



**U.S. Department  
of Transportation**

Office of the Secretary  
of Transportation

1200 New Jersey Ave., S.E.  
Washington, DC 20590

**SUBJECT:** Class Deviation No. 2026-22, Supplement to Certain Federal Acquisition Regulation (FAR) Deviations (Part 5, 8, 9, 12, 13, and 23), in Support of Executive Order 14275 on Restoring Common Sense to Federal Procurement

**FROM:** Chrishaun Jones  
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Date: 2026.01.12 19:19:51 -05'00'

**TO:** Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This class deviation (CD) supplement is issued under Federal Acquisition Regulation (FAR) part 1 and Transportation Acquisition Regulation (TAR) part 1201 and authorizes a class deviation to FAR part 25 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR part 25.
- II. Effective Date:** Immediately.
- III. Background:** On April 15, 2025, [Executive Order \(E.O.\) 14275 on Restoring Common Sense to Federal Procurement](#) was signed. Section 2 of the E.O. establishes the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."

The FAR is being updated to:

- Remove language that is not required by statute
- Remove duplicative or outdated language
- Clarify or provide more plain language
- Revise language for the new FAR framework
- Retain language necessary for governmentwide acquisition standards.

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

Subsequent review has identified the need to update and amend DOT's implementing deviations for RFO FAR Parts 5, 8, 9, 13, and 23.

Summary of Supplement Updates are as follows-

## RFO FAR parts 5, 12, 13, and 23

<b>Background</b>	RFO FAR parts 5, 12, 13, and 23 included corresponding definition updates to part 2, but the implementing DOT deviations did not provide instructions to the workforce on how to use the revised part 2 definitions in concert with existing definitions in part 2.
<b>Supplement Update</b>	<p>In DOT's class deviations implementing RFO FAR parts 5, 12, 13, and 23, section 4, "Required Action," is updated to add the following sentence after, "A line-out version of the changes may also be found here for reference."</p> <p>"The DOT acquisition workforce must use the definitions (Part 2 – Definitions of Words and Terms) found on Acquisition.gov/far-overhaul."</p> <p>The remainder of the deviation is unchanged.</p>

## RFO FAR part 8

<b>Background</b>	<p>The FAR Council initially released the RFO FAR part 8 model deviation text on August 14, which required use of Office of Federal Property Policy best-in-class (BIC) contracts. On August 29, OFPP updated the model deviation text to reference "required use" contracts at 8.104 instead of BIC contracts. It is understood that OFPP will be establishing a new class of "required use" contracts (and associated criteria) that will be separate from BIC contracts. "Required use" contracts will be mandatory. BICs may be prioritized, but are not mandatory.</p> <p>DOT's class deviation implementing RFO FAR Part 8 is amended as follows, to reflect the updated RFO FAR part 8 model deviation text:</p>
<b>Supplement Update 1</b>	<p>Section 3, "Background" is updated as follows:</p> <p>FAR part 8, Required Sources of Supplies and Services, is significantly updated. The model deviation language:</p> <ul style="list-style-type: none"> <li>• Enhances usability by restructuring and organizing the part in the logical flow of the acquisition lifecycle.</li> <li>• Simplifies mandatory guidance.</li> <li>• <del>Make the use of Governmentwide Best in Class (BIC) contracts mandatory</del> <b>[Makes the use of OFPP – designated "Required Use" contracts mandatory.]</b></li> <li>• Retains focus on the importance of the AbilityOne Program</li> </ul>

<b>Supplement Update 2</b>	<p>The fourth bullet in the “Retained” section of the table in Section 3, “Background,” is updated as follows:</p> <ul style="list-style-type: none"> <li>• Use of Existing Contracts. 8.104 replaces section 8.004, “Use of Other Sources.” <del>Best in class (BIC)</del><b>[OFPP – designated “Required Use”]</b> contracts or BPAs are now <del>required</del><b>[mandatory]</b> <del>to be used</del> when a commercial product or commercial service meets an agency’s need, unless approved by the Head of the Contracting Activity (HCA). If a <del>BIC</del><b>[“required use” contract]</b> is not suitable, agencies should consider use of an existing governmentwide contract, BPA, or shared service.</li> </ul>
<b>Miscellaneous</b>	<ul style="list-style-type: none"> <li>• OFPP is expected to provide more information about “required use” contracts in the future.</li> </ul>

