002 Appeal file.  
533.7002-1 Preparation of the appeal file.  
533.7002-2 Transmittal of the appeal file.  
533.7003 The contracting officer's memorandum of position.  
533.7004 Action following decision of the GSA Board of Contract Appeals.

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Regional Council must immediately notify the AGC if they receive a copy of a protest before the AGC notifies them.

(6) After receiving the formal protest filed with GAO, the AGC formally requests a statement of fact and position from you through your Central Office contracting activity or Regional Council. You must immediately notify the affected bidders or offerors that you received a protest using the following format (see FAR 33.104(a)(2)):

Name  
Address

A protest concerning Solicitation No. \_\_\_\_\_ has been filed with the General Accounting Office (GAO).

[Insert the name and address of the protester, and the name of the person signing the protest.] filed the protest on [Date].

You may obtain copies of the protest from this office.

Submit your views and relevant information regarding the protest directly to GAO. Provide this office a copy of any submission to GAO.

\_\_\_\_\_  
Contracting Officer's signature

(7) You must also immediately notify assigned counsel and begin preparing a documented statement of fact and position.

(8) The contracting director concurs on the statement of fact and position (the Office of Regional Council concurs on a Regional procurement). The AGC may request the Regional Council to prepare a legal position analyzing the merits of a protest against a Regional procurement. In these cases, your statement of fact and position is included as a referenced attachment.

(9) The Regional Council's legal position, if requested, and your statement of fact and position, are sent in triplicate to the AGC. The AGC may request additional copies if other interested parties are involved. The statement is due to the AGC no later than 10 workdays after the date you originally receive the protest. GAO may reduce this time by invoking the express option.

(10) If you cannot prepare a statement of fact and position within 10 work days, promptly telephone the AGC with the reason for the delay. The AGC may grant additional time if the report cannot be prepared because of:

(i) Complicated facts or legal issues affecting protest resolution.

(ii) The need to coordinate the report with other agencies, or with offices in distant locations.

(iii) Other compelling circumstances.

(11) At the AGC's request, you must confirm in writing any oral requests for extensions. The contracting director concurs in the request and sends a copy to the HCA. GAO grants a request that will delay submission of GSA's report to GAO beyond 30 days from the date GSA originally received the

protest. The AGC notifies your Central Office contracting activity or Regional Council of GAO's decision.

(12) After submitting the statement to the AGC, you or Regional Council must advise the AGC of all later developments that may affect the case.

(13) All documents must be sent by the fastest means possible.

(14) In addition to the requirements of FAR 33.104(a)(5)(ii), send a copy of any comments to the AGC.

(b) *Protests before award.* If the HCA determines that urgent and compelling circumstances do not permit waiting for GAO's decision as allowed by FAR 33.104(b):

(1) Prepare the written determinations and findings (D&F) in the format shown at 501.704-70(e)(1) for the HCA's signature.

(2) The AGC and the Regional Council (on Regional acquisitions) concur on the D&F.

(3) The AGC notifies GAO of the findings and intended action approved by the HCA before award is made.

(c) *Protests after award.* If GSA receives a protest from GAO within the time periods specified in FAR 33.104(c)(1), GSA must suspend contract performance unless the HCA provides written justification to continue.

(1) Prepare the written D&F for the HCA's signature.

(2) The AGC and Regional Council (on Regional procurements) concur on the D&F.

(3) The AGC notifies GAO of the findings and intended action the HCA approved before contract performance is authorized.

(d) *Notice to GAO.* OGC concurs on the HCA's report to the Comptroller General if GSA has decided not to comply with GAO's recommendation.

## Subpart 533.2—Disputes and Appeals

### 533.211 Contracting officer's decision.

In addition to the information in FAR 33.211(a)(4)(v), advise the contractor in your written decision that a notice of appeal must:

(a) Describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute considered important.

(b) Be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

### 533.214 Alternative dispute resolution (ADR).

GSA Order, Using Alternative Dispute Resolution Techniques (CSL P 5050.1), contains information about implementing ADR procedures.

