

SUMMARY: The Commission adopted new rules to establish technical, service and licensing rules governing Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. Certain rules contained new and modified information collection requirements and were published in the **Federal Register** on June 26, 2002. This document announces the effective date of these published rules.

DATES: The amendments to §§ 25.139, 101.103, 101.1403, 101.1413, 101.1417, and 101.1440, published in the **Federal Register** on June 26, 2002, became effective on November 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418-2487.

SUPPLEMENTARY INFORMATION: On November 30, 2002, the Office of Management and Budget (OMB) approved the information collection requirements contained in Sections 25.139, 101.103, 101.1403, 101.1413, 101.1417, and 101.1440, pursuant to OMB Control Nos. 3060-1021, 3060-1023, 3060-1022, 3060-1024, 3060-1026, and 3060-1025, respectively. Accordingly, the information collection requirements contained in these rules became effective on November 30, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 516, 532, 538, 546, and 552

[Amendment 2004-01; GSAR Case 2002-G505]

RIN 3090-AH76

General Services Administration Acquisition Regulation; Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) has issued a final rule amending the General Services Administration Acquisition Regulation (GSAR) to implement section 211 of the E-Government Act of 2002. Section 211

authorizes the Administrator of GSA to provide for the use by States or local governments of its Federal Supply Schedules for automated data processing equipment (including firmware), software, supplies, support equipment, and services.

DATES: *Effective Date:* May 18, 2004.

Applicability Date: This amendment applies to solicitations and existing contracts for Schedule 70, Information Technology (IT), and Consolidated Products and Services Schedule contracts, containing Information Technology (IT) Special Item Numbers (SINs), as defined in GSAM 538.7001, Definitions, Schedule 70. Further, this amendment applies to contracts awarded after the effective date of this rule for Schedule 70 and Consolidated Products and Services Schedule contracts, containing IT SINs. Existing Schedule 70 contracts and Consolidated Products and Services Schedule contracts, containing IT SINs, shall be modified by mutual agreement of both parties.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. The TTY Federal Relay Number for further information is 1-800-877-8973. Please cite Amendment 2004-01, GSAR case 2002-G505.

SUPPLEMENTARY INFORMATION:

A. Background

1. Interim and Final Rules

GSA published an interim rule in the **Federal Register** at 68 FR 24372, May 7, 2003, with a request for comments. This interim rule implemented section 211 of the E-Government Act of 2002. Section 211 of the E-Government Act of 2002 (Pub. L. 107-347) amended the Federal Property and Administrative Services Act to allow for “cooperative purchasing,” where the Administrator of GSA provides States and localities access to certain items offered through GSA’s Federal Supply Schedules. Section 211 amends 40 U.S.C. 502 by adding a new subsection (c) that allows, to the extent authorized by the Administrator, a State or local government to use Federal Supply Schedules of the General Services Administration to purchase automated data processing equipment (ADPE) (including firmware), software, supplies, support equipment, and services. “State or local government” includes any State, local, regional, or tribal government, or any

instrumentality thereof (including any local educational agency or institution of higher education).

GSA concluded that the interim rule should be converted to a final rule with minor changes. In particular, the final rule amends—

- GSAM Parts 511, 516, 532, 538, 546, and 552 to delete the term “Corporate” Schedule and substitute it with “Consolidated Products and Services” Schedule;
- Paragraphs (d)(2) and (d)(3) of the clause at 552.238-75, Price Reduction, to clarify that price reductions are not triggered for sales made to State and local government entities under Cooperative Purchasing;
- Paragraphs (b) and (c) of the clause at 552.238-78, Scope Of Contract (Eligible Ordering Activities), to define domestic and overseas delivery, and provide the contractor the option of providing supplies or services on an international basis; and paragraph (f) to clarify the contractor’s option in accepting or not accepting orders from activities outside the Executive Branch of the Federal Government; and
- Paragraph (a)(1) of the clause at 552.238-79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, to clarify that both contracts and Blanket Purchase Agreements (BPAs) established under Cooperative Purchasing are separate contracts; and paragraph (a)(3) to clarify that State and local government entities may add terms and conditions other than those required by statute, ordinance, regulation, or order.

2. Summary and Disposition of Comments

Comments were received from four respondents. These comments were considered in the formulation of the final rule. A summary of the comments and their respective disposition is as follows:

Comment: One respondent had concerns about State and local government entities’ ability to use the finance and leasing terms under the GSA IT Schedule. Will State and local government entities have the ability to terminate a lease for convenience, nonrenewal and nonappropriation?