## RFO FAR part 9

<b>Background</b>	<p>The DOT implementing deviation stated that all existing provisions and clauses are retained (or remain reserved if previously reserved) with no changes to the text. The implementing class deviation is amended as follows to highlight that some provisions and clauses were updated.</p>
<b>Supplement Update 1</b>	<p>The third bullet in the “Retained” section of the table in Section 3, “Background,” is updated as follows:</p> <p>From: All existing provisions and clauses are retained (or remain reserved if previously reserved) with no changes to the text.</p> <p>To: The following provision and clause are retained (or remain reserved if previously reserved) with no changes to the text:</p> <ul style="list-style-type: none"> <li>• 52.209-8 remains reserved</li> <li>• 52.209-12 (Provision), Certification Regarding Tax Matters</li> <li>• 52.209-14 (Clause), Reserve Officer Training Corps and Military Recruiting on Campus</li> </ul>
<b>Supplement Update 2</b>	<p>A new section titled “Updated” is added to the table in Section 3, “Background.” The following bullet is added.</p>

	<ul style="list-style-type: none"> <li>• The following provisions and clauses have been updated to reflect plain language, update cross-references, or to correspond with updates made within the part: <ul style="list-style-type: none"> <li>○ 52.209-1 (Clause), Qualification Requirements</li> <li>○ 52.209-2 (Provision), Prohibition on Contracting with Inverted Domestic Corporations-Representation</li> <li>○ 52.209-3 (Clause), First Article Approval-Contractor Testing <ul style="list-style-type: none"> <li>▪ Note - The Alternates are not updated</li> </ul> </li> <li>○ 52.209-4 (Clause), First Article Approval-Government Testing <ul style="list-style-type: none"> <li>▪ Note - The Alternates are not updated</li> </ul> </li> <li>○ 52.209-5 (Provision), Certification Regarding Responsibility Matters</li> <li>○ 52.209-6 (Clause), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded</li> <li>○ 52.209-7 (Provision) Information Regarding Responsibility Matters</li> <li>○ 52.209-9 (Clause), Updates of Publicly Available Information Regarding Responsibility Matters</li> <li>○ 52.209-10 (Clause), Prohibition on Contracting with Inverted Domestic Corporations</li> <li>○ 52.209-11 (Provision), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law</li> <li>○ 52.209-13 (Provision) Violation of Arms Control Treaties or Agreements-Certification</li> </ul> </li> </ul>
<b>Supplement Update 3</b>	<p>Section 4, “Required Actions,” is updated to add the following bullets after the first paragraph:</p> <ul style="list-style-type: none"> <li>• For new solicitations or contracts, when using any provisions or clauses that have been revised, utilize the RFO model deviation language at <a href="#">RFO FAR Part 52</a>.</li> <li>• For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clause, the contracting officer may be required to separately address certain aspects in the contract.</li> </ul> <p>The rest of Section 4, “Required Actions,” is unchanged.</p>

<b>Miscellaneous</b>	<ul style="list-style-type: none"><li>For ease of reference, GSA's Office of Acquisition Policy has created a helpful tool to easily find and sort provision and clauses changes: RFO Part 52 P&amp;C Table.</li></ul>
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- IV. Applicability:** This supplement to applicable class deviations applies to all DOT OAs, OST, and OIG, excluding the FAA in accordance with TAR 1201.104(d).
- V. Expiration Date:** This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded, whichever occurs first.
- VI. Point of Contact:** Questions or comments regarding this deviation may be directed to [DOTAcquisitionPolicy@dot.gov](mailto:DOTAcquisitionPolicy@dot.gov).



**U.S. Department  
of Transportation**

Office of the Secretary  
of Transportation

1200 New Jersey Ave., S.E.  
Washington, DC 20590

**SUBJECT:** Class Deviation No. 2025-19 from the Federal Acquisition Regulation for FAR Part 8 in Support of Executive Order 14275 on Restoring Common Sense to Federal Procurement

**FROM:** Chrishaun Jones  
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Date: 2025.09.05 12:47:00 -04'00'

**TO:** Department of Transportation Chiefs of the Contracting Offices

**I. Purpose:** This class deviation (CD) is issued under Federal Acquisition Regulation (FAR) part 1 and Transportation Acquisition Regulation (TAR) part 1201 and authorizes a class deviation to FAR part 8 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR part 8.

