

GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[Amendment 2004–03; GSAR Case 2002–G504; Change 11]

RIN 3090–AH01

General Services Administration Acquisition Regulation; Acquisition of Leasehold Interests in Real Property; Historic Preference

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising the provision on Historic Preference.

DATES: *Effective Date:* September 16, 2004.

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 Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite Amendment 2004–03; GSAR case 2002–G504.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is amending the GSAR by revising the provision on Historic Preference. Executive Order (E.O.) 13006, dated May 21, 1996, requires that the Federal Government utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts in order to help revitalize the nation's central cities. The E.O. requires that, subject to the requirements of the Rural Development Act and E.O. 12072, when locating Federal facilities, Federal agencies give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies must consider other developed or undeveloped sites within historic districts. Federal agencies must then consider historic properties outside historic districts, if no suitable site within a district exists. Based on the requirements of E.O. 13006, the GSAR provision has been revised to establish a hierarchy of consideration that is facilitated by giving a price evaluation preference to offers of space falling within the hierarchy.

A proposed rule implementing a historic preference provision for leasehold interests in real property was published in the **Federal Register** for comments at 64 FR 35122, June 30, 1999. GSA received comments, and the proposed rule was revised. The comments received by GSA and the changes made to the historic preference provision are summarized as follows: The Advisory Council on Historic Preservation recommended that the definitions of historic property and historic district be made consistent with other existing regulations and statutory definitions and that the hierarchical preferences be stated more clearly. The proposed historic preference provision has been revised to incorporate appropriate definitions from the National Historic Preservation Act and implementing regulations in Title 36 of the Code of Federal Regulations, and to clarify how the historic preference will be applied. GSA also considered whether the price preference for non-historic developed and undeveloped sites within historic districts should be less than the price preference for historic properties within and outside of historic districts. GSA believed that this would more appropriately reflect the relatively higher cost of rehabilitating, altering, and maintaining existing historic buildings as opposed to constructing and maintaining new buildings or altering existing non-historic buildings within an historic district. Accordingly, the historic preference provision has been revised to provide that historic properties within and outside of historic districts may be eligible for a 10 percent price preference; non-historic developed and undeveloped sites within historic districts may be eligible for a 2.5 percent price preference. Finally, the provision has been revised to state that the Government will compute the price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in the historic preference provision. Because numerous changes were made to the proposed historic preference provision, GSA published a second proposed rule in the **Federal Register** at 66 FR 53193, October 19, 2001. No further 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 this rule implements an existing Executive order and does not impose any new requirements. This rule requires the Federal Government to utilize and maintain historic properties and districts, wherever possible, to aid in the revitalization of the nation's central cities and establishes a price evaluation preference and order preference for properties in these specific areas.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C.3501, *et seq.*

List of Subjects in 48 CFR Part 552

Government procurement.

Dated: September 8, 2004.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer.

■ Therefore, GSA amends 48 CFR part 552 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

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

■ 2. Revise section 552.270–2 to read as follows:

552.270–2 Historic Preference.

As prescribed in 570.602, insert the following provision:

Historic Preference (SEPT. 2004)

(a) The Government will give preference to offers of space in historic properties following this hierarchy of consideration:

- (1) Historic properties within historic districts.
- (2) Non-historic developed and non-historic undeveloped sites within historic districts.
- (3) Historic properties outside of historic districts.

(b) *Definitions.* (1) *Determination of eligibility* means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation

although the property is not formally listed in the National Register (36 CFR 60.3(c)).

(2) *Historic district* means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history (36 CFR 60.3(d)). The historic district must be included in or be determined eligible for inclusion in the National Register of Historic Places.

(3) *Historic property* means any pre-historic or historic district, site, building, structure, or object included in or been determined eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior (36 CFR 800.16(l)).

(4) *National Register of Historic Places* means the National Register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture that the Secretary of the Interior is authorized to expand and maintain under the National Historic Preservation Act (36 CFR 60.1).

(c) The offer of space must meet the terms and conditions of this solicitation. The Contracting Officer has discretion to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of an historic building, such as high ceilings and wooden floors, or to maintain the integrity of an historic district, such as setbacks, floor-to-ceiling heights, and location and appearance of parking.

(d) When award will be based on the lowest price technically acceptable source selection process, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(e) When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference, based on the total annual square foot (ANSI/BOMA Office Area) cost to the Government, to historic properties as follows:

(1) First to suitable historic properties within historic districts, a 10 percent price preference.

(2) If no suitable historic property within a historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(3) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(4) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

(f) The Government will compute price evaluation preferences by reducing the price(s) of the offerors qualifying for a price evaluation preference by the applicable percentage provided in this provision. The price evaluation preference will be used for price evaluation purposes only. The Government will award a contract in the amount of the actual price(s) proposed by the successful offeror and accepted by the Government.

(g) To qualify for a price evaluation preference, offerors must provide satisfactory documentation in their offer that their property qualifies as one of the following:

(1) An historic property within an historic district.

(2) A non-historic developed or undeveloped site within an historic district.

(3) An historic property outside of an historic district.

(End of provision)

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