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Parent topic: General Services Administration Acquisition Manual

538.000 Scope of part.

(a)This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule (FSS) program. GSA may delegate certain responsibilities for other agency acquisition programs as they relate to the establishment of individual federal supply schedules.

(b)The authority of other agencies to award FSS contracts can only be accomplished through delegation from GSA. An agency delegated authority by GSA to award contracts under the FSS program is responsible for complying with GSA regulations and policies that apply to the FSS program, unless an exception is approved by GSA (see 538.001).

538.001 General.

If a policy, regulation, or clause is identified as not applicable or in conflict to what is delegated by GSA, the delegated agency shall submit a determination and finding supporting the rationale as to why it does not apply, or is in conflict, in accordance with the delegation that was already received from GSA. The determination and finding must be approved by the GSA Senior Procurement Executive, the Commissioner of the Federal Acquisition Service (FAS) or a designee.

Subpart 538.2 - Establishing and Administering Federal Supply Schedules

538.201 Coordination requirements.

GSA will coordinate with other agencies who administer FSS contracts specific to their delegated authority (i.e., the Department of Veterans Affairs). Coordination will ensure adherence to policies and procedures at the program level, such as providing guidance on approved exceptions (see 538.001).

538.270 Solicitation, evaluation, and award of Federal Supply Schedule (FSS) contracts.

538.270-1 Evaluation of offers without access to transactional data.

(a) *Applicability*. Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is included in the solicitation (see 515.408).

(b) When offerors have commercial catalogs, negotiate concessions from established catalogs, including price and non-price terms and conditions.

(c) The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(d) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(e) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

(1) Aggregate volume of anticipated purchases.

(2) The purchase of a minimum quantity or a pattern of historic purchases.

(3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.

(4) Length of the contract period.

(5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices

(6) Ordering and delivery practices.

(7) Any other relevant information, including differences between the MAS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an offeror may incur more expense selling to the Government than to the customer who receives the offeror's best price, or the

customer (*e.g.*, dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(f) You may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

(2) Award is otherwise in the best interest of the Government.

(g) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) upon which the award is based.

538.270-2 Evaluation of offers with access to transactional data.

(a) *Applicability.* Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is not included in the solicitation (see 515.408).

(b) Contracting Officers shall utilize the techniques in FAR 15.404 when evaluating pricing for MAS offers.

(c) Order of preference. When evaluating MAS offers and establishing negotiation objectives, Contracting Officers shall–

(1) Use the following data that is already readily available in accordance with FAR 15.404-1(b)(2)(ii):

(i) Prices paid information on contracts for the same or similar items.

(ii) Contract-level prices on other MAS contracts or other government-wide contracts for the same or similar items.

(iii) Commercial data sources that consolidate and normalize prices offered by commercial vendors to the general public to compare prices for the same or similar items.

(2) If the Contracting Officer cannot determine the prices offered to be fair and reasonable based on the data described in 538.270-2(c)(1), perform market research to compare prices for the same or similar items in accordance with FAR 15.404-1(b)(2)(vi).

(3) If the Contracting Officer cannot determine the prices offered to be fair and reasonable based on the data described in 538.270-2(c)(1) or (2), perform an analysis of data other than certified cost or pricing data (as defined at FAR 2.101) provided by the offeror in accordance with FAR 15.404-1(b)(2)(vii).

538.270-3 Use of clause fill-in information.

(a) *General.* The fill-in information required by GSAR 538.273(e) outlines the timeframe that orders must be completed and provides for—

(1)The exercise of task and delivery order options after the FSS contract ordering period, if those options were evaluated as part of the initial award and the order is completed within the timeframe outlined in 538.273(e);

(2) The FSS contract to remain an active contract until the final order is closed out; and

(3)The FSS contract to govern the terms and conditions with respect to active task and delivery orders (e.g., price adjustments) to the same extent as if the orders were completed during the FSS contract ordering period.