**533.215 Contract clause.**

Insert the clause at [552.233-71](#), Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

**Subpart 533.70—Processing Contract Appeals**

**533.7001 Notice of appeal.**

(a) *Record.* Upon receipt of the notice of appeal, the contracting activity must establish a record to ensure the timely preparation and submission of appeal cases. The record should show, at a minimum:

- (1) The name of the appellant.
- (2) The date of your final decision.
- (3) The date the appeal was filed.
- (4) Contract number.
- (5) Docket number.
- (6) Your name.

(b) *Untimely notices.* If a contractor submits an untimely notice of appeal, the contracting director must send a separate letter to the AGC, requesting that a motion for dismissal of the appeal be submitted to the Board. The letter and transmittal package must include all the following:

- (1) The name of the appellant, contract number, and date of your final decision.
- (2) The certified mail receipt showing the date on which the appellant received your final decision.
- (3) The envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

**533.7002 Appeal file.**

(a) *Submission time.* Prepare the appeal file in accordance with this section. Obtain the concurrence of assigned counsel and forward the file to the AGC within 20 calendar days after receipt of a notice of appeal or advice that an appeal has been filed. The AGC will advise you if the Board requires a shorter period under its small claims procedures.

(b) *Late submission.* If you cannot meet the submission time for the appeal file, submit in writing to the AGC, before expiration of the designated time, a full explanation and a request for additional time.

**533.7002-1 Preparation of the appeal file.**

(a) *General.*

- (1) Prepare appeal files in quadruplicate. Ensure that all copies are identical in content and position of items.
- (2) If more than one appeal is filed under the same contract, you may request, through the AGC, that the Board waive the requirement to duplicate the documents included in

the first appeal file. Appeal files for the second and subsequent appeals must include all the following:

- (i) Refer to the original appeal file and include the docket and item numbers.
- (ii) Identify and include any changes to documents occurring after preparation of the original file.
- (iii) Include any documents pertinent to the later appeal not previously furnished.

(b) *Content of appeal file.* You must prepare the appeal file following the requirements in the Rules of Procedure of the General Services Administration Board of Contract Appeals. The Rules of Procedure are available at <http://www.gsbcg.gsa.gov/currules.htm>. In addition:

- (1) Put a gummed label (NSN 7510-00-264-5460) on top of the file that identifies the case by appellant, contract number, and docket number.
- (2) Use multiple binders for large files. Individual binders must not be more than 1 inch thick. Use the same exterior labels on subsequent binders that appear on the original binder.

(3) Assigned counsel will assist in determining which documents to include in the file.

(4) Use division sheets to separate the documents listed in the “Index of Exhibits”

(5) *Index of Exhibits.* Place the index as the first (top) document.

(6) *Other pertinent exhibits.* In addition to the basic documents described in Rule 104 of the Rules of Procedures, additional pertinent exhibits may include:

- (i) Copy of the repurchase contract, including referenced terms and conditions.
- (ii) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.
- (iii) Copy of letter of assessment, including worksheet showing calculation of excess costs and other damages including administrative costs.
- (iv) Copies of orders issued under the repurchase contract.

(v) Proof of payment and a detailed disbursement listing, annotated and certified. (**NOTE:** Obtain these from your finance office. Finance will provide a detailed disbursement listing, annotated with the payment number and date, and the amount applicable to the repurchase order if different from the payment amount. A finance division official will certify the disbursement listing. His or her title and date of signature will also be shown.)

(vi) Evidence of certification of the claim or claims, as applicable.

**533.7002-2 Transmittal of the appeal file.**

(a) The contracting director is responsible for all the following:

(1) Forwarding the original and two copies of the appeal file to the AGC by a transmittal letter.

(2) Including your detailed statement of facts in a memorandum of position as a separate document.

(3) Preparing a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision.

(4) Giving the AGC a point of contact: name of individual, position, title, and telephone number.

(b) Assigned counsel concurs on your memorandum and attaches a statement of legal position.

(c) You must retain one copy of the appeal file.

(d) The trial attorney in OGC is responsible for all the following:

(1) Reviewing the appeal file for adequacy.

(2) Transmitting the file to the Board.

(3) Serving a copy of the file upon appellant.

#### **533.7003 The contracting officer's memorandum of position.**

(a) The memorandum of position is a chronological summary for the trial attorney of the actions leading to the dispute and an explanation of your actions. Include all the following in the memorandum:

(1) Identify the contract.

