

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 515, 538, and 552

[Change 100; GSAR Case 2013–G502;
Docket No. GSA–GSAR–2019–0008;
Sequence No. 1]

RIN 3090–AJ41

General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule Contracting (Administrative Changes)

AGENCY: Office of Acquisition Policy,
General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) Part 515, Contracting by Negotiation, Part 538, Federal Supply Schedule Contracting, and GSAR Part 552, Solicitation Provisions and Contract Clauses, to clarify, update, and incorporate existing Federal Supply Schedule contract administration policies and procedures.

DATES: *Effective:* May 23, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, General Services Acquisition Policy Division, GSA, 202–357–9652 or email Dana.Bowman@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2013–G502.

SUPPLEMENTARY INFORMATION:

I. Background

In 2006, GSA initiated a rewrite of the GSAM to consolidate, update, and revise policy to fulfill statutory and executive order requirements, meet the needs of evolving acquisition programs within GSA's Federal Acquisition Service (FAS), Public Building Service (PBS), and other staff procurement offices, and ensure consistency with the FAR.

GSAR Case 2006–G507 was created to rewrite GSAR Part 538, Federal Supply Schedule Contracting. The proposed rule, published in the **Federal Register** at 74 FR 4596, on January 26, 2009, received well over 100 public comments and received considerable stakeholder opposition. Therefore, GSA withdrew this case (*i.e.*, the complete rewrite of GSAM Part 538) in favor of an iterative

approach—opening cases with a more limited scope to allow stakeholders to focus on specific issues that allowed for robust analysis and discussion as well as increased transparency—while expediting the rulemaking process as much as possible.

GSAR Case 2013–G502 *Federal Supply Schedule Contracting (Administrative Changes)*¹ was opened as one of several cases to reform the Federal Supply Schedule (FSS) Program and address outstanding issues. This case is focused on incorporating non-complex provisions and clauses, updating administrative matters, and restructuring the GSAR to be more consistent with the FAR in terms of the FSS program.

GSA's FSS program, commonly known as the GSA Schedules program or Multiple Award Schedule (MAS) program, is the Government's most used commercial-item purchasing channel, accounting for approximately \$34.2 billion of Federal contract awards in fiscal year 2018 (not including the VA Schedules).

GSA Schedules provide a convenient and effective option for both ordering activities and Schedule contractors. Ordering activities enjoy simplified ordering procedures and reduced prices, while Schedule contractors connect with federal business quickly and easily. Additional features of the Schedules program, including Blanket Purchase Agreements (BPAs) and Contractor Team Arrangements (CTAs), greatly enhance the flexibility of the program. These features offer:

- Additional price discounts for ordering activities;
- Expanded opportunities for contractors;
- Elimination of redundant effort, with a single contracting vehicle fulfilling complex or ongoing needs;
- Reductions in administrative time and paperwork;
- Expanded business opportunities for socioeconomic groups; and
- Help for ordering activities wishing to reach socio-economic goals.

The Schedules Program supports Federal Agencies' missions by providing access from simple commodities such as pens and pencils to complex services such as IT Modernization.

Authority for This Rulemaking

Pursuant to paragraph (3) of section 152 of Title 41 of the United States

¹ See 79 FR 54126, dated September 10, 2014; Extension 79 FR 64356, dated October 29, 2014.

Code, GSA is authorized to establish procedures for the Federal Supply Schedules (FSS) program. FSS procedures meet the Competition in Contracting Act (CICA) requirement of full and open competition as long as participation has been open to all responsible sources; and orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government.

II. Discussion of the Final Rule

GSA published a proposed rule with a request for public comments in the **Federal Register** at 79 FR 54126 on September 10, 2014 to clarify and update the contracting by negotiations GSAR section and incorporate existing Federal Supply Schedule Contracting policies and procedures, and corresponding provisions and clauses. This final rule amends the GSAR at GSAR part 515, Contracting by Negotiation, GSAR part 538, Federal Supply Schedule Contracting, and corresponding provisions and clauses in GSAR part 552, Solicitation Provisions and Contract Clauses.

Specifically, the GSAR amendments included in this final rule are as follows:

1. *Solicitation and Contract Structuring:* GSAR 538.273 is restructured to be more consistent with the formation of Federal Supply Schedule (FSS) solicitations and contracts. The previous structure of GSAR 538.273 was based upon whether the FSS was single-award or multiple-award. A more practical structure outlines where each provision or clause shall be located in FSS solicitations and contracts (*e.g.*, as an addendum to FAR clause 52.212–1 or 52.212–4).

2. *New Clauses and Provisions:* Thirty (30) new FSS-specific clauses and provisions, previously implemented through internal GSA policy and currently in FSS solicitations and contracts are incorporated into GSAR parts 538 and 552. Bringing these clauses and provisions into the GSAR allows for greater transparency, and consolidates all regulations into one area, while updating administrative information to ensure currency and consistency within the FSS program. The thirty (30) new provisions/clauses, prescriptions, and brief descriptions are as follows:

No.	Name	Prescription	Description
552.238-70	Cover Page for Worldwide Federal Supply Schedules.	Use in all FSS solicitations. Use Alternate I for single-award Federal Supply Schedules.	This provision notifies the Offeror of the industry and types of products/services being solicited.
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.	This provision notifies small business Offerors which Special Item Numbers (SINs) are set aside.
552.238-72	Information Collection Requirements.	Use in all FSS solicitations.	This provision informs Offerors that only required regulations are contained in the solicitation.
552.238-74	Introduction of New Supplies/ Services (INSS).	Use only in FSS 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).	This provision notifies Offerors of the method to propose new services or supplies not covered by the Schedule.
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.	This provision provides notification to Offerors that non-Government employees may be utilized to review their solicitation response.
552.238-87	Delivery Prices	Use in all FSS solicitations and contracts.	This clause ensures all parties are aware of the delivery terms of the contract.
552.238-88	GSA Advantage!	Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.	This clause outlines to the Contractor that it must participate in the GSA Advantage! [®] online shopping service. This clause is not applicable to the Department of Veterans Affairs.
552.238-89	Deliveries to the U.S. Postal Service.	Use only in FSS solicitations and contracts for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.	This clause provides requirements for the delivery of mailable articles delivered direct to a USPS facility. The clause ensures the use of the USPS to reduce unnecessary costs of shipping.
552.238-90	Characteristics of Electric Current.	Use only in FSS solicitations and contracts when the supply of equipment that uses electrical current is contemplated.	This clause requires the Contractor to provide equipment with electrical currents suitable for the location in which the equipment is to be used, as specified on the order.
552.238-91	Marking and Documentation Requirements for Shipping.	Use only in FSS solicitations and contracts for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.	This clause defines the responsibility of Ordering Activities and Contractors for the marking and documentation of shipping information.
552.238-92	Vendor Managed Inventory (VMI) Program.	Use only in FSS solicitations and contracts for supplies when a VMI Program is contemplated.	This clause allows Contractors that commercially provide a VMI type system to enter into similar partnerships with customers under a Blanket Purchase Agreements.
552.238-93	Order Acknowledgement	Use only in FSS solicitations and contracts for supplies.	This clause requires Contractors to acknowledge orders which state "Order Acknowledgement Required" within 10 calendar days after receipt to the Ordering Activity placing the order and contain information pertinent to the order, including the anticipated delivery date.
552.238-94	Accelerated Delivery Requirements.	Use only in FSS solicitations and contracts for supplies.	This clause assists with the request of accelerated delivery when the FSS contract delivery period does not meet the bona fide urgent delivery requirements of an Ordering Activity.
552.238-95	Separate Charge for Performance Oriented Packaging (POP).	Use only in FSS solicitations and contracts for items defined as hazardous under Federal Standard No. 313.	This clause ensures both parties, Contractors and Ordering Activities, are aware of a separate charge for preservation, packaging, packing and marking and labeling of domestic and overseas HAZMAT surface shipments.
552.238-96	Separate Charge for Delivery Within Consignee's Premises.	Use only in FSS solicitations and contracts for supplies when allowing Offerors to propose separate charges for deliveries within the consignee's premises.	This clause ensures both parties, Contractors and Ordering Activities, are aware of a separate charges for deliveries within the consignee's premises.

No.	Name	Prescription	Description
552.238-97	Parts and Service	Use in all FSS solicitations and contracts.	This clause is used to ensure that the parts and services (including the performance of warranty or guarantee service) submitted by Offerors (dealers/distributors) is good for the entire contract period.
552.238-98	Clauses for Overseas Coverage.	<p>Use only in FSS solicitations and contracts when overseas acquisition is contemplated.</p> <p>The following clauses and provisions shall also be inserted in full text, when applicable.</p> <p>(a) 52.214-34 <i>Submission of Offers in the English Language.</i></p> <p>(b) 52.214-35 <i>Submission of Offers in U.S. Currency.</i></p> <p>(c) 552.238-90 <i>Characteristics of Electric Current.</i></p> <p>(d) 552.238-91 <i>Marking and Documentation Requirements Per Shipment.</i></p> <p>(e) 552.238-97 <i>Parts and Service.</i></p> <p>(f) 552.238-99 <i>Delivery Prices Overseas.</i></p> <p>(g) 552.238-100 <i>Transshipments.</i></p> <p>(h) 552.238-101 <i>Foreign Taxes and Duties.</i></p> <p>(i) 52.247-34 <i>FOB Destination.</i></p> <p>(j) 52.247-38 <i>FOB Inland Carrier, Point of Exportation.</i></p> <p>(k) 52.247-39 <i>FOB Inland Point, Country of Importation.</i></p>	This clause ensures all applicable overseas clauses are included in the solicitation and contract.
552.238-99	Delivery Prices Overseas	Use only in FSS solicitations and contracts when overseas acquisition is contemplated.	This clause is for use for f.o.b. destination in overseas deliveries to ensure that all parties are aware of delivery terms.
552.238-100	Transshipments	Use in FSS solicitations and contracts when overseas acquisition is contemplated.	This clause states the terms and conditions for transshipments, and provides information to Contractors with the necessary Department of Defense forms.
552.238-101	Foreign Taxes and Duties	Use only in FSS solicitations and contracts when overseas acquisition is contemplated.	This clause delineates which fees, taxes and other foreign Governmental costs are exempt/non-exempt by the U.S. Government.
552.238-102	English Language and U.S. Dollar Requirements.	Use in all FSS solicitations and contracts.	This clause is used to instruct Contractors that all documents shall be produced in the English language, including, but not limited to, price lists and catalogs.
552.238-103	Electronic Commerce	Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.	This clause outlines the use of electronic commerce/data interchange to conduct contract processes and procedures.
552.238-104	Dissemination of Information by Contractor.	Use in all FSS solicitations and contracts.	This clause provides to the Contractor the responsibility of distributing Authorized Federal Supply Schedule Price Lists to all authorized sales outlets.
552.238-105	Deliveries Beyond the Contractual Period—Placing of Orders.	Use only in FSS solicitations and contracts for supplies.	This clause allows orders to be processed if they were received prior to the expiration of the contract.
552.238-106	Interpretation of Contract Requirements.	Use in all FSS solicitations and contracts.	This indicates that only written clarifications regarding interpretation of contract clauses may only be made by the Contracting Officer or his/her designated representative.
552.238-107	Export Traffic Release (Supplies).	Use in FSS solicitations and contracts for supplies, except vehicles.	This clause informs Contractors of the requirements for exporting items under the contract.
552.238-108	Spare Parts Kit	Use only in FSS solicitations and contracts for items requiring spare part kits.	This clause ensures requirements for spare part kits are understood by all parties.

No.	Name	Prescription	Description
552.238-109	Authentication Supplies and Services.	Use in Federal Supply Schedule 70 solicitations only, and only contracts awarded Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive 12 (HSPD-12).	This clause outlines requirements for the Homeland Security Presidential Directive 12 (HSPD-12).
552.238-110	Commercial Satellite Communication (COMSATCOM) Services.	Use only in FSS solicitations and contracts for COMSATCOM services.	This clause provides minimum requirements for COMSATCOM services.
552.238-111	Environmental Protection Agency Registration Requirement.	Use only in FSS solicitations and contracts for supplies when items may require registration with the Environmental Protection Agency.	This clause ensures items in FSC Group 68 items (insecticides, etc.) are properly registered with EPA.

