

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAR Case 2010-G511, Purchasing by Non-Federal Entities.

1. **Purpose.** This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).

2. **Background.** The General Services Administration (GSA) published a proposed rule in the Federal Register at 79 FR 21691 on April 17, 2014; this rule combined previous GSAR case 2006-G522; Federal Supply Schedule Contracts—Recovery Purchasing by State and Local Governments Through Federal Supply Schedules (Interim Rule), which published in the Federal Register at 72 FR 4649 on February 1, 2007 and GSAR Case 2008-G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules (Interim Rule), which published in the Federal Register at 73 FR 54334 on September 9, 2008 to amend the General Services Administration Acquisition Manual (GSAM) to revise coverage in the following GSAR parts:

- 511 Describing Agency Needs at 511.2 Using and Maintaining Requirements Documents.
- 538 Federal Supply Schedule Contracting at 538.2 Establishing and Administering Federal Supply Schedules.
- Subpart 538.70 Purchasing by Non-Federal Entities.
- 552 Solicitation Provisions and Contract Clauses at 552.2 Text of Provisions and Clauses, in regard to this statutory implementation.

Two respondents submitted comments in response to the proposed rule. These comments, along with comments received from the previously published interim rules were published as GSAR Case 2010-G511, Change 73, final rule, in the Federal Register at 81 FR 36425 on June 6, 2016.

3. **Effective date.** July 6, 2016.

4. **Explanation of changes.** The GSAM is amended as follows:

- (a) GSAR clause 511.204 Solicitation provisions and contract clauses is revised to—

- (1) Include GSAR clause 552.211-75 Preservation, Packaging, and Packing Alternate I in solicitations and contracts for all Federal Supply Schedule contracts at 511.204 (b) (2); and
- (2) Include GSAR clause 552.211-77 Packing List Alternate I in solicitations and contracts for all Federal Supply Schedule contracts at 511.204 (c).

(b) GSAR clause 538.273 Contract clauses is revised to—

- (1) Delete GSAR clause 552.238-71 Submission and Distribution of Authorized FSS Schedule Pricelists Alternate I in Multiple Award Schedule (MAS) solicitations and contracts at 538.273 (a) (2); and
- (2) Delete GSAR clause 552.238-75 Price Reductions Alternate I in MAS solicitations and contracts at 538.273 (b) (2).

(c) Subpart 538.70 Cooperative Purchasing is changed to Purchasing by Non-Federal Entities.

(d) GSAR subpart 538.7000 Scope of Subpart is revised to authorize non-federal organizations to use (d) other Federal Supply Schedules as outlined in the subpart.

(e) GSAR subpart 538.7001 Definitions is revised to include definitions for preparedness, recovery, relief, and response.

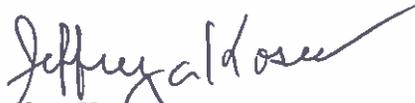
(f) GSAR subpart 538.7002 General:

- (3) Implements the John Warner National Defense Authorization Act and the Federal Supply Schedules Usage Act of 2010 (FSSUA) allowing state and local governments increased access to GSA's Federal Supply Schedules at 538.7002 (d).
- (4) Authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter (36 U.S.C. § 300102) at 538.7002 (e).
- (5) Authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services 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 at 538.7002 (f).
- (6) Notifies that participating contractors and SINS for the goods and services available under the authorized Federal Supply Schedules, are available in GSA's e-Library at www.gsa.gov/elibrary at 538.7002(g).

(g) GSAR subpart 538.7003 Policy is revised to provide instructions to contracting officers on preparing solicitations when opening authorized Federal Supply Schedules to eligible non-federal entities for use.

