

GENERAL SERVICES ADMINISTRATION

48 CFR Part 538

[GSAR Case 2006–G507; Docket 2009–0013; Sequence 1]

RIN 3090–A177

General Services Acquisition Regulation; GSAR Case 2006–G507; Rewrite of GSAR Part 538, Federal Supply Schedule Contracting

AGENCY: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Proposed rule.

SUMMARY: The GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise sections of the GSAR that provide requirements for Federal Supply Schedule Contracting actions.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before March 27, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2006–G507 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “GSAR Case 2006–G507” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with GSAR Case 2006–G507. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “GSAR Case 2006–G507” on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2006–G507 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Warren Blankenship at (202) 501–1900, or by e-mail at warren.blankenship@gsa.gov. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room

4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2006–G507.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration is amending the General Services Administration Acquisition Regulation (GSAR) to update the text addressing GSAR Part 538, Federal Supply Schedule Contracting: Subpart 538.1, Definitions; Subpart 538.4, Administrative Matters; Subpart 538.7, Acquisition Planning; Subpart 538.9, Contractor Qualifications; Subpart 538.12, Acquisition of Commercial Items—FSS; Subpart 538.15, Negotiation and Award of Contracts; Subpart 538.17, Administration of Evergreen Contracts; Subpart 538.19, FSS and Small Business Programs; Subpart 538.25, Requirements for Foreign Entities; Subpart 538.42, Contract Administration and Subpart 538.43, Contract Modifications. This rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA is in the process of rewriting each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This proposed rule covers the GSAR portion of Part 538. The information in Subpart 538.2 is being retained; however, the various sections have been redistributed to more appropriate subparts within the text. Subpart 538.9, Contractor Qualifications, is being added to define the roles and responsibilities of “Contractor Partnering Arrangements (CPAs)” for contractors. Subpart 538.12, Acquisition of Commercial Items, has been added to outline solicitation provisions and clauses. This subpart was formerly 538.273—Contract clauses, but was moved to 538.1203 so as to align with the FAR. Aside from individual prescriptions, GSA has also included an overarching prescription that directs the contracting officer to insert appropriate provisions and clauses, when applicable. Additionally, 96 provisions/clauses are now proposed for inclusion. Some of the provisions/clauses are new, some are being retained, and others are being relocated from other GSAM parts.

Subpart 538.15, Negotiation and Award of Contracts, has been added to provide clarity to FSS contracting officers regarding contract evaluation and award. The current section 538.270, Evaluation of multiple award schedule (MAS) offers, has been relocated to Subpart 538.15. It contains minor revisions within the text to clarify the contracting officer’s role as well as a revised title and section, 538.1504, Evaluation of commercial pricing practices. Also, 538.272, MAS price reductions, has been revised for clarity. More specifically, the term “eligible ordering activity” has been changed to “Government” to bring clarity to the relationship between the Government and the contractor, and to ensure that the contractor understands the importance of maintaining this correlation of price relationship for the duration of the contract. The revision can be found at section 538.1508.

Subpart 538.25, Requirements for Foreign Entities, is added to advise contractors to submit commercial price lists in English and to allow for payments in local currency. Subpart 538.42, Contract Administration, is being added to advise the contractor to abide by the terms and conditions of the Industrial Funding Fee (IFF) and Sales Reporting Requirements when entering into “Contractor Partnering Arrangements (CPAs),” and to explain the process and procedures that should be followed when cancelling a contract at the contractor’s request. Subpart 538.43, Contract Modifications, is added to provide guidance to the contractor when initiating a modification request to the Government.

There were 36 public comments received in response to the Advanced Notice of Proposed Rulemaking.

The first commenter recommended suggestions in regard to GSAR 552.238–75, Price Reductions (May 2004) clause, the Commercial Sales Practices Format (CSPF) in GSAR 515.408, and figure 515.4, Instructions that accompany the CSPF. First, the commenter indicated that the failure to identify the customer (or category of customers) that formed the basis of award in the Price Reductions clause needs to be corrected.

Response: Though the rewrite team reviewed this comment as substantive, it was unable to be addressed at this time. The team will confer with the Multiple Award Schedule Advisory Panel for possible recommendations. Second, the commenter indicated that more consistent parameters were needed for the “Commercial Sales Practices” disclosure section. GSAM Part 505 includes a GSAM Form 3617, Record of Authorization of Access to

Proprietary or Source Selection Information, which the GSA contracting community will use to ensure that proprietary data is not released.

The second commenter suggested that GSA be proactive in using GSAM Part 538 to address unresolved issues regarding GSA Schedule contracting. The GSA contractors have requested guidance and consistent policy on matters such as time and material task orders, and the extent to which G&A can be added to travel. Though some of these issues are addressed generally in the FAR, specific questions regarding application to Schedules contracting have remained unanswered, leading to inconsistent applications across the Schedules program.

Response: The team's analysis of this comment is that it is outside the scope of this part. Currently, the Schedule's acquisition community uses FAR 52.232-7, Payments Under Time and Material, and FAR 31.205-46, Travel Costs, to address time and material task orders. However, specific guidance for contracting officers for time and material task orders is under internal review.

The third commenter suggested that the GSAR should include coverage on Governmentwide Acquisition Contracts (GWACs) contracting and the use of GSA Assisted Service. Presently, the GSAR covers neither of these topics. Such areas of discussion, according to the commenter, should include criteria for establishing GWAC and/or assisted acquisition services, pricing objectives, and standard clauses. The commenter stated that adding GWAC coverage would enable the government to implement the best practices of individual offices across the entire program, afford GSA contractors an opportunity to streamline their internal corporate systems and processes, and result in better service and more cost efficient systems that may ultimately reflect in the Government's prices.

Response: The Team's analysis of this comment is that it is outside the scope of this part. The team has referred this comment to the GSAM Part 516, Types of Contracts, team.

The fourth commenter suggested that GSA resolve how the requirement to annually update the Central Contractor Registration (CCR) affects the position that small business size status is as of the time the offer is submitted. This problem stems from the number of corporate acquisitions and restructurings that continue to take place in the commercial marketplace. The commenter recommended that GSA rationalize the rules of FAR 42.12,

GSAR 542.12 and the commercial item clause at FAR 52.212-4(p).

Response: The team's analysis concludes that this comment is outside the scope of this part. This is a comment that would have Government-wide application.

The fifth commenter suggested that the GSAR prescribe language to insert into GSA Schedule Price Lists on the topic of Size Status and the CCR. The language would inform agencies that, notwithstanding data in CCR, for purposes of ordering against the Schedule, a contractor is designated as small in size for the entire 5-year period of the Schedule contract. Schedule contractors are required to recertify size status at the time of renewal. Additionally, the commenter suggests that GSAR resolve how the requirement to annually update CCR affects the position that small business size status is currently determined at the time the offer is submitted.

Response: The team's analysis concluded that guidance at FAR 52.219-28, Post-Award Small Business Program Rerepresentation, appropriately addresses and provides guidance to the acquisition and contractor communities to ensure proper implementation of size considerations at various times during the contract. From time of submittal to award, offerors are required to maintain information in CCR as current and accurate.

The sixth commenter suggested that GSA consider adding a section describing the purpose and objectives of Schedule contracting. Such a section would provide context and focus that could help improve consistency in the myriad of decisions that contracting officers have to make daily. For example, some contracting officers are attempting to compare prices offered by one company to prices of another for similar, but not identical, services and products. This process was found to be highly objectionable.

Response: The team's analysis concludes that the rewrite of GSAM Part 538 will adequately provide contracting officers consistent guidance and policy.

The seventh commenter suggested that GSA clarify the MAS pricing policy by deleting the term "most favored customer (MFC)" from this section of the GSAR.

Response: The team does not concur with this comment because the convention of the term "most favored customer" still remains a viable practice across the FSS program.

The eighth commenter suggested that the GSAR more specifically state the circumstances that warrant the

Government getting a lower discount than commercial customers.

Response: The team does not concur with this comment because section 538.1504, Evaluation of commercial pricing practices (formerly 538.270), clearly outlines the criteria for the Government to seek a lower discount than commercial customers.

The ninth commenter suggested that GSAR be revised to reflect that many MAS contracts are no longer awarded as a discount from catalog. This shift has occurred because more services have been introduced into the program.

Response: The team concurs with this comment and has created a Commercial Sales Practices Format (CSP-2), GSAR 538.1203(c)(42) for "Professional Services" to reflect contracts awarded for services.

The tenth commenter suggested that the GSAR should limit (or give better guidance) as to the number of commercial customers that can be the basis of award.

Response: The team does not concur with this comment. Current guidance as outlined in section 538.1504 allows the contracting officer the flexibility to analyze numerous factors to establish the customer for the basis of award.

The 11th commenter suggested that GSA eliminate the Price Reductions Clause (552.238-75).

Response: The team does not concur with this comment. In keeping with the philosophy of the FSS Program, this clause should remain. The team will await the results of the Multiple Award Schedule Advisory Panel's analysis and recommendations and will consider this when assessing the clause's validity within the program.

The 12th commenter suggested that the GSAR should provide specific guidelines on the Schedule renewal process.

Response: The team concurs with this comment and has added verbiage at GSAR 538.4202, Administration of Evergreen Contracts.

The 13th commenter suggested that exceptions to the Price Reduction Clause be considered for situations where the Government is not negotiating discounts from a commercial price list; also, the commenter suggested that the Government give consideration to using price analysis and price acceptance from a vendor's average selling price.

Response: The team partially concurs with this comment and has created a CSP-2 Format, GSAR 538.1203(c)(42) for "Professional Services" to reflect contracts awarded for services without a commercial price list. Also, the team will confer with the Multiple Award

Schedule Advisory Panel for possible recommendations in this area.

The 14th commenter recommended providing guidance on establishing relationships with dealers/distributors/resellers under the FSS Program in terms of tracking customer selections.

Response: The team does not concur with this comment. The Price Reductions Clause encompasses a mechanism for tracking customers in dealer/distributor/reseller situations. This can be accomplished under "category of customers." Further, the team will confer with the Multiple Award Schedule Advisory Panel for possible recommendations in this area.

The 15th commenter suggested the addition of guidance on sales volume for vendor consideration under the FSS Program—Contract Award Sales Criteria Clause.

Response: The team partially concurs with this comment. First, the team revised the Commercial Sales Practices Format (CSP-1) to bring clarity to the "Instructions" section, explaining that the contracting officer has the discretion to change offeror estimated sales to conform with the level of sales expectancy. The business decision will be based upon the contracting officer's analysis of the offeror's submission and a realistic evaluation of expected sales.

The 16th commenter suggested adding guidance on how to handle teaming arrangements.

Response: The team concurs with this comment and has added guidance on Teaming Arrangements, which will be entitled "Contractor Partnering Arrangements (CPAs)," and the team added guidance on the application of the CPAs to the Federal Supply Schedule Program.

The 17th commenter suggested that FAR 52.212-4(s), Order of Precedence, be revised to resolve any inconsistencies discovered in the solicitation or resulting contract.

Response: The team reviewed the comment and does not concur. This comment is deemed outside the scope of this part and should be resolved at the FAR level.

The 18th commenter suggested adding the following verbiage to update GSAR 552.238-75, Price Reductions: "The identified customer or category of customers may, but is not required to be, the Offeror's most-favored customer." The intent here is to clarify the misconception as to whether the tracking customer is required to be the MFC for a particular product or group of products or service.

Response: The team does not concur with this comment, and feels that the addition of this verbiage would

convolute the intent of the current Price Reductions Clause. Moreover, it would diminish the contracting officer's authority to establish a viable price/discount relationship with the offeror.

The 19th commenter recommended that GSAR 552.238-75(a) be revised to be consistent with GSAR 538.272 to make clear that a change in the price/discount relationship between the eligible ordering activity and the tracking customer(s) does not trigger a price reduction under the clause unless that change also "results in a less advantageous relationship" for the Government.

Response: The team does not concur with this comment and feels that the intent is clearly defined in the current Price Reduction Clause. Additionally, GSAR 538.272 has been proposed for deletion.

The 20th commenter suggested deleting the verbiage "with the same effective date and * * *" from the Price Reductions Clause. The commenter suggested that this language be deleted because it is not feasible or realistic to require the contractor to make a revised price available to the Government with the "same effective date" as for the tracking customer.

Response: The team reviewed the comment and does not concur. GSAR 552.238-75 delineates as to the time period during which an FSS price reduction is required to be effective. It states that "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)." Thus, no change is warranted.

The 21st commenter suggested that the GSAR be clarified to require that the parties express the relationship in the basis of award as a specific percentage or ratio, or any other objective measurement.

Response: The team concurs with this comment and has added new verbiage to GSAR 538.1506-2, Price Negotiation Memorandum, which clarifies the relationship of the parties in terms of a percentage or ratio.

The 22nd commenter stated that GSA sometimes requests commercial sales practices information from manufacturers of GSA resellers regardless of whether the reseller has significant sales to the general public, in an attempt to ascertain whether the reseller's proposed prices are fair and reasonable. Further, the commenter stated that, if the reseller has significant sales, the need for its manufacturer's sales information is negated. In this case, the commenter suggested that such

requests for pricing information should be limited to pricing or other than cost and pricing information as provided by the reseller, who already has an existing competitive commercial sales practice. In the event that the reseller does not have significant commercial sales or otherwise lacks relevant pricing information, GSA may request other information from the reseller, such as the reseller's cost basis from the manufacturer, pricing information available under other GSA Schedules, or sales by other resellers of the manufacturer's products. Requiring pricing information from manufacturers is unnecessary and a source of considerable confusion within GSA and industry.

Response: The team concurs with the commenter's scenarios in regard to resellers as offerors under the Federal Supply Schedule Program. If a reseller has significant sales to the general public for products and/or services being proposed by manufacturers which are represented by the resellers they represent, then they should follow the instructions provided in the CSP-1 with an established catalog price list. For resellers that do not have significant sales to the general public, the manufacturer's data shall be submitted in connection with the offer as documentation to support the contracting officer's determination of price reasonableness.

The 23rd commenter suggests that GSA consider changing the way it administers the updates to the Federal Supply Schedules. Furthermore, the commenter suggests that the process is administratively burdensome for Schedule contractors and GSA contracting officers alike, and can create considerable confusion concerning which set of terms applies to a particular task or delivery order.

Response: The team empathizes with the commenter; however, the FSS Program is constantly evolving. As new products and services are introduced as well as changes to any terms and conditions, the Government reserves the right to provide state-of-the-art technology to the end user. Therefore, spontaneous "refreshment" of solicitation and/or contract terms and conditions are inevitable and part of the acquisition process.

The 24th commenter focused on section C.32 of the contract and GSAR 552.246-73 (WARRANTY—MULTIPLE AWARD SCHEDULE (Mar 2000) (Alternate I—May 2003)) as outlined in the Schedule 70 Solicitation. The commenter suggested that FAR 52.246-4 and FAR 52.246-6 are redundant with paragraph (a) of FAR 52.212-4.

Response: The team concurs with the commenter that the aforementioned clauses conflict, and that they should not be used in Schedule acquisitions. Adequate coverage can be found in FAR 52.212-4 (Alternate I).

Second, the commenter suggested that GSAR 552.246-73, which invites contractors to offer their commercial warranties to address post-acceptance remedies, conflicts with the final sentence of paragraph (a) of 52.212-4.

Response: The team concurs with this comment and believes that Schedule acquisitions should follow the procedures as outlined in FAR Part 12, Commercial Acquisitions, and GSAM Part 512, Acquisition of Commercial Items.

Third, the commenter suggested that FAR 52.232-23 incorporated by reference and GSAR 552.232-23 should be removed because they conflict with FAR 52.212-4(b).

Response: The team concurs with this comment because commercial acquisitions should use commercial terms and conditions as outlined in FAR Part 12, Commercial Acquisitions, and GSAM Part 512—Acquisition of Commercial Items.

Fourth, this commenter focused on the “Changes Clause” at FAR 52.212-4(c). Paragraph (c) of this clause does not make clear whether changes to the contract may be agreed to by an ordering activity and the contractor for purposes of a particular order.

Response: The team does not concur with this comment. Subparagraph (c) indicates that all changes to the contract must be made only by written agreement between the parties. Commercial practices should be considered for incorporation into the solicitation/contract in accordance with FAR 12.213. If so indicated by market research that the aforementioned is appropriate for the acquisition of the particular item, an ordering activity may add additional terms and conditions to the order as long as the terms and conditions do not conflict with the base contract, as long as it is not precluded by law or executive order. Therefore, this requirement flows down to the task order level.

The 25th commenter is concerned about excusable delays, more specifically, GSA’s change to paragraph (f) of FAR 52.212-4 by substituting the words “ordering activity” for “Government” in the standard FAR version. Although this change is appropriate in other areas of the clause, it is not appropriate to describe force majeure events. Typically, a force majeure clause recognizes that a superseding event could arise from any

part of the Government rather than solely from the ordering activity. Further, the commenter stated that the clause might be read to create automatic liability for default of the entire contract for a nonperformance event with a single order.

Response: After careful review of this comment, the team was unable to clearly ascertain the rationale. It appears that GSA changed the text as mentioned above; however, without supporting documentation, the team could not provide a substantive response. “The standard FAR text of paragraph (f) of 52.212-4 contains the word “Government.” Based on the comment, it appears that GSA deviated from this verbiage and substituted “ordering activity.” The team’s interpretation of this comment is that the change was made to accommodate cooperative and recovery purchasing. The rationale is that a force majeure event can only be determined at the order level and would only apply to that order. It does not apply to the entire Schedule contract.

The 26th commenter was concerned about contract invoicing. The commenter suggested that the unlabelled paragraph after (g)(1), but before (g)(2), of GSA’s deviation to FAR 52.212-4 addresses electronic funds transfer. FAR 52.232-33 (PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (Oct 2003)) should be integrated within this portion of the clause to simplify the contract. The commenter recommended deleting FAR 52.232-33 and changing the relevant section of FAR 52.212-4 to more assertively and clearly incorporate FAR 52.232-33, unless an ordering activity indicates otherwise. Additionally, paragraph (d) of GSAR 552.232-74 (INVOICE PAYMENTS (Sep 1999)) changes the requirement in FAR 52.212-4(g)(1) from having to provide three copies of the invoice to having to provide only one original invoice.

Response: The team concurs with the comment and agrees that FAR 52.232-33 should not be included in MAS solicitations because FAR 52.212-4 contains the appropriate invoicing information. The issue of the number of copies of invoices required is outside the scope of this part.

The 27th commenter was concerned about risk of loss. The commenter recommends that GSA consider whether the various delivery and packaging requirements can be simplified to clearly require delivery and packaging that comports with the contractor’s standard commercial practices.

Response: The team concurs that the delivery requirements should be

simplified. As such, the team determined that GSAR 552.211-75 and GSAR 552.211-77 are not applicable under the MAS. However, the team believes that the MAS should include GSAR 552.211-78, which was deleted from GSAM Part 511 and added to this part.

The 28th commenter stated that FAR clauses 52.229-1 (State and Local Taxes (Apr 1984) (Deviation—May 2003)), 52.229-3 (Federal, State, and Local Taxes (Apr 2003) (Deviation—May 2003)), 52.229-5 (Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (Apr 1984)), and 52.229-71 (Federal Excise Tax—DC Government (Sep 1999)) appear to be in conflict.

Response: The team, believes, however that a careful reading of the language makes clear GSA’s apparent intent to exclude all applicable Federal, State, and local taxes and duties, except after imposed or relieved Federal taxes. Additionally, FAR 52.229-71, which is incorporated into the contract in section C.2 of the contract, is not reflected in current regulations. The team concurs that FAR 52.212-4(k) should not be modified. However, FAR 52.212-5 still remains a viable clause in the FSS program. Additionally, FAR 52.229-71 was cited incorrectly and should be noted as GSAR 552.229-71 (Federal Excise Tax—DC Government). This clause will remain as an incorporated by reference clause under GSAR 552.212-71.

The 29th commenter suggested that GSA establish a central location for all contract clauses that it includes in FSS and GWAC contracts. The commenter’s concern is that there is no single publication, Web site, or other resource where all of the different types of contract clauses can be reviewed. Publishing all of them in a central location, according to the commenter, will make the contract formation process more transparent and administratively less burdensome.

Response: The team concurs with this comment. The GSA’s rewrite of the GSAM will accomplish this feat by relocating all of the FSS’s clauses and provisions from its current clause manual to GSAM Part 538. This is inclusive of other FSS clauses and provisions that are currently found in other GSAM parts. Consequently, this will bring consistency to the program, providing a one-stop approach to FSS policy and guidance.

The 30th commenter suggested revisions to the GSAR to make it more consistent with the FAR and to eliminate inconsistencies and redundancies between the FAR and GSAR. Specifically, the commenter

focused on FAR clauses 52.246-4 (Inspection of Services—Fixed Price (Aug 1996) (Deviation—May 2003)) and 52.246-6 (Inspection-Time and Material and Labor-Hour (May 2001) (Deviation—May 2003)) as well as GSAR clause 552.246-73 (Warranty—Multiple Award Schedule (Mar 2000) (Alternate I—May 2003)). The commenter noted that the aforementioned clauses conflict and are redundant with paragraph (a) of FAR 52.212-4. Moreover, GSAR 552.246-73, which invites contractors to offer their commercial warranties to address post-acceptance remedies, according to the commenter, conflicts with the final sentence of paragraph (a) of FAR 52.212-4. The commenter suggested that the clauses be reconciled or deleted to the extent that they are redundant. As such, paragraph (a) could be limited in application to products under particular Special Identification Numbers (SINs)—as opposed to services—to easily alleviate the patent conflict between the FAR clauses as to the inspection and acceptance of services. Also, the final sentence of paragraph (a) should be changed to reference the post acceptance rights contemplated under the contractor's commercial warranty pursuant to GSAR 552.246-73. A suggested change might read as follows: "The ordering activity must exercise any post acceptance rights pursuant to contractor's commercial warranty incorporated into this contract under C.32. If no such commercial warranty is incorporated, then the ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item." Alternatively, the commenter believes that the final sentence of paragraph (a) should be deleted altogether as the post acceptance rights to which it refers are unclear.

