

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101-70 Using part 552.

(a) *Definition.* “Clause,” as used in this subpart, means provision or clause as defined in FAR 52.101(a).

(b) *Numbering.* (1) Clauses which are “substantially” the same as FAR clauses and clauses to be used instead of FAR clauses are identified as follows:

(i) The clause has the same title as a clause in the FAR.

(ii) The number 5 precedes the clause.

(iii) The clause appears under the same subsection number and caption as in the FAR.

(2) Supplemental clauses are numbered in the same manner as the FAR, except:

(i) The chapter number precedes the clause.

(ii) The subsection numbers begin with 70.

(iii) The clauses are sequentially numbered, e.g., 552.232-70, 552.232-71, etc.

552.102 Incorporating provisions and clauses.

You may incorporate clauses prescribed in the GSAR for solicitations and contracts by reference.

552.103 Identification of provisions and clauses.

Deviations. If the GSAR prescribes a class deviation from a FAR clause, identify the clause by the GSAR citation (e.g., 552.232-8 PROMPT PAYMENT DISCOUNT (NOV 1987) (DEVIATION FAR 552.232-8)).

552.104 Procedures for modifying and completing provisions and clauses.

(a) The procedures in FAR 52.104 apply when you modify or complete a GSAR provision or clause. Provisions and clauses shall not be modified unless the GSAR authorizes their modification.

(b) You do not need to identify modifications of clauses which result from negotiations unless you issue an amendment to the solicitation.

(c) In general, you should modify FAR or GSAR clauses only for individual cases. If a contracting activity

develops a modification for repeated use, furnish a copy to the Office of GSA Acquisition Policy (MV) for potential inclusion in the GSAR.

552.105 Procedures for using alternates.

The procedures in FAR 52.105 apply to GSAR part 552.

552.107-70 Provisions and clauses prescribed in subpart 552.1.

(a) Insert the provision at 552.252-5, Authorized Deviations in Provisions, in solicitation that include any FAR or GSAR clause with an authorized deviation. You must use this provision in lieu of the FAR provision at 552.252-5.

(b) Insert the clause at 552.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation. You must use this clause in lieu of the FAR clause at 52.252-6.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses. It also cross-references the location in the GSAR that prescribes the use of each provision and clause.

552.203-5 Covenant Against Contingent Fees.

As prescribed in 502.404, insert the following clause:

CONVENANT AGAINST CONTINGENT FEES (FEB 1990)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warrant, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business,

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that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a Contractor and subject to the Contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

552.203-70 Price Adjustment for Illegal or Improper Activity.

As prescribed in 503.104-9, insert the following clause:

PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1999)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor’s subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and

argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of clause)

552.203-71 Restriction on Advertising.

As prescribed in 503.570-2, insert the following clause:

RESTRICTION ON ADVERTISING (SEP 1999)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: “This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government.”

(End of clause)

552.209-70 Product Removal from Qualified Products List.

As prescribed in 509.206-2, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (SEP 1999)

If, during the performance of this contract, the product being furnished is for any reason (except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification for security cabinets, security vault doors and changeable combination padlocks) removed from the Qualified Products List, the Government may terminate this contract for default.

(End of clause)

552.209-71 Waiver of First Article Testing and Approval Requirement.

As prescribed in 509.306, insert the following provision:

WAIVER OF FIRST ARTICLE TESTING AND APPROVAL REQUIREMENT (SEP 1999)

(a) Offerors must submit an offer including testing and approval, however, an offeror may submit an alternate offer excluding testing and approval, provided the offeror