

GSA ORDER

Subject: Amendment 2008-03; GSAR Case 2007-G501; Protests, Disputes, and Appeals (Change 24)

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).
2. Background. The General Services Administration amends the GSA Acquisition Manual (GSAM) to revise coverage in 533, Protests, Disputes, and Appeals, to edit the coverage and delete the two clauses for this part. The clauses are no longer needed because the relevant FAR clauses are preferred. This guidance supplements the Federal Acquisition Regulation (FAR) coverage provided in FAR Part 33 and in the FAR clauses found at FAR 52.233-1 through 52.233-4.

GSA published GSAR Case 2007-G501, final rule, in the *Federal Register* at 73 FR 74613, December 9, 2008.

3. Effective date. January 8, 2009.
4. Explanation of changes. This GSAM 533 coverage replaces the current GSAM Part 533 and GSAR 552.233-70 and -71. GSA Acquisition Letter V-05-14, Protest Tracking System, dated July 12, 2005, is rescinded.
5. Cancellations and rescissions. GSA Acquisition Letter V-05-14, Protest Tracking System, dated July 12, 2005, is cancelled.
6. Filing instructions. Insert the following pages to the GSAM:

Remove pages

General Structure
pp. vii and viii

Part 533 TOC
pp. 533-i and 533-ii

Insert pages

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PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

533.101 Definitions.

“Agency Protest Official for GSA” means the Central Office official in the Office of the Chief Acquisition Officer (OCAO) designated to independently review and decide procurement protests filed with GSA when the protester requests an agency review by other than the contracting officer.

“Deciding official” means the person chosen by the protester to decide the agency protest; it may be either the contracting officer or the Agency Protest Official for GSA.

533.102 General.

Unless otherwise authorized by the Office of General Counsel (OGC), OGC contacts anyone outside of GSA involved in protests of GSA contract actions filed with the Comptroller General or in a Federal court.

533.103 Protests to the agency.

533.103-1 Filing a protest.

(a) Any protester filing an agency protest has the choice of requesting either that the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest. If a party requests a review at a level above the contracting officer, the Agency Protest Official will decide the protest. The decision by the Agency Protest Official for GSA is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official for GSA will not consider an appeal of the contracting officer’s decision on an agency protest.

(b) If an agency protest is filed, the deciding official uses the procedures in FAR 33.103 and this section to resolve the protest. The deciding official will provide a fair and quick review of any protest filed with the agency.

(c) The filing timeframes in FAR 33.103(e) apply. An agency protest is filed when the complete protest is received at the location the solicitation designates for serving protests. GSA’s hours of operation are 8 a.m. to 4:30 p.m. Protests delivered after 4:30 p.m. will be considered received and filed the following business day.

(d) The protest must meet all the following conditions:

(1) Include the information required by FAR 33.103(d)(2).

(2) Indicate that it is a protest to the agency.

(3) Be filed in writing with the contracting officer.

(4) State whether the protester chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest does not include the protester’s choice, then the contracting officer will decide the protest (see paragraph (a) of this subsection).

(e) The following procedures apply to information submitted in support of or in response to an agency protest:

(1) GSA procedures do not provide for any discovery.

(2) The deciding official has discretion to request additional information from either the agency or the protester, orally or in writing, as may be necessary to render a timely decision on the protest. However, protests are normally decided on the basis of information initially provided by the protester and the agency.

(3) To the extent permitted by law and regulations, the parties may exchange relevant information.

(4) The agency must make a written response to the protest within ten days unless another date is set by the deciding official.

(5) The agency must also provide the protester with a copy of the response on the same day it files the protest response with the deciding official. If the agency believes it needs to redact or withhold any information in the response from the protester, it should identify and provide the information to the deciding official for *in camera* review.

(f) A protester may represent itself or be represented by legal counsel. GSA will not reimburse the protester for any legal fees related to the agency protest.

(g) GSA may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a protest forum outside of GSA.

533.103-2 Deciding a protest.

(a) When the Agency Protest Official is the deciding official:

(1) The contracting officer must ensure that the Agency Protest Official and assigned legal counsel receive a copy of the materials served on the contracting officer within one business day after the filing date.