Response: The team partially concurs with this comment. An attempt to revise paragraph (a) of FAR 52.212-4 would require a FAR Case and consensus from the Department of Defense (DoD) and Civilian agencies. This is outside the scope of this part. However, GSAR 552.246-73 is sufficient in supplementing the FAR because it provides policy regarding placement of the burden of defective items on the contractor for a specific timeframe (90 days) as opposed to FAR 52.212-4(a) which states "within a reasonable time." This is inclusive of

transportation to and from site as well as onsite repair.

The 31st commenter raised a concern about GSAR 552.232-23 (Assignment of Claims (Sep 1999)) conflicting with and supplementing paragraph (b) of FAR 52.232-23. The GSAR at 552.232-23 incorporates FAR 52.232-23, but whereas FAR 52.232-23 permits assignment of any amount under the contract to a bank, trust company or financial institution, GSAR 552.232-23 changes the first paragraph of FAR 52.232-23 to permit assignment of amounts due under any order of \$1000 or more. Although the GSAR clause refers to the indefinite delivery/ indefinite quantity nature of the GSA Schedule Contract as a rationale, it is unclear if the \$1000 limitation remains relevant today; the vast majority of orders are well above \$1000. The change in nomenclature between the contract and order is appropriate and provides the parties more flexibility than a reference to the entire GSA Schedule Contract might. The recommendation here is that section C.21 of the contract should be deleted and paragraph (b) of FAR 52.232-23 should be changed to conform to the order concept. The GSAR clause 552.232-23, including the \$1000 limitation, should be eliminated. Thus, FAR paragraph 52.232-23(b) might read: "The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract, *or any order hereunder*, to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727)." Nevertheless, when a third party makes payment (*e.g.*, use of a credit card), the contractor may not assign its rights to receive payment under this contract.

Response: The team does not concur with this comment. The \$1000 limitation would not apply to most orders, but still remains relevant when purchasing office supplies under the program. Further, the recommendation that section C.21 of the contract should be deleted and that paragraph (b) of FAR 52.232-23 be changed to conform to the order concept is outside the scope of this part. This would require a collaborative decision between DoD and GSA at the FAR level.

The 32nd commenter noted that, on the topic of Termination for the Ordering Activity's Convenience, the clause is ambiguous due to the use of the word "hereof." The commenter is concerned that it could be read to suggest that the ordering activity has the ability to terminate the underlying GSA Schedule contract, rather than merely

the order. Thus, the commenter's recommendation is that the first sentence should be clarified, consistent with GSA's intent, to refer to an "order" rather than the GSA Schedule Contract, by changing the terms "hereof" to "thereof" and "hereunder" to "thereunder."

Response: The team partially concurs with this comment. Though the change in verbiage would adequately distinguish "contract" from "order," this change is outside the scope of this part. It would require a collaborative decision between DoD and GSA at the FAR level.

The 33rd commenter focused on FAR 52.212-4(m) addressing the topic of Termination for cause, particularly GSAR clause section C.34 contract Default (I-FSS-249-B) (May 2000). The commenter is concerned that the use of the word "hereof" in this clause is somewhat ambiguous with regard to the ordering activity's ability to terminate the underlying GSA Schedule Contract, rather than merely the order. The commenter's suggestion is that the first sentence should be clarified so as to be consistent with GSA's intent by referring to an "order" rather than the GSA Schedule Contract and by changing the word "hereof" to "thereof."

Response: The team partially concurs with this comment. Though the change in verbiage would adequately distinguish "contract" from "order," this change is outside the scope of this part. It would require a collaborative decision between DoD and GSA at the FAR level.

The 34th commenter focused on FAR 52.212-4(p) addressing Limitation of Liability. Of particular note was GSA's deviation to paragraph (p) which does not permit an exclusion of consequential damages for implied warranty claims. As the commenter notes, the FAR version of this clause does not include the language "or implied warranty" in the first sentence of the clause, thereby excluding consequential damages from implied warranty claims.

Further, the commenter believes that there does not seem to be any reason for GSA's different approach, particularly because most companies exclude all implied warranties in their commercial warranty provisions—exclusions that GSA presumably accepts under GSAR 552.246-73, which, as explained above, invited the contractor to provide its commercial warranty. The commenter's recommendation is that the clause should at least revert to the standard paragraph (p) at FAR 52.212-4—GSA's deviation does not make sense in the context of GSAR 552.246-73. Moreover,

as suggested previously by the section, the limitation of the exclusion of consequential damages to only defects or deficiencies in accepted items provides a gap in coverage for unaccepted items, which is inconsistent with commercial practice and prior versions of the clause.

Response: The team proposes maintaining clauses at FAR 52.212-4(p) and GSAR 552.246-73; they include the standard commercial warranty. A deviation is not necessary.

The 35th commenter seeks clarification of the application of the Buy American Act (BAA) and the Trade Agreements Act (TAA). The commenter is concerned that contractors receive consistent treatment under the law and applicable regulations. Knowing when the BAA and TAA apply and how their respective tests will be applied to products or services is of great importance to contractors. Contractors selling commercial items to the Federal Government generally do not manufacture their products based on the origin of supplies or manufacturing location. The Government, however, requires such contractors to consider these things when they contract to sell commercial products to the Federal Government. Making it easier for contractors to know and understand how the rules will be applied can only improve the procurement system. This is particularly important because an inaccurate certification can result in loss of monies, contracts, serious civil and criminal penalties, or both. The commenter feels that there is uncertainty as to whether the BAA or TAA applies to a procurement. The TAA dollar-value applicability threshold, which is set out in FAR 25.402, can vary according to whether the country of origin is a Free Trade Agreement (FTA) country and whether the contract is for supplies, services, or construction. Generally, the BAA applies to contracts below the applicable TAA threshold, and the TAA waives application of the BAA to contracts at or above the applicable TAA threshold. But it is unclear whether the TAA threshold applies to the total contract value, the individual Contract Line Item value, or the delivery or task order value. FAR 25.402(b) and 25.403(b) identify the TAA and FTA thresholds and how they ought to apply to specific types of contracts, but it is the commenter's understanding that contracting officers routinely (and perhaps not reasonably) interpret these provisions differently. Is it GSA's belief that the TAA applies to each order regardless of order amount and what is the reason for this belief?

Response: The team agrees that the TAA and BAA apply to the total value of the contract, regardless of individual order value. Specifically, as identified in FAR 25.403(b)(3), if, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, the contracting officer is to use the total estimated value of these projected awards to determine whether the World Trade Organization (WTO), Government Procurement Agreement (GPA) or an FTA applies. Acquisitions should not be divided with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO, GPA or an FTA.

The 36th commenter was concerned about Alternate I of GSAR clause 552.232-77 (Payment by Governmentwide Commercial Purchase Card), and GSAR clause 552.232-79 (Payment by Credit Card) and their impact on small businesses. The commenter states that, with the exception of FSS Schedule 70 (Information Technology) contracts, GSAR 532.7003 requires contracting officers to insert Alternate I of the clause at GSAR 552.232-77 in FSS schedule solicitations and contracts. Moreover, for FSS Schedule 70 solicitations and contracts, GSAR 532.7003 requires contracting officers to include clause 552.232-79. The GSAR clause at 552.232-77, without Alternate I, permits government orders using the Governmentwide commercial purchase card if agreeable to the contractor. Alternate I of that clause, however, provides that the FSS contractor *must* accept the Governmentwide commercial purchase card for payments equal to or less than the micro-purchase threshold (\$2500). Likewise, clause 552.232-79 provides that Schedule 70 contractors *must* accept credit card orders (including the Governmentwide commercial purchase card) for payments equal to or less than the micro-purchase threshold. Consequently, the commenter felt that this mandate may be problematic for some companies. Through reports, it was outlined that credit card companies do not permit companies participating in their programs to discriminate by accepting their cards from some customers and not others. Consequently, the requirement contained in Alternate I of GSAR 552.232-77 and in GSAR 552.232-79 for contractors to accept Government payment by the Governmentwide commercial purchase card may have the effect of compelling these contractors to accept credit card payments from all commercial customers as well. Therefore, the

commenter recommends that GSA examine the current requirement in Alternate I of the clause to determine its impact and the burden it poses for contractors and potential contractors, especially small businesses that have chosen not to accept payment by credit card from their commercial customers in order to avoid the fees charged by the credit card companies.

Response: The team does not concur with this comment. Under GSAR Clause 552.232-77, Alternate I, GSA mandates that the Contractor must accept use of the Governmentwide commercial credit card for payments equal to or less than the micro-purchase threshold as part of the FSS program. This mandate leverages the streamlined and more efficient transaction process use of the credit card. Offerors should consider this mandate before submitting an offer under the FSS program. The clause has been a final rule since March 2, 2000, and does not seem to have adversely impacted the number of small businesses under the FSS Program, as nearly 80 percent of FSS contractors are small business. According to the GSA purchase card Web site, the Government saves on administrative processing costs by using the purchase card rather than traditional purchase orders. Further, use of the purchase card ensures timely payment to merchants who do business with the Federal Government. Merchants are paid for credit card transactions within 48 hours of submitting the transaction to the card network. This is a vast improvement to the lengthy invoicing and payment process without cards and improves cash flow to merchants most in need, especially small businesses. However, the team is currently coordinating with the GSA Purchase Card office to track any issues and/or concerns that may have arisen based on current requirements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule will implement a number of provisions and clauses that are the same provisions and clauses currently in use in FSS solicitations and contracts. However, the provisions and clauses have never been vetted to the

public for comment, and must be approved by the Office of Management and Budget under the Paperwork Reduction Act.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

This Initial Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Description of the reasons why action by the agency is being considered.

GSAM coverage in Part 538 does not currently include internal policy and guidance issued in other forms such as Acquisition Letters, Procurement Information Bulletins (PIBs), Procurement Information Notices (PINs), Instructional Letters and the Supply Operations Handbook (FAS P 2901.2A). This internal FSS guidance has never been fully vetted to the regulatory level for analysis, thereby bringing about conflict and overlap within the Program. Therefore, under conventions of the General Services Administration's (GSA) rewrite of the General Services Administration Manual (GSAM), the rule proposes to implement this policy and guidance for the Federal Supply Schedule (FSS) Program.

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

The objective of the proposed rule is to implement policy and guidance currently used in Federal Supply Schedule solicitations and contracts. Essentially, the goal of the new rule is to make the process more efficient by reducing duplication of effort and to ensure currency and consistency within the program for the acquisition of supplies and services.

3. Description of, and where feasible, estimate of the number of small entities to which the proposed rule will apply.

The proposed rule will affect large and small businesses, which are awarded GSA FSS contracts. The Program contains over 17,000 long-term governmentwide contracts with commercial firms that provide over 11 million supplies and services. Approximately eighty-one percent (13,770) of GSA FSS contracts are small businesses. Over \$13 billion (37 percent) of sales under the Program in FY07 went to small businesses, which is well above the 23 percent governmentwide goal. There are a total of 39 Schedules, with 17 possessing an array of Special Item Numbers (SINs) set-aside for small businesses. Overall, small businesses have benefited from GSA providing education and access to the Federal marketplace via the Pre-award phase (Pathway to Success), the Post-award phase (New Contractor Orientation), and Contractor Assistance Visits (CAVs). Additionally, this proposed rule contains changes such as the addition of a Commercial Sales Practices Format for Supplies/Services without an Established Catalog Price, which will assist in facilitating ease-of-use in the preparation of offers from prospective Contractors, inclusive of small business concerns. FSS contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small businesses to be awarded under the FSS Program has enabled

them to grow in the Federal marketplace as well as realize significant cost savings.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This rule will not pose a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule will implement a number of provisions/clauses that are the same provisions/clauses currently in use in FSS solicitations and contracts. However, the provisions/clauses have never been vetted to the public for comment, and must be approved by the Office of Management and Budget under the Paperwork Reduction Act.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

The proposed rule when finalized does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

There are no practical alternatives that will accomplish the objective of this rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. The GSA will consider comments from small entities concerning the affected GSAR part 538 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (GSAR Case 2006-G507), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and state and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. In accordance with the requirements of the Paperwork Reduction Act, agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it

displays a currently valid Office of Management and Budget (OMB) control number.

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 3090-0243 (GSAR 552.216-70), 3090-0250 (GSAR 552.238-70 and 552.238-74), 3090-0262 (GSAR 552.238-72), 3090-0121 (GSAR 552.238-75), and 3090-0204 (GSAR 552.211-78).

However, GSA is requesting comments on a proposed information collection. The proposed information collection is representative of required process of Federal Supply Schedule (FSS) solicitations in order to negotiate and award contracts. Offerors submit solicitations either by hard copy or electronically through GSA's eOffer system at <http://www.gsa.gov/eoffer>.

The Regulatory Secretariat will submit a request for approval of a new information collection requirement concerning Federal Supply Schedule Contracting to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

552.238-10—Additional Offer Submission Instructions (Federal Supply Schedules) (SCP-FSS-001), 552.238-11—Additional Evaluation Factors for Award of Services (CI-FSS-151), and 552.238-90—Dealers and Suppliers (I-FSS-644). The burden for the three clauses is combined, thereby constituting a total of 8 burden hours collectively. FSS Offerors are at liberty to submit offers for both supplies and services, which may be inclusive of acting as a Dealer/Reseller.

Number of Respondents: 4,000.

Responses per Respondent: 1.

Annual Responses: 4,000.

Average Burden per Response: 8.

Total Burden Hours: 32,000.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

552.238-65—Commercial Sales Practices Format—Supplies and/or Services with an Established Catalog Price (CSP-1) and 552.238-66—Commercial Sales Practices Format—Supplies and/or Services with Market Pricing Without an Established Catalog Price (CSP-2).

Number of Respondents: 18,000.

Responses per Respondent: 3.5.

Annual Responses: 63,000.

Average Burden per Response: 5.

Total Burden Hours: 315,000.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

552.238-71—Submission and Distribution of Authorized FSS Schedule Price Lists, 552.238-15—Contract Price Lists (I-FSS-600), 552.238-61—Price Lists/Brochures for Non-Commercial Items (I-FSS-602), and 552.238-92—Dissemination of Information by Contractor (I-FSS-680).

Number of Respondents: 18,000.

Responses per Respondent: 3.5.

Annual Responses: 63,000.

Average Burden per Response: 5.

Total Burden Hours: 315,000.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

552.238-58—GSA Advantage!® (I-FSS-597) and 552.238-59—Electronic Commerce-FACNET (I-FSS-599).

Number of Respondents: 16,634.

Responses per Respondent: 3.5.

Annual Responses: 58,219.

Average Burden per Response: 2.

Total Burden Hours: 116,438.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

552.238-69, Economic Price Adjustment—Supplies and/or Services with Market Prices without an Established Catalog Price (I-FSS-969).

Number of Respondents: 11,000.

Responses per Respondent: 1.

Annual Responses: 11,000.

Average Burden per Response: 1.

Total Burden Hours: 11,000.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden,

not later than March 27, 2009 to: GSA Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control Number 3090-XXXX, GSAR 2006-G507, Federal Supply Schedule Contracting, in all correspondence.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Dated: January 6, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 538 and 552 as set forth below:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

Subpart 538.2 [Removed]

2. Remove Subpart 538.2, consisting of sections 538.270 through 538.273.

3. Add Subpart 538.9, consisting of section 538.906-3, to read as follows:

Subpart 538.9—Contractor Qualifications

Sec.

538.906-3 Roles and Responsibilities of a contractor partnering arrangement.

538.906-3 Roles and responsibilities of a contractor partnering arrangement.

(a) The Contractor Partnering Arrangement document should outline

all FSS partners. The lead partner is responsible for identifying FSS contract numbers, Contractor's point-of-contact information, and information about what each partner is responsible for at each phase of the project. Each partner is responsible for the terms and conditions of its respective FSS contract, including any proposed unit prices or hourly rates.

(b) The CPA is solely between or among the partners and cannot conflict with the underlying terms and conditions of each partner member's Schedule contract.

(c) Schedule Contractors are responsible for crafting the CPA document. The Government is not involved in this process.

(d) The CPA document should acknowledge that any dispute involving the distribution of payment between the lead partner and the team members will be resolved by all partners, without any involvement by the Government.

4. Add Subpart 538.12, consisting of section 538.1203, to read as follows:

Subpart 538.12—Acquisition of Commercial Items—FSS

Sec.

538.1203 Solicitation provisions and contract clauses.

538.1203 Solicitation provisions and contract clauses.

(a) *Multiple and single award schedules.* The following provisions are required for all Federal Supply Schedules. As prescribed below, insert the following Cover Page language prior to the beginning of FSS solicitations:

(1) 552.238-1, Cover Page for Worldwide Multiple Award Schedules (CP-FSS-1-C). This provision is for both supply and service solicitations. For supplies, complete the information required by this paragraph (a) and delete paragraph (b) of this section in its entirety. For services, complete the information required by paragraph (b) and delete (a) in its entirety. For solicitations containing both supplies and services, complete paragraphs (a) and (b).

(2) 552.238-2, Significant Changes (CP-FSS-2). This provision outlines to Offerors the most recent solicitation revisions since its previous posting to the Government's point of entry.

(3) 552.238-3, Pricing (CP-FSS-19). This provision notifies Offerors that separate pricing may be submitted for different countries, if offered commercially.

(4) 552.238-4, Notice of Total Small Business Set-Aside (A-FSS-31). This provision notifies small business

Offerors which Special Item Numbers (SINs) are set-aside.

(5) 552.238-5, Information Collection Requirements and Hours of Operation (A-FSS-41). This provision informs Offerors that only required regulations are contained in the solicitation and the hours of operation.

(6) 552.238-6, Notice: Requests for Explanation or Information (CP-FSS-3). This provision contains the contact information to address questions regarding the solicitation.

(b) *Multiple and single award Schedules.* As prescribed below, insert the following provisions as an addendum to 52.212-1, Instructions to Offerors—Commercial Items, in solicitations issued under FSS, when applicable:

(1) 552.238-7, Estimated Sales (B-FSS-96). This provision instructs Offerors to provide the estimated annual sales anticipated under the Schedule.

(2) 552.238-8, Consideration of Offers Under Standing Solicitation (A-FSS-11). This provision outlines to Offerors the Government's contemplation of awards under a standing solicitation.

(3) 552.238-9, Period for Acceptance of Offers (A-FSS-12-C). This provision instructs the Offeror to insert the number of days that the offered pricing is firm.

(4) 552.238-10, Additional Offer Submission Instructions (Federal Supply Schedules) (SCP-FSS-001). This provision clarifies how to submit solicitation responses.

(5) 552.238-11, Additional Evaluation Factors for Award of Services (I-FSS-151). This provision provides clarification to Offerors on how solicitation responses for services will be evaluated.

(6) 552.238-12, Submission of Offers—Additional Instructions (CI-FSS-002). This provision outlines to Offerors additional instructions on how to submit an offer under the Schedules Program.

(7) 552.238-13, Impact of Mandatory Use on Quantities Ordered (B-FSS-97). In conjunction with clause 552.238-51, Scope of Contract (I-FSS-102), this provision requires that this contract is the first instance where GSA is the only agency listed as a mandatory user. This provision does not apply to the Department of Veterans Affairs.

(8) 552.238-14, Introduction of New Supplies/Services (INSS) (L-FSS-400). This provision is for use when establishing new services or supplies.

(9) 552.238-15, Contract Price Lists (I-FSS-600). This provision provides instructions to Offerors on how to create the Authorized FSS Schedule Price List. For Schedule 70, use Alternate I.

(10) 552.238-16, Ordering Information (Federal Supply Schedules). This provision outlines how Offerors will accept orders placed against the contract.

(11) 552.238-17, Contractor's Remittance (Payment) Address. This provision instructs the Offeror on how to insert its remittance/payment address.

(12) 552.238-18, Final Proposal Revision (L-FSS-101). This provision provides instructions to Offerors on how to prepare and submit a Final Proposal Revision (FPR) letter.

(13) 552.238-19, Use of Non-Government Employees to Review Offers. This provision provides notification to Offerors that non-government employees may be utilized to review their solicitation response.

(14) 552.238-20, Authorized Negotiators (K-FSS-1). This provision provides for the Offeror to outline its point-of-contact information for negotiations.

(c) *Multiple and single award schedules.* As prescribed below, insert the following clauses as an addendum to clause 52.212-4, Contract Terms and Conditions—Commercial Items, in solicitations and contracts issued under FSS, when applicable:

(1) 552.238-21, Authentication Supplies and Services (CI-FSS-52). This clause is to be used with Schedule 70 only and specifically corresponds to those Special Item Numbers (SINs) associated with the Homeland Security Presidential Directive-12 (HSPD-12).

(2) 552.238-22, Indemnification and Liability (CI-FSS-053). This clause is to be used to protect the interest of the Government for loss or damage or anticipated loss for services related to hazardous substances or waste.

(3) 552.238-23, Organizational Conflicts of Interest (CI-FSS-054). This clause is to be used when the nature of the work to be performed under a proposed ordering activity contract may either

(i) Result in an unfair competitive advantage to the Contractor or its affiliates; or

(ii) Impair the Contractor or its affiliates' objectively in performing contract work.

(4) 552.238-24, Section 508 Compliance (CI-FSS-056). This clause instructs the Contractor to insert its Web site in a location where ordering activities can verify the 508 compliance for specific items.

(5) 552.238-25, Characteristics of Electric Current (C-FSS-412). This clause is used for overseas orders when Contractors are supplying equipment which uses electrical current.

