

further delay prior coordination for the mix of signals needed to effect transition to DTV pending the development of more detailed criteria.

Ordering Clauses

8. Pursuant to sections 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and 1.429 (k) of the Commission's rules, 47 CFR 1.429 (k), that the Society of Broadcast Engineers' Request for Temporary Stay of the rules *is granted*, suspending effect of these rules until October 16, 2003.

Federal Communications Commission.

Geraldine Matise,

*Deputy Chief, Policy and Rules Division,
Office of Engineering and Technology.*

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 538, and 552

[GSAR Amendment 2003-02; GSAR Case No. 2002-G507]

RIN 3090-AH79

General Services Administration Acquisition Regulation; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to give GSA's Federal Supply Service (FSS) the unilateral right to change the percentage rate of the Industrial Funding Fee (IFF) in Multiple Award Schedule (MAS) contracts. The final rule also modifies and consolidates provisions of two existing GSA clauses that implement collection of the IFF by FSS on sales from all Federal Supply Schedule contracts. These clauses are Industrial Funding Fee and Contractor's Report of Sales. They have been consolidated into a single clause, Industrial Funding Fee and Sales Reporting. This new clause eliminates duplicative information from the preceding clauses, clarifies sales reporting procedures, and describes the procedures FSS will utilize to unilaterally effect future IFF rate changes.

Additionally, while the GSAR does not specify the percentage rate of the IFF, GSA's Federal Supply Service

intends to lower the current IFF rate from 1.0 percent to 0.75 percent of reported sales, effective January 1, 2004. The final rule gives GSA's Federal Supply Service the authority to change the IFF after consulting with OMB prior to effecting any future changes.

The January 1, 2004, change will be implemented by means of a bilateral contract modification to be executed electronically. As consideration to Federal Supply Schedule contractors for any potential costs incurred as the direct result of this change, FSS will allow these vendors to continue to include the 1 percent IFF in their contract prices until December 31, 2003, but to forward to FSS an IFF of 0.75 percent for reported sales for the period of October 1, 2003, through December 31, 2003. Examples of the type of costs GSA anticipates contractors could incur include updating published prices and modifying accounting systems.

DATES: *Effective Date:* July 11, 2003.

Applicability Date: Solicitations issued and contracts awarded after July 1, 2003, shall comply with this change. Existing FSS contracts shall be modified by December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4225, for information pertaining to status or publication schedules. For clarification of content, contact Vonda J. Sines, Procurement Analyst, at (703) 305-7542, or Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite GSAR Amendment 2003-02, GSAR case 2002-G507. The TTY Federal Relay Number for further information is 1-800-877-8973.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration published a proposed rule in the **Federal Register** at 68 FR 13212, March 18, 2003, with request for comments. Comments were received from 11 respondents, representing individual vendors as well as associations. GSA considered all comments and concluded that the proposed rule should be converted to a final rule with certain changes. Accordingly, the final rule:

1. Revises the clause at 552.238-74(a)(3) to make clear that reportable sales do not include those made under FAR Part 14 or non-FAR contracts, but do include sales to states and localities under Cooperative Purchasing authority.
2. Makes minor restructuring and editorial changes to the clause at 552.238-74 to provide a clearer intent of the clause language.

3. Adds the words "and Sales Reporting" to the clause at 552.215-71, Examination of Records by GSA (Multiple Award Schedules).

B. Summary and Discussion of Significant Public Comments

1. *IFF not currently included.* Five Schedule contractors indicated that they did not realize the IFF was intended to be passed on to their customers.

Response: GSA intends that the IFF cost be borne by the customer and merely collected and remitted by Schedule contractors. All current Multiple Award Schedule (MAS) contracts contain the clause at 552.238-76, Industrial Funding Fee. This clause requires that the IFF be included in the award price(s) and reflected in the total amount charged to ordering activities. GSA is consolidating and streamlining the current Industrial Funding Fee and Contractor's Report of Sales clauses to make doing business with the agency easier for Schedule contractors.

2. *Covered sales.* Three respondents stated that a sale should be subject to the IFF only if the order references the vendor's GSA Schedule or both the vendor and the purchasing agency agree that the purchase is being made under the vendor's MAS contract. They further commented that GSA should not require a vendor to provide the burden of proof that a sale was made outside the Schedule.

Response: Under current policy, GSA will consider the totality of the circumstances in determining if a sale is subject to the IFF. The final rule does not alter this policy, but recognizes various circumstances under which a sale would not be subject to the IFF (e.g., contracts awarded under FAR parts 12, 13, 14, or 15, or a non-FAR contract). This clarification is designed to help ensure that sales conducted outside the authority of the Schedules program are not made subject to the IFF, even if the product or service being purchased is also available on a Schedule contract.

Since vendors always have the ability to make sales outside the Schedule, they need to establish with their customers at the time of order placement whether a sale is being conducted under or outside the Schedule. This distinction is important, since FSS, as a fee-for-service operation, must rely on the fees generated from Schedule sales to cover expenses associated with the MAS program.

