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**GENERAL SERVICES ADMINISTRATION**

**48 CFR Parts 501, 538, and 552**

**[GSAR Case 2012-G501; Docket 2013-0006; Sequence 1]**

**RIN 3090-AJ36**

**General Services Administration Acquisition Regulation  
(GSAR); Electronic Contracting Initiative (ECI)**

**AGENCY:** Office of Acquisition Policy, General Services Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add a Modifications (Federal Supply Schedule) clause, and an Alternate I version of the clause that will require electronic submission of modifications under Federal Supply Schedule (FSS) contracts managed by GSA. The public reporting burdens associated with both the basic and Alternate I clauses are also being updated.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before **[Insert date 60 days after date of publication in the Federal Register]** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2012-G501, Electronic Contracting Initiative, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments by searching for "GSAR Case 2012-G501". Follow the instructions provided to "Submit a Comment". Please include your name, company name (if any), and "GSAR Case 2012-G501", on your attached document.

- Fax: 202-501-4067.
- Mail: U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW, 2nd Floor, ATTN: Hada Flowers, Washington, DC 20405-0001.

Instructions: Please submit comments only and cite GSAR Case 2012-G501 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202-357-9652 or email [Dana.Munson@gsa.gov](mailto:Dana.Munson@gsa.gov), for clarification of content.

For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2012-G501.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

GSA is proposing to amend the GSAR to add a Modifications (Federal Supply Schedule) clause, and an Alternate I version of the clause that requires electronic submission of modifications for FSS contracts managed by GSA. This change is the result of modernized technology that will improve the process for submission of modifications under the Federal Supply Schedules Program, and was developed by GSA to satisfy customer demands.

The basic clause (previously at GSAR 552.243-72) was removed during the initial GSAR rewrite under proposed rule 2006-G507 published in the Federal Register at 74 FR 4596 on January 26, 2009. The initial GSAR rewrite proposed amendments to the GSAR to update text addressing GSAR Part 538. Withdrawal of GSAR case 2006-G507 was published in the Federal Register at 77 FR 76446 on December 28, 2012.

The basic clause is being reinstated at GSAR 552.238-81, Modifications (Federal Supply Schedule). The alternate version of the clause implements and mandates electronic submission of modifications, and only applies to FSS contracts managed by GSA. The alternate version of the clause links to GSA's electronic tool, eMod at <http://eoffer.gsa.gov/>. Use of eMod will streamline the modification submission process for both FSS contractors and contracting officers.

Use of eMod will establish automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster GSA's Rapid Action Modification (RAM), which allows contracting officers to process certain modification requests to the FSS contract (e.g., administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30).

Current and new FSS contractors will be required to obtain a digital certificate in order to comply with submission of information via eMod. A digital certificate is an electronic credential that asserts the identity of an individual and enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate at the associated cost during that time. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of \$119 per issuance and at renewals every two years. Having a digital certificate creates digital signatures which are verifiable. GSA has developed training on eMod, and

obtaining a digital certificate. This information is posted on GSA's eOffer website at <http://eoffer.gsa.gov>.

The Department of Veterans Affairs (VA) does not have access to eMod, and is therefore not required to comply with the requirements of the Alternate I version of GSAR clause 552.238-81, Modifications (Federal Supply Schedule). VA will continue to utilize the basic version of the clause in management of their FSS contracts.

GSA is in the process of rewriting each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the Federal Register for comments. This rule covers the rewrite of GSAR Part 538, Electronic Contracting Initiative (Modifications).

On December 17, 2012, GSA published in the Federal Register at 77 FR 74631 a request for public comments on an information collection requirement for a new OMB clearance. One comment was received and is addressed in the Paperwork Reduction Act section of this notice.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **III. 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 proposed rule will implement a streamlined, electronic process for submission and processing of modification requests pertaining to FSS contracts managed by GSA. However, small businesses will be positively impacted by this initiative in that the process for submitting information is simplified, more structured and easy to use, and processing time is significantly reduced. For example, submission of a paper modification request is often a labor intensive process that involves repeated exchanges of information via standard mail and/or facsimile. The electronic process will include controls to

prevent submission of incomplete requests that require follow-up.

Contractors will be able to offer the latest products and services to the Federal Government faster and more often due to this streamlined submission process.

Contractors will be required to obtain a digital certificate in order to comply with the eMod requirement. The cost of the digital certificate will impose some economic impact on all contractors, both small and other than small, doing business under Federal Supply Schedule contracts managed by GSA. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.238-81, Modifications (Federal Supply Schedule) back into the GSAR, and an alternate version of the clause that requires electronic submission of modifications for Federal Supply Schedule (FSS) contracts managed by GSA via eMod. The addition of the basic clause is an administrative change that reinstates a previous clause inadvertently removed from the GSAR. The alternate clause has never received public comment.

The alternate version of this clause mandates electronic submission of modifications through GSA's electronic tool, eMod. Use of eMod establishes automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster Rapid Action Modification (RAM), which allows contracting officers to process certain modifications (e.g., administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30). eMod will streamline the process and result in modification actions being processed more timely and efficiently.

