

General Services Administration
Washington, DC 20405

ADP 2800.12B Change 25
January 9, 2009

GSA ORDER

Subject: Amendment 2008-04; GSAR Case 2008-G513; Contract Modifications (Change 25)

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).

2. Background.

a. The General Services Administration amends the GSA Acquisition Manual (GSAM) to revise coverage in Part 543, Contract Modifications. This guidance supplements the Federal Acquisition Regulation (FAR) coverage provided in FAR Part 43 and in the FAR clauses found at FAR 52.243.

b. GSA published GSAR Case 2008-G513, Change 25, final rule, in the *Federal Register* at 74 FR 864, January 9, 2009.

3. Effective date. January 9, 2009.

4. Explanation of changes. The GSAM revisions include the following – deletion of language in 543.102; revision of language in 543.170, 543.202, and 543.205; removal of a clause at 552.243-70 that repeats FAR requirements, revision of the clause at 552.243-71, and re-location of the clause at 552.243-72 to GSAM Part 538, GSAR Case 2006-G507.

5. Filing instructions. Insert the following pages to the GSAM:

Remove Pages

Part 543 TOC
pp. 543-i and 543-ii
543-1 and 543-2

Part 552 TOC
pp. 552-i and 552-ii
552-45 thru 552-48

Matrix
pp. 552-71 and 552-72

Insert Pages

Part 543 TOC
pp. 543-i and 543-ii
543-1 and 543-2

Part 552 TOC
pp. 552-i and 542-ii
552-45 thru 552-48

Matrix
pp. 552-71 and 552-72



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PART 543—CONTRACT MODIFICATIONS

Sec.

	Subpart 543.1—General		Subpart 543.2—Change Orders
I		543.202	Authority to issue change orders.
543.170	Changes in designated subcontractors, inspection and/or production points.	543.205	Contract clauses.

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PART 543—CONTRACT MODIFICATIONS

Subpart 543.1—General

543.170 Changes in designated subcontractors, inspection and/or production points.

(a) Before executing a contract modification authorizing changes in either a designated subcontractor or inspection or production point, the contracting officer must consider the impact of the change on the contractor’s ability to satisfy contract requirements. Employ the same standards that were used to determine that the contractor was responsible (see FAR 9.1 and GSAM [509.1](#)).

(b) The modification must identify the nature of the change and the effective date. In establishing an effective date, consider the time necessary for affected offices to take required actions.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.

This section applies to construction contracts.

(a) *COR authority.* The contracting officer may authorize a warranted COR to issue change orders. Authorization must be in writing, on a contract-by-contract basis, and must identify any limitations. For example, identify dollar limitations or specify that authority is only valid in emergency situations.

(b) *Additional restrictions.* The Contracting Officer should provide the following instruction to the COR as part of the written authorization:

(1) For any single change order, the COR may perform some or all of these actions:

- (i) Determining the need for a change.
- (ii) Preparing the Government’s cost estimate.
- (iii) Conducting negotiations.
- (iv) Issuing the change order.
- (v) Inspecting the work.

(2) For an unpriced change order, if the COR personally performs all the actions in paragraph (1) of this section, the change order must be reviewed by a designated official before issuance or definitization.

(c) *Review change orders.* For unpriced change orders when the COR personally performs all actions, the contracting officer must either personally review each change order or designate a capable official to perform the review. Consider designating the COR’s immediate supervisor or a higher-level official within the organization. Avoid designating more than one official to review change orders issued under an individual contract.

(d) *Coordination of change orders.* Issue change orders only after coordination, as appropriate, with quality control, finance, audit or other technical personnel.