(2) State the nature of the contractor's claim.

(3) Cite pertinent portions of the contract.

(4) State your decision with citations to pertinent contract provisions and a supporting explanation.

(5) Set out any new facts which developed since the decision was made.

(b) You must sign the memorandum of position.

(c) Submit the memorandum of position to the AGC simultaneously with the appeal file, but as a separate document. The memorandum is not a part of the appeal file. Do not reference it in the index.

#### **533.7004 Action following decision of the GSA Board of Contract Appeals.**

(a) *Implementation.* Board decisions are promptly implemented, but may be postponed if further appeal or a motion for reconsideration is considered. If the issue is over quantum,

you should consider paying the undisputed amount to minimize later interest payments to the contractor. Either party may:

(1) Appeal a Board decision in the United States Court of Appeals for the Federal Circuit.

(2) File a motion for reconsideration by the Board within 30 calendar days from the receipt date of the Board decision.

(b) *Cost recovery.* You need not take any further action (other than administrative) if the Board affirms your original decision, unless you must recover costs from the contractor. If a recovery is due, initiate collection by one of the following:

(1) Contract amendment adjusting the contract price.

(2) Written demand for immediate payment. (In excess cost cases, Office of Finance will normally pursue the necessary collection.) A written demand must instruct the contractor to pay the General Services Administration and send the payment to the appropriate GSA finance office. Provide a copy of the written demand to the finance office for information and follow-up.

(3) Set off against other contracts. You may use this alternative to facilitate collection if the contractor is receiving revenue from other contracts.

(c) *Appeals brought under the contract's disputes clause.* If the Board does not uphold your original decision and provides for payment in favor of the contractor, prepare a supplemental agreement and obtain AGC's concurrence. The supplemental agreement will ensure against further litigation of the same dispute. Forward a recommendation for payment to the appropriate finance office with the original of the supplemental agreement and a copy of the Board's decision.

(d) *Appeals brought under the Contract Disputes Act of 1978.* If the Board does not uphold your original decision and awards the contractor money, and the AGC informs you that the Government will not appeal or move for reconsideration, complete the Certificate of Finality attached to the Board's decision and return it to assigned legal counsel. Counsel will forward the Board Decision, Certificate of Finality, and FMS Forms 195, 196, and 197 (or 197A, as appropriate) to the U.S. Department of Treasury, Financial Management Service, for payment of monetary awards.

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# AMENDMENT 2004-02 SEPTEMBER 16, 2004

## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

552.000	Scope of part.	552.212-72	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.
<b>Subpart 552.1—Instructions for Using Provisions and Clauses</b>			
552.101-70	Using Part 552.	552.212-73	Evaluation—Commercial Items (Multiple Award Schedule).
552.102	Incorporating provisions and clauses.	552.214-70	“All or None” Offers.
552.103	Identification of provisions and clauses.	552.214-71	Progressive Awards and Monthly Quantity Allocations.
552.104	Procedures for modifying and completing provisions and clauses.	552.214-72	Bid Sample Requirements.
552.105	Procedures for using alternates.	552.215-70	Examination of Records by GSA.
552.107-70	Provisions and clauses prescribed in Subpart 552.1.	552.215-71	Examination of Records by GSA (Multiple Award Schedule).
<b>Subpart 552.2—Text of Provisions and Clauses</b>			
552.200	Scope of subpart.	552.215-72	Price Adjustment—Failure to Provide Accurate Information.
552.203-5	Covenant Against Contingent Fees.	552.216-70	Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
552.203-70	Price Adjustment for Illegal or Improper Activity.	552.216-71	Economic Price Adjustment—Stock and Special Order Program Contracts.
552.203-71	Restriction on Advertising.	552.216-72	Placement of Orders.
552.209-70	Product Removal from Qualified Products List.	552.216-73	Ordering Information.
552.209-71	Waiver of First Article Testing and Approval Requirement.	552.217-70	Evaluation of Options.
552.209-72	Supplemental Requirements for First Article Approval—Contractor Testing.	552.217-71	Notice Regarding Option(s).
552.209-73	Supplemental Requirements for First Article Approval—Government Testing.	552.219-70	Allocation of Orders—Partially Set-aside Items.
552.211-8	Time of Delivery.	552.219-71	Notice to Offerors of Subcontracting Plan Requirements.
552.211-15	Defense Priorities and Allocations System Requirements.	552.219-72	Preparation, Submission, and Negotiation of Subcontracting Plans.
552.211-70	[Reserved]	552.219-73	Goals for Subcontracting Plan.
552.211-71	Standard References.	552.219-74	Section 8(a) Direct Award.
552.211-72	Reference to Specifications in Drawings.	552.223-70	Hazardous Substances.
552.211-73	Marking.	552.223-71	Nonconforming Hazardous Materials.
552.211-74	Charges for Marking.	552.223-72	Hazardous Material Information.
552.211-75	Preservation, Packaging and Packing.	552.225-70	Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.
552.211-76	Charges for Packaging and Packing.	552.227-70	Government Rights (Unlimited).
552.211-77	Packing List.	552.227-71	Drawings and Other Data to Become Property of Government.
552.211-78	Commercial Delivery Schedule (Multiple Award Schedule).	552.228-70	Workers’ Compensation Laws.
552.211-79	Acceptable Age of Supplies.	552.229-70	Federal, State, and Local Taxes.
552.211-80	Age on Delivery.	552.229-71	Federal Excise Tax—DC Government.
552.211-81	Time of Shipment.	552.232-1	Payments.
552.211-82	Notice of Shipment.	552.232-8	Discounts for Prompt Payment.
552.211-83	Availability for Inspection, Testing, and Shipment/Delivery.	552.232-23	Assignment of Claims.
552.211-84	Non-Compliance with Contract Requirements.	552.232-25	Prompt Payment.
552.212-70	Preparation of Offer (Multiple Award Schedule).	552.232-70	Invoice Requirements.
552.212-71	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.	552.232-71	Adjusting Payments.
		552.232-72	Final Payment.
		552.232-73	Availability of Funds.
		552.232-74	Invoice Payments.
		552.232-75	Prompt Payment.

# AMENDMENT 2004-05 JANUARY 4, 2005

## GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

552.232-76	Electronic Funds Transfer Payment.	552.243-72	Modifications (Multiple Award Schedule).
552.232-77	Payment By Governmentwide Commercial Purchase Card.	552.246-17	Warranty of Supplies of a Noncomplex Nature
552.232-78	Payment Information.	552.246-70	Source Inspection by Quality Approved Manufacturer.
552.232-79	Payment by Credit Card.	552.246-71	Source Inspection by Government.
552.232-81	Payments by Non-Federal Ordering Activities.	552.246-72	Final Inspection and Tests.
552.232-82	Contractor's Remittance (Payment) Address.	552.246-73	Warranty—Multiple Award Schedule.
552.232-83	Contractor's Billing Responsibilities.	552.246-74	[Reserved]
552.233-70	Protests Filed Directly with the General Services Administration.	552.246-75	Guarantees.
552.233-71	Disputes (Utility Contracts).	552.246-76	Warranty of Pesticides.
552.236-70	Definitions.	552.247-70	Placarding Railcar Shipments.
552.236-71	Authorities and Limitations.	552.247-71	Diversion of Shipment Under f.o.b. Destination Contracts.
552.236-72	Specialist.	552.249-70	Termination for Convenience of the Government (Fixed Price) (Short Form).
552.236-73	Basis of Award—Construction Contract.	552.249-71	Submission of Termination Liability Schedule.
552.236-74	Working hours.	552.252-5	Authorized Deviations in Provisions.
552.236-75	Use of Premises.	552.252-6	Authorized Deviations in Clauses.
552.236-76	Measurements.	552.270-1	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.
552.236-77	Specifications and Drawings.	552.270-2	Historic Preference.
552.236-78	Shop Drawings, Coordination Drawings, and Schedules.	552.270-3	Parties to Execute Lease.
552.236-79	Samples.	552.270-4	Definitions.
552.236-80	Heat.	552.270-5	Subletting and Assignment.
552.236-81	Use of Equipment by the Government.	552.270-6	Maintenance of Building and Premises—Right of Entry.
552.236-82	Subcontracts.	552.270-7	Fire and Casualty Damage.
552.236-83	Requirement for a Project Labor Agreement.	552.270-8	Compliance with Applicable Law.
552.237-70	Qualifications of Offerors.	552.270-9	Inspection—Right of Entry.
552.237-71	Qualifications of Employees.	552.270-10	Failure in Performance.
552.237-72	Prohibition Regarding "Quasi-Military Armed Forces."	552.270-11	Successors Bound.
552.237-73	Restriction on Disclosure of Information.	552.270-12	Alterations.
552.238-70	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.	552.270-13	Proposals for Adjustment.
552.238-71	Submission and Distribution of Authorized FSS Schedule Pricelists.	552.270-14	Changes.
552.238-72	Identification of Products that have Environmental Attributes.	552.270-15	Liquidated Damages.
552.238-73	Cancellation	552.270-16	Adjustment for Vacant Premises.
552.238-74	Industrial Funding Fee and Sales Reporting.	552.270-17	Delivery and Condition.
552.238-75	Price Reductions.	552.270-18	Default in Delivery—Time Extensions.
552.238-76	[Reserved]	552.270-19	Progressive Occupancy.
552.238-77	Definition (Federal Supply Schedules).	552.270-20	Payment.
552.238-78	Scope of Contract (Eligible Ordering Activities).	552.270-21	Effect of Acceptance and Occupancy.
552.238-79	Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.	552.270-22	Default by Lessor During the Term.
552.242-70	Status Report of Orders and Shipments.	552.270-23	Subordination, Nondisturbance and Attornment.
552.243-70	Pricing of Adjustments.	552.270-24	Statement of Lease.
552.243-71	Equitable Adjustments.	552.270-25	Substitution of Tenant Agency.
		552.270-26	No Waiver.
		552.270-27	Integrated Agreement.
		552.270-28	Mutuality of Obligation.
		552.270-29	Acceptance of Space.

