

GSA Class Deviation CD-2019-01
Frequently Asked Questions

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A. General.

1. Where can I find the full text of the interim FAR rule?

The FAR text and Federal Register Notice are posted on acquisition.gov.

2. What does “information technology or communication technology” mean?

Information technology is defined in [FAR 2.101](#). Communication technology means equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of information technology or communication technology include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; web sites; videos; and electronic documents.

3. What is “covered telecommunications equipment or services”?

“Covered telecommunications equipment or services” is defined at [FAR 4.2101](#). Additional entities, equipment, or services may be included in the definition by additional determinations made by the Secretary of Defense in accordance with FAR 4.2101.

4. What is the scope of the FAR prohibition?

The FAR prohibits use of covered telecommunications equipment or services as substantial or essential components of any system (defined as “any component necessary for the proper function or performance of a piece of equipment, system, or service”) or as critical technology of any system (defined at [FAR 4.2101](#)).

The prohibition **does not** apply to a telecommunications “service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.” Contractors may be permitted to maintain common network arrangements with telecommunications providers. Common network arrangements with telecommunications providers include backhaul, roaming, and interconnection arrangements. These network connections are defined below:

Backhaul - intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., MPLS, Point to Point (PTP), SD-WAN).

Roaming - cellular communications services (e.g., voice, video, data) received from a visited network when traveling outside the geographical coverage area of a home network.

Interconnection arrangements - arrangements governing the physical connection of two or more networks for the purpose of sharing data and other information resources (e.g., T1, T3, VPN).

The prohibition **does not** apply to “[t]elecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.” Contractors may still be able to provide services to the Government so long as any covered equipment does not route or redirect user traffic, or permit visibility or inspection of user data or packets.

If there are any questions regarding the applicability of a procurement and the scope of the FAR prohibition, consult with the supply chain POC listed on insite.gsa.gov/scrm.

5. Do the FAR representation and reporting requirements apply to micro-purchases?

The prohibition applies to micro-purchases. However, per [FAR 13.201](#), micro-purchases generally do not require provisions or clauses. Therefore, for a GSA employee making a micro-purchase, the representation provision and reporting clause are not required. Agencies may impose precautions to ensure that micro-purchases do not violate the prohibition.

6. How do the FAR representation requirement and the GSA class deviation apply to Blanket Purchase Agreements (BPAs) and to orders under BPAs?

a. Multiple Award Schedule BPAs

For new and existing BPAs established under a Multiple Award Schedule (MAS) contract, the contracting officer should first determine whether the master contract has been modified to include the reporting clause at [FAR 52.204-25](#) and the representation clause at GSAR 552.204-70. If the MAS contract includes these clauses, the BPA contracting officer is not required to include the provision or clauses at the BPA level. If the MAS contract does not include these clauses, the BPA contracting officer shall include the representation provision at [FAR 52.204-24](#) and incorporate clauses [FAR 52.204-25](#) and GSAR 552.204-70 into the BPA terms and conditions.

b. Open Market BPAs

For BPAs established under FAR 13.3, there is no underlying master contract. GSA contracting officers shall require offerors to respond to the representation provision at [FAR 52.204-24](#) and incorporate clauses [FAR 52.204-25](#) and GSAR 552.204-70 into the BPA terms and conditions.

c. BPA Orders

For BPAs established for high risk procurements as identified in the GSA class deviation, contracting officers shall include the representation provision in all notices of intent to place an

order or solicitations for orders. For BPAs established for medium or low risk procurements, contracting officers shall include the representation provision in all notices of intent to place an order or solicitations for orders that could potentially include information technology or communication technology. Additionally, when placing a BPA order under the micro-purchase threshold, the representation provision and reporting clause are not required (see the answer to Question 5).

7. What procurements are not included in the GSA class deviation?

GSA issued a class deviation to both the FAR and the GSAR.

The GSAR class deviation applies to all GSA-funded contracts, including real property lease acquisitions and Commercial Solution Opening procurements.

The FAR class deviation applies to all GSA-funded contracts except for the following procurements that have a high risk of including covered telecommunications or services:

- Telecommunications Contracts (Network, Enterprise Infrastructure Solutions, Connections II, and Local Telecommunications)
- Federal Supply Schedules 36, 58 I, 70, and 84 (or the equivalent SINs under the MAS Reform Structure)
- IT Governmentwide Acquisition Contracts (GWACs) (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III)
- Commercial Solution Opening Procurements (CSOs)

Representations are required for all orders under the above high risk procurements, regardless of dollar value of the order. Orders under GSA's medium and low risk procurements, as classified in the GSA class deviation, do not require representations unless the order (again, regardless of dollar value) could potentially include information technology or communication technology.