- (h) GSAR subpart 538-7004 Solicitation provisions and contract clauses is revised to—
- (1) Instruct contracting officers to insert GSAR clause 552.238-77 Definitions (Federal Supply Schedules) in solicitations and contracts for all Federal Supply Schedules at 538.7004 (a);
 - (2) Instruct contracting officers to insert GSAR clause 552.238-78 Scope of Contract (Eligible Ordering Activities) in solicitations and contracts for all Federal Supply Schedules at 538.7004 (b); and
 - (3) Instruct contracting officers to insert GSAR clause 552.238-79 Use of Federal Supply Schedule Contracts by Non-Federal Entities in solicitations and contracts for all Federal Supply Schedules at 538.7004 (c).
- (i) GSAR Subpart 552.2 Text of Provisions and Clauses is revised to correct the prescriptions for the following GSAR clauses:
- (1) 552.211-85 Consistent Pack and Package Requirements.
 - (2) 552.211-86 Maximum Weight per Shipping Container.
 - (3) 552.211-87 Export Packing.
 - (4) 552.211-88 Vehicle Export Preparation.
 - (5) 552.211-89 Non-Manufactured Wood Packaging Material for Export.
- (j) GSAR clause 552.238-75 Price Reductions is revised at (d) (3) to clarify that there is no price reduction for sales made to Eligible Ordering Activities identified in GSAR clause 552.238-78 for sales placed under the contract (and the Eligible Ordering Activities identified in GSAR clause 552.238-78 is the agreed upon customer or category of customer that is the basis of award).
- (k) GSAR clause 552.238-78 Scope of Contract (Eligible Ordering Activities) is revised to—
- (1) Include Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111 (j) as an entity authorized to establish contracts on a non-mandatory basis at 552.238-78 (a) (7);
 - (2) Authorize state and local governments, the American National Red Cross, and other qualified organizations as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5152) to place orders against Schedule contracts at 552.238-78 (d) (1) – (3);
 - (3) Authorize State and Local Governments to place orders against FSS for goods 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 to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack;

- (4) Direct users of GSA's FSS to use the schedules in accordance with the ordering guidance provided by the Administrator of the GSA. Users are also encouraged to follow the Schedule Ordering Procedures at FAR 8.4, but may use established competitive ordering procedures if needed to satisfy state and local acquisition regulations and/or organizational policies at 552.238-78 (h); and
- (5) Delete Alternate I in its entirety.
- GSAR clause 552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities– Cooperative Purchasing is changed to Use of Federal Supply Schedule Contracts by Non-Federal Entities.
 - GSAR clause 552-238-80 Use of Federal Supply Schedule Contracts by Certain Entities – Recovery Purchasing is deleted in its entirety. This clause is RESERVED.



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

LEGEND:

Additions: **[bold and bracketed]**; Deletions: ~~Strikethrough~~

Legal Comments: Add **[Bold, bracket and underlined]**: Deletions: ~~Strikethrough and underlined~~

Part 511—Describing Agency Needs

Subpart 511.2—Using and Maintaining Requirements Documents

511.204 Solicitation provisions and contract clauses.

(a) *Federal specifications.* The contracting officer shall insert the clause at ~~552.211-72~~, Reference to Specifications in Drawings, in solicitations and contracts citing Federal or agency specifications that contain drawings.

(b) *Supply contracts that exceed the simplified acquisition threshold.*

(1) The contracting officer shall include the clause at ~~552.211-73~~, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(2) The contracting officer shall include the clause at ~~552.211-75~~, Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for **[all Federal Supply Schedule Contracts.]**

~~(i) Federal Supply Schedules ~~70~~ and ~~84~~ and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or~~

~~(ii) Federal Supply Schedules for ~~Purchasing by Non-Federal Entities~~ recovery purchasing (see 538.7102).~~

(3) The contracting officer shall insert a clause substantially the same as the clause at ~~552.211-76~~, Charges for Packaging, Packing, and Marking, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(4) The contracting officer shall include the clause ~~552.211-85~~, Consistent Pack and Package Requirements, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(5) The contracting officer shall include the clause ~~552.211-86~~, Maximum Weight Per Shipping Container, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(6) The contracting officer shall include the clause ~~552.211-87~~, Export Packing, in solicitations and contracts for

supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(7) The contracting officer shall include the clause ~~552.211-88~~, Vehicle Export Preparation, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(8) The contracting officer shall include the clause at ~~552.211-89~~, Non-Manufactured Wood Packaging Material for Export, in solicitations and contracts for supplies when deliveries may be made to

both civilian and military activities overseas and the contract amount is expected to exceed the simplified acquisition threshold.