(2) The Agency Protest Official must conduct a scheduling conference with the protester and assigned agency legal counsel as soon as practicable after the protest is filed. The scheduling conference will establish the Agency Protest Official’s plan to develop an appropriate record to assist his/her decision making. The Agency Protest Official, in his/her discretion, may ask the parties to participate in an oral presentation and/or to submit other written material related to the protest issues. In the event the Agency Protest Official deems it necessary to have an oral presentation following submission of the agency’s written response, it should be limited to

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resolving remaining issues of material fact necessary for resolution of the protest, as identified in advance by the Agency Protest Official. In such a case, the Agency Protest Official will determine whether a further written response from both parties is required following the oral conference. Other parties (e.g., representatives of the program office) may attend at the discretion of the Agency Protest Official.

(3) If the Agency Protest Official sustains a protest, the contracting officer must, within thirty (30) days after receiving the protest decision, fully implement the recommended relief.

(b) Conferences and presentations may take place either by telephone or in person.

(c) If GSA receives an agency protest before contract award, the contracting officer shall not make award unless the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if GSA receives an agency protest within ten (10) days after award or within five (5) days after a debriefing date offered to the protester under a timely debriefing request under FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend contract performance unless the HCA makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(d) The deciding official must obtain legal review of all draft protest decisions as required by GSA Order, Legal Services (ADM 5000.4A).

(e) The decision of the deciding official must be in writing, dated, and include the following information:

(1) Whether the protest was denied, sustained, or dismissed; and

(2) The rationale for the decision.

(f) If the deciding official sustains the protest, relief may consist of any of the following recommendations:

(1) Terminating the contract.

(2) Re-competing the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Reevaluating the offers or bids and awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(6) Other action determined appropriate by the deciding official.

533.104 Protests to GAO.

(a) *General procedures.* (1) The expeditious and timely handling of Government Accountability Office (GAO) protests is a GSA priority.

(2) As soon as GAO receives a protest filed against GSA, it informs the GSA Office of General Counsel (OGC). OGC will —

(i) Formally request a Statement of Fact and Position and compilation of documents (see FAR 33.104(a)(3)) from the contracting officer;

(ii) Notify the contracting officer of the designated protest counsel (the GSA attorney responsible for handling the case);

(iii) Provide GAO with the name, title, and telephone number of one or more GSA officials who may be contacted by GAO regarding the protest.

(3) If the contracting activity receives a protest before being informed of it by OGC, he/she must immediately forward it to OGC.

(4) The designated protest counsel is responsible for preparing a report to GAO, based upon the Contracting Officer's Statement of Fact and Position.

(5) The Contracting Officer's Statement of Fact and Position shall be reviewed by designated protest counsel and the contracting director.

(6) The Contracting Officer's Statement of Fact and Position and the compilation of documents under FAR 33.104(a)(3)(ii) are due to the designated protest counsel within 10 business days after receipt of the protest by the contracting officer. The time period may be reduced if the GAO so decides. If the contracting officer cannot complete the Statement of Fact and Position and the compilation of documents within the time, the contracting officer must promptly telephone the designated protest counsel with the reason for the delay. The designated protest counsel has the discretion to authorize or disapprove the request; if the extension would delay submission of GSA's report to GAO beyond 30 days from receipt of the protest, the designated protest counsel must first consult with GAO.

(7) Once the Statement of Fact and Position has been sent to the designated protest counsel, the contracting officer and Regional Counsel are responsible for promptly informing the designated protest counsel of any later developments that may affect the case.

(8) The contracting officer is responsible for informing all interested parties that a GAO protest has been filed. (See FAR 33.104(a)(2).) This should be done in writing using a method that provides evidence of receipt.

(b) *Competition in Contracting Act (CICA) stay overrides.* GSA requires the contracting officer to prepare the written determination and findings (D&F) under FAR 33.104(b) and (c) and obtain the concurrence of the Associate General Counsel (and Regional Counsel if a regional procurement) before submitting the D&F for the HCA's approval and signature. Once the D&F is signed, the designated protest counsel must inform GAO of the findings and intention to award, or authorize contract performance, before GSA can actually take the intended action. Copies of the decision must be distributed in accordance with FAR 33.104(d).