3. Reinstated Clauses and Provisions: Four (4) FSS-specific clauses and provisions that were removed from the GSAR as part of a previous General Services Administration Acquisition Manual (GSAM) rewrite and retained by internal GSA policy are reinstated and given new clause numbers. The clauses and provisions are reinstated into GSAR Parts 538 and 552 in order to ensure consistency and transparency. The four (4) reinstated clauses/provisions, prescriptions, and a brief description are as follows:

New No.	Previous No.	Name	Prescription	Description
552.238-75	552.212-73	Evaluation—Commercial Items (Federal Supply Schedules).	Use in FSS standing solicitations.	This provision informs Offerors that multiple awards for commercial items offered may be made, resulting in a binding contract between parties.
552.238-84	552.232-8	Discounts for Prompt Payment.	Use in all FSS solicitations and contracts.	This clause provides the rules governing early payment under the FSS contract (and resulting orders).
552.238-85	552.232-83	Contractor's Billing Responsibilities.	Use in all FSS solicitations and contracts.	This clause provides to the Contractor the requirements of billing responsibilities, particularly those associated with participating dealers.
552.238-86	552.211-78	Delivery Schedule	Use only in FSS solicitations and contracts for supplies.	This clause provides to the Offeror the requirement to address normal commercial delivery times in its offer.

4. Revised Existing Clauses and Provisions: Ten (10) existing FSS-specific clauses and provisions are updated to reflect current references and practices. The ten (10) updated existing clauses/provisions and a brief description of the changes are as follows:

No.	Name	Description of change
552.212-71	Contract Terms and Conditions Applicable to GSA Acquisition Commercial Items.	Updated to remove unnecessary clauses and outdated FSS clauses.
552.238-73	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.	Prescription update to use only in FSS solicitations for electronic office equipment.
552.238-74	Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.	Prescription updated to use in all FSS solicitations and contracts.
552.238-75	Identification of Products that have Environmental Attributes	Prescription updated to use only in FSS solicitations and contracts that contemplate items with environmental attributes.
552.238-76	Cancellation	Prescription updated to use in all FSS solicitations and contracts.
552.238-77	Industrial Funding Fee and Sales Reporting	Prescription updated to use in all FSS solicitations and contracts.
552.238-78	Price Reductions	Prescription updated to use in all FSS solicitations and contracts.
552.238-79	Scope of Contract (Eligible Ordering Activities)	Updated to reference the correct payment clause, FAR 52.232-36, Payment by Third Party.
552.238-80	Modifications	Prescription updated to use in all FSS solicitations and contracts. (i) Use Alternate I for Federal Supply Schedules that only accept eMod.
552.238-81	Examination of Records by GSA (Federal Supply Schedules)	Relocated and retitled from 552.215-71, Examination of Records by GSA (Multiple Award Schedule) as this is an FSS-specific clause.

5. *Technical Amendments:*

Typographical errors are corrected and minor administrative changes are made to GSAR parts 538 and 552 (e.g., renumbers existing provisions and clauses, changes “MAS” to “FSS” to be more consistent with the FAR).

A. *Summary of Significant Changes From the Proposed Rule*

Three respondents submitted numerous comments in response to the proposed rule. The General Services Administration has reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of these comments are addressed in the Analysis of Public Comments Section.

This final rule makes the following changes from the proposed rule:

- **New Clauses and Provisions:** Forty-three (43) new FSS-specific clauses and provisions were contemplated in the proposed rule for public comment.² The proposed rule published incorrectly stated this number as thirty-five (35) and listed forty-five (45) clauses. However, 552.238–82 (Proposed Rule), now 552.238–89 (Final Rule), Delivery Schedule was incorrectly included in the “new” clause list rather than the “reinstated” clause list. In addition, 552.238–92 *Examination of Records by GSA (Federal Supply Schedules)* was incorrectly included in the “new” clause list rather than the “revised existing” clause list. So, the correct number was forty-three (43) “new” FSS-specific clauses in the proposed rule. After taking into consideration public comments received from the proposed rule, thirty (30) new FSS-specific clauses and provisions are incorporated into GSAR parts 538 and 552 in the final rule. The following thirteen (13) clauses from the proposed rule are removed from the GSAR final rule:

- 552.238–85 *Significant Changes*
- 552.238–88 *Notice: Requests for Explanation or Information and Hours of Operation*
- 552.238–91 *Authorized Negotiators*
- 552.238–102 *Inspection at Destination*
- 552.238–106 *Post-Award Samples*

² The proposed rule at 79 FR 54126 notes thirty-five (35) new clauses and provisions in the text at Paragraph I.2, but lists forty-five (45) new clauses and provisions in the table. One (1) of the clauses listed in the proposed rule table, “Delivery Schedule”, was actually previously part of the GSAR and is now reinstated; this is now reflected in Paragraph II.3 of the final rule. One (1) of the clauses listed in the proposed rule table, “Examination of Records by GSA”, actually existed in the GSAR and is moved; this is now reflected in Paragraph II.4 of the final rule.

- 552.238–107 *Restriction on the Acceptance of Orders*
- 552.238–110 *Shipping Points*
- 552.238–111 *Contact for Contract Administration*
- 552.238–119 *Federal Excise Tax*
- 552.238–120 *Guarantee*
- 552.238–122 *Imprest Funds*
- 552.238–127 *Export Traffic Release (Vehicles)*
- 552.238–128 *Carload Shipments*

- **Reinstated Clauses and Provisions:** Seven (7) FSS-specific clauses and provisions were contemplated for reinstatement in the proposed rule for public comment. The proposed rule published incorrectly identified this number as six (6), because 552.238–82 (P.R.), now 552.238–90 (F.R.) Delivery Schedule was incorrectly included in the list of “new” FSS-specific clauses rather than the “reinstated” clauses. After taking into consideration public comments received from the proposed rule, four (4) FSS-specific clauses and provisions are reinstated into GSAR parts 538 and 552 in the final rule. The following three (3) clauses from the proposed rule are removed from the GSAR final rule:

- 552.238–89 *Contractor’s Remittance (Payment) Address*
- 552.238–97 *Payment by Credit Card*
- 552.238–98 *Warranty*

- **Revised Existing Clauses and Provisions:** Nine (9) existing clauses and provisions were contemplated for revision in the proposed rule for public comment. The proposed rule published incorrectly identified this number as seven (7) clauses. However, GSAR clause 552.238–94 *Examination of Records by GSA (Federal Supply Schedules)* was incorrectly included in the list of “new” FSS-specific clauses rather than the “revised existing” clauses. In addition, GSAR clause 552.238–78 *Scope of Contract (Eligible Ordering Activities)* is revised to replace the reference to GSAR clause 552.232–79 *Payment by Credit Card*, which is redundant to FAR clause 52.232–36 *Payment by Third Party*, and is now included in the list of “revised existing” clauses. So, the correct number is nine (9) “revised existing” FSS-specific clauses from the proposed rule. After reviewing the public comments and reflecting on the content, ten (10) revised existing FSS-specific provisions and clauses are incorporated into GSAR parts 538 and 552 in the final rule. The following one (1) GSAR clause is added to the GSAR final rule because it includes references to GSAR clauses affected by this case and is amended to reflect such.

- 552.212–71 *Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items*

B. *Analysis of Public Comments*

GSA received numerous comments from three respondents in response to the proposed rule.³ All comments filed were considered. A discussion of the comments and the changes made to the final rule as a result of those comments is provided as follows:

The comments received covered several points and topics. In order to provide clarification and to better respond to the issues raised, the respondents’ comments are organized into the following categories: (1) General comments regarding the overall rule; (2) Comments on specific provisions and clauses in the rule; (3) Comments regarding the Paperwork Reduction Act and Regulatory Flexibility Act; and (4) Comments outside the scope of the rule.

1. *General Comments*

The following general comments were received in response to the proposed rule:

Respondent: There is value in GSA maintaining a system of Acquisition and Instruction Letters to the GSAR as this is a mechanism to provide transparency.

GSA Response: GSA will continue to maintain a system of Acquisition Letters and Instructional Letters to supplement the GSAR. However, the goal is to implement such policy letters into the GSAM/GSAR for transparency and policy guidance. No changes were made to the final rule as a result of this comment.

Respondent: GSA should initiate a Federal Acquisition Regulation (FAR) case to delete all references to “Federal Supply Schedule (FSS)” and replace with the term “GSA Multiple Award Schedule (MAS)” or “GSA Schedule.”

GSA Response: “Federal Supply Schedule” is being incorporated in the GSAR to achieve consistency with the FAR, which does not frequently use the term “Multiple Award Schedule (MAS).” Until MAS is changed in the FAR, the GSAR will use the term Federal Supply Schedule.

Respondent: GSA has not performed a detailed analysis of nor obtained a baseline understanding of how the proposed policies were historically administered and implemented across all Schedules and the GSA FSS contracting officer community.

GSA Response: GSA has performed an in-depth analysis of the clauses proposed in this rule and has

³ See GSAR Case 2013–G502; Docket 2014–0009; Sequence 1 [79 FR 54125 (September 10, 2014)].

determined that the clauses are still used in FSS contracts. Adding them to the GSAR increases clarity for FSS contracting officers and contractors to understand when each clause should be used. However, based on comments received in response to the proposed rule, some clauses are revised to address the specific comments related to outdated policies. No changes were made to the final rule as a result of this comment.

Respondent: GSA should reissue the proposed rule, covering only clauses currently included in all GSA Schedule contracts and which are being incorporated into the GSAR without change.

GSA Response: This rule only incorporates clauses currently in use by the FSS program through internal agency policy (e.g., acquisition letters). With the exception of minor administrative edits, different numbers, and slightly different names to improve clarity, the substances of the clauses are the same as those currently in FSS contracts and are being incorporated into the GSAR without change.

Respondent: Additional time should be allocated to interested parties to comment on the proposed language, discuss specific issues with each of the legacy policies, and the implications on current operations.

GSA Response: GSA extended the comment period to provide additional time for interested parties to provide comments (See 79 FR 64356).

Respondent: The respondent requested clarity on the number of new FSS-specific clauses currently in FSS solicitations that will be incorporated into the GSAR.

GSA Response: The final rule incorporates 33 new FSS-specific clauses.

2. Comments on Specific Provisions and Clauses

GSAR Text Amended as a Result of Public Comments

Respondent: The proposed rule adds GSAR clause *Evaluation—Commercial Items* including an alternate.

A clause entitled *Evaluation—Commercial Items (Multiple Award Schedule)* (52.212–73) has been in the MAS contract since 1997.

Alternate I, however, is new and a significant change to the way resellers' offers are now evaluated. Further, the provisions of the clause are inconsistent with MAS contracting policy and procedures. Alternate I is prescribed for use in non-standing Schedules. At a minimum the rule should explain what a non-standing schedule is. It is not a concept currently in use.

GSA Response: Concur. The alternate version of the provision is removed from the GSAR text final rule.

Additionally, instructions for a single-award Federal Supply Schedule which has a beginning and end date, and also known as a non-standing solicitation, are included in the new GSAR provision *Cover Page for Worldwide Federal Supply Schedules*, which instructs contracting officers to insert a beginning and end date for non-standing solicitations.

Respondent: GSAR clause *Notice Request for Explanations or Information and Hours of Operation* appears duplicative and/or unnecessary. Information for offerors to submit questions is already included in the SF 1449.

GSA Response: Concur. This clause is duplicative of the Standard Form 1449 and is therefore deleted from the GSAR text of the final rule.

Respondent: What is the purpose of including a unique inspection clause, such as the proposed GSAR clause *Inspection*, in MAS contracts? The commercial item clause has an inspection provision and an alternate for use in service contracts.