In addition to adding automated controls into the modification process, mandating the electronic submission of modifications will support several Federal Acquisition Service

(FAS) initiatives that are currently underway to enhance the MAS Program's ability to transition to a completely electronic contracting environment. These initiatives include but are not limited to digitization of Multiple Award Schedule (MAS) contract files, Contracts Online, and the Enterprise Acquisition Solution (EAS).

eMod is consistent with the Electronic Signatures In Global and National Commerce Act (E-SIGN), enacted on June 20, 2000, and the Office of Management and Budget (OMB) Memoranda M-00-15, Guidance on Implementing the Electronic Signatures, dated September 25, 2000.

All of GSA's FSS contractors (19,000) will be required to obtain a digital certificate in order to comply with this requirement. Approximately 80 percent (15,200) GSA FSS contracts are held by small businesses. A digital certificate is an electronic credential that enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of \$119 per issuance. The alternate version of this requirement does not apply to FSS contracts managed by the Department of Veteran Affairs (VA) because the VA does not utilize or have access to eMod.

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

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should

cite 5 U.S.C. 601, et seq. (GSAR Case 2012-G501), in correspondence.

#### **IV. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat submitted a request for approval of a revised information collection requirement concerning (GSAR 2012-G501; Electronic Contracting Initiative) to the Office of Management and Budget.

The 1<sup>st</sup> notice of the information collection requirement was published in the Federal Register at 77 FR 74631 on December 17, 2012. The comment period closed on February 15, 2013. One comment was received. The commenter suggested that GSA increase the estimated burden hours per response to reflect the additional time required for complex modification requests. The commenter also recommended that the number of estimated respondents per year be reduced, based on the logic that companies with zero sales under their contracts are not likely to submit modification requests.

GSA responded that the estimate of five burden hours per response already takes into consideration that modification requests can range from simple administrative

changes to more complex changes involving the award of additional products and services. Additionally, the current estimate of 20,500 respondents per year is based on the total number of contracts awarded under the Federal Supply Schedule program, and is utilized consistent with other Federal Supply Schedule burden calculations for clauses and provisions applicable to all Federal Supply Schedule contracts. No change to the burden estimate was made as a result of the comment.

However, the notice indicated that 20,500 contractors would use the basic clause with an associated burden of 5 hours per response. This notice revises the collection to explain that 1,500 contractors (VA contractors) will use the basic clause with 5 hours of burden, and 19,000 contractors (GSA contractors) will use the alternate clause with 4 hours of burden. This will result in a total burden reduction for this collection of 57,000 burden hours.

A 2<sup>nd</sup> notice of the information collection requirement was published in the Federal Register at 78 FR 18285 on March 26, 2013. The comment period closed on April 25, 2013. No comments were received.

A. Public reporting burden for this collection of information is estimated to average 5 hours per response for manual modification requests and 4 hours per response

for eMod requests, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

**552.238-81, Modifications (VA FSS Contractors Manual process)**

Respondents: 1,500.

Responses per Respondent: 3.

Total Responses: 4,500.

Hours per Response: 5.

Total Burden Hours: 22,500.

**552.238-81, Modifications Alternate I (GSA FSS Contractors eMod Electronic process)**

Estimated respondents/yr: 19,000.

Number of submissions per respondent: 3.

Total responses: 57,000.

Estimated hours/response: 4.

Total Burden Hours: 228,000.

B. Request for Comments Regarding Paperwork Burden. Submit comments, including suggestions for reducing this burden, not later than **[Insert date 60 days after publication in the Federal Register]** to: U.S. General Services Administration, Regulatory Secretariat Division

(MVCB), ATTN: Hada Flowers, 1800 F Street, NW, 2nd Floor, Washington, DC 20405-0001.

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

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE, 7<sup>th</sup> Floor, Washington, DC 20417. Please cite OMB Control Number 3090-0302, Modifications(Multiple Award Schedules): GSAR Part Affected: 552.243-72, in all correspondence.

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

Government procurement.

**DATED:** May 22, 2013

STEVEN J. KEMPF,  
Acting Senior Procurement Executive,  
Office of Acquisition Policy,  
General Services Administration.

Therefore, GSA proposes to amend 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 121(c).

**PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION  
REGULATION SYSTEM**

**501.106 [Amended]**

2. Amend section 501.106 in the table, by adding in sequence, GSAR Reference "552.238-81" and its corresponding OMB Control Number "3090-0320".

**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING**

3. Amend section 538.273 by adding paragraph (b) (3) to read as follows:

**538.273 Contract clauses.**

\* \* \* \* \*

(b) \* \* \*

(3) 552.238-81, Modifications (Federal Supply Schedule). Use alternate I for Federal Supply Schedules that only accept electronic modifications.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Add section 552.238-81 to read as follows:

**552.238-81 Modifications (Federal Supply Schedule).**

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

**MODIFICATIONS (FEDERAL SUPPLY SCHEDULE) (DATE)**

(a) General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) Types of Modifications. (1) Additional items/additional SINs. When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212-70, Preparation of Offer (Multiple Award Schedule), is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with FAR 552.211-78, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications—Commercial

Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-75. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-75.

(d) Electronic File Updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINS, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-75.

(e) Amendments to Paper Federal Supply Schedule Price Lists.

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February–April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of Clause)

Alternate I (Date). As prescribed in 538.273(b)(3), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (<http://vsc.gsa.gov>). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

**[Billing Code: 6820-61]**

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