**II. Effective Date:** Immediately

**III. Background:** On April 15, 2025, [Executive Order \(E.O.\) 14275 on Restoring Common Sense to Federal Procurement](#) was signed. Section 2 of the E.O. establishes the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."

The FAR is being updated to:

- Remove language that is not required by statute
- Remove duplicative or outdated language
- Clarify or provide more plain language
- Revise language for the new FAR framework
- Retain language necessary for governmentwide acquisition standards.

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

FAR part 8, concerning Required Sources of Supplies and Services, is significantly updated. The model deviation language:

- Enhances usability by restructuring and organizing the part in the logical flow of the acquisition lifecycle
- Simplifies mandatory source guidance
- Makes the use of Governmentwide Best-in-Class (BIC) contracts mandatory
- Retains focus on the importance of the AbilityOne Program.

This RFO update also moves the procedures for ordering under the Federal Supply Schedule (FSS) from the FAR into the General Services Administration Acquisition Manual/Regulation (GSAM/R). The new language represents a significant shift from the overly prescriptive framework found in FAR subpart 8.4. FSS ordering procedures have been revised to create a streamlined structure that provides only the essential requirements needed to place orders and establish blanket purchase agreements (BPAs) against FSS contracts. This streamlined structure enhances the speed of acquisition, and empowers acquisition professionals to use innovative approaches to acquire products/services/solutions under the FSS program.

The updated FSS Ordering Procedures are located in the [GSAM/R subpart 538.71<sup>1</sup>](#), the text of which has also been included as Attachment A of this CD.

Statutory requirements and government directives retained in the RFO FAR part 8 model deviation, include, but are not limited to the following:

- 10 U.S.C. § 3905, Products of Federal Prison Industries
- 18 U.S.C. § 4124, Purchase of Prison-Made Products by Federal Departments
- 40 U.S.C. § 501, Services for Executive Agencies
- 41 U.S.C. § 152(3), Competitive Procedures
- 41 U.S.C. § 3302, Requirements for Purchase of Property and Services Pursuant to Multiple Award Contracts
- 41 U.S.C. §§ 8501 et seq, Committee for Purchase from People Who are Blind or Severely Disabled
- 44 U.S.C. §§ 501 et seq, Production and Procurement of Printing and Binding
- Pub. L. 108-136, Title XIV, Services Acquisition Reform Act of 2003

The following table is not an exhaustive list but includes notable updates to FAR part 8.

Change	Description
<b>Retained</b>	<ul style="list-style-type: none"><li>• The substance of the “Scope” in 8.000 is retained.</li><li>• Many definitions, previously scattered across different subparts of part 8, are now consolidated at new section 8.001.</li><li>• Use of Mandatory Sources. The priorities and requirements for use of mandatory sources are moved from 8.002 to new sections 8.102 and 8.103. Former section 8.003, “Use of Other Mandatory Sources,” is deleted, but its content is preserved and merged into section 8.101.</li><li>• Use of Existing Contracts. 8.104 replaces section 8.004, “Use of Other Sources.” Best-in-class (BIC) contracts or BPAs are now required to be used when a commercial product/service meets an agency’s need, unless approved by the Head of the Contracting Activity (HCA). If a BIC is not suitable, agencies should consider use of an existing governmentwide contract, BPA, or shared service.</li></ul>

<sup>1</sup> Please note that this link and the text of Attachment A are GSA’s Class Deviation to incorporate the former FAR Subpart 8.4 into its GSAM/R FSS Ordering Procedures.