(c) *Content of Report to GAO.* (1) *All reports.* In addition to the requirements of FAR 33.104(a)(3), the GSA report contains all the following:

- (i) GAO protest number (GAO case file number).
- (ii) Solicitation or contract number.
- (iii) Full corporate name of the protesting organization and other firms involved.
- (iv) Statement indicating if the protest was filed before or after award.

(2) *Report for protest after award.* If the protest is filed after award, the report also includes:

- (i) Identity of the awardee.
- (ii) Date of award.
- (iii) Contract number.
- (iv) Date and time of bid opening (including a statement if the date of bid opening was extended by amendments).
- (v) Total number of offerors.
- (vi) Complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken).
- (vii) Other relevant documents believed helpful in determining the validity of the protest. This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, *e.g.*, Tab A, Exhibit 1, etc.

(d) *Notice to GAO.* OGC concurs on the HCA’s report to the Comptroller General if GSA has decided not to comply with GAO’s recommendation.

533.105 Court of Federal Claims Protests.

(a) Upon receipt of either a copy of a protest filed in the Court of Federal Claims (COFC) or a telephone call from the Department of Justice (DOJ) advising of the filing of a COFC protest, the contracting officer shall immediately notify and/or send a copy of any filed documents received to OGC.

(b) OGC is responsible for communicating and coordinating with DOJ regarding defense of any COFC protest. The contracting officer shall provide information and support as directed by OGC, including compilation of necessary documents and other materials.

Subpart 533.2—Disputes and Appeals

533.209 Suspected fraudulent claims.

In GSA, the agency official responsible for investigating fraud is the Office of Inspector General.

533.211 Contracting officer’s decision.

The contracting officer’s written decision must include the paragraph at FAR 33.211(a)(4)(v). The contracting officer shall state in the decision that a contractor’s notice of appeal to the Civilian Board of Contract Appeals (CBCA) should include a copy of the contracting officer’s decision.

533.212 Contracting officer’s duties when an appeal is filed.

533.212-1 General.

(a) The contractor may elect to appeal the contracting officer’s decision by filing a notice of appeal with the Civilian Board of Contract Appeals (CBCA) or by filing suit in the United States Court of Federal Claims (COFC). In cases brought before the CBCA, GSA is represented by the GSA Office of General Counsel (OGC). In cases brought before the COFC, GSA is represented by the Department of Justice (DOJ), with the assistance of OGC.

(b) When a case is brought before the CBCA or the COFC, OGC will notify the contracting officer of the designated litigation counsel (the GSA attorney responsible for handling the case). The contracting officer shall provide assistance to designated litigation counsel as specified in this section or as otherwise requested by designated litigation counsel.

(c) Notwithstanding the filing of an appeal, the contracting officer retains existing authorities with respect to the administration of the contract. However, the contracting officer is not authorized to represent GSA before the CBCA or the COFC or to an attorney representing the contractor. If the contracting officer is contacted by an attorney for the contractor, the contractor’s attorney must be referred to GSA’s designated litigation counsel.

(d) If a contractor appeals a decision that has been deemed to be denied in accordance with the Contract Disputes Act (CDA), the CBCA or COFC may require the contracting officer to issue a decision in accordance with the CDA at 41 U.S.C. §605.

533.212-2 Procedures when an appeal is filed.

(a) *Timeliness.* If the contracting officer believes that the appeal is untimely filed, either at the CBCA or COFC, the contracting officer shall immediately transmit to designated litigation counsel copies of documentary evidence related to timeliness, including a copy of the final decision and certified mail receipt.

(b) *CBCA Appeal File.*(1) When an appeal is filed before the CBCA, the contracting officer shall prepare the file of documentary exhibits required in the Board's Rules of Procedure at <http://www.cbca.gsa.gov>, in accordance with the Board's rules governing the Appeal File.

(2) Generally, the Appeal File shall include all documents referenced in and supporting the agency's position, including, the contract, the claim, and the contracting officer's decision.