(6) 552.238-26, Separate Charge for Performance Oriented Packaging (POP) (D-FSS-447). This clause is to be used when the Offeror is requested to quote a separate charge for preservation, packaging, packing and marking and labeling of domestic and overseas HAZMAT SURFACE SHIPMENTS.

(7) 552.238-27, Special Packing (D-FSS-464). This clause instructs bidders to specify additional charges for preservation, packaging, and packing when other than the commercial standard is used.

(8) 552.238-28, Export Packing (D-FSS-465). This clause instructs Offerors to quote in their price lists accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial and/or Government export packing. This clause only applies to Schedule 70 for Information Technology.

(9) 552.238-29, Marking and Documentation Requirements Per Shipment (D-FSS-471). This clause is used when outlining the minimum information and documentation required for shipment.

(10) 552.238-30, Inspection (E-FSS-521-D). This clause is for use when all items are to be inspected at a destination by a Government representative.

(11) 552.238-31, Emergency/Expedited Delivery (CI-FSS-051). This applies to Schedule 51 V only, and is to be used when delivery terms and conditions deviate from normal delivery practices.

(12) 552.238-32, Delivery Prices (F-FSS-202-G). This clause is for use in Indefinite Delivery/Indefinite Quantity contracts and describes delivery terms and conditions for the 48 Contiguous States and Washington, DC as well as additional destinations.

(13) 552.238-33, Additional Service Charge for Delivery Within Consignee's Premises (F-FSS-244-B). This clause is for use when the Contractor charges a separate cost for each shipping container to be shipped (inclusive of items that are comparable in size and weight).

(14) 552.238-34, Additional Service Charge for Delivery Within Consignee's Premises (Specification for Inside Delivery) (F-FSS-244-C). This clause is applicable to furniture acquisitions only and is to be used in accordance with FAR 52.247-35 when an additional charge is necessary beyond F.O.B Destination within Consignee's Premises.

(15) 552.238-35, Shipping Points (F-FSS-712-B). This clause instructs the Offeror to provide shipping information,

inclusive of carrier and address, for F.O.B. Origin shipments.

(16) 552.238-36, Contact for Contract Administration (G-FSS-900-C). This clause instructs Offerors to provide points of contact for domestic and/or overseas contact information for contract administration.

(17) 552.238-37, Vendor Managed Inventory (VMI) Program (MAS) (G-FSS-906). This clause instructs Contractors to monitor and maintain specified inventory levels for selected supplies at designated stocking points.

(18) 552.238-38, Order Acknowledgement (G-FSS-907). This clause is only applicable to orders which state "Order Acknowledgement Required" and advises the Contractor of the receipt process within 10 days of delivery.

(19) 552.238-39, Urgent Requirements (I-FSS-140B). This clause is for use when a bona fide need exists for accelerated delivery.

(20) 552.238-40, Post-Award Samples (H-FSS-505). This clause is for use with carpet acquisitions only and is used to instruct the Contractor on submission requirements.

(21) 552.238-41, Guaranteed Minimum (I-FSS-106). This clause outlines the minimum guarantee that the Government agrees to order during the term of the contract.

(22) 552.238-42, Restriction on the Acceptance of Orders (I-FSS-107). This clause sets restrictions on orders and deliveries in connection with the United States Navy and the Military Sealift Command.

(23) 552.238-43, Clauses for Overseas Coverage (I-FSS-108). The following clauses must be inserted, when applicable, in solicitations in full text for overseas acquisitions:

(i) 52.214-34, Submission of Offers in the English Language.

(ii) 52.214-35, Submission of Offers in U.S. Currency.

(iii) 52.247-34, F.O.B. Destination.

(iv) 52.247-38, F.O.B. Inland Carrier, Country of Exportation.

(v) 52.247-39, F.O.B. Inland Point, Country of Importation.

(vi) 552.238-25, Characteristics of Electric Current (C-FSS-412).

(vii) 552.238-29, Marking and Documentation Requirements Per Shipment (D-FSS-471).

(viii) 552.238-44, Transshipments (D-FSS-477). This clause is for use for transshipments and states the terms and conditions of the use of Department of Defense forms necessary for shipment.

(ix) 552.238-45, Delivery Prices (F-FSS-202-F). This clause is for use for F.O.B. Destination in overseas deliveries.

(x) 552.238-46, Foreign Taxes and Duties (I-FSS-314). This clause delineates which fees, taxes and other foreign governmental costs are exempt/non-exempt by the U.S. Government. The prices offered must be NET delivered F.O.B.

(xi) 552.238-47, Parts and Service (I-FSS-594). This clause is used to ensure that the parts and services (including the performance of warranty or guarantee service) submitted by Offerors (dealers/distributors) is good for the entire contract period.

(24) 552.238-48, English Language and U.S. Dollar Requirements (I-FSS-109). This clause is used to instruct Contractors that all documents shall be produced in the English language, including, but not limited to, price lists and catalogs.

(25) 552.238-49, Geographic Area Address of Supply and Service Point. This clause outlines the intent for available means to maintain Government-owned items in satisfactory condition.

(26) 552.238-50, Option to Extend the Term of the Contract (Evergreen) (I-FSS-163). This clause is for use when determining continued performance of a contract for the next option period.

(27) 552.238-51, Scope of Contract (I-FSS-102). This clause is for use with single awards only and is used to outline the scope of delivery.

(28) 552.238-52, Option to Extend the Term of Contract for Period of One Year (I-FSS-165). This clause is for use when determining continued performance of a contract for an additional 12 months, inclusive of the same terms and conditions as contained in the original contract.

(29) 552.238-53, Option to Extend the Term of the Contract (I-FSS-167). This clause is for single awards only and is used when determining continued performance of a contract not to exceed 60 days.

(30) 552.238-54, Federal Excise Tax (I-FSS-311). This clause is for use with tire and tube acquisitions only and instructs ordering activities on the procedures for invoicing the Federal Excise Tax.

(31) 552.238-55, Contractor Partnering Arrangements (CPAs) (I-FSS-40). This clause instructs Contractors to abide by the terms and conditions of their respective contracts when participating in Contractor Partnering Arrangements. This clause is not applicable to the U.S. Department of Veterans Affairs.

(32) 552.238-56, Performance Reporting Requirements (I-FSS-50). This clause outlines to the Contractor the performance requirements for

contracts exceeding the simplified acquisition threshold.

(33) 552.238-57, Guarantee (I-FSS-546). This clause outlines the guarantee afforded to the Government for a period of one year from the date of delivery.

(34) 552.238-58, GSA *Advantage!*[®] (I-FSS-597). This clause outlines to the Contractor that it must participate in the GSA *Advantage!*[®] online shopping service. This clause is not applicable to the U.S. Department of Veterans Affairs.

(35) 552.238-59, Electronic Commerce-FACNET (I-FSS-599). This clause outlines the use of electronic commerce/data interchange to conduct contract processes and procedures. This clause is not applicable to the U.S. Department of Veterans Affairs.

(36) 552.238-60, Performance Incentives (I-FSS-60). This clause outlines performance incentives agreed upon between the ordering activity and the Contractor.

(37) 552.238-61, Price Lists/ Brochures for Non-Commercial Items (I-FSS-602). This clause outlines the requirements for submission of price lists for non-commercial items.

(38) 552.238-62, Office Copier Utilization Guidelines (I-FSS-624). This clause explains to ordering activities the guidelines for selecting the appropriate and most economical copying process.

(39) 552.238-63, Preference for Small Business Concerns (I-FSS-90). This clause advises Offerors to prioritize the small business concerns where two or more items at the same delivered price will meet the ordering activity's needs.

(40) 552.238-64, Imprest Funds (Petty Cash) (I-FSS-918). This clause outlines to the Contractor that it agrees to accept cash payment for purchases under the terms of the contract in accordance with FAR 13.305.

(41) 552.238-65, Commercial Sales Practices Format-Supplies and/or Services with an Established Catalog Price List (CSP-1). This clause provides instructions to the Offeror for completing the commercial sales practices format for supplies and services with an established catalog price list.

(42) 552.238-66, Commercial Sales Practices Format-Supplies and/or Services with Market Pricing without an Established Catalog Price (CSP-2). This clause provides instructions to the Offeror for completing the commercial sales practices format for supplies and/or services with market pricing without an established catalog price.

(43) 552.238-67, Modifications (Multiple Award Schedule) (currently 552.243-72). This clause instructs to the Contractor as to the types of contract

modifications and the procedures for requesting them.

(44) 552.238–68, Economic Price Adjustment-Supplies and/or Services with an Established Catalog Price List (currently 552.216–70). This clause provides Contractors the procedures for submitting economic price adjustments for supplies and services with an established catalog price list.

(45) 552.238–69, Economic Price Adjustment-Supplies and/or Services with Market Pricing without an Established Catalog Price (I–FSS–969). This clause provides the Contractor the procedures for submitting economic price adjustments for supplies and services with market pricing and without an established catalog price list.

(46) 552.238–70, Identification of Electronic Office Equipment Providing Accessibility for the Handicapped. This clause instructs the Offeror to identify in its offer any special peripheral that will facilitate electronic office equipment accessibility for handicapped individuals.

(47) 552.238–71, Submission and Distribution of Authorized FSS Schedule Price Lists. This clause provides to the Contractor the responsibility of printing and distributing its Authorized FSS Schedule Price List after award.

(48) 552.238–72, Identification of Products that have Environmental Attributes. This clause provides to the ordering activity the requirement to purchase supplies that are not harmful to the environment.

(49) 552.238–73, Cancellation. This clause provides to the Contractor the policy and procedures for cancelling a contract.

(50) 552.238–74, Industrial Funding Fee and Sales Reporting. This clause provides to the Contractor the requirement to report all contract sales under the contract to GSA on a quarterly basis.

(51) 552.238–75, Price Reductions. This clause provides to the Offeror the requirement to establish an agreed-upon price and discount relationship with the Government prior to award.

(52) 552.238–77, Definition (Federal Supply Schedules). This clause defines eligible ordering activities authorized to place orders under FSS contracts.

(53) 552.238–78, Scope of Contract (Eligible Ordering Activities). This clause outlines solicitations issued to establish contracts which may be used on a non-mandatory basis by designated ordering activities as a source of supply for supplies or services for domestic and/or overseas delivery.

(54) 552.238–79, Use of Federal Supply Schedule Contracts by Certain

Entities—Cooperative Purchasing. This clause outlines to ordering activities the procedures for use of Federal Supply Schedules by State and Local Governments.

(55) 552.238–81, Placement of Orders by Eligible Ordering Activities. This clause instructs to eligible ordering activities the procedures for placing orders through the Electronic Data Interchange (EDI).

(56) 552.238–82, Discounts for Prompt Payments (Federal Supply Schedule). This clause provides the Offeror the Government's consideration of discount for early payment.

(57) 552.238–83, Contractor's Billing Responsibilities. This clause provides to the Contractor the requirements of billing responsibilities, particularly those associated with participating dealers.

(58) 552.238–84, Payment by Credit Card. This clause provides to the Offeror the mandatory acceptance of payment of the Governmentwide Commercial Purchase Card.

(59) 552.238–85, Payments by Non-Federal Ordering Activities. This clause provides to eligible non-federal ordering activities the procedures for payment under a State prompt payment law versus the Federal Prompt Payment Act.

(60) 552.238–86, Warranty-Multiple Award Schedule (currently 552.246–73). This clause provides, for domestic or overseas, the application of the Contractor's standard commercial warranty.

(61) 552.238–87, Warranty (I–FSS–542–A). This clause provides procedures for the necessary adjustment of procured equipment when the Government is not at fault.

(62) 552.238–88, Service Points (I–FSS–626). This clause instructs the Offeror to provide information in its price list addressing supply and service points.

(63) 552.238–89, Contract Sales Criteria (I–FSS–639). This clause provides the anticipated sales expected to be generated by a contract and the Government's right to cancel the contract if they are not met.

(64) 552.238–90, Dealers and Suppliers (I–FSS–644). This clause instructs Offerors that are other than the manufacturer the requirement to submit a letter of commitment to assure an uninterrupted source of supply to satisfy the Government's requirements.

(65) 552.238–91, Blanket Purchase Agreements (BPAs) (I–FSS–646). This clause provides to the Contractor the procedures for entering into Blanket Purchase Agreements (BPAs) with ordering activities.

(66) 552.238–92, Dissemination of Information by Contractor (I–FSS–680). This clause provides to the Contractor the responsibility of distributing Authorized Federal Supply Schedule Price Lists to all authorized sales outlets.

(67) 552.238–93, Purchase of Open Market Items (CI–FSS–055). This clause provides to the ordering activity the treatment of open market items under BPAs and individual task or delivery orders placed against a Federal Supply Multiple Award Schedule (MAS) contract.

(68) 552.238–94, Contractor Tasks/Special Requirements (C–FSS–370). This clause provides to the Contractor special requirements that may be needed when completing various tasks.

(69) 552.238–95, Commercial Delivery Schedule (Multiple Award Schedule) (currently 552.211–78). This clause provides to the Offeror the requirement to address normal commercial delivery times in its offer.

(70) 552.238–96, Preparation of Offer (Multiple Award Schedule) (currently 552.212–70). This clause provides to the Offeror the requirement of including specified information used for evaluation purposes when preparing its offer.

(71) 552.238–97, Examination of Records by GSA (Multiple Award Schedule) (currently 552.215–71). With the Senior Procurement Executive's approval, the contracting officer may modify the clause at 552.238–97 to provide for post-award access to and the right to examine records to verify that the pre-award/modification pricing, sales or other data related to the supplies or services offered under the contract which formed the basis for the award/modification was accurate, current, and complete. The following procedures apply:

(i) Such a modification of the clause must provide for the right of access to expire two years after award or modification.

(ii) Before modifying the clause, the Contracting Officer must make a determination that absent such access there is a likelihood of significant harm to the Government and submit it to the Senior Procurement Executive for approval.

(iii) The determinations under paragraph (d)(2) must be made on a schedule-by-schedule basis.

(72) 552.238–98, Price Adjustment—Failure to Provide Accurate Information (currently 552.215–72).

(i) *Multiple and single award schedules*. Insert the following alternate FAR clauses in solicitations and

contracts issued under FSS, when applicable:

(A) Alternate IV of the FAR provision at 52.215–20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data. The Contracting Officer should insert the following in paragraph (b) of the provision:

(B) An offer prepared and submitted in accordance with the clause at 552.238–96, Preparation of Offer (Multiple Award Schedule) (currently 552.212–70).

(C) The Offeror shall submit commercial sales practices in the format provided in this solicitation in accordance with the instructions in 552.238–65, Commercial Sales Practices Format—Supplies and/or Services with an Established Catalog Price List (CSP–1); or 552.238–66, Commercial Sales Practices Format—Supplies and/or Services with Market Pricing Without an Established Catalog Price (CSP–2).

(D) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(E) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Offeror's cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(ii) Alternate IV of FAR 52.215–21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications. The Contracting Officer should insert the following in paragraph (b) of the clause:

(A) Information required by the clause at GSAR 552.238–67, Modifications (Multiple Award Schedule) (currently 552.243–72).

(B) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.

(C) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized

representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(73) 552.238–99, Task Order Period of Performance. This clause indicates that orders placed under a FSS contract which include priced options that were evaluated at the time the order was placed, allows those options to be exercised if the contract has expired.

(74) 552.238–100, Deliveries Beyond the Contractual Period—Placing of Orders (G–FSS–910). This clause allows orders to be processed if they were received prior to the expiration of the contract.

(75) 552.238–101, Award (L–FSS–59). This provision lets Offerors know that only a formal written notification from the Government can be interpreted as a notice of award.

(76) 552.238–102, Interpretation of Contract Requirements (I–FSS–965). This indicates that only written clarifications regarding interpretation of contract clauses may only be made by the Contracting Officer or his/her designated representative.

5. Add Subpart 538.15, consisting of sections 538.1504 and 538.1508, to read as follows:

Subpart 538.15—Negotiation and Award of Contracts

Sec.

538.1504 Evaluation of commercial pricing practices.

538.1508 Price reductions.

538.1504 Evaluation of commercial pricing practices.

(a) The Government will seek to obtain the Offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

(b) The contracting officer will establish negotiation objectives based on a review of relevant data, and determine price reasonableness.

(c) When establishing negotiation objectives and determining price reasonableness, the contracting officer shall compare the terms and conditions of the FSS solicitation with the terms

and conditions of agreements with the Offeror's commercial customers. When determining the Government's price negotiation objectives, the following factors, at a minimum, shall be considered:

(1) Aggregate volume of anticipated sales.

(2) The purchase of a minimum quantity or a pattern of historic purchases.

(3) Pricing, taking into consideration any combination of discounts and concessions offered to commercial customers. In the case of services, geographic location, description of duties, education and experience.

(4) Length of the contract period.

(5) Warranties, training, and/or maintenance included in the purchase price or provided at additional cost to the product prices.

(6) Ordering and delivery practices.

(7) Any other relevant information, including differences between the FSS solicitation and commercial terms and conditions that may warrant differentials between the offer and the discounts offered to the most favored commercial customer(s). For example, an Offeror may incur more expense selling to the Government than to the customer who receives the Offeror's best price, or the customer (e.g., dealer, distributor, original equipment manufacturer, other reseller) who receives the best price may perform certain value-added functions for the Offeror that the Government does not perform. In such cases, some reduction in the discount given to the Government may be appropriate. If the best price is not offered to the Government, the contracting officer should ask the Offeror to identify and explain the reason for any differences. Offerors should not be required to provide detailed cost breakdowns.

(d) The contracting officer may award a contract containing pricing which is less favorable than the best price the Offeror extends to any commercial customer for similar purchases if the contracting officer makes a determination that both of the following conditions exist:

(1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated.

(2) Award is otherwise in the best interest of the Government.

538.1508 Price reductions.

(a) Section 552.238–75, Price Reductions, requires the Contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship)

between the Government and the Offeror's customer or category of customers on which the contract award was predicated. If a change occurs in the Contractor's commercial pricing or discount arrangement applicable to the identified commercial customer (or category of customers) that results in a less advantageous relationship between the Government and this customer or category of customers, the change constitutes a "price reduction."

(b) The contracting officer shall ensure that the Contractor understands the requirements of section 552.238-75 and agrees to report all price reductions as provided for in the clause to the Government.

6. Add Subpart 538.25, consisting of section 538.2502, to read as follows:

Subpart 538.25—Requirement for Foreign Entities

Sec.
538.2502 English language and U.S. dollar requirements.

538.2502 English language and U.S. dollar requirements.

(a) Offerors shall reprint their commercial price list in English if it is not published and disseminated commercially in English.

(b) Overseas customers may make payments for supplies or services in local currencies.

7. Add Subpart 538.42, consisting of sections 538.4201-3, 538.4206, and 538.4206-1, to read as follows:

Subpart 538.42—Contract Administration

Sec.
538.4201-3 IFF and Contractor partnering arrangements.
538.4206 Contractor cancellation of FSS contract.
538.4206-1 Processing cancellation of a Contractor request.

538.4201-3 IFF and Contractor partnering arrangements.

Contractors participating in Contractor Partnering Arrangements must abide by all terms and conditions of their respective contracts, including compliance with clause 552.238-74, Industrial Funding Fee and Sales Reporting.

538.4206 Contractor cancellation of FSS contract.

538.4206-1 Processing cancellation at Contractor request.

Contractor-requested cancellations shall be formalized by a contract modification, which incorporates the Contractor's letter and indicates the effective date of the cancellation (30

days after written notice). The contracting officer is responsible for ensuring that the modification distributed to the Contractor and the administrative contracting officer. The modification will provide a formal notice to the administrative contracting officer and an appropriate closure to the contract file. Contractors should be reminded that they are responsible for completion of any outstanding orders. The contracting officer must cancel the contract in FSS Online.

8. Add Subpart 538.43, consisting of section 538.4303-3, to read as follows:

Subpart 538.43—Contract Modifications

Sec.
538.4303-3 Contractor initiated modifications.

538.4303-3 Contractor initiated modifications.

All Contractor modification requests must adequately describe and justify the proposed changes. However, there are certain modification requests that require additional documentation before they can be evaluated and approved. Examples of such modification requests include economic price adjustments, price reductions, and the addition/deletion of items. The specific documentation required to be submitted for each of these actions is identified under the Modifications and/or Economic Price Adjustment clauses that are applicable to the contract. If any modification request fails to provide current, accurate, and complete information as required by the terms and conditions in the contract, the contracting officer should return the request and detail its deficiencies to the Contractor.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211-78 [Redesignated as 552.238-95]

9. Redesignate section 552.211.78 as 552.238-95.

552.212-70 [Redesignated as 552.238-96]

10. Redesignate section 552.212.70 as 552.238-96.

552.215-71 [Redesignated as 552.238-97]

11. Redesignate section 552.215-71 as 552.238-97.

552.215-72 [Redesignated as 552.238-98]

12. Redesignate section 552.215.72 as 552.238-98.

552.216-70 [Redesignated as 552.238-68]

13. Redesignate section 552.216-70 as section 552.238-68.

14. Add sections 552.238-1 through 552.238-66 to read as follows:

552.238-1 Cover Page for Worldwide Multiple Award Schedules (CP-FSS-1-C).

As prescribed in 538.1203(a)(1), insert the following provision:

WORLDWIDE FEDERAL SUPPLY
SCHEDULE CONTRACT (CP-FSS-1-C)
(DATE)

Solicitation No. * _____ *

Federal Supply Schedule Contract for All
Geographic Areas

FSC Group * _____ * Part * _____ *
Section * _____ *.

Supply: * _____ *.
FSC Class(es)/Product Code(s)/NAICS:
* _____ * and/or

Service: * _____ *.
Service Code(s)/NAICS: * _____ *.

Any information that may be desired on this particular solicitation can be obtained from the issuing office; address shown herein.