(9) The contracting officer shall include the clause 552.211-90, Small Parts, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(10) The contracting officer shall include the clause 552.211-91, Vehicle Decals, Stickers, and Data Plates, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(11) The contracting officer shall include the clause 552.211-92, Radio Frequency Identification (RFID) using Passive Tags, in solicitations and contracts for supplies when deliveries may be made to military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(12) The contracting officer shall include the clause 552.211-93, Unique Item Identification (UID), in solicitations and contracts for supplies when deliveries may be made to military activities and a single item exceeds \$5,000.00 in cost.

(c) *Supply contracts.* The contracting officer shall include the clause at 552.211-77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for [all Federal Supply Schedule Contracts]—

~~(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or~~

~~(2) Federal Supply Schedules for [Purchasing by Non-Federal Entities] recovery purchasing (see 538-7102).~~

Part 538—Federal Supply Schedule Contracting

Subpart 538.2 Establishing and Administering Federal Supply Schedules

538.273 Contract clauses.

(a) *Multiple award schedules.* Insert in solicitations and contracts:

(1) 552.238-70, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped, if you include electronic office equipment items.

(2) 552.238-71, Submission and Distribution of Authorized FSS Schedule Pricelists

~~(Use Alternate I, in solicitations and contracts for~~

~~(A) Federal Supply Schedule 70;~~

~~(B) The Consolidated Schedule contracts containing information technology Special Item~~

~~Numbers;~~

~~(C) Federal Supply Schedule 84; and~~

~~(D) Federal Supply Schedules for [Purchasing by Non-Federal Entities] recovery~~

~~purchasing (see 538-7102); use Alternate I.~~

~~(ii) If GSA is not prepared to accept electronic submissions for a particular schedule delete—~~

~~(A) The paragraph identifier "(i)" in (b)(1) and the word "and" at the end of paragraph (b)(1)(i);~~

~~and~~

~~(B) Paragraphs (b)(1)(ii) and (b)(3).~~

(3) 552.238-72, Identification of Products that have Environmental Attributes.

(4) 552.238-73, Cancellation.

(b) *Multiple and single award schedules.* Insert in solicitations and contracts:

(1) 552.238-74, Industrial Funding Fee and Sales Reporting.

(2) 552.238-75, Price Reductions. ~~Use Alternate I in solicitations and contracts for—~~

~~(i) Federal Supply Schedule 70;~~
~~(ii) The Consolidated Schedule containing information technology Special Item Numbers;~~
~~(iii) Federal Supply Schedule 84; and~~
~~(iv) Federal Supply Schedules for [Purchasing by Non-Federal Entities] recovery purchasing~~
~~(see 538.7102).~~

Subpart 538.70— Cooperative Purchasing [by Non-Federal Entities]

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use—

- (a) Federal Supply Schedule 70;
- (b) The Consolidated Schedule contracts containing information technology Special Item Numbers (SINs); and
- (c) Federal Supply Schedule 84; and
- (d) Other Federal Supply Schedules as authorized in this subpart]**

538.7001 Definitions.

“Ordering activity” (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see 552.238-78) authorized to place orders under Federal Supply Schedule contracts.

“Schedule 70,” as used in this subpart, means Schedule 70 information technology contracts, and Consolidated Products and Services Schedule contracts containing information technology SINs. The Consolidated Products and Services Schedule is a compilation of multiple individual Federal Supply Schedules; therefore, only the SINs that fall under Schedule 70 of the Consolidated Products and Services Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and Consolidated Products and Services Schedule contracts containing Schedule 70 SINs, will apply.

“Schedule 84” means the Federal Supply Schedule for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal Supply Classification Code Group 84 or any amended or subsequent version of that Federal supply classification group).

“State and local government entities,” as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) “Local educational agency” has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) “Institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) “Tribal government” means—

- (i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and
- (ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

[“Preparedness” means actions that may include, but are not limited to planning, resourcing, training, exercising, and organizing to build, sustain, and improve operational disaster

response capabilities. Preparedness also includes the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction-specific plans for delivering capabilities when needed for an incident.

“Recovery” means actions including, but not limited to, the development, coordination, and execution of service- and site-restoration plans; the reconstitution of Government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post-incident reporting; and development of initiatives to mitigate the effects of future incidents.

“Relief” means disaster “response” and “recovery.” Please see full definitions for these terms.

“Response” means immediate actions taken during a disaster, or in its immediate 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 support short-term recovery.]