(3) The contracting officer should consult with the counsel to obtain general assistance in preparing the Appeal File, and consult with designated litigation counsel to determine requirements specific to the appeal, including possible electronic submission of the Appeal File. If the contract is voluminous and the dispute pertains only to a discrete portion of the contract, the contracting officer should consult with designated litigation counsel to determine whether inclusion of a portion of the contract is acceptable.

(4) In preparing the Appeal File, the contracting officer must adhere to the following particular requirements:

(i) The exhibits must be placed in a 3-ring binder(s), with numbered tabbed division sheets separating each exhibit.

(ii) The exhibits must be assembled in chronological order, with the oldest exhibit coming first.

(iii) If a multi-page exhibit lacks internal pagination, page numbering must be added, by hand, label, stamp or other means.

(iv) An index must be prepared including a brief description of each exhibit, the date of the exhibit, and the tab number corresponding to the exhibit.

(5) The contracting officer shall submit the proposed Appeal File, together with an electronic version of the index, to designated litigation counsel within 20 days of receiving notice of appeal, or shorter, if notified that accelerated procedures apply. Should the volume of exhibits or other factors require additional time for preparation of the Appeal File, the contracting officer should immediately notify designated litigation counsel in order that an extension may be obtained.

(6) After designated litigation counsel has reviewed the proposed Appeal File and index, the contracting officer shall make revisions as requested. Unless otherwise requested, the contracting officer shall produce five copies of the Appeal File and transmit four copies to designated litigation counsel.

(c) *COFC Litigation Report.*(1) When a case is filed at the COFC, the agency is required to furnish a litigation report to DOJ. The contracting officer shall furnish all necessary information to designated litigation counsel for preparation of the litigation report.

(2) At a minimum, the information to be furnished shall include—

(i) A narrative of the factual background underlying the dispute;

(ii) A copy of the claim and the contracting officer's decision;

(iii) Copies of documents related to the dispute, including copies of documents referenced in the claim or contracting officer's decision;

(iv) Name and contact information for GSA and other personnel involved in the dispute.

(d) *Answer to Complaint.* When an appeal is filed at the CBCA or COFC, the contractor is required to file a formal pleading called a Complaint, which sets forth the allegations of fact upon which the claim is based. The Government, except for the situation discussed below, is obligated to respond to the Complaint by admitting, denying, or otherwise responding to the contractor's allegations in a formal pleading called the Answer. The contracting officer shall assist designated litigation counsel in the drafting of the Answer by advising whether the contractor's allegations of fact should be admitted or denied. If a response to an allegation in the complaint requires information in the possession of other GSA personnel, the contracting officer shall conduct sufficient research reasonably necessary in order to form a belief as to the truth of the allegation. If the information necessary to form a belief as to the truth of the allegation is not in GSA's possession, the contracting officer shall so advise designated litigation counsel. In some cases, the Government may respond to the Complaint by filing a motion to dismiss in lieu of filing an Answer. Designated litigation counsel will advise the contracting officer if a motion to dismiss will be filed.

(e) *Discovery.* After the complaint and answer are filed with the CBCA or COFC, each party will usually commence discovery. The contracting officer shall assist designated litigation counsel in responding to all discovery requests, including providing information in response to interrogatories, identifying and locating requested documents, and assisting with production of witnesses for depositions.

533.212-3 Preservation of Evidence.

When an appeal is filed, the contracting officer is required to ensure that evidence in his or her control related to a dispute is preserved. In addition to physical documentation, such evidence includes electronic data stored on agency computer systems. The contracting officer shall assist designated litigation counsel with preservation of evidence by identifying relevant files containing physical documentation, including not only the contract file but files containing information related to the dispute that are maintained by other GSA organizations. The contracting officer shall also assist designated litigation counsel in identifying other GSA personnel whose electronic data, including email, word processing documents, spreadsheets, and other electronic files may include information relating to the dispute.

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533.212-4 Settlement.