	<ul style="list-style-type: none"> <li>• Contractor permitted use of Government supply sources. This new content moves from FAR part 51 to the new section at 8.105. A new clause is prescribed in section 8.105-1 and discussed below.</li> <li>• Contractor Use of GSA Fleet. Former subpart 8.11, “Leasing of Motor Vehicles,” is deleted but guidance for authorizing contractor use of GSA Fleet is preserved and moved to section 8.105-3.</li> <li>• Ordering under the Federal Supply Schedule. This new subpart 8.4 directs agencies to follow the ordering procedures established by GSA found at GSAM/R part 538.</li> <li>• Requirements and procedures for Acquisition From Federal Prison Industries, Inc. are retained and streamlined. The content has been moved from subpart 8.6 to the new subpart 8.3.</li> <li>• Requirements and procedures for Acquisition From AbilityOne Participating Nonprofit Agencies are retained and streamlined. The content has been moved from subpart 8.7 to the new subpart 8.2.</li> <li>• Requirements and procedures for Acquisitions of Government Printing and Related Supplies are retained and streamlined. The content has been moved from subpart 8.8 to the new subpart 8.5.</li> <li>• The following clauses are retained or relocated from other parts: <ul style="list-style-type: none"> <li>○ Clause 52.208-9, Contractor Use of Mandatory Sources of Supply and Services, is streamlined. <ul style="list-style-type: none"> <li>▪ The prescription is now at 8.105-1(b).</li> </ul> </li> <li>○ Clause 52.208-10 Government Supply Sources (previously at 52.251-1) <ul style="list-style-type: none"> <li>▪ The prescription is now at 8.105-2(c).</li> </ul> </li> <li>○ Clause 52.208-11, GSA Fleet and Related Services (previously at 52.251-2) <ul style="list-style-type: none"> <li>▪ The prescription is now at 8.105-3(c).</li> </ul> </li> <li>○ 52.208-1 through 52.208-8 remain reserved</li> </ul> </li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>• Section 8.001, “General,” is removed. It contained a general requirement for IT acquisitions to comply with capital planning rules. This information is not specific to the core purpose of part 8.</li> <li>• Subpart 8.1, “Excess Personal Property,” is removed. The new 8.103(a)(2) points readers to the authoritative Federal Management Regulation (41 C.F.R. 102-36) to avoid outdated information.</li> <li>• Subpart 8.4, “Federal Supply Schedules,” is retitled to “Ordering under the Federal Supply Schedule,” and streamlined with most of the content moving to GSAM/R part 538.</li> <li>• The following clauses associated with “Leasing of Motor Vehicles” are removed: <ul style="list-style-type: none"> <li>○ 52.208-4, Vehicle Lease Payments</li> <li>○ 52.208-5, Condition of Leased Vehicles</li> <li>○ 52.208-6, Marking of Leased Vehicles</li> <li>○ 52.208-7, Tagging of Leased Vehicles</li> </ul> </li> </ul>

**IV. Required Actions:** All DOT Operating Administrations (OAs), the Office of the Secretary of Transportation (OST), and the Office of the Inspector General (OIG), excluding the Federal Aviation Administration (FAA) per TAR 1201.104(d) shall follow the [RFO part 8 model deviation text](#) and corresponding [RFO part 52 model deviation text](#) instead of FAR parts 8 and 52 as codified at 48 CFR chapter 1. The Council's RFO part 8 model deviation text is available at [Acquisition.gov/far-overhaul](#) and is incorporated by reference into this CD. A line-out version of the changes may also be found [here](#) for reference.

To access the new FSS Ordering Procedures, users can:

- Click the hyperlinked “538” in the part 8 model deviation text at 8.401(b)
- Click the hyperlinked “NEW – Federal Supply Schedule Ordering Procedures” link in the new box at the top right of [acquisition.gov/far-overhaul/far-part-deviation-guide](#)
- Type [acquisition.gov/FSS-ordering procedures](#) in the URL address bar.

Heads of the Contracting Activities (HCAs) must ensure this deviation is disseminated to the acquisition workforce and ensure compliance with the requirements in the revised FAR part 8 guidance.

For new solicitations and contracts, when using any provisions or clauses that have been revised, utilize the [RFO part 52 model deviation text](#). Do not include any of the removed provisions or clauses in future solicitations and contracts.

For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clauses, the contracting officer may be required to separately address certain aspects in the contract.

**V. Applicability:** This CD applies to all DOT OAs, OST, and OIG, excluding the FAA in accordance with TAR 1201.104(d).

**VI. Expiration Date:** This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded, whichever occurs first.

**VII. Point of Contact:** Questions or comments regarding this deviation may be directed to [DOTAcquisitionPolicy@dot.gov](mailto:DOTAcquisitionPolicy@dot.gov).