GSA Response: Concur. This clause was previously used specifically for stock and special order contracts and does not belong in GSAR part 538. The clause is deleted from the GSAR text final rule.

Respondent: The following GSAR clauses are unique to an individual procurement. GSA should consider removing them from the GSAR and including them in a document or database that is easier to change to keep pace with federal and industry changes.

A. Post-award Samples prescribes a samples clause applicable only to carpet.

B. Export Traffic Release (Vehicles) prescribes a clause applicable only to vehicles.

C. Restriction on the Acceptance of Orders prescribes a clause restricting the receipt of orders from Navy ships that is only applicable to copiers, supplies and services.

D. Federal Excise Taxes prescribes an Excise Tax applicable only to tires and tubes.

E. Carload Shipments prescribes a clause applicable only in contracts for vehicles.

GSA Response: Concur. The prescriptions and associated clauses are deleted from the GSAR text final rule.

Respondent: GSA's proposed clause *Contractor's Remittance (Payment) Address* provision appears to be duplicative or in conflict with FAR 12.303 which requires the remittance

address be addressed in Block 18B of SF1449.

GSA Response: Concur. This clause is deleted from the GSAR text of the final rule.

Respondent: Recommend GSA review FAR 32.1108 as it applies to GSA's proposed GSAR clause *Payment by Credit Card* and the "third party" payment clause to ensure the proposed clause is not inconsistent with or in conflict with FAR.

GSA Response: Concur. The proposed GSAR clause *Payment by Credit Card* is redundant to FAR clause 52.232–36 and is removed from the GSAR text final rule. Additionally, GSAR clause *Scope of Contract (Eligible Ordering Activities)* is amended as a result of this comment.

Respondent: GSAR clauses *Performance Oriented Packaging; Parts and Service; and Spare Parts*, seem impracticable to negotiate at the schedule contract level. GSA should consider deleting these clauses from the GSAR or including instructions for implementing the provisions at the task order level.

GSA Response: Concur. The clauses are maintained at the contract level, but are revised to require submission of the required information at the task order level. GSAR text is amended as a result of this comment.

Respondent: GSAR clause *Authorized Negotiators* appears to be duplicative of FAR 52.203–2 provision which is mandatory for all FSS contracts. This clause and GSAR clause *Contact for Contract Administration* should use a designated URL to revise POC information and feed this information to associated contract systems.

GSA Response: Both clauses are removed from the GSAR text final rule. The agency will take this suggestion into consideration when updating applicable policy in the future.

Respondent: Vendors frequently use multiple carriers for shipments. It is therefore not feasible to specify a specific carrier at the Schedule contract level as required in GSAR clause *Shipping Points*.

GSA Response: Concur. This clause is removed from the GSAR text final rule.

Respondent: GSA should insert a statement at the end of GSAR clause *Significant Changes* that prior to refreshing a solicitation to incorporate significant changes, existing contractors should be given no less than 60 days to review and comment or implement the provision.

GSA Response: This clause is removed from the GSAR text final rule. FAS provides offerors with a 30-day notice when a solicitation is amended

from a previous version to a new version.

Respondent: The GSAR clause *Guarantee* is applicable only to major appliances. GSA should consider going to standard commercial warranty in all MAS schedules as provided for in the proposed *Warranty* clause and FAR clause 52.212-4 *Contract Terms and Conditions—Commercial Items*.

GSA Response: Concur. This clause is removed from the GSAR text final rule. The standard commercial warranty applies to all FSS contracts.

Respondent: GSA's proposed clause *Warranty* appears to be duplicative or in conflict with FAR 52.212-4(o) clause. Also, COs are required to make a determination (D&F) in the Acquisition Plan IAW FAR 46.703 prior to including a warranty clause.

GSA Response: Concur. This clause is removed from the GSAR text final rule. The standard commercial warranty applies to all FSS contracts.

Respondent: Recommend GSA delete proposed GSAR clause *Imprest Funds (Petty Cash)* since the use of imprest funds are established by individual agencies. Also FAR 13.305-3 establishes Conditions for Use of Imprest Funds including a limit of \$500.

GSA Response: Concur. This clause is removed from the GSAR text final rule.

GSAR Text not Amended as a Result of Public Comments

Respondent: GSAR clause *Evaluation—Commercial Items (Federal Supply Schedules)* appears to be duplicative and/or in conflict with FAR. "Multiple awards" and basis of awards are already addressed under FAR 52.212-1(g) and (h). Also the phrase "at the lowest overall cost" implies that there is a head-to-head price competition that is not applicable to schedule offers. Also paragraph (b) appears to duplicate FAR 52.212-2(c). Withdrawals are addressed under FAR 52.212-1.

GSA Response: As stated above, Alternate I of GSAR provision *Evaluation—Commercial Items (Federal Supply Schedules)* is deleted from the GSAR text of the final rule. However, the purpose of the basic provision is not duplicative and does not conflict with the FAR provision. The FAR provision the respondent cites, 52.212-1, is intended to provide instructions to offerors, whereas GSAR provision *Evaluation—Commercial Items* is intended to supplement FAR provision 52.212-2.

Respondent: Should the proposed GSAR clause *Vendor Managed Inventory* be included in all solicitations? This clause typically

applies only in Schedule 51V and perhaps Schedule 75.

GSA Response: This clause is not prescribed for all solicitations. It is only included in solicitations and contracts for supplies when a VMI Program is contemplated.

Respondent: Delivery prices and terms are a matter of FSS contract negotiations, which should be based on a contractor's commercial practices. Mandating specific delivery terms and pricing, such as GSAR clauses *Delivery Prices Overseas* and *Delivery Prices*, will result in schedule contractors having to deviate from their standard commercial practices. Customization of these terms to meet GSA specific requirements could necessitate wholesale changes to contractor shipping and delivery processes.

GSA Response: GSAR clauses *Delivery Prices Overseas* and *Delivery Prices* do not state specific delivery terms or pricing. The clauses require contractors to notify the Government if they cannot deliver within the specified locations agreed to up-front. Also, the clauses are essential to FSS contracts and will ensure a consistent basis for delivery terms across the FSS program.

Respondent: The respondent listed a number of provisions and clauses that were not included in the proposed rule, asking if the clauses not included in this rule would be deleted entirely or published for comments and an IRFA analysis conducted to determine the costs and economic impact on small businesses.

GSA Response: The absence of existing provisions and clauses in the final rule does not necessarily mean they are being deleted from FSS solicitations. Any attempt to incorporate new provisions and clauses will be addressed in a separate GSAR case and an IRFA analysis will be conducted at such time. GSA performed an in-depth analysis of all FSS provisions and clauses and after careful consideration decided to only include the most-used, non-complex clauses in this GSAR case.

Respondent: Is there any plan by FAS to ensure streamlined solicitations are in compliance with FAR 12.603 for Commercial Items?

GSA Response: This case streamlines the solicitation process and ensures the appropriate terms of the FAR commercial items requirements are incorporated into FSS solicitations and contracts. Also, FSS contracts already include FAR clause 52.212-5 and designate the appropriate clauses and provisions.

Respondent: There are already FAR provisions/clauses to address "English

language" and U.S. "dollar" requirements.

GSA Response: The "English language" and U.S. "dollar" requirements are included in the instructions for competitive acquisitions (FAR clause 52.215-1). FSS uses commercial item acquisition instructions (52.212-1) and therefore must specify this requirement as a separate clause.

Respondent: GSA's proposed GSAR clause *Contractor's Billing Responsibilities* appears to be in conflict with FAR. How are dealers permitted to bill ordering activities if payments are tied to the contractor's EFT in SAM?

GSA Response: The FAR does not currently provide coverage for the contractor's relationship with their participating dealers. The terms of EFT, as it relates to the SAM registration, are covered by FAR clause 52.204-7 and only apply to the prime contractor relationship.

Respondent: GSA's proposed clause *Deliveries Beyond the Contractual Period—Placing of Orders* appears to be duplicative or inconsistent with FAR 52.216-22(d). The prescription calls for use in all FSS solicitations and contracts for supplies. However, the clause itself says in accordance with clause *Scope of Contract (Eligible Ordering Activities)* which only applies to "solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack." So there appears to be inconsistency here. Also which products/services has DHS determined are approved for used by 'eligible ordering activities'? In other words, which solicitations are COs supposed to include the *Scope of Contract (Eligible Ordering Activities)* clause? How or when is that determination to be made?

GSA Response: GSAR clause *Deliveries Beyond the Contractual Period—Placing Orders* is not inconsistent or duplicative of FAR 52.216-22(d). This clause supplements the FAR by providing Contracting Officers with specific instructions for such situations.

Subpart 538.7004 is revised in GSAR case 2010-G511 *Purchasing by Non-Federal Entities*, 81 FR 36425 effective July 6, 2016, to state "The contracting officer shall insert the clause, *Scope of Contract (Eligible Ordering Activities)*, in solicitations and contracts for all Federal Supply Schedules."

In December 2006, DHS Memo 06-11884, stipulated that all goods and services available on GSA Federal Supply Schedules qualified as goods

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 Act, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. The memo was signed by the then Secretary of Homeland Security Michael Chertoff.

3. Comments on Paperwork Reduction Act and Regulatory Flexibility Act

Respondent: Please address several collections of information, mandated for submittal in all FSS solicitations, which do not appear to be listed in OMB's current Inventory of Approved Information Collections on reginfo.gov as part of the IRFA analysis.

GSA Response: The IRFA describes the impact of the proposed rule on small entities. It does not break the clauses down individually. GSAR case 2013–G502, which incorporates a number of provisions and clauses currently in use in FSS solicitations and contracts, includes an IRFA that took into consideration all of the applicable clauses and provisions that may impact small entities. The requirements described in this comment are not part of the provisions and clauses on which this rule seeks feedback. The collection requirements included in this comment are included in OMB Control 3090–0163. No changes were made to the rule as a result of this comment.

Respondent: The methodology for estimating Paperwork Burdens is flawed resulting in a significant underestimation of the burden imposed by the rule.

GSA Response: GSA has outlined its methodology for calculating the burden estimates in the information collection supporting statement. Since no specific information on how the methodology is flawed was provided, no changes were made to the rule as a result of this comment.

Respondent: Clarify what information collection requirements are being referred to in GSAR clause *Information Collection Requirements* and comment on whether this provision would be accurate in all FSS solicitations as proposed.

GSA Response: The information collection associated with this clause, OMB control number 3090–0163, is for information specific to a contract or contracting action, not required by regulation. The supporting statement for this information collection notes it is “associated with GSA’s information collection requirements contained in solicitations issued in accordance with the Uniform Contract Format under FAR Part 14, Sealed Bidding (see GSAR

514.201–1); FAR Part 15, Contracting by Negotiation (see GSAR 515.204–1); and solicitations under FAR Part 12, Acquisition of Commercial Items, when issued in accordance with the policy and procedures of FAR Part 14 and FAR Part 15 (see GSAR 512.301). This includes information collection requirements found in GSA Federal Supply Schedule (FSS) solicitations.”

4. Comments Outside the Scope of the Rule

Respondent: There is no GSAR clause that mandates contractors be subjected routinely to Contractor Assistance Visits (CAV). I recommend GSA create a clause to indicate it is mandatory, conduct the IRFA analysis of cost burden and impact on small businesses, and the CAV requirements.

GSA Response: This suggestion is outside the scope of the current rule as this rule focuses on publishing non-complex provisions and clauses, updating administrative matters, and restructuring the GSAR to be more consistent with the FAR in terms of the FSS program. Contractor Assessments are conducted under GSAR clause *Examination of Records by GSA (Federal Supply Schedules)*. GSA examines the cost burden and impact of CAVs on vendors in the PRA of the GSAR *Examination of Records* clause.

Respondent: There are significant clauses covered by the rule that should be the subject of a separate rule-making, such as the *Price Reduction* clause. Including such provisions in this massive collection of clauses does not offer the opportunity to propose changes in this important area.

