

## GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAR Case 2020-G511,  
Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).
2. Background. GSA conducts routine reviews of its acquisition regulations. Routine review of the GSAR, as well as feedback from GSA's operational offices, prompted this change. The review indicated a need to update and clarify GSAR subpart 538.70, Purchasing by Non-Federal Entities. Subpart 538.70 prescribes the policies and procedures that implement statutory, regulatory, and other provisions that authorize eligible non-Federal entities use of Federal Supply Schedule (FSS) contracts. This revision updates and clarifies the requirements for use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities, such as State and local governments.
3. Effective date. March 25, 2024
4. Explanation of changes. This amendment includes both non-regulatory and regulatory changes. For full text changes of the amendment see Attachment A, GSAR/M Text Line-In/Line-Out.

This amendment revises the language of the following GSAR/M parts, changes summarized below:

### Part 538 Federal Supply Schedule Contracting

- GSAR section 538.273 FSS solicitation provisions and contract clauses, is being revised to provide for the prescription of GSAR clauses 552.238-112 and 552.238-113, which are being revised and renamed under this amendment. This section is appropriate because these clauses apply to FSS contracts as whole and not just non-Federal entities (which is addressed in subpart 538.70);
- GSAR subpart 538.70 is revised in its entirety to clarify the scope of this subpart. These revisions are as follows:
  - The subpart is being renamed as follows:
    - From: Subpart 538.70 Purchasing by Non-Federal Entities
    - To: Subpart 538.70 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities.

- Section 538.7000 Scope of subpart, is being revised in its entirety to clarify the scope of the subpart.
- Section 538.7001 Definitions, is revised in its entirety to: add definitions for purposes of clarity, revise existing definitions for purposes of clarity or currency, and remove definitions determined to be no longer necessary.
- Section 538.7002 General, is being renamed as 538.7002 Authorities, and revised in its entirety. The revision identifies new authorities as well as clarifies existing authorities available to eligible non-Federal entities; and provides a hyperlink to a GSA website that provides additional information about eligibility.
- Section 538.7003 Policy, is being renamed as 538.7003 Non-Federal entity requirements, and revised in its entirety. The revision removes the ability to deviate from various FAR provisions and clauses; provides clarity on the use of FSS contracts by eligible non-Federal entities; and adds a hyperlink to GSA's website that provides GSA FSS ordering guidance to eligible non-Federal entities.
- Section 538.7004 Solicitation provisions and contract clauses, is being renamed as 538.7004 GSA responsibilities, and revised in its entirety. The revision describes GSA's responsibilities concerning the use of FSS contracts by eligible non-Federal entities.
- Section 538.7005 Contract clause, is a new section being added to the subpart. This new section provides for the prescription of 552.238-114, which is being revised under this amendment.

#### Part 552 Solicitation Provisions And Contract Clauses

- GSAR subpart 552.2 Text of Provisions and Clauses, is revised as follows:
  - 552.238-105, Deliveries Beyond the Contractual Period—Placing of Orders, is being revised. The revision changes the citation from “Clause 552.238-113, Scope of Contract (Eligible Ordering Activities)” to “the GSAR clause at 552.238-113, Authorities Supporting Use of Federal Supply Schedule Contracts;
  - 552.238-112, Definitions (Federal Supply Schedules) Non-Federal Entity, is being revised, and renamed as 552.238-112, Definitions—Federal Supply Schedule Contracts. The revision provides for a definition for the word ‘eligible’ and an updated definition for the term ‘ordering activity.’;
  - 552.238-113, Scope of Contract (Eligible Ordering Activities), is being revised, and renamed 552.238-113, Authorities Supporting Use of Federal Supply Schedule Contracts. The revision streamlines the clause to focus solely on the authorities that support use of FSS contracts; and
  - 552.238-114, Use of Federal Supply Schedule Contracts by Non-Federal Entities, is being revised and renamed 552.238-114, Use of Federal Supply

Schedule Contracts by Eligible Non-Federal Entities. The revision clarifies the requirements that apply to use of FSS contracts by eligible non-Federal entities.