# AMENDMENT 2004-05 JANUARY 4, 2005

will confirm in writing within three (3) days after the decision.

(m) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest forum outside of GSA.

(End of provision)

## 552.233-71 Disputes (Utility Contracts).

As prescribed in [533.215](#), insert the following clause:

DISPUTES (UTILITY CONTRACTS) (JAN 2005)

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

## 552.236-70 Definitions.

As prescribed in [536.570-1](#), insert the following clause:

DEFINITIONS (APR 1984)

The terms “Administration” and “Service” as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of clause)

## 552.236-71 Authorities and Limitations.

As prescribed in [536.570-2](#), insert the following clause:

AUTHORITIES AND LIMITATIONS (APR 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who 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, except that he shall have the right to designate authorized representatives 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 Contracting Officer’s authorized representative 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 authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an

additional authorized representative 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 an authorized representative 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.

(End of clause)

## 552.236-72 Specialist.

As prescribed in [536.570-3](#), insert the following clause:

SPECIALIST (APR 1984)

The term “Specialist,” as used in the contract specification, shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer’s direct supervision.

(End of clause)

## 552.236-73 Basis of Award—Construction Contract.

As prescribed in [536.570-4](#), insert the following provision or the appropriate Alternate:

BASIS OF AWARD—CONSTRUCTION CONTRACT  
(APR 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled “Contract Award—Sealed Bidding.”

(b) 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 (Apr 1985).* If the solicitation includes a base bid and options, the Contracting Officer shall delete

paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled “Contract Award—Sealed Bidding.”

*Alternate II (Apr 1985).* If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled “Contract Award—Sealed Bidding.”

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is \$100,000 and a bidder’s base bid is \$85,000, with its separate bids on four successive alternates being \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of selecting the alternates would be \$99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the \$100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceed the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

*Alternate III (Apr 1985).* If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) of this provision. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled “Contract Award—Sealed Bidding.”

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is \$100,000 and a bidder’s base bid is \$85,000, with its separate bids on four successive alternates being \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of selecting the alternates would be \$99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the \$100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c) of this provision. If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

#### **552.236-74 Working hours.**

As prescribed in [536.570-5](#), insert the following clause:

##### WORKING HOURS (APR 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of clause)

**552.236-75 Use of Premises.**

As prescribed in [536.570-6](#), insert the following clause:

USE OF PREMISES (APR 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

(End of clause)

**552.236-76 Measurements.**

As prescribed in [536.570-7](#), insert the following clause:

MEASUREMENTS (APR 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of clause)

**552.236-77 Specifications and Drawings.**

As prescribed in [536.570-8](#), insert the following clause:

SPECIFICATIONS AND DRAWINGS (SEP 1999)

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

(b) 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.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where

the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and the drawings prepared specifically for this contract, the later shall govern.

(End of clause)

**552.236-78 Shop Drawings, Coordination Drawings, and Schedules.**

As prescribed in [536.570-9](#), insert the following clause:

SHOP DRAWINGS, COORDINATION DRAWINGS, AND  
SCHEDULES (SEP 1999)

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

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Shop drawings shall include fabrication, erection and setting drawings, schedule drawings, manufacturers’ scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer’s approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:

Number and title of drawing

Date of drawing or revision

Name of project building or facility

Name of Contractor and (if appropriate) name of subcontractor submitting drawing

Clear identity of contents and location on the work

## Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of clause)

**552.236-79 Samples.**

As prescribed in [536.570-10](#), insert the following clause:

## SAMPLES (APR 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

- (1) Name of project building or facility, project title and contract number.
- (2) Name of Contractor and, if appropriate, name of subcontractor.
- (3) Identification of material or equipment with specification requirement.
- (4) Place of origin.
- (5) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) of this clause. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not

approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

(End of clause)

**552.236-80 Heat.**

As prescribed in [536.570-11](#), insert the following clause:

## HEAT (APR 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall:

- (a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;
- (b) Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and
- (c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

(End of clause)

**552.236-81 Use of Equipment by the Government.**

As prescribed in [536.570-12](#), insert the following clause:

## USE OF EQUIPMENT BY THE GOVERNMENT (APR 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heat-

**MATRIX OF PROVISIONS AND CLAUSES**

<b>KEY:</b> Sup = Supply	Leas = Acquisitions of leasehold interests in real property
Serv = Service Contract (excluding construction and A-E services)	P = Provision
Const = Construction Services	C = Clause
A-E = Architect-Engineer Services	R = Required
SAT = Acquisitions at or under the simplified acquisition threshold	WR = When required
Util = Utility services, sole supplier-regulated rate	O = Optional