8. How do offerors and contractors submit representations? Is there a separate document they must fill out?

Until SAM is updated, representations will be submitted by contractors with their offers in response to new contracts or new order-level solicitations.

Specifically, representations will be submitted as follows:

- By offerors as part of their offers in response to new contract solicitations
- By contractors in conjunction with SF-30 as all existing indefinite delivery contracts are modified
- By contractors in conjunction with SF-30 as non-indefinite delivery contracts and task and delivery orders are modified to extend their periods of performance, including exercising options
- By contractors as part of their offers in response to new order-level solicitations under non-deviated indefinite delivery vehicles

See Questions 24-27 for additional information for Federal Supply Schedule (FSS) contracts.

For real property lease acquisitions, the representations must be submitted as follows (See [Leasing Alert LA-19-05](#) for further details):

- By offerors as part of their offers in response to a new or amended Request for Lease Proposal (RLP) package
- By lessors in conjunction with extension or renewal actions, to be included in the Lease Amendment

9. Do the FAR provision and clause and the GSAR clause flow down to subcontractors?

Yes.

10. Do the FAR provision and clause and the GSAR clause have to be incorporated in full text, or can they be incorporated by reference?

Incorporate the FAR representation provision and the GSAR representation clause in full text. The FAR reporting clause should also be incorporated in full text but may be incorporated by reference, if desired.

11. The representation language in GSAR clause 552.204-70 and FAR provision 52.204-24 is very similar. Is it necessary to include both of these in solicitations for new contracts?

Yes. While the language is similar, GSAR clause 552.204-70 includes a requirement for the contractor to re-represent **annually** as to whether they will provide covered telecommunications equipment or services during performance of the contract. The offeror need not provide the same representation twice, however, as the offeror's response to [FAR 52.204-24](#) at the offer stage will also be considered the initial GSAR 552.204-70 response.

12. If I have issued a solicitation and offers are coming in, do I have to amend the solicitation?

For solicitations open as of August 13, 2019 where offers have not been received, the contracting officer shall amend the solicitation. For solicitations where offers have been received but the contract has not been awarded, the contracting officer should either amend the solicitation and require the representation from all offerors, or incorporate the representation provision into the award of the apparent successful offeror(s).

13. Do GSA contracting activities need to wait to place orders under GSA vehicles until the master IDIQ contracts are updated?

No. GSA ordering activities should determine whether or not an order-level representation is required. To make that order-level determination, the contracting officer should consider the risk level of the procurement (i.e., the likelihood that covered telecommunications equipment or services will be provided) consistent with the guidance in the GSA class deviation.

Remember, contracting officers must always require the representation provision at [FAR 52.204-24](#) when placing orders under high risk contracts or when placing orders that may include information technology or communications technology.

14. What guidance do GSA contracting officers follow if placing an order under another agency's indefinite delivery contract?

GSA contracting officers are required to follow the GSA class deviation in all cases. GSA contracting officers should determine if the agency that awarded the indefinite delivery contract (e.g., NASA SEWP or a DOE Energy Savings Performance Contract IDIQ) has incorporated the representation provision at [FAR 52.204-24](#) into the master contract.

Regardless of the risk level, if the agency **has not** incorporated the representation provision at the master contract level, the GSA contracting officer must include the provision at [FAR 52.204-24](#) to request a representation in all solicitations for orders and notices of intent to place orders.

If the agency **has** incorporated the representation provision at the master contract level, the GSA contracting officer should determine whether or not an order-level representation is required. To make that order-level determination, the GSA contracting officer should consider the risk level of the procurement (i.e., the likelihood that covered telecommunications equipment or services will be provided) consistent with the guidance in the GSA class deviation.

Remember, GSA contracting officers must always require the representation provision at [FAR 52.204-24](#) when placing orders under high risk contracts or when placing orders that may include information technology or communications technology.

15. What guidance do GSA contracting officers follow if providing assisted acquisition services for another agency?

When providing assisted acquisitions on behalf of other agencies under FAS programs, GSA contracting officers are required to follow the funding agency's rules. When performing acquisitions on behalf of the Department of Defense (DoD), FAS and PBS contracting officers are required to follow DoD's rules.

16. What guidance do other agencies' contracting officers follow if placing orders under GSA's indefinite delivery contracts?

Contracting officers at other agencies must follow their own agencies' policies.

The GSA class deviation applies to GSA-funded contracts and orders only and does not require other agencies to include the GSAR representation clause in, or to modify, any contracts or orders.