Notwithstanding the contracting officer's claim of settlement authority, the contracting officer is not authorized to settle a case brought before the CBCA or COFC. Only OGC may authorize settlement of a case before the CBCA or concur on behalf of GSA to the settlement of a case before the COFC, subject to internal OGC approval requirements. The contracting officer shall provide requested assistance to designated litigation counsel in the negotiation, review, and approval of settlements.

533.214 Alternative dispute resolution (ADR).

It is GSA's policy to use ADR to effect the prompt, efficient and just resolution of disputes. The contracting officer should refer to GSA Order CSL P 5050.1A, Using Alternative Dispute Resolution Techniques, and consult with designated litigation counsel on the use of ADR.

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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<p>552.000 Scope of part.</p> <p style="text-align: center;">Subpart 552.1—Instructions for Using Provisions and Clauses</p> <p>552.101-70 Using Part 552.</p> <p>552.102 Incorporating provisions and clauses.</p> <p>552.103 Identification of provisions and clauses.</p> <p>552.104 Procedures for modifying and completing provisions and clauses.</p> <p>552.105 Procedures for using alternates.</p> <p>552.107-70 Provisions and clauses prescribed in Subpart 552.1.</p> <p style="text-align: center;">Subpart 552.2—Text of Provisions and Clauses</p> <p>552.200 Scope of subpart.</p> <p>552.203-5 Covenant Against Contingent Fees.</p> <p>552.203-70 Price Adjustment for Illegal or Improper Activity.</p> <p>552.203-71 Restriction on Advertising.</p> <p>552.209-70 Product Removal from Qualified Products List.</p> <p>552.209-71 Waiver of First Article Testing and Approval Requirement.</p> <p>552.209-72 Supplemental Requirements for First Article Approval—Contractor Testing.</p> <p>552.209-73 Supplemental Requirements for First Article Approval—Government Testing.</p> <p>552.211-8 Time of Delivery.</p> <p>552.211-15 Defense Priorities and Allocations System Requirements.</p> <p>552.211-70 [Reserved]</p> <p>552.211-71 Standard References.</p> <p>552.211-72 Reference to Specifications in Drawings.</p> <p>552.211-73 Marking.</p> <p>552.211-74 Charges for Marking.</p> <p>552.211-75 Preservation, Packaging and Packing.</p> <p>552.211-76 Charges for Packaging and Packing.</p> <p>552.211-77 Packing List.</p> <p>552.211-78 Commercial Delivery Schedule (Multiple Award Schedule).</p> <p>552.211-79 Acceptable Age of Supplies.</p> <p>552.211-80 Age on Delivery.</p> <p>552.211-81 Time of Shipment.</p> <p>552.211-82 Notice of Shipment.</p> <p>552.211-83 Availability for Inspection, Testing, and Shipment/Delivery.</p> <p>552.211-84 Non-Compliance with Contract Requirements.</p> <p>552.212-70 Preparation of Offer (Multiple Award Schedule).</p> <p>552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.</p>	<p>552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.</p> <p>552.212-73 Evaluation—Commercial Items (Multiple Award Schedule).</p> <p>552.214-70 “All or None” Offers.</p> <p>552.214-71 Progressive Awards and Monthly Quantity Allocations.</p> <p>552.214-72 Bid Sample Requirements.</p> <p>552.215-70 Examination of Records by GSA.</p> <p>552.215-71 Examination of Records by GSA (Multiple Award Schedule).</p> <p>552.215-72 Price Adjustment—Failure to Provide Accurate Information.</p> <p>552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.</p> <p>552.216-71 Economic Price Adjustment—Stock and Special Order Program Contracts.</p> <p>552.216-72 Placement of Orders.</p> <p>552.216-73 Ordering Information.</p> <p>552.217-70 Evaluation of Options.</p> <p>552.217-71 Notice Regarding Option(s).</p> <p>552.219-70 Allocation of Orders—Partially Set-aside Items.</p> <p>552.219-71 Notice to Offerors of Subcontracting Plan Requirements.</p> <p>552.219-72 Preparation, Submission, and Negotiation of Subcontracting Plans.</p> <p>552.219-73 Goals for Subcontracting Plan.</p> <p>552.219-74 Section 8(a) Direct Award.</p> <p>552.223-70 Hazardous Substances.</p> <p>552.223-71 Nonconforming Hazardous Materials.</p> <p>552.223-72 Hazardous Material Information.</p> <p>552.225-70 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.</p> <p>552.227-70 Government Rights (Unlimited).</p> <p>552.227-71 Drawings and Other Data to Become Property of Government.</p> <p>552.228-70 Workers’ Compensation Laws.</p> <p>552.229-70 Federal, State, and Local Taxes.</p> <p>552.229-71 Federal Excise Tax—DC Government.</p> <p>552.232-1 Payments.</p> <p>552.232-8 Discounts for Prompt Payment.</p> <p>552.232-23 Assignment of Claims.</p> <p>552.232-25 Prompt Payment.</p> <p>552.232-70 Invoice Requirements.</p> <p>552.232-71 Adjusting Payments.</p> <p>552.232-72 Final Payment.</p> <p>552.232-73 Availability of Funds.</p> <p>552.232-74 Invoice Payments.</p> <p>552.232-75 Prompt Payment.</p>
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debit card will receive the applicable prompt payment discount.