GSA Response: The *Price Reductions* clause is not being changed as a result of this rule. Comments on the substance of this clause are considered outside the scope of this rule. No changes were made to the rule as a result of this comment.

Respondent: The current GSAR does not contain the proposed GSAR Clause *Discounts for Prompt Payment* referenced in the proposed rule. The proposed clause should be included for public comment in a subsequent rulemaking. The clause appears complicated, and its purpose is not clear. Prompt payment discounts should be disclosed in the CSPF. Whether the contractor offers them to the government, or the contracting officer accepts them, should be subject to negotiation. The Government can advise its contracting staff of factors to consider without adding another clause to the contract.

GSA Response: Clause *Discounts for Prompt Payment (Federal Supply*

Schedules) was previously included in the GSAR at 552.232–8. The clause is unchanged from the previous version and is now reinstated under 538.273 and 552.238–84. No changes were made to the rule as a result of this comment.

Respondent: Proposed GSAR prescription 538.273(d) directs use of the clause *Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists*, which requires distribution of a paper price list. This is an opportunity for GSA to eliminate a requirement in light of the extensive electronic reporting required of contractors.

GSA Response: GSAR clause *Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists* is not being revised by this rule; therefore, this comment is outside the scope of this case. No changes were made to the rule as a result of this comment.

Respondent: The text of GSAR clause *Cancellation*, which “provides instructions to the Offeror on canceling its FSS contracts,” should be corrected to reflect that the clause is intended for use by contractors only. Additional text in the clause, which indicates that the Government will not reimburse the minimum guarantee if the contractor elects to cancel the contract, violates FAR 16.501–2(b)(3) that the Government’s “obligation” in IDIQ contracts is “to the minimum quantity specified in the contract”.

GSA Response: The text of the clause questioned is not being revised; therefore, the comments are not within the scope of this case. However, GSA will take the comments into consideration for potentially addressing in a separate case. No changes were made to the rule as a result of this comment.

Respondent: GSA’s *Examination of Records by GSA (Federal Supply Schedules)* clause, appears to be in conflict with FAR 52.212–4 Alternate I’s “access to records,” which is limited to service contracts and restricts access to timecards to verify labor hours charged and, in the case of a cost-reimbursable T&M contract, invoices to certify material costs. Also, recommend addressing the “Report Card” by COs into CPARs and the cost to the Government for the IOAs travel to and preparation for visits with contractors.

GSA Response: The text of the clause questioned is not being revised; therefore, the comments are not within the scope of this case. However, GSA will take the comments into consideration for potentially addressing in a separate case. No changes were

made to the rule as a result of this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will incorporate a number of provisions and clauses that are currently in use in FSS solicitations and contracts and most contractors are familiar with and are currently complying with these practices. Although this rule does not have a significant impact on a substantial number of small entities, GSA prepared an Initial Regulatory Flexibility Analysis (IRFA) in conjunction with the proposed rule. As a result, GSA has also prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The FRFA is summarized as follows:

This FRFA has been prepared consistent with the criteria of 5 U.S.C. 604.

There are approximately 14,674⁴ FSS contracts that are affected by this change. Of these, approximately eighty percent (11,739) of FSS contracts are held by small businesses. The rule is unlikely to affect small businesses awarded GSA FSS contracts as it implements a number of provisions and clauses currently in use in FSS solicitations and contracts, yet not vetted via public comment. The information collected is used by FAS to evaluate vendors' offers, ordering activities when placing orders against the

contract, and other FSS vendors to conduct market research when submitting proposals. Therefore, this rule does not pose any new projected reporting, recordkeeping, or additional compliance requirements. Bringing these regulations into the GSAR consolidates all regulations into one area, allowing for any future changes to receive public comment.

There are a total of 31 Schedules, with 14 possessing an array of Special Item Numbers (SINs) set-aside for small businesses. Overall, small businesses have benefited from GSA providing access to the Federal marketplace via the Pre-award phase (Pathway to Success), the Post-award phase (New Contractor Orientation), and Contractor Assessments. FSS contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small businesses to receive awards under the FSS Program has enabled them to grow in the Federal marketplace as well as realize significant cost savings.

There were no comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule. The Regulatory Secretariat will submit a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule implements a number of provisions and clauses currently in use in FSS solicitations and contracts that contain information collection requirements. The requirements are not new, but have not previously been approved by OMB. The information collected is used by FAS to evaluate vendors' offers, ordering activities when placing orders against the contract, and other FSS vendors to conduct market research when submitting proposals.

The annual total public reporting burden for this collection of information is estimated to be 38,674 total hours (\$1,819,998.44), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Annual reporting burdens include the estimated respondents with one (1) submission per respondent multiplied by preparation hours per response to get the total response burden hours. The estimated cost of \$47.06 (\$34.54 + \$12.52) per hour is applied to the burden hours based on the task being accomplished by mid-level contractor personnel equivalent to a GS-12, Step 5 salary (Base Pay and Rest of U.S. Locality Pay) (Salary Table 2018-GS, Effective January 2018), with fringe of

36.25% (OMB Memo M-08-13). The estimated burden to the public for the below clauses are as follows:

The reinstated GSAR clause 552.238-84 *Discounts for Prompt Payment* requires the offeror to provide the Government a discount for early payment, if applicable.

Respondents: 14,674.

Responses per respondent: 1.

Total annual responses: 14,674.

Preparation hours per response: 1.0 (1 hr.).

Total response burden hours: 14,674.

Cost per hour: \$47.06

Estimated cost burden to the public: \$690,558.44

The new GSAR clause 552.238-87 *Delivery Prices* requires the offeror to identify the intended geographic area(s)/countries/zones that are to be covered.

Respondents: 8,000.

Responses per respondent: 1.

Total annual responses: 8,000.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 4,000.

Cost per hour: \$47.06

Estimated cost burden to the public: \$188,240.00

The new GSAR clause 552.238-95 *Separate Charge for Performance Oriented Packaging* requires the offeror to list any separate charge for preservation, packaging, packing and marking, and labeling of domestic and overseas HAZMAT surface shipments.

Respondents: 8,000.

Responses per respondent: 1.

Total annual responses: 8,000.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 4,000.

Cost per hour: \$47.06.

Estimated cost burden to the public: \$188,240.00.

The new GSAR clause 552.238-96 *Separate Charge for Delivery within Consignee's Premises* requires the offeror to list any separate cost for shipping when the delivery is within the consignee's premises (inclusive of items that are comparable in size and weight).

Respondents: 8,000.

Responses per respondent: 1.

Total annual responses: 8,000.

Preparation hours per response: .50(30 minutes).

Total response burden hours: 4,000.

Cost per hour: \$47.06.

Estimated cost burden to the public: \$188,240.00.

The new GSAR clause 552.238-97 *Parts and Service* requires the offeror to include in the price list, the names and addresses of all supply and service points maintained in the geographic area in which the offeror will perform, whether or not a complete stock of repair parts for items offered is carried

⁴FY18 Active Schedule contract holders.

at that point, and whether or not mechanical service is available.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: \$47.06.
Estimated cost burden to the public: \$188,240.00.

The new GSAR clause 552.238–99 *Delivery Prices Overseas* requires the offeror to identify the intended geographic area(s)/countries/zones which are to be covered.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: \$47.06.
Estimated cost burden to the public: \$188,240.00.

The new GSAR clause 552.238–111 *Environmental Protection Agency Registration Requirement* requires the offeror to list the manufacturer’s and/or distributor’s name and EPA Registration Number for each item requiring registration with the EPA.

Respondents: 8,000.
Responses per respondent: 1.
Total annual responses: 8,000.
Preparation hours per response: .50 (30 minutes).
Total response burden hours: 4,000.
Cost per hour: \$47.06.
Estimated cost burden to the public: \$188,240.00.

The reinstated GSAR clause 552.238–85 *Contractor’s Billing Responsibilities* contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The clause provides for the contractor to require all dealers participating in the performance of the contract to agree to maintain certain records on sales made under the contract on behalf of the contractor. However, it does not add burden to what is already estimated for GSAR clause 552.238–80 *Industrial Funding Fee and Sales Reporting* under OMB Control Number 3090–0121 *Industrial Funding Fee and Sales Reporting*.

GSA solicited public comments on this information collection requirement at the proposed rule stage. In response, three public comments were received and are addressed in Section *B. Analysis of Public Comments*. GSA will submit to OMB a request to review and approve this new information collection requirement. For a copy of the information collection documents, contact the Regulatory Secretariat by

mail at 1800 F Street NW, Washington, DC 20405, or by phone at 202–501–4755. Please cite OMB Control Number 3090–0303, (GSAR) Administrative Changes; GSAR Case 2013–G502, in all correspondence.

List of Subjects in 48 CFR Parts 501, 515, 538, and 552

Government procurement.

Jeffrey Birch,

Acting Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

For the reasons described in the preamble, GSA amends 48 CFR parts 501, 515, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 515, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. Amend section 501.106 in the table by—

- a. Revising the entry for “538.273(a)(1)” to read “538.273” and revising the OMB control number;
- b. Removing the entries for “538.273(a)(3)” and “538.273(b)(1)”;
- c. Revising the GSAR references “552.238–70”, “552.238–72”, 552.238–74”, and “552.238–81” to read “552.238–73”, “552.238–78”, “552.238–80”, and “552.238–82”, respectively;
- d. Adding in numerical sequence entries for “552.238–84”, “552.238–85”, “552.238–87”, “552.238–95”, “552.238–95”, “552.238–97”, “552.238–99”, and “552.238–111”.

The revision and additions read as follows:

501.106 OMB approval under the Paperwork Reduction Act.

GSAR reference	OMB control No.
* * *	* *
538.273	3090–0250 3090–0262 3090–0121 3090–0303 3090–0306
* * *	* *
552.238–73	3090–0250
552.238–78	3090–0262
552.238–80	3090–0121 3090–0306 3090–0302
552.238–82	3090–0302
552.238–84	3090–0303
552.238–85	3090–0121 3090–0306

GSAR reference	OMB control No.
552.238–87	3090–0303
552.238–95	3090–0303
552.238–96	3090–0303
552.238–97	3090–0303
552.238–99	3090–0303
552.238–111	3090–0303
* * *	* * *

PART 515—CONTRACTING BY NEGOTIATION

515.209–70 [Amended]

■ 3. Amend section 515.209–70 by removing the subheading “Clause for Multiple Award Schedules” and paragraphs (c) and (d).

515.408 [Amended]

- 4. Amend section 515.408 by—
- a. Removing from paragraphs (a)(2), (b) introductory text, and (c) introductory text “basic clause 552.238–74” and adding “basic clause 552.238–80” in its place;
- b. Removing from paragraph (c) Figure 515.4 “clause at 552.238–75” and adding “clause at 552.238–81” in its place; and
- c. Removing from paragraph (d) “basic clause 552.238–74” and adding “basic clause 552.238–80” in its place.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 5. Amend section 538.270 by revising the section heading to read as follows:

538.270 Evaluation of Federal Supply Schedule (FSS) offers.

* * * * *

- 6. Amend section 538.271 by—
- a. Revising the section heading;
- b. Removing from paragraph (a) “MAS awards” and adding “FSS awards” in its place; and
- c. Removing from paragraph (b) “MAS contract” and adding “FSS contract” in its place.

The revision reads as follows:

538.271 FSS contract awards.

* * * * *

- 7. Amend 538.272 by—
 - a. Revising the section heading;
 - b. Removing from paragraph (a) “basic clause 552.238–74” and adding “basic clause 552.238–80” in its place; and
 - c. Removing from paragraph (b) “Alternate I of 552.238–75” and adding “Alternate I of 552.238–81” in its place.
- The revision reads as follows:

538.272 FSS price reductions.

* * * * *

■ 8. Revise section 538.273 to read as follows:

538.273 FSS solicitation provisions and contract clauses.

(a) As prescribed in this paragraph, insert the following provisions in the beginning of FSS solicitations:

(1) 552.238–70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations. Use Alternate I for single award Federal Supply Schedules.