Per the FAR interim rule, unless an agency has issued its own deviation, that agency's contracting officers must insert the representation provision at [FAR 52.204-24](#) in all notices of intent to place an order, and solicitations for an order, under indefinite delivery contracts, including **any** GSA indefinite delivery contracts. Contractors must comply with ordering-agency requirements.

17. When will SAM.gov be updated to include this new representation requirement?

DoD, GSA, and NASA are currently working on updates to SAM.gov that will allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. These updates are expected in 2020 and, once made, GSA expects the FAR will be updated to reflect the annual requirement. Once SAM and the FAR are updated, GSAR 552.204-70 will no longer be necessary.

B. FAS Programs.

18. How will FAS implement the interim FAR rule and the GSA class deviation for existing Federal Supply Schedule (FSS) contracts?

For existing FSS contracts, FAS will issue a customized mass modification to incorporate the required FAR clause and GSAR clause. Contractors will be required to respond to the GSAR clause by representing to the contracting officer if they will, or will not, provide covered telecommunications equipment or services under the FSS contract.

19. How will FAS implement the interim FAR rule and the GSA class deviation for Federal Supply Schedule (FSS) offers that are in-house and/or received prior to MAS Consolidation?

For FSS offers that are in-house and/or received prior to MAS Consolidation, vendors will be required to accept an amendment incorporating the required FAR clause, FAR provision, and GSAR clause before the FSS contract is awarded. Offerors will be required to respond to the FAR provision by representing to the contracting officer if they will, or will not, provide covered telecommunications equipment or services. If awarded an FSS contract, the contractor will be required to accept the custom mass modification after award so FAS can track the response and ensure the updated terms and conditions are captured and displayed in GSA eLibrary.

The FAS Office of Policy and Compliance (OPC) will coordinate with FAS Heads of Contracting Activities to monitor and track FSS offeror acceptance of the FAR clause and GSAR clause.

20. How will FAS implement the interim FAR rule and the GSA class deviation for Federal Supply Schedule (FSS) offers submitted after MAS Consolidation?

FAS will incorporate the FAR provision, FAR clause, and GSAR clause into the consolidated Schedule solicitation.

21. What is FAS doing to find and remove covered telecommunications equipment or services under Federal Supply Schedule (FSS) contracts?

In FY19, the FAS Office of Policy and Compliance (OPC) piloted the Prohibited Products Robo-mod Process to automate the identification and removal of prohibited products from FSS contracts. OPC initiated another iteration of the process on August 13, 2019 to include covered telecommunications equipment. Additional details on the Prohibited Products Robo-mod Process is available on the [FAS Acquisition Policy Library](#).

22. How does the GSA class deviation apply to the FedRooms Program?

FedRooms is an order off of Schedule 599. Agencies place service calls with Carlson for hotel rooms. There is no order-level solicitation process for these service calls. For the purposes of [FAR 4.2105\(a\)](#), the representation provision is required only at the Schedule 599 contract level, and the GSA class deviation does not apply to service calls, so no process changes are required.

23. How does the GSA class deviation apply to the Express Mail Program?

The Express Mail Program (or Next Generation Delivery Service) was transferred to US Transportation Command (TRANSCOM) within the Department of Defense (DoD). Any Express Mail procurements are handled by DoD and governed by the FAR, DFARS, and DoD class deviations, if any. The GSA class deviation does not apply to this program. Requesting shipment of packages does not trigger the representation requirement, so no process changes are required.

24. Are any extra precautions required for Schedules that allow for Order Level Materials (OLMs)?

Schedule contracts that are authorized for OLMs may present an increased risk for misuse by contractors. Please note, contracting officers are always required to include the representation provision in any notice of intent to place an order or solicitations for an order where there is potential for information technology or communication technology. Contracting officers may also, at their discretion, include the representation provision in any order request for quote deemed necessary.

C. PBS Programs.

25. Will concessions, outleasing, or site acquisitions be impacted by the GSA class deviation?

The interim FAR rule and GSA class deviation are not applicable to concessions, outleasing, or site acquisition. For all three, the FAR representation provision and reporting clause and the GSAR representation clause are not required.

GSA issued a class deviation to the GSAR, in part, to apply the FAR clause to the acquisition of a leasehold interest in real property. The purchases of leased buildings (e.g., where GSA exercises an option under a real property lease to purchase) are subject to the interim FAR rule and the GSA class deviation.

26. Are real property lessors' video surveillance systems and services impacted by the interim FAR rule and the GSA class deviation?

Generally, no. Real property lessors' video surveillance equipment is usually outside of the required performance under the contract. A lessor using video surveillance systems that include

covered telecommunications equipment or services would only be prohibited if the lease contract required the video surveillance systems to be provided by the lessor.