**Attachments:**

Attachment A – FSS Ordering Procedures via GSAM/R subpart 538.71

## Attachment A – FSS Ordering Procedures via GSAM/R subpart 538.71

Source Link: <https://www.acquisition.gov/fss-ordering-procedures>

### Subpart 538.71— Federal Supply Schedule Ordering Procedures

Note. The Revolutionary Federal Acquisition Regulation Overhaul (RFO) was used for purposes of providing citations to the FAR. The RFO is available at <https://www.acquisition.gov/far-overhaul>

#### 538.7100 Scope of subpart.

This subpart prescribes the procedures for placing orders and establishing blanket purchase agreements (BPAs) against Federal Supply Schedule (FSS) contracts. Learn more about the FSS program at <http://www.gsa.gov/schedules>.

#### 538.7101 Definitions.

As used in this subpart—

*Ordering activity* means an entity that is eligible to place orders or establish BPAs against FSS contracts.

*Order-level materials (OLMs)* means products, services, and/or solutions (a combination of products and/or services) acquired in direct support of an order placed against a FSS contract, including orders under FSS BPAs, when the products, services, and/or solutions are not known at the time of FSS contract or FSS BPA award. OLM pricing is not established in FSS contracts or FSS BPAs.

#### 538.7102 General.

##### 538.7102-1 FSS program.

(a) The procedures in this subpart constitute competitive procedures and meet the requirements of the Competition in Contracting Act (see 41 U.S.C. 152(3)).

(b) Unless otherwise prescribed, FAR parts 5, 6, 14, 15, 16, and 19 do not apply to this subpart.

(c) Requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in FAR 2.101) are not within scope of the FSS program (see 40 U.S.C. 1103 note).

(d) Two or more FSS contractors can combine their offerings and propose a FSS contractor team arrangement (CTA) to meet an ordering activity's needs. Learn more about FSS CTAs at <http://www.gsa.gov/schedules>.

(e) In performance of a FSS order, including orders under FSS BPAs, a FSS contractor may acquire products, services, or solutions from other FSS contractors.

(f) The Governmentwide commercial purchase card or other authorized means may be used—

(1) As a payment mechanism for orders, regardless of dollar amount, subject to any applicable limitations (e.g., limitations established by the FSS BPA, ordering activity policies, or the Governmentwide commercial purchase card program).

(2) To place orders, regardless of dollar amount subject to any applicable limitations (e.g., limitations established by the FSS BPA, ordering activity policies, or the Governmentwide commercial purchase card program).

## 538.7102-2 Placing FSS orders and establishing FSS BPAs

(a) To solicit quotations for orders and BPAs against FSS contracts, issue a Request for Quotation (RFQ). A quotation is not an offer. Consequently, the procedures described in this subpart are not considered negotiations or source selection. Ordering activities are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting revised quotations. To maximize efficiency, ordering activities are encouraged to use innovative RFQ approaches when placing orders and establishing FSS BPAs. Learn more about innovative RFQ approaches in the Periodic Table of Acquisition Innovations at <https://acquisitiongateway.gov/periodic-table>.

(b) Ordering activities must—

(1) Follow FAR parts 4, 7, 10, and 11, to the extent necessary, for purposes of planning, conducting market research, and defining their needs. For example, ordering activities may use FSS e-tools (e.g., [GSA Advantage!®](#)) to search for and compare products, services, and solutions offered under the FSS program.

(2) Comply with the requirements of FAR 12.104(b) when placing an order, including orders under FSS BPAs, using a contract type other than fixed-price.

(3) Check the System for Award Management (SAM.gov) for active contractor exclusion records prior to award.

(4) Award the FSS order to (or establish the FSS BPA with) the FSS contractor that represents the best value (as defined by FAR 2.101) and notify any unsuccessful quoters.

(5) Document the file to the extent necessary to support the award decision, such as demonstrating that each quotation submitted by an FSS contractor in response to an RFQ was fairly considered. See 538.7104-3 for additional documentation requirements when the order is to be placed, or FSS BPA established, on a sole source basis.

(6) If an unsuccessful quoter requests information on an award within 3 days after the date on which that quoter received notification of contract award, provide a brief explanation of the award decision that explains why the unsuccessful quoter was not selected.

(c) Ordering activities may—

(1) Set aside, reserve or otherwise place orders or establish FSS BPAs with small business concerns identified in FAR part 19.

