

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 536 and 552

[GSAR Case 2015-G508; Docket No. 2005-0013; Sequence No. 1]

RIN 3090-AJ57

**General Services Administration Acquisition Regulation
(GSAR); Removal of Unnecessary Construction Clauses and
Editorial Changes**

AGENCY: Office of Acquisition Policy, General Services
Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is
issuing a proposed rule amending the General Services
Administration Acquisition Regulation (GSAR) coverage on
Construction and Architect-Engineer Contracts, including
provisions and clauses for solicitations and resultant
contracts, to remove unnecessary regulations.

DATES: Interested parties should submit written comments
to the Regulatory Secretariat at one of the addressees
shown below on or before **[Insert 60 days after publication
in the FEDERAL REGISTER]** to be considered in the formation
of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2015-
G508 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments by searching for "GSAR Case 2015-G508". Select the link "Comment Now" that corresponds with "GSAR Case 2015-G508." Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2015-G508" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2015-G508, 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: Ms. Christina Mullins, Program Analyst, at 202-969-4066 or email at Christina.Mullins@gsa.gov, for clarification of content.

For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite GSAR Case 2015-G508.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is proposing to amend the GSAR to revise sections

of GSAR part 536, Construction and Architect-Engineer Contracts, and part 552, Solicitation Provisions and Contract Clauses, to remove unnecessary construction clauses.

The proposed rule includes the removal of one section and seven GSAR subpart 536.5 supplemental provisions and clauses that are now covered in the Federal Acquisition Regulation (FAR) or are otherwise no longer necessary for the agency.

A GSA Acquisition Manual (GSAM) rewrite initiative was undertaken by GSA to revise the GSAM starting in 2008. A proposed rule to update GSAR part 536, Construction and Architect-Engineer Contracts was initially published as GSAR Case 2008-G509 in the Federal Register at 73 FR 73199, December 2, 2008. Due to the variety of issues addressed in the GSAR 536 rewrite, and strong internal stakeholder interest, the agency re-evaluated the implementation plan for the GSAR 536 rewrite and withdrew this initial proposed rule. The initial proposed rule withdrawal was published in the Federal Register at 80 FR 6944, February 9, 2015. GSAR Case 2015-G508 is the first of several new GSAR cases to separately address the issues and update the GSAR 536 text.

II. Discussion and Analysis

The changes to the GSAM included in the proposed rule are summarized below:

- GSAR subpart 536.1, General: Revised to add language at GSAR 536.101 to clarify applicability of this part.
- GSAR 536.271, Project Labor Agreements (PLA): The coverage on project labor agreements is being removed in its entirety as Executive Order (E.O.) 13202 revoked the June 5, 1997 Presidential Memorandum entitled "Use of Project Labor Agreements for Federal Construction Projects" that provided for the original inclusion in the GSAM. In addition, later PLA guidance from E.O. 13502 was incorporated into the FAR effective May 13, 2010 under FAR Case 2009-005. The GSAR language is out of date and conflicts with FAR subpart 22.5 and clause 52.222-33. The current FAR coverage does not require further agency implementation or supplementation.
- GSAR subpart 536.5, Contract Clauses: Several prescriptions and associated clauses will be removed as listed below.
 - GSAR prescription 536.570-3, Specialist and associated clause 552.236-72. The specialist requirement is a technical detail contained in the scope of work or specifications for a

contract or task order. A regulatory clause is not warranted.

- o GSAR prescription 536.570-5, Working Hours and associated clause 552.236-74. The working hour's requirement is a technical detail contained in the scope of work or specifications for a contract or task order. Working hours are also covered in FAR subparts 22.3 and 22.4. A regulatory clause is not warranted.
- o GSAR prescription 536.570-6, Use of Premises and associated clause 552.236-75. The use of premises requirement is a technical detail contained in the scope of work or specifications for a contract or task order. A regulatory clause is not warranted.
- o GSAR prescription 536.570-7, Measurements and associated clause 552.236-76. The measurements requirement is a technical detail contained in the scope of work or specifications for a contract or task order. A regulatory clause is not warranted.
- o GSAR prescription 536.570-10, Samples and associated clause 552.236-79. Samples are a type of submittal. Submittal requirements are

contained in the scope of work or specification for a contract or task order. Submittals are also covered under FAR Subpart 42.3 and FAR clause 52.246-12. A regulatory clause is not warranted.

- o GSAR prescription 536.570-11, Heat and associated clause 552.236-80. The heat requirement is a technical detail contained in the scope of work or specifications for a contract or task order. A regulatory clause is not warranted.
- o GSAR prescription 536.570-14, Requirement for a Project Labor Agreement and associated clause 552.236-83. The GSAR language is out of date and conflicts with FAR subpart 22.5 and clause 52.222-33. The current FAR coverage does not require further agency implementation or supplementation.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

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 rule only deletes unnecessary sections and clauses and does not contain substantive changes. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The proposed rule changes will not have a significant economic impact on a substantial number of small entities. The rule changes do not place any new requirements on small entities. The section, provision and clause associated with project labor agreement is no longer a requirement based on E.O 13202 and because E.O 13502 was incorporated into FAR Subpart 22.5. The provisions and associated clauses for specialist, working hours, use of premises, measurements, samples, heat, and government use of equipment are considered technical requirements that are contained in the scope of work or specifications. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were determined that will accomplish the objectives of the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small

Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule 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 2015-G508), in correspondence.

V. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 536 and 552

Government procurement.

Dated: July 23, 2015.

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, GSA proposes to amend 48 CFR parts 536 and 552 as set forth below:

1. The authority citation for 48 CFR part 536 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. Revise section 536.101 to read as follows:

536.101 Applicability.

This part supplements FAR part 36 policies and procedures applicable to contracting for construction and architect-engineer services. Contracts for construction management services are covered by FAR part 37 and GSAM part 537. Part 536 shall take precedence when the acquisition involves construction or architect-engineer services, and when the requirement is inconsistent with another part of the GSAR.

536.271 [Removed and Reserved]

3. Remove and reserve section 536.271.

536.570-3 [Removed and Reserved]

4. Remove and reserve section 536.570-3.

536.570-5 through 536.570-7 [Removed and Reserved]

5. Remove and reserve sections 536.570-5 through 536.570-7.

536.570-10 and 536.570-11 [Removed and Reserved]

6. Remove and reserve sections 536.570-10 and 536.570-11.

536.570-14 [Removed]

7. Remove section 536.570-14.

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

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

552.236-72 [Removed and Reserved]

9. Remove and reserve section 552.236-72.

552.236-74 through 552.236-76 [Removed and Reserved]

10. Remove and reserve sections 552.236-74 through 552.236-76.

552.236-79 and 552.236-80 [Removed and Reserved]

11. Remove and reserve sections 552.236-79 and 552.236-80.

552.236-83 [Removed]

12. Remove section 552.236-83.

[BILLING CODE 6820-61]

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