

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 538, and 552

[GSAR Case 2002–G507]

RIN 3090–AH79

General Services Administration Acquisition Regulation; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

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

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to give GSA the unilateral right to change the percentage rate of the Industrial Funding Fee (IFF) in Multiple Award Schedule (MAS) contracts. The proposed rule also sets forth GSA's intent to modify and combine two existing General Services Administration (GSA) clauses that implement collection of the IFF by the Federal Supply Service (FSS) on sales from all Federal Supply Schedule contracts. These clauses are Industrial Funding Fee and Contractor's Report of Sales. Additionally, the proposed rule provides notice of the method FSS intends to utilize to modify each contract subject to the IFF. While the GSAR does not specify the percentage rate of the IFF, GSA intends to lower the current IFF rate from 1.0 percent to 0.75 percent of reported sales, effective January 1, 2004. The Administrator of GSA has the authority to change the IFF; GSA will consult with OMB prior to effecting any future changes to the IFF.

DATES: Interested parties should submit comments in writing on or before April 17, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—gsarcase.2002-g507@gsa.gov.

Please submit comments only and cite GSAR case 2002–G507 in all correspondence related to this issue.

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 Vonda J. Sines, Procurement Analyst, at (703)

305–7542, or Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite GSAR Case 2002–G507. The TTY Federal Relay Number for further information is 1–800–877–8973.

SUPPLEMENTARY INFORMATION:

A. Background

On April 18, 1995, GSA implemented an Industrial Funding Fee (IFF) for Federal Supply Schedules. Two clauses, 552.238–76, Industrial Funding Fee, and 552.238–74, Contractor's Report of Sales, are included in the solicitation for each Federal Supply Schedule contract and provide instructions for the submission of quarterly sales reported by contractors.

GSA utilizes the IFF to fund the cost of providing supplies and services through the Federal Supply Schedule program, eliminating operating expenses formerly funded with appropriated monies.

Fees are included in the Schedule prices charged to ordering activities; all contract award prices include the total amounts charged. Federal Supply Schedule contractors remit fees to GSA based on quarterly contract sales. GSA recoups its costs from the ordering activities through the contractor's quarterly remittance to FSS. The GSAR does not specify the percentage rate of the IFF. Rather, the initial 1 percent IFF rate was set via Acquisition Letter and has not changed since its inception.

GSA proposes to change the GSAR to provide that effective January 1, 2004, GSA will have the unilateral right to change the IFF rate.

The agency also proposes consolidation of the two foregoing clauses into a single clause, Industrial Funding Fee and Sales Reporting, under the number 552.238–74. The number 552.238–76 will become “reserved.” The new clause eliminates duplicative information in the two current clauses, clarifies sales reporting procedures, and describes the procedures FSS will utilize to unilaterally effect future IFF rate changes.

GSA also intends to reduce the IFF from its current rate of 1 percent of sales to 0.75 percent effective January 1, 2004. GSA proposes to implement this change by means of a bilateral contract modification to be executed electronically. As consideration to Federal Supply Schedule contractors for any potential costs incurred as the direct result of this change, GSA proposes to allow these vendors to continue to include the 1 percent IFF in their contract prices until December 31, 2003, but to forward to FSS an IFF of

0.75 percent for reported sales for the period of October 1, 2003, through December 31, 2003. Examples of the type of costs GSA anticipates contractors could incur include reprinting price lists and modifying accounting systems. The Administrator of GSA has the authority to change the IFF; GSA will consult with OMB prior to effecting any future changes to the IFF.

B. 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.

C. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the purpose of the proposed rule is to assign to GSA the sole discretion to set the rate of the IFF and to clarify for contractors how to handle changes in the IFF. The rule also proposes to modify and consolidate the provisions of two existing GSAR clauses in terms of sales reporting and procedural changes when the IFF rate changes. While some 78 percent of the Federal Supply Schedule contracts represent small business concerns, all contractors holding Federal Supply Schedules are already required to report quarterly sales and to periodically submit the Industrial Funding Fee to FSS. The proposed rule does not change these two requirements. It does require both small and large businesses to execute appropriate bilateral contract modifications and to make changes to existing price lists and accounting systems. GSA intends to mitigate the anticipated cost to contractors for these changes via offering consideration as described under paragraph A. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR parts 501, 538, and 552 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 2002–G507), in correspondence.

D. Paperwork Reduction Act

The current clause, 552.238–74, Contractor's Report of Sales, contains an

information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that has been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned control number 3090-0121. Current clause 552.238-76, Industrial Funding Fee, also contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). However, the estimated burden for this clause has been determined to be zero, and GSA has a blanket approval under control number 3090-0250 from OMB for information collections with a zero burden estimate.

The consolidation of information from these two clauses into a single clause results in no additional burden and, therefore, no additional approval from OMB is required.

List of Subjects in 48 CFR Parts 501, 538, and 552

Government procurement.

Dated: March 12, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

Therefore, GSA proposes amending 48 CFR parts 501, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 501, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

2. In section 501.106 at GSAR reference 552.238-74, remove the OMB Control Number "3090-0121" and add "3090-0121 & 3090-0250" in its place.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

3. Amend section 538.273 by revising paragraph (b)(1); and by removing paragraph (b)(3). The revised text reads as follows:

538.273 Contract clauses.

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(b) * * *

(1) 552.238-74, Industrial Funding Fee and Sales Reporting.

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 552.212-71 by revising the date of the clause; and in paragraph (b) by revising entry 552.238-74 to read as follows:

552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

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Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Date)

(b) Clauses.

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552.238-74 Industrial Funding Fee and Sales Reporting

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552.212-72 [Amended]

5. Amend section 552.212-72 by revising the date of the clause to read "(Date)"; and by removing from the end of paragraph (b) "552.238-76 Industrial Funding Fee".

6. Revise section 552.238-74 to read as follows:

552.238-74 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(b)(1), insert the following clause:

Industrial Funding Fee and Sales Reporting (Date)

(a) *Reporting of Federal Supply Schedule Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1—March 31, April 1—June 30, July 1—September 30, and October 1—December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method for sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC), or a separately awarded FAR Part 12, FAR Part 13, or FAR Part 15 procurement.

(3) The Contractor shall electronically report the quarterly dollar value of sales, including "zero" sales, by utilizing the automated reporting system at an Internet

website designated by the Federal Supply Service (FSS). Prior to using this automated system, the Contractor shall complete contract registration with the FSS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(4) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from—Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: <http://www.fms.treas.gov/intn.html>.

(5) Contract sales shall be reported to FSS within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, until physical completion of the last outstanding task order or delivery order.

(b) The Contractor shall remit the IFF at the rate set by FSS.

(1) The Contractor shall remit the IFF to FSS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of the General Services Administration (GSA). The Commissioner of GSA's Federal Supply Service, or the Commissioner's delegated representative, has the unilateral right to change the percentage at any time, but not more than once per year. FSS will provide reasonable notice prior to the effective date of the change. The statutorily based IFF reimburses FSS for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FSS will post notice of the current IFF at <http://72a.fss.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FSS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FSS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR 32.6. The Government may exercise all rights under the Debt Collection Act of 1982, including withholding or setting off payments and interest on the debt (see FAR 52.232-17, Interest). Should the Contractor

fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

552.238-76 [Reserved]

7. Remove and reserve section 552.238-76.

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