(b) *Continuity of services*. The fill-in information prescribed in 538.273(e) does not preclude use of FAR clause 52.217-8 by ordering activities. However, the clause may only be used if the extension does not extend the cumulative term of the task order beyond the timeframe outlined in 538.273(e).

538.270-4 Use of economic price adjustments in FSS contracts.

The use of economic price adjustment (EPA) in FSS contracts helps ensure the Government is able to receive products, services, and solutions at fair and reasonable pricing throughout contract performance. EPAs provide for the increase or decrease of contract pricing based upon the occurrence of specified conditions described in the EPA method, such as market index changes or unforeseeable significant changes in market conditions.

(a) *Types of economic price adjustment*. The FSS program provides the following types of EPA:

(1) Adjustments based on fixed escalation rates (*e.g*, a fixed annual escalation rate).

(2) Adjustments based on a market index or other basis (*e.g.*, U.S. Bureau of Labor Statistics' Employment Cost Index).

(3) Adjustments based on established pricing (e.g., a contractor’s commercial price list, commercial catalog, or other standard market pricing).

(4) Adjustments based on unforeseeable significant changes in market conditions.

(b) *Exceptions*. The following types of price adjustments are not EPAs:

(1) Adjustments based on statute, Executive Order, or regulation (*e.g.*, Service Contract Labor Standards (41 U.S.C. chapter 67) and AbilityOne procurements (FAR subpart 8.7)).

(2) Adjustments based on a change clause (e.g., paragraph (c) of 552.212-4).

(3) Price reductions based on 552.238-81, Price Reduction.

(4) Adjustments based on 552.238-117, Price Adjustment-Failure to Provide Accurate Information.

(5) Adjustments based on a contract clause that authorizes an adjustment based on specified actions

or conditions.

(c) *General requirements*.

(1) The solicitation owner may establish EPA solicitation instructions and requirements (e.g., establish a ceiling percentage for a specified category).

(2) The FSS contracting officer is responsible for—

(i) Evaluating the proposed EPA method;

(ii) Incorporating the agreed-upon EPA method into the resultant contract; and

(iii) Processing EPA requests in accordance with 552.238-120 and FAS policy.

538.271 FSS contract awards.

(a) FSS awards will be for commercial products and commercial services. Negotiate contracts as a discount from established catalog prices.

(b) Before awarding any FSS awards determine that the offered prices are fair and reasonable (see FAR Subpart 15.4 and 538.270). Document the negotiation and your determination using FAR 15.406-3 as guidance.

538.272 MAS price reductions.

(a) *Applicability*. This section applies when the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting.

(b) The basic clause and Alternate I of 552.238-81, Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities and the offeror's customer or category of customers on which the contract award was predicated (see 538.271). If a change occurs in the contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the eligible ordering activities and this customer or category of customers, the change constitutes a "price reduction."

(c) Ensure that the contractor understands the requirements of section 552.238-81 and agrees to report all price reductions to the Contracting Officer as provided for in the clause.

538.273 FSS solicitation provisions and contract clauses.

The following clauses and provisions apply to FSS solicitations and contracts, unless otherwise excepted (see 538.001) or as otherwise stated below. For example, if only used in solicitations, the prescription will clearly state this. If the language does not specify "solicitations" then the clause applies to both FSS solicitations and contracts.

(a) Insert the following provisions in FSS solicitations:

(1) 552.238-70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations.

(2) 552.238-71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238-72, Information Collection Requirements. Use in all FSS solicitations.

(4) 552.238-118, Single-use Plastic Free Packaging Identification.

(b) Insert the following clauses and provisions in FSS solicitations and contracts] as an addendum to FAR 52.212-1, Instructions to Offerors - Commercial Products and Commercial Services:

(1) 552.238-73, Identification of Electronic Office Equipment Providing Accessibility for Individuals with Disabilities. Use only in FSS solicitations for electronic office equipment.

(2) 552.238-74, Introduction of New Supplies and Services Special Item Number (SIN). Only for those solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) Insert the following provisions in FSS solicitations as an addendum to FAR 52.212-2, Evaluation—Commercial Products and Commercial Services:

(1) 552.238-75, Evaluation – Commercial Products and Commercial Services (Federal Supply Schedules). Use in FSS standing solicitations.