(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.

(b) As prescribed in this paragraph, insert the following clause and provision as an addendum to 52.212–1, Instructions to Offerors—Commercial Items:

(1) 552.238–73, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped. Use only in FSS solicitations for electronic office equipment.

(2) 552.238–74, Introduction of New Supplies/Services (INSS). Use only in FSS 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) As prescribed in this paragraph, insert the following provisions as an addendum to 52.212–2, Evaluation—Commercial Items:

(1) 552.238–75, Evaluation—Commercial Items (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) As prescribed in this paragraph, insert the following clauses as an addendum to Clause 52.212–4, Contract Terms and Conditions—Commercial Items:

(1) 552.238–77, Submission and Distribution of Authorized FSS Price Lists. Use in all FSS solicitations and contracts.

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

(3) 552.238–79, Cancellation. Use in all FSS solicitations and contracts.

(4) 552.238–80, Industrial Funding Fee and Sales Reporting. Use Alternate I for Federal Supply Schedules with

Transactional Data Reporting requirements. Clause 552.238–75 Alternate I should also be used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(5) 552.238–81, Price Reductions. Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(6) 552.238–82, Modifications (Federal Supply Schedules). Use in all FSS solicitations and contracts.

(i) Use Alternate I for Federal Supply Schedules that only accept eMod.

(ii) Use Alternate II for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238–74 Alternate I in the contract.

(7) 552.238–83, Examination of Records by GSA (Federal Supply Schedules). Use in all FSS solicitations and contracts. With the Senior Procurement's Executive approval, the contracting officer may modify this clause to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(i) Such a modification of the clause must provide for the right of access to expire 2 years after award or modification.

(ii) Before modifying the clause, the contracting officer must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(iii) The determinations under paragraph (9)(ii) must be made on a schedule-by-schedule basis.

(8) 552.238–84, Discounts for Prompt Payment. Use in all FSS solicitations and contracts.

(9) 552.238–85, Contractor's Billing Responsibilities. Use in all FSS solicitations and contracts.

(10) 552.238–86, Delivery Schedule. Use only in FSS solicitations and contracts for supplies.

(11) 552.238–87, Delivery Prices. Use in all FSS solicitations and contracts.

(12) 552.238–88, GSA *Advantage!*®. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238–89, Deliveries to the U.S. Postal Service. Use only in FSS solicitations and contracts 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 in FSS solicitations and contracts when the supply of equipment which uses electrical current is contemplated.

(15) 552.238–91, Marking and Documentation Requirements for Shipping. Use only in FSS solicitations and contracts 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 in FSS solicitations and contracts for supplies when a VMI Program is contemplated.

(17) 552.238–93, Order Acknowledgement. Use only in FSS solicitations and contracts for supplies.

(18) 552.238–94, Accelerated Delivery Requirements. Use only in FSS solicitations and contracts for supplies.

(19) 552.238–95, Separate Charge for Performance Oriented Packaging (POP). Use only in FSS solicitations and contracts for items defined as hazardous under Federal Standard No. 313.

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

(21) 552.238–97, Parts and Service. Use in all FSS solicitations and contracts.

(22) 552.238–98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The following clauses and provisions shall also be inserted in full text, when applicable.

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

(ii) 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 Per Shipment.

(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) 52.247–34 FOB Destination.

(x) 52.247–38 FOB Inland Carrier, Country of Exportation.

(xi) 52.247–39 FOB Inland Point, Country of Importation.

(23) 552.238–99, Delivery Prices Overseas. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(24) 552.238–100, Transshipments. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(25) 552.238–101, Foreign Taxes and Duties. Use only in FSS solicitations and contracts when overseas acquisition is contemplated.

(26) 552.238–102, English Language and U.S. Dollar Requirements. Use in all FSS solicitations and contracts.

(27) 552.238–103, Electronic Commerce. Use in all FSS solicitations and contracts except the Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238–104, Dissemination of Information by Contractor. Use in all FSS solicitations and contracts.

(29) 552.238–105, Deliveries Beyond the Contractual Period—Placing of Orders. Use only in FSS solicitations and contracts for supplies.

(30) 552.238–106, Interpretation of Contract Requirements. Use in all FSS solicitations and contracts.

(31) 552.238–107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies, except vehicles.

(32) 552.238–108, Spare Parts Kit. Use only in FSS solicitations and contracts for items requiring spare part kits. This information is to be specified at the order level.

(33) 552.238–109, Authentication Supplies and Services. Use in Federal Supply Schedule 70 solicitations only, and only contracts awarded Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive 12 (HSPD–12).

(34) 552.238–110, Commercial Satellite Communication (COMSATCOM) Services. Use only in FSS solicitations and contracts for COMSATCOM services.

(35) 552.238–111, Environmental Protection Agency Registration Requirement. Use only in FSS solicitations and contracts for supplies when items may require registration with the Environmental Protection Agency.

538.7001 [Amended]

■ 9. Amend section 538.7001 by removing from the definition “Ordering activity” “(see 552.238–78)” and adding “(see 552.238–113)” in its place.

538.7004 [Amended]

■ 10. Amend section 538.7004 by—

■ a. Removing from paragraph (a) “the clause at 552.238–77” and adding “the clause at 552.238–112” in its place;

■ b. Removing from paragraph (b) “the clause at 552.238–78” and adding “the clause at 552.238–113” in its place; and

■ c. Removing from paragraph (c) “the clause at 552.238–79” and adding “the clause at 552.238–114” in its place.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Amend section 552.212–71 by revising the date of the clause and paragraph (b) to read as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

* * * * *

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (May 2019)

* * * * *

(b) Clauses.

552.203–71 Restriction on Advertising
 552.211–73 Marking
 552.215–70 Examination of Records by GSA
 552.215–72 Price Adjustment-Failure to Provide Accurate Information
 552.219–70 Allocation of Orders-Partially Set-Aside Items
 552.228–70 Workers' Compensation Laws
 552.229–70 Federal, State, and Local Taxes
 552.232–23 Assignment of Claims
 552.232–71 Adjusting Payments
 552.232–72 Final Payment
 552.232–73 Availability of Funds
 552.232–78 Payment Information
 552.237–71 Qualifications of Employees
 552.242–70 Status Report of Orders and Shipments
 552.246–76 Warranty of Pesticides
 * * * * *

■ 12. Amend section 552.212–72 by revising the date of the clause and paragraph (b) to read as follows:

552.212–72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (May 2019)

* * * * *

(b) Clauses.

552.223–70 Hazardous Substances.
 552.223–71 Nonconforming Hazardous Material.
 552.223–73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments.
 552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

552.238–78 Identification of Products That Have Environmental Attributes.
 * * * * *

552.215–71 [Removed and Reserved]

■ 13. Remove and reserve section 552.215–71.

■ 14. Revise sections 552.238–70 through 552.238–75 to read as follows:
 Sec.

* * * * *

552.238–70 Cover Page for Worldwide Federal Supply Schedules.

552.238–71 Notice of Total Small Business Set-Aside.

552.238–72 Information Collection Requirements.

552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

552.238–74 Introduction of New Supplies/ Services (INSS).

552.238–75 Evaluation—Commercial Items (Federal Supply Schedule).

* * * * *

552.238–70 Cover Page for Worldwide Federal Supply Schedules.

As prescribed in 538.273(a)(1), insert the following provision:

Cover Page for Worldwide Federal Supply Schedules (May 2019)

For All Geographic Areas

Solicitation No. [The contracting officer should insert the solicitation number here]* ____*

Federal Supply Schedule Contract for All Geographic Areas [For supplies, the Contracting Officer should complete the information required by paragraph (a) and delete paragraph (b) in its entirety. For services, the Contracting Officer should complete the information required by paragraph (b) and delete (a) in its entirety. For solicitations containing both supplies and services, the Contracting Officer should complete paragraphs (a) and (b).]

(a) Federal Supply Classification (FSC) GROUP * ____ * PART * ____ * SECTION * ____ *

SUPPLY: * ____ * FSC CLASS(ES)/ PRODUCT CODE(S)/NAICS: * ____ *

(b) STANDARD INDUSTRY GROUP: * ____ * SERVICE: * ____ * SERVICE CODE(S)/ NAICS: * ____ *

(End of provision)

Alternate I (May 2019): As prescribed at 538.273(a)(1)(i), add the following paragraph (c) to the basic provision.

(c) PERIOD: * ____ * THROUGH * ____ *

552.238–71 Notice of Total Small Business Set-Aside.

As prescribed in 538.273(a)(2), insert the following provision:

Notice of Total Small Business Set-Aside (May 2019)

FAR clause 52.219–6, Notice of Total Small Business Set-Aside applies to the following:

[The contracting officer should insert the special item numbers (SINs) set aside for small businesses] * ____*.

(End of provision)

552.238–72 Information Collection Requirements.

As prescribed in 538.273(a)(3), insert the following provision:

Information Collection Requirements (May 2019)

The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

(End of provision)

552.238–73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.

As prescribed in 538.273(b)(1), insert the following clause:

Identification of Electronic Office Equipment Providing Accessibility for the Handicapped (May 2019)

(a) *Definitions.* “Electronic office equipment accessibility” means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities (*i.e.*, handicapped individuals) so as to promote productivity and provide access to work related and/or public information resources.

“Handicapped individuals” mean qualified individuals with impairments as cited in 29 CFR 1613.702(f) who can benefit from electronic office equipment accessibility.

“Special peripheral” means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for handicapped individuals. Identification should include the type of disability accommodated and how the users with that disability would be helped.

(End of clause)

552.238–74 Introduction of New Supplies/Services (INSS).

As prescribed in 538.273(b)(2), insert the following provision:

Introduction of New Supplies/Services (INSS) (May 2019)

(a) *Definition.*

Introduction of New Supplies/Services Special Item Number (INSS SIN) means a new or improved supply or service—within the scope of the Federal Supply Schedule (FSS), but not currently available under any Federal Supply Schedule contract—that provides a new service, function, task, or

attribute that may provide a more economical or efficient means for ordering activities to accomplish their missions. It may significantly improve an existing supply or service. It may be a supply or service existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new or improved supplies or services via INSS SIN at any time by clearly identify the INSS SIN item in the offer.

(c) The Contracting Officer has the sole discretion to determine whether a supply or service will be accepted as an INSS SIN item. The Contracting Officer will evaluate and process the offer and may perform a technical review. The INSS SIN provides temporary placement until the Contracting Officer formally categorizes the new supply or service.

(d) If the Contractor has an existing schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSS SIN item in accordance with 552.238–81, Modifications (Federal Supply Schedules).

(End of provision)

552.238–75 Evaluation—Commercial Items (Federal Supply Schedule).

As prescribed in 538.273(c)(1), insert the following provision:

Evaluation—Commercial Items (Federal Supply Schedule) (May 2019)

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a “commercial item” in FAR 52.202 1. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the Government, taking into consideration the multiplicity and complexity of items of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s) that constitute the best value and that meet their needs at the lowest overall cost.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

■ 15. Add section 552.238.76 to read as follows:

552.238–76 Use of Non-Government Employees to Review Offers.

As prescribed in 538.273(c)(2), insert the following provision:

Use of Non-Government Employees to Review Offers (May 2019)

(a) The Government may employ individual technical consultants/advisors/contractors from the below listed organizations to review limited portions of the technical, management and price proposals to assist the government in both pre-award and post-award functions. [The contracting officer should insert a list of organizations used to review solicitation responses and execute a non-disclosure and organizational conflict of interest statement for all individuals conducting reviews.]

* ____*

(b) These representatives will be used to advise on specific technical, management, and price matters and shall not, under any circumstances, be used as voting evaluators. However, the Government may consider the advice provided in its evaluation process. In addition, Contractor personnel may be used in specific contract administration tasks (*e.g.*, administrative filing, review of deliverables, etc.).

(c) If individual technical consultants/advisors/contractors are utilized as described in (b) above, they will be required to execute a non-disclosure and organizational conflict of interest statements.