(End of clause)

552.232-81 Payments by Non-Federal Ordering

Activities.

As prescribed in 532.206(b), insert the following clause:

PAYMENTS BY NON-FEDERAL ORDERING ACTIVITIES (MAY 2003)

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible non-federal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in Federal Acquisition Regulation clause 52.232-25, Prompt Payment, or 52.212-4, Contract Terms and Conditions—Commercial Items, apply to such activities in the same manner as to Federal ordering activities.

(End of clause)

552.232-82 Contractor's Remittance (Payment) Address.

As prescribed in 532.206(c), insert the following provision:

CONTRACTOR'S REMITTANCE (PAYMENT) ADDRESS (MAY 2003)

(a) Payment by electronic funds transfer (EFT) is the preferred method of payment. However, under certain conditions, the ordering activity may elect to make payment by check. The offeror shall indicate below the payment address to which checks should be mailed for payment of proper invoices submitted under a resultant contract.

Payment Address: _____

(b) Offeror shall furnish by attachment to this solicitation, the remittance (payment) addresses of all authorized participating dealers receiving orders and accepting payment by check in the name of the Contractor in care of the dealer, if different from their ordering address(es) specified elsewhere in this solicitation. If a dealer's ordering and remittance address differ, both must be furnished and identified as such.

(c) All offerors are cautioned that if the remittance (payment) address shown on an actual invoice differs from that shown in paragraph (b) of this provision or on the attachment, the remittance address(es) in paragraph (b) of this provision

or attached will govern. Payment to any other address, except as provided for through EFT payment methods, will require an administrative change to the contract.

NOTE: All orders placed against a Federal Supply Schedule contract are to be paid by the individual ordering activity placing the order. Each order will cite the appropriate ordering activity payment address, and proper invoices should be sent to that address. Proper invoices should be sent to GSA only for orders placed by GSA. Any other ordering activity's invoices sent to GSA will only delay your payment.

(End of provision)

552.232-83 Contractor's Billing Responsibilities.

As prescribed in 532.206(d), insert the following clause:

CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2003)

The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

- (1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;
(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—
(i) The date of sale;
(ii) The ordering activity to which the sale was made;
(iii) The service or product/model sold;
(iv) The quantity of each service or product/model sold;
(v) The price at which it was sold, including discounts; and
(vi) All other significant sales data.
(3) Be subject to audit by the Government, with respect to sales made under the contract; and
(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

(End of clause)

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552.236-70 Definitions.

As prescribed in [536.570-1](#), insert the following clause:

DEFINITIONS (APR 1984)

The terms “Administration” and “Service” as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of clause)

552.236-71 Authorities and Limitations.

As prescribed in [536.570-2](#), insert the following clause:

AUTHORITIES AND LIMITATIONS (APR 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer’s authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the ion) of anyone not authorized to issue such order.

(End of clause)

552.236-72 Specialist.

