

firmware), software, supplies, support equipment, and services.

**DATES:** *Effective Date:* May 7, 2003.

*Applicability Date:* This amendment applies to solicitations and existing contracts for Schedule 70, Information Technology (IT), and the Corporate Schedule, containing Information Technology (IT) Special Item Numbers SINs, as defined in GSAM 538.7001, Definitions, Schedule 70. Further, this amendment applies to contracts awarded after the effective date of this rule for Schedule 70 and Corporate Schedule contracts containing IT SINs. Existing Schedule 70 contracts and Corporate Schedule contracts containing IT SINs, shall be modified by mutual agreement of both parties.

*Comment Date:* Interested parties should submit comments to the Regulatory Secretariat at the address shown below on or before July 7, 2003 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to—General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to—*gsarcase.2002-505@gsa.gov*. Please submit comments only and cite GSAR case 2002–G505, in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite GSAR case 2002–G505. The TTY Federal Relay Number for further information is 1–800–877–8973.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

This interim rule amends GSAM Parts 511, 516, 532, 538 and 552 to implement Section 211 of the E-Government Act of 2002. Section 211 of the E-Government Act of 2002 (Pub. L. 107–347) amended the Federal Property and Administrative Services Act to allow for “cooperative purchasing,” where the Administrator of GSA provides States and localities access to certain items offered through GSA’s supply schedules. Section 211 amends 40 U.S.C. 502 by adding a new subsection “(c)” that allows, to the extent authorized by the Administrator, a State or local government to use Federal Supply Schedules of the General Services Administration to purchase automated data processing

equipment (ADPE) (including firmware), software, supplies, support equipment, and services. “State or local government” includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education). Eligible ordering activities (as defined in 552.238–78(b), Scope of Contract (Eligible Ordering Activities)) are encouraged, but not required, to use the ordering procedures outlined in Federal Acquisition Regulation Subpart 8.4 (48 CFR Chapter 1, Subpart 8.4).

GSA published a proposed rule in the **Federal Register** at 68 FR 3220, January 23, 2003. GSA concluded that the proposed rule should be converted to an interim rule, with substantive changes. The interim rule modifies the proposed rule to—

- Incorporate schedule 70 information technology (IT) special item numbers (SINs) that are included in IT “corporate” schedule contracts;
- Delete the language regarding dealer sales and their impact on the price reduction clause from the clause at 552.232–83, Contractor’s Billing Responsibilities;
- Permit authorized state and local governments to add terms and conditions as part of the statement of work (SOW) or statement of objectives (SOO) required by the state or local government statutes, ordinances, regulations or orders to the extent that they do not conflict with the schedule contract terms and conditions; and
- Revise the disputes language in the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Entities—Cooperative Purchasing, to encourage the use of Alternative Dispute Resolution to the extent authorized by law.

##### *B. Summary and Discussion of Significant Comments*

Twenty-four respondents submitted public comments during the comment period. These comments were considered in the formulation of the interim rule and their disposition is summarized as follows:

###### *1. Scope of Rule*

a. Several respondents addressed whether Information Technology (IT) available on the GSA corporate schedule will be available for State or local use.

*Response:* Yes. However, only the Corporate Schedule contracts containing IT Special Item Numbers (SINs), will be available for State or local use.

b. One respondent objected to the inclusion of Architect and Engineering services in the schedules program as

violating both the Brooks Architect and Engineering Act and most state statutes.

*Response:* Neither the proposed rule, nor the interim rule, add Architect and Engineering services to the schedules program. Neither the Brooks Architect and Engineering Act, nor the state statutes identified in the respondent’s comments, apply to the information technology hardware, software or services provided by Schedule 70 or the information technology corporate Schedule contracts containing IT SINs.

c. Several contractors responding to the rule expressed interest in participating in this program; however, the products and services they offer do not fall within the scope of the products and services offered under Schedule 70 or the Corporate Schedule, containing IT SINs, or they have IT services on another Federal Supply Schedule in support of other Federal supply classes not covered by this rule.

*Response:* Cooperative purchasing may only be conducted pursuant to statutory authorization. Section 211 of the e-Government Act of 2002 authorizes GSA to provide State and local government entities access to information technology products, services, and support equipment. Section 211 does not grant authority to GSA to broaden the scope of this rule to include products and services other than those specifically authorized by that Section. However, to the extent any business offers a product or service that falls within the scope of the rule, that entity may seek to sell their product or service to the Federal Government, states, and localities, by negotiating a schedule contract under Schedule 70 or the Corporate Schedule, containing IT SINs.

d. One respondent expressed concern with allowing dealers to sell to State and local governments.

*Response:* Disagree. State and local government entities should be able to access the same distribution network for goods and services as all other authorized users of the GSA Schedules.

e. One respondent raised concerns about extending cooperative purchasing to commodities other than IT.

*Response:* The statute and this regulation limit application of cooperative purchasing to IT products, services, and support equipment.

###### *2. Ordering*

a. One respondent inquired as to whether State and local entities will be allowed to: place orders through existing BPAs; establish BPAs; and place orders against future BPAs.

*Response:* State and local entities will not be allowed to place orders through