(End of provision)

■ 16. Revise sections 552.238–77 through 552.238–79 to read as follows:

Sec.

* * * * *

552.238–77 Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

552.238–78 Identification of Products that Have Environmental Attributes.

552.238–79 Cancellation.

* * * * *

552.238–77 Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

As prescribed in 538.273(d)(1), insert the following clause:

Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists (May 2019)

(a) *Definition.* For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: “the list of addressees provided to the Contractor by the Contracting Officer” or “the Contractor’s listing of its Federal Government customers”].

(b) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium. The

Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the pricelist. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of pricelist information through the online Multiple Award Schedule electronic data base.

(c) The Contractor shall make all of the distributions required in this paragraph (c) at least 15 calendar days before the beginning of the contract period, or within 30 calendar days after receipt of the Contracting Officer's approval for printing, whichever is later.

(d) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request. Use of the mailing list for any other purpose is not authorized.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *Definition*. For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: "the list of addressees provided to the Contractor by the Contracting Officer" or "the Contractor's listing of its ordering activity customers"].

552.238-78 Identification of Products that Have Environmental Attributes.

As prescribed in 538.273(d)(2), insert the following clause:

Identification of Products That Have Environmental Attributes (May 2019)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (e.g., publications and electronic formats).

(b) *Definitions*. As used in this clause—
Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

GSA Advantage! is an on-line shopping mall and ordering system that provides

customers with access to products and services under GSA contracts.

Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

Recovered materials means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

Remanufactured means factory rebuilt to original specifications.

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—
(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) *Identification requirements*. (1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/femp/procurement/>);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program (e.g., the EPA and DOE ENERGY STAR® product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

552.238-79 Cancellation.

As prescribed in 538.273(d)(3), insert the following clause:

Cancellation (May 2019)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

(End of clause)

■ 17. Add section 552.238-80 to read as follows:

552.238-80 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.273(d)(4) insert the following clause:

Industrial Funding Fee and Sales Reporting (May 2019)

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent

accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including "zero" sales, by utilizing the automated reporting system at an internet website designated by the General Services Administration (GSA)'s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, internet: http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm.

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules

Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at <https://72a.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(4), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) Definition. "Transactional data" encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) Reporting of Transactional Data. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, <https://vsc.gsa.gov>. The reporting system website address, as well as registration instructions and reporting procedures, will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

- (i) Contract or Blanket Purchase Agreement (BPA) Number.
- (ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).
- (iii) Non Federal Entity.
- (iv) Description of Deliverable.
- (v) Manufacturer Name.

- (vi) Manufacturer Part Number.
- (vii) Unit Measure (each, hour, case, lot).
- (viii) Quantity of Item Sold.
- (ix) Universal Product Code.
- (x) Price Paid per Unit.
- (xi) Total Price.

Note to paragraph (b)(2): The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(c)(3).

(3) The Contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) Reporting Points.

(i) The acceptable points at which transactional data may be reported include—

- (A) Issuance of an invoice; or
- (B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) *Industrial Funding Fee (IFF)*.

(1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current

IFF on the Vendor Support Center website at <https://vsc.gsa.gov>.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

■ 18. Revise sections 552.238-81 and 552.238-82 to read as follows:

552.238-81 Price Reductions.

As prescribed in 538.273(d)(5) insert the following clause:

Price Reductions (May 2019)

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon

which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238-113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238-113 is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(5), substitute the following paragraph (a) and (b) for paragraphs (a), (b), (c), (d), (e), (f) and (g) of the basic clause:

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

552.238-82 Modifications (Federal Supply Schedules).

As prescribed in 538.273(d)(6), insert the following clause:

Modifications (Federal Supply Schedules) (May 2019)

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval,

except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of modifications*—(1) *Additional items/additional SINs.* When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act—Balance of Payments Programs—Supplies.

(2) *Deletions.* The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price reduction.* The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-81. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) *Electronic file updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price

reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238–81.

(e) *Amendments to paper Federal Supply Schedule Price Lists.* (1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February–April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of clause)

Alternate I (May 2019). As prescribed in 538.273(d)(6)(i), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (<http://vsc.gsa.gov>). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

Alternate II (May 2019). As prescribed in 538.273(d)(6)(ii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *Types of Modifications.*

(1) Additional items/additional SINs. When requesting additions, the Contractor must submit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

(2) Deletions. The Contractor must provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the Contracting Officer determines that the higher price is unreasonable compared to the price of the deleted item.

■ 19. Add sections 552.238–83 through 552.238–115 to read as follows:

Sec.	*	*	*	*	*
552.238–83					Examination of Records by GSA (Federal Supply Schedules).
552.238–84					Discounts for Prompt Payment.
552.238–85					Contractor's Billing Responsibilities.
552.238–86					Delivery Schedule.
552.238–87					Delivery Prices.
552.238–88					GSA Advantage! [®] .
552.238–89					Deliveries to the U.S. Postal Service.
552.238–90					Characteristics of Electric Current.
552.238–91					Marking and Documentation Requirements for Shipping.
552.238–92					Vendor Managed Inventory (VMI) Program.
552.238–93					Order Acknowledgement.
552.238–94					Accelerated Delivery Requirements.
552.238–95					Separate Charge for Performance Oriented Packaging (POP).
552.238–96					Separate Charge for Delivery within Consignee's Premises.
552.238–97					Parts and Service.
552.238–98					Clauses for Overseas Coverage.
552.238–99					Delivery Prices Overseas.
552.238–100					Transshipments.
552.238–101					Foreign Taxes and Duties.
552.238–102					English Language and U.S. Dollar Requirements.
552.238–103					Electronic Commerce.
552.238–104					Dissemination of Information by Contractor.
552.238–105					Deliveries Beyond the Contractual Period—Placing of Orders.
552.238–106					Interpretation of Contract Requirements.
552.238–107					Export Traffic Release (Supplies).
552.238–108					Spare Parts Kit.
552.238–109					Authentication Supplies and Services.
552.238–110					Commercial Satellite Communication (COMSATCOM) Services.
552.238–111					Environmental Protection Agency Registration Requirement.
552.238–112					Definition (Federal Supply Schedules)—Non-Federal Entity.
552.238–113					Scope of Contract (Eligible Ordering Activities).
552.238–114					Use of Federal Supply Schedule Contracts by Non-Federal Entities.

552.238–115 Special Ordering Procedures for the Acquisition of Order-Level Materials.

* * * * *

552.238–83 Examination of Records by GSA (Federal Supply Schedules).

As prescribed in 538.273(d)(7) insert the following clause:

Examination of Records by GSA (Federal Supply Schedules) (May 2019)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to this contract for overbillings, billing errors, compliance with contract clauses 552.238–75, Price Reductions and 552.238–74, Industrial Funding Fee and Sales Reporting. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

(End of clause)

552.238–84 Discounts for Prompt Payment.

As prescribed in 538.273(d)(8), insert the following clause:

Discounts for Prompt Payment (May 2019)

(a) Discounts for early payment (hereinafter referred to as “discounts” or “the discount”) will be considered in evaluating the relationship of the Offeror's concessions to the Government vis-a-vis the Offeror's concessions to its commercial and Federal non-schedule customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low Offeror in the situation described in the “Offers on Identical Products” provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the “value of funds” rate established by the Department of the Treasury and published quarterly in the **Federal Register**. The “value of funds” rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the ordering activity if payment is made within the discount period specified.

(e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(f) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose

of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

552.238–85 Contractor’s Billing Responsibilities.

As prescribed in 538.273(d)(9) insert the following clause:

Contractor’s Billing Responsibilities (May 2019)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/ payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor’s name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

- (1) Comply with the same terms and conditions as the Contractor for sales made under the contract;
 - (2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—
 - (i) The date of sale;
 - (ii) The ordering activity to which the sale was made;
 - (iii) The service or supply/model sold;
 - (iv) The quantity of each service or supply/model sold;
 - (v) The price at which it was sold, including discounts; and
 - (vi) All other significant sales data.
 - (3) Be subject to audit by the Government, with respect to sales made under the contract; and
 - (4) Place orders and accept payments in the name of the Contractor in care of the dealer.
- (b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

(End of clause)]

552.238–86 Delivery Schedule.

As prescribed in 538.273(d)(10) insert the following clause:

Delivery Schedule (May 2019)

(a) *Time of delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the “Time of Delivery (days ARO)” column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor’s normal business practice. The Government requires the Contractor’s normal delivery time, as long as it is less than the “stated” delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government’s stated delivery time, as stated below [The contracting officer shall insert the solicited items or Special Item Numbers (SIN) as well as a reasonable delivery time that corresponds with each item or SIN, if known]:

Items or group of items (special item no. or nomenclature)	Government’s stated delivery time (days ARO)	Contractor’s delivery time
* _____ *	* _____ *	* _____ *
* _____ *	* _____ *	* _____ *
* _____ *	* _____ *	* _____ *

(b) *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Items or group of items (special item no. or nomenclature)	Expedited delivery time (hours/days ARO)
* _____ *	* _____ *
* _____ *	* _____ *
* _____ *	* _____ *
* _____ *	* _____ *

(c) *Overnight and 2-Day delivery times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

(End of clause)]

552.238–87 Delivery Prices.

As prescribed in 538.273(d)(11), insert the following clause:

Delivery Prices (May 2019)

- (a) Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.
- (1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor’s vehicle. Where store-door delivery is subject to a charge, the Contractor shall place the notation “Delivery Service Requested” on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.
- (2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.
- (3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.
- (b) The Offeror shall indicate in the offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.
- (c) When deliveries are made to destinations outside the contiguous 48 States; *i.e.*, Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by

paragraph (b), above, the following conditions will apply:

- (1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247–38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.
- (2) The right is reserved to ordering agencies to furnish Government bills of lading.

(End of clause)

552.238–88 GSA Advantage!®.

As prescribed in 538.273(d)(12), insert the following clause:
GSA Advantage!® (May 2019)

(a) The Contractor shall participate in the GSA Advantage!® online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238–111, Electronic Commerce.

(b) The Contractor shall refer to contract clauses 552.238–71, Submission and Distribution of Authorized FSS Price Lists (which provides for submission of price lists on a common-use electronic medium), and 552.238–81, Modifications (which addresses electronic file updates).

(End of clause)

552.238–89 Deliveries to the U.S. Postal Service.

As prescribed in 538.273(d)(13), insert the following clause:

Deliveries to the U.S. Postal Service (May 2019)

(a) *Applicability.* This clause applies to orders placed for the U.S. Postal Service (USPS) and accepted by the Contractor for the delivery of supplies to a USPS facility (consignee).

(b) *Mode/method of transportation.* Unless the Contracting Officer grants a waiver of this requirement, any shipment that meets the USPS requirements for mailability (*i.e.*, 70 pounds or less, combined length and girth not more than 108 inches, etc.) delivery shall be accomplished via the use of the USPS. Other commercial services shall not be used, but this does not preclude the Contractor from making delivery by the use of the Contractor’s own vehicles.

(c) *Time of delivery.* Notwithstanding the required time for delivery to destination as may be specified elsewhere in this contract, if shipments under this clause are mailed not later than five (5) calendar days before the required delivery date, delivery shall be deemed to have been made timely.

(End of clause)

552.238–90 Characteristics of Electric Current.

As prescribed in 538.273(d)(14), insert the following clause:

Characteristics of Electric Current (May 2019)

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

(End of clause)

552.238–91 Marking and Documentation Requirements for Shipping.

As prescribed in 538.273(d)(15), insert the following clause:

Marking and Documentation Requirements for Shipping (May 2019)

(a) *Responsibility.* It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b) *Documentation.* In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment

requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c) *Direct shipments.* The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

- (1) Traffic Management or Transportation Officer at FINAL destination.
- (2) Ordering Supply Account Number.
- (3) Account number.
- (4) Delivery Order or Purchase Order Number.
- (5) National Stock Number, if applicable; or Contractor’s item number.
- (6) Box ___ of ___ Boxes.
- (7) Nomenclature (brief description of items).