As prescribed in [536.570-3](#), insert the following clause:

SPECIALIST (APR 1984)

The term “Specialist,” as used in the contract specification, shall mean an individual or firm of established reputation (or, if

newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer’s direct supervision.

(End of clause)

552.236-73 Basis of Award—Construction Contract.

As prescribed in [536.570-4](#), insert the following provision or the appropriate Alternate:

BASIS OF AWARD—CONSTRUCTION CONTRACT
(APR 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled “Contract Award—Sealed Bidding.”

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of provision)

Alternate I (Apr 1985). If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled “Contract Award—Sealed Bidding.”

Alternate II (Apr 1985). If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price

bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled “Contract Award—Sealed Bidding.”

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is \$100,000 and a bidder’s base bid is \$85,000, with its separate bids on four successive alternates being \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of selecting the alternates would be \$99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the \$100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceed the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

Alternate III (Apr 1985). If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) of this provision. The evaluation of

options will not obligate the Government to exercise the options. See the provision entitled “Contract Award—Sealed Bidding.”

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is \$100,000 and a bidder’s base bid is \$85,000, with its separate bids on four successive alternates being \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of selecting the alternates would be \$99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the \$100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c) of this provision. If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

552.236-74 Working hours.

As prescribed in [536.570-5](#), insert the following clause:

WORKING HOURS (APR 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of clause)

MATRIX OF PROVISIONS AND CLAUSES

KEY: Sup = Supply
 Serv = Service Contract (excluding construction and A-E services)
 Const = Construction Services
 A-E = Architect-Engineer Services
 SAT = Acquisitions at or under the simplified acquisition threshold
 Util = Utility services, sole supplier-regulated rate

Leas = Acquisitions of leasehold interests in real property
 P = Provision
 C = Clause
 R = Required
 WR = When required
 O = Optional

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.203-5	503.404	Covenant Against Contingent Fees							WR
C	552.203-70	503.104-9	Price Adjustment for Illegal or Improper Activity							WR
C	552.203-71	503.570-2	Restriction on Advertising	R	R	R	R			R
C	552.209-70	509.206-2	Product Removal from Qualified Products List	WR				WR		
P	552.209-71	509.306	Waiver of First Article Testing and Approval Requirements	WR				WR		
C	552.209-72	509.308-1	Supplemental Requirements for First Article Approval—Contractor Testing	WR				WR		
C	552.209-73	509.308-2	Supplemental Requirements for First Article Approval—Government Testing	WR				WR		
C	552.211-8	511.404	Time of Delivery	WR				WR		
C	552.211-71	511.204(a)	Standard References			WR				
C	552.211-72	511.204(b)	Reference to Specifications in Drawings	WR	WR	WR		WR		
C	552.211-73	511.204(c)(1)	Marking	WR						
C	552.211-74	511.204(c)(2)	Charges for Marking	WR						
C	552.211-75	511.204(c)(3)	Preservation, Packaging and Packing	WR				O		
C	552.211-76	511.204(c)(4)	Charges for Packaging and Packing	WR				WR		
C	552.211-77	511.204(d)	Packing List	WR				WR		
C	552.211-78	511.404(a)(2)	Commercial Delivery Schedule (Multiple Award Schedule)	WR						
C	552.211-79	511.404(a)(3)(i)	Acceptable Age of Supplies	WR				WR		
C	552.211-80	511.404(a)(3)(ii)	Age on Delivery	WR				WR		
C	552.211-81	511.404(a)(4)	Time of Shipment	WR				WR		
C	552.211-82	511.404(a)(5)	Notice of Shipment	WR				WR		
C	552.211-83	511.404(a)(6)	Availability for Inspection, Testing, and Shipment/Delivery	WR				WR		
C	552.211-84	511.404(b)	Non-Compliance with Contract Requirements			R				
C	552.212-70	512.301(a)(1)	Preparation of Offer (Multiple Award Schedule)	WR	WR					
C	552.212-71	512.301(a)(2)	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
C	552.212-72	512.301(a)(3)	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
P	552.212-73	512.301(a)(4)	Evaluation—Commercial Items (Multiple Award Schedule)	WR	WR					
P	552.214-70	514.201-6	"All or None" Offers	WR	WR			WR		
C	552.214-71	514.201-7(a)	Progressive Awards and Monthly Quantity Allocations	WR						
P	552.214-72	514.202-4(a)(3)	Bid Sample Requirements	WR	WR			WR		
C	552.215-70	514.201-7(a)(1) 515.209-70(a)	Examination of Records by GSA	WR	WR	WR	WR			WR
C	552.215-71	515.209-70(c)	Examination of Records by GSA (Multiple Award Schedule)	WR	WR					