(End of Provision)

552.238-2 Significant Changes (CP-FSS-2).

As prescribed in 538.1203(a)(2), insert the following provision:

SIGNIFICANT CHANGES (CP-FSS-2)
(DATE)

The following changes have been made since the issuance of the solicitation for the supplies and/or services covered herein:
* _____ *.

(End of Provision)

552.238-3 Pricing (CP-FSS-19).

As prescribed in 538.1203(a)(3), insert the following provision:

PRICING (CP-FSS-19) (DATE)

Offerors are advised that separate pricing may be submitted for different countries if separate pricing is consistent with the Offeror's commercial sales practice.

(End of Provision)

552.238-4 Notice of Total Small Business Set-Aside (A-FSS-31).

As prescribed in 538.1203(a)(4), insert the following provision:

NOTICE OF TOTAL SMALL BUSINESS
SET-ASIDE (A-FSS-31) (DATE)

The clause entitled "Notice of Total Small Business Set-Aside," applies to the following items in this solicitation: * _____ *.

(End of Provision)

552.238-5 Information Collection Requirements and Hours of Operation (A-FSS-41).

As prescribed in 538.1203(a)(5), insert the following provision:

INFORMATION COLLECTION REQUIREMENTS AND HOURS OF OPERATION (A-FSS-41) (DATE)

(a) "The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163."

(b) "GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day."

(End of Provision)

552.238-6 Notice: Requests for Explanation or Information (CP-FSS-3).

As prescribed in 538.1203(a)(6), insert the following provision:

NOTICE: REQUESTS FOR EXPLANATION OR INFORMATION (CP-FSS-3) (DATE)

Oral or written requests for explanation or information regarding this solicitation should be directed to:

General Services Administration

* _____ *
* _____ *
* _____ *

or

Phone * _____ *.

Note: *Important.* Do not address offers, modifications or withdrawals to the address in this provision. The address designated for receipt of offers is contained elsewhere in this solicitation.

(End of Provision)

552.238-7 Estimated Sales (B-FSS-96).

As prescribed in 538.1203(b)(1), insert the following provision:

ESTIMATED SALES (B-FSS-96) (DATE)

The "Estimated Sales" column of the Schedule of Items shows (1) a twelve-month reading of purchases in dollars or purchases in units as reported by the previous Contractor(s), or (2) estimates of the anticipated dollar volume where the item is new. The absence of a figure indicates that neither reports of previous purchases nor estimates of sales are available.

* _____ *.

(End of Provision)

552.238-8 Consideration of Offers Under Standing Solicitation (A-FSS-11).

As prescribed in 538.1203(b)(2), insert the following provision:

CONSIDERATION OF OFFERS UNDER STANDING SOLICITATION (A-FSS-11) (DATE)

(a) This solicitation is a standing solicitation from which the Government contemplates award of contracts for supplies/services listed in the Schedule of Items. This solicitation will remain in effect unless replaced by a refreshed solicitation.

(b) There is no closing date for receipt of offers; therefore, offers may be submitted for consideration at any time.

(c) Contracts awarded under this solicitation will be in effect for 5 years from the date of award, unless further extended, pursuant to clause 552.238-50/I-FSS-163, Option to Extend the Term of the Contract (Evergreen), canceled pursuant to the Cancellation clause, or terminated pursuant to the termination provisions of the contract.

(End of Provision)

552.238-9 Period for Acceptance of Offers (A-FSS-12-C).

As prescribed in 538.1203(b)(3), insert the following provision:

PERIOD FOR ACCEPTANCE OF OFFERS (A-FSS-12-C) (DATE)

Paragraph (c) of the provision 52.212-1, Instructions to Offerors—Commercial Items, is revised to read as follows: "The Offeror agrees to hold the prices in its offer for * _____ * calendar days from the date of the offer, within which the offer may be accepted."

(End of Provision)

552.238-10 Additional Offer Submission Instructions (Federal Supply Schedules) (SCP-FSS-001).

As prescribed in 538.1203(b)(4), insert the following provision:

ADDITIONAL OFFER SUBMISSION INSTRUCTIONS (FEDERAL SUPPLY SCHEDULES) (DATE)

(a) All information provided by the Offeror shall be current, accurate, and complete, and shall demonstrate a thorough understanding of the scope of this solicitation and where applicable, described in the Statement of Work. By signing the offer, the Offeror attests that there have been no changes to the text of this solicitation. Proposed exceptions shall be stated in writing and submitted with Administration/Contract Data.

(b) All offers must include the following, as applicable to the solicitation. Any deficiencies or omitted information may result in the offer being returned without further consideration.

(c) *Solicitation response/vendor response document.* (1) If available, the preferred submission method is electronically via eOffer (<http://eOffer.gsa.gov>). Offerors must have a digital certificate, which is available at the eOffer Web site, to submit an electronic offer.

(2) Alternately, submit the entire paper solicitation with a signed Standard Form 1449, unless otherwise directed in the solicitation. The most recent refresh of this

solicitation can be viewed on FedBizOpps. Submissions of previous versions received more than thirty (30) calendar days after the issuing date of the current version of the solicitation will be rejected.

(d) *Exhibit I—Administrative/Contract Data.* (1) "Pathway to Success" training certificate. "Pathway to Success" training is available through the Vendor Support Center Web site at <http://vsc.gsa.gov>. Click on the tab "Vendor Training" to access this free, Web-based training. The training session is less than two hours total and covers the major factors your organization should consider prior to submitting an offer to a FSS solicitation.

(2) If a consultant or an agent, other than an employee of the company, is being used during or after award, submit an agent authorization letter signed by a company official.

(3) A copy of the current and up-dated registration in Central Contractor Registry (CCR).

(4) The complete Online Representations and Certifications Application (ORCA). The information is current, accurate, and complete, and reflects the North American Industrial Classification System (NAICS) code(s) for this solicitation.

(5) A completed Open Ratings, Inc. (ORI) Past Performance Evaluation and Order Form (references).

(6) When applicable, a Small Business Subcontracting Plan. A sample outline that may be used in preparing a subcontracting plan is included at FedBizOpps. (ref. FAR 19.704).

(7) Offeror shall provide the current contract number(s) and price lists of any other FSS Schedule contract(s).

(8) If other than the manufacturer, Offeror must provide guaranteed source of supply letters (letters of commitment).

(9) Additional solicitation specific instructions: * _____ *.

(d) *Exhibit II, Technical Offer.* (1) Technical Offer for supplies—

(i) Refer to 552.212-73.

(ii) Other pertinent factors, if any: * _____ *

(2) Technical Offer for Services: The technical offer is comprised of three factors—Factor One (Corporate Experience), Factor Two (Relevant Project Experience), and Factor Three (Past Performance). All offers shall address these factors as instructed in this provision. If the Offeror is proposing multiple Special Item Numbers (SINs), they shall clearly identify each SIN with the corresponding technical information. Please provide a narrative for each of the following sections to demonstrate the company's capabilities in satisfying ALL underlying requirements as listed in this provision.

(i) Factor One—Corporate Experience: Submit a (three page maximum) narrative describing the company's corporate experience in a market relevant to this solicitation, regardless of the number of SINs being offered. Company must have provided the offered services for at least two years. At a minimum, the narrative must include the following:

(A) Number of years of corporate experience; to include quality control measures to facilitate high quality

performance. A brief history of the organization's activities contributing to experience in the field and to the development of expertise and capabilities.

(B) If applicable, Offeror must submit a Professional Compensation Plan as defined by 29 CFR 541 and in accordance with clause 52.222-16 and a copy of the Offeror's policy that addresses uncompensated overtime in accordance with provision 52.237-10, Identification of Uncompensated Overtime.

(C) Additional solicitation specific instructions: * _____ *

(i) *Factor Two—Relevant Experience.* (A) For each SIN, the Offeror must provide descriptions (four page maximum) of two (2) contracts/agreements/projects, with similar scope and complexity to the work relevant to the scope of the solicitation. Each description must demonstrate how it is relevant to the SIN(s).

(B) To be relevant, the service must either have been completed within the last two years or be on-going. Additional solicitation specific instructions: * _____ *

(C) Each contract/agreement/project description shall include the following customer reference information:

- (1) Contract/Agreement/Project name;
- (2) Project description, including any challenges, actions and resolutions;
- (3) Dollar amount of contract;
- (4) Project duration, which includes the original estimated completion date and the actual completion date; and
- (5) Point of contact, telephone number, and email address.

(D) Substitution For Relevant Contract/Agreement/Project Experience—If contract/agreement/project experience does not exist, the Offeror may substitute relevant contract/agreement/project of predecessor company(ies) and personnel that have a vested interest in the company (*i.e.*, substantial financial interest). If the Offeror chooses to make such a substitution, the narratives must clearly identify the predecessor company(ies) and personnel. (Refer to FAR 15.305(a)(2) and Comptroller General Decision: B-296197 June 30, 2005).

(iii) *Factor Three—Past Performance:* The Offeror shall provide a Past Performance Evaluation from Open Ratings, Inc. (ORI) dated within 12-months of offer submission. Offerors are responsible for payment to ORI for the Past Performance Evaluation. See attached form.

(e) *Exhibit III—Price Offer.* (1) For supplies and/or services based on an established catalog price, Offerors must submit:

- (i) The commercial catalog, price list, schedule, and/or other pricing document(s) used as the basis of the offer; and
- (ii) The proposed discount(s) and/or concession(s) offered under this solicitation.

(2) For supplies and/or services based on market prices without an established catalog price, the Offeror must submit a document including description of line item, proposed pricing, concessions, terms and conditions offered under the solicitation. Travel cost shall not be included in the proposed pricing. Additional solicitation specific instructions: * _____ *

(3) Any deficiencies or omitted information may result in the offer being returned without further consideration.

(End of Provision)

552.238-11 Additional Evaluation Factors for Award of Services (CI-FSS-151).

As prescribed in 538.1203(b)(5), insert the following provision:

ADDITIONAL EVALUATION FACTORS FOR AWARD OF SERVICES (CI-FSS-151) (DATE)

The Government will consider award for a responsible Offeror, whose offer conforms to all solicitation requirements, is determined technically acceptable, has acceptable past performance, and whose prices are determined fair and reasonable.

(a) *Exhibit II—Technical Offer.* Technical Offer will be reviewed, evaluated and rated acceptable or unacceptable based on the three evaluation factors described in this provision. Award will be made on a SIN basis. A rating of "unacceptable" under any evaluation factor, by SIN, will result in an "unacceptable" rating overall for that SIN. Offers determined unacceptable for all proposed SIN(s) will be rejected.

(1) *Factor One—Corporate Experience.* Failure to provide the information as described in the 552.238-10 will result in an "unacceptable" rating for that SIN.

(i) * _____ * years corporate experience in the industry relevant to the scope of the solicitation.

(ii) Description of quality control measure(s) evaluated as set forth in FAR 12.208 and FAR 46.4.

(iii) Review the compensation plans as set forth in FAR 52.222-46 Evaluation of Compensation for Professional Employees and FAR 52.237-10 Identification of Uncompensated Overtime for acceptability.

(iv) Additional solicitation specific evaluation factors: * _____ *

(2) *Factor Two—Relevant Experience.* The Offeror must demonstrate the satisfactory completion of contracts/agreements/projects, which are of a similar size and scope as anticipated under this contract.

(i) Contracts/agreements/projects have been completed within two years of the submission of the offer.

(ii) In order for the projects to be acceptable, the Offeror must demonstrate a commitment to customer service, timeliness, quality of services and personnel provided, and resolution of conflicts.

(3) *Factor Three—Past Performance.* Past performance evaluation will be conducted as set forth in FAR 12.206 and FAR 15.3.

(i) Open Ratings Past Performance Evaluation will be considered, along with other information available to the Contracting Officer in determining the past performance rating of the Offeror. The government reserves the right to consider any other pertinent information.

(ii) The Government will evaluate the Offeror's performance in the following key areas: overall performance, reliability, order accuracy, delivery/timeliness, quality, business relations, personnel, customer support, and responsiveness. Those Offerors demonstrating a pattern of consistent acceptable performance will receive an acceptable rating.

(iii) Those Offerors with no relevant performance history will received a neutral rating.

(b) *Exhibit III—Price Offer.* (1) In order for the offer to be rated acceptable, the Contracting Officer must determine that the proposed pricing is fair, reasonable, and supportable, based on the submission of sufficient pricing information as outlined in the 552.238-65/CSP-1 and/or 552.238-66/CSP-2.

(2) The proposed pricing must be advantageous to the government. If the pricing offered is not "equal to or lower than" the lowest billable net rate, an acceptable justification must be provided.

(3) Additional evaluation factors unique to this solicitation: * _____ *

(c) The government reserves the right to award without discussions. Therefore, the Offeror's initial offer should contain the best terms from a price and technical standpoint.

(End of Provision)

552.238-12 Submission of Offers—Additional Instructions (CI-FSS-002).

As prescribed in 538.1203(b)(6), insert the following provision:

SUBMISSION OF OFFERS—ADDITIONAL INSTRUCTIONS (CI-FSS-002) (DATE)

Offerors are requested to submit a signed original and * _____ * copies of SF 1449 together with all addenda and attachments complete in every respect with the exception of oversized blueprints, drawings, or similar documents attached to the solicitation. Oversized blueprints, drawings, or similar documents are not required to be duplicated for the purpose of submitting a duplicate copy of the offer.

(End of Provision)

552.238-13 Impact of Mandatory Use on Quantities Ordered (B-FSS-97).

As prescribed in 538.1203(b)(7), insert the following provision:

IMPACT OF MANDATORY USE ON QUANTITIES ORDERED (B-FSS-97) (DATE)

This solicitation represents the first instance where the General Services Administration is the only agency listed as a mandatory user. It is not known how this change will impact on the quantities ordered under this contract.

(End of Provision)

552.238-14 Introduction of New Supplies/Services (INSS) (L-FSS-400).

As prescribed in 538.1203(b)(8), insert the following provision:

INTRODUCTION OF NEW SUPPLIES/SERVICES (INSS) (L-FSS-400) (DATE)

(a) *Definition. Introduction of New Supplies/Services Special Item Number (INSS SIN)* means a new or improved supply or service within the scope of the Federal Supply Schedule (FSS), but not currently

available under any Federal Supply Service contract—that provides a new service, function, task, or attribute that may provide a more economical or efficient means for ordering activities to accomplish their missions. It may significantly improve an existing supply or service. It may be a supply or service existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new or improved supplies or services via INSS SIN at any time by clearly identify the INSS SIN item in the offer.

(c) The Contracting Officer has the sole discretion to determine whether a supply or service will be accepted as an INSS SIN item. The Contracting Officer will evaluate and process the offer and may perform a technical review. The INSS SIN provides temporary placement until the Contracting Officer formally categorizes the new supply or service.

(d) If the Contractor has an existing schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSS SIN item in accordance with 552.238–67, Modifications (Multiple Award Schedule) (currently 552.243–72).

(End of Provision)

552.238–15 Contract Price List (I–FSS–600).

As prescribed in 538.1203(b)(9), insert the following provision:

CONTRACT PRICE LIST (I–FSS–600) (DATE)

(a) *Electronic Contract Data.* (1) At the time of award, the Contractor will be provided instructions and is responsible for submitting electronic contract data in a prescribed electronic format as required by clause 552.238–71, Submission and Distribution of Authorized FSS Schedule Price Lists.

(2) The Contractor will have a choice to transmit its file submissions electronically through Electronic Data Interchange (EDI) in accordance with the Federal Implementation Convention (IC) or use the application made available at the time of award. The Contractor's electronic files must be complete; correct; readable; virus-free; and contain only those supplies and services, prices, and terms and conditions that were accepted by the Government. They will be added to GSA's electronic ordering system known as GSA *Advantage!*[®], a menu-driven database system that provides online access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic order. The Contractor's electronic files must be received no later than sixty (60) days after award, unless addition time is approved by the Contracting Officer. Contractors should refer to clause 552.238–58 GSA *Advantage!*[®] (I–FSS–597) for further information.

(3) Further details on EDI, ICs, and GSA *Advantage!*[®] can be found in clause 552.238–59 Electronic Commerce—FACNET (I–FSS–599).

(4) The Contractor is encouraged to place the GSA identifier (logo) on their website for

those supplies or services covered by this contract. The logo can link to the Contractor's FSS price list. The identifier URL is located at www.gsa.gov/logo. All resultant "web price lists" shown on the Contractor's website must be in accordance with section (b)(3)(ii) of this clause and nothing other than what was accepted/awarded by the Government may be included. If the Contractor elects to use contract identifiers on its website (either logos or contact number) the website must clearly distinguish between those items awarded on the contract and any other items offered by the Contractor on an open market basis.

(5) The Contractor is responsible for keeping all electronic catalog data up to date; e.g., prices, supply deletions and replacements.

(b) *FSS Price List.* (1) When requested by an ordering activity, the Contractor must prepare, print, and distribute a paper FSS Price List as required by clause 552.238–71 Submission and Distribution of Authorized FSS Price Lists. This must be done as set forth in this paragraph (b).

(2) When required, the Contractor must prepare a paper FSS Price List by either:

(i) Using the commercial catalog, price list, schedule, or other document as accepted by the Government, showing accepted discounts, and removing all items, terms, and conditions not accepted by the Government by lining out those items or by a stamp across the face of the item stating "NOT UNDER CONTRACT" or "EXCLUDED"; or

(ii) Composing a price list in which only those items, terms, and conditions accepted by the Government are included, and which contain only net prices, based upon the commercial price list less discounts accepted by the Government. In this instance, the Contractor must show on the cover page the notation, "Prices Shown Herein are Net (discount deducted)".

(3) The FSS Price List format must include the following information:

(i) *Cover page.* The cover page should include the following information:

- (A) Authorized FSS Price List.
- (B) On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA *Advantage!*[®], a menu-driven database system. The INTERNET address GSA *Advantage!*[®] is: www.GSAAdvantage.gov.
- (C) Schedule Title.
- (D) FSC Group, Part, and Section.
- (E) FSC Class(es)/Product Code(s) and/or Service Codes (as applicable).
- (F) Contract number.

(G) For more information on ordering from Schedules click on the link titled "Schedules" under Acquisition Solutions from at gsa.gov/fas.

- (H) Contract period.
- (I) Contractor's name, address, email, fax number and phone number (as applicable).
- (J) Contractor's internet address/website where schedule information can be found (as applicable). Contract administration source (if different from preceding entry).
- (K) Business size.

(L) This price list is current through modification/refresh number: (sequentially numbered).

(ii) *Customer information.* The following information should be placed under this heading in consecutively numbered paragraphs in the sequence set forth in this provision. If this information is placed in another part of the FSS Price List, a table of contents must be shown on the cover page that refers to the exact location of the information.

1. Table of awarded special item number(s) with appropriate cross-reference to category descriptions.

2. Maximum order.

3. Minimum order.

4. Geographic coverage (delivery area).

5. Point(s) of Production (city, county, and State or foreign country). All items are Trade Agreement Act, as amended, compliant.

6. Discount from list prices or statement of net price.

7. Quantity discounts.

8. Prompt payment terms.

9a. Notification that payment by credit cards must be accepted at or below the micro-purchase threshold.

9b. Notification whether payment by credit cards are accepted or not accepted above the micro-purchase threshold.

10. Foreign items (list items by country of origin).

11a. Time of delivery. (Contractor insert number of days.)

11b. Expedited Delivery. The Contractor will insert the sentence "Items available for expedited delivery are noted in this price list." under this heading. The Contractor may use a symbol of its choosing to highlight items in its price lists that have expedited delivery.

11c. Overnight and 2-day delivery. The Contractor will indicate whether overnight and 2-day delivery are available. Also, the Contractor will indicate that the schedule customer may contact the Contractor for rates for overnight and 2-day delivery.

11d. Urgent Requirements. The Contractor will note in its price list the "Urgent Requirements" clause of its contract and advise agencies that they can also contact the Contractor's representative to effect a faster delivery.

12. F.O.B. point(s).

13a. Ordering address(es).

13b. Ordering procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405–3.

14. Payment address(es).

15. Warranty provision.

16. Export packing charges, if applicable.

17. Terms and conditions of payment by credit cards acceptance (any thresholds above the micro-purchase level).

18. Terms and conditions of rental, maintenance, and repair (if applicable).

19. Terms and conditions of installation (if applicable).

20. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable).

20a. Terms and conditions for any other services (if applicable).

21. List of service and distribution points (if applicable).

22. List of participating dealers (if applicable).

23. Preventive maintenance (if applicable).
24a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants).

24b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. Contractor's Web site or other location). The EIT standards can be found at: *www.Section508.gov*.

25. Data Universal Number System (DUNS) number.

26. Notification regarding registration in Central Contractor Registration (CCR) database.

27a. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.

27b. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subContractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item.

(4) When requested, the Contractor must provide, in the format requested by the Contracting Officer (electronic or paper) of the FSS Price Lists (including covering letters) within 30 days after the date of award. Accuracy of information and computation of prices is the responsibility of the Contractor. Note: The removal discussed in subdivision (b)(2) of this provision must be accomplished prior to the printing and distribution of the FSS Lists.

(5) Inclusion of incorrect information (electronically or paper) will cause the Contractor to reprint/resubmit/correct and redistribute the FSS Price List, and may constitute sufficient cause for Cancellation, applying the provisions of 52.212-4, Contract Terms and Conditions (paragraph (m), Termination for Cause), and application of any other remedies as provided by law—including monetary recovery.

(6) In addition, one copy of the FSS Price List must be submitted to the: GSA, Federal Acquisition Service, National Customer Service Center (QC0CC), Bldg. #4, 1500 E. Bannister Road, Kansas City, MO 64131-3009, Telephone: 1 (800) 488-3111.