Response: State and local government entities are provided access to all goods and services offered through both Schedule 70 and Consolidated Products and Services Schedule contracts, containing IT SINs. Further, State and local government entities are afforded the same terms and conditions offered through those Schedules. State and local government entities may include additional contract terms and

conditions; however, those terms and conditions may not contradict the Schedule terms and conditions.

Comment: One respondent noted that the listing of services and goods available through both Schedule 70 and Consolidated Products and Services Schedule contracts, containing IT SINs, included FSC Class 5820, Radio and Television Communication Equipment, except Airborne. The respondent inquired as to whether FSC Class 5820 was included as part of section 211 of the e-Government Act of 2002, and; therefore, available to State and local government entities.

Response: The services and goods available under FSC Class 5820, Radio and Television Communication Equipment, except Airborne, are available to State and local government entities only if they are offered through Schedule 70 and Consolidated Products and Services Schedule contracts containing IT SINs. No other Schedules are authorized for State and local government use under section 211 of the E-Government Act of 2002.

Comment: One respondent indicated that the clause at 552.238-75, Price Reductions, should clarify whether price reductions to State and local government entities would trigger the price reductions clause, when the State and local government entities are also the category of customer upon which the award is based.

Response: The Price Reductions clause has been modified to clarify this point.

Comment: One respondent had concerns about the necessity for an agreement between GSA and any participating State and local agencies utilizing the schedules as a matter of management and oversight of the program. Additionally, the respondent had concerns about a failure to incorporate an express statement recognizing the primacy of state and local contract law.

Response: Congress intended that GSA make available to State and local governments the simplified acquisition methods and discounts negotiated by GSA for IT goods and services. This grant of authority does not give GSA any new powers to exercise oversight over the acquisition offices of State and local governments. There are more than three thousand counties, many of which have multiple entities with independent procurement authority. The average State government has hundreds of offices that may or may not choose to use GSA schedules as a source of supply. Some jurisdictions may already have authority to use GSA's IT schedules without supplementing the

existing terms and conditions. Some may require supplemental terms and conditions. Other jurisdictions may never be able to use GSA's IT schedules, absent changes in the law, as local law requires different procedures. These determinations will need to be resolved by the local governmental entities, in consultation with their legal counsel.

Comment: One respondent had concerns about the desirability of authorizing State and local agencies to utilize the services of GSBCA for purposes of dispute resolution. The commenter indicated that the Inter-Governmental Cooperation Act grants authority for Federal executive branch agencies to enter in cooperative agreements with other governmental entities to provide services to those agencies which the executive branch agencies otherwise perform.

Response: The Inter-Governmental Cooperation Act (IGCA) permits the Federal Government to provide, to State and local governments, specialized or technical services, *i.e.*, functions which a Federal agency is especially equipped and authorized by law to perform. Dispute resolution, a commercially available service, is not the type of service that historically has been offered under the IGCA.

B. Unfunded Mandates Reform Act and Executive Order 13132

The following statutes and Executive orders do not apply to this rulemaking: Unfunded Mandates Reform Act of 1995; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; and Executive Order 13132, Federalism.

C. Executive Order 12866

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

D. Regulatory Flexibility Act

The rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small entities that are awarded Schedule 70 contracts and Consolidated Products and Services Schedule contracts, containing IT Special Item Numbers (SINs), under the GSA Federal Supply Schedule program who elect to participate, can contract with State or local governments and small governmental jurisdictions that place orders under Schedule 70 and

Consolidated Products and Services Schedule contracts, containing IT SINs. The rule is expected to benefit small business concerns, however, the net effect of the rule is unknown at this time.

GSA has prepared a Final Regulatory Flexibility Analysis (FRFA), and it reads as follows:

Final Regulatory Flexibility Analysis GSAR Case 2002-G505, Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

1. Statement of the need for, and objective of, the rule.

Section 211 Authorization for Acquisition of Information Technology By States and Local Governments Through Federal Supply Schedules, of the E-Government Act of 2002 (P.L. 107-347) amends Section 502 of title 40, United States Code, to authorize the Administrator to provide for use by State or local governments of Federal Supply Schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services. The rule opens the Federal supply schedule 70, Information Technology (IT), and Consolidated Products and Services Schedule contracts, containing Information Technology (IT) Special Item Numbers (SINs) for use by other governmental entities to enhance intergovernmental cooperation.

2. Summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the rule as a result of such comments.

There were no public comments received in response to the Initial Regulatory Flexibility Analysis.

