

April 4, 2011

## FAS INSTRUCTIONAL LETTER 2011-07

FROM: HOUSTON W. TAYLOR  
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Procedures for Reviewing Contractor Compliance with Prompt  
Payment Discount (PPD) Terms on Federal Supply Schedule (FSS)  
contracts

1. Purpose: To provide guidance to FSS Contracting Officers when reviewing contractor compliance with PPD terms on FSS contracts.
2. Background: The GSA Inspector General (IG) issued Report Number A090026/Q/7/P10001, Review of Multiple Award Schedule Vendors' Invoicing Practices Relative to Prompt-Payment Discounts, on March 15, 2010. Among other findings and recommendations, the OIG recommended that GSA seek recoveries from FSS contractors who have failed to cite contractual PPD terms on invoices in accordance with GSAR 552.232-83, Contractors Billing Responsibilities, when such recoveries are "economical, advisable and feasible".

Although FSS contractors sometimes fall short of their contractual responsibility to include PPD terms on invoices, there are other variables that may affect the Government's ability to obtain PPD. For example, payments made in accordance with GSAR 552.232-77(e) Payment by Government Commercial Purchase Card, are not eligible for PPD. In instances where a contractor properly includes PPD terms on an invoice, the finance office may fail to submit payment on time to obtain the PPD, and in instances where a contractor does not include PPD terms on an invoice, the finance office would not know of the PPD terms and would fail to reject the invoice.

Because of the complexities surrounding PPD, it is important for FSS Contracting Officers to be aware of PPD contract requirements and to be cognizant of the procedures for reviewing compliance.

Please see "Instructions" below.

3. Effective Date: Date of signature.
4. Termination Date: This supplement remains in effect until it is cancelled or incorporated into a handbook.
5. Applicability: This supplement applies to all GSA/FAS acquisition activities awarding and administering Federal Supply Schedule contracts.
6. Reference to Regulations: FAR 52.212-4(g)(1)(vi) Contract Terms and Conditions-Commercial Items, GSAR 552.232-83 Contractors Billing Responsibilities, GSAM 552.232-8 Discounts for Prompt Payment, GSAR 552.232-77(e) Payment by Government Commercial Purchase Card..
7. Instructions / Procedures:

To determine whether an instance of noncompliance with PPD terms has occurred, the FSS Contracting Officer should take the following steps:

- 1). Analyze any relevant documentation. In most instances, PPD issues will be noted in a GSA Office of Inspector General (IG) contract audit, Contractor Assistance Visit (CAV) report, or discovered via a customer complaint.
- 2). Review the contract file to determine if PPD terms were negotiated.
- 3). Contact the contractor, and document the contract file. Topics for discussion include whether or not the contractor properly cited PPD terms on the invoice(s) in question and any other relevant information that may impact the ordering activity's receipt of the PPD. In accordance with GSAR 552.215-70 Examination of Records by GSA, the CO may request whatever information they deem necessary in order to determine whether any noncompliance issues with the PPD have occurred and to what extent.
- 4). Contact the ordering activity when the issue cannot be resolved with the contractor and document the contract file. Topics for discussion include whether or not the contractor properly cited PPD terms on the invoice(s) in question; if the invoice was improper (did not include applicable PPD terms), why the ordering activity did not reject the invoice; if the invoice contained the PPD terms, did the ordering activity's finance office pay the invoice on time to receive the PPD; and any other relevant information that may impact the ordering activity's receipt of the PPD.
- 5). If it is determined that the ordering activity's action or inaction resulted in its inability to obtain PPD, document

the contract file, and take any other follow up action needed to respond to the initial finding.

- 6). If it is determined that the contractor was not compliant with the contract's PPD terms, the Contracting Officer should work with the contractor and ordering activities to find a resolution. Oftentimes, when a violation is brought to the contractor's attention, the contractor is more than willing to honor the PPD terms or make other equitable adjustments.
- 7). If the issue cannot be resolved, the FSS Contracting Officer may consider issuing a Cure Notice to the contractor.
- 8). If the contractor refuses to remedy the problem, the FSS Contracting Officer shall seek the advice of legal counsel to determine what appropriate actions should/can be taken. The CO may elect to cancel the contract in accordance with GSAR 552.238-73, Cancellation.
- 9). In some instances, the FSS Contracting Officer and legal counsel may define whether it is "economical, advisable and feasible" given the particular set of circumstances to seek recoveries from the contractor via a contract claim. Please refer to FAR Subpart 33.2, Disputes and Appeals, for additional information regarding initiating a claim.

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