date of first loading of the vessel for acquisition.

(c) *Sale or other disposition of Agreement Vessels to related persons.*

(1) Net proceeds from the sale or other disposition of an Agreement Vessel will be the fair market value of the vessel when the party and the purchaser are owned or controlled directly or indirectly by the same interests within the meaning of section 482 of the Internal Revenue Code of 1986, as amended, and implementing regulations. In such case, the party must furnish data to establish that the amount realized or to be realized is the fair market value; and

(2) Sufficient data must be submitted to support a MARAD determination of the fair market value including the original cost of the vessel, dates of original delivery, acquisition, and reconstruction (as applicable), cost of improvements, sales price, costs of sale, and any other information that would assist in making such determination.

§ 390.27 Failure to fulfill a substantial obligation under the agreement.

If MARAD determines that a party to an Agreement holder fails to fulfill a substantial obligation under the Agreement, MARAD will send a certified letter informing the party that the Agreement will terminate 60 days after the date of the letter unless the deficiencies identified in the letter are addressed to MARAD's satisfaction.

§ 390.19 Miscellaneous.

Wherever MARAD prescribes time constraints, the postmark date will control if mailed. If a courier service is used the date listed on the label will control.

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–19367 Filed 9–21–26; 8:45 am]

BILLING CODE 4910–81–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 538

[GSAR Case 2026–G501; Docket No. GSA–GSAR–2026–0563; Sequence No. 1]

RIN 3090–AL13

General Services Administration Acquisition Regulation; GSAR Implementation of Executive Order 14275, Federal Supply Schedule Ordering Procedures

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to move Federal Supply Schedule (FSS) ordering procedures from the Federal Acquisition Regulation (FAR) to GSAR part 538. This rule would direct ordering activities to use the FSS ordering procedures established by GSA.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before October 22, 2026 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR case 2026–G501 to: *https://www.regulations.gov* via the Federal eRulemaking portal by searching for "GSAR Case 2026–G501". Select the link "Comment Now" that corresponds with GSAR Case 2026–G501. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2026–G501" on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view the docket summary, click on "View docket" on the top left corner of the screen."

Instructions: Please submit comments only and cite GSAR Case 2026–G501, in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Thomas O'Linn at *GSARPolicy@gsa.gov* or call 202–445–0390 and cite "GSAR Case 2026–G501". For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite GSAR Case 2026–G501.

SUPPLEMENTARY INFORMATION:

I. Background

Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB); Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA) (collectively referred to as the Federal Acquisition Regulatory Council or FAR Council) are working to amend the FAR to implement Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement. The E.O. directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. In response to E.O. 14275, the Office of Management and Budget issued memorandum M–25–26, Overhauling the Federal Acquisition Regulation. The Memo directed the FAR Council to complete a "revolutionary overhaul" of the FAR (herein referred to as "Revolutionary FAR Overhaul" or "RFO").

The FAR Council's RFO FAR case 2026–003 includes the complete revision to FAR part 8. FAR part 8, specifically FAR subpart 8.4, is where FSS ordering procedures are currently located. FAR case 2026–003 removes FSS ordering procedures and instead directs agencies to use the FSS ordering procedures provided by GSA. As a result, GSA is proposing to amend the GSAR to move FSS ordering procedures to GSAR part 538.

II. Discussion and Analysis

Currently, FAR part 8 contains requirements, guidance, and procedures for acquiring and using excess property and ordering products and/or services from Federal Prison Industries (FPI), AbilityOne participating nonprofit agencies, the Federal Supply Schedule (FSS) program, and the Government Publishing Office.

FAR case 2026–003 removes duplicative requirements, guidance, and procedures currently found in the FAR part 8 and directs agencies to rely on the requirements, guidance, and procedures provided by these sources.

The FSS program pursuant to 41 U.S.C. 152(3) is directed and managed by GSA. GSA develops and oversees FSS ordering procedures. Currently, FSS ordering procedures are codified in Chapter 1 of Title 48 of the CFR (see FAR subpart 8.4). FSS ordering procedures would be moved under this proposed rule to Chapter 5 of title 48 of the CFR. At the same time, FSS ordering procedures are being reorganized to harmonize with RFO efforts and improve readability. The removal of FSS ordering procedures from FAR part 8 provides GSA with the flexibility necessary to better manage FSS ordering procedures and support customers' use of the FSS program. A summary of proposed changes to existing FSS ordering procedures follows:

A. General

The changes to FSS ordering procedures reflect the principles of the RFO and address only the essential requirements for placing orders and establishing blanket purchase agreements (BPAs) against FSS contracts. These changes-enhance the speed of acquisition and empower acquisition professionals to use innovative approaches to acquire products, services, and solutions under the FSS program.

