

GSA ORDER

Subject: General Services Administration Acquisition Manual; Amendment 2018-01,
GSAR Case 2016-G506, Federal Supply Schedule, Order-Level Materials

1. **Purpose.** This order transmits a revision to the General Services Administration Acquisition Manual (GSAM). This rule clarifies the authority and provides guidance to the GSAM on how to acquire order-level materials (OLMs) when placing a task or delivery order against an authorized Federal Supply Schedule (FSS) contract or FSS Blanket Purchase Agreement (BPA).
2. **Background.** The purpose of this final rule is to add a similar flexibility to the FSS program for authorized FSS Schedules that exist for other indefinite-delivery/indefinite-quantity (IDIQ) contracts when supplies or services cannot be defined at the time of FSS contract or FSS BPA award. Historically, previous rules have addressed this issue in other commercial IDIQ contract vehicles, but the OLM authority was never fully implemented in the FSS program. The lack of OLM authority to the FSS program has resulted in the application of inconsistent policies and procedures as well as increased administrative costs of acquisition across the government as agencies established their own IDIQ contracts or performed open market procurements.

The added flexibility to acquire OLMs on authorized Schedules is balanced with a set of adequate controls to ensure the authority is being used correctly and within scope. By using the new OLM authority, ordering level contracting officers can avoid conducting separate open market procurements and better utilize the FSS program for authorized Schedules that allow for OLMs.

3. **Effective date.** January 24, 2018
4. **Explanation of changes.**
The GSAM is amended as follows:
 - A. The final rule makes the following changes to the regulatory GSAR.
Regulatory changes:
 - **Part 515 - Contracting by Negotiation**
 - GSAR 515.408 has been revised to clarify that OLMs are exempt from the commercial sales practice disclosure requirement.

- Part 538 - Federal Supply Schedule Contracting
 - GSAR Subpart 538.72 has been added to provide guidance on OLMs.
 - GSAR 538.7200 has been added to define OLMs.
 - GSAR 538.7201(a)-(b) has been added to provide information on authorized Schedules that allow for OLMs.
 - GSAR 538.7204 has been added to provide guidance on the use of FAR clause 52.212-4 Alternate I for authorized Schedules for the acquisition of OLMs.

- Part 552 - Solicitation Provisions and Contract Clauses
 - GSAR 552.238-XX prescribes special ordering procedures for the acquisition of OLMs.

B. The following supplementary guidance changes have been made to the GSAM.

Non-regulatory changes:

- GSAM 538.7201(c) provides guidance on how to request additions or deletions to the authorized Schedules that allow for OLMs.
- GSAM 538.7202 provides guidance on administering OLMs on FSS contracts and FSS BPAs.
- GSAM 538.7203 provides guidance on administering OLMs on FSS contracts.

5. Cancellations and Rescissions.



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GSAR Case 2016-G506: Federal Supply Schedule Order-Level Materials
TAB AA – GSAM/GSAR Text, Line-In/Line-Out

GSAM Baseline: Change 81 Effective 1/24/2018

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- Additions to baseline made by proposed rule are indicated by **[bold text in brackets]**
 - Deletions to baseline made by proposed rule are indicated by ~~strikethroughs~~
 - Additions to baseline made by final rule are indicated by **[bold and underlined text in brackets]**
 - Deletions to baseline made by final rule are indicated by ~~strikethroughs and underlined~~
 - Five asterisks (*****) indicate there are no revisions between the preceding and following sections
 - Three asterisks (***) indicate there are no revisions between the material shown within a subsection
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Part 515— Contracting by Negotiation

Subpart 515.4— Contract Pricing

515.408 Solicitation provisions and contract clauses

(c) When the contract contains the basic clause 552.238-74 Industrial Funding Fee and Sales Reporting, include the instructions for completing the commercial sales practices format in Figure 515.4-2 in solicitations issued under the MAS program. **[Offerors are not required to complete the commercial sales practices disclosure for order-level materials (See subpart 538.72).]**

Part 538— Federal Supply Schedule Contracting

[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 a [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_[,] as_[which are] discussed in FAR 8.402(f).

538.7201 Applicability.

[(a) The GSA Senior Procurement Executive authorizes the use of order-level materials on Federal Supply Schedules.

(b) The list of Federal Supply Schedules authorized to allow for order-level materials are [is] available at <https://www.gsa.gov/olm>.

(c) HCAs may request changes [additions or deletions] to the list in paragraph (b) by submitting a GSA Form 1649 for SPE approval. Justifications 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)).]

Order-level materials are authorized under all of the following:

(a) Federal Supply Schedule 03-FAC;

(b) Federal Supply Schedule 56;

(c) Federal Supply Schedule 70;

(d) Federal Supply Schedule 71;

(e) Federal Supply Schedule 84;

(f) Professional Services Schedule 99; and

(g) Federal Supply Schedule 738X.

[538.7202 Reserved]

[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 ~~necessary to complement~~acquired in direct support of a contractor's offerings ~~that may be~~(and which are) unknown before a task or delivery order is placed against the ~~Federal Supply Schedule~~[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 ~~Federal Supply Schedule~~[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 considered order-level materials.