3. Description of, and estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

The rule will affect large and small entities including small businesses, that are awarded Schedule 70 contracts and Consolidated Products and Services Schedule contracts, containing IT SINs, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments and small governmental jurisdictions that will be eligible to place orders under Schedule 70 and Consolidated Products and Services Schedule contracts, containing IT SINs. Approximately eighty-five percent (3499) of GSA Schedule 70 contractors are small businesses and approximately eighty-two percent (69) of Consolidated Products and Services Schedule contracts, containing IT SINs, are awarded to small businesses. All of those small business Schedule 70 contractors, and Consolidated Products and Services Schedule contractors, containing IT SINs will be allowed, at the schedule contractor's option, to accept orders from State and local governments. As of September 10, 2003, 941 Schedule 70

contractors accepted the contract modification to participate in cooperative purchasing of which approximately eighty-two percent (772) were small businesses.

4. *Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The rule makes changes in certain provisions or clauses in order to recognize the fact that authorized non-federal ordering activities may place orders under the contract. The Office of Management and Budget under the Paperwork Reduction Act has previously approved these clauses and the changes do not impact the information collection or recordkeeping requirements.

5. *Description of steps the agency has taken to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.*

These revisions are the only alternatives to implement Section 211 of the E-Government Act of 2002. The rule should involve no substantial risk to small entities, since participation is on a voluntary basis.

E. Paperwork Reduction Act

The new provision at GSAR 552.232–82, Contractor's Remittance (Payment) Address, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The provision provides for the offeror to indicate the payment address to which checks should be mailed for payment of invoices and provides for the offeror to identify participating dealers and provide their addresses for receiving orders and payments on behalf of the contractor. This information is the same as is normally required in the commercial world and does not represent a Government-unique information collection. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The new clause at GSAR 552.232–83, Contractor's Billing Responsibilities, contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The clause provides for the contractor to require all dealers participating in the performance of the contract to agree to maintain certain records on sales made under the contract on behalf of the contractor. The records required are the same as those normally maintained by

dealers in the commercial world and do not represent a Government-unique recordkeeping requirement. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under control number 3090–0250 from OMB for information collections with a zero burden estimate.

The revised clause at GSAR 552.238–75, Price Reductions, contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that has previously been approved by the OMB under the Paperwork Reduction Act and assigned control number 3090–0235. The changes made to the clause by this rule do not have an impact on the information collection requirement, which was previously approved. Therefore, it has not been submitted to OMB for approval under the Act.

List of Subjects in 48 CFR Parts 511, 516, 532, 538, 546, and 552

Government procurement.

Dated: May 12, 2004.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

■ Accordingly, GSA adopts the interim rule amending 48 CFR parts 511, 516, 532, 538, 546, and 552 which was published in the **Federal Register** at 68 FR 24372, May 7, 2003, as a final rule with the following changes:

PARTS 511, 516, 532, 538, 546, and 552—[AMENDED]

■ 1. The authority citation for 48 CFR parts 511, 516, 532, 538, 546, and 552 continues to read as follows:

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

511.204, 516.506, 532.206, 532.7003, 538.273, 538.7000, 538.7001, 538.7002, 538.7003, 538.7004, and 546.710 [Amended]

■ 2. In parts 511, 516, 532, 538, 546, and 552, remove the words "Corporate Schedule" and add, in their place, the words "Consolidated Products and Services Schedule" in the following places:

- a. 511.204(c)(3) and (d);
- b. 516.506(c);
- c. 532.206(a) and (b);
- d. 532.7003(b) and (c);
- e. 538.273(a)(2) and (b)(2);
- f. 538.7000;
- g. 538.7001, in the definition "Schedule 70" (four times);
- h. 538.7002(c) (twice)
- i. 538.7003, introductory paragraph (twice);
- j. 538.7004(a), (b), and (c); and
- k. 546.710(b).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.216–72 [Amended]

■ 3. Amend section 552.216–72 in Alternate III by revising the date of the Alternate to read "May 2004"; and by removing the words "paragraphs (a) and (b)" from the last sentence of paragraph (c) and adding "paragraphs (a) and (d)" in its place.

■ 4. Amend section 552.238–75 by revising the date of the clause; removing the word "or" from paragraph (d)(2); redesignating paragraph (d)(3) as (d)(4); and adding a new paragraph (d)(3) to read as follows:

552.238–75 Price Reductions.

