

January 28, 2010

FAS INSTRUCTIONAL LETTER 2010-05

MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

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SUBJECT: Implementation of the Federal Acquisition Regulation (FAR) Part 51 Class Deviation to the Federal Supply Schedule (FSS) Program

1. Purpose. The purpose of this Instructional Letter (IL) is to provide guidance on implementing the class deviation to FAR Part 51 in Federal Supply Schedule (FSS) contracts.
2. Background. FAR subpart 51.1 allows for the use of GSA supply sources in the case of cost-reimbursable contracts; contracts where a significant portion of the contractor's contracts are of a cost-reimbursable nature; AbilityOne; and fixed-price contracts for protection of security classified information and related security equipment.

In order to better meet the needs of GSA's customer agencies, a deviation to FAR Part 51 has been approved to expand the authority of contractors to use GSA sources of supply. The [class deviation](#) expires 5 years from date of signature (October 8, 2009).

Specifically, the deviation authorizes Federal Government contracting officers to give GSA contractors access to the Federal Supply Schedule (FSS) and GSA Global Supply Programs when deemed appropriate for fulfillment of their agency requirements. Please note that the FSS Program is inclusive of those Schedules managed by the Department of Veterans Affairs. This authority is limited to orders:

- Placed on a time-and-materials (T&M)/labor-hour (LH) basis-an order placed by the Federal Government to the buying contractor can be partially fixed price, but the portion of the order for the items to be procured using the FAR 51 deviation must be T&M/LH only;
- For ancillary supplies/services that are in support of the overall order such that the items are not the primary purpose of the work ordered, but are an integral part of the total solution offered;
- Issued in accordance with the procedures in FAR 8.405-1, Ordering Procedures for supplies, and services not requiring a statement of work;
- Placed by the Federal Government. The authorization is NOT available to state and local governments.

For comprehensive guidance on the proper use the FAR Part 51 authority granted by the deviation, please refer to the [Ordering Guide](#).

3. Effective Date. Date of signature.
4. Termination Date. This IL expires one year from the effective date unless cancelled, extended, or incorporated into a handbook.
5. Applicability. This IL applies to all activities awarding and administering Federal Supply Schedule contracts.
6. Reference to Regulations. FAR Subpart 51.101 is deviated. GSAR clause 552.238-75, Price Reductions (Alternate I), is added to include clarifying language that the conditions of the clause do not apply to sales made pursuant to the class deviation. Clause CI-FSS-056, Federal Acquisition Regulation (FAR) Part 51 Deviation Authority (Federal Supply Schedules), is added.
7. Instructions/Procedures.
 - A. Refresh all Federal Supply Schedule solicitations and modify all Schedule contracts to incorporate FSS clause CI-FSS-056, Federal Acquisition Regulation (FAR) Part 51 Deviation Authority (Federal Supply Schedules)(See Appendix A for full-text), and GSAR clause 552.238-75, Price Reductions (Alternate I) with additional applicability note (See Appendix B for note language).

- i. Applicability

FSS clause CI-FSS-056, Federal Acquisition Regulation (FAR) Part 51 Deviation Authority (Federal Supply Schedules), applies to all Schedule contracts.

1. Inclusion of clause CI-FSS-056 at the contract level does not mean that a contractor must utilize the FAR Part 51 deviation on future task/delivery orders. Proposing items under the FAR Part 51 deviation is dependent on its inclusion in the Federal Government's Request for Quotes/Proposals. A contractor always reserves the right to submit a proposal accordingly or may choose to not participate in the procurement.

GSAR clause 552.238-75, Price Reductions (Alternate I) with additional applicability note, applies to all Schedule contracts.

