

March 22, 2010

## FAS INSTRUCTIONAL LETTER 2010-08

MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

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SUBJECT: Implementation of Contracts Online – Phase II (a.k.a. Goldstar Initiative); Compliance with Utilizing the Solicitation Writing System (SWS); and How to Review and Award Proposed Exceptions

1. Purpose. The purpose of this Instructional Letter (IL) is to provide implementation guidance on Phase II of GSA Contracts Online (a.k.a. Goldstar initiative); to mandate that all Federal Supply Schedule (FSS) solicitations are entered and refreshed, at least annually, in the Solicitation Writing System (SWS); and to provide guidance on how to review and award proposed exceptions after the Phase II mass modification for GSA Contracts Online has been implemented.
2. Background. GSA Contracts Online is an effort to make Schedule contract clauses transparent in order to help ordering activities maximize their effective use of the Schedules Program and support the Administration's goal of greater transparency in Federal acquisition.

Phase I (See [Acquisition Letter \(AL\) FX-05-1](#) for specifics) created the disclosure of current contract clauses in GSA eLibrary under each individual Schedule solicitation. Each FSS Contractor that agreed to the standard contract clauses received a "Goldstar" next to the Contractor's name in GSA eLibrary.

Since the publishing of Acquisition Letter (AL) FX-05-1, Phase II has been revised to establish the baseline for standard contract clauses and capture awarded exceptions to those standard contract clauses. Currently, a Contractor's awarded exceptions are collected via paper or electronic methods, but these exceptions are not displayed in a viewable format. Phase II is designed to address the challenges surrounding the capture of a Contractor's current version of the standard contract clauses and awarded exceptions, and displaying these exceptions in GSA eLibrary.

Phase II will also provide greater transparency and visibility of Schedule contracts, by capturing and displaying, on a contract-by-contract basis in GSA eLibrary, awarded exceptions to standard contract clauses. Instead of having the "Goldstar" next to a Contractor's name, each Contractor will have a "Contracts Online" link, and when applicable, an "Exceptions" link next to the Contractor's name in GSA eLibrary. The "Contracts Online" link will display the standard contract clauses AND indicate the refresh number under which the contract has been updated. The "Exceptions" link will display any awarded exceptions to those standard contract clauses.

The mass modification process will be used to establish a baseline so that all contracts contain the latest versions of the solicitation contract clauses. The new baseline will

eliminate the need to execute any previous "refresh" mass modifications. Any other type of mass modification not previously accepted will still be available for acceptance. After the establishment of the baseline and posting of currently awarded exceptions, under a separate administrative modification, a Contractor may propose new exceptions.

3. Effective Date. Date of signature.
4. Termination Date. This IL remains in effect until revoked, terminated or is incorporated in a handbook.
5. Applicability. This IL applies to all FAS acquisition activities awarding and administering FSS contracts. This IL does not apply to task or delivery orders placed against Schedule contracts.
6. Reference. [FSS Acquisition Letter FX-05-1 and Supplemented No. 1](#).
7. Instructions/Procedures.

A. All FSS solicitations shall be created in SWS.

All FSS solicitations shall be created in SWS and posted through SWS to Federal Business Opportunities (fbo.gov) by **April 5, 2010**. After this date, all Schedule solicitation refreshes shall be processed using SWS. At a minimum, solicitations shall be refreshed on an annual basis. Based upon future policy changes, future ILs may require that all FSS solicitations be refreshed more than once a year.

B. Implementation of Contracts Online – Phase II (a.k.a Goldstar Initiative).

To improve transparency and provide ordering activities complete and up-to-date visibility to Schedule contract clauses, FAS is implementing process and system changes to Contracts Online. The implementation of these changes will occur in the three stages outlined below:

Stage 1: Capturing a contract clause exceptions with submission and award of an offer.

This stage has already been implemented in eOffer, the Offer Registration System (ORS), and FSS OnLine. This stage provides the ability to electronically capture an Offeror's proposed exceptions to contract clauses submitted with an offer. A new *Exceptions Tab* has been created in ORS to allow Contracting Officers to electronically review and either accept or reject proposed contract clause exceptions.

Contracting Officers shall ensure that any bilaterally agreed exceptions are entered into the ORS system prior to award. Once an offer is ready to be awarded and there are contract clause exceptions, the agreed upon contract clause exceptions are sent to FSS Online and to GSA eLibrary for posting and viewing by ordering activities.

Stage 2: Capturing contract clause exceptions with submission and award of a modification.