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal Supply Schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) Pub. L. 110-248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

~~(d) State and local governments are authorized to procure from Schedule 70 contracts, Consolidated Schedule contracts containing information technology SINs, and Schedule 84 contracts. A listing of the participating contractors and SINs for the products and services that are available through Schedule 70 contracts, the Consolidated Schedule contracts containing information technology SINs, and Schedule 84 contracts, is available in GSA's Schedules e Library at www.gsa.gov/elibrary. Click on Schedules e Library, and under Cooperative Purchasing, click on "View authorized vendors." The contractors and the products and services available for Cooperative Purchasing will be labeled with the Cooperative Purchasing icon.~~

[(d)] [Pub. L. 109-364, This subpart prescribes policies and procedures to implement the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) authorizing [state and local governments,] non-federal organizations to use Federal Supply Schedule contracts to purchase products and services to be used [to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.) or to facilitate] for recovery from major disasters, terrorism or nuclear, biological, chemical, or radiological attack. [Pub. L. 111-263, the Federal Supply Schedules Usage Act of 2010 authorizing state and local governments to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate disaster preparedness or response.]

(e) Pub. L. 111-263, the Federal Supply Schedules Usage Act of 2010, authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter (36 U.S.C. § 300102).

(f) Pub. L. 111-263, the Federal Supply Schedules Usage Act of 2010, authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services in

furthurance 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. Other qualified organizations must meet the requirements of 42 U.S.C. § 5152.

(g) A listing of the participating contractors and SINs for the goods and services that are available under these authorized Federal Supply Schedules, is available in GSA's e-Library at www.gsa.gov/elibrary]

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening ~~[authorized Federal Supply Schedules] Schedule 70, the Consolidated Schedule containing information technology SINs, and Schedule 84,~~ for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under ~~Schedule 70, and the Consolidated Schedule containing information technology SINs, and Schedule 84~~ **[authorized Federal Supply Schedules]**. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

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

538.7004 Solicitation provisions and contract clauses.

~~(a) The contracting officer shall insert the clause at 552.238-77, Definition (Federal Supply Schedules) [**Non-Federal Entity**] in solicitations and contracts for **[all Federal Supply Schedules]**. **Recovery Disaster Purchasing in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack**~~

~~(b) The contracting officer shall insert the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for **[all Federal Supply Schedules]**.~~

~~(1) Schedule 70; and~~

~~(2) The Consolidated Schedule containing information technology SINs; and~~

~~(3) Schedule 84.~~

~~(c) The contracting officer shall insert the clause at 552.238-79, Use of Federal Supply Schedule Contracts by **Certain Entities—Cooperative Purchasing [Non-Federal Entities]**, in solicitations and contracts for **[all Federal Supply Schedules]**.~~

~~(1) Schedule 70;~~

~~(2) The Consolidated Schedule containing information technology SINS; and~~

~~(3) Schedule 84.~~

~~(d) See 552.101-70 for authorized FAR deviations.~~

Subpart 538.71—[Disaster] Recovery Purchasing [RESERVED]

538.7100 Scope of subpart.

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

538.7102 General.

~~(a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires The Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. Use of Federal supply schedules by State and local governments is voluntary. Agreement of a schedule contractor to offer recovery purchasing under the contract and acceptance of any order for recovery purchasing from a state or local government is voluntary.~~

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

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

538.7103 Policy.

~~*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation (FAR) and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded~~

under the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to-

- (a) ~~52.212-4, Contract Terms and Conditions—Commercial Items.~~
- (b) ~~52.216-18, Ordering.~~
- (c) ~~52.216-19, Order Limitations.~~
- (d) ~~52.220-1, State and Local Taxes.~~
- (e) ~~52.220-3, Federal, State, and Local Taxes.~~
- (f) ~~52.232-7, Payments Under Time and Materials and Labor Hour Contracts.~~
- (g) ~~52.232-17, Interest.~~
- (h) ~~52.232-19, Availability of Funds for the Next Fiscal Year.~~
- (i) ~~52.232-34, Payment by Electronic Funds Transfer Other than Central Contractor Registration.~~
- (j) ~~52.232-36, Payment by Third Party.~~
- (k) ~~52.237-3, Continuity of Services.~~
- (l) ~~52.246-4, Inspection of Services—Fixed Price.~~
- (m) ~~52.246-6, Inspection Time and Material and Labor Hour.~~
- (n) ~~52.247-34, F.O.B. Destination.~~
- (o) ~~52.247-38, F.O.B. Inland Carrier Point of Exportation.~~