Alternate I—use for Schedule 70 only. Replace paragraph (b) of the base clause with the following paragraph (b) (Date):

(b) *FSS Price List.* (1) When submitting a paper offer, the Offeror should prepare a paper Information Technology Schedule Price List in accordance with the Attachment titled "Guidelines for Format and Content of Authorized Information Technology Schedule Price List". Two (2) copies of the proposed Information Technology Schedule Price List shall be submitted with the Offeror's proposal.

(2) The Contracting Officer will return one copy of the Authorized Information Technology Schedule Price List to the Contractor with the notification of contract award. In accordance with GSAR clause 552.238-71 the Contractor may print and distribute the awarded price list without written approval from the Contracting Officer. The price list must include all applicable terms and conditions of the cited contract. The Contractor will be responsible for the accuracy of the price list.

(3) As an option, the Contractor may provide one (1) copy (including cover letter) of the Authorized Information Technology Schedule Price List to the Contracting Officer for review prior to distribution. Accuracy of information and computation of prices is the responsibility of the Contractor.

(4) The Contractor may formally print and distribute the Authorized Information Technology Schedule Price List. Inclusion of incorrect information (electronically or in paper) will cause the Contractor to reprint/resubmit/correct and redistribute the price list, and may constitute sufficient cause for Cancellation, applying the provisions of 52.212-4, Contract Terms and Conditions (paragraph (m), Termination for Cause) and application of any other remedies as provided by law—including monetary recovery.

(6) In addition, one copy of the Authorized Information Technology Schedule Price List must be submitted to the: GSA, Federal Acquisition Service, National Customer Service Center (QC0CC), Bldg. #4, 1500 E. Bannister Road, Kansas City, MO 64131-3009, Telephone: 1 (800) 488-3111.

(End of Provision)

552.538-16 Ordering Information (Federal Supply Schedules).

As prescribed in 538.1203(b)(10), insert the following provision:

ORDERING INFORMATION (FEDERAL SUPPLY SCHEDULES) (DATE)

(a) In accordance with the Placement of Orders clause of this solicitation, the Offeror elects to receive orders placed by either [] facsimile transmission or [] computer-to-computer Electronic Data Interchange (EDI).

(b) An Offeror electing to receive computer-to-computer EDI is requested to indicate the name, address, and telephone number of the representative to be contacted regarding establishment of an EDI interface:

Name: _____
Address: _____
Telephone number: _____

(c) An Offeror electing to receive orders by facsimile transmission is requested to indicate the telephone number(s) for facsimile transmission equipment where orders should be forwarded:

Telephone number: _____
Telephone number: _____
Telephone number: _____

(d) For mailed orders, the Offeror is requested to include the postal mailing address(es) where paper form orders should be mailed.

Name: _____

Address: _____

(e) Offerors marketing through dealers are requested to indicate whether those dealers will be participating in the proposed contract:

YES _____ NO _____

If "yes" is checked, ordering information to be inserted in paragraphs (b) or (c) in this section shall reflect that in addition to Offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the Offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule price list.

(End of Provision)

552.238-17 Contractor's Remittance (Payment) Address.

As prescribed in 538.1203(b)(11), insert the following provision:

CONTRACTOR'S REMITTANCE (PAYMENT) ADDRESS (DATE)

(a) Payment by electronic funds transfer (EFT) is the preferred method of payment. However, under certain conditions, the ordering activity may elect to make payment by check. The Offeror shall indicate the payment address to which checks should be mailed for payment of proper invoices submitted under a resultant contract:

Payment: _____
Address: _____

(b) Offeror shall furnish by attachment to this solicitation, the remittance (payment) addresses of all authorized participating dealers receiving orders and accepting payment by check in the name of the Contractor in care of the dealer, if different from their ordering address(es) specified elsewhere in this solicitation. If a dealer's ordering and remittance address differ, both must be furnished and identified as such.

(c) All Offerors are cautioned that if the remittance (payment) address shown on an actual invoice differs from that shown in paragraph (b) of this provision or on the attachment, the remittance address(es) in paragraph (b) of this provision or attached will govern. Payment to any other address, except as provided for through EFT payment methods, will require an administrative change to the contract.

Note: All orders placed against a Federal Supply Schedule contract are to be paid by the individual ordering activity placing the order. Each order will cite the appropriate ordering activity payment address, and proper invoices should be sent to that address. Proper invoices should be sent to GSA only for orders placed by GSA. Any other ordering activity's invoices sent to GSA will only delay your payment.

(End of Provision)

552.238-18 Final Proposal Revision (L-FSS-101).

As prescribed in 538.1203(b)(12), insert the following provision:

FINAL PROPOSAL REVISION (L-FSS-101) (DATE)

(a) Upon the conclusion of discussions the Contracting Officer will request a final proposal revision. Oral requests will be confirmed in writing.

(b) The request will include—

- (i) Notice that discussions are concluded;
- (ii) Notice that this is the opportunity to submit a final proposal revision;
- (iii) The specified cutoff date and time;
- (iv) A statement that any modification proposed as a result of the final proposal revision must be received by the date and time specified and will be subject to the Late Submissions, Modifications, and Withdrawals of Proposals provision of this solicitation.

(c) The Contracting Officer will not reopen discussions after receipt of final proposal revisions unless it is clearly in the interests of the Government to do so. If discussions are reopened, the Contracting Officer will issue an additional request for final proposal revision.

(d) It is the Contracting Officer's desire to conclude negotiations by * ____*.

(End of Provision)

552.238-19 Use of Non-Government Employees to Review Offers.

As prescribed in 538.1203(b)(13), insert the following provision:

USE OF NON-GOVERNMENT EMPLOYEES TO REVIEW OFFERS (DATE)

(a) The Government may employ individual technical consultants/advisors/contractors from the listed organizations in this provision to review limited portions of the technical, management and price proposals to assist the government in both pre-award and post-award functions.

(b) These representatives will be used to advise on specific technical, management, and price matters and shall not, under any circumstances, be used as voting evaluators. However, the Government may consider the advice provided in its evaluation process. In addition, contractor personnel may be used in specific contract administration tasks (e.g., administrative filing, review of deliverables, etc.).

(c) If so utilized, personnel from these organizations will be required to execute a non-disclosure and organizational conflict of interest statements.

(End of Provision)

552.238-20 Authorized Negotiators (K-FSS-1).

As prescribed in 538.1203(b)(14), insert the following provision:

AUTHORIZED NEGOTIATORS (K-FSS-1) (DATE)

The offeror shall, in the spaces provided, fill in the names of all persons authorized to negotiate with the Government in connection with this request for proposals or quotations:

* _____ *
* _____ *
* _____ *

(List the names, titles, telephone numbers and electronic mail address of the authorized negotiators.)

(End of Provision)

552.238-21 Authentication Supplies and Services (CI-FSS-52).

As prescribed in 538.1203(c)(1), insert the following clause:

AUTHENTICATION SUPPLIES AND SERVICES (CI-FSS-52) (DATE)

(a) *General Background.* (1) Authentication Supplies and Services provide for authentication of individuals for purposes of physical and logical access control, electronic signature, and performance of E-business transactions and delivery of Government services. Authentication Supplies and Services consist of hardware, software components and supporting services that provide for identity assurance.

(2) Homeland Security Presidential Directive 12 (HSPD-12), "Policy for a Common Identification Standard for Federal Employees and Contractors" establishes the requirement for a mandatory Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and Contractor employees assigned to Government contracts in order to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Further, the Directive requires the Department of Commerce to promulgate a Federal standard for secure and reliable forms of identification within six months of the date of the Directive. As a result, the National Institute of Standards and Technology (NIST) released Federal Information Processing Standard (FIPS) 201: Personal Identity Verification of Federal Employees and Contractors on February 25, 2005. FIPS 201 requires that the digital certificates incorporated into the Personal Identity Verification (PIV) identity credentials comply with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework. In addition, FIPS 201 requires that Federal identity badges referred to as PIV credentials, issued to Federal employees and Contractors comply with the Standard and associated NIST Special Publications 800-73, 800-76, 800-78, and 800-79.

(b) *Special Item Numbers.* The General Services Administration has established the E-Authentication Initiative (see URL: <http://cio.gov/eaauthentication>) to provide common infrastructure for the authentication of the public and internal federal users for logical access to Federal E-Government applications and electronic services. To support the government-wide implementation of HSPD-12 and the Federal E-Authentication Initiative, GSA is establishing the following Special Item Numbers (SINs):

- SIN 132-60: Access Certificates for Electronic Services (ACES) Program. This program provides identity management and authentication services and ACES digital

certificates for use primarily by external end users to access Federal Government electronic services and transactions in accordance with the X.509 Certificate Policy for the Federal ACES Program.

- SIN 132-61: PKI Shared Service Providers (PKI SSP) Program. This program provides PKI services and digital certificates for use by Federal employees and Contractors to the Federal Government in accordance with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework.

- SIN 132-62: HSPD-12 Supply and Service Components. SIN 132-62 is established for supplies and services for agencies to implement the requirements of HSPD-12, FIPS-201 and associated NIST special publications. The HSPD-12 implementation components specified under this SIN are:

- PIV Enrollment and Registration Services and Supplies Hardware and Software Supplies Deployment Services\Managed Service;
- PIV Systems Infrastructure Services and Supplies Hardware and Software Supplies Deployment Services\Managed Service;
- PIV Card Management and Production Services, and Supplies Hardware and Software Products Deployment Services\Managed Services;
- PIV Card Finalization Services and Supplies Hardware and Software Products Deployment Services\Managed Services;
- PIV System Integration Services, and Supplies (Bundled) "Pure" Integration Services Turn-Key Integrated Services and Supplies Managed Services;
- Physical Access Control Supplies and Services;
- Logical Access Control Supplies and Services; and
- Approved FIPS 201-Compliant Supplies and Services.

(c) *Qualification Information.* (1) All of the supplies and services for the SINs listed in paragraph (b) of this clause must be qualified as being compliant with Governmentwide requirements before they will be included on a FSS Information Technology (IT) Schedule contract. The Qualification Requirements and associated evaluation procedures against the Qualification Requirements for each SIN and the specific Qualification Requirements for HSPD-12 implementation components are presented at the following URL: <http://www.idmanagement.gov>.

(2) In addition, the National Institute of Standards and Technology (NIST) has established the NIST Personal Identity Verification Program (NPIVP) to evaluate integrated circuit chip cards and supplies against conformance requirements contained in FIPS 201. FSS has established the FIPS 201 Evaluation Program to evaluate other supplies needed for agency implementation of HSPD-12 requirements where normative requirements are specified in FIPS 201 and to perform card and reader interface testing for interoperability. Products that are approved as FIPS-201 compliant through these evaluation and testing programs may be offered directly through SIN 132-62 under the category "Approved FIPS 201-Compliant Products and services."

(d) *Qualification Requirements.* Offerors proposing supplies and services under

Special Item Numbers (SINs) 132–60, 132–61 and 132–62 are required to provide the following:

(1) Proposed items must be determined to be compliant with Federal requirements for that Special Item Number. Qualification Requirements and procedures for the evaluation of supplies and services are posted at the URL: <http://www.idmanagement.gov>. GSA will follow these procedures in qualifying Offeror's supplies and services against the Qualification Requirements applicable to SIN. Offerors must submit all documentation certification letter(s) for HSPD–12, SINs 132–60, 132–61 and 132–62 at the same time as submission of proposal. Award will be dependent upon receipt of official documentation from the Acquisition Program Management Office (APMO) listed in this clause verifying satisfactory qualification against the Qualification Requirements of the proposed SIN(s).

(2) After award, Contractor agrees that certified supplies and services will not be offered under any other SIN on any FSS Multiple Award Schedule.

(3)(i) If the Contractor changes the supplies or services previously qualified, GSA may require the Contractor to resubmit the supplies or services for re-qualification.

(ii) If the Federal Government changes the qualification requirements or standards, Contractor must resubmit the supplies and services for re-qualification.

(e) *Demonstrating Conformance*. The Federal Government has established Qualification Requirements for demonstrating conformance with the Standards. The following Web sites provide additional information regarding the evaluation and qualification processes:

(1) For Access Certificates for Electronic Services (ACES) and PKI Shared Service Provider (SSP) Qualification Requirements and evaluation procedures: <http://www.idmanagement.gov>;

(2) For HSPD–12 Product and Service Components Qualification Requirements and evaluation procedures: <http://www.idmanagement.gov>;

(3) For FIPS 201 compliant supplies and services qualification and approval procedures: <http://www.csrc.nist.gov/piv-project> and <http://www.smart.gov>.

(f) *Acquisition Program Management Office (APMO)*. GSA has established the APMO to provide centralized technical oversight and management regarding the qualification process to industry partners and Federal agencies. Contact the following APMO for information on the E-Authentication Qualification process.

(1) The Acquisition Program Management Office point-of-contact for Access Certificates for Electronic Services (ACES—SIN 132–60) is: Stephen P. Duncan, Program Manager, E-Authentication Program Management Office, 2011 Crystal Drive, Suite 911, Arlington, VA 22202, stephen.duncan@gsa.gov, 703–872–8537.

(2) The Acquisition Program Management Office Point-of-contact for Shared Service Provider (SSP) Program (SIN 132–61) is: Judith Spencer, Office of Electronic Gov't & Technology, 1800 F Street, NW., Room 2011,

Washington, DC 20405,

Judith.spencer@gsa.gov, 202–208–6576.

(3) The Acquisition Program Management Office point-of-contact for HSPD–12 Products and Services or bundled Solutions (SIN 132–62) is: Mike Brooks, Director, Center for Smartcard Solutions, Office of Center for Smartcard Solutions, 1800 F Street, NW., Room 5010, Washington, DC 20405, 202–501–2765 (telephone), 202–208–3133 (fax).

(4) The Acquisition Program Management Office point-of-contact for FIPS 201 Evaluation Program Approved Products List (Sin 132–62) is: April Giles, FIPS 201 Evaluation Program Chief Architect, Identity Management Division, GSA Office of Governmentwide Policy, 202–501–1123 (telephone).

(End of Provision)

552.238–22 Indemnification and Liability (CI–FSS–053).

As prescribed in 538.1203(c)(2), insert the following clause:

INDEMNIFICATION AND LIABILITY (CI–FSS–053) (DATE)

For services related to hazardous substances or wastes under this contract, it is understood that the General Services Administration (GSA) and/or Department of Veterans Affairs (VA) does not become an owner, operator, generator, arranger, or transporter of hazardous substances or wastes by executing a schedule contract or by the award of a task order by an ordering activity. As a result, GSA/VA shall not incur any liability under any environmental laws for contamination to the extent resulting from the negligent acts or omissions of a schedule Contractor performing the services. In addition, the Contractor shall be liable for, and shall indemnify and hold harmless the GSA/VA against, all actions or claims for loss of or damage to property or the injury or death of persons to the extent resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees. EXCEPTION: The aforementioned does not apply when GSA/VA is the ordering activity and is procuring the services for property it owns and/or has legal jurisdiction.

(End of Clause)

552.238–23 Organizational Conflicts of Interest (CI–FSS–054).

As prescribed in 538.1203(c)(3), insert the following clause:

ORGANIZATIONAL CONFLICTS OF INTEREST (CI–FSS–054) (DATE)

(a) *Definitions*.

Contractor means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

Contractor and its affiliates and *Contractor or its affiliates* refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently

merges or affiliates, or any other successor or assignee of the Contractor.

An *Organizational conflict of interest* exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

(b) The Contractor shall promptly notify the Ordering Activity of any known or reasonably anticipated potential organizational conflicts of interest when submitting a quote or proposal in response to a solicitation for services, or once the conflict of interest becomes apparent, whichever circumstance arises first.

(c) The Contractor shall not provide any personnel to perform services under this contract that it knows or reasonably anticipates will result in an individual conflict of interest. In the event that a conflict of interest arises involving the Contractor's personnel, the Contractor shall promptly notify the Ordering Activity of the facts and circumstances and take all necessary steps to mitigate or eliminate the conflict of interest while ensuring acceptable service delivery.

(d) To avoid an organizational, individual or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractor(s), its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

(End of Clause)

552.238–24 Section 508 Compliance (CI–FSS–056).

As prescribed in 538.1203(c)(4), insert the following clause:

SECTION 508 COMPLIANCE (CI–FSS–056) (DATE)

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following:

Note: Contractor should insert the Contractor's Web site or other location where full details can be found.

The EIT standard can be found at: www.Section508.gov.

(End of Clause)

552.238–25 Characteristics of Electric Current (C–FSS–412).

As prescribed in 538.1203(c)(5), insert the following clause:

CHARACTERISTICS OF ELECTRIC CURRENT (C-FSS-412) (DATE)

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

(End of Clause)

552.238-26 Separate Charge For Performance Oriented Packaging (POP) (D-FSS-447).

As prescribed in 538.1203(c)(6), insert the following clause:

SEPARATE CHARGE FOR PERFORMANCE ORIENTED PACKAGING (POP) (D-FSS-447) (DATE)

(a) Offerors are requested to quote a separate charge for providing preservation, packaging, packing, and marking and labeling of domestic and overseas HAZMAT SURFACE SHIPMENTS in compliance with all requirements of the following:

(1) International Maritime Dangerous Goods (IMDG) Code established by the International Maritime Organization (IMO) in accordance with the United Nations (UN) Recommendations on the Transportation of Dangerous Goods (Note: Marine pollutants must be labeled as required by the IMDG Code);

(2) The performance oriented packaging requirements contained in the U. S. Department of Transportation (DOT) Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) effective October 1, 1991 (Note: The "Combustible" and "ORM" classifications contained these requirements are not permitted by the IMDG Code and can not be used);

(3) Occupational Safety and Health Administration (OSHA) Regulations 29 CFR Parts 1910.101-1910.120 and 1910.1000-1910.1500, relating to Hazardous and Toxic Substances; and

(4) Any preservation, packaging, packing, and marking and labeling requirements contained elsewhere in the solicitation.

(b) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this clause or on a separate attachment. These separate charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.

ITEMS (NSN'S, SIN'S or Descriptive Name of Articles, as appropriate) Packaging

Charge for Performance Oriented

(c) Ordering activities will not be obligated to utilize the Contractor's services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall

provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor's contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

(d) The test reports showing compliance with package requirements will be made available to contract administration/management representatives upon request.

(End of clause)

552.238-27 Special Packing (D-FSS-464).

As prescribed in 538.1203(c)(7), insert the following clause:

SPECIAL PACKING (D-FSS-464) (DATE)

(a) Bidders are requested to furnish, in the spaces provided elsewhere in this invitation, additional charges for Level B and Level A preservation, packaging and packing (hereinafter referred to as "packing") in accordance with * ____ *. These additional charges shall include any differentials in transportation and other costs incidental to handling and shipment of the items to destination.

(b) Additional charges submitted for Level B and/or Level A packing will not be considered in evaluating bids. However, award will be made for such packing to the bidder receiving award on the basic item when the prices offered for the higher level of packing are considered reasonable.

(c) Ordering activities will not be obligated to utilize the Contractor's services for special packing awarded under this invitation, and they may obtain such services elsewhere if desired. However, the Contractor shall fulfill all orders for items packed Level B or Level A at the accepted price when such packing is specified on the purchase order.

(End of clause)

552.238-28 Export Packing (D-FSS-465).

As prescribed in 538.1203(c)(8), insert the following clause:

EXPORT PACKING (D-FSS-465) (DATE)

(a) Offerors are requested to quote, in the price list accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial and/or Government export packing. Government export packing, if offered, shall be in accordance with * ____ *. If commercial export packing is offered, the offer or price list shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to utilize the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export packed when such packing is specified on the purchase order.

(End of clause)

552.238-29 Marking and Documentation Requirements Per Shipment (D-FSS-471).

As prescribed in 538.1203(c)(9), insert the following clause:

MARKING AND DOCUMENTATION REQUIREMENTS PER SHIPMENT (D-FSS-471) (DATE)

It shall be the responsibility of the ordering office to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract. Set forth in this clause is the minimum information and documentation that will be required for shipment. In the event the ordering office fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering office and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the stated prerequisites in this clause:

Direct *Shipments*. The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

(a) Traffic Management or Transportation Officer at FINAL destination.

(b) Ordering Supply Account Number.

(c) Account number.

(d) Delivery Order or Purchase Order Number.

(e) National Stock Number, if applicable; or Contractor's item number.

(f) Box ____ of ____ Boxes.

(g) Nomenclature (brief description of items).

(End of clause)

552.238-30 Inspection (E-FSS-521-D).

As prescribed in 538.1203(c)(10), insert the following clause:

INSPECTION (E-FSS-521-D) (DATE)

Inspection of all purchases under this contract will be made at destination by an authorized Government representative.

(End of clause)

552.238-31 Emergency/Expedited Delivery Times (I-FSS-051).

As prescribed in 538.1203(c)(11), insert the following clause:

EMERGENCY/EXPEDITED DELIVERY TIMES (I-FSS-051) (DATE)

In the case of an Emergency, ordering activities may require 24-hour access or delivery. The Offeror is requested to annotate on the offer or by a separate attachment a willingness to provide this service and identify any additional cost associated with such request.

(a) *AbilityOne (formerly JWOD) (NIB/NISH) RETURN POLICY (Applicable to all AbilityOne (formerly JWOD) (NIB/NISH) distributors)*. The AbilityOne (formerly JWOD) Program stands behind the quality of its supplies and will replace or credit authorized AbilityOne (formerly JWOD) distributors 100% of the purchase price for any merchandise that is defective upon

receipt by the Contractor and/or its carrier. In such cases, the distributor should contact the AbilityOne (formerly JWOD) Program for instructions on whether to dispose of or return the defective supply to the manufacturing agency. NIB and NISH must be notified of damaged supply (s) within 48 hours of receipt of supply by the Contractor. Any defective merchandise must be identified and returned within one year of receipt.