(End of clause)

552.238–92 Vendor Managed Inventory (VMI) Program.

As prescribed in 538.273(d)(16), insert the following clause:

Vendor Managed Inventory (VMI) Program (May 2019)

(a) The term “Vendor Managed Inventory” describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

(End of clause)

552.238–93 Order Acknowledgement.

As prescribed in 538.273(d)(17), insert the following clause:

Order Acknowledgement (May 2019)

Contractors shall acknowledge only those orders which state “Order Acknowledgement Required.” These orders shall be acknowledged within 10 calendar days after receipt. Such acknowledgement shall be sent to the ordering activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

(End of clause)

552.238–94 Accelerated Delivery Requirements.

As prescribed in 538.273(d)(18), insert the following clause:

Accelerated Delivery Requirements (May 2019)

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering

activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

(End of clause)

552.238–95 Separate Charge for Performance Oriented Packaging (POP).

As prescribed in 538.273(d)(19), insert the following clause:

Separate Charge for Performance Oriented Packaging (POP) (May 2019)

(a) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this paragraph or on a separate attachment. The final price shall be quoted separately at the order level and, if considered reasonable, will be accepted as part of the order.

ITEMS	
SINS or Descriptive Name of Articles (as appropriate).	Charge for Performance Oriented

(b) Ordering activities will not be obligated to utilize the Contractor’s services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor’s contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

(End of clause)

552.238–96 Separate Charge for Delivery within Consignee’s Premises.

As prescribed in 538.273(d)(20), insert the following clause:

Separate Charge for Delivery within Consignee’s Premises (May 2019)

(a) Offerors are requested to insert, in the spaces provided below or by attachment hereto, a separate charge for “Delivery Within Consignee’s Premises” applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor’s published catalog and/or price list.

(b) Ordering activities are not obligated to issue orders on the basis of “Delivery Within Consignee’s Premises,” and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the

Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish "Delivery Within Consignee's Premises" at the additional charge awarded. When an ordering activity issues an order on the basis of "Delivery Within Consignee's Premises" at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery "F.o.b. Destination, Within Consignee's Premises" in accordance with FAR 52.247-35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify "Delivery Within Consignee's Premises" on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for "Delivery Within Consignee's Premises" will be shown as separate entries on the order.

ITEMS	
(NSNs or Special Item Numbers or Descriptive Name of Articles).	Additional Charge (Per shipping container) FOR "DELIVERY WITHIN CONSIGNEE'S PREMISES"

(End of clause)

552.238-97 Parts and Service.

As prescribed in 538.273(d)(21), insert the following clause:

Parts and Service (May 2019)

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

(End of clause)

552.238-98 Clauses for Overseas Coverage.

As prescribed in 538.273(d)(22), insert the following clause:

Clauses for Overseas Coverage (May 2019)

The following clauses apply to overseas coverage.

- (a) 52.214-34 Submission of Offers in the English Language
- (b) 52.214-35 Submission of Offers in U.S. Currency
- (c) 552.238-90 Characteristics of Electric Current
- (d) 552.238-91 Marking and Documentation Requirements Per Shipment
- (e) 552.238-97 Parts and Service
- (f) 552.238-99 Delivery Prices Overseas
- (g) 552.238-100 Transshipments
- (h) 552.238-101 Foreign Taxes and Duties
- (i) 52.247-34 FOB Destination
- (j) 52.247-38 FOB Inland Carrier, Point of Exportation
- (k) 52.247-39 FOB Inland Point, Country of Importation

(End of clause)

552.238-99 Delivery Prices Overseas.

As prescribed in 538.273(d)(23), insert the following clause:

Delivery Prices Overseas (May 2019)

(a) Prices offered must cover delivery to destinations as provided as follows:

(1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247-39). (Offeror should indicate countries where direct delivery will be provided.)

(2) Delivery to overseas assembly point for transshipment when specified by the ordering activity, if delivery is not covered under paragraph (1), above.

(3) Delivery to the overseas port of entry when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) Geographic area(s)/countries/zones which are intended to be covered must be identified in the offer.

(End of clause)

552.238-100 Transshipments.

As prescribed in 538.273(d)(24), insert the following clause:

Transshipments (May 2019)

(a) The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387-2, Special Handling/Data Certification—used when shipping chemicals, dangerous cargo, etc.

(1) Two copies of the DD Form 1387 will be attached to each shipping container

delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2) These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387-2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c) Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d) Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e) Failure to include DD Form 1387, and DD Form 1387-2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

(End of clause)

552.238-101 Foreign Taxes and Duties.

As prescribed in 538.273(d)(25), insert the following clause:

Foreign Taxes and Duties (May 2019)

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a) The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

(End of clause)

552.238-102 English Language and U.S. Dollar Requirements.

As prescribed in 538.273(d)(26), insert the following clause:

English Language and U.S. Dollar Requirements (May 2019)

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the "Treasury Reporting Rates of Exchange" in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

(End of clause)

552.238–103 Electronic Commerce.

As prescribed in 538.273(d)(27), insert the following clause:

Electronic Commerce (May 2019)

(a) *General background.* The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (e.g., procurement, finance, logistics) into a fully electronic environment and fundamentally changes the way organizations operate.

(b) *Trading partners and Value-Added Networks (VAN's).*

(1) Within the electronic commerce architecture, electronic documents (e.g., orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as "trading partners"). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c) *Registration instructions.* To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) <http://www.sam.gov>. Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d) *Implementation conventions.* All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at <http://www.nist.gov/itl>. ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) *Additional information.* GSA has additional information available for Contractors who are interested in using EC/EDI on its website, www.gsa.gov.

(f) *GSA Advantage!®.* (1) GSA Advantage!® uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!® enables customers to:

(i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.

(ii) Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.

(iii) Use the credit card.

(2) GSA Advantage!® may be accessed via the GSA Home Page. The internet address is: <http://www.gsa.gov>.

(End of clause)

552.238–104 Dissemination of Information by Contractor.

As prescribed in 538.273(d)(28), insert the following clause:

Dissemination of Information by Contractor (May 2019)

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

(End of clause)

552.238–105 Deliveries Beyond the Contractual Period—Placing of Orders.

As prescribed in 538.273(d)(29), insert the following clause:

Deliveries Beyond the Contractual Period—Placing of Orders (May 2019)

In accordance with Clause 552.238–78, Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

(End of clause)

552.238–106 Interpretation of Contract Requirements.

As prescribed in 538.273(d)(30), insert the following clause:

Interpretation of Contract Requirements (May 2019)

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

(End of clause)

552.238–107 Export Traffic Release (Supplies).

As prescribed in 538.273(d)(31), insert the following clause:

Export Traffic Release (Supplies) (May 2019)

Supplies ordered by GSA for export will not be shipped by the Contractor until shipping instructions are received from GSA. To obtain shipping instructions, the

Contractor shall forward completed copies of GSA Form 1611, Application for Shipping Instructions and Notice of Availability, to the GSA office designated on the purchase order at least 15 days prior to the anticipated shipping date. Copies of GSA Form 1611 will be furnished to the Contractor with the purchase order. Failure to comply with this requirement could result in nonacceptance of the material by authorities at the port of exportation. When supplies for export are ordered by other Government agencies the Contractor should obtain shipping instructions from the ordering agency.

(End of clause)

552.238–108 Spare Parts Kit.

As prescribed in 538.273(d)(32), insert the following clause:

Spare Parts Kit (May 2019)

(a) The Contractor will be required to offer a spare parts kit conforming, generally, to the following requirements for each item awarded under this solicitation: [The Ordering Activity contracting officer should insert the specifications for a spare parts kit specific to the solicited items.]

(b) The Contractor shall furnish prices for spare parts kits as follows:

(i) Price of kit unpackaged.

(ii) Price of kit in domestic pack.

(iii) Price of kit in wooden case, steel-strapped.

(c) The Contractor will be required to furnish a complete description of spare parts kit offered, a list of parts included, and the price of the kit delivered f.o.b. destination to any point within the conterminous United States within 15 days after receipt of a request from the Ordering Activity Contracting Officer. If the kit offered is acceptable to the Ordering Activity, awards covering requirements will be made by supplemental agreement to this contract.

(End of clause)

552.238–109 Authentication Supplies and Services.

As prescribed in 538.273(d)(33), insert the following clause:

Authentication Supplies and Services (May 2019)

(a) *General background.* (1) The General Services Administration (GSA) established the "Identity and Access Management Services" (IAMS) Program to clearly define the kinds of digital certificates and PKI services that meet the requirements for service providers and supplies that support FISMA-compliant IAM systems deployed by Federal agencies.

(2) Homeland Security Presidential Directive 12 (HSPD–12), "Policy for a Common Identification Standard for Federal Employees and Contractors" establishes the requirement for a mandatory Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and Contractor employees assigned to Government contracts in order to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Further, the

Directive requires the Department of Commerce to promulgate a Federal standard for secure and reliable forms of identification within six months of the date of the Directive. As a result, the National Institute of Standards and Technology (NIST) released Federal Information Processing Standard (FIPS) 201-2: Personal Identity Verification of Federal Employees and Contractors August 2013. FIPS 201-2 requires that the digital certificates incorporated into the Personal Identity Verification (PIV) identity credentials comply with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework. In addition, FIPS 201-2 requires that Federal identity badges referred to as PIV credentials, issued to Federal employees and Contractors comply with the Standard and associated NIST Special Publications 800-73, 800-76, 800-78, and 800-79.

(b) *Special item numbers.* GSA has established the e-Authentication Initiative (see URL: <http://www.idmanagement.gov>) to provide common infrastructure for the authentication of the public and internal Federal users for logical access to Federal e-Government applications and electronic services. To support the government-wide implementation of HSPD-12 and the Federal e-Authentication Initiative, GSA has established Special Item Numbers (SINs) pertaining to Authentication Products and Services, including Electronic Credentials, Digital Certificates, eAuthentication, Identify and Access Management, PKI Shared Service Providers, and HSPD-12 Product and Service Components.

(c) *Qualification information.* (1) All Authentication supplies and services must be qualified as being compliant with Government-wide requirements before they will be included on a GSA Information Technology (IT) Schedule contract. The Qualification Requirements and associated evaluation procedures against the Qualification Requirements for each SIN and the specific Qualification Requirements for HSPD-12 implementation components are presented at the following URL: <http://www.idmanagement.gov>.

(2) In addition, the National Institute of Standards and Technology (NIST) has established the NIST Personal Identity Verification Program (NPIVP) to evaluate integrated circuit chip cards and supplies against conformance requirements contained in FIPS 201. GSA has established the FIPS 201 Evaluation Program to evaluate other supplies needed for agency implementation of HSPD-12 requirements where normative requirements are specified in FIPS 201 and to perform card and reader interface testing for interoperability. Products that are approved as FIPS-201 compliant through these evaluation and testing programs may be offered directly through HSPD-12 Supplies and Services Components SIN under the category "Approved FIPS 201-Compliant Products and services."

(d) *Qualification requirements.* Offerors proposing Authentication supplies and services under the established SINs are required to provide the following:

(1) Proposed items must be determined to be compliant with Federal requirements for

that SIN. Qualification Requirements and procedures for the evaluation of supplies and services are posted at the URL: <http://www.idmanagement.gov>. GSA will follow these procedures in qualifying offeror's supplies and services against the Qualification Requirements for applicable to SIN. Offerors must submit all documentation certification letter(s) for Authentication Supplies and Services offerings at the same time as submission of proposal. Award will be dependent upon receipt of official documentation from the Acquisition Program Management Office (APMO) listed below verifying satisfactory qualification against the Qualification Requirements of the proposed SIN(s).

(2) After award, Contractor agrees that certified supplies and services will not be offered under any other SIN on any Federal Supply Schedule

(3)(i) If the Contractor changes the supplies or services previously qualified, GSA may require the Contractor to resubmit the supplies or services for re-qualification.