(2) 552.238-76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) Insert the following clauses in FSS solicitations and contracts as an addendum to FAR Clause 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services:

(1) 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule Price Lists.

(2) 552.238-78, Identification of Products that have Environmental Attributes. Use only in solicitations and contracts that contemplate products with environmental attributes.

(3) 552.238-79, Cancellation.

(4) 552.238-80, Industrial Funding Fee and Sales Reporting. Use Alternate I for FSS with Transactional Data Reporting requirements. Clause 552.238-81 Alternate I should also be used when vendors agree to include clause 552.238-80 Alternate I in the contract.

(5) 552.238-81, Price Reductions. Use Alternate I for FSS with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.

(6) 552.238-82, Modifications (Federal Supply Schedules).

(i) Use Alternate I for FSS that only accept eMod.

(ii) Use Alternate II for FSS with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.

(7) 552.238-83, Examination of Records by GSA (Federal Supply Schedules).

(8) 552.238-84, Discounts for Prompt Payment.

(9) 552.238-85, Contractor's Billing Responsibilities.

(10) 552.238-86, Delivery Schedule. Use only for supplies.

(11) 552.238-87, Delivery Prices.

(12) 552.238-88, GSA Advantage!®. This clause is not required for the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238-89, Deliveries to the U.S. Postal Service. Use only for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238-90, Characteristics of Electric Current. Use only when the supply of equipment which uses electrical current is contemplated.

(15) 552.238-91, Marking and Documentation Requirements for Shipping. Use only for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238-92, Vendor Managed Inventory (VMI) Program. Use only for supplies when a VMI Program is contemplated.

(17) 552.238-93, Order Acknowledgement. Use only for supplies.

(18) 552.238-94, Accelerated Delivery Requirements. Use only for supplies.

(19) 552.238-95, Separate Charge for Performance Oriented Packaging (POP). Use only for products defined as hazardous under Federal Standard No. 313.

(20) 552.238-96, Separate Charge for Delivery within Consignee's Premises. Use only for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238-97, Parts and Service.

(22) 552.238-98, Clauses for Overseas Coverage. Use only when overseas acquisition is contemplated. Choose the most appropriate clause(s) to the contract scenario. For example there are multiple free on board (F.o.b.) clauses. Select those that apply best to what is being procured. The GSAR clauses and GSAR provisions in paragraphs (d)(22)(i) through (xi) of this section shall also be inserted in full text, when applicable.

(i) FAR 52.214-34 Submission of Offers in the English Language.

(ii) FAR 52.214-35 Submission of Offers in U.S. Currency.

(iii) 552.238-90 Characteristics of Electric Current.

(iv) 552.238-91 Marking and Documentation Requirements for Shipping.

(v) 552.238-97 Parts and Service.

(vi) 552.238-99 Delivery Prices Overseas.

(vii) 552.238-100 Transshipments.

(viii) 552.238-101 Foreign Taxes and Duties.

(ix) FAR 52.247-29 F.o.b Origin

(x) FAR 52.247-34 F.o.b. Destination.

(xi) FAR 52.247-48 F.o.b. Destination-Evidence of Shipment

(23) 552.238-99, Delivery Prices Overseas. Use only when overseas acquisition is contemplated.

(24) 552.238-100, Transshipments. Use only when overseas acquisition is contemplated.

(25) 552.238-101, Foreign Taxes and Duties. Use only when overseas acquisition is contemplated.

(26) 552.238-102, English Language and U.S. Dollar Requirements.

(27) 552.238-103, Electronic Commerce. This clause is not required for Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238-104, Dissemination of Information by Contractor.

(29) 552.238-105, Deliveries Beyond the Contractual Period-Placing of Orders.

(30) 552.238-106, Interpretation of Contract Requirements.

(31) 552.238-107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies, This clause is not required for vehicles.