(b) In the case of damaged merchandise that was shipped FOB Destination, the distributor should contact the AbilityOne (formerly JWOD) Program for instructions on handling the damaged goods. Damaged goods must be identified in writing within five (5) days of signing the bill of lading and damage should be noted on the bill of landing before the receiving personnel sign for the shipment. For damaged merchandise that was shipped FOB Origin (using the distributor's freight carriers), the distributor must file a claim with the freight carrier.

(c) In addition to paragraph (a) of this clause, the AbilityOne (formerly JWOD) Program allows returns on a limited basis for supplies that are not damaged or defective but unsold by wholesale or commercial distributors (see attached AbilityOne (formerly JWOD) Return Policy effective May 1, 2003.

(End of clause)

552.238-32 Delivery Prices (F-FSS-202-G).

As prescribed in 538.1203(c)(12), insert the following clause:

DELIVERY PRICES (F-FSS-202-G) (DATE)

(a) Prices offered must cover delivery as provided in this clause, to destinations located within the 48 contiguous States and the District of Columbia.

(1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall (a) place the notation "Delivery Service Requested" on bills of lading covering such shipments, and (b) pay such charge and add the actual cost thereof as a separate item to his invoice.

(2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this clause.

(3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (a)(2) of this clause.

(b) The Offeror is requested to indicate whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico:

Table with 3 columns: Item, (Yes), (No). Row 1: Alaska

Table with 3 columns: Item, (Yes), (No). Row 1: Hawaii, Row 2: Puerto Rico

(c) When deliveries are made to destinations outside the contiguous 48 States; i.e., Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b) of this clause, the following conditions will apply:

(1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247-38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.

(2) The right is reserved to ordering agencies to furnish Government bills of lading.

(End of clause)

552.238-33 Additional Service Charge for Delivery Within Consignee's Premises (F-FSS-244-B).

As prescribed in 538.1203(c)(13), insert the following clause:

ADDITIONAL SERVICE CHARGE FOR DELIVERY WITHIN CONSIGNEE'S PREMISES (F-FSS-244-B) (DATE)

(a) Offerors are requested to insert, in the spaces provided in this clause or by attachment hereto, a separate charge for "Delivery Within Consignee's Premises" applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.

(b) Ordering activities are not obligated to issue orders on the basis of "Delivery Within Consignee's Premises," and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish "Delivery Within Consignee's Premises" at the

additional charge awarded. When an ordering activity issues an order on the basis of "Delivery Within Consignee's Premises" at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery "F.o.b. Destination, Within Consignee's Premises" in accordance with FAR 52.247-35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify "Delivery Within Consignee's Premises" on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for "Delivery Within Consignee's Premises" will be shown as separate entries on the order.

ITEMS (NSN's or Special Item Numbers or Descriptive Name of Articles)

ADDITIONAL CHARGE (Per shipping container) FOR "DELIVERY WITHIN CONSIGNEE'S PREMISES"

552.238-34 Additional Service Charge for Delivery Within Consignee's Premises (Specification for Inside Delivery) (F-FSS-244-C).

As prescribed in 538.1203(c)(14), insert the following clause:

ADDITIONAL SERVICE CHARGE FOR DELIVERY WITHIN CONSIGNEE'S PREMISES (F-FSS-244-C) (DATE)

The Government reserves the right to require "delivery within consignee's premises" on any order placed against this contract. When "Inside Delivery" is specified on the purchase order the Contractor will be required to provide delivery in accordance with FAR 52.247-35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for this service. The Contractor will be paid for this additional service at the following rates which will be shown as a separate item on the order:

Table with 2 columns: Number of units of * to be delivered "within consignee's premises", Rate. Rows with asterisks for data entry.

(End of clause)

552.238-35 Shipping Points (F-FSS-712-B).

As prescribed in 538.1203(c)(15), insert the following clause:

SHIPPING POINTS (F-FSS-712-B) (DATE)

Offerors submitting F.O.B. origin (or F.O.B. shipping point) prices shall indicate, in the spaces provided, the complete address (street, city, and State) from which the items

offered will be shipped, and the name of the rail carrier serving plant (if any). If more than one shipping point is designated for an item, ordering activities will have the option of specifying the shipping point unless the Offeror otherwise qualifies his offer:

Item Nos.	Name of facility	Address	Rail carrier
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(End of clause)

552.238-36 Contact for Contract Administration (G-FSS-900-C).

As prescribed in 538.1203(c)(16), insert the following clause:

CONTACT FOR CONTRACT ADMINISTRATION (G-FSS-900-C) (DATE)

(a) Offerors should complete paragraphs (a) and (b) if providing both domestic and overseas delivery. Complete paragraph (a) if providing domestic delivery only. Complete paragraph (b) if providing overseas delivery only.

(b) The Contractor shall designate a person to serve as the contract administrator for the contract both domestically and overseas. The contract administrator is responsible for overall compliance with contract terms and conditions. The contract administrator is also the responsible official for issues concerning 552.238-74, Industrial Funding Fee and Sales Reporting (July 2003), including reviews of Contractor records. The Contractor's designation of representatives to handle certain functions under this contract does not relieve the contract administrator of responsibility for contract compliance. Any changes to the designated individual must be provided to the Contracting Officer in writing, with the proposed effective date of the change.

(c) *Domestic:*

Name
Title
Address
Zip Code
Telephone No. (_____) Fax No.
E-Mail Address

(d) *Overseas:* Overseas contact points are mandatory for local assistance with the resolution of any delivery, performance, or quality complaint from customer agencies. (Also, see the requirement in 552.238-47, Parts and Service (I-FSS-594).) At a minimum, a contact point must be furnished for each area in which deliveries are contemplated, e.g., Europe, South America, Far East, etc.

Name
Title
Address
Zip Code
Telephone No. (_____) Fax No.
E-Mail Address

(End of clause)

552.238-37 Vendor Managed Inventory (VMI) Program (MAS) (G-FSS-906).

As prescribed in 538.1203(c)(17), insert the following clause:

VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAS) (G-FSS-906) (DATE)

(a) The term "Vendor Managed Inventory" describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with customers under a Blanket Purchase Agreement.

(End of clause)

552.238-38 Order Acknowledgement (G-FSS-907).

As prescribed in 538.1203(c)(18), insert the following clause:

ORDER ACKNOWLEDGEMENT (G-FSS-907) (DATE)

Contractors shall acknowledge only those orders which state "Order Acknowledgement Required." These orders shall be acknowledged within 10 days after receipt. Such acknowledgement shall be sent to the activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

(End of clause)

552.238-39 Urgent Requirements (I-FSS-140-B).

As prescribed in 538.1203(c)(19), insert the following clause:

URGENT REQUIREMENTS (I-FSS-140-B) (DATE)

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering agency, agencies are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the

ordering agency, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

(End of clause)

552.238-40 Post-Award Samples (H-FSS-505).

As prescribed in 538.1203(c)(20), insert the following clause:

POST-AWARD SAMPLES (H-FSS-505) (DATE)

(a) Within 20 days after approval of the brochure proof, Contractors who have received an award on carpet items are required to:

(1) Furnish the Contracting Officer with 5 sets (by sets, not loosely packed) of samples approximately 12 by 12 inches of all patterns and/or colors awarded.

(2) Furnish such additional sets of samples as may be requested during the contract period.

(3) Furnish a set of small cuttings approximately 3 by 5 inches of each quality carpet awarded to all ordering activities to which brochures are mailed, except that such sample cuttings need not be furnished when the brochure distributed by the Contractor was fully swatched with all available colors for each quality carpet awarded.

(4) Furnish sets of 3 by 5 inch samples to any agency when specifically requested to do so notwithstanding the fact that the brochure was fully swatched.

(5) Furnish the Contracting Officer with one 18 inch by 24 inch sample of each quality carpet and in each color or pattern covered by the contract, with the clear understanding that the Government reserves the right at its option to request one additional 18 inch by 24 inch sample in any one or all qualities in each pattern and/or color specified, and the Contractor agrees to honor such request. These samples will be returned at the Contractor's expense after expiration of the contract provided they have not been consumed as a result of the Government's sample requirements.

(b) Each individual sample, or cutting, shall bear the Contractor's name, manufacturer's name, brand or quality name, pattern or color number and name, and the National Stock Number.

(End of clause)

552.238-41 Guaranteed Minimum (I-FSS-106).

As prescribed in 538.1203(c)(21), insert the following clause:

GUARANTEED MINIMUM (I-FSS-106) (DATE)

The minimum that the Government agrees to order during the period of this contract is \$2,500. If the Contractor receives total orders for less than \$2,500 during the term of the contract, the Government will pay the difference between the amount ordered and \$2,500:

(a) Payment of any amount due under this clause shall be contingent upon the Contractor's timely submission of GSA Form 72A reports (see GSAR 552.238-74 "Industrial Funding Fee and Sales Reporting") during the period of the contract and receipt of the close-out sales report pursuant to GSAR 552.238-74.

(b) The guaranteed minimum applies only if the contract expires or contract cancellation is initiated by the Government. The guaranteed minimum does not apply if the contract is terminated for cause or if the contract is canceled at the request of the Contractor.

(End of clause)

552.238-42 Restriction on the Acceptance of Orders (I-FSS-107).

As prescribed in 538.1203(c)(22), insert the following clause:

RESTRICTION ON THE ACCEPTANCE OF ORDERS (I-FSS-107) (DATE)

No orders shall be accepted from, and no deliveries shall be made to any ship of the United States Navy or the Military Sealift Command. This prohibition shall include all electrostatic copying equipment, supplies (toner, developer, fuser oil) for such equipment, repair or replacement parts for such equipment, and maintenance or repair service for such equipment.

(End of clause)

552.238-43 Clauses for Overseas Coverage (I-FSS-108).

As prescribed in 538.1203(c)(23), insert the following clause:

CLAUSES FOR OVERSEAS COVERAGE (I-FSS-108) (DATE)

The following clauses apply to overseas coverage:

(a) 52.214-34, Submission of Offers in the English Language.

(b) 52.214-35, Submission of Offers in U.S. Currency.

(c) 52.247-34, FOB Destination.

(d) 52.247-38, FOB Inland Carrier, Country of Exportation.

(e) 52.247-39, FOB Inland Point, Country of Importation.

(f) 552.238-25, Characteristics of Electric Current (C-FSS-412).

(g) 552.238-29, Marking and Documentation Requirements Per Shipment (D-FSS-471).

(h) 552.238-44, Transshipments (D-FSS-477).

(i) 552.238-45, Delivery Prices (F-FSS-202-F).

(j) 552.238-46, Foreign Taxes and Duties (I-FSS-314).

(k) 552.238-47, Parts and Service (I-FSS-594).

(End of clause)

552.238-44 Transshipments (D-FSS-477).

As prescribed in 538.1203(c)(23)(viii), insert the following clause:

TRANSSHIPMENTS (D-FSS-477) (DATE)

The Contractor shall complete TWO DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387-2, Special Handling/Data Certification—used when shipping chemicals, dangerous cargo, etc. Two copies of the DD Form 1387 will be attached to EACH shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract. These forms will be attached to one end and one side (NOT on the top or bottom) of the container. The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387-2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading. DANGEROUS CARGO WILL NOT BE INTERMINGLED WITH NONDANGEROUS CARGO IN THE SAME CONTAINER. Copies of the forms and preparation instructions will be obtained from the Ordering Office issuing the Delivery Order. Reproduced copies of the forms are acceptable. FAILURE TO INCLUDE DD FORMS 1387 (AND DD FORM 1387-2, IF APPLICABLE) ON EACH SHIPPING CONTAINER WILL RESULT IN REJECTION OF SHIPMENT BY THE PORT TRANSPORTATION OFFICER.

(End of clause)

552.238-45 Delivery Prices (F-FSS-202-F).

As prescribed in 538.1203(c)(23)(ix), insert the following clause:

DELIVERY PRICES (F-FSS-202-F) (DATE)

(a) Prices offered must cover delivery to destinations as provided in this clause:

(1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247-39). (Offeror should indicate countries where direct delivery will be provided.)

(2) Delivery to overseas assembly point for transshipment when specified by the ordering office, if delivery is not covered under paragraph (a) of this clause.

(3) Delivery to the overseas port of entry when delivery is not covered under paragraphs (a) or (b) of this clause.

(b) Offerors are requested to furnish the geographic area(s)/countries/zones which are intended to be covered:

(End of clause)

552.238-46 Foreign Taxes and Duties (I-FSS-314).

As prescribed in 538.1203(c)(23)(x), insert the following clause:

FOREIGN TAXES AND DUTIES (I-FSS-314) (DATE)

Prices offered must be net, delivered, F.O.B. to the destinations accepted by the Government.

(a) The Offeror warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt. The Offeror further warrants that any applicable taxes, duties, customs fees, other Government costs, assessments or similar charges from which the U.S. Government is not exempt are included in the prices quoted and that such prices are not subject to increases for any such charges applicable at the time of acceptance of this offer by the Government.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, marking are included in the pricing offered and accepted by the Government.

(End of clause)

552.238-47 Parts and Service (I-FSS-594).

As prescribed in 538.1203(c)(23)(xi), insert the following clause:

PARTS AND SERVICE (I-FSS-594) (DATE)

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Offeror certifies by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Offerors are requested to include in the price list, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

(End of clause)

552.238-48 English Language and U.S. Dollar Requirements (I-FSS-109).

As prescribed in 538.1203(c)(24), insert the following clause:

ENGLISH LANGUAGE AND U.S. DOLLAR REQUIREMENTS (I-FSS-109) (DATE)

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the "Treasury Reporting Rates of Exchange" in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

(End of clause)

552.238-49 Geographic Area Address of Supply and Service Point.

As prescribed in 538.1203(c)(25), insert the following clause:

GEOGRAPHIC AREA ADDRESS OF SUPPLY AND SERVICE POINT (DATE)

It is desired to have available means for maintaining Government-owned items in satisfactory operating condition and to receive service at least as good as that extended to commercial customers.

(End of clause)

552.238-50 Option To Extend the Term of the Contract (Evergreen) (I-FSS-163).

As prescribed in 538.1203(c)(26), insert the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (EVERGREEN) (I-FSS-163) (DATE)

(a) The Government may require continued performance of this contract for an additional 5-year period when it is determined that exercising the option is advantageous to the Government considering price and other factors. The option clause may not be exercised more than three times. When the option to extend the term of this contract is exercised the following conditions are applicable:

(1) It is determined that exercising the option is advantageous to the Government considering price and the other factors covered in paragraphs (a)(2) through (a)(4) of this clause.

(2) The Contractor's electronic catalog/price list has been received, approved, posted, and kept current on GSA Advantage!® in accordance with clause 552.238-15, Contract Price Lists (I-FSS-600).

(3) Performance has been acceptable under the contract.

(4) Subcontracting goals have been reviewed and approved.

(b) The Contracting Officer may exercise the option by providing a written notice to the Contractor within 30 days, unless otherwise noted, prior to the expiration of the contract or option.

(c) When the Government exercises its option to extend the term of this contract, prices in effect at the time the option is exercised will remain in effect during the option period, unless an adjustment is made in accordance with another contract clause (e.g., Economic Price Adjustment Clause or Price Reduction Clause).

(End of clause)

552.238-51 Scope of Contract (I-FSS-102).

As prescribed in 538.1203(c)(27), insert the following clause:

SCOPE OF CONTRACT (I-FSS-102) (DATE)

This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named in this clause, as a source of supply for the supplies or services described herein, for delivery within * _____ * and Washington, DC.

(a) All Federal agencies and activities in the executive, legislative, and judicial branches.

(b) Government Contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1.

(c) Mixed ownership Government corporations (as defined in the Government Corporation Control Act).

(d) The Government of the District of Columbia.

(e) Other activities and organizations authorized by statute or regulation to use GSA as a source of supply. (Questions regarding activities authorized to use this schedule should be directed to the Contracting Officer.)

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.

For orders received from activities within the executive branch of the Government, each Contractor is obligated to deliver all articles or services contracted for that may be ordered during the contract term, except as otherwise provided herein.

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 is unwilling to accept such an order, the Contractor shall return it by mailing it or delivering it to the ordering office within 5 workdays from receipt. Failure to return an order shall constitute acceptance whereupon all provisions of the contract shall apply.

The Government is obligated to purchase under each resultant contract a guaranteed minimum of one hundred dollars during the contract term.

(End of clause)

552.238-52 Option to Extend the Term of Contract for Period of One (1) Year (I-FSS-165).

As prescribed in 538.1203(c)(28), insert the following clause:

OPTION TO EXTEND THE TERM OF CONTRACT FOR PERIOD OF ONE (1) YEAR (I-FSS-165) (DATE)

(a) The Government shall have the unilateral option of extending this contract for an additional twelve (12) months upon the same terms and conditions as are contained in this contract at the time said option is exercised. The total duration of this contract inclusive of the option period shall not exceed 24 months.

(1) Said options shall be deemed to have been exercised upon formal written notification (mail or otherwise furnished) to the Contractor at least thirty (30) calendar days prior to the expiration of the contract. The Contracting Officer shall have given preliminary notice of the Government's intention to extend at least ninety (90) calendar days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to exercise the option.)

(2) Offerors are cautioned that the exercise of the option is a Government prerogative, not a contractual right on the part of the Contractor. If the Government exercises the option, the Contractor shall be contractually bound to perform the services for the option period, or in the event it fails to perform, be subject to the termination for default provisions of this contract.

(b) If the option to extend is exercised by the Government, the contract price(s) may be adjusted upward or downward at that time in accordance with Section (b) of this clause. The Government will notify the Contractor of the percentage change in the Bureau of Labor Statistics (BLS) Producer Price Index when it becomes aware of the adjusting price index.

(1) *Definitions.* As used in this provision:

(i) The price index for the purpose of price adjustment for the option period shall be the originally released Producer Price Index stated in this clause, not seasonally adjusted, published by the Bureau of Labor Statistics, U. S. Department of Labor. The applicable Producer Price Index under Table * _____ * is:

Code number * _____ *.

Commodity * _____ *.

(ii) The base price index for the purpose of price adjustment shall be the originally released index listed in paragraph (b)(1)(A) of this clause for the month of the contract date;

(iii) The term "contract date" means:

(A) The date of bid opening in the case of sealed bid solicitations;

(B) The date of award in the case of negotiated solicitations, except that with respect to any set-aside portion (Combined Small Business-Labor Surplus Area, Labor Surplus Area, or Small Business) of this solicitation, the date of bid opening for the non-set-aside portion, if sealed bid, or the date of award for the non-set-aside portion, if negotiated; or

(C) The effective date(s) of the contract modification(s) adding line items to the contract.

(iv) The “adjusting price” index shall be the originally released index listed in (b)(1)(A) of this clause for the ninth month of any twelve month contract or, if the contract period is less than twelve months, the month which would occur three full months before contract performance ends.

(2) The original unit prices for supplies, as of the contract date, shall be subject to adjustment upward or downward by the percent of difference between the base price index and the adjusting price index. This price adjustment shall become effective on the date performance under the option period begins. If orders are issued under the contract, the adjustment shall apply only to those orders mailed to the Contractor after the date performance under the option period begins.

(3) If base price index data are not available for the month in which the contract date occurs or if adjusting price index data are not available as specified in this clause, the month with the most recently published data before the contract date or the option exercise date, as applicable, shall be the basis for adjustment.

(4) If any of the BLS series specified in this clause are discontinued, the Government shall determine a substitute series. If BLS designates an index with a new title and/or code number as being continuous with one of the indexes cited in this clause, the new index will be used.

(5) Price adjustments pursuant to this provision will be made by contract modification issued by the Contracting Officer which will show the base price index, the adjusting price index, the percent of difference and the new contract price.

(6) No adjustment will be made under this provision unless the total change in the contract amount is * _____ * or more.

(7) Increases shall not exceed 10 percent of the contract price as of the contract date.

(End of clause)

552.238-53 Option To Extend the Term of the Contract (I-FSS-167).

As prescribed in 538.1203(c)(29), insert the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (I-FSS-167) (DATE)

(a) The Government may extend the term of this contract by written notice to the Contractor within the time specified in this clause; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 14 months.

(d) Prices in effect at the end of the 12th month shall remain unchanged during the period of the extension.

(End of clause)

552.238-54 Federal Excise Tax (I-FSS-311).

As prescribed in 538.1203(c)(30), insert the following clause:

FEDERAL EXCISE TAX (I-FSS-311) (DATE)

Prices offered shall exclude Federal Excise Tax. Ordering agencies will be notified that the Federal Excise Tax will be invoiced and paid for by them as a separate item based upon published Rubber Manufacturer's Association average weights effective at time of delivery, unless the ordering activity is exempt from such tax.

(End of clause)

552.238-55 Contractor Partnering Arrangements (I-FSS-40).

As prescribed in 538.1203(c)(31), insert the following clause:

CONTRACTOR PARTNERING ARRANGEMENTS (I-FSS-40) (DATE)

Contractors participating in contractor partnering arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with contract clause 552.238-74, Industrial Funding Fee and Sales Reporting, *i.e.*, each Contractor (partner member) must report sales and remit the IFF for all supplies and services provided under its individual contract.

(End of clause)

552.238-56 Performance Reporting Requirements (I-FSS-50).

As prescribed in 538.1203(c)(32), insert the following clause:

PERFORMANCE REPORTING REQUIREMENTS (I-FSS-50) (DATE)

(a) This clause applies to all contracts estimated to exceed \$100,000.

(b) Unless notified otherwise in writing by the Contracting Officer, the Contractor may assume contract performance is satisfactory.

(c) If negative performance information is submitted by customer agencies, the Contracting Officer will notify the Contractor in writing and provide copies of any complaints received. The Contractor will have 30 calendar days from receipt of this notification to submit a rebuttal and/or a report of corrective actions taken.