- GSAM subpart 552.3 Provision and Clause Matrixes, is revised as follows:
  - 552.238-112, Definitions (Federal Supply Schedules) Non-Federal Entity, is renamed as 552.238-112, Definitions—Federal Supply Schedule Contracts.
  - 552.238-113, Scope of Contract (Eligible Ordering Activities), is renamed 552.238-113, Authorities Supporting Use of Federal Supply Schedule Contracts.
  - 552.238-114, Use of Federal Supply Schedule Contracts by Non-Federal Entities, is renamed 552.238-114, Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities.
- 5. Cancellations. The following are hereby canceled:
  - Class Deviation CD-2020-01, GSAR Class Deviation - Clarifying the Government's Rights Under the Commercial Items Clause.
  - FAS clause I-FSS-973, Payments By Non-Federal Ordering Activities, which was previously retained under Acquisition Letter MV-2023-01.
- 6. Point of contact. For clarification of content, contact the GSA Acquisition Policy Division, at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov).

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

## TAB A – GSAR Line-In/Line-Out Text

### GSAM Baseline: Change 177 effective 03/20/2024

- Additions to baseline made by rule are indicated by [bold text in brackets]
- Deletions to baseline made by rule are indicated by strikethroughs
- Five asterisks (\*\*\*\*\* ) indicate that there are no revisions between the preceding and following parts, subparts, or sections
- Three asterisks (\*\*\*) indicate that there are no revisions between the material shown within a subsection

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### PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

#### Subpart 538.2—Establishing and Administering Federal Supply Schedules

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#### 538.273 FSS solicitation provisions and contract clauses.

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(d) Insert the following clauses in FSS solicitations and contracts as an addendum to FAR Clause 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services::

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**[(36) 552.238-112, Definitions—Federal Supply Schedule Contracts.  
(37) 552.238-113, Authorities Supporting Use of Federal Supply Schedule  
Contracts.]**

~~(36)~~**[(38)]** 552.238-116, Option to Extend the Term of the FSS Contract. Use when appropriate.

~~(37)~~**[(39)]** 552.238-117, Price Adjustment—Failure to Provide Accurate Information. Use only in FSS solicitations and contracts under the MAS program. This clause is used when the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting.

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#### Subpart 538.70—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) The Consolidated Schedule contracts containing information technology or security and protection Special Item Numbers (SINs); and
- (b) 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 552.238-113) authorized to place orders under Federal supply schedule contracts.

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 the full definitions for these terms in this section.

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.

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.).

#### 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) Public Law 109-364, the John Warner National Defense Authorization Act for Fiscal Year 2007 authorizing state and local governments, 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 terrorism or nuclear, biological, chemical, or radiological attack. Public Law 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) Public Law 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) Public Law 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 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. 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](http://www.gsa.gov/elibrary).

#### 538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening authorized Federal Supply Schedules 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 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 552.238-112, Definition (Federal Supply Schedules)-Non-Federal Entity in solicitations and contracts for all Federal Supply Schedules.

(b) The contracting officer shall insert the clause at 552.238-113, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.

(c) The contracting officer shall insert the clause at 552.238-114, Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.

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

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

### **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, 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 Urban Indian organizations.**

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, in FSS solicitations and contracts.]

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#### **Subpart 552.2—Text of Provisions and Clauses**

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#### **552.238-105 Deliveries Beyond the Contractual Period—Placing of Orders.**

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

**Deliveries Beyond the Contractual Period—Placing of Orders (MAY 2019)[(MAR 2024)]**

In accordance with Clause ~~552.238-113, Scope of Contract (Eligible Ordering Activities)~~**[the GSAR clause at 552.238-113, Authorities Supporting Use of Federal Supply Schedule Contracts]**, this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the

Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

(End of clause)

\* \* \*

~~552.238-112 Definition (Federal Supply Schedules) — Non-Federal Entity.~~  
As prescribed in 538.7004(a), insert the following clause:

~~Definition (Federal Supply Schedules) — Non-Federal Entity (MAY 2019)~~

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

(End of clause)

~~552.238-113 Scope of Contract (Eligible Ordering Activities).~~  
As prescribed in 538.7004(b) insert the following clause:

~~Scope of Contract (Eligible Ordering Activities) (MAY 2023)~~

~~(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 the Wireless Mobility Services Special Item Number 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(j);~~

~~(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:

Contractor will provide domestic and overseas delivery.