(2) Seek further price discounts or other concessions before placing an order or establishing a FSS BPA.

(3) Place orders orally when using the procedures in 538.7103-1 or 538.7103-2(a).

(d) Ordering activities are not required to—

(1) Determine contractor responsibility at the order level or BPA level as contractor responsibility has been determined at the FSS contract level.

(2) Make a fair and reasonable price determination for FSS products, services, or solutions at the order level or BPA level as FSS contract pricing has been determined fair and reasonable.

#### 538.7103 Procedures.

These procedures apply to placing orders and establishing BPAs against FSS contracts. See 538.7104-1(d) for placing orders against FSS BPAs.

#### 538.7103-1 Acquisitions valued at or below the micro-purchase threshold.

(a) Place order or establish BPA with any FSS contractor that can meet the need.

(b) Although not required to solicit from a specific number of FSS contractors, ordering activities should attempt to distribute orders among FSS contractors.

#### 538.7103-2 Acquisitions valued above the micro-purchase threshold, but not above the simplified acquisition threshold (SAT).

(a) When the product, service, or solution is clearly defined and is available for purchase at a fixed-price (e.g., capability-as-a-service, subscription, training) place the order after—

(1) Considering reasonably available information about the product, service, or solution by surveying three or more FSS contractors on [GSA Advantage!®](#);

(2) Considering reasonably available information about the product, service, or solution by reviewing the FSS contract catalogs of three or more FSS contractors;

(3) Publishing an RFQ on GSA's [eBuy](#); or

(4) Issuing an RFQ to three or more FSS contractors.

(b) When the product, service, or solution is not clearly defined, involves OLMs, requires a statement of objectives, statement of work, or performance work statement, or is not available for purchase at a fixed-price—

(1) Publish an RFQ on GSA's [eBuy](#); or

(2) Issue an RFQ to three or more FSS contractors.

(c) When the product, service, or solution is to be procured on a sole source basis, execute a justification in accordance with 538.7104-3(a).

538.7103-3 Acquisitions valued above the SAT.

(a) Unless a justification is executed and approved in accordance with 538.7104-3(b)—

(1) Publish an RFQ on GSA's [eBuy](#); or

(2) Issue an RFQ to as many FSS contractors offering the product, service, or solution as practicable, to reasonably ensure that quotations will be received from at least three FSS contractors. If fewer than three quotations are received, document the file by describing how no additional FSS contractors capable of meeting the need could be identified despite reasonable efforts taken.

(b) RFQs must describe the work to be performed and the basis on which selection will be made.

(c) Fairly consider all quotations received by evaluating and making award according to the basis described in the RFQ.

538.7104 Additional requirements.

538.7104-1 FSS Blanket purchase agreements.

This section outlines additional requirements specific to FSS BPAs. FSS BPAs may be established with one or more FSS contractors to fill repetitive needs. FSS BPAs shall be established in accordance with the procedures in 538.7102-2 and 538.7103.

(a) Content requirements. FSS BPAs must, at a minimum, include—

(1) Sufficient detail about the need, such as scope of work;

(2) An ordering period, inclusive of any options or award terms;

(3) Ordering activity requirements (e.g., invoicing, delivery, and discounts/other concessions) that are not otherwise included in the FSS contract; and

(4) Ordering procedures that—

(i) Identify the customers/individuals authorized to place orders and any limitations surrounding the placement of orders;

(ii) For multiple-award BPAs, ensure that orders above the SAT are solicited from—

(A) all BPA holders; or

(B) as many BPA holders as practicable and document when three qualified BPA holders were not solicited.

(b) Duration. FSS BPAs may be established with an ordering period that extends beyond the current term of a contractor's FSS contract, so long as there are option periods in the contractor's FSS contract that, if

exercised by the FSS contracting officer, will cover the FSS BPA's ordering period, including options and award terms.

(c) Review. On an annual basis or prior to exercise of an option or award of an award term, FSS BPAs must be reviewed and a written determination made as to whether—

- (1) The BPA still represents the best value;
- (2) Estimated quantities/amounts have been reached or exceeded;
- (3) The BPA ordering procedures are being followed;
- (4) Additional price discounts or other concessions can be obtained; and
- (5) The FSS contract, against which the BPA is established, is still in effect.