This stage will implement the capability to electronically capture deletions or new exceptions to standard contract clauses. Contracting Officers shall ensure that all modification data is entered into FSS OnLine, including data submitted by paper. A new *Exceptions Tab* has been created in FSS Online to allow Contracting Officers to review and either accept or reject contract clause exceptions. Awarded exceptions

will be sent to GSA eLibrary for posting and will be available for viewing starting mid-April 2010.

### Stage 3: Solicitation Refreshes and Baseline Mass Modification.

This stage will involve the following steps.

Step 1: All FSS solicitations shall be refreshed in SWS by April 5, 2010. Within 15 days of the refresh, a mass modification for each solicitation will be issued to bring existing FSS contracts up to date with the current refresh. The mass modification will list ALL standard contract clauses under that Schedule solicitation.

After reviewing the mass modification, the Contractor shall indicate whether there are any awarded exceptions. If there are awarded exceptions, the Contractor shall include the exceptions with the mass modification response. The response shall be returned to the Procuring Contracting Officer (PCO) for review and acceptance.

A solicitation owner cannot refresh the solicitation in SWS between April 6, 2010, and May 30, 2010.

Step 2: The Contractor receives electronic notification of the mass modification. After reviewing the mass modification, the Contractor: (1) accepts all standard contract clauses; (2) accepts standard contract clauses, but with exceptions; or (3) rejects the mass modification in its entirety. Only currently awarded exceptions will be reviewed in this mass modification (refer to Step 1 above).

If the Contractor has no exceptions to the standard contract clauses, the Contractor electronically signs the mass modification. The Administrative Contracting Officer (ACO) will then review and electronically sign the mass modification.

If the Contractor indicates that the Schedule contract has currently awarded exceptions to the standard contract clauses, the Contractor must include the exceptions in the system text box. The mass modification is then routed to the PCO, and the ACO is notified that the mass modification is pending approval by the PCO.

Step 3: The PCO, through FSS Online, reviews the exceptions to verify that they are the same as those accepted under the Schedule contract. The PCO reserves the right to re-negotiate the exceptions if necessary (See paragraph C, below).

Step 4: After the PCO has made the determination in Step 3, the PCO accepts or rejects the mass modification.

If the PCO accepts the mass modification, it is then sent back to the Contractor for signature, and returned to the PCO for final signature.

If the PCO rejects the mass modification, a notification is sent to the Contractor and the PCO may open negotiations to resolve any issues.

If the Contractor rejects the mass modification, the PCO should consider canceling the Schedule contract pursuant to the cancellation clause (See GSAR 552.238-73).

The exceptions are posted in GSA eLibrary and made available for viewing.

C. Instructions on how to review, negotiate, and award proposed NEW exceptions to standard Schedule contract clauses AFTER acceptance of the baseline mass modification.

The following steps outline the process for reviewing, negotiating and awarding contract clause exceptions:

Step 1: Schedule PCOs shall utilize business judgment in determining if the proposed exceptions are in the best interest of the Government. Factors to consider, include, but are not limited to:

- Is the exception customary in the commercial marketplace?
- Is the exception favorable to the Government?
- Is the exception the result of a broader negotiation that results in additional price and/or price-related terms and conditions concessions?
- Is the proposed exception one that was previously granted, but is now inconsistent with policy?

Step 2: PCOs shall establish negotiation objectives appropriate to the circumstances of the proposed exceptions.

Step 3: Prior to accepting the proposed exceptions to standard contract clauses, PCOs shall submit the proposed exceptions, including the rationale for the exceptions, to Legal for review and concurrence.

Step 4: Through FSS OnLine, PCOs shall post the awarded contract exceptions to GSA eLibrary. This process will provide ordering activities with the ability to view the standard contract clauses and exceptions for comparison.

Remember, a complete text of the awarded contract clause exceptions is displayed in GSA eLibrary, so utilize language that is clear and unambiguous.

8. Questions and Answers.

**Can a Contractor propose not previously awarded exceptions under the baseline mass modification?**

No. Only currently awarded exceptions shall be agreed to under this mass modification. However, the PCO reserves the right to re-negotiate the awarded exceptions, if determined necessary.

Any proposed new exceptions must be submitted under a separate administrative modification.

**What types of exceptions are captured and displayed in GSA eLibrary?**

Only contract clause exceptions are displayed in GSA eLibrary. Any pre-decisional information, such as sales practices data, certifications and representations, etc. will **NOT** be captured or displayed.

**What should a PCO do if the PCO is asked to review an exception to a standard**

**contract clause that was previously awarded which, using business judgment, should not be subject to exception?**

PCOs should attempt to negotiate the exception out of the contract. If the PCO is unable to successfully remove the exception, the PCO, in consultation with Legal and the Contracting Director, shall utilize appropriate contractual remedies to resolve the impasse.

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