

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 542 and 552

[GSAR Amendment 2008–05; GSAR Case 2008–G512 (Change 26); Docket 2009–0012; Sequence 1]

RIN 3090–AI59

General Services Administration Acquisition Regulation; GSAR Case 2008–G512; Rewrite of GSAR Part 542; Contract Administration and Audit Services

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR Part 542 that provide requirements for contract administration and audit services.

DATES: *Effective Date:* February 9, 2009.

FOR FURTHER INFORMATION CONTACT Contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082 for clarification of content. For information pertaining to the status or publication schedules, please contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2008–04, GSAR case 2008–G512 (Change 26).

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update the text addressing GSAR Subpart 542.1107, Production Surveillance and Reporting, and the clause at 552.242–70, Status Report of Orders and Shipments. The language in the contract clause at 542.1107 is revised to add emphasis to the contracting officer's responsibilities. The clause at 552.242–70, Status Report of Orders and Shipments, is revised to update information about the referenced GSA office. The language in 542.15, Contractor Performance Information, is reorganized and removed from the GSAR because it is considered guidance that is internal to the agency.

GSA published a proposed rule with request for comments in the **Federal Register** at 73 FR 35614, June 24, 2008. There were three public comments, pertaining to GSAM 542.1503, received from one respondent. This language in 542.1503, previously shown as GSAR

coverage, is now, not included in the GSAR but provided as instruction to contracting officers in the GSA Manual (GSAM). This is internal GSA guidance for contracting officers.

The respondent suggested “putting oversight mechanisms in place to review evaluations in the database for disagreements where no review, or an inadequate review, exists from Contracting Directors.” GSA does not agree. GSA's procedures allow flexibility for the Heads of the Services to identify the officials responsible for collecting, disseminating, and applying contractor performance information in the acquisition process. In addition, contracting directors, as specified by Service organizations, are responsible for reviewing and making the final determination. GSA believes that the information provided to agency personnel is adequate.

The respondent suggested that the contractor and the contracting director respond to the evaluation within 30 days from receipt of the contractor's rebuttal statements. GSA does not agree. The current coverage allows flexibility for the contracting office to make final determinations as needed for the contract at hand. In addition, FAR 42.1503(b) allows agencies to address final decisions as soon as is practical.

The respondent also recommended that GSAR 542.1503 should “provide guidance to Contracting Directors on what should be included in any review comments to satisfy the FAR and ensure an honest and unbiased evaluation.” GSA does not agree. The current coverage allows flexibility for the contracting director to make final determinations as needed for the contract at hand. Each contractor performance evaluation is tailored to the contract requirements and, therefore, is specific to the contract at hand.

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

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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 rule provides clarity for existing language and updates other language.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved on July 30, 2008, under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 542 and 552

Government procurement.

Dated: October 30, 2008.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 542 and 552 as set forth below:

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 542 is revised to read as follows:

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

■ 2. Revise section 542.1107 to read as follows:

542.1107 Contract clause.

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

SUBPART 542.15 [Removed]

■ 3. Remove Subpart 542.15.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

■ 5. Amend section 552.242–70 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a) “*FQC*” and adding “*QVOC*” in its place; and
■ c. Revising paragraph (b) to read as follows:

552.242–70 Status Report of Orders and Shipments.

* * * * *

STATUS REPORT OF ORDERS AND SHIPMENTS February 9, 2009.

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

(End of clause)

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 543 and 552

[GSAR Amendment 2005-04; GSAR Case 2008-G513 (Change 25); Docket 2009-0012; Sequence 2]

RIN 3090-A183

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

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) to revise the language that provides requirements for contract modifications.

DATES: *Effective Date:* January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501-4082, for clarification of content. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite Amendment 2005-04, GSAR case 2008-G513 (Change 25).

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to revise GSAR 543.205, Contract clauses, and associated clauses in GSAR 552.243. The information in GSAR 543.205, Contract clauses, is revised to remove 543.205(a)(1) and 543.205(b) and be re-numbered accordingly. The information in 543.205(a)(1) is deleted. This clause prescription is no longer necessary. The information in 543.205(b) is relocated to part 538. The prescription for the clause at 552.243-71, Equitable Adjustment, is revised to include the clause title for FAR 52.243-4, Changes. The clause at 552.243-70, Pricing of Adjustments, is deleted. Information formerly contained in this clause is now contained in the revised clause at 552.243-71, Equitable Adjustments. The clause at 552.243-71,

Equitable Adjustments, is revised to clarify costs, overhead, profit, and proposal preparation costs. The clause at 552.243-72, Modifications, (Multiple Award Schedule) is relocated to GSAR part 538.

The GSA published a proposed rule with request for comments in the **Federal Register** at 73 FR 35614 on June 24, 2008. There were four public comments from two respondents. One respondent recommended adding the phrase "impacted by the change" to paragraph (e) of the clause at 552.243-71 to limit the equitable adjustment to only the work impacted by the change. The GSA agrees and the language was revised to include this recommendation. The second respondent made three suggestions regarding internal GSA procedures. These suggestions are outside the scope of the GSAR case as published. Additional editorial corrections were made in paragraphs (b), (d), and (j)(2) of the clause at 552.243-71.

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

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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 rule updates, clarifies, and reorganizes existing language.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C.3501, *et seq.*

List of Subjects in 48 CFR Parts 543 and 552

Government procurement.

Dated: December 8, 2008.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 543 and 552 as set forth below:

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

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

PART 543—CONTRACT MODIFICATIONS

■ 2. Revise section 543.205 to read as follows:

543.205 Contract clauses.

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

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.243-70 [Removed]

■ 3. Remove section 552.243-70.

■ 4. Revise section 552.243-71 to read as follows:

552.243-71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

Equitable Adjustments

(JAN 2009)

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

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

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

(d) Proposals for equitable adjustments, including no cost requests for adjustment of the contract's required