~~538.7104—Solicitation provisions and contract clauses.~~

~~(a) [As an addendum to 52.212-4, Contract Terms and Conditions—Commercial Items t]The contracting officer shall insert the clause at _____, Definition (Federal Supply Schedules)—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.~~

~~(b) [As an addendum to 52.212-4, Contract Terms and Conditions—Commercial Items t]The contracting officer shall insert the clause at _____, Scope of Contract (Eligible Ordering Activities), with Alternate I in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.~~

~~(c) [As an addendum to 52.212-4, Contract Terms and Conditions—Commercial Items t]The contracting officer shall insert the clause at _____, Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security that facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.~~

~~—End of Clause~~

Part 552—Solicitation Provisions and Contract Clauses

Subpart 552.2—Text of Provisions and Clauses

552.211-85 Consistent Pack and Package Requirements.

As prescribed in [511.204(b)(4)] ~~511.204(b)(5)~~, insert the following clause:

Consistent Pack and Package Requirements (Jan 2010)

The Contractor is advised that the Government will, where possible, order in full shipping containers and/or unitized loads. If volume warrants, the Government may also order in truckload or carload quantities provided such quantities do not exceed the maximum order limitation of this contract.

When the number of items per unit container, intermediate container and/or shipping container is not specified for an item, the offeror will state, in the spaces provided in the schedule of items, the number of items to be provided in each container. The quantities which are accepted at the time of award shall remain in effect throughout the term of the contract unless the Contracting Officer approves in writing a request by the Contractor to change the package quantities. Requests for changes shall be directed to the Contracting Officer or Administrative Contracting Officer, whichever is applicable.

(End of clause)

552.211-86 Maximum Weight per Shipping Container.

As prescribed in [511.204(b)(5)] ~~511.204(b)(6)~~, insert the following clause:

Maximum Weight per Shipping Container (Jan 2010)

In no instance shall the weight of a shipping container and its contents exceed 23 kilograms (51 pounds), except when caused by—

- (1) The weight of a single item within the shipping container;
- (2) A prescribed quantity per pack for an item per shipping container; or
- (3) A definite weight limitation set forth in the purchase description.

(End of clause)

552.211-87 Export Packing.

As prescribed in [511.204(b)(6)] ~~511.204(b)(7)~~, insert the following clause:

Export Packing (Jan 2010)

(a) Offerors are requested to quote, in the pricelist accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial or military export packing. Military export packing, if offered, shall be in accordance with Mil-Std-2073-1 Level A or B as specified. If commercial export packing is offered, the offer or pricelist shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to utilize the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export packed when such packing is specified on the purchase order.

(End of clause)

552.211-88 Vehicle Export Preparation.

As prescribed in [511.204(b)(7)] ~~511.204(b)(8)~~, insert the following clause:

Vehicle Export Preparation (Jan 2010)

Vehicles shall be prepared for export on wheels, unboxed, unless otherwise specified in the Schedule of Items. All parts and equipment easily removable (subject to pilferage) shall be enclosed in a box substantially secured to the vehicle (inside body if feasible) in such a manner as to minimize the possibility of loss or damage while in transit to ultimate destination.
(End of clause)

552.211-89 Non-Manufactured Wood Packaging Material for Export.

As prescribed in [511.204(b)(8)] ~~511.204(b)(4)~~, insert the following clause:

Non-Manufactured Wood Packaging Material for Export (Jan 2010)

(a) Definitions:

IPPC Country. Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) "Guidelines for Regulating Wood Packaging Material in International Trade," approved March 15, 2002. A listing of countries participating in the IPPC is found at http://www.aphis.usda.gov/import_export/plants/plant_exports/wpm/country/index.shtml.

Non-manufactured wood, is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a combination thereof.

Packaged material, and solid wood packing material (SWPM), for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLAD 47.305-1 (available at <http://www.dla.mil/4-34-3311/DLAD/rev5.htm>) [<http://farsite.hill.af.mil/archive/Dlad/Rev5/PART47.htm>], and MIL-STD-2073-1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery to

the countries endorsing the IPPC Guidelines will comply with DLAD 47.305-1, and MIL-STD-2073-1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

(End of clause)

552.238-71 Submission and Distribution of Authorized FSS Schedule Pricelists.