(End of clause)

552.238-57 Guarantee (I-FSS-546).

As prescribed in 538.1203(c)(33), insert the following clause:

GUARANTEE (I-FSS-546) (DATE)

The Contractor guarantees the equipment furnished will be free from defects in material and workmanship for a period of not less than 1 year from date of delivery. All parts found defective within that period shall be replaced, with the cost of replacement, including shipping charges, to be borne by the Contractor. Under no circumstances will any equipment covered by this guarantee be

returned without (a) advance written notice to the Contractor, or (b) obtaining shipping instructions from the Contractor.

(End of clause)

552.238-58 GSA Advantage!® (I-FSS-597).

As prescribed in 538.1203(c)(34), insert the following clause:

GSA ADVANTAGE!® (I-FSS-597) (DATE)

(a) The Contractor must participate in the GSA *Advantage!*® online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238-59, Electronic Commerce—FACNET (I-FSS-599).

(b) The Contractor also should refer to contract clauses 552.238-71, Submission and Distribution of Authorized FSS Schedule Price Lists (which provides for submission of price lists on a common-use electronic medium), 552.238-15, Contract Pricelists (I-FSS-600) (which provides information on electronic contract data), and 552.238-67, Modifications (Multiple Award Schedule) (currently 552.243-72) (which addresses electronic file updates).

(End of clause)

552.238-59 Electronic Commerce—FACNET (I-FSS-599).

As prescribed in 538.1203(c)(35), insert the following clause:

ELECTRONIC COMMERCE—FACNET (I-FSS-599) (DATE)

(a) *General Background.* The Federal Acquisition Streamlining Act (FASA) of 1994 establishes the Federal Acquisition Computer Network (FACNET) requiring the Government to evolve its acquisition process from one driven by paperwork into an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI means more than merely automating manual processes and eliminating paper transactions. It can and will help to move business processes (*e.g.*, procurement, finance, logistics, etc.) into a fully electronic environment and fundamentally change the way organizations operate.

(b) *Trading Partners and Value-Added Networks (VAN's).*

(1) Within the FACNET architecture, electronic documents (*e.g.*, orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as “trading partners”). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be done using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and

different pricing strategies. If your VAN only provides communications services, you may also need a software translation package.

(c) *Registration Instructions.* (1) DOD will require Contractors to register as trading partners to do business with the Government. This policy can be reviewed via the INTERNET at http://www.defenselink.mil/releases/1999/b03011999_bt079-99.html.

(2) To do EDI with the Government, Contractors must register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners, called the Central Contractor Registration (CCR) <http://www.ccr.gov/>, has been developed. All Government procuring offices and other interested parties will have access to this central repository. The database is structured to identify the types of data elements which are public information and those which are confidential and not releasable.

(3) To register, Contractors must provide their Dun and Bradstreet (DUNS) number. The DUNS number is available by calling 1 (800) 333-0505. It is provided and maintained free of charge and only takes a few minutes to obtain. Contractors will need to provide their Tax Identification Number (TIN). The TIN is assigned by the Internal Revenue Service by calling 1 (800) 829-1040. Contractors will also be required to provide information about company bank or financial institution for electronic funds transfer (EFT).

(4) Contractors may register through online at <http://www.ccr.gov/> or through their Value Added Network (VAN) using an American National Standards Institute (ANSI) ASC X12 838 transaction set, called a "Trading Partner Profile." A transaction set is a standard format for moving electronic data. VAN's will be able to assist Contractors with registration.

(d) *Implementation Conventions.* All EDI transactions must comply with the Federal Implementation Conventions (IC's). Many VAN's and software providers have already built the IC requirements into their supplies. If you need to see the IC's, they are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at <http://www.itl.nist.gov/lab/csl-pubs.htm>. IC's are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) *Additional Information.* GSA has additional information available for Contractors who are interested in starting to use EC/EDI. Contact the Contracting Officer for a copy of the latest handbook. Several resources are available to Contractors to assist in implementing EC/EDI; specific addresses are available in the handbook or from the Contracting Officer:

(1) Electronic Commerce Resource Centers (ECRC's) are a network of U.S. Government sponsored centers that provide EC/EDI training and support to the Contractor community. They are found in over a dozen locations around the country.

(2) Procurement Technical Assistance Centers (PTAC's) and Small Business Development Centers (SBDC's) provide

management assistance to small business owners. Each state has several locations.

(3) Most major U.S. cities have an EDI user group of companies who meet periodically to share information on EDI related subjects.

(f) *GSA Advantage!*[®]. (1) *GSA Advantage!*[®] will use this FACNET system to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. *GSA Advantage!*[®] enables customers to:

(i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories;

(ii) Generate their own EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders; and

(iii) Use the Federal IMPAC VISA.

(2) *GSA Advantage!*[®] may be accessed via the GSA Home Page. The Internet address is: <http://www.gsa.gov>, or <http://www.fss.gsa.gov>.

(End of clause)

552.238-60 Performance Incentives (I-FSS-60).

As prescribed in 538.1203(c)(36), insert the following clause:

PERFORMANCE INCENTIVES (I-FSS-60) (DATE)

(a) Performance incentives may be agreed upon between the Contractor and the ordering office on individual orders or Blanket Purchase Agreements under this contract in accordance with this clause.

(b) The ordering office must establish a maximum performance incentive price for these services and/or total solutions, on individual orders or Blanket Purchase Agreements.

(c) Incentives should be designed to relate results achieved by the Contractor to specified targets. To the maximum extent practicable, ordering offices shall consider establishing incentives where performance is critical to the agency's mission and incentives are likely to motivate the Contractor. Incentives shall be based on objectively measurable tasks.

(End of clause)

552.238-61 Price Lists/Brochures for Non-Commercial Items (I-FSS-602).

As prescribed in 538.1203(c)(37), insert the following clause:

PRICE LISTS/BROCHURES FOR NON-COMMERCIAL ITEMS (I-FSS-602) (DATE)

(a) Each Contractor shall furnish price lists containing reproductions of actual photograph(s) or line drawing(s) of the items awarded. These price lists are to be sent to the list of addressees which will be provided, after formal approval of the price list format, by the Contracting Officer.

(b) Only those items awarded under this contract shall be shown in the price lists or catalogs for these items. Commercial

advertising or sales promotional language is not permitted. As the price lists become one of the primary working tools of agencies, it is important that they accurately portray the contract items.

(c) The cover page format, certification and distribution for these items shall be in accordance with paragraph (b) of 552.238-15, Contract Price Lists (I-FSS-600).

(End of clause)

552.238-62 Office Copier Utilization Guidelines (I-FSS-624).

As prescribed in 538.1203(c)(38), insert the following clause:

OFFICE COPIER UTILIZATION GUIDELINES (I-FSS-624) (DATE)

(a) Ordering offices using this Federal Supply Schedule should select the appropriate and most economical copier equipment and/or plans for the application intended. The selection process should include a review of the functional and financial advantage of all available copying processes. FAR 7.4, Equipment Lease or Purchase, provides guidance in determining whether equipment should be acquired by lease or purchase; (FAR 8.404 provides ordering procedures applicable to Federal Supply Schedules).

(b) Pursuant to a recommendation of the General Accounting Office and in order to assist ordering offices in this evaluation, office copying machine Contractors are requested to include in their authorized price lists specific factual and objective information concerning the productivity and supply use associated with each copier. Such information should relate to the price of equipment and/or plans, price of supplies, rates of consumption, machine production rate, etc., and may include price-per-copy computations. The information furnished should be predicated upon equipment and supplies at prices awarded on the schedule contract. Supply costs should be based on the use of supplies offered by the Contractor for the specific model. Contractors should state all assumptions and the basis for their calculations.

(c) The principal value of the information requested will be to expedite the selection of the appropriate and most economical equipment and/or plan. This will largely depend upon the clarity and reliability of the information furnished. The Contractor should state that all calculations are his own and that he is solely responsible for their accuracy.

(End of clause)

552.238-63 Preference for Small Business Concerns (I-FSS-90).

As prescribed in 538.1203(c)(39), insert the following clause:

PREFERENCE FOR SMALL BUSINESS CONCERNS (I-FSS-90) (DATE)

Offerors are advised that the following statement will be included in the resultant Federal Supply Schedule: Where two or more

items at the same delivered price will meet the ordering agency's needs equally well, selection should be based on preference for the item of a small business concern that is also a labor surplus area concern. In making a selection on that basis, the same order of priority shall be used as that established for processing equal low bids in FAR 14.408-6. In making such a selection, the information in the Federal Supply Schedule as to the business size status or points of production of Contractors may be used for preliminary, but not conclusive, determination as to whether small business policies might be furthered through preferential award of the order. The extent to which additional and current information is obtained by an ordering agency is left to the discretion of the agency which should take into account the size of the order and other factors which the agency considers pertinent.

(End of clause)

552.238-64 Imprest Funds (Petty Cash) (I-FSS-918).

As prescribed in 538.1203(c)(40), insert the following clause:

IMPREST FUNDS (PETTY CASH) (I-FSS-918) (DATE)

The Contractor agrees to accept cash payment for purchases made under the terms of the contract in conformance with Federal Acquisition Regulation (FAR) 13.305.

(End of clause)

552.238-65 Commercial Sales Practices Format—Supplies and/or Services With an Established Catalog Price (CSP-1).

As prescribed in 538.1203(c)(41), insert the following clause:

COMMERCIAL SALES PRACTICES FORMAT—SUPPLIES AND/OR SERVICES WITH AN ESTABLISHED CATALOG PRICE (CSP-1) (DATE)

(a) Instructions for completing the commercial sales practices format:

(1) Provide information required in this clause in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete on the date the offer is signed.

(2) Notify the contracting officer of any changes to catalog price or practices for discounts and/or concessions which occur after the date the offer is signed but before the close of negotiations.

(3) Provide discount information by model/supply line and/or service when discounts vary, as appropriate.

(4) When proposed services are subject to the Service Contract Act (SCA) of 1965, as amended, and pricing is equal to or higher than the appropriate wage determination, follow the format under (c)(5) of this clause. All wage determinations are included within the solicitation and follow procedures under FAR 22.10. If commercial labor category titles and duties/functions do not match the wage determination titles and duties/functions, then provide a "cross walk" to match up the titles and duties/functions.

(5) The Contracting Officer may ask for additional information to demonstrate that the products and/or services offered meet the definition of a commercial item and/or to determine whether the offered price(s) is fair and reasonable. When additional information is requested, the Contracting Officer will limit the request to information needed to complete the review.

(b) Guidance for completing (c)(5) is as follows:

Column 1—Customer (e.g., a single customer or group).

"Customer" or category of customer—The term customer includes, but is not limited to original equipment manufacturers (OEM), value added resellers (VARs), state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. As further clarification, distributors only sell to dealers/reseller/VARS; who only sell to end users.

Column 2—Base/Standard discount (%). Indicate the best discount or range of discounts* given to the customer identified on column 1 (based on written discounting policies or standard commercial practices in the event they are not written discounting policies) and identify the catalog, price list, schedule, or other document the discount was given from without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral.

If the discount disclosed is a combination of various discounts (prompt payment, FOB, etc.), separate the percentage for each type of discount. If the pricing document from which the discount was given to the customer identified in column 1 is different than the pricing document submitted upon which the offer is based, provide a copy of the pricing document to expedite the evaluation process.

Note: The intent is that the Offeror may have base/standard discounts, quantity/volume discounts, or both. Provide the discount information using the definitions of those columns as guidance.

* If a range of discounts is offered commercially, provide an explanation.

Column 3—Quantity/Volume Discount (%)

Insert the minimum quantity or sales volume which the identified customer must either purchase/order, per order or within a specified time period, to earn the discount. In addition, provide the terms necessary to obtain the minimum quantity or sales volume.

Column 4—FOB Term (Origin/Destination) See FAR 47.3 for an explanation of FOB delivery terms.

For supplies, identify the shipping term necessary for the customer identified in column 1 to achieve the discount.

For services, performance will be assumed to be at the government facility, unless otherwise stated.

Column 5—Other Concessions (e.g., Prompt Payment, etc.)

Identify other concessions and discounts offered to the customer identified in column 1 to include, but not limited to, prompt

payment, freight allowances, extended warranties, extended price guarantees, free installation, bonus goods, rebates, purchase option credits, etc.

Discounts and concessions are defined in solicitation clause 552.212-70, Preparation of Offers (Multiple Award Schedule).

If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

(c) Commercial Sales Practices Format—Supplies and/or Services with an Established Catalog List.

(1) Name of Offeror _____ (SINs)

Note: Provide the following information for each SIN (or SINs for which information is the same). If discount information is different for SINs offered, duplicate this format.

(2) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period: \$ _____.

State the beginning and ending of the 12 month period. Beginning _____, ending _____.

(3) Show your total projected annual sales for each SIN offered. If a current Federal Supply Schedule Contractor for the SIN, use the previous 12 months of sales under the contract. If NOT a current Schedule Contractor, base projected sales on the previous 12 months of sales to the general public. Identify the basis of the projected sales.

SIN _____	\$ _____
SIN _____	\$ _____
SIN _____	\$ _____

(4) Provide the discount, including concessions being offered in response to this solicitation: _____

Based on written discounting policies (standard commercial practices in the event they are not written discounting policies), are the discounts and/or concessions, in any combination, which are being offered under this solicitation equal to or better than the best price offered to any customer acquiring the same items regardless of quantity or terms and conditions?

YES _____ NO _____

If yes, provide, in its entirety the data in paragraph (c)(5) of this clause, ONLY for the commercial customer with the greatest discount, including concessions.

If no, provide in its entirety, the data in paragraph (c)(5) of this clause, for ALL commercial customer(s) who receive the discounts and/or concessions, in any combination, that are equal to or greater than offered in response to this solicitation. In addition, provide an explanation of why the discounts and/or concessions are not being offered.

(5) Based on written discounting policies (standard commercial practices in the event they are not written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same), or in an equivalent format developed by the Offeror. Rows should be added to accommodate as many customers as required:

Column 1 customer (e.g., a single customer or group)	Column 2 base/standard discount (%) (Note: if there is a base discount and a volume discount, disclose both on the same row.)	Column 3 quantity/volume discount (%)	Column 4 FOB term (origin/destination)	Column 5 other concessions and discounts (e.g., prompt payment, etc.) in any combination.

(6) Do any deviations from your written discounting policies (standard commercial practices in the event they are not written discounting policies), in any combination, disclosed in the (5) above ever result in better discounts (lower prices) or concessions than indicated? YES ___ NO ___. If yes, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart and explain how often they occur.

Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur (frequency), and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.

(d) If other than the manufacturer, i.e., dealer/reseller, without significant sales to the general public:

(1) Provide manufacturer's information required by paragraphs (c)(1) through (6) of this clause for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed \$500,000.

(2) Obtain written authorization from the manufacturer(s) that grants the Contracting Officer or an authorized government representative access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer.

(3) The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government, at a minimum, the commercial sales data must be updated annually.

(4) The Offeror must submit the following pricing information along with a listing of contact information regarding each of the manufacturers whose products included in the offer (include the manufacturer's name,

address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

- (i) Manufacturer's Name.
- (ii) Manufacturer's Part Number.
- (iii) Dealer's/Reseller's Part Number.
- (iv) Product Description.
- (v) Manufacturer's List Price.
- (vi) Dealer's/Reseller's percentage discount from list price or net prices.
- (vii) Proposed price excluding IFF.
- (viii) Proposed discount from manufacturer's list price.
- (ix) Proposed price including IFF (calculation: proposed price divided by (1 minus IFF rate)).

(End of clause)

552.238-66 Commercial Sales Practices Format—Supplies and/or Services with Market Pricing Without an Established Catalog Price (CSP-2).

As prescribed in 538.71(c)(42), insert the following clause:

COMMERCIAL SALES PRACTICES FORMAT—SUPPLIES AND/OR SERVICES WITH MARKET PRICING WITHOUT AN ESTABLISHED CATALOG PRICE (CSP-2) (DATE)

(a) Instructions for completing the commercial sales practices format.

(1) Provide information required of this clause in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete on the date the offer is signed.

(2) Notify the contracting officer of any changes to pricing, terms or conditions that occur after the date the offer is signed, but before the close of negotiations.

(3) If pricing varies by line item, the information must be submitted per line item.

(4) When proposed line item(s) is subject to the Service Contract Act (SCA) of 1965, as amended, and pricing is equal to or higher than the appropriate wage determination, follow the format under paragraph (c)(4) of this clause. All wage determinations are included within the solicitation and follow procedures under FAR 22.10. If commercial labor category titles and duties/functions do not match the wage determination titles and duties/functions, then provide a "cross walk" to match up the titles and duties/functions.

(5) The Contracting Officer may ask for additional information to demonstrate that the line item(s) offered meets the definition of a commercial item and/or to determine whether the offered price(s) is fair and reasonable. When additional information is requested, the Contracting Officer will limit the request to information needed to complete the review.

(b)(1) Guidance for completing (b)(2) of this section, disclosures for supplies and/or services:

Column 1—Customer.

"Customer" or category of customer—The term customer includes, but is not limited to original equipment manufacturers (OEM), value added resellers (VARs), state and local Governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users, as applicable. For Offerors proposing supplies, as further clarification, distributors only sell to dealers/resellers/VARS; who only sell to end users.

Column 2—Contract/Agreement Number.

Indicate the contract/agreement number that corresponds with the pricing information being provided.

Columns 3—Type of Contract/Agreement.

Indicate if the referenced contract/agreement is a firm, fixed price (FFP); firm, fixed price with economic price adjustment (FFP EPA), etc.

Column 4—Contract/Agreement Period.

Provide the initial award date and end date. If options were part of the original award, indicate the option(s) periods independently.

Column 5—Acted as a Prime or a Sub on the Contract/Agreement.

State in what capacity, prime or sub, the Offeror acted as on the referenced contract/agreement.

Column 6—Customer Point of Contact and Contact Information.

Provide the contact information for the purchaser/buyer for the referenced contract/agreement.

(2) Previous commercial contract information:

(d)(1) Guidance for completing (d)(2) of this section, disclosures for flat rate services and/or supplies ONLY:

Column 1—Title of flat rate services and/or supplies.

Under this solicitation, “flat rate” is defined as comprehensive, fixed pricing that includes all elements of the proposed supply and/or service and is not based on an established catalog price.

Provide the title of the flat rate services and/or supplies that are being proposed, as awarded under the referenced contract/agreement from (b).

Column 2—Itemized description of tasks, outcome, or supply.

Provide a concise description of the end deliverable, as awarded under the referenced contract/agreement from (b). This could include descriptive literature, reports, etc.

Columns 3A–3C Contract/Agreement Billed Pricing.

If offering flat rate services, indicate the lowest net billable price offered to any commercial customer at Offeror site and/or other than Offeror site in the appropriate columns of this clause, as awarded under the referenced contract/agreement from (b).

If offering flat rate supplies, indicate the lowest net billable price offered to any commercial customer at FOB terms under the appropriate column, as awarded under the referenced contract/agreement from (b).

If the billable prices being offered to the government under this solicitation are equal to or lower than the lowest net billed price

offered to any commercial customer, then fill in column 3A only.

If the billable prices being offered to the government under this solicitation are not equal to or lower than the lowest net billable price offered to any commercial customer, provide an explanation and complete columns 3A, 3B and 3C.

Column 4—Discount, If Offered.
Insert the discount, if any, being offered off the lowest net billable rate.

Column 5—Rate Offered to FSS (Excluding IFF).

Insert the pricing for the service and/or supply that is being proposed. This does not include the Industrial Funding Fee.

Column 6—Rate Offered to FSS (Including IFF).

Insert the pricing for the service and/or supply that is being proposed. This includes the Industrial Funding Fee.

Note: The correct method for calculating the IFF is:

Proposed FSS pricing / (1 minus the applicable IFF) = correct calculated proposed FSS price.

Example:

FSS pricing = \$100.00.

IFF = 0.75%.

$\$100.00 / (1 - .0075) = \$100.00 / .9925 = \$100.7556$, which rounds to \$100.76.

(d)(2) Commercial Sales Practices Format—Flat Rate Services and/or Supplies with Market Prices without an Established Catalog Price.

(1) Name of Offeror _____ SIN(s) _____.

Note: Provide the following information for each SIN (or SINs for which information is the same). For each SIN with different services, the Offeror must duplicate this format.

(2) Provide the total dollar sales for all customers, including government, for the most recently available 12-month period: \$ _____. The beginning and ending of the 12-month period. Beginning _____, ending _____.

(3) For each SIN being proposed, provide the actual sales for the most recent available 12-month period:

The beginning and ending of the 12-month period. Beginning _____, ending _____.
SIN sales _____

Commercial Sales _____
Federal Government Sales _____

(4) Show your total projected annual sales for each SIN offered. If a current Federal Supply Schedule Contractor for the SIN, use the previous 12 months of sales under the contract. If NOT a current Schedule Contractor, base projected sales on the previous 12 months of sales to the general public. Identify the basis of the projected sales.

SIN _____ \$ _____
SIN _____ \$ _____
SIN _____ \$ _____

(5) FLAT RATE SERVICES AND/OR SUPPLIES INFORMATION:
SIN(s): _____.

