



September 16, 2013

FAS INSTRUCTIONAL LETTER 2013-06

MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

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SUBJECT: Interpretation of cancelled clause I-FSS-125 (SEP 1999) and Deletion of All Remaining I-FSS-125 Language in Federal Supply Schedule Contracts

1. Purpose. The purpose of this Instructional Letter (IL) is to reiterate GSA's interpretation of the cancelled clause I-FSS-125 (SEP 1999), and to delete any remaining I-FSS-125 clauses, and all similar language, from existing Federal Supply Schedule (FSS) contracts.
2. Background. The GSA Office of Inspector General (OIG) audit report, *Applicability of Price Reductions Over the Maximum Order Threshold*, identified a small pool of vendors who have cited cancelled clause I-FSS-125 as the basis for not providing price reductions for sales over the maximum order threshold (MOT). The vendors claim that the "plain language" of clause I-FSS-125 (i.e., the PRC is not applicable to orders placed over the MOT in FAR 52.216-19) exempts such sales from the application of the PRC. GSA's interpretation of the parenthetical language in I-FSS-125(b)(1) is it refers to Government orders where the ordering activity has requested a reduced price/discount. It emphasizes that offering a discount to a Government customer will not trigger a price reduction.
3. Effective Date: Date of signature.
4. Expiration Date: This IL remains in effect for one year from the date of signature, or until extended or incorporated into a handbook.
5. Applicability: This IL applies to all GSA/FAS acquisition activities awarding and administering Federal Supply Schedule (FSS) contracts.
6. Reference:
 - [FSS Clause Manual Change No. 56](#) (Deletion of I-FSS-125).
 - GSA Office of Inspector General (OIG) issued audit report *Applicability of Price Reductions Over the Maximum Order Threshold*, Report Number A130068/Q/3/P13002

7. Instructions/Procedures: Sales to a Federal Government customer do not trigger Governmentwide price reductions under the PRC. Rather, vendors may provide reduced prices/discounts to Government customers without triggering a Governmentwide price reduction.

However, price reductions may be triggered by changes to the commercial catalog and/or sales to the BOA customer (or category or customers), subject to the limitation noted above. And if price reductions are triggered, the resulting price reductions must be passed on to Government customers in accordance with GSAM Clause 552.238-75(c)(2), regardless of order size.

A program-wide mass modification will be issued to all FSS Contracts to address the deletion of clause I-FSS-125 and any similar language in existing FSS contracts.

8. Questions and Answers:

Q1. When does the Maximum Order Threshold (MOT) affect if an order triggers price reductions?

A1. As noted in the PRC, "There shall be no price reduction for sales...[t]o commercial customers under firm, fixed price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in [the MAS] contract..." Therefore, sales of this nature above the MOT do not trigger Governmentwide price reductions. However, the PRC is still applicable to commercial **non**-firm fixed price, definite quantity contracts, such as Time and Material (T&M) and Labor Hour (LH) type contracts.

Sales to the Federal Government, regardless of order size, do not trigger Governmentwide price reductions under the PRC.

Q2. How will tracking of the deletion of I-FSS-125 and any similar language be conducted?

A2. Tracking will be conducted through FSS19 via the issuance of the mass modification. Those vendors who do not accept the mass modification will be flagged as vendors who need CO action to be taken to ensure I-FSS-125 and any similar language will be removed from the FSS Contract.

Q3. What background information and documentation does GSA have to support its interpretation of clause I-FSS-125?

A3. The following is background information regarding why clause I-FSS-125 was created and support for GSA's interpretation of the clause.

In 1994, the Price Reductions Clause (PRC) (GSAM clause 552.238-75) was amended to encourage vendors to give the best price to government customers. In response, GSA also created clause I-FSS-125 in order to clarify the applicability of the PRC for sales to government customers under FSS contracts.

Pre-1994

Under the preexisting PRC, any sales to Government Customers/Ordering Activities using FSS Contracts at a lower price than the contract price would trigger the PRC, and the lower price would become the new FSS Contract Schedule Price. This in turn discouraged vendors from giving reduced prices to government customers.