* * * * *

Price Reductions (May 2004)

* * * * *

(d) * * *

(3) Made to State and local government entities when the order is placed under this contract (and the State and local government entity is the agreed upon customer or category of customer that is the basis of award); or

* * * * *

■ 5. Amend section 552.238–78 as follows:

■ a. Revise the date of the clause;

■ b. Revise the introductory text of paragraph (a); and remove "(b)" from paragraph (a)(8) and add "(d)" in its place;

■ c. Remove paragraph (e);

■ d. Redesignate paragraphs (d) and (f) as paragraphs (f) and (g), respectively, and revise newly designated paragraph (f);

■ e. Redesignate paragraphs (b) and (c) as paragraphs (d) and (e), respectively, and add new paragraphs (b) and (c); and

■ f. Remove "Corporate Schedule" from newly designated paragraph (d) and add "Consolidated Products and Services Schedule" in its place, as follows:

552.238–78 Scope of Contract (Eligible Ordering Activities)

* * * * *

Scope of Contract (Eligible Ordering Activities) (May 2004)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For Special Item Number 132–53, Wireless Services ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

* * * * *

(b) *Definitions. Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington,

DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

- Contractor will provide domestic and overseas delivery.
 Contractor will provide overseas delivery only.
 Contractor will provide domestic delivery only.

* * * * *

(f)(1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 552.232-79, Payment by Credit Card. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 552.232-79, Payment by Credit Card.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

* * * * *

- 6. Amend section 552.238-79 by—
- a. Revising the date of the clause;
- b. Removing “(b)” from the introductory text of paragraph (a) and adding “(d)” in its place;
- c. Adding a sentence to the end of paragraph (a)(1);
- d. Revising the second sentence of paragraph (a)(3);
- e. Removing “paragraph (b)” from the introductory text of paragraph (b) and adding “paragraph (d)” in its place;
- f. Removing the word “contractor” from the third sentence of paragraph (b)(2) and adding “Contractor” in its place; and
- g. Revising paragraph (c) to read as follows:

552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.

* * * * *

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing (May 2004)

(a) * * *

(1) * * * Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is

an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

* * * * *

(3) * * * Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. * * *

* * * * *

(c) In accordance with clause 552.238-74, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

- (1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities), and
- (2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-78.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 15

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1520

[Docket No. TSA-2003-15569; Amendment No. 1520-1]

RIN 1652-AA08

Protection of Sensitive Security Information

AGENCY: Transportation Security Administration (TSA), DHS, and Office of the Secretary of Transportation (OST), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: TSA is revising its regulation governing the protection of sensitive security information (SSI) in order to protect the confidentiality of maritime security measures adopted under the U.S. Coast Guard’s regulations, published on October 22, 2003, implementing the Maritime Transportation Security Act (MTSA) and other activities related to port and

maritime security. SSI is information that TSA has determined must be protected from improper disclosure in order to ensure transportation security. TSA’s SSI regulation establishes certain requirements for the handling and dissemination of SSI, including restrictions on disclosure and civil penalties for violations of those restrictions. Currently, the SSI regulation applies primarily to information related to aviation security. Airlines, airports, and others operating in civil aviation are required to limit access to this information to those personnel who need it to carry out their security functions.

Under MTSA, Congress directed the Coast Guard to issue regulations requiring maritime facility and vessel operators to develop security plans detailing the types of security measures they will implement under varying threat conditions. In order to meet statutory deadlines for implementation of these plans, the Coast Guard issued a series of final rules on October 22, 2003, requiring facility and vessel operators to submit security plans to the Coast Guard for approval. In order to protect the security of the facilities and vessels that prepare security plans, it is necessary to ensure that the plans and related security information are subject to limitations on their disclosure. Therefore, TSA is issuing an interim final rule expanding the scope of its SSI regulation so that it covers security plans and other information about security measures required by the Coast Guard’s MTSA regulations. The Coast Guard also will supplement the MTSA regulations by exercising its longstanding authority under the Ports and Waterways Safety Act and the Magnuson Act. Sensitive information related to maritime security collected pursuant to these authorities should likewise be protected from public disclosure.

In connection with this revision to the regulations, TSA is requiring employees, contractors, grantees, and agents of DHS and DOT to follow the same requirements governing protection of SSI as those in the transportation sector who are subject to the regulation. This change will provide clear standards for those persons employed by and acting on behalf of DHS and DOT regarding the obligation to safeguard SSI.

The interim rule also makes clarifying changes to existing provisions of the SSI regulation governing aviation security.

The Office of the Secretary of Transportation (OST) is issuing this rule jointly with TSA to implement DOT’s parallel authority to protect SSI. In