(32) 552.238-108, Spare Parts Kit. Use only for products requiring spare part kits. This information is to be specified at the order level.

(33) 552.238-109, Authentication Supplies and Services. Use only for information technology associated with the Homeland Security Presidential Directive 12 (HSPD–12).

(34) 552.238-110, Commercial Satellite Communication (COMSATCOM) Services. Use only for COMSATCOM services.

(35) 552.238-111, Environmental Protection Agency Registration Requirement. Use only for supplies when products may require registration with the Environmental Protection Agency.

(36) 552.238-112, Definitions—Federal Supply Schedule Contracts.

(37) 552.238-113, Authorities Supporting Use of Federal Supply Schedule Contracts.

(38) 552.238-116, Option to Extend the Term of the FSS Contract. Use when appropriate.

(39) 552.238-117, Price Adjustment—Failure to Provide Accurate Information. Use only in FSS solicitations and contracts under the MAS program. This clause is used when the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting.

(40) 552.238-119, Single-use Plastic Free Packaging Availability.

552.238-120, Economic Price Adjustment—Federal Supply Schedule Contracts. (41)

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR 52.216-22, Indefinite Quantity: “the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period”.

Subpart 538.70 - Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities

538.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementing statutory, regulatory, and other authorities that authorize use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities.

538.7001 Definitions.

As used in this subpart—

Eligible means an entity that meets the requirements prescribed by statute, regulation, or other authority for purposes of being able to use FSS contracts. Information about GSA’s FSS eligibility process is available at https://www.gsa.gov/eligibilitydeterminations.

Non-Federal entity means any state, local, 15 territorial, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education); and any other non-Federal organization (e.g., a qualified nonprofit agency as defined in 40 U.S.C. 502(b)).

Preparedness means actions that may include, but are not limited to: planning, resourcing, organizing, equipping, training, and conducting exercises to improve, build and sustain the capabilities necessary to prevent, protect, mitigate, respond, and recover from a disaster.

Recovery means actions taken to assist communities affected by an incident to recover effectively. This includes, but is not limited to, actions to restore, redevelop, and revitalize the health, social, economic, natural, and environmental fabric of the community. Recovery may begin while response is still occurring.

Response means actions taken during a disaster, or in its aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to enable recovery from a disaster.

538.7002 Authorities.

Various laws, regulations, and other authorities allow eligible non-Federal entities to use FSS contracts. This section identifies some of the common authorities allowing eligible non-Federal entities to use FSS contracts. See https://www.gsa.gov/eligibilitydeterminations for additional

information about the authorities available.

538.7002-1 Cooperative purchasing program.

40 U.S.C. 502(c) allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase the types of supplies and services described in 40 U.S.C. 502(c). The supplies and services described in 40 U.S.C. 502(c) are limited to those available under the Information Technology Category, and the Security and Protection Category (or successor category(ies)). The GSA program that implements this authority is called the Cooperative Purchasing program.

538.7002-2 Disaster purchasing program.

(a) 40 U.S.C. 502(d) allows State or local governments, as defined in 40. U.S.C. 502(c)(3), to purchase supplies or services that are to be used to facilitate—

(1) Disaster preparedness or response;

(2) Recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(3)Recovery from terrorism, nuclear, biological, chemical, or radiological attack.

(b) The GSA program that implements this authority is called the Disaster Purchasing program.

538.7002-3 Public health emergencies program.

42 U.S.C. 247d allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase supplies and services when expending Federal grant funds in response to a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program that implements this authority is called the Public Health Emergencies program.

538.7002-4 Qualified nonprofit agencies for the blind or other severely disabled.

40 U.S.C. 502(b) allows qualified nonprofit agencies for the blind or other severely disabled, as defined by 41 U.S.C. 8501, that are providing a commodity or service to the Government under 41 U.S.C. chapter 85, to purchase supplies or services. Purchases under this authority must be used directly in making or providing to the Government a commodity or service that has been determined by the Committee for Purchase From People Who Are Blind or Severely Disabled under 41 U.S.C. 8503 to be suitable for procurement by the Government.