3. *Consideration.* Five comments suggested that the costs of reprinting price lists/catalogs or of maintaining separate price lists are substantially greater than the consideration offered,

or that some unrecoverable vendor costs might not have been identified by GSA. Two respondents made suggestions regarding consideration to contractors for future IFF changes.

Response: The consideration GSA offered takes into account the types of costs that GSA believes vendors, especially small businesses, would reasonably be expected to encounter. In an effort to minimize contractor costs associated with this action, the final rule requires only that vendors update catalogs or price lists; vendors need not reprint them. Contractors may utilize stickers to announce price changes until their supply of catalogs is exhausted. With respect to future consideration, GSA will make this determination based on the totality of circumstances of any future IFF change.

4. *Implementation schedule.* Two comments suggested that GSA consider delaying the rule to permit further evaluation of a more reasonable implementation schedule or revise the proposed implementation schedule.

Response: GSA believes the final implementation schedule is reasonable given the underlying policy objectives of the program and based on informal dialogue with industry during the development of the rule. Industry will have been on notice of the coming change nearly 9 months before the changes take effect. To reduce disruption, the selected implementation schedule coincides with the beginning of a sales quarter.

5. *Advance notice.* Four respondents requested that Schedule contractors be notified a specified number of months (e.g., 9 months) in advance of a change to the IFF.

Response: GSA believes that the imposition of a mandatory minimum wait period would place an inappropriate constraint on its ability to effectively manage the schedules program. However, GSA appreciates vendors' need for sufficient notice of IFF rate changes and intends to provide notice as far in advance as is practicable under the circumstances surrounding any future changes to the IFF.

6. *Affected sales.* Four respondents stated that the rule should (1) clarify that the change would be effective only on new sales after January 1, 2004, and (2) explain how delivery and task orders with extended delivery periods will be treated.

Response: As stated in this *Federal Register* notice, the IFF rate change applies to sales made on or after January 1, 2004. With respect to purchase orders with extended delivery and task orders with extended delivery/performance periods, contractors will be expected to

remit 0.75 percent (rather than 1.0 percent) upon the effective date of the IFF rate change. However, prices in that order will stay the same through the remainder of performance. Orders may be renegotiated at the option of the applicable buying agency and the contractor. For example, a firm-fixed-price order placed on August 1, 2003, with a period of performance through July 31, 2004, would not need to be renegotiated during the order period, but the contractor would report and remit IFF at the reduced 0.75 percent rate beginning on January 1, 2004.

Under certain circumstances, vendors will be expected to renegotiate Blanket Purchase Agreements (BPAs) with their customers in order to pass along a price reduction to the customer when the IFF is reduced. For example, if BPA pricing at award had been set at \$100 per unit, it will have to be renegotiated. On the other hand, if the pricing had been discounted to be 10 percent below prices in the applicable MAS contract, there would be no need to renegotiate the BPA.

7. *Special pricing arrangements.* Two comments stated that the draft rule is not explicit enough on the subject of existing leases, leasebacks, and other contractual pricing conditions and could lead to future questions and possible misinterpretations involving the proper IFF collection and remittance on October 1.

Response: All leases established on or before December 31, 2003, will not have to be renegotiated. Renegotiation may occur at the option of the applicable buying agency and the contractor. Contractors will start remitting 0.75 percent vs. 1 percent IFF as of January 1, 2004. All new leases awarded on or after January 1, 2004, must contain the 0.75 percent IFF rate.

8. *Voluntary pass-through reduction.* One contractor suggested that GSA permit vendors, at their option, to continue charging the 1 percent IFF until the next negotiation for a price increase (or decrease), even though contractors would be remitting IFF to GSA at the reduced 0.75 percent rate.

Response: Reducing the IFF collected from vendors without requiring a corresponding reduction in the price charged to customers does not meet GSA's objective of helping customers meet mission needs at less expense to the taxpayer.

9. *Requiring IFF in contract prices.* One respondent stated that while GSA has the unilateral right to revise the IFF, it does not have the unilateral right to require contractors to modify their contracts to reflect any IFF that GSA might choose to establish.

Response: By executing the bilateral modification resulting from the rule, a contractor will agree to GSA's Federal Supply Service having the unilateral right to require that the contract contain prices that include the current IFF. To successfully manage the Schedules program, FSS needs to have the ability to manage its revenue and needs to retain this unilateral right. Upon implementation of any rate change, contractor prices will not move upward or downward; the published contract prices will change only according to the portion that is IFF.

10. *Web site content.* One comment suggested that in addition to utilizing an agency website to publish the current IFF, GSA should use all other available means to publish the rate and should maintain additional, historic IFF data on the website.

Response: The agency website will continuously post the current IFF rate, and the site's content will be periodically reviewed. FSS values its partnership with industry and related associations and will continue to work with them to take every practicable step to widely publicize any future changes.