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P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.215-72	515.408(d)	Price Adjustment—Failure to Provide Accurate Information	WR	WR					
C	552.216-70	516.203-4(a)	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	WR	WR					
C	552.216-71	516.203-4(b)	Economic Price Adjustment—Stock and Special Order Program Contracts	WR				WR		
C	552.216-72	516.506(a)	Placement of Orders	WR				WR		
P	552.216-73	516.506(e)	Ordering Information	WR	WR			WR		
P	552.217-70	517.208(a)	Evaluation of Options	WR				WR		
P	552.217-71	517.208(b)	Notice Regarding Option(s)	WR	WR	WR	WR	WR		
C	552.219-70	519.508	Allocation of Orders—Partially Set-aside Items	WR						
P	552.219-71	519.708-70(a)	Notice to Offerors of Subcontracting Plan Requirements	WR	WR	WR	WR			WR
P	552.219-72	519.708-70(b)	Preparation, Submission, and Negotiation of Subcontracting Plans	WR	WR	WR	WR			WR
P	552.219-73	519.708-70(c)	Goals for Subcontracting Plan	WR	WR	WR	WR			WR
C	552.219-74	519.870-8(a)	Section 8(a) Direct Award	WR	WR	WR	WR	WR		WR
C	552.223-70	523.303(a)	Hazardous Substances	WR				WR		
C	552.223-71	523.303(b)	Nonconforming Hazardous Materials	WR				WR		
P	552.223-72	523.370	Hazardous Material Information	WR				WR		
C	552.225-70	525.109	Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware	WR						
C	552.227-70	527.409(a)	Government Rights (Unlimited)				WR			
C	552.227-71	527.409(b)	Drawings and Other Data to Become Property of Government				WR			
C	552.228-70	528.310	Workers' Compensation Laws		WR	WR				
C	552.229-70	529.401-70	Federal, State, and Local Taxes		WR	WR	WR	R		
C	552.229-71	529.401-71	Federal Excise Tax—DC Government	WR	WR			WR		
C	552.232-71	532.7103(a)	Payments		WR					
C	552.232-8	532.206	Discounts for Prompt Payment	WR	WR					
C	552.232-23	532.806	Assignment of Claims	WR	WR					
C	552.232-25	532.908(a)(2)	Prompt Payment	WR	WR			WR		
C	552.232-70	532.111(a)	Invoice Requirements	WR	WR	WR	WR	WR	WR	WR
C	552.232-71	532.111(b)	Adjusting Payments		WR					
C	552.232-72	532.111(c)	Final Payment		WR					
C	552.232-73	532.705-1	Availability of Funds		WR			WR		
C	552.232-74	532.908(a)(1)	Invoice Payments	WR	WR			WR		
C	552.232-75	532.908(b)(1)	Prompt Payment							R
C	552.232-76	532.908(b)(2)	Electronic Funds Transfer Payment							WR
C	552.232-77	532.7003	Payment By Governmentwide Commercial Purchase Card	WR	WR			WR		
C	552.232-78	532.908(c)	Payment Information	R	R	R	R	R	R	R
C	552.232-79	532.7003(c)	Payment by Credit Card	WR	WR					
C	552.232-81	532.206(b)	Payments by Non-Federal Ordering Activities	WR	WR					
C	552.232-82	532.206(c)	Contractor's Remittance (Payment) Address	WR	WR					
C	552.232-83	532.206(d)	Contractor's Billing Responsibilities	WR	WR					
C	552.236-70	536.570-1	Definitions			WR	WR	WR		
C	552.236-71	536.570-2	Authorities and Limitations			WR	WR			