2. GSAR clause 552.238-75, Price Reductions (Alternate I) with additional applicability note, is necessary in order to clarify that there shall be no price reduction for sales made under the authority of the Federal Acquisition Regulation (FAR) Part 51 class deviation. In accordance with GSAR clause 552.238-78, Scope of Contract (Eligible Ordering Activities)(Alternate I)(a)(2), a GSA contractor acting under the authority of the FAR Part 51 class deviation is authorized to use GSA as a source of supply. With written authorization by a Federal Government contracting officer, a GSA contractor may place an order as an eligible ordering activity with a Schedule contractor. In this case, the Schedule contract sale shall not trigger a price reduction in accordance with GSAR clause 552.238-75 Price Reductions(Alternate I)(d)(2).

- ii. Solicitation Refresh

During the next scheduled solicitation refresh, insert clause CI-FSS-056,

Federal Acquisition Regulation (FAR) Part 51 Deviation Authority (Federal Supply Schedules) and GSAR clause 552.238-75, Price Reductions (Alternate I) with additional applicability note, into all Schedule solicitations. The Solicitation Writing System (SWS) will mark both clauses as required for all Schedule solicitations.

1. In-House Offers -- Schedule offers received prior to the solicitation refresh shall issue a solicitation amendment to incorporate the clauses into the awarded contract. When deciding to accept the amendment, each offeror shall have the opportunity to withdraw its' offer.

iii. Contract Modification

Schedule contracts shall be modified to incorporate clause CI-FSS-056, Federal Acquisition Regulation (FAR) Part 51 Deviation Authority (Federal Supply Schedules) GSAR clause 552.238-75, Price Reductions (Alternate I) with additional applicability note. This shall be accomplished through the usual mass modification that is issued from SWS following a solicitation refresh. There is no need for a separate mass modification that addresses only this clause. The effective date for existing Schedule contracts will be the date that the modification is executed.

Appendix A

CI-FSS-056

FEDERAL ACQUISITION REGULATION (FAR) PART 51 DEVIATION AUTHORITY (FEDERAL SUPPLY SCHEDULES)

(a) General Background.

On October 8, 2009, a class deviation to FAR Part 51 was granted by GSA's Senior Procurement Executive in accordance with FAR Subpart 1.404, Class deviations. The deviation permits federal contracting officers to authorize GSA contractors, who are performing an order on a time-and-material or labor-hour basis, to purchase supplies and services from schedule contractors or to process requisitions through the Global Supply Program.

(b) Orders.

Orders placed using the FAR Part 51 deviation shall be:

- (1) Placed on a time-and-materials (T&M)/labor-hour (LH) basis—an order placed by the Federal Government to the buying contractor can be partially fixed price, but the portion of the order for the items to be procured using the FAR Part 51 deviation shall be T&M/LH;
- (2) For ancillary supplies/services that are in support of the overall order such that the items are not the primary purpose of the work ordered, but are an integral part of the total solution offered;
- (3) Issued in accordance with the procedures in FAR 8.405-1, Ordering Procedures for supplies, and services not requiring a statement of work;
- (4) Placed by the Federal Government. The authorization is **NOT** available to state and local governments.

(c) For comprehensive guidance on the proper use the FAR Part 51 authority granted by the deviation, please refer to the Ordering Guide at www.gsa.gov/far51deviation.

Appendix B

552.238-75 Price Reductions.

As prescribed in [538.273\(b\)\(2\)](#), 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 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 when the order is placed under this contract (and the State and local government entity 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 [538.273\(b\)\(2\)](#) substitute the following paragraph (c)(2) for paragraph (c)(2) of the basic clause, and substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause.

(c)(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

Note: In accordance with GSAR clause 552.238-78 Scope of Contract (Eligible Ordering Activities) (Alternate I)(a)(2) and GSAR clause 552.238-75 Price Reductions(Alternate I)(d)(2), there shall be no price reduction for sales made under the authority of the Federal Acquisition Regulation (FAR) Part 51 class deviation. With written authorization by a Federal Government contracting officer, a GSA contractor may place an order as an eligible ordering activity with a Schedule contractor. In this case, the Schedule contract sale shall not trigger a price reduction.

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