BILLING CODE 6820-61-P

Column 1 Labor Category or Title	Column 2 Itemized description of task, outcome, or supply	Column 3A Contract / Agreement 1 Billed Pricing	Performance at Offeror site (service) / FOB Origin (supplies)	Performance at Other than Offeror Site (service) / FOB Destination (supplies)	Column 3B Contract / Agreement 2 Billed Pricing	Performance at Offeror site (service) / FOB Origin (supplies)	Performance at Other than Offeror Site (service) / FOB Destination (supplies)	Column 3C Contract / Agreement 3 Billed Pricing	Performance at Offeror site (service) / FOB Origin (supplies)	Performance at Other than Offeror Site (service) / FOB Destination (supplies)	Column 4 Discount, if Offered	Percent (%)	Column 5 Pricing Offered To FSS (excluding IFF)	Performance at Offeror site (service) / FOB Origin (supplies)	Performance at Other than Offeror Site (service) / FOB Destination (supplies)	Column 6 Pricing Offered To FSS (including IFF)	Performance at Offeror site (service) / FOB Origin (supplies)	Performance at Other than Offeror Site (service) / FOB Destination (supplies)

BILLING CODE 6820-61-C
(End of clause)

552.243-72 [Redesignated as 552.238-67 and Revised]

15. Redesignate section 552.243.72 as section 552.238-67 and revise it to read as follows:

552.238-67 MODIFICATIONS (MULTIPLE AWARD SCHEDULE).

As prescribed in 538.1203(c)(43), insert the following clause:

MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (DATE)

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.* (1) Additional items/additional SIN's. When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SIN's.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.238-96, Preparation of Offer (Multiple Award Schedule) is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with 552.238-95, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215 6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by 52.223 3 (ALT I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by 52.212 3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225 1, Buy American Act-Balance of Payments Programs—Supplies.

(2) *Deletions.* The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the Contracting Officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price Reduction.* The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-75. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the

effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-75.

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-75.

(e) *Amendments to Paper Federal Supply Schedule Price Lists.* (1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every 3 month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of clause)

16. Revise the newly designated section 552.238-68 to read as follows:

552.238-68 Economic Price Adjustment—Supplies and/or Services With an Established Catalog Price.

As prescribed in 538.1203(c)(44), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—SUPPLIES AND/OR SERVICES WITH AN ESTABLISHED CATALOG PRICE (DATE)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's

commercial catalog/price list that was used as the basis for the contract award.

(2) Increases are requested before the last 60 days of the contract period.

(3) At least 30 days elapse between requested increases.

(c) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/price list showing the price increase and the effective date for commercial customers.

(2) Commercial Sales Practice format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(d) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;

(2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or

(3) Remove the supply(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(e) The contract modification reflecting the price adjustment shall be made effective upon signature of the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)

Alternate I (Date), for the AbilityOne Schedule ONLY, add the following paragraph before paragraph (a) in this clause and renumber the paragraphs.

(a) AbilityOne (formerly Javits-Wagner-O'Day (JWOD)) items are not covered by this Economic Price Adjustment Clause. The Committee for Purchase from People who are Blind or Severely Disabled is responsible for determining fair market prices are paid by the Government customers for AbilityOne (formerly JWOD) items, the Distributor must agree to charge prices that are acceptable to the Committee. The Committee for Purchase from People who are Blind or Severely Disabled will administer price changes on an annual basis.

17. Add section 552.238-69 to read as follows:

552.238-69 Economic Price Adjustment—Supplies and/or Services With Market Pricing Without an Established Catalog Price (I-FSS-969).

As prescribed in 538.1203(c)(45), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—SUPPLIES AND/OR SERVICES WITH MARKET PRICING WITHOUT AN ESTABLISHED CATALOG PRICE (I-FSS-969) (DATE)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) There are two types of economic price adjustments (EPAs) possible under the Schedules program for contracts not based on commercial catalogs or price lists as described in this clause. Price adjustments may be effective on or after the first 12 months of the contract period on the following basis:

(1) Adjustments based on escalation rates negotiated prior to contract award. Normally, when escalation rates are negotiated, they result in a fixed price for the term of the contract. No separate contract modification will be provided when increases are based on negotiated escalation rates. Price increases will be effective on the 12-month anniversary date of the contract effective date, subject to paragraph (f) of this clause.

(2) Adjustments based on an agreed-upon market indicator prior to award. The market indicator, as used in this clause, means the originally released public index, public survey or other public, based market indicator. The market indicator shall be the originally released index, survey or market indicator, not seasonally adjusted, published by the [to be negotiated] and made available at [to be identified]. Any price adjustment shall be based on the percentage change in the designated (*i.e.*, indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e) of this clause.

If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g) of this clause. The adjusted prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

(c) Notwithstanding the two economic price adjustments discussed in this clause, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the Contracting Officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions in paragraphs (d) and (e) of this clause. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the Contracting Officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

(d) Conditions of Price change requests under paragraphs (b)(2) and (c) of this clause:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of subparagraph (b)).

(2) Increases are requested before the last 60 days of the contract period, including options.

(3) At least 30 days elapse between requested increases.

(4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed * _____ * percent (* _____ * percent) of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(e) The following material shall be submitted with request for a price increase under paragraphs (b)(2) and (c) of this clause:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) Commercial Sales Practice format, per contract clause 52.215–21 Alternate IV, demonstrating the relationship of the Contractor's commercial pricing practice to the adjusted pricing proposed or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.

(f) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;

(2) Negotiate more favorable prices when the total increase requested is not supported; or

(3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.

(g) Effective Date of Increases: No price increase shall be effective until the Government receives the electronic file updates pursuant to GSAR 552.238–67, Modifications (Multiple Award Schedule) (Currently 552.243–72).

(h) All MAS contracts remain subject to contract clauses GSAR 552.238–75, "Price Reductions"; and 552.238–98, "Price Adjustment—Failure to Provide Accurate Information." In the event the application of an economic price adjustment results in a price less favorable to the Government than the price relationship established during negotiation between the MAS price and the price to the designated customer, the Government will maintain the price relationship to the designated customer.

(End of clause)

552.238–70 [Amended]

18. Amend section 552.238–70 by removing from the introductory

paragraph "538.273(a)(1)" and adding "538.1203(c)(46)" in its place.

19. Revise section 552.238–71 to read as follows:

552.238–71 Submission and Distribution of Authorized FSS Schedule Price Lists.

As prescribed in 538.1203(c)(47), insert the following clause:

SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS PRICE LISTS (DATE)

(a)(1) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(2) The Contractor may print and distribute the awarded price list without written approval from the Contracting Officer. The price list must include all terms and conditions of the cited contract. Note: It shall not absolve the Contractor from responsibility for the accuracy of the price list. Consequently, the Contractor would be required to revise the price list to correct any significant errors subsequently found by the Contracting Officer and reprint and distribute at the Contractor's expense. If significant pricing errors are found, the Government may cancel the contract and the Contractor may be liable for any price adjustments for overpricing.

(b)(1) The Contractor shall provide to the GSA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium.

Note: The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(2) The Contractor shall provide to each addressee on the mailing list either:

(i) One paper copy of the Authorized FSS Schedule Price List; or

(ii) A self-addressed, postage-paid envelope or postcard to be returned by addressees that want to receive a paper copy of the price list. The Contractor shall distribute price lists within 20 calendar days after receipt of returned requests.

(3) The Contractor shall advise each addressee of the availability of price list information through the online Multiple Award Schedule electronic data base.

(c) The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(d) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request.

(End of clause)

552.238–72 [Amended]

20. Amend section 552.238–72 by removing from the introductory paragraph "538.273(a)(3)" and adding "538.1203(c)(48)" in its place.

552.238–73 [Amended]

21. Amend section 552.238–73 by removing from the introductory paragraph "538.273(a)(4)" and adding "538.1203(c)(49)" in its place.

22. Revise section 552.238–74 to read as follows:

552.238–74 Industrial Funding Fee and Sales Reporting.

As prescribed in 538.1203(c)(50), insert the following clause:

INDUSTRIAL FUNDING FEE AND SALES REPORTING (DATE)

(a) Reporting Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule ordering activity for supplies and/or services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Contract sales shall be rounded to the nearest whole dollar and reported within 30 calendar days following the completion of each reporting quarter. The Contractor shall electronically report the quarterly dollar value of sales, including "zero" sales, by utilizing the automated reporting system. Prior to using this automated system, the Contractor shall complete contract registration at the Vendor Support Center (VSC) website. The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each Special Item Number (SIN) and shall continue to furnish quarterly reports through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing, Recovery Purchasing, or other similar authority are reportable sales.

(4) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall

use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: <http://www.fms.treas.gov/intn.html>.

(b) Remitting the Industrial Funding Fee (IFF). The Contractor shall remit the IFF at the rate set by GSA's FSS.

(1) The Multiple Award Schedule Program recoups its operating costs by charging an Industrial Funding Fee (IFF) to ordering activities. GSA receives the IFF from ordering activities by including the fee in prices/rates of awarded schedule supplies and/or services. The fee is collected by the Contractor and is passed to GSA. Offerors must include the IFF in their prices/rates. Contractors may NOT absorb the fee and the fee is non-negotiable. GSA will post notice of the current IFF rate at the Vendor Support Center.

(2) The Contractor shall remit the IFF electronically, rounded to the nearest whole U.S. dollar. The IFF must be received by GSA within 30 calendar days after the end of the reporting quarter. Final payment must be received by GSA within 30 days after physical completion of the last outstanding task order or delivery order of the contract. Specific instructions for electronically remitting the IFF will be made available through the Vendor Support Center website.

(3) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA, with the unilateral right to change the percentage at any time, but not more than once per year. Reasonable notice prior to the effective date of the change will be provided.

(4) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding payments or interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

(End of clause)

552.238-75 [Amended]

23. Amend section 552.238-75 by removing from the introductory paragraph "538.273(b)(2)" and adding "538.1203(c)(51)" in its place.

552.238-77 [Amended]

24. Amend section 552.238-77 by removing from the introductory paragraph "538.7004(a)" and adding "538.1203(c)(52)" in its place.

552.238-78 [Amended]

25. Amend section 552.238-78 by—
a. Removing from the introductory paragraph "538.7004(b)" and adding "538.1203(c)(53)" in its place; and

b. Removing from Alternate I "538.7104(b)" and adding "538.1203(c)(53)" in its place; and

552.238-79 [Amended]

26. Amend section 552.238-79 by removing from the introductory paragraph "538.7004(c)" and adding "538.1203(c)(54)" in its place;

27. Add sections 552.238-81 through 552.238-85 to read as follow:

552.238-81 Placement of Orders by Eligible Ordering Activities.

As prescribed in 538.1203(c)(55) insert the following clause:

PLACEMENT OF ORDERS BY ELIGIBLE ORDERING ACTIVITIES (DATE)

(a) See 552.238-78, Scope of Contract (Eligible Ordering Activities), for who may order under this contract.

(b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.

(c) If the Contractor agrees, GSA's Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other eligible ordering activities may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

(e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.

(f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.

(g) The basic content and format of the TPA will be provided by: General Services Administration, Acquisition Operations and Electronic Commerce Center (FCS) Washington, DC 20406, Telephone: [Contracting Officer insert appropriate

telephone numbers], FAX: [Contracting Officer insert appropriate telephone numbers].

(End of clause)

Alternate I (Date). As prescribed in 538.1203(c)(55), substitute the following paragraphs (a), (c), and (d) for paragraphs (a), (c), and (d) of the basic clause:

(a) See 552.238-78, Scope of Contract (Eligible Ordering Activities), Alternate I for who may order under this contract.

(c) If the Contractor agrees, GSA's Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other eligible ordering activities may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

Alternate II (Date). As prescribed in 538.1203(c)(55) substitute the following paragraphs (a), (c), and (d) for paragraphs (a), (c), and (d) of the basic clause:

(a) See 552.238-78, Scope of Contract (Eligible Ordering Activities), Alternate II for who may order under this contract.

(c) If the Contractor agrees, GSA's Federal Acquisition Service (FAS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other eligible ordering activities may place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

(End of clause)

552.238–82 Discounts for Prompt Payment (Federal Supply Schedule).

As prescribed in 538.1203(c)(56), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (FEDERAL SUPPLY SCHEDULES) (DATE)

(a) Discounts for early payment (hereinafter referred to as “discounts” or “the discount”) will be considered in evaluating the relationship of the Offeror’s concessions to the Government vis-a-vis the Offeror’s concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low Offeror in the situation described in the “Offers on Identical Products” provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the “value of funds” rate established by the Department of the Treasury and published quarterly in the **Federal Register**. The “value of funds” rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(f) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

552.238–83 Contractor’s Billing Responsibilities.

As prescribed in 538.1203(c)(57) insert the following clause:

CONTRACTOR’S BILLING RESPONSIBILITIES (DATE)

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/ payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor’s name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to—

(1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

- (i) The date of sale;
- (ii) The ordering activity to which the sale was made;
- (iii) The service or supply/model sold;
- (iv) The quantity of each service or supply/model sold;
- (v) The price at which it was sold, including discounts; and
- (vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

(End of clause)

552.238–84 Payment by Credit Card.

As prescribed in 538.1203(c)(58) insert the following clause:

PAYMENT BY CREDIT CARD (DATE)

(a) *Definitions.*

Credit card means any credit card used to pay for purchases, including the Governmentwide Commercial Purchase Card.

Governmentwide commercial purchase card means a uniquely numbered credit card issued by a Contractor under GSA’s Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

Oral order means an order placed orally either in person or by telephone.

(b) The Contractor must accept the credit card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency’s established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

(d) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder’s account for items returned as defective or faulty.

(e) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt

payment discount. Payment made using an ordering activity debit card will receive the applicable prompt payment discount.

(End of clause)

552.238–85 Payments by Non-Federal Ordering Activities.

As prescribed in 538.1203(c)(59), insert the following clause:

PAYMENTS BY NON-FEDERAL ORDERING ACTIVITIES (DATE)

If eligible non-federal ordering activities are 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 activities. If eligible non-federal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in Federal Acquisition Regulation clause 52.232–25, Prompt Payment, or 52.212–4, Contract Terms and Conditions—Commercial Items, apply to such activities in the same manner as to Federal ordering activities.

(End of clause)

552.246–73 [Redesignated as 552.238–86 and Revised]

28. Redesignate section 552.246–73 as section 552.238–86 and revise it to read as follows:

552.238–86 Warranty-Multiple Award Schedule.

As prescribed in 538.1203(c)(60), insert the following clause:

WARRANTY-MULTIPLE AWARD SCHEDULE (DATE)

(a) *Applicable to domestic locations.* Unless specified otherwise in this contract, the Contractor’s standard commercial warranty as stated in the Contractor’s commercial price list applies to this contract.

(b) *Applicable to overseas destinations.* Unless specified otherwise in this contract, the Contractor’s standard commercial warranty as stated in the commercial price list applies to this contract, except as follows:

(1) The Contractor must provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the ordering activity accepts the supply.

(2) The Contractor must supply parts and labor required under the warranty provisions free of charge.

(3) The Contractor must bear the transportation costs of returning the supplies to and from the repair facility, or the costs involved with Contractor personnel traveling to the ordering activity facility for the purpose of repairing the supply onsite, during the 90-day warranty period.

(End of clause)

29. Add sections 552.238–87 through 552.238–94 to read as follows:

552.238–87 Warranty (I–FSS–542–A).

As prescribed in 538.1203(c)(61), insert the following clause:

WARRANTY (I-FSS-542-A) (DATE)

All necessary adjustments of equipment procured hereunder not occasioned by accident or misuse through fault or negligence by the Government shall be made by the Contractor at his own expense, including transportation costs, if any, during the 90-day period after acceptance by the Government. All equipment procured hereunder is guaranteed for a period of 1 year from date of acceptance. During the guarantee period all broken or defective parts not caused by accident or misuse through fault or negligence by the Government must be replaced, and all necessary equipment adjustment occasioned by such defective parts must be made, at the Contractor's expense, including labor, parts, and transportation cost, if any.

(End of clause)

552.238-88 Service Points (I-FSS-626).

As prescribed in 538.1203(c)(62), insert the following clause:

SERVICE POINTS (I-FSS-626) (DATE)

Offerors are required to include in their price lists the names and addresses of supply and service points and indicate whether they are stocking or service points, or both.

(End of clause)

552.238-89 Contract Sales Criteria (I-FSS-639).

As prescribed in 538.1203(c)(63), insert the following clause:

CONTRACT SALES CRITERIA (I-FSS-639) (DATE)

(a) A contract will not be awarded unless anticipated sales are expected to exceed \$25,000 within the first 24 months following contract award, and are expected to exceed \$25,000 in sales each 12-month period thereafter.

(b) The Government may cancel the contract in accordance with clause 552.238-73. Cancellation, unless reported sales are at the levels specified in paragraph (a) of this clause.

(End of clause)

552.238-90 Dealers and Suppliers (I-FSS-644).

As prescribed in 538.1203(c)(64), insert the following clause:

DEALERS AND SUPPLIERS (I-FSS-644) (DATE)

When requested by the Contracting Officer, if other than the manufacturer, the Offeror must submit prior to award of a contract, either (1) a letter of commitment from the manufacturer which will assure the Offeror of a source of supply sufficient to satisfy the Government's requirements for the contract period; or (2) evidence that the Offeror will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period.

(End of clause)

552.238-91 Blanket Purchase Agreements (I-FSS-646).

As prescribed in 538.1203(c)(65), insert the following clause:

BLANKET PURCHASE AGREEMENTS (I-FSS-646) (DATE)

Blanket Purchase Agreements (BPAs) can reduce costs and save time because individual orders and invoices are not required for each procurement but can instead be documented on a consolidated basis. The Contractor agrees to enter into BPAs with ordering activities provided that:

(a) The period of time covered by such agreements shall not exceed the period of the contract including option year period(s);

(b) Orders placed under such agreements shall be issued in accordance with all applicable regulations and the terms and conditions of the contract; and

(c) BPAs may be established to obtain the maximum discount (lowest net price) available in those schedule contracts containing volume or quantity discount arrangements.

(End of clause)

552.238-92 Dissemination of Information by Contractor (I-FSS-680).

As prescribed in 538.1203(c)(66), insert the following clause:

DISSEMINATION OF INFORMATION BY CONTRACTOR (I-FSS-680) (DATE)

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

(End of clause)

552.238-93 Purchase of Open Market Items (CI-FSS-055).

As prescribed in 538.1203(c)(67), insert the following clause:

PURCHASE OF OPEN MARKET ITEMS (CI-FSS-055) (DATE)

For administrative convenience, an ordering activity Contracting Officer may add items not on the Federal Supply Multiple Award Schedule (MAS)—referred to as open market items—to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, only if—

(a) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(b) The ordering activity Contracting Officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(c) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(d) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

Note: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

(End of clause)

552.238-94 Contractor Tasks/Special Requirements (C-FSS-370).

As prescribed in 538.1203(c)(68), insert the following clause:

CONTRACTOR TASKS/SPECIAL REQUIREMENTS (C-FSS-370) (DATE)

(a) *Security Clearances:* The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.

(b) *Travel:* The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub. L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.

(c) *Certifications, Licenses and Accreditations:* As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

(d) *Insurance:* As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

(e) *Personnel:* The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

(f) *Organizational Conflicts of Interest:* Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's

participation in such order may be restricted in accordance with FAR Part 9.5.

(g) *Documentation/Standards*: The Contractor may be requested to provide supplies or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.

(h) *Data/Deliverable Requirements*: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.

(i) *Government-Furnished Property*: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.

(j) *Availability of Funds*: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

(k) *Overtime*: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed at time and a half of the labor rate).

(End of clause)

552.238-95 [Amended]

30. Amend newly designated section 552.238-95 by removing from the introductory paragraph "511.404(a)(2)" and adding "538.1203(c)(69)" in its place.

552.238-96 [Amended]

31. Amend newly designated section 552.238-96 by—

a. Removing from the introductory paragraph "512.301(a)(1)" and adding "538.1203(c)(70)" in its place;

b. Removing from the clause heading "(Aug 1997)" and adding "(Date)" in its place;

c. Removing from the introductory text of paragraph (b) "products" and "product" and adding "supplies" and "supply" in its place, respectively; and

d. Removing from paragraph (c)(2) "offeror" and adding "Offeror" in its place.

552.238-97 [Amended]

32. Amend the newly designated 552.238-97 by removing from the introductory paragraph "515.209-70(c)" and adding "538.1203(c)(71)" in its place.

552.238-98 [Amended]

33. Amend the newly designated section by removing from the introductory paragraph "515.408(d)" and adding "538.1203(c)(72)" in its place.

34. Add sections 552.238-99 through 552.238-102 to read as follows:

552.238-99 Task Order Period of Performance.

As prescribed in 538.1203(c)(73), insert the following clause:

TASK ORDER PERIOD OF PERFORMANCE (DATE)

The term for each order placed under the basic contract shall be specified in the individual order. Under no circumstances may an order be placed under the basic contract if the basic contract has expired, or has been terminated or cancelled by the government. No orders may exceed ten (10) years, inclusive of options, from the date that the order is placed; however, no orders may extend more than five (5) years after the expiration of the basic contract. Priced order options, if included in the initial evaluation and issuance of the order, may be exercised after the expiration date of the basic contract. Notwithstanding anything to the contrary clause, a multi-year order placed under the basic contract must be consistent with FAR Subpart 17.1 and any applicable funding restrictions.

(End of Clause)

552.238-100 Deliveries Beyond the Contractual Period—Placing of Orders (G-FSS-910).

As prescribed in 538.1203(c)(74), insert the following clause:

DELIVERIES BEYOND THE CONTRACTUAL PERIOD—PLACING OF ORDERS (G-FSS-910) (DATE)

In accordance with the Scope of Contract clause, 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)

552.238-101 Award (L-FSS-59).

As prescribed in 538.1203(c)(75), insert the following provision:

AWARD (L-FSS-59) (DATE)

Until a formal notice of award is issued, no communication by the Government, whether written or oral, shall be interpreted as a promise that an award will be made.

(End of Provision)

552.238-102 Interpretation of Contract Requirements (I-FSS-965).

As prescribed in 538.1203(c)(76), insert the following provision:

INTERPRETATION OF CONTRACT REQUIREMENTS (I-FSS-965) (DATE)

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

(End of Provision)

[FR Doc. E9-1096 Filed 1-23-09; 8:45 am]

BILLING CODE 6820-61-P