Contractor will provide overseas delivery only.

Contractor will provide domestic delivery only.

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

(1) State and local government may place orders against Consolidated Schedule contracts containing information technology or security and protection Special Item Numbers, 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 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 (42 U.S.C. 5121, et seq.) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; provided, the Contractor accepts order(s) from such activities.

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

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

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

Payment by Third Party.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

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

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

(End of clause)

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

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

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

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

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

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

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or

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

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

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

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

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

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

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

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

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

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-113.

(End of clause)

**[552.238-112 Definitions—Federal Supply Schedule Contracts.**

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

**Definitions—Federal Supply Schedule Contracts (MAR 2024)**

As used in this contract,

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

*Ordering activity* (also called “ordering agency” and “ordering office”) means an entity that is eligible to place orders or establish blanket purchase agreements (BPA) under this contract.

(End of clause)

552.238-113 Authorities Supporting Use of Federal Supply Schedule Contracts.  
As prescribed in 538.273(d), insert the following clause:

**Authorities Supporting Use of Federal Supply Schedule Contracts (MAR 2024)**

(a) Ordering activities are able to use Federal Supply Schedule (FSS) contracts based upon a number of statutes, regulations, and other authorities. Authorities allowing ordering activities use of FSS contracts include, but are not limited to:

(1) 25 U.S.C. 1660g(e), which provides for the use by urban Indian organizations, as defined in 25 U.S.C. 1603, for the purposes of carrying out a contract or grant pursuant to 25 U.S.C. chapter 18 subchapter IV.

(2) 25 U.S.C. 2507, which provides for the use by tribally controlled schools, as defined in 25 U.S.C. 2511, for the purposes of carrying out a grant pursuant to 25 U.S.C. chapter 27 (known as the Tribally Controlled Schools Act).

(3) 25 U.S.C. 4111(j), which provides for the use by Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, for the purposes of carrying out a contract, grant, or cooperative agreement pursuant to 25 U.S.C. chapter 43 (known as the Native American Housing Assistance and Self Determination Act (NAHASDA)).

(4) 25 U.S.C. 5324(k), which provides for the use by Tribal organizations, as defined in 25 U.S.C 5304, for the purposes of carrying out a contract, grant, or cooperative agreement pursuant to 25 U.S.C. chapter 46 (known as the Indian Self-Determination and Education Assistance Act (ISDEEA)).

(5) 25 U.S.C. 5370 and 25 U.S.C. 5396, which provides for the use by Indian Tribes, as defined in 25 U.S.C. 5304, for the purpose of carrying out a compact or funding agreement pursuant to 25 U.S.C. chapter 46 (known as ISDEEA).

(6) 40 U.S.C. 113(d), which provides for the use by the Senate, the House of Representatives, and the Architect of the Capitol (including any building, activity, or function under the direction of the Architect of the Capitol).

(7) 40 U.S.C. 501, which provides for the use by executive agencies as defined in 5 U.S.C. 105.

(8) 40 U.S.C. 502(a), which provides for the use by Federal agencies as defined in 40 U.S.C. 102, the District of Columbia, and mixed-ownership Government corporations as defined in 31 U.S.C. 9101.



(9) 40 U.S.C. 502(b), which provides for the use by qualified nonprofit agencies for other severely disabled, as defined in 41 U.S.C. 8501(6), and qualified nonprofit agencies for the blind, as defined in 41 U.S.C. 8501(7), for the purposes of 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.

(10) 40 U.S.C. 502(c), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purpose of purchasing the types of supplies and services described in 40 U.S.C. 502(c). The types of supplies and services described in 40 U.S.C. 502(c) are limited to those available in the Information Technology Category and the Security and Protection Category (or any successor categories). The GSA program implementing this authority is the Cooperative Purchasing program.