543.205 Contract clauses.

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

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

<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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<p>552.232-76 Electronic Funds Transfer Payment. 552.232-77 Payment By Governmentwide Commercial Purchase Card. 552.232-78 Payment Information. 552.232-79 Payment by Credit Card. 552.232-81 Payments by Non-Federal Ordering Activities. 552.232-82 Contractor’s Remittance (Payment) Address. 552.232-83 Contractor’s Billing Responsibilities. 552.236-70 Definitions. 552.236-71 Authorities and Limitations. 552.236-72 Specialist. 552.236-73 Basis of Award—Construction Contract. 552.236-74 Working hours. 552.236-75 Use of Premises. 552.236-76 Measurements. 552.236-77 Specifications and Drawings. 552.236-78 Shop Drawings, Coordination Drawings, and Schedules. 552.236-79 Samples. 552.236-80 Heat. 552.236-81 Use of Equipment by the Government. 552.236-82 Subcontracts. 552.236-83 Requirement for a Project Labor Agreement. 552.237-70 Qualifications of Offerors. 552.237-71 Qualifications of Employees. 552.237-72 Prohibition Regarding “Quasi-Military Armed Forces.” 552.237-73 Restriction on Disclosure of Information. 552.238-70 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped. 552.238-71 Submission and Distribution of Authorized FSS Schedule Pricelists. 552.238-72 Identification of Products that have Environmental Attributes. 552.238-73 Cancellation 552.238-74 Industrial Funding Fee and Sales Reporting. 552.238-75 Price Reductions. 552.238-76 Definition (Federal Supply Schedules)—Recovery Purchasing. 552.238-77 Definition (Federal Supply Schedules). 552.238-78 Scope of Contract (Eligible Ordering Activities). 552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing. 552.238-80 Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing. 552.242-70 Status Report of Orders and Shipments. 552.243-71 Equitable Adjustments.</p>	<p>552.246-17 Warranty of Supplies of a Noncomplex Nature 552.246-70 Source Inspection by Quality Approved Manufacturer. 552.246-71 Source Inspection by Government. 552.246-72 Final Inspection and Tests. 552.246-73 Warranty—Multiple Award Schedule. 552.246-74 [Reserved] 552.246-75 Guarantees. 552.246-76 Warranty of Pesticides. 552.247-70 Placarding Railcar Shipments. 552.247-71 Diversion of Shipment Under f.o.b. Destination Contracts. 552.249-70 Termination for Convenience of the Government (Fixed Price) (Short Form). 552.249-71 Submission of Termination Liability Schedule. 552.252-5 Authorized Deviations in Provisions. 552.252-6 Authorized Deviations in Clauses. 552.270-1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property. 552.270-2 Historic Preference. 552.270-3 Parties to Execute Lease. 552.270-4 Definitions. 552.270-5 Subletting and Assignment. 552.270-6 Maintenance of Building and Premises—Right of Entry. 552.270-7 Fire and Casualty Damage. 552.270-8 Compliance with Applicable Law. 552.270-9 Inspection—Right of Entry. 552.270-10 Failure in Performance. 552.270-11 Successors Bound. 552.270-12 Alterations. 552.270-13 Proposals for Adjustment. 552.270-14 Changes. 552.270-15 Liquidated Damages. 552.270-16 Adjustment for Vacant Premises. 552.270-17 Delivery and Condition. 552.270-18 Default in Delivery—Time Extensions. 552.270-19 Progressive Occupancy. 552.270-20 Payment. 552.270-21 Effect of Acceptance and Occupancy. 552.270-22 Default by Lessor During the Term. 552.270-23 Subordination, Nondisturbance and Attornment. 552.270-24 Statement of Lease. 552.270-25 Substitution of Tenant Agency. 552.270-26 No Waiver.</p>
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into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., Federal Acquisition Regulation 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B).

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(7) The state or local government ordering activity will be responsible for purchasing products or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities)—Alternate I, the Contractor agrees to the following conditions—

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause [552.238-74](#), Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number—

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at [552.238-78](#), Scope of Contract (Eligible Ordering Activities)—Alternate I; and

(2) The dollar value for sales to entities identified in paragraph (d) of clause [552.238-78](#), Alternate I.

(d) A listing of the Federal Supply Schedule contracts for the products and services available for disaster recovery purchasing is accessible in GSA's Schedules e-Library at web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating Contractors and the products and services available for disaster recovery purchasing will be labeled with the Disaster Recovery Purchasing icon.

(End of clause)

552.242-70 Status Report of Orders and Shipments.