538.7002-5 Qualified relief or disaster assistance organizations.

40 U.S.C. 502(e) allows the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3), to purchase supplies or services. Purchases under this authority by

the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in 36 U.S.C. 300102. Purchases under this authority by other qualified organizations shall be used in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency.

538.7002-6 Indian Self-Determination and Education Assistance Act (ISDEAA).

(a) 25 U.S.C. 5324(k) allows Tribal organizations, as defined in 25 U.S.C. 5304, that have an active ISDEAA contract, grant, or cooperative agreement to purchase supplies or services for the purposes of carrying out the ISDEAA contract, grant, or cooperative agreement.

(b) 25 U.S.C. 5370 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying the ISDEAA compact or funding agreement.

(c)25 U.S.C. 5396 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying out the ISDEAA compact or funding agreement.

538.7002-7 Native American Housing Assistance and Self Determination Act (NAHASDA).

25 U.S.C 4111(j) allows Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, that have an active NAHASDA contract, grant, or cooperative agreement to purchase supplies and services for the purposes of carrying out the NAHASDA contract, grant, or cooperative agreement.

538.7002-8 Native American Housing Assistance and Self Determination Act (NAHASDA).

25 U.S.C. 1660g(e) allows Urban Indian organizations, as defined in 25 U.S.C. 1603, that have an active contract or grant pursuant to 25 U.S.C. chapter 18 subchapter IV to purchase supplies and services for the purposes of carrying out the contract or grant.

538.7002-9 Tribally controlled schools.

25 U.S.C. 2507(a)(6) allows tribally controlled schools, as defined under 25 U.S.C. 2511, that have an active grant pursuant to 25 U.S.C. chapter 27 to purchase supplies or services for the purposes of carrying out the grant.

538.7002-10 1122 Program.

10 U.S.C. 281 allows States and units of local government, as defined in 10 U.S.C. 281, to purchase equipment suitable for counter-drug, homeland security, and emergency response activities through

the Department of Defense. GSA, in coordination with the Secretary of Defense, produces and maintains a catalog in accordance with the procedures established by the Secretary of Defense. The catalog includes access to equipment available under FSS contracts. States and units of local government interested in using the 1122 program should contact their designated State point of contact.

538.7003 Non-Federal entity requirements.

Only non-Federal entities that are eligible may use FSS contracts. Use of FSS contracts by eligible non-Federal entities is voluntary. The following requirements apply to eligible non-Federal entities who decide to use FSS contracts:

(a) FSS contractors are not obligated to accept orders or enter into blanket purchase agreements; however, they are encouraged to do so.

(b) Purchases cannot be made for personal use.

(c) Purchases cannot be for resale, unless specifically authorized.

(d) At a minimum, purchases shall comply with—

(1)FSS ordering guidance. Information about GSA's FSS contracts, including ordering guidance is available at https://www.gsa.gov/schedules; and

(2)Any conditions of the underlying authority(ies) supporting the use of FSS contracts (e.g.,40 U.S.C. 502(c) limits purchases to specific supplies and services available under the FSS program).

(e) An eligible non-Federal entity's eligibility cannot be transferred to a third party (e.g., a subcontractor) or successor entity.

538.7004 GSA responsibilities.

(a)Eligibility determination process. GSA may need to make a determination of eligibility to support a non-Federal entity's use of FSS contracts. See https://www.gsa.gov/eligibilitydeterminations for information about eligibility.

(b) Oversight. To ensure proper use of and access to FSS contracts by eligible non-Federal entities, GSA may take any action within its authority as deemed necessary to deny, limit, or restrict use of FSS contracts, in whole or in part. Reasons may include, but are not limited to—

(1)A change in an underlying authority;

(2)A change in the terms and conditions of the FSS program or FSS contracts;

(3)A failure by an eligible non-Federal entity to comply with the requirements of 538.7003; or

(4)Use by an ineligible non-Federal entity.