(b) The order-level materials SIN cannot be the only awarded SIN on a Federal Supply Schedule[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 Reserved]

538.7203 Administering Order-Level Materials in FSS contracts

(a) ~~[Federal Supply Schedule Contracting Officers]~~ 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] ~~to evaluate~~ the appropriate 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 552.238-82(d).]

(b) [Except as stated in 552.238-82 (d)(10)(11)], 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 clause[s].

[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]”

charge(s) for that order” in paragraph (i)(1)(ii)(D)(1).

(3) Insert “none” [“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) Use 552.238-82, Special Ordering Procedures for the Acquisition of Order-Level Materials[,] in all Federal Supply Schedules authorized for the acquisition of order-level materials (see 538.7201).]

Part 552- Solicitation Provisions and Contract Clauses

[552.238-82 Special Ordering Procedures for the Acquisition of Order-Level Materials.

As prescribed in 538.7204(b), insert the following clause:

Special Ordering Procedures for the Acquisition of Order-Level Materials (DATE)

(a) [Definitions.]

“Order-level materials” means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS BPA[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]. ~~Order-level materials that are acquired following the procedures in paragraph (d) of this clause are not open market items [as] discussed in FAR 8.402(f).~~ [Order-level materials acquired following the procedures in paragraph (d) are done so 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).]

(b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS ~~or for Special Item Numbers (SINs) within a Schedule.~~

(c) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS Blanket Purchase Agreement (BPA).

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders ~~for~~[that include] order-level materials.

(2) Order-level materials are included in the definition of the term “materials” in [FAR] clause 52.212-4 Alternate I, and therefore all provisions of [FAR] clause 52.212-4 Alternate I that apply to “materials” also apply to order-level materials. The ordering activity shall follow procedures under the Federal Travel Regulation and FAR Part 31 when order-level materials include travel.

(3) Order-level materials shall only be acquired in direct support of an [individual task or delivery] order and not as the primary basis or purpose of the order.

(4) The cumulative value of order-level materials [in an individual task or delivery order] awarded under a FSS ~~order~~ [contract] or [FSS BPA] shall not exceed 33~~[.33]~~% of the total value of the [individual task or delivery] order.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the Ordering Activity shall follow procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials,

[(i) T]the contractor proposing order-level materials as part of a solution shall submit [obtain] a minimum of three quotes obtained by the contractor for each order-level material above the micro-purchase threshold [simplified acquisition threshold].

[(A)] One of these three quotes may include materials furnished by the contractor under FAR 52.212-4 Alt I (i)(1)(ii)(A).]

[(B)] If the contractor cannot obtain three quotes, [the contractor shall maintain its documentation of why three quotes could not be obtained to support their determination] provide the rationale for why they cannot obtain three quotes to support the contracting officer’s determination in d(7).

[C A contractor with an approved purchasing system per FAR 44.3 shall instead follow its purchasing system requirement and is exempt from the requirements in 52.238-XX(d)(7)(i)(A)-(B).]

~~(8)~~[(ii)] The Ordering Activity Contracting Officer must make a determination that prices for all order-level materials are fair and reasonable. The Ordering Activity Contracting Officer may base this determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

[(iii) If indirect costs are approved per [FAR 52.212-4(i)(1)(ii)(D)(2) Alternate I] 538.7201(a)(3), the Ordering Activity Contracting Officer must make a determination that all indirect costs approved for payment are fair and reasonable. Supporting data shall be submitted in a form acceptable to the Ordering Activity Contracting Officer.

~~(iii) Exceptions. The requirements in subparagraph (d)(7) do not apply to travel. Travel costs are governed by Pub .L. 99-234 , Federal Travel Regulations and FAR Part 31.~~

~~(9)(8)~~ Prior to an increase in the ceiling price of order-level materials[,] ~~above the micro-purchase threshold,~~ the Ordering Activity Contracting Officer ~~[shall follow the procedures at FAR 8.404(h)(3)(iv).]~~

~~(i) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government and obtain the approval at the levels described in FAR 8.405-6(d); or~~

~~(ii) Follow the procedures at FAR 8.405-6 for a change that modifies the general scope of the order.~~

~~(10)(9)~~ In accordance with GSAR clause 552.215-71 Examination of Records by GSA, GSA has the authority to examine the Contractor's records for compliance with the pricing provisions in FAR clause 52.212-4 Alternate I, to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the IFF and the Sales Reporting clauses of the contract.

~~(11)(10)~~ OLM[s] are exempt from the following clauses:[]

(i) 552.216-70 Economic Price Adjustment - FSS Multiple Award Schedule Contracts.

(ii) 552.238-71 Submission and Distribution of Authorized FSS Schedule Pricelists.

(iii) 552.238-75 Price Reductions.

~~[(11) Exceptions for travel.~~

~~(i) Travel costs are governed by FAR 31.205-46 and therefore the requirements in paragraph (d)(7) does not apply to travel costs.~~

~~(ii) Travel costs do not count towards the 33.33% limitation described in paragraph (d)(4).~~

~~(iii) Travel costs are exempt from clause 552.238-74 Industrial Funding Fee and Sales Reporting.]~~

(End of Clause)

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