B. Summary of changes

1. Statutory Requirements

The proposed rule retains GSA's statutory requirements and principles regarding the FSS program, including:

- 40 U.S.C. 501, Services for Executive Agencies
- 40 U.S.C. 1103 Note, Architectural and Engineering Services
- 41 U.S.C. 152(3), Competitive Procedures
- 41 U.S.C. 3302, Requirements for Purchase of Property and Services Pursuant to Multiple Award Contracts

2. Plain Language Requirements

The proposed rule reorganizes requirements and simplifies the text into plain language. This aligns with the Federal plain language guidelines as directed by the Plain Writing Act of 2010 (Pub. L. 111–274; 5 U.S.C. 301 note). Plain language efforts include:

- Changes to active voice.
- Edits to improve readability and clarity.
- Reorganization to present information more logically.
- Replacing the use of the term ''shall'' with ''must'' or ''will,'' as appropriate to impose requirements.

3. Harmonization With the RFO [for Federal Acquisition Regulation (FAR]

The proposed rule harmonizes FSS ordering requirements with revisions being made by the FAR Council under their RFO FAR efforts. Revisions include updating cross-references and use of consistent language, where appropriate (*e.g.,* harmonization with language used in RFO part 12 and subpart 16.5).

4. Improve Readability and Organization of Content

The proposed rule improves clarity, organization, and usability while preserving existing statutory authorities and long-standing FSS program policy. Specifically, the proposed rule reorganizes existing text into a more direct and streamlined format that is easier to read and allows ordering activities to quickly and easily identify the requirements that apply to their specific acquisition. These efforts include:

- Creating a single unified approach to order placement based on dollar threshold vs. type of order. Currently, ordering requirements are spread across three different sections in FAR subpart 8.4 (*i.e.,* FAR 8.405–1 (for products/services not requiring a Statement of Work—non-Blanket Purchase Agreement (BPA) orders); FAR 8.405–2 (for services requiring an SOW—non-BPA order); and FAR 8.405–3 (for orders against BPAs)). This reorganization ensures ordering procedures are logically grouped and do not include unnecessary repetition, thereby simplifying the regulatory structure and enhancing clarity for ordering activities; and
- Relocating Order-level materials (OLM) requirements from GSAR clause 552.238–115 into GSAR subpart 538.71. This reorganization ensures OLM order-level requirements are located with FSS ordering procedures, thereby ensuring ordering activities have awareness of these requirements.

III. Expected Impact of the Rule

This proposed rule creates no significant new or additional costs. The rule moves the procedures from the FAR to GSA and reorganizes and improves the readability of the language. The revisions proposed by this rule will significantly benefit the FSS program as a whole (*i.e.,* GSA and VA, ordering activities, businesses interested in doing business with GSA, and existing FSS contractors).

The proposed rule streamlines the Federal Supply Ordering procedures at FAR 8.4 from over 10,000 words to approximately 2,600. Removing, reducing, and streamlining content ensures GSA, ordering activities, businesses interested in doing business with GSA, and existing FSS contractors don't:

- Waste time or effort navigating a maze of scattered instructions as currently required;
- Unnecessarily complete requirements not required by statute, executive order, or for sound procurement that don't support faster acquisitions or better results.

GSA anticipates that these revisions will result in qualitative benefits, such as:

- Increasing competition;
- Improving customer satisfaction and reduced customer costs (*e.g.,* time) associated with ordering products, services, and solutions under the FSS program);
- Encouraging businesses to consider seeking an FSS contract;
- Reducing administrative costs for ordering activities and existing FSS contractors;
- Clarifying burdensome procedures, like FAR part 15 source selection procedures that don't apply to FSS orders (*e.g.,* there is no requirement for evaluation plans, quotation scoring, or establishing a competitive range before communicating with quoters or soliciting revised quotations);
- Encouraging coordination between FSS contractors, such as through FSS contractor team arrangements and OLMs; and
- Encouraging an increase in the number and extent of offerings available under the FSS program.

GSA anticipates non-recurring costs associated with familiarization and training related to the rule. GSA anticipates these costs will apply to ordering activities and business concerns, including those interested in seeking a FSS contract and existing FSS contractors. These entities will likely need to take the time to familiarize themselves with the changes to FSS ordering procedures. Additionally, it is anticipated that GSA will need to update existing FSS program resources to reflect the revisions made under this proposed rule.

GSA calculates the estimated cost for ordering activities to familiarize themselves with the updates to FSS ordering procedures as $1,390,830.[1] GSA calculates the estimated cost for existing FSS contractors and potential interested business concerns seeking to obtain a FSS contract to familiarize themselves with the updates to FSS ordering procedures as $567,775.[2] GSA calculates the estimated cost for training and updating existing FSS program

[1] The anticipated costs is calculated as follows: estimated .5 hours * $66.23 hourly rate * 42,000 (estimated impacted ordering entities). The hourly rate is based on GS–12 Step 5 base pay plus ''Rest of US Locality Pay'' plus ''Fringe''). The hourly rate for GS–12 is $66.23 ($48.61 as a GS–12/step 5 salary OPM 2026 pay scale Rest of US, with a 36.25% ($17.62) fringe factor pursuant to OMB memorandum M–08–13). The total estimated impacted entities is calculated by adding the approximate 42,000 Federal employees within the 1102, 1103 and 1104 job series (source OPM Federal Workforce Data).

[2] The anticipated costs is calculated as follows: estimated .5 hour * $66.23 hourly rate * 16,700 (impacted entities). The hourly rate is based on GS–12 Step 5 base pay plus ''Rest of US Locality Pay'' plus ''Fringe''). The hourly rate for GS–12 is $66.23 ($48.61 as a GS–12/step 5 salary OPM 2026 pay scale Rest of US, with a 36.25% ($17.62) fringe factor pursuant to OMB memorandum M–08–13). The total estimated impacted entities is calculated by adding the approximate 14,445 active FSS contractors and approximate 2,700 annual offerors.

resources for purposes of reflecting these revisions as $33,115.[3]

In whole, the movement of FSS ordering procedures from the FAR to the GSAR and the qualitative benefits outlined offset any new, de minimis non-recurring costs identified above.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the 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 a significant regulatory action under section 3(f) of E.O. 12866 and, therefore, was subject to review under Section 6(b) of E.O. 12866.

V. Executive Order 14192

This proposed rule, if finalized as proposed, is not an E.O. 14192 regulatory action because it does not impose any more than de minimis regulatory costs. See discussion in the ''Expected Impact of the Rule'' section of this preamble.

VI. Regulatory Flexibility Act

GSA does not expect this proposed rule to 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 this rule is to move to the GSAR, reorganize, and improve readability of existing ordering procedures related to FSS program currently found in FAR subpart 8.4. The underlying purpose of the rule remains the same (*i.e.,* supporting the placement of orders and establishment of blanket purchase agreements against FSS contracts). However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

The analysis is summarized as follows:

1. Reasons for the action.

OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council or FAR Council) are working to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement, and Office of Management and Budget issued memorandum M–25–26, Overhauling the Federal Acquisition Regulation. This effort is collectively referred to as the Revolutionary FAR Overhaul (RFO).

One of the FAR Council's RFO efforts, specifically FAR case 2026–003, includes the complete revision to FAR part 8, which currently contains requirements, guidance, and procedures for ordering products and/or services from the following sources: Federal Prison Industries (FPI), AbilityOne participating nonprofit agencies, the Federal Supply Schedule (FSS) Program, and the Government Publishing Office. FAR case 2026–003 removes duplicative requirements, guidance, and procedures currently found in the FAR part 8 and has ordering activities rely on the requirements, guidance, and procedures provided by each source, instead. This approach simplifies the acquisition process for ordering activities when ordering from these sources and provides each of these sources with the flexibility to manage how customers use their programs (*e.g.,* the FSS Program).

As a result, GSA is proposing to amend the GSAR to move FSS ordering procedures to GSAR part 538.

2. Objective of, and legal basis for, the rule.

The rewrite of the FAR under the RFO represents a paradigm shift in federal acquisition. It emphasizes streamlining, clarity, and accessibility, while ensuring that the regulation focuses only on statutory mandates and foundational procurement principles. The RFO is designed to streamline compliance for contracting professionals, improve acquisition speed and agility, and reinforce mission outcomes over process formalities.

For purposes of moving FSS ordering procedures the GSAR, GSA is reorganizing and improving readability of existing requirements currently codified in FAR subpart 8.4. The proposed changes support the RFO objectives and do not create any new burden on the Government or industry. Instead, these changes simplify the requirements needed for customers to acquire products, services, and solutions from the FSS program, thereby making the acquisition process faster and more efficient.

The basis for the RFO, which encompasses the basis for this rule, is E.O. 14275, Restoring Common Sense to Federal Procurement. GSA's authority for promulgation of ordering procedures for the FSS Program is 10 U.S.C. 3012(3); 40 U.S.C. 121(c); 40 U.S.C. 501; 41 U.S.C. 152(3); and 41 U.S.C. 3302. These ordering procedures have been coordinated with The Administrator for Federal Procurement Policy in accordance with 41 U.S.C. 4104(c).

3. Description of, and estimate of, the number of small entities to which the rule will apply.

The proposed changes to the GSAR do not impose any new requirements or burdens on small business concerns. The proposed changes impact the internal procedures of the Government concerning the placement of orders and establishment of blanket purchase agreements under the FSS program. Therefore, the changes proposed by this rule are not expected to have a significant economic impact on a substantial number of small entities.

It is recognized that small business concerns seeking to do business with the Federal Government, specifically those seeking to obtain a FSS contract as well as existing FSS contractors will have to familiarize themselves with the updates to FSS ordering procedures. As of January 2026, there were 401,196 entities registered in the System for Award Management (SAM) that were small for at least one NAICS code they had selected. At the end of Fiscal Year 2025, there were approximately 14,000 active vendors holding a FSS contract (out of which approximately 12,400 (89 percent) were small business FSS contractors).

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

The proposed rule does not impose any new reporting, recording keeping, or compliance requirements.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

There are no significant alternatives that would minimize the impact of the rule on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. The FAR Council invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

[3] The anticipated costs is calculated as follows: estimated hours 500 * 66.23 hourly rate. The hourly rate is the same hourly rate used for the familiarization cost.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (GSAR Case 2026–G501), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 538

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR part 538 as set forth below:

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 1. The authority citation for 48 CFR Part 538 continues to read as follows:

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

■ 2. Add subpart 538.71 to read as follows:

Sec.

Subpart 538.71 Federal Supply Schedule Ordering Procedures

538.7100 Scope of subpart.

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

538.7101 Definitions.

As used in this subpart—

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

Order-level materials (OLMs) means products, services, and/or solutions (a combination of products and/or services) included in an order against an FSS contract or BPA in direct support of the primary purpose of the order or BPA, when the products, services, and/or solutions are not awarded on the contractor's FSS contract. OLMs do not include costs that are separately addressed elsewhere in the FSS contract (*e.g.,* travel).

538.7102 FSS program.

(a) The procedures in this subpart are considered competitive procedures under the Competition in Contracting Act (see 41 U.S.C. 152(3) and 10 U.S.C. 3012(3)).

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

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

(d) Two or more FSS contractors can combine their offerings and propose an FSS contractor team arrangement (CTA) to meet an ordering activity's needs, unless prohibited by the ordering activity.

(e) In performance of an FSS order, including orders under FSS BPAs, GSA has authorized FSS contractors to acquire products, services, or solutions from other FSS contracts, unless prohibited by the ordering activity. A separate authorization under FAR 8.105 is not required at the order level.

(f) GSA may establish special ordering procedures for a particular FSS schedule, category, or special item number (SIN). When established, the special ordering procedures will be identified within the applicable FSS, category, or SIN. Except when otherwise stated, special ordering procedures take precedence over the procedures in this subpart.

538.7103 Procedures.

These procedures apply to placing orders and establishing BPAs against FSS contracts. See 538.7104–1(e) for the procedures for placing orders against FSS BPAs.

538.7103–1 General requirements.

(a) Ordering activities must—

(1) Follow FAR parts 4, 7, and 11, to the extent necessary, for purposes of planning, conducting market research, and defining their needs. For example, ordering activities may use FSS e-tools to search for and compare products, services, and solutions offered under the FSS program. Refer to 538.7104–4 if the requirement involves items peculiar to one manufacturer.

(2) Comply with the requirements of FAR 12.104(b) when placing an order on a time-and-materials or labor-hour basis.

(3) Based on the total estimated value of the acquisition, follow the applicable requirements in 538.7103–2 through 538.7103–4 and any applicable requirements in 538.7104.

(i) To solicit quotations for orders and BPAs against FSS contracts, issue a Request for Quotation (RFQ). A quotation is not an offer. Consequently, the procedures described in this subpart are not considered negotiations or source selection. RFQs must describe the requirement and the basis on which selection will be made. Ordering activities have broad discretion in establishing how quotations will be evaluated.

(ii) Ordering activities are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting quotations. To maximize efficiency, ordering activities are encouraged to use innovative approaches when placing orders and establishing FSS BPAs, commensurate with the risk and complexity of the requirement. Learn more about innovative approaches in the Periodic Table of Acquisition Innovations at *https://acquisitiongateway.gov/periodic-table.*

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

(5) Document the file to the extent necessary to support the award decision, commensurate with the risk and complexity of the requirement, such as demonstrating that each quotation was fairly considered.

(6) Award the FSS order to (or establish the FSS BPA with) the FSS contractor that represents the best value (as defined by FAR 2.101). This may include considering the level of effort and the mix of labor proposed to perform a specific task being ordered.

(b) Ordering activities may—

(1) Set aside or otherwise place orders or establish FSS BPAs with small business concerns identified in FAR 19.000(a)(3).

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

(3) Place orders orally, ahead of written confirmation, when using the procedures in 538.7103–2 or 538.7103–3(a).

(4) Use the Governmentwide commercial purchase card or other authorized means—

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

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

(c) Ordering activities are not required to—

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

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

538.7103–2 Acquisitions at or not more than the micro-purchase threshold.

Place the order or establish the BPA with any FSS contractor that can meet the need. Although not required to solicit from a specific number of FSS contractors, ordering activities should attempt to distribute orders among FSS contractors.

538.7103–3 Acquisitions exceeding the micro-purchase threshold, but not more than the simplified acquisition threshold (SAT).

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

(1) Publish an RFQ on GSA's eBuy;

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

(3) Consider reasonably available information about the product, service, or solution offered by three or more FSS contractors.

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

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

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

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

538.7103–4 Acquisitions exceeding the SAT.

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

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

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

(b) After award, provide prompt notification to unsuccessful quoters. If, within 3 days after receipt of the award notice, an unsuccessful quoter requests information on an award that was based on factors other than price alone, provide a brief explanation of the basis for award decision that explains why the unsuccessful quoter was not selected. *Day,* as used in this paragraph, has the meaning set forth at FAR 33.102.

538.7104 Additional requirements.

538.7104–1 FSS Blanket purchase agreements.

(a) *General.* FSS BPAs may be established with one or more FSS contractors to fill repetitive needs. Pricing is generally established as a discount off of the established FSS contract. When establishing multiple-award BPAs, one or more BPAs may be reserved for small business concerns identified in FAR 19.000(a)(3).

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

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

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

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

(4) Ordering procedures that—

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

(ii) Ensure compliance with FAR 12.104(b) when placing an order on a time-and-materials or labor-hour basis; and

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

(A) All BPA holders; or

(B) As many BPA holders as practicable. If fewer than three BPA holders are solicited, document the reason.

(c) *Duration.* FSS BPAs may be established with an ordering period that extends beyond the current term of a contractor's FSS contract, so long as there are option periods in the contractor's FSS contract that, if exercised by the FSS contracting officer, will cover the FSS BPA's ordering period, including any options and award terms.

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

(1) The BPA still represents the best value;

(2) Estimated quantities, if applicable, or the total estimated value has been reached or exceeded;

(3) The BPA ordering procedures are being followed;

(4) Additional price discounts or other concessions can be obtained;

(5) The FSS contract, against which the BPA is established, is still in effect; and

(6) If OLMS are included in the BPA, whether

(i) Their pricing is still considered fair and reasonable;

(ii) They are still necessary; and

(iii) If OLMs are still necessary in the BPA, whether they should be added to the contractor's FSS contract.

(e) *Ordering.* When placing orders against FSS BPAs, follow the ordering procedures established by the FSS BPA.

538.7104–2 Order-level materials.

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

(1) They must not be the primary purpose of the order or BPA. For administrative convenience, OLMs may be concentrated in individual orders under a BPA, provided they are not the primary purpose of the BPA itself.

(2) They must be clearly identified in the order and BPA as OLMs.

(3) The underlying FSS contract must include the OLM SIN.

(4) A fair and reasonable price determination must be made for each OLM at the order level or, if applicable, the BPA level. This determination—

(i) Is not required for OLMs acquired from other FSS contracts under 538.7102(e).

(ii) Is not required to be made prior to award of the order, but must be made prior to the FSS contractor acquiring the OLM.

(iii) May be based on a comparison of the quotes for OLMs received in response to the RFQ, information provided by the FSS contractor, or any other information available.

(5) The FSS contractor must have any necessary authorization before acquiring OLMs from other Government sources (see FAR 8.105). Authorization is not required for a FSS contractor to propose or acquire OLMs from other FSS contracts under 538.7102(e).

(6) OLMs may not be used to circumvent any limitations on the ordering activity's eligibility or authority to use the FSS program, such as the Cooperative Purchasing program or other initiatives which limit purchases to certain FSS categories.

(b) *Optional requirements.* The ordering activity should—

(1) Provide notification in the RFQ of any restrictions or conditions concerning OLMs, such as mandating or limiting the use of Government sources (see FAR 8.105).

(2) Include any requirements governing OLMs that are not otherwise included in the contractor's FSS contract or BPA, such as requirements for indirect costs and contract type requirements (see FAR 12.104(b)).

538.7104–3 FSS Sole source justifications.

Orders placed and BPAs established against FSS contracts are exempt from the competition requirements in FAR part 6. However, the ordering activity contracting officer must justify, in writing, placing an order or establishing a BPA exceeding the MPT on a sole source basis in accordance with this subsection.

(a) *Exceeding the MPT, but not more than the SAT.* Document the circumstances, including rationale, as to why only one source is reasonably capable of providing the products, services, or solutions (*e.g.,* urgency, exclusive licensing agreements, items particular to one manufacturer).

(b) *Exceeding the SAT.* Document the circumstances, including sufficient detail and supporting rationale to support the statutory exception used. (1) *Statutory exceptions.* The exceptions permitting an order or an FSS BPA to be established on a sole source basis are:

(i) The need is of such unusual urgency that following the procedures in 538.7103–4 would result in unacceptable delays in fulfilling that need;

(ii) Only one source is capable of providing the products, services, or solution required at the level of quality required because the products, services, or solutions are unique or highly specialized;

(iii) The order or BPA must be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to an FSS order already issued or BPA already established on a competitive basis (see 538.7103–4);

(iv) It is necessary to place an order to satisfy a minimum guarantee; or

(v) A statute expressly authorizes or requires that the purchase be made from a specified source.

(vi) For DoD, NASA, and the Coast Guard, the order satisfies one of the exceptions permitting the use of other than full and open competition listed in 10 U.S.C. 3406(c)(5). The public interest exception may only be used when Congress is notified in accordance with 10 U.S.C. 3204(a)(7).

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

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

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

(ii) Justifications must be made publicly available—

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

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

(C) For a minimum of 30 days.

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

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

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

(c) *Documentation and approval.* Agency procedures may establish similar content and approval requirements as prescribed by FAR 16.507–6(d)(2) and FAR 16.507–6(e).

538.7104–4 Items peculiar to one manufacturer.

(a) *General.* An item peculiar to one manufacturer can be a particular brand name, product, or a feature of a product, that is peculiar to one manufacturer.

(b) *Requirement.* Items peculiar to one manufacturer may only be acquired when—

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

(2) The file is documented accordingly—

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

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

538.7105 Postaward requirements.

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

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

(ii) Issue the final decision in accordance with FAR 33.205–6.

(b) The ordering activity contracting officer should use the alternative dispute resolution (ADR) procedures (see FAR 33.205–8), to the maximum extent practicable.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2023–0031]

RIN 2127–AM20

Part 572; Anthropomorphic Test Devices; Test Device for Human Occupant Restraint 50th Percentile Adult Male Dummy (THOR–50M)

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document supplements NHTSA's September 2023 notice of