(ii) If the Federal Government changes the qualification requirements or standards, Contractor must resubmit the supplies and services for re-qualification.

(4) Immediately prior to making an award, Contracting Officers MUST consult the following website to ensure that the supplies and/or services recommended for award under any Authentication Supplies and Services SINs are in compliance with the latest APL qualification standards: www.idmanagement.gov. A dated copy of the applicable page should be made and included with the award documents.

(e) *Demonstrating conformance.* (1) The Federal Government has established Qualification Requirements for demonstrating conformance with the Standards. The following websites provide additional information regarding the evaluation and qualification processes:

(i) For Identify and Access Management Services (IAMS) and PKI Shared Service Provider (SSP) Qualification Requirements and evaluation procedures: <http://www.idmanagement.gov>;

(ii) For HSPD-12 Product and Service Components Qualification Requirements and evaluation procedures: <http://www.idmanagement.gov>;

(iii) For FIPS 201 evaluation program testing and certification procedures: <https://www.idmanagement.gov/fips201/>.

(f) *Acquisition Program Management Office (APMO).* GSA has established the APMO to provide centralized technical oversight and management regarding the qualification process to industry partners and Federal agencies. Contact the following APMO for information on the eAuthentication Qualification process. Technical, APMO, FIPS 201, and HSPD-12 Points of Contact can be found below, or in an additional attachment to the solicitation. [The contracting officer should insert the points of contact information below, unless otherwise included elsewhere in the solicitation.]

* * *

(End of clause)

552.238-110 Commercial Satellite Communication (COMSATCOM) Services.

As prescribed in 538.273(d)(34) insert the following clause:

Commercial Satellite Communication (COMSATCOM) Services (May 2019)

(a) *General background.* Special Item Numbers (SINs) have been established for Commercial Satellite Communications (COMSATCOM) services, focused on transponded capacity (SIN 132-54) and fixed and mobile subscription services (SIN 132-55), to make available common COMSATCOM services to all Ordering Activities.

(b) *Information assurance.* (1) The Contractor shall demonstrate, to the maximum extent practicable, the ability to meet:

(i) The Committee on National Security Systems Policy (CNSSP) 12, "National Information Assurance Policy for Space Systems used to Support National Security Missions," or

(ii) Department of Defense Directive (DoDD) 8581.1, "Information Assurance (IA) Policy for Space Systems Used by the Department of Defense."

(2) The Contractor shall demonstrate the ability to comply with the Federal Information Security Management Act of 2002 as implemented by Federal Information Processing Standards Publication 200 (FIPS 200), "Minimum Security Requirements for Federal Information and Information Systems." In response to ordering activity requirements, at a minimum, all services shall meet the requirements assigned against:

(i) A low-impact information system (per FIPS 200) that is described in the current revision of National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, "Recommended Security Controls for Federal Information Systems and Organizations," or

(ii) A Mission Assurance Category (MAC) III system that is described in the current revision of DoD Instruction (DoDI) 8500.2, "Information Assurance Implementation."

(3) The Contractor's information assurance boundary is where the Contractor's services connect to the user terminals/equipment (*i.e.*, includes satellite command encryption (ground and space); systems used in the Satellite Operations Centers (SOCs), Network Operations Centers (NOCs) and teleport; and terrestrial infrastructure required for service delivery).

(c) *Delivery schedule.* The Contractor shall deliver COMSATCOM services in accordance with 552.238-90.

(d) *Portability.* The Contractor shall have the capability to redeploy COMSATCOM services, subject to availability. Portability shall be provided within the COMSATCOM Contractor's resources at any time as requested by the ordering activity. When portability is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor.

(e) *Flexibility/optimization.* The Contractor shall have the capability to re-groom resources for spectral, operational, or price efficiencies. Flexibility/optimization shall be provided within the COMSATCOM

Contractor's resources at any time as requested by the ordering activity. When flexibility/optimization is exercised, evidence of equivalent net present value (NPV) shall be provided by the Contractor. The Contractor is encouraged to submit re-grooming approaches for ordering activity consideration that may increase efficiencies for existing COMSATCOM services.

(f) *Net ready (interoperability)*. COMSATCOM services shall be consistent with commercial standards and practices. Services shall have the capability to access and/or interoperate with Government or other Commercial teleports/gateways and provide enterprise service access to or among networks or enclaves. Interfaces may be identified as interoperable on the basis of participation in a sponsored interoperability program.

(g) *Network monitoring (Net OPS)*. The Contractor shall have the capability to electronically collect and deliver near real-time monitoring, fault/incident/outage reporting, and information access to ensure effective and efficient operations, performance, and availability, consistent with commercial practices. Consistent with the Contractor's standard management practices, the Net Ops information will be provided on a frequency (example: Every 6 hours, daily) and format (example: SNMP, XML) as defined in a requirement to a location/entity/electronic interface defined by the ordering activity. Specific reporting requirements will be defined by the Ordering Activity.

(h) *EMI/RFI identification, characterization, and geo-location*. The Contractor shall have the capability to collect and electronically report in near real-time Electro Magnetic Interference (EMI)/Radio Frequency Interference (RFI) identification, characterization, and geo-location, including the ability to identify and characterize sub-carrier EMI/RFI being transmitted underneath an authorized carrier, and the ability to geo-locate the source of any and all EMI/RFI. The Contractor shall establish and use with the ordering activity a mutually agreed upon media and voice communications capability capable of protecting "Sensitive, but Unclassified" data.

(i) *Security*. (1) The Contractor may be required to obtain/possess varying levels of personnel and facility security clearances up to U.S. Government TOP SECRET/Sensitive Compartmented Information (TS/SCI) or

equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally.

(2) For incident resolution involving classified matters, the Contractor shall provide appropriately cleared staff who can affect COMSATCOM services operations (example: Satellite payload operations, network operations). The Contractor shall provide a minimum of one operations staff member AND a minimum of one person with the authority to commit the company if resolution requires business impacting decisions (example: Chief Executive Officer, Chief Operations Officer, etc.).

(3) When Communications Security or Transmission Security equipment or keying material is placed in the equipment/terminal shelter, the Contractor shall ensure compliance with applicable physical security directives/guidelines and that all deployed equipment/terminal operations and maintenance personnel shall possess the appropriate clearances, equal to or higher than the classification level of the data being transmitted. Where local regulations require use of foreign personnel for terminal operations and maintenance, then the Contractor shall ensure compliance with applicable security directives/guidelines and document to the U.S. Government's satisfaction that protective measures are in place and such individuals have equivalent clearances granted by the local host nation.

(4) For classified operations security (OPSEC), the Contractor shall ensure that all personnel in direct contact with classified OPSEC indicators (example: The unit, location, and time of operations) have U.S. SECRET or higher personnel security clearances, or, as appropriate, equivalent clearances assigned by the National Security Authority of a NATO Member State or Major Non-NATO Ally, in accordance with applicable security directives and guidelines.

(5) For classified requirements, cleared satellite operator staff must have access to secure voice communications for emergency purposes. Communications security equipment certified by the National Security Agency (NSA) to secure unclassified and up to and including SECRET communication transmissions at all operations centers is preferred. If a Contractor is unable to have access to NSA-approved communications security equipment at its operations centers, then a combination of a "Sensitive but Unclassified" (SBU) cryptographic module

approved by the U.S. National Institute for Standards and Technology and pre-arranged access to National Security Agency-approved communications security equipment at an agreed alternate facility is acceptable.

(6) The Contractor shall have the capability to "mask" or "protect" users against unauthorized release of identifying information to any entity that could compromise operations security. Identifying information includes but is not limited to personal user and/or unit information including tail numbers, unit names, unit numbers, individual names, individual contact numbers, street addresses, etc.

(j) *Third party billing for COMSATCOM subscription services*. The Contractor shall identify authorized network infrastructure for the ordering activity. In some cases, the user of the terminal may access network infrastructure owned or operated by a third party. In the event a terminal is used on a third party's network infrastructure, the Contractor shall provide to the ordering activity, invoices and documentation reflecting actual usage amount and third party charges incurred. The ordering activity shall be billed the actual third party charges incurred, or the contract third party billing price, whichever is less.

(End of clause)

552.238-111 Environmental Protection Agency Registration Requirement.

As prescribed in 538.273(d)(35), insert the following clause:

Environmental Protection Agency Registration Requirement (May 2019)

(a) With respect to the products described in this solicitation which require registration with the Environmental Protection Agency (EPA), as required by the Federal Insecticide, Fungicide, and Rodenticide Act, Section 3, Registration of Pesticides, awards will be made only for such products that have been assigned an EPA registration number, prior to the time of bid opening.

(b) The offeror shall insert in the spaces provided in this section, the manufacturer's and/or distributor's name and the "EPA Registration Number" for each item offered. Any offer which does not specify a current "EPA Registration Number" in effect for the duration of the contract period, and including the manufacturer's and/or distributor's name will be rejected.

Items			
Item numbers	Name of manufacturer/distributor	EPA registration number	Date of expiration

(c) If, during the performance of a contract awarded as a result of this solicitation, the EPA Registration Number for products being furnished is terminated, withdrawn, canceled, or suspended, and such action does

not arise out of causes beyond the control, and with the fault or negligence of the Contractor or subcontractor, the Government may terminate the contract pursuant to either the Default Clause or Termination for Cause

Paragraph (contained in the clause 52.212-4, Contract Terms and Conditions—Commercial Items), whichever is applicable to the resultant contract.

(End of clause)

552.238–112 Definition (Federal Supply Schedules)—Non-Federal Entity.

As prescribed in 538.7004(a), insert the following clause:

Definition (Federal Supply Schedules)—Non-Federal Entity (May 2019)

Ordering activity (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see 552.238–113), authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

552.238–113 Scope of Contract (Eligible Ordering Activities).

As prescribed in 538.7004 (b) insert the following clause:

Scope of Contract (Eligible Ordering Activities) (May 2019)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For Special Item Number 132–53, Wireless Services ONLY, limited geographic coverage (consistent with the Offeror’s commercial practice) may be proposed.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101–26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

(8) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) Definitions.

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

Contractor will provide domestic and overseas delivery.

Contractor will provide overseas delivery only.

Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services 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; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security 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.*) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f)(1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232–36 Payment by Third Party. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232–36 Payment by Third Party.) Failure to return an order or advise the ordering activity within

the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of \$2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA’s Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

(End of clause)

552.238–114 Use of Federal Supply Schedule Contracts by Non-Federal Entities.

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019)

(a) If an entity identified in paragraph (d) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies “Compliance with laws unique to Government contracts” (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (*e.g.*, FAR 52.212–4 at paragraph (f) and FSS clause I–FSS–249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238–80, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238–113, Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238–113 Scope of Contract (Eligible Ordering Activities).

(End of clause)

552.238–115 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 (May 2019)

(a) *Definition.*

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 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 acquired following the procedures in paragraph (d) of this section 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.

(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 BPA.

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

(2) Order-level materials are included in the definition of the term "material" 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 value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract shall not exceed 33.33%.

(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) The contractor proposing order-level materials as part of a solution shall obtain a minimum of three quotes for each order-level material above the 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.

(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 paragraphs (d)(7)(i)(A)–(B) of this clause.

(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, 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.

(8) Prior to an increase in the ceiling price of order-level materials, the Ordering Activity Contracting Officer shall follow the procedures at FAR 8.404(h)(3)(iv).

(9) In accordance with GSAR clause 552.238–83, 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.

(10) OLMs are exempt from the following clauses:

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

(ii) 552.238–77 Submission and Distribution of Authorized FSS Schedule Pricelists.

(iii) 552.238–81 Price Reductions.

(11) *Exceptions for travel.* (i) Travel costs are governed by FAR 31.205–46 and therefore the requirements in paragraph (d)(7) do not apply to travel costs.

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

(iii) Travel costs are exempt from clause 552.238–80 Industrial Funding Fee and Sales Reporting.

(End of clause)

[FR Doc. 2019–08012 Filed 4–22–19; 8:45 am]

BILLING CODE 6820–61–P