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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517 and 552

[GSAR Case 2007-G500; Docket 2008-0007; Sequence 3]

RIN 3090-AI51

**General Services Administration Acquisition Regulation
(GSAR); Rewrite of GSAR Part 517, Special Contracting
Methods**

AGENCY: Office of Acquisition Policy, Office of Government-wide 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Acquisition Regulation (GSAR) to revise requirements for special contracting methods and updates eliminating out of date references and reorganizes the text to align with the Federal Acquisition Regulation (FAR). This second proposed rule incorporates many of the changes of the proposed rule and makes additional modifications to the text.

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

ADDRESSES: Submit comments identified by GSAR case 2007-G500 by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by searching for "GSAR Case 2007-G500". Select the link "Comment Now" that corresponds with "GSAR Case 2007-G500." Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2007-G500" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2007-G500, 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: For clarification about content, contact Ms. Janet Fry at 703-605-3167 or janet.fry@gsa.gov. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F Street, NW, Washington, DC 20405, 202-501-4755. Please cite GSAR Case 2007-G500.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 517 that provide requirements for special contracting methods.

GSA published a proposed rule in the Federal Register at 73 FR 32274 on June 6, 2008 <http://www.gpo.gov/fdsys/pkg/FR-2008-06-06/pdf/E8-12613.pdf> as part of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to update the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR). The GSAM incorporates the GSAR as well as internal agency acquisition policy. No comments were received in response to the Federal Register Notice for the proposed rule.

The case is being issued as a second proposed rule due to the additional edits made to GSAR part 517 and the length of time since the proposed rule was published in 2008.

II. Discussion and Analysis

A. Summary of significant changes

The second proposed rule:

- Updates the statutes cited in GSAR 517.109.

- Deletes GSAR 517.200(b), GSAR 517.202(iv), GSAR 517.202(v), and GSAR 517.207(a) and makes conforming changes.
- Replaces the content of GSAR 517.203 with new text, cross referencing the requirements in FAR 22.407 when using option provisions that extend the term of a construction contract.
- Adds a new paragraph at GSAR 517.207(b) that reminds contracting officers to seek new wage determinations when exercising options that extend the term of the contract.
- Addresses other administrative and typographical updates.

Note: The following proposed changes were not retained in the second proposed rule:

- 517.202(c) was not retained as FAR 7.105 already requires contracting officers to address options in acquisition plans.
- 517.203(c) was not retained as availability of funds is part of the FAR 17.207 determination.

B. Analysis of public comments

No comments on the proposed rule were received from the public by the August 5, 2008 closing date.

III. 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.

IV. 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 revisions are administrative in nature. The changes merely update and reorganize existing GSAR coverage. Therefore, the agency did not perform an Initial Regulatory Flexibility Analysis (IRFA).

GSA will also consider comments from small entities concerning the subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, GSAR case 2007-G500, in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply as the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35.

List of Subjects in 48 CFR Parts 517 and 552

Government procurement.

Dated: June 5, 2015

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 517 and 552 as set forth below:

1. The authority citation for 48 CFR part 517 is revised to read as follows:

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

PART 517—SPECIAL CONTRACTING METHODS

517.109 [Amended]

2. Amend section 517.109 by removing from the introductory text "40 U.S.C. 490(a)(14)" and "40 U.S.C. 481(a)(3)" and adding "40 U.S.C. 581(c)(6)" and "40 U.S.C. 501(b)(1)(B)" in their places, respectively.

3. Revise section 517.200 to read as follows:

517.200 Scope of subpart.

This subpart applies to all GSA contracts for supplies and services, including:

(a) Services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

(b) Architect-engineer services.

4. Amend section 517.202 by—

a. Removing from the introductory paragraph of (a)(1) "You should use options" and adding "Options should be used" in its place;

b. Removing from paragraph (a) (2) (i) "You anticipate a" and adding "There is an anticipated" in its place;

c. Revising paragraph (a) (2) (ii);

d. Removing paragraphs (a) (2) (iv) and (a) (2) (v);
and

e. Removing from paragraph (a) (3) "Do not use an option" and adding "An option may not be used" in its place.

The revision reads as follows:

517.202 Use of Options.

(a) * * *

(2) * * *

(ii) The use of multiyear contracting authority is inappropriate and the contracting officer anticipates a need for additional supplies or services beyond the basic contract term.

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5. Revise section 517.203 to read as follows:

517.203 Solicitations.

Construction solicitations and contracts which contain options that extend the term of the contract must include one of the three clauses described at FAR 22.407(e), (f) or (g).

6. Revise section 517.207 to read as follows:

517.207 Exercise of options.

In addition to the requirements of FAR 17.207, the contracting officer must also:

(a) Determine that the contractor's performance under the contract met or exceeded the Government's expectation for quality performance, unless another circumstance justifies an extended contractual relationship; and

(b) Obtain a new wage determination if the Service Contract Act (FAR 22.1007) or the Davis-Bacon Act (FAR 22.404-12) applies.

(c) Determine that the option price is fair and reasonable.

517.208 [Amended]

7. Amend section 517.208 by removing from the introductory paragraph (a) "FSS's" and adding "FAS'" in its place.

PART 552-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. The authority citation for 48 CFR parts 552 continues to read as follows:

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

9. Amend section 552.217-70 by revising the date of the provision; and removing from paragraph (a), in the

second sentence "standard);” and adding “standard),” in its place.

The revision reads as follows:

552.217-70 Evaluation of Options.

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EVALUATION OF OPTIONS (DATE)

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[BILLING CODE 6820-61]

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