

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 533 and 552

[GSAR 2004–G501]

RIN 3090–AH98

General Services Acquisition Regulation; Disputes and Appeals

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

ACTION: Proposed rule with request for comments.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to add a clause that supplements the Disputes clause in the Federal Acquisition Regulation (see 48 CFR Chapter 1).

DATES: Interested parties should submit comments in writing on or before September 7, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR case 2004–G501 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the GSAR Case number to submit comments.

- E-mail: [gsarcase.2004–G501@gsa.gov](mailto:gsarcase.2004-G501@gsa.gov). Include GSAR case 2004–G501 in the subject line of the message.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR case 2004–G501 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson at (202) 501–3775, or by e-mail at ernest.woodson@gsa.gov. Please cite GSAR case 2004–G501.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) Subpart 33.2 (48 CFR Subpart 33.2) implements the requirements of the Contract Disputes Act of 1978, as amended (41 U.S.C 601–613)(the Act), which establishes procedures and requirements for asserting and resolving claims subject to the Act. It is the Government's policy to resolve all contractual issues in controversy by mutual agreement at the contracting officer level. The Act provides for Agencies Boards of Contract Appeals (Boards) and the United States Court of Federal Claims (Court) to resolve appeals of a contracting officer's decision. However, the Boards and Court do not have authority to interpret tariffs or tariff related matters established through public hearings in each jurisdiction for regulated utilities. The authority pertaining to these matters lie with state public utility commissions.

As a means to resolve disputes that evolve from a contracting officer's decision, FAR 33.215 requires that the FAR clause at 52.233–1, Disputes, be inserted in all solicitations and contracts except those with a foreign government or agency of that government, or an international organization or subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest. GSA's Public Building Service awards contracts for public utility services. From time-to-time, disputes may arise from those contracts that involve tariffs and tariff related matters. This proposed rule would provide for a supplement to the FAR clause at 52.233–1, Disputes, allowing for such disputes to be subject to the jurisdiction and regulation of the utility rate commission having jurisdiction. This proposed rule also would provide GSA contracting officers and contractors, acting under a utility service contract, with specific guidance regarding the resolution of disputes involving tariffs and tariff related matters.

This rule 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 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 majority of small entities that are in the industry were established as a result of deregulation and are not subject to the utility rate commissions. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 533 and 552 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 2004–G501), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAR does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 533 and 552

Government procurement.

Dated: June 28, 2004

David A. Drabkin,

Deputy Chief Acquisition Officer, Office of Chief Acquisition Officer.

Therefore, GSA proposes amending 48 CFR parts 533 and 552 as set forth below:

1. The authority citation for 48 CFR parts 533 and 552 continues to read as follows:

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

PART 533—PROTESTS, DISPUTES, AND APPEALS

2. Add section 533.215 to read as follows:

533.215 Contract clause.

Insert the clause at 52.233–71, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 552.233–71 to read as follows:

552.233–71 Disputes (utility contracts).

As prescribed in 533.215, insert the following clause:
DISPUTES (UTILITY CONTRACTS) (DATE)

The requirements of the Disputes clause at Federal Acquisition Regulation (FAR)

52.233-1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract

are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)
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