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	<a href="#">552.203-5</a>	<a href="#">503.404</a>	Covenant Against Contingent Fees							WR
C	<a href="#">552.203-70</a>	<a href="#">503.104-9</a>	Price Adjustment for Illegal or Improper Activity							WR
C	<a href="#">552.203-71</a>	<a href="#">503.570-2</a>	Restriction on Advertising	R	R	R	R			R
C	<a href="#">552.209-70</a>	<a href="#">509.206-2</a>	Product Removal from Qualified Products List	WR				WR		
P	<a href="#">552.209-71</a>	<a href="#">509.306</a>	Waiver of First Article Testing and Approval Requirements	WR				WR		
C	<a href="#">552.209-72</a>	<a href="#">509.308-1</a>	Supplemental Requirements for First Article Approval—Contractor Testing	WR				WR		
C	<a href="#">552.209-73</a>	<a href="#">509.308-2</a>	Supplemental Requirements for First Article Approval—Government Testing	WR				WR		
C	<a href="#">552.211-8</a>	<a href="#">511.404</a>	Time of Delivery	WR				WR		
C	<a href="#">552.211-71</a>	<a href="#">511.204(a)</a>	Standard References			WR				
C	<a href="#">552.211-72</a>	<a href="#">511.204(b)</a>	Reference to Specifications in Drawings	WR	WR	WR		WR		
C	<a href="#">552.211-73</a>	<a href="#">511.204(c)(1)</a>	Marking	WR						
C	<a href="#">552.211-74</a>	<a href="#">511.204(c)(2)</a>	Charges for Marking	WR						
C	<a href="#">552.211-75</a>	<a href="#">511.204(c)(3)</a>	Preservation, Packaging and Packing	WR				O		
C	<a href="#">552.211-76</a>	<a href="#">511.204(c)(4)</a>	Charges for Packaging and Packing	WR				WR		
C	<a href="#">552.211-77</a>	<a href="#">511.204(d)</a>	Packing List	WR				WR		
C	<a href="#">552.211-78</a>	<a href="#">511.404(a)(2)</a>	Commercial Delivery Schedule (Multiple Award Schedule)	WR						
C	<a href="#">552.211-79</a>	<a href="#">511.404(a)(3)(i)</a>	Acceptable Age of Supplies	WR				WR		
C	<a href="#">552.211-80</a>	<a href="#">511.404(a)(3)(ii)</a>	Age on Delivery	WR				WR		
C	<a href="#">552.211-81</a>	<a href="#">511.404(a)(4)</a>	Time of Shipment	WR				WR		
C	<a href="#">552.211-82</a>	<a href="#">511.404(a)(5)</a>	Notice of Shipment	WR				WR		
C	<a href="#">552.211-83</a>	<a href="#">511.404(a)(6)</a>	Availability for Inspection, Testing, and Shipment/Delivery	WR				WR		
C	<a href="#">552.211-84</a>	<a href="#">511.404(b)</a>	Non-Compliance with Contract Requirements			R				
C	<a href="#">552.212-70</a>	<a href="#">512.301(a)(1)</a>	Preparation of Offer (Multiple Award Schedule)	WR	WR					
C	<a href="#">552.212-71</a>	<a href="#">512.301(a)(2)</a>	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
C	<a href="#">552.212-72</a>	<a href="#">512.301(a)(3)</a>	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
P	<a href="#">552.212-73</a>	<a href="#">512.301(a)(4)</a>	Evaluation—Commercial Items (Multiple Award Schedule)	WR	WR					
P	<a href="#">552.214-70</a>	<a href="#">514.201-6</a>	"All or None" Offers	WR	WR			WR		
C	<a href="#">552.214-71</a>	<a href="#">514.201-7(a)</a>	Progressive Awards and Monthly Quantity Allocations	WR						
P	<a href="#">552.214-72</a>	<a href="#">514.202-4(a)(3)</a>	Bid Sample Requirements	WR	WR			WR		
C	<a href="#">552.215-70</a>	<a href="#">514.201-7(a)(1)</a> <a href="#">515.209-70(a)</a>	Examination of Records by GSA	WR	WR	WR	WR			WR
C	<a href="#">552.215-71</a>	<a href="#">515.209-70(c)</a>	Examination of Records by GSA (Multiple Award Schedule)	WR	WR					