(11) 40 U.S.C. 502(d), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purposes of facilitating disaster preparedness or response, facilitating 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 facilitating recovery from terrorism, nuclear, biological, chemical, or radiological attack. The GSA program implementing this authority is the Disaster Purchasing program.

(12) 40 U.S.C. 502(e), which provides for the use by the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3). 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.

(13) 42 U.S.C. 247d, which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), when a public health emergency has been declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program implementing this authority is the Public Health Emergencies program.

(14) FAR subpart 51.1, which provides for the use by contractors, including subcontractors, when such use is authorized pursuant to FAR subpart 51.1.

(End of clause)

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

As prescribed in 538.7005, insert the following clause:

**Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities (MAR 2024)**

**(a) Definition.**

**Non-Federal entity**, as used in this clause, means any state, local, 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)).

**(b) Responsibilities.** Eligible non-Federal entities are responsible for complying 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 FSS contracts).

**(c) Acceptance.** (1) The Contractor is encouraged, but not obligated, to accept orders from eligible non-Federal entities under this contract. The Contractor may, within 5 business days of receipt of an order, reject an order from an eligible non-Federal entity for any reason. However, purchase card orders must be rejected within 24 hours of receipt of the order. Failure to reject an order within these timeframes shall constitute acceptance.

(2) The Contractor is encouraged, but not obligated, to enter into blanket purchase agreements (BPAs) with eligible non-Federal entities under the terms of this contract. The Contractor should respond to any requests to enter into a BPA within 5 business days of receipt of the request.

**(d) Conditions of acceptance.** If the Contractor accepts an order from or enters into a BPA with an eligible non-Federal entity under this contract, the following conditions apply:

(1) For orders, a separate contract is formed between the Contractor and the eligible non-Federal entity (herein "the parties"). For BPAs, a separate agreement is formed between the parties.

(2) The resultant order or BPA shall incorporate by reference all the terms and conditions of this contract except for:

(i) FAR clause 52.233-1, Disputes, and

(ii) Paragraphs (d) Disputes, (h) Patent indemnity, and (r) Compliance with laws unique to Government contracts, of GSAR clause 552.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services.

(3) The U.S. Government is not liable for the performance or nonperformance of any order or BPA entered into under this contract by the parties. Disputes which cannot be resolved by the parties 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, the parties are encouraged to resolve disputes through alternative dispute resolution.

(4) Neither party will look to, primarily or in any secondary capacity, or file any claim against the U.S. Government or any of its agencies with respect to any failure of performance by the other party.

**(e) *Additional terms and conditions.*** Terms and conditions required by statute, ordinance, regulation, or as otherwise required by an eligible non-Federal entity may be made a part of an order or a BPA to the extent that these terms and conditions do not conflict with the terms and conditions of this contract. The Contractor should review any such additional terms and conditions prior to accepting an order or entering into a BPA with an eligible non-Federal entity.

**(f) *Payment.*** (1) The Contractor is responsible for obtaining all payments due to the Contractor from the eligible non-Federal entity under the terms and conditions of the order or the BPA entered into under this contract, without recourse to the U.S. Government or any of its agencies that awarded this contract or administer this contract.

(2) If an eligible non-Federal entity is subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such entities. If an eligible non-Federal entity is not subject to a State prompt payment law, the terms and conditions of paragraph (i) of the GSAR clause at 552.212-4, apply to such entities in the same manner as to Federal entities.

**(g) *Fee and sales reporting.*** The requirements of the GSAR clause at 552.238-80, Industrial Funding Fee and Sales Reporting, apply to any sales to eligible non-Federal entities under this contract.

**(End of clause)]**

\* \* \* \* \*



<del>552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities</del> <b>552.238-114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities]</b>	<del>Jan 1, 2022</del> <b>DATE]</b>	<del>538.70</del> <b>04[538.7005]</b>	* * * *																							
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