Post-1994

The PRC was amended to reflect that sales to Federal customers would not trigger a price reduction. The final rule on the amendment to the PRC was published in the Federal Register on October 18, 1994 (Volume 59, Number 200, attached). The Federal Register notice states: "...the final rule provides that there shall be no price reduction for sales to Federal agencies." The PRC was amended with the following:

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 limitation specified in this contract;

(2) To Federal agencies; or

(3) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

The changes to the PRC, combined with FAR changes to the Schedule ordering procedures, necessitated revisions to the Maximum Order Limitation procedures. In response, GSA issued Acquisition Letter FC-95-6 (attached), dated October 11, 1995, which provided guidance for placing orders over the maximum order and addressed the changes to the PRC. FC-96-5 stated:

In October 1994, a new price reduction clause went into effect. This clause enables agencies to request a price reduction from schedule vendors when placing an order against a schedule contract without triggering a Governmentwide price reduction.

Based upon all of these changes, the Maximum Order Limitation (MOL) procedures need to be revised... to reduce the administrative cost of acquiring commercial products. This acquisition letter provides the procedures to enable customer agencies to take increased advantage of the Federal Supply Schedule contracts and the savings they can provide.

FC-95-6 implemented these new procedures through clause I-FSS-125. Clause I-FSS-125 was incorporated into FSS contracts to encourage Government customers to seek additional discounts from the FSS ceiling rates and to assure vendors they would not be penalized under the PRC for providing additional discounts. The clause provided the options available to the Schedule vendor when a customer requested a reduced price/discount when considering a purchase from the Schedule. I-FSS-125 listed three choices available to the vendors: offer a lower price, offer the Federal Supply Schedule price, or decline the order. As clearly stated in FC-95-6, the clause also included language intended to clarify that federal sales no longer triggered a price reduction. Specifically, I-FSS-125 stated, "the Price Reduction clause is not applicable to orders placed over the Maximum Order

in FAR 52.216-19),” which was intended to emphasize the PRC’s rule that says that discounts to federal agencies do not trigger a Governmentwide reduction in price. I-FSS-125’s language does not mean that vendors are not required to offer price reductions on orders above the Maximum Order Threshold (MOT). On the contrary, as clearly evidenced by both FC-95-6, as well as the amendments to the PRC encouraging discounts, GSA’s intent for I-FSS-125 was to encourage vendors to provide discounts on orders above the MOT.

In December 2004 GSA cancelled clause I-FSS-125.

On April 26, 2013, the GSA Office of Inspector General (OIG) issued audit report *Applicability of Price Reductions Over the Maximum Order Threshold, Report Number A130068/Q/3/P13002*. The report results identified seven FSS contracts with I-FSS-125 clause language in contract documents. The report also specifically identified two vendors that have not provided over \$100 million in price reductions for Schedule orders over the maximum order threshold (MOT). Both vendors cited clause I-FSS-125 as the basis for not providing these price reductions. The vendors claim that the “plain language” of GSA contract clause I-FSS-125 exempts such sales from the application of the PRC. Specifically, they cite the above-referenced parenthetical statement in I-FSS-125(b)(1):

I-FSS-125

(b) Vendors may:

(1) offer a new lower price for this requirement (the Price Reduction clause is not applicable to orders placed over the Maximum Order in FAR 52.216-19)

As just stated above, the parenthetical language in I-FSS-125(b)(1) refers to Government orders where the ordering activity has requested a reduced price/discount. It emphasizes that offering a discount to a Government customer will not trigger a price reduction (as it would have prior to the change to the PRC as noted previously).

These few contractors, however, are claiming that the “plain language” of I-FSS-125 (i.e., the PRC is not applicable to orders placed over the MOT in FAR 52.216-19) means that price reductions triggered by discounts given to a Basis of Award (BOA) customer do not have to be passed on to Government customers when the order is over the MOT.

GSA disagreed with the vendors’ “plain language” interpretation of I-FSS-125. As explained above, I-FSS-125 is merely implementing the procedures of FC-95-6, which are based on the changes to the PRC which exempt Government sales from triggering a price reduction. GSA would not implement a policy that allows contractors to withhold price reductions on large purchases, but requires them for small purchases. The entire purpose of amending the PRC was to encourage vendors to offer discounts on orders to federal agencies. It would therefore be inaccurate to interpret I-FSS-125 as effectively eliminating discounts, when it was actually designed to implement the discount-encouraging changes to the PRC.

Such an interpretation is actually the opposite of GSA's intention, as well as contrary to the PRC and the explicit language of FC-95-6.

The OIG concurred with the GSA interpretation and found that this vendor practice may result in Schedule orders exceeding the MOT receiving a less favorable discount than orders below the MOT.

As long as I-FSS-125 and similar language continues to be present in FSS contracts, the Government agencies using these contracts may not be receiving the benefit of the price reduction discounts on orders over the MOT.

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