(d) Ordering. When placing orders against multiple-award FSS BPAs, follow the ordering procedures established by the FSS BPA.

#### 538.7104-2 Order-level materials.

(a) Mandatory requirements. For OLMs to be included in an order—

- (1) They must not be the primary purpose of the order;
- (2) They must be clearly identified in the order as items not on the contractor's FSS contract or FSS BPA; and
- (3) A fair and reasonable price determination must be made for each authorized OLM, but is not required prior to award of the order; and.

(b) Optional requirements. The ordering activity should—

- (1) Authorize FSS contractors to acquire OLMs from priority sources under FAR part 8. Ordering activities do not need to authorize FSS contractors when OLMs are acquired under 538.7102-1(e).
- (2) Include any additional requirements governing the OLMs being ordered that are not otherwise included in the contractor's FSS contract or FSS BPA.

#### 538.7104-3 Sole source justifications.

Orders placed or BPAs established against FSS contracts are exempt from the requirements in FAR part 6. However, an ordering activity must justify its action when awarding on a sole source basis in accordance with this subsection.

(a) Exceeding MPT, but not exceeding the SAT. The ordering activity contracting officer must determine in writing that the circumstances of the acquisition deems only one source reasonably capable of providing the

products, services, or solutions (e.g., urgency, exclusive licensing agreements, items particular to one manufacturer).

(b) Exceeding the SAT. (1) Statutory exceptions. The statutory exceptions supporting the placement of an order or establishment of a FSS BPA that exceeds the SAT on a sole source basis are:

- (i) The need is of such unusual urgency that following the procedures would result in unacceptable delays in fulfilling that need;
- (ii) Only one source is capable of providing the products, services, or solution required at the level of quality required because the products, services, or solutions are unique or highly specialized;
- (iii) The order should be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to an FSS order already issued on a competitive basis;
- (iv) It is necessary to place the order with a particular FSS contractor to satisfy a minimum guarantee established in the FSS BPA; or
- (v) A law expressly authorizes or requires that the purchase be made from a specified source.

(2) Content requirements. Justifications must be in writing and include sufficient detail and supporting rationale to support the exception used.

(3) Publication requirements. (i) Justifications must be made publicly available within 14 days after award, except—

(A) For justifications made under paragraph (b)(1)(i) of this subsection, which must be posted within 30 days after contract award; and

(B) When publication is not required. Publication is not required in the event of extraordinary circumstances or where publication would compromise national security (e.g., would result in disclosure of classified information or create other security risks).

(ii) Justifications must be made publicly available—

(A) At the Government-wide Point of Entry (GPE); or

(B) On the website of the ordering activity, which may provide access to the justifications by linking to the GPE; and

(C) For a minimum of 30 days.

(iii) Before publication, justifications must be carefully screened—

(A) To identify and remove any contractor proprietary data, including references and citations as are necessary to protect such proprietary data.

(B) To determine whether the justification, or portions of the justification, are exempt from publication under any of the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure contained in FAR part 24.

**538.7104-4 Items peculiar to one manufacturer.**

(a) General. An item peculiar to one manufacturer can be a particular brand name, product, or a feature of a product, peculiar to one manufacturer. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer.

(b) Requirement. Items peculiar to one manufacturer must not be acquired unless—

(1) The particular brand name, product, or feature is essential to the ordering activity's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the need; and

(2) The file is documented accordingly—

(i) If the order is to be placed (or FSS BPA established) competitively, the file must be documented concerning the basis for restricting consideration to an item peculiar to one manufacturer, or

(ii) If the order is to be placed (or FSS BPA established) on a sole source basis, a justification must be executed in accordance with 538.7104-3.

**538.7105 Disputes.**

(a) Disputes. Under the Disputes clause of the FSS contract, the ordering activity contracting officer must—

(1) Consult with the FSS contracting officer prior to resolving a dispute arising under or relating to an FSS order that requires interpretation of material FSS contract terms or involves a significant FSS contract administration issue.

(2) Issue any final decision on a dispute arising under or relating to an FSS order, unless the FSS contracting officer agrees, after consultation with the ordering activity contracting officer, to issue the final decision.

(b) Appeals. Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(c) Alternative dispute resolution. The ordering activity contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable.

**\*\*\* END OF ATTACHMENT A \*\*\***