

By Order of the Maritime Administrator.

Dated: April 6, 2009.

**Leonard Sutter,**

*Secretary, Maritime Administration.*

[FR Doc. E9-8226 Filed 4-13-09; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 528 and 552

[GSAR Amendment 2009-02; GSAR Case 2006-G517 (Change 28); Docket 2008-0007; Sequence 3]

RIN 3090-A164

### General Services Administration Acquisition Regulation; GSAR Case 2006-G517, Rewrite of GSAR Part 528, Bonds and Insurance

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

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) to update the text addressing bonds and insurance. This rule 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.

**DATES:** *Effective Date:* May 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael O. Jackson at (202) 208-4949. 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 2006-G517 (Change 28).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The General Services Administration published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910 on February 15, 2006, with request for comments on all parts of the GSAM. No comments were received on Part 528. However, internal review comments have been incorporated as appropriate.

A proposed rule for the regulatory portion of the GSAM was published in the **Federal Register** at 73 FR 45378 on August 5, 2008. The public comment period for GSAR Part 528 closed on October 6, 2008, and no comments were received.

#### The Rewrite of Part 528

This final rule contains the revisions made to Part 528, Bonds and Insurance, as a result of internal review comments. The rule revises Part 528 to address the text at GSAR 528.202, Acceptability of corporate sureties, and GSAR 528.310, Contract clause for work on a Government installation. The rule adds GSAR 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts, and GSAR 552.228-5, Government as Additional Insured, and deletes GSAR 552.228-70, Workers' Compensation Laws. The specific changes are as follows:

- The language in GSAR 528.202, Acceptability of corporate sureties is revised to change "you" to the "contracting officer."
- The change in GSAR 528.310, Contract clause for work on a Government installation deletes GSAR 528.310 paragraph (b) and GSAR 552.228-70, Workers' Compensation Laws. The clause GSAR 552.228-70 is deleted because its only purpose is to recite the fact that 40 U.S.C. 3172 effects a limited cession of jurisdiction to states with respect to enforcement of worker's compensation laws and has no contractual effect. Paragraph (b) in GSAR 528.310 is being deleted because it relates to the deletion of GSAR 552.228-70 where it states "in the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder's requirements" the phrase "the clause" refers to GSAR 552.528-70.
- GSA is adding GSAR 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts. The new language at section 528.311-1 clarifies the usage for the FAR clause 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts. The language states that other than contracts and solicitations for construction and architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause, FAR clause 52.228-7 is required.
- GSA is adding clause 552.228-5 to the GSAR. The language in this clause was previously in the GSAR and based upon GSA's experience with contracts that do not have such a clause, it is

being reinstated to protect the Federal Government's interest. In essence, the new GSAR 552.228-5 replaced the newly deleted GSAR 552.228-70. GSAR 552.228-70 (formerly GSAR 552.228-75) did not serve any purpose other than to recite the fact that 40 U.S.C. 3172 (formerly 40 U.S.C. 290) effects a limited cession of jurisdiction to states with respect to enforcement of worker's compensation laws. GSAR clause 552.228-70 had no contractual effect and was superfluous.

#### Discussion of Comments

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** at 71 FR 7910 on February 15, 2006. A proposed rule was published in the **Federal Register** at 73 FR 45378 on August 5, 2008. The comment period closed October 6, 2008, and no comments were received.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not 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.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; 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 528 and 552

Government procurement.

Dated: March 6, 2009

**Rodney P. Lantier,**

*Acting, Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

■ Therefore, GSA amends 48 CFR parts 528 and 552 as set forth below:

#### PART 528—BONDS AND INSURANCE

■ 1. The authority citation for 48 CFR part 528 is revised to read as follows:

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

■ 2. Revise section 528.202 to read as follows:

**528.202 Acceptability of corporate sureties.**

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. The contracting officer may waive failure of the surety to affix the corporate seal as a minor informality. (See B-184120, July 2, 1975, 75-2 CPD 9.)

■ 3. Revise section 528.310 to read as follows:

**528.310 Contract clause for work on a Government installation.**

Insert the clause at 552.228-5, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold; and

(b) The contract will require work to be performed on Government property.

■ 4. Add sections 528.311 and 528.311-1 to read as follows:

**528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**

**528.311-1 Contract clause.**

Use the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

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

■ 5. The authority citation for 48 CFR part 552 continues to read as follows:

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

■ 6. Add section 552.228-5 to read as follows:

**552.228-5 Government as Additional Insured.**

As prescribed in 528.310, insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (MAY 2009)

(a) This clause supplements the requirements set forth in FAR clause 52.528-5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under

this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

**552.228-70 [Removed]**

■ 7. Remove section 552.228-70.

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**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 192 and 195**

[Docket No. PHMSA-2008-0334.]

RIN 2137-AE42

**Pipeline Safety: Incorporation by Reference Update: American Petroleum Institute (API) Standards 5L and 1104**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule incorporates by reference the most recent editions of API Specification 5L "Specification for Line Pipe" and API 1104 "Welding of Pipelines and Related Facilities." The purpose of this update is to enable pipeline operators to utilize current technology, materials, and practices to help maintain a high level of safety relative to their pipeline operations. PHMSA is not eliminating the use of the current referenced standards but simply allowing the additional use of these new standards. PHMSA may in the future propose to eliminate the incorporation of the existing referenced standards.

**DATES:** *Effective Date:* This rule is effective April 14, 2009 without further action, unless adverse comment is received by June 15, 2009. If adverse comment is received, PHMSA will publish a timely withdrawal of the rule in the **Federal Register**.

*Incorporation by Reference Date:* The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 14, 2009.

**ADDRESSES:** Comments should reference DOT Docket ID Number PHMSA-2008-0334 and may be submitted by any of the following methods:

• *E-Gov Web:* <http://www.regulations.gov>. This web site allows the public to enter comments on any **Federal Register** notice issued by

any agency. Follow the online instructions for submitting comments.

• *Mail:* Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• *Hand Delivery or Courier:* DOT Docket Management System, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202-493-2251.

*Instructions:* Identify the docket ID, PHMSA 2008-0334, at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>.

**Note:** All comments received will be posted without edits to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For information about the technical standards contact Mike Israni, (202) 366-4571, or by e-mail at [mike.israni@dot.gov](mailto:mike.israni@dot.gov). For all other information contact John Gale by phone at (202) 366-4046 or by e-mail at [john.gale@dot.gov](mailto:john.gale@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This direct final rule adopts the most recent editions of two consensus technical standards, the American Petroleum Institute (API) 5L (44th edition) and API 1104 (20th edition). Through use of these consensus standards, pipeline operators will be able to use current technology, materials, and practices. The incorporation of the most recent