538.7005 Contract clause.

Insert the clause at 552.238-114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities., Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities, in FSS solicitations and contracts.

Subpart 538.71 - [Reserved]

GSAR deviation with FSS ordering procedures

Subpart 538.72 - Order-level Materials

538.7200 Definitions.

As used in this subpart—

“Order-level materials” means supplies and/or services acquired in direct support of an individual task or delivery order placed against an authorized (see GSAR 538.7201(b)) Federal Supply Schedule (FSS) contract or FSS Blanket Purchase Agreement (BPA)), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. However, order-level materials are purchased under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).

538.7201 General.

(a) *Authority.* In accordance with GSA's authority under FAR 8.403(b), GSA has established special ordering procedures for the incorporation of order-level materials into the Federal Supply Schedule program.

(b) *List.* The list of Federal Supply Schedule subcategories authorized to allow for order-level materials is available at https://www.gsa.gov/olm.

(c) *Changes.* HCAs may request changes to the list in paragraph (b) by submitting GSA Form 1649, Notification of Federal Supply Schedule Improvement, for approval by the Assistant Commissioner of the FAS Office of Policy and Compliance. Requests, submitted via GSA Form 1649 or otherwise, to add this authority to a Federal Supply Schedule must address the need for the authority, including why it is impractical to price the items at the contract level, and a description of the market research conducted (see FAR 10.002(e)). The FAS Office of Policy and Compliance should notify the SPE of changes to the list in paragraph (b) via email sent to spe.request@gsa.gov.

538.7202 Awarding Order-Level Materials in FSS contracts.

(a) Federal Supply Schedules authorizing order-level materials must include a separate Special Item

Number (SIN) with the following scope:

(1) Order-level materials are supplies or services acquired in direct support of a contractor's offerings and which are unknown before a task or delivery order is placed against the FSS contract or FSS BPA); including, direct materials, subcontracts for supplies and incidental services for which there is not a labor category specified in the FSS contract, other direct costs, and indirect costs. Order-level materials are subject to a negotiated price ceiling that the contractor exceeds at its own risk.

(2) Items awarded under ancillary supplies or other direct cost (ODC) SINs are not order-level materials.

(b) The order-level materials SIN cannot be the only awarded SIN on a FSS contract or FSS BPA.

(c) Price Pricing analysis for order-level materials is not conducted when awarding the Federal Supply Schedule FSS contract or FSS BPA; therefore, sections 538.270 and 538.271 do not apply to order-level materials.

538.7203 Administering Order-Level Materials in FSS contracts.

(a) Federal Supply Schedule Contracting Officers should consider requesting the assistance of members of the acquisition team responsible for contract administration functions (e.g., Administrative Contracting Officers, Industrial Operations Analysts) when evaluating the use of order-level materials at the FSS contract-level. Task or delivery orders including order-level materials placed against FSS contracts should be monitored to ensure special ordering procedures are being followed at GSAR 552.238-115(d).

(b) Except as stated in 552.238-115(d)(10), all terms and conditions that otherwise apply to the FSS contract also apply to order-level materials. For example, order-level materials must comply with the Trade Agreements Act clauses, the Environmental Attributes clause, and the Industrial Funding Fee and Sales Reporting clauses.

538.7204 Contract clauses.

(a)Use FAR clause 52.212-4 Alternate I in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7201(b)). Use the following language for the clause fill-in—

(1)Insert “Each order must list separately subcontracts for services excluded from the FSS Hourly Rates” in paragraph (e)(1)(iii)(D).

(2)Insert “Each order must list separately the elements of other direct costs for that order” in paragraph (i)(1)(ii)(D)*(1)*.

(3)Insert “Each order must list separately the fixed amount for the indirect costs and payment schedule; if no indirect costs are approved,” insert “None” in (i)(1)(ii)(D)*(2)*.

(b) Insert the clause at 552.238-115, Special Ordering Procedures for the Acquisition of Order-Level Materials, in FSS solicitations and contracts authorized to allow for order-level materials.