As prescribed in _____, insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS SCHEDULE PRICELISTS (SEP 1999)

(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] Federal Government customers"].

(End of clause)

~~Alternate 1 (May 2003). As prescribed in _____, 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"].~~

552.238-75 Price Reductions.

As prescribed in _____, insert the following clause:

PRICE REDUCTIONS (MAY 2004)

(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] Government 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 State and local government entities [Eligible Ordering Activities Identified in GSAR clause 552.238-78] when the order is placed under this contract (and the State and local government entity [Eligible Ordering Activities Identified in GSAR clause 552.238-78] 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 2003). As prescribed in~~ ~~substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause, and substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause.~~

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

~~(d)(2) To eligible ordering activities under this contract; or~~

~~552.238-76 Definition (Federal Supply Schedules)—Recovery Purchasing—[RESERVED]As prescribed in~~ ~~, insert the following clause:~~

~~DEFINITION (FEDERAL SUPPLY SCHEDULES)—RECOVERY PURCHASING (FEB 2007)~~

~~Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see~~

~~552.238-76 RESERVED~~

~~552.238-77 Definition (Federal Supply Schedules)—[Non-Federal Entity]Recovery Purchasing.~~

~~As prescribed in~~ ~~, insert the following clause:~~

~~DEFINITION (FEDERAL SUPPLY SCHEDULES) (MAY 2003)~~

~~Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see 552.238-78.) authorized to place orders under Federal Supply Schedule contracts.~~

~~*****~~

(End of clause)

~~552.238-78 Scope of Contract (Eligible Ordering Activities).~~

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

SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (SEP-2008[DATE])

(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 USC 450j(k);

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

(8) Qualified Nonprofit Agencies as authorized under 40 USC 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:

o Contractor will provide domestic and overseas delivery.

o Contractor will provide overseas delivery only.

o Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule 70 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 products [goods or] and 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 552.232-79, Payment by Credit Card. 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 552.232-79, Payment by Credit Card.) 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.]

Alternate 1 (Feb 2007). As prescribed in 538.7104(b), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic clause:

~~(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 delivery.~~

~~(1) Executive agencies (as defined in Federal Acquisition Regulation 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 Federal Acquisition Regulation Subpart 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) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and~~

~~(8) 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.~~

~~(d) The following activities may place orders against Federal Supply Schedules for products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities: State and local government entities, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning):~~

~~"State and local government entities", means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.~~

~~(1) "Local educational agency" has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).~~

~~(2) "Institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).~~

~~(3) "Tribal government" means—~~

~~(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and~~

~~(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);~~

552.238-79 Use of Federal Supply Schedule Contracts by Certain [Non-Federal Entities] – Cooperative Purchasing-

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

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing [Non-Federal Entities] (DATE)

(a) If an entity identified in paragraph (d) of the clause at 552.238-78, 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 552.238-78, 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 552.238-74, 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 552.238-78, Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-78.

(End of clause)

~~552.238-80-Use of Federal Supply Schedule Contracts by Certain Entities-[RESERVED]~~

As prescribed in ~~538.7104(c)~~, insert the following clause:

~~USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY CERTAIN ENTITIES (FEB 2007)~~

~~(a) If an entity identified in paragraph (d), of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities) Alternate I, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:~~

~~(1)***~~

~~(7) The state or local government ordering activity will be responsible for purchasing products or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or to facilitate [disaster preparedness, response, or to facilitate] recovery from terrorism or nuclear, biological, chemical, or radiological attack.~~

~~[(8) The American National Red Cross will be responsible for placing orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its federal charter (36 U.S.C. § 300402).~~

~~—(9) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5152), will be responsible for placing orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief.]~~

~~(b)***~~

~~(d) A listing of the Federal Supply Schedule contracts for the products and services available [is]for disaster recovery purchasing is accessible in GSA's Schedules e Library at web site <http://www.gsaelibrary.gsa.gov>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating Contractors and the products and services available for disaster recovery purchasing will be labeled with the Disaster Recovery Purchasing icon.~~

(End of clause)