As prescribed in [542.1107](#), insert the following clause:

STATUS REPORT OF ORDERS AND SHIPMENTS (APR 1992)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [*Insert appropriate telephone number of FQC*]. Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the

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form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of clause)

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 completion date, shall include a detailed breakdown of the following elements, as applicable:

- (1) Direct Costs.
- (2) Markups.

(3) Change to the time for completion specified in the contract.

(e) *Direct Costs.* The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work impacted by the change. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material

fabrication and cost of delivery to site, unless separately itemized);

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer’s overhead, profit, and any labor cost burdens carried in employer’s overhead rate);

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed;

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs [\(e\)\(1\)](#) and [\(e\)\(2\)](#) of this clause;

(5) Delivery costs, if not included in material unit costs;

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor’s or subcontractors’ overhead rates, as specified in paragraph [\(g\)](#) of this clause; and

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph [\(i\)](#) of this clause.

(g) Extensions of Time and Time-related Costs. The Contractor shall propose a daily rate for each firm’s time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm’s time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm’s performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm’s overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor’s project schedule.

(h) *Markups.* For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose

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an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractor[s] shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth below in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h).

(j) *Proposal Preparation Costs.* If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them.

Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o), or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment.

(End of clause)

552.246-17 Warranty of Supplies of a Noncomplex

Nature

As prescribed in [546.710\(d\)](#), insert the following clause:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE
(DEC 1990) (DEVIATION FAR 52.246-17)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for *

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant to the return, correction or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph [\(a\)\(1\)](#) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph [\(a\)\(1\)](#) of this clause within **. This notice shall contain information concerning the deficiencies found, the location of the nonconforming supplies, and the quantity involved.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph [\(a\)\(1\)](#) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3) (i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph [\(a\)\(1\)](#) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

AMENDMENT 2008-04 JANUARY 9, 2009

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.300

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C		536.570-3	Specialist			WR		WR		
P	552.236-73	536.570-4	Basis of Award—Construction Contract			WR				
C	552.236-74	536.570-5	Working Hours			R				
C	552.236-75	536.570-6	Use of Premises			R		WR		
C	552.236-76	536.570-7	Measurements			R		WR		
C	552.236-77	536.570-8	Specifications and Drawings			R				
C	552.236-78	536.570-9	Shop Drawings, Coordination Drawings, and Schedules			R				
C	552.236-79	536.570-10	Samples			WR		WR		
C	552.236-80	536.570-11	Heat			R		WR		
C	552.236-81	536.570-12	Use of Equipment by the Government			WR		WR		
C	552.236-82	536.570-13	Subcontracts			R				
C	552.236-83	536.570-14	Requirement for a Project Labor Agreement			WR				
P	552.237-70	537.110(a)	Qualifications of Offerors		WR					
C	552.237-71	537.110(b)	Qualifications of Employees		WR					
C	552.237-72	537.110(b)	Prohibition Regarding "Quasi-Military Armed Forces"		WR			WR		
C	552.237-73	537.110(c)	Restriction on Disclosure of Information		WR			WR		
C	552.238-70	538.273(a)(1)	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped	WR						
C	552.238-71	538.273(a)(2)	Submission and Distribution of Authorized FSS Schedule Pricelists	WR	WR					
C	552.238-72	538.273(a)(3)	Identification of Products That Have Environmental Attributes	WR	WR					
C	552.238-73	538.273(a)(4)	Cancellation	WR	WR					
C	552.238-74	538.273(b)(1)	Industrial Funding Fee and Sales Reporting	WR	WR					
C	552.238-75	538.273(b)(2)	Price Reductions	WR	WR					
C	552.238-76	538.7104(a)	Definition (Federal Supply Schedules)—Recovery Purchasing	WR	WR					
C	552.238-77	538.7004(a)	Definition (Federal Supply Schedules)	WR	WR					
C	552.238-78	538.7004	Scope of Contract (Eligible Ordering Activities)	WR	WR					
C	552.238-79	538.7004(c)	Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing	WR	WR					
C	552.238-80	538.7104(c)	Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing	WR	WR					
C	552.242-70	542.1107	Status Report of Orders and Shipments	WR				WR		
C	552.243-71	543.205	Equitable Adjustments			WR				
C	552.246-17	546.710(a)	Warranty of Supplies of a Noncomplex Nature	WR				WR		
C	552.246-70	546.302-70	Source Inspection by Quality Approved Manufacturer	WR				WR		
C	552.246-71	546.302-71	Source Inspection by Government	WR				WR		
C	552.246-72	546.312	Final Inspection and Tests			WR		O		
C	552.246-73	546.710(b)	Warranty—Multiple Award Schedule	WR	WR					
C	552.246-75	546.710(c)	Guarantees			WR				
C	552.246-76	546.710(d)	Warranty of Pesticides	WR				WR		
C	552.247-70	547.305(a)	Placarding Railcar Shipments	WR				WR		
C	552.247-71	547.305(b)	Diversion of Shipment Under f.o.b. Destination Contracts	WR				WR		
C	552.249-70	549.502(a)	Termination for Convenience of the Government (Fixed Price) (Short Form)	WR				WR		
C	552.249-71	549.502(b)	Submission of Termination Liability Schedule	WR				WR		

