

General Services Administration

538.7102

the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/ clauses to delete “Government” or similar language referring to the U.S. Government and substitute “ordering activity” or similar language when preparing solicitations and contracts to be awarded under Schedule 70, and the Consolidated Schedule containing information technology SINs, and Schedule 84. When such changes are made, the word “(DEVIATION)” shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

- (a) 52.212-4, Contract Terms and Conditions—Commercial Items.
- (b) 52.216-18, Ordering.
- (c) 52.216-19, Order Limitations.
- (d) 52.229-1, State and Local Taxes.
- (e) 52.229-3, Federal, State, and Local Taxes.
- (f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232-17, Interest.
- (h) 52.232-19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration
- (j) 52.232-36, Payment by Third Party.
- (k) 52.237-3, Continuity of Services.
- (l) 52.246-4, Inspection of Services-Fixed Price.
- (m) 52.246-6, Inspection-Time-and-Material and Labor-Hour.
- (n) 52.247-34, F.O.B. Destination.
- (o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

538.7004 Solicitation provisions and contract clauses.

- (a) The contracting officer shall insert the clause at 552.238-77, Definition (Federal Supply Schedules), in solicitations and contracts for—
 - (1) Schedule 70;
 - (2) The Consolidated Schedule containing information technology SINs; and
 - (3) Schedule 84.
- (b) The contracting officer shall insert the clause at 552.238-78, Scope of

Contract (Eligible Ordering Activities), in solicitations and contracts for—

- (1) Schedule 70; and
- (2) The Consolidated Schedule containing information technology SINs; and
- (3) Schedule 84.
- (c) The contracting officer shall insert the clause at 552.238-79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and contracts for—
 - (1) Schedule 70;
 - (2) The Consolidated Schedule containing information technology SINs; and
 - (3) Schedule 84.
- (d) See 552.101-70 for authorized FAR deviations.

[73 FR 54339, Sept. 19, 2008]

Subpart 538.71—Recovery Purchasing

SOURCE: 72 FR 4653, Feb. 1, 2007, unless otherwise noted.

538.7100 Scope of subpart.

This subpart prescribes policies and procedures to implement the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) authorizing non-federal organizations to use Federal Supply Schedule contracts to purchase products and services to be used for recovery from major disasters, terrorism or nuclear, biological, chemical, or radiological attack.

538.7101 Definitions.

The definitions in subsection 538.7001 shall apply for purposes of this subpart.

538.7102 General.

- (a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate 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 to

facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. Use of Federal supply schedules by State and local governments is voluntary. Agreement of a schedule contractor to offer recovery purchasing under the contract and acceptance of any order for recovery purchasing from a State or local government is voluntary.

(b) State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to be used to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. A listing of the Federal Supply Schedules for the products and services is available in GSA's Schedules e-Library at Web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating contractors and the products and services available for recovery purchasing will be labeled with the Disaster Recovery Purchasing ICON.

(c) State and local governments that wish to use the Federal Supply Schedules to facilitate recovery from major disasters or attacks are responsible for ensuring that only authorized representatives of their governments place orders against these schedules and that procured products and services are used only for the purposes authorized by Section 833 of Public Law 109–364.

538.7103 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation (FAR) and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity

pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to—

- (a) 52.212–4, Contract Terms and Conditions—Commercial Items.
- (b) 52.216–18, Ordering.
- (c) 52.216–19, Order Limitations.
- (d) 52.229–1, State and Local Taxes.
- (e) 52.229–3, Federal, State, and Local Taxes.
- (f) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232–17, Interest.
- (h) 52.232–19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
- (j) 52.232–36, Payment by Third Party.
- (k) 52.237–3, Continuity of Services.
- (l) 52.246–4, Inspection of Services—Fixed Price.
- (m) 52.246–6, Inspection-Time-and-Material and Labor-Hour.
- (n) 52.247–34, F.O.B. Destination.
- (o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

538.7104 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.238–76, Definition (Federal Supply Schedules)—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear,