

# **Subpart 538.70 - Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities**

**Parent topic:** [Part 538 - Federal Supply Schedule Contracting](#)

## **538.7000 Scope of subpart.**

This subpart prescribes policies and procedures for implementing statutory, regulatory, and other authorities that authorize use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities.

## **538.7001 Definitions.**

As used in this subpart—

*Eligible* means an entity that meets the requirements prescribed by statute, regulation, or other authority for purposes of being able to use FSS contracts. Information about GSA's FSS eligibility process is available at <https://www.gsa.gov/eligibilitydeterminations>.

*Non-Federal entity* means any state, local, 15 territorial, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education); and any other non-Federal organization (e.g., a qualified nonprofit agency as defined in 40 U.S.C. 502(b)).

*Preparedness* means actions that may include, but are not limited to: planning, resourcing, organizing, equipping, training, and conducting exercises to improve, build and sustain the capabilities necessary to prevent, protect, mitigate, respond, and recover from a disaster.

*Recovery* means actions taken to assist communities affected by an incident to recover effectively. This includes, but is not limited to, actions to restore, redevelop, and revitalize the health, social, economic, natural, and environmental fabric of the community. Recovery may begin while response is still occurring.

*Response* means actions taken during a disaster, or in its aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to enable recovery from a disaster.

## **538.7002 Authorities.**

Various laws, regulations, and other authorities allow eligible non-Federal entities to use FSS contracts. This section identifies some of the common authorities allowing eligible non-Federal

entities to use FSS contracts. See <https://www.gsa.gov/eligibilitydeterminations> for additional information about the authorities available.

### **538.7002-1 Cooperative purchasing program.**

40 U.S.C. 502(c) allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase the types of supplies and services described in 40 U.S.C. 502(c). The supplies and services described in 40 U.S.C. 502(c) are limited to those available under the Information Technology Category, and the Security and Protection Category (or successor category(ies)). The GSA program that implements this authority is called the Cooperative Purchasing program.

### **538.7002-2 Disaster purchasing program.**

(a) 40 U.S.C. 502(d) allows State or local governments, as defined in 40. U.S.C. 502(c)(3), to purchase supplies or services that are to be used to facilitate—

(1) Disaster preparedness or response;

(2) Recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(3) Recovery from terrorism, nuclear, biological, chemical, or radiological attack.

(b) The GSA program that implements this authority is called the Disaster Purchasing program.

### **538.7002-3 Public health emergencies program.**

42 U.S.C. 247d allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase supplies and services when expending Federal grant funds in response to a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program that implements this authority is called the Public Health Emergencies program.

### **538.7002-4 Qualified nonprofit agencies for the blind or other severely disabled.**

40 U.S.C. 502(b) allows qualified nonprofit agencies for the blind or other severely disabled, as defined by 41 U.S.C. 8501, that are providing a commodity or service to the Government under 41 U.S.C. chapter 85, to purchase supplies or services. Purchases under this authority must be used directly in making or providing to the Government a commodity or service that has been determined by the Committee for Purchase From People Who Are Blind or Severely Disabled under 41 U.S.C. 8503 to be suitable for procurement by the Government.

## **538.7002-5 Qualified relief or disaster assistance organizations.**

40 U.S.C. 502(e) allows the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3), to purchase supplies or services. Purchases under this authority by the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in 36 U.S.C. 300102. Purchases under this authority by other qualified organizations shall be used in furtherance of purposes 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.

## **538.7002-6 Indian Self-Determination and Education Assistance Act (ISDEAA).**

(a) 25 U.S.C. 5324(k) allows Tribal organizations, as defined in 25 U.S.C. 5304, that have an active ISDEAA contract, grant, or cooperative agreement to purchase supplies or services for the purposes of carrying out the ISDEAA contract, grant, or cooperative agreement.

(b) 25 U.S.C. 5370 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying the ISDEAA compact or funding agreement.

(c) 25 U.S.C. 5396 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying out the ISDEAA compact or funding agreement.

## **538.7002-7 Native American Housing Assistance and Self Determination Act (NAHASDA).**

25 U.S.C 4111(j) allows Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, that have an active NAHASDA contract, grant, or cooperative agreement to purchase supplies and services for the purposes of carrying out the NAHASDA contract, grant, or cooperative agreement.

## **538.7002-8 Native American Housing Assistance and Self Determination Act (NAHASDA).**

25 U.S.C. 1660g(e) allows Urban Indian organizations, as defined in 25 U.S.C. 1603, that have an active contract or grant pursuant to 25 U.S.C. chapter 18 subchapter IV to purchase supplies and services for the purposes of carrying out the contract or grant.

## **538.7002-9 Tribally controlled schools.**

25 U.S.C. 2507(a)(6) allows tribally controlled schools, as defined under 25 U.S.C. 2511, that have an active grant pursuant to 25 U.S.C. chapter 27 to purchase supplies or services for the purposes of

carrying out the grant.

### **538.7002-10 1122 Program.**

10 U.S.C. 281 allows States and units of local government, as defined in 10 U.S.C. 281, to purchase equipment suitable for counter-drug, homeland security, and emergency response activities through the Department of Defense. GSA, in coordination with the Secretary of Defense, produces and maintains a catalog in accordance with the procedures established by the Secretary of Defense. The catalog includes access to equipment available under FSS contracts. States and units of local government interested in using the 1122 program should contact their designated State point of contact.

### **538.7003 Non-Federal entity requirements.**

Only non-Federal entities that are eligible may use FSS contracts. Use of FSS contracts by eligible non-Federal entities is voluntary. The following requirements apply to eligible non-Federal entities who decide to use FSS contracts:

(a) FSS contractors are not obligated to accept orders or enter into blanket purchase agreements; however, they are encouraged to do so.

(b) Purchases cannot be made for personal use.

(c) Purchases cannot be for resale, unless specifically authorized.

(d) At a minimum, purchases shall comply with—

(1) FSS ordering guidance. Information about GSA's FSS contracts, including ordering guidance is available at <https://www.gsa.gov/schedules>; and

(2) Any conditions of the underlying authority(ies) supporting the use of FSS contracts ( e.g., 40 U.S.C. 502(c) limits purchases to specific supplies and services available under the FSS program).

(e) An eligible non-Federal entity's eligibility cannot be transferred to a third party ( e.g., a subcontractor) or successor entity.

### **538.7004 GSA responsibilities.**

(a) Eligibility determination process. GSA may need to make a determination of eligibility to support a non-Federal entity's use of FSS contracts. See <https://www.gsa.gov/eligibilitydeterminations> for information about eligibility.

(b) Oversight. To ensure proper use of and access to FSS contracts by eligible non-Federal entities, GSA may take any action within its authority as deemed necessary to deny, limit, or restrict use of FSS contracts, in whole or in part. Reasons may include, but are not limited to—

(1) A change in an underlying authority;

- (2)A change in the terms and conditions of the FSS program or FSS contracts;
- (3)A failure by an eligible non-Federal entity to comply with the requirements of 538.7003; or
- (4)Use by an ineligible non-Federal entity.

## **538.7005 Contract clause.**

Insert the clause at 552.238-114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities., Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities, in FSS solicitations and contracts.