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
P	552.252-5	552.107-70(a)	Authorized Deviations in Provisions	WR	WR	WR	WR	WR	WR	
C	552.252-6	552.107-70(b)	Authorized Deviations in Clauses	WR	WR	WR	WR	WR	WR	
P	552.270-1	570.602	Instructions to Offerors—Acquisition of Leasehold Interests in Real Property							R
P	552.270-2	570.602	Historic Preference							R
P	552.270-3	570.602	Parties to Execute Lease							R
C	552.270-4	570.603	Definitions							R*
C	552.270-5	570.603	Subletting and Assignment							R
C	552.270-6	570.603	Maintenance of Building and Premises—Right of Entry							R
C	552.270-7	570.603	Fire and Casualty Damage							R
C	552.270-8	570.603	Compliance with Applicable Law							R
C	552.270-9	570.603	Inspection—Right of Entry							R
C	552.270-10	570.603	Failure in Performance							R
C	552.270-11	570.603	Successors Bound							R
C	552.270-12	570.603	Alterations							R
C	552.270-13	570.603	Proposals for Adjustment							R
C	552.270-14	570.603	Changes							R
C	552.270-15	570.603	Liquidated Damages							R
C	552.270-16	570.603	Adjustment for Vacant Premises							R
C	552.270-17	570.603	Delivery and Condition							R
C	552.270-18	570.603	Default in Delivery—Time Extensions							R
C	552.270-19	570.603	Progressive Occupancy							R
C	552.270-20	570.603	Payment							R
C	552.270-21	570.603	Effect of Acceptance and Occupancy							R
C	552.270-22	570.603	Default by Lessor During the Term							R
C	552.270-23	570.603	Subordination, Nondisturbance and Attornment							R
C	552.270-24	570.603	Statement of Lease							R
C	552.270-25	570.603	Substitution of Tenant Agency							R
C	552.270-26	570.603	No Waiver							R
C	552.270-27	570.603	Integrated Agreement							R
C	552.270-28	570.603	Mutuality of Obligation							R
C	552.270-29	570.603	Acceptance of Space							R
P	52.203-2	570.601(e)	Certificate of Independent Price Determination							WR
C	52.203-7	570.601(e)	Anti-Kickback Procedures							WR
P	52.203-11	570.601(d)	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions							WR
P	52.204-3	570.601(a)	Taxpayer Identification							WR
P	52.209-5	570.601(e)	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters							WR
C	52.209-6	570.601(c)	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment							WR
C	52.215-2	570.601(e)	Audit and Records—Negotiation							WR
P	52.215-5	570.601(j)	Facsimile Proposals							WR
C	52.215-10	570.601(i)	Price Reduction for Defective Cost or Pricing Data							WR
C	52.215-12	570.601(i)	Subcontractor Cost or Pricing Data							WR
P	52.219-1	570.601(a)	Small Business Program Representations							WR
C	52.219-8	570.601(e)	Utilization of Small Business Concerns							WR
C	52.219-9	570.601(f)	Small Business Subcontracting Plan,							WR