# AMENDMENT 2004-05 JANUARY 4, 2005

552.300

GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	<a href="#">552.215-72</a>	<a href="#">515.408(d)</a>	Price Adjustment—Failure to Provide Accurate Information	WR	WR					
C	<a href="#">552.216-70</a>	<a href="#">516.203-4(a)</a>	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	WR	WR					
C	<a href="#">552.216-71</a>	<a href="#">516.203-4(b)</a>	Economic Price Adjustment—Stock and Special Order Program Contracts	WR				WR		
C	<a href="#">552.216-72</a>	<a href="#">516.506(a)</a>	Placement of Orders	WR				WR		
P	<a href="#">552.216-73</a>	<a href="#">516.506(c)</a>	Ordering Information	WR	WR			WR		
P	<a href="#">552.217-70</a>	<a href="#">517.208(a)</a>	Evaluation of Options	WR				WR		
P	<a href="#">552.217-71</a>	<a href="#">517.208(b)</a>	Notice Regarding Option(s)	WR	WR	WR	WR	WR		
C	<a href="#">552.219-70</a>	<a href="#">519.508</a>	Allocation of Orders—Partially Set-aside Items	WR						
P	<a href="#">552.219-71</a>	<a href="#">519.708-70(a)</a>	Notice to Offerors of Subcontracting Plan Requirements	WR	WR	WR	WR			WR
P	<a href="#">552.219-72</a>	<a href="#">519.708-70(b)</a>	Preparation, Submission, and Negotiation of Subcontracting Plans	WR	WR	WR	WR			WR
P	<a href="#">552.219-73</a>	<a href="#">519.708-70(c)</a>	Goals for Subcontracting Plan	WR	WR	WR	WR			WR
C	<a href="#">552.219-74</a>	<a href="#">519.870-8(a)</a>	Section 8(a) Direct Award	WR	WR	WR	WR	WR		WR
C	<a href="#">552.223-70</a>	<a href="#">523.303(a)</a>	Hazardous Substances	WR				WR		
C	<a href="#">552.223-71</a>	<a href="#">523.303(b)</a>	Nonconforming Hazardous Materials	WR				WR		
P	<a href="#">552.223-72</a>	<a href="#">523.370</a>	Hazardous Material Information	WR				WR		
C	<a href="#">552.225-70</a>	525.109	Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware	WR						
C	<a href="#">552.227-70</a>	<a href="#">527.409(a)</a>	Government Rights (Unlimited)				WR			
C	<a href="#">552.227-71</a>	<a href="#">527.409(b)</a>	Drawings and Other Data to Become Property of Government				WR			
C	<a href="#">552.228-70</a>	<a href="#">528.310</a>	Workers' Compensation Laws		WR	WR				
C	<a href="#">552.229-70</a>	<a href="#">529.401-70</a>	Federal, State, and Local Taxes		WR	WR	WR	R		
C	<a href="#">552.229-71</a>	<a href="#">529.401-71</a>	Federal Excise Tax—DC Government	WR	WR			WR		
C	<a href="#">552.232-71</a>	<a href="#">532.7103(a)</a>	Payments		WR					
C	<a href="#">552.232-8</a>	<a href="#">532.206</a>	Discounts for Prompt Payment	WR	WR					
C	<a href="#">552.232-23</a>	<a href="#">532.806</a>	Assignment of Claims	WR	WR					
C	<a href="#">552.232-25</a>	<a href="#">532.908(a)(2)</a>	Prompt Payment	WR	WR			WR		
C	<a href="#">552.232-70</a>	<a href="#">532.111(a)</a>	Invoice Requirements	WR	WR	WR	WR	WR	WR	WR
C	<a href="#">552.232-71</a>	<a href="#">532.111(b)</a>	Adjusting Payments		WR					
C	<a href="#">552.232-72</a>	<a href="#">532.111(c)</a>	Final Payment		WR					
C	<a href="#">552.232-73</a>	<a href="#">532.705-1</a>	Availability of Funds		WR			WR		
C	<a href="#">552.232-74</a>	<a href="#">532.908(a)(1)</a>	Invoice Payments	WR	WR			WR		
C	<a href="#">552.232-75</a>	<a href="#">532.908(b)(1)</a>	Prompt Payment							R
C	<a href="#">552.232-76</a>	<a href="#">532.908(b)(2)</a>	Electronic Funds Transfer Payment							WR
C	<a href="#">552.232-77</a>	<a href="#">532.7003</a>	Payment By Governmentwide Commercial Purchase Card	WR	WR			WR		
C	<a href="#">552.232-78</a>	<a href="#">532.908(c)</a>	Payment Information	R	R	R	R	R	R	R
C	<a href="#">552.232-79</a>	<a href="#">532.7003(c)</a>	Payment by Credit Card	WR	WR					
C	<a href="#">552.232-81</a>	<a href="#">532.206(b)</a>	Payments by Non-Federal Ordering Activities	WR	WR					
C	<a href="#">552.232-82</a>	<a href="#">532.206(c)</a>	Contractor's Remittance (Payment) Address	WR	WR					
C	<a href="#">552.232-83</a>	<a href="#">532.206(d)</a>	Contractor's Billing Responsibilities	WR	WR					
P	<a href="#">552.233-70</a>	<a href="#">533.103-72</a>	Protests Filed Directly with the General Services Administration	R	R	R	R			R
C	<a href="#">552.233-71</a>	<a href="#">533.215</a>	Disputes (Utility Contracts)						WR	
C	<a href="#">552.236-70</a>	<a href="#">536.570-1</a>	Definitions			WR	WR	WR		
C	<a href="#">552.236-71</a>	<a href="#">536.570-2</a>	Authorities and Limitations			WR	WR			
C	<a href="#">552.236-72</a>	<a href="#">536.570-3</a>	Specialist			WR		WR		