

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

#### Unincorporated Areas of Yakima County

Maps are available for inspection at 128 N. 2nd St., Yakima, WA 98901.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 29, 2008.

**Michael K. Buckley,**

*Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.*

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### GENERAL SERVICES ADMINISTRATION

#### 48 CFR Parts 514, 552, and 553

[GSAR Case 2008-G505; Docket 2008-0007; Sequence 20]

RIN 3090-A173

#### General Services Acquisition Regulation; GSAR Case 2008-G505; Rewrite of GSAR Part 514, Sealed Bidding

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

**ACTION:** Proposed rule.

**SUMMARY:** The GSA is proposing to amend the General Services Acquisition Regulation (GSAR) to revise the GSAR language regarding requirements for sealed bidding.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before December 9, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2008-G505 by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting "GSAR Case 2008-G505" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with GSAR Case 2008-G505. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "GSAR Case 2008-G505" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite GSAR Case 2008-G505 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 of content, contact Mr. Michael O. Jackson at (202) 208-4949, or by e-mail at [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov). For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite GSAR Case 2008-G505.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The GSA is amending the GSAR to revise sections of GSAR Part 514 that provide requirements for sealed bidding. This amendment is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 514. The specific changes are as follows:

- **501.106 OMB Approval under the Paperwork Reduction Act.**
  - Added Control Number 3090-0163 as a cross reference for 514.201-1.
- **514.201-2 Part I—The Schedule.**

- Changed (a) from "When you" to "When using." Also in (a) changed "which" to "that" and added the FAR clause number for Prompt Payment.

- Changed (b) from "When you use" to "When using" to clarify the reference to "you" and added a reference to the Standard Form 1449 as an example that this form can also be used.

- **514.201-6 Solicitation provisions.**

- Changed "When you" to "When considering" to delete the reference to the word "you".

- Deleted the reference for Alternate I because it is not consistent with the intention of the basic clause.

- **514.201-7 Contract clauses.**

- In the old paragraph (a) changed "you" to "The contracting officer".

- Deleted paragraph (b), Examination of Records. The clause does not provide basic audit rights that are in addition to the FAR clauses at 52.215-2, Audit and Records-Negotiation and 52.214-26, Audit and Records — Sealed Bidding. And as opposed to the GSA clause, the FAR clause is specific to sealed bids. Further, the GSA clause grants to the agency rights to audit subcontractors that are in excess of those granted by the FAR and the statute.

- **514.202-4 Bid samples.**

- Renamed subparagraphs (a) and (b) to be more consistent with the FAR. Also in (a) and (b) restructured the language to remove the word "you" and replaced with contracting officer.

- Clarified the language to state who must take physical custody of bid samples.

- Deleted paragraph (c) because it is redundant with FAR 14.202-4(d).

- Added a new 514.202-5, Descriptive Literature, in order to address the requirements of FAR 14.202-5(c).

- **514.203 Methods of soliciting bids.**

- Removed because we are not using paper copies and to be consistent with the FAR.

- **514.203-1 Transmittal to prospective bidders.**

- Removed because we are not using paper copies and to be consistent with the FAR.

- **514.270-2 Justification for use.**

- Inserted "the contracting officer should" in paragraph b and made last sentence of (3) a new number (4) and

renumbered old paragraphs (4) and (5) to (5) and (6), respectively.

◦ Added “the contracting officer should” to replace the understood “you” and deleted “Do” in paragraph c.

• **514.270–3 Evaluation factors for award.**

◦ Edited to avoid either using the passive voice or repeating “the contracting officer.”

• **514.270–4 Grouping line items for aggregate award.**

◦ In paragraph (a) the title “Type of contract” was changed to one that is more descriptive of the substance of the paragraph; type of contract refers to Part 16 contract types.

◦ In paragraph (b) changed the “when you group” to “when grouping” and in (d)(3)(i) changed “It can cause you to lose” to “It can cause the loss of”.

• **514.270–6 Guidelines for using the weight factors method.**

◦ In paragraph (a) changed “you have” to “there are”; in paragraph (d) changed “You may reduce estimated quantities” to “Estimated quantities may be reduced”. In paragraph (e) deleted the “you” in the first sentence.

• **514.270–7 Guidelines for using the price list method.**

◦ Changed “you need to make” in paragraph (a) to “making”.

◦ In paragraph (b) changed “When you use” to “using”.

◦ In paragraph (c) changed “You may develop price lists” to “Price lists may be developed”.

◦ In paragraph (d) changed “you use” to “the contracting officer uses” and changed “You may provide” to “This information may be provided”.

◦ In paragraph (e) changed “You may use prices” to “Prices may be used”.

◦ In paragraph (h) changed “If you cannot estimate the Government’s needs” to “If the Government’s needs cannot be estimated”.

◦ In paragraph (i)(6) changed “If you provide” to “If providing”.

◦ In paragraph (i)(8) deleted the sentence in its entirety and replaced with “When the solicitation further groups united prices by trade or business category, multiple percentages may be required”.

• **514.407–3 Other mistakes disclosed before award.**

◦ Deleted paragraph (b) because it is redundant with FAR 14.407–3(f).

◦ Renumbered old paragraphs (1) and (2), (a) and (b), respectively.

• **514.407–4 Mistakes after award.**

◦ Added “are required to” and changed “your” to “the contracting officer’s”.

• **552.214–70 “All or None” Offers.**

◦ Deleted the Sep 1999 date and replaced with [DATE].

◦ In subparagraph (a) deleted the first part of the sentence so it now to begins with “The government...”

◦ Deleted Alternate I in its entirety to match the proposed changes.

• **552.214–71 Progressive Awards and Monthly Quantity Allocations.**

Unchanged.

• **552.214–72 Bid Sample Requirements.**

◦ Deleted “NOTE (1)” because it is redundant.

**Discussion of Comments**

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking.

**B. Regulatory Flexibility Act**

The GSA 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 not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The GSA will consider comments from small entities concerning the affected GSAR Part 514 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008–G505), in correspondence.

**C. Paperwork Reduction Act**

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

**List of Subjects in 48 CFR Parts 514, 552, and 553**

Government procurement.

Dated: September 17, 2008

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, GSA proposes to amend 48 CFR parts 514, 552, and 553 as set forth below:

1. The authority citation for 48 CFR parts 514, 552, and 553 continues to read as follows:

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

**PART 514—SEALED BIDDING**

2. Revise section 514.201–2 to read as follows:

**514.201–2 Part I—The Schedule.**

(a) When using Standard Form 33, Solicitation, Offer and Award, include the following cautionary notice:

“Notice to Bidders—Use Item 13 of the Standard Form 33, Solicitation, Offer and Award, to offer prompt payment discounts. The Prompt Payment clause of this solicitation sets forth payment terms. Do not insert any statement in Item 13 that requires payment sooner than the time stipulated in the Prompt Payment clause (See FAR 52.232–25). EXAMPLE: If you insert “NET 20” in Item 13, GSA will reject your offer as nonresponsive because the entry contradicts the 30 day payment terms specified in the Prompt Payment clause.”

(b) When using other authorized forms (e.g., Standard Form 1447, Solicitation/Contract; Standard Form 1449, Solicitation/Contract/Order for Commercial Items), include the notice in paragraph (a) of this subsection. Change the reference to the form number, form title, and item number accordingly.

3. Revise section 514.201–6 to read as follows:

**514.201–6 Solicitation provisions.**

When considering all or none bids, insert the provision at 552.214–70, “All or None” Offers, in the solicitation.

4. Revise section 514.201–7 to read as follows:

**514.201–7 Contract clauses.**

Stock replenishment contracts. For some stock replenishment contracts, individual contractors may be unable to furnish the Government’s monthly requirements. The contracting officer may determine that progressive awards will be more expedient. In such cases, insert a clause substantially the same as the clause at 552.214–71, Progressive Awards and Monthly Quantity Allocations, in the solicitation and contract.

5. Revise section 514.202–4 to read as follows:

**514.202–4 Bid samples.**

(a) *Requirements for samples in invitations for bids.* (1) When bid samples are required, the contracting officer shall require bidders to submit samples produced by the manufacturer whose products will be supplied under the contract.

(2) The FAR limits use of bid samples to cases where the contracting officer cannot describe some characteristics of a product adequately in the specification or purchase description. This usually applies to subjective characteristics. The contracting officer may determine that there is a need to

examine objective characteristics of bid samples to determine the responsiveness of a bid. The contracting officer should base the determination on past experience or other valid considerations. In the solicitation, separately list "Subjective Characteristics" and "Objective Characteristics."

(3) A provision appears at 552.214-72, Bid Sample Requirements. This provision may be modified to fit the circumstances of a procurement.

(b) *Handling bid samples.* (1) Samples from accepted bids must be retained for the period of contract performance. If there are no outstanding claims regarding the contract, the contracting officer may authorize disposal of the samples at the end of the contract term following the bidder's instructions.

(2) If the contracting officer anticipates a claim regarding the contract, the contracting officer shall require that the bid samples be retained until the claim is resolved.

(3) The contracting officer shall require that samples from unsuccessful bids be retained until award. After award, these samples may be disposed of following the bidder's instructions.

6. Add section 514.202-5 to read as follows:

**514.202-5 Descriptive Literature.**

*Requirements for Invitations for bids.* When using brand name or equal purchase descriptions, the provision at FAR 52.211-6 satisfies the requirement for descriptive literature.

**514.203 [Removed]**

7. Remove section 514.203.

8. Amend section 514.270-2 by revising the section heading, redesignating paragraphs (a)(4) and (a)(5) as (a)(5) and (a)(6), respectively, adding new paragraph (a)(4), and revising paragraphs (b) introductory text, and (c) to read as follows::

**514.270-2 Justification for use.**

\* \* \* \* \*

(4) Awarding the low-demand articles in conjunction with the high-demand articles may encourage competition.