11. *Transitioning electronic vendor registration.* One respondent recommended that FSS develop a transition plan to phase out the registration requirements under its Vendor Support system and develop a mechanism linked to Central Contractor Registration (CCR).

Response: While this comment does not pertain to the rule-making process, FSS appreciates the suggestion and will consider it in the future.

12. *Designated official.* One comment cited the inconsistency in wording within the clause and in the explanatory material in the draft rule regarding the official designated the authority to change the IFF rate. The respondent recommended more uniform language.

Response: Wherever possible in the clause and in other parts of the final rule, wording has been changed to use "GSA's Federal Supply Service" or "FSS," as appropriate, as the authority for purposes of consistency.

13. *Clarifying clause wording.* One comment suggested deleting "statutorily-based" from paragraph (b)(2) of the clause at 552.238-74, stating that the wording is confusing, unnecessary, and creates the impression that the IFF amount is set by statute.

Response: This language has been deleted from the clause.

C. Executive Order 12866

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.

D. 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 purpose of the rule is to assign to GSA the sole discretion to set the rate of the IFF and to clarify for contractors how to handle changes in the IFF. The rule also modifies and consolidates the provisions of two existing GSAR clauses in terms of sales reporting and procedures changes when the IFF rate changes. While some 78 percent of the Federal Supply Schedule contracts represent small business concerns, all contractors holding Federal Supply Schedules are already required to report quarterly sales and to periodically submit the Industrial Funding Fee to FSS. The final rule does not change these two requirements. It does require both small and large businesses to execute appropriate bilateral contract modifications and to make changes to published prices and accounting systems. GSA will mitigate the anticipated cost to contractors for these changes by offering consideration based on reported sales for the period of October 1, 2003, through December 31, 2003.

E. Paperwork Reduction Act

Prior clause 552.238-74, Contractor's Report of Sales, contained an information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that was previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and assigned control number 3090-0121. Prior clause 552.238-76, Industrial Funding Fee, also contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). However, the estimated burden for this clause has been determined to be zero, and GSA has a blanket approval under control number 3090-0250 from OMB for information collections with a zero burden estimate.

The consolidation of information from these two clauses into a single clause results in no additional burden and, therefore, no additional approval from OMB is required.

List of Subjects in 48 CFR Parts 501, 538, and 552

Government procurement.

Dated: July 7, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

■ Therefore, GSA amends 48 CFR parts 501, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 538, and 552 continues to read as follows:

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

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501-106 [Amended]

■ 2. Amend section 501.106 at GSAR reference 552.238-74 by removing the OMB Control Number "3090-0121" and adding "3090-0121 & 3090-0250" in its place.

■ 3. Amend section 538.273 by revising paragraph (b)(1); and by removing paragraph (b)(3). The revised text reads as follows:

538.273 Contract clauses.

* * * * *

(b) * * *

(1) 552.238-74, Industrial Funding Fee and Sales Reporting.

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 552.212-71 by revising the date of the clause; and in paragraph (b) by revising entry 552.238-74 to read as follows:

552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

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Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (July 2003)

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(b) *Clauses.*

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552.238-74 Industrial Funding Fee and Sales Reporting

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552.212-72 [Amended]

■ 5. Amend section 552.212-72 by revising the date of the clause to read "(July 2003)"; and by removing from the end of paragraph (b) "552.238-76 Industrial Funding Fee".

552.215-71 [Amended]

■ 6. Amend section 552.215-71 by revising the date of the clause to read "(JULY 2003)"; and in the first sentence

of the clause by adding "and Sales Reporting" after the word "Fee".

■ 7. Revise section 552.238-74 to read as follows:

552.238-74 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(b)(1), insert the following clause:

Industrial Funding Fee and Sales Reporting (July 2003)

(a) *Reporting of Federal Supply Schedule Sales.* The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Contract sales shall be reported to FSS within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including "zero" sales, by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA)'s Federal Supply Service (FSS). Prior to using this automated system, the Contractor shall complete contract registration with the FSS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial

Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: <http://www.fms.treas.gov/intn.html>.

(b) The Contractor shall remit the IFF at the rate set by GSA's FSS.

(1) The Contractor shall remit the IFF to FSS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FSS. GSA's FSS has the unilateral right to change the percentage at any time, but not more than once per year. FSS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FSS for the costs of operating the Federal Supply Schedules

Program and recoups its operating costs from ordering activities. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FSS will post notice of the current IFF at <http://72a.fss.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FSS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FSS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the

Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

552.238-76 [Reserved]

■ 8. Remove and reserve section 552.238-76.

552.238-79 [Amended]

■ 9. Amend section 552.238-79 by revising the date of the clause to read "(July 2003)"; and in the first sentence of paragraph (c) of the clause by removing "Contractor's Report of Sales" and adding "Industrial Funding Fee and Sales Reporting" in its place.

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