\* \* \* \* \*

(b) Before deciding to combine items for aggregate award, the contracting officer should consider the following factors:

\* \* \* \* \*

(c) The contracting officer should not use an aggregate award if it will significantly restrict the number of eligible bidders.

9. Revise section 514.270-3 to read as follows:

**514.270-3 Evaluation factors for award.**

The solicitation should clearly state the basis for evaluating bids for aggregate award, require bidders to submit a price on each item within the group or a percentage to be added or subtracted from a list price, and advise bidders that failure to submit prices as required within a group makes a bid ineligible for award for that group.

10. Amend section 514.270-4 by revising paragraphs (a), (b), and (d)(3)(i) to read as follows:

**514.270-4 Grouping line items for aggregate award.**

(a) *Supplies and services.* This subsection applies to acquisitions of supplies and services.

(b) *Effect on competition.* Provide for full and open competition when grouping items for award. Grouping items for award may preclude a significant number of firms from bidding. This occurs if firms are unable to provide all the types or quantities of supplies or services, or make deliveries to the various delivery points included in the prospective aggregate group.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) Grouping widespread geographic locations or delivery points may reduce competition or result in higher prices. It can cause the loss of "area pricing" advantages provided by a supplier with a single production point.

\* \* \* \* \*

11. Amend section 514.270-6 by—

- a. Revising the first sentence of paragraph (a) introductory text;
- b. Revising the first sentence of paragraph (d); and
- c. Removing from paragraph (e) the word "you".

The revised text reads as follows:

**514.270-6 Guidelines for using the weight factors method.**

(a) Use the weight factors method when there are reliable estimates for the quantities needed in an acquisition. \* \*

\* \* \* \* \*

(d) Estimated quantities may be reduced to smaller numbers by a common denominator. \* \* \*

\* \* \* \* \*

12. Amend section 514.270-7 by—

- a. Revising the first sentence in paragraph (a);
- b. Revising the introductory text of paragraphs (b) and (c);
- c. Revising paragraph (d);
- d. Revising the second sentence of paragraph (e);
- e. Revising the third sentence in paragraph (h), and paragraphs (i)(6) and (i)(8).

The revised text reads as follows:

**514.270-7 Guidelines for using the price list method.**

(a) *General.* The price list method helps avoid unbalanced bidding when making aggregate awards, but lack accurate estimates of anticipated quantities. \* \* \*

(b) *Solicitation requirements.* When using the price list method, in the solicitation:

\* \* \* \* \*

(c) *Developing list prices.* Price lists may be developed using one or more of the following sources:

\* \* \* \* \*

(d) *First time use for an item or service.* The first time the contracting officer uses list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. This information may be provided in a draft solicitation.

(e) \* \* \*. Prices may be used from previous awards made using the weight factors method to develop price lists.

\* \* \* \* \*

(h) \* \* \*. If the Government's needs cannot be estimated, the solicitation may include past orders. \* \* \*

(i) \* \* \*

(6) If providing quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

\* \* \* \* \*

(8) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

\* \* \* \* \*

13. Revise section 514.407-3 to read as follows:

**514.407-3 Other mistakes disclosed before award.**

Delegation of authority by head of the agency. Under FAR 14.407-3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make—

(a) The determinations regarding corrections and withdrawals under FAR 14.407-3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407-3(d).

14. Revise section 514.407-4 to read as follows:

**514.407-4 Mistakes after award.**

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407-4(b) and (c).

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

15. Amend section 552.214–70 by—  
a. Revising the date of the provision;  
b. Revising paragraph (a); and  
c. Removing Alternate I.  
The revised text reads as follows:

**552.214–70 “All or None” Offers.**

\* \* \* \* \*

“ALL OR NONE” OFFERS (DATE)

(a) The Government reserves the right to evaluate offers and make awards on an “all or none” basis as provided below.

\* \* \* \* \*

(End of provision)

16. Amend section 552.214–72 by—

a. Revising the date of the provision;

b. Revising the “Note”; and

c. Adding text for the Contracting

Officer’s address.

The revised and added text reads as follows:

**552.214–72 Bid Sample Requirements.**

\* \* \* \* \*

BID SAMPLE REQUIREMENTS (DATE)

\* \* \* \* \*

NOTE: Bidders that propose to furnish an item or group of items from more than one manufacturer or production point must submit two

samples from the production of each manufacturer or production point.

\* \* \* \* \*

Contracting Officer insert address.

\_\_\_\_\_

\_\_\_\_\_

(End of provision)

**PART 553—FORMS**

**553.370–3577 [Removed]**

17. Remove section 553.370–3577 [FR Doc. E8–22795 Filed 10–9–08; 8:45 am]

BILLING CODE 6820–61–S