

# Subpart 538.2 - Establishing and Administering Federal Supply Schedules

**Parent topic:** [Part 538 - Federal Supply Schedule Contracting](#)

## 538.201 Coordination requirements.

GSA will coordinate with other agencies who administer FSS contracts specific to their delegated authority (i.e., the Department of Veterans Affairs). Coordination will ensure adherence to policies and procedures at the program level, such as providing guidance on approved exceptions (see 538.001).

## 538.270 Solicitation, evaluation, and award of Federal Supply Schedule (FSS) contracts.

### 538.270-1 Evaluation of offers without access to transactional data.

(a) *Applicability.* Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is included in the solicitation (see [515.408](#)).

(b) When offerors have commercial catalogs, negotiate concessions from established catalogs, including price and non-price terms and conditions.

(c) 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.

(d) Establish negotiation objectives based on a review of relevant data and determine price reasonableness.

(e) When establishing negotiation objectives and determining price reasonableness, compare the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. When determining the Government's price negotiation objectives, consider the following factors:

- (1) Aggregate volume of anticipated purchases.
- (2) The purchase of a minimum quantity or a pattern of historic purchases.
- (3) Prices taking into consideration any combination of discounts and concessions offered to commercial customers.
- (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 MAS 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, you should ask the offeror to identify and explain the reason for any differences. Do not require offerors to provide detailed cost breakdowns.

(f) You 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 you make 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.

(g) State clearly in the award document the price/discount relationship between the Government and the identified commercial customer (or category of customers) upon which the award is based.

### **538.270-2 Evaluation of offers with access to transactional data.**

(a) *Applicability.* Utilize this evaluation methodology for negotiating MAS offers when the commercial sales practices format is not included in the solicitation (see [515.408](#)).

(b) Contracting Officers shall utilize the techniques in FAR 15.404 when evaluating pricing for MAS offers.

(c) Order of preference. When evaluating MAS offers and establishing negotiation objectives, Contracting Officers shall-

(1) Use the following data that is already readily available in accordance with FAR 15.404-1(b)(2)(ii):

(i) Prices paid information on contracts for the same or similar items.

(ii) Contract-level prices on other MAS contracts or other government-wide contracts for the same or similar items.

(iii) Commercial data sources that consolidate and normalize prices offered by commercial vendors to the general public to compare prices for the same or similar items.

(2) If the Contracting Officer cannot determine the prices offered to be fair and reasonable based on the data described in [538.270-2\(c\)\(1\)](#), perform market research to compare prices for the same or similar items in accordance with FAR 15.404-1(b)(2)(vi).

(3) If the Contracting Officer cannot determine the prices offered to be fair and reasonable based on the data described in [538.270-2\(c\)\(1\)](#) or [\(2\)](#), perform an analysis of data other than certified cost or pricing data (as defined at FAR 2.101) provided by the offeror in accordance with FAR 15.404-1(b)(2)(vii).

### **538.270-3 Use of clause fill-in information.**

(a) *General.* The fill-in information required by GSAR [538.273\(e\)](#) outlines the timeframe that orders must be completed and provides for—

(1) The exercise of task and delivery order options after the FSS contract ordering period, if those options were evaluated as part of the initial award and the order is completed within the timeframe outlined in [538.273\(e\)](#);

(2) The FSS contract to remain an active contract until the final order is closed out; and

(3) The FSS contract to govern the terms and conditions with respect to active task and delivery orders (e.g., price adjustments) to the same extent as if the orders were completed during the FSS contract ordering period.

(b) *Continuity of services.* The fill-in information prescribed in [538.273\(e\)](#) does not preclude use of FAR clause 52.217-8 by ordering activities. However, the clause may only be used if the extension does not extend the cumulative term of the task order beyond the timeframe outlined in [538.273\(e\)](#).

### **538.270-4 Use of economic price adjustments in FSS contracts.**

The use of economic price adjustment (EPA) in FSS contracts helps ensure the Government is able to receive products, services, and solutions at fair and reasonable pricing throughout contract performance. EPAs provide for the increase or decrease of contract pricing based upon the occurrence of specified conditions described in the EPA method, such as market index changes or unforeseeable significant changes in market conditions.

(a) *Types of economic price adjustment.* The FSS program provides the following types of EPA:

(1) Adjustments based on fixed escalation rates (e.g., a fixed annual escalation rate).

(2) Adjustments based on a market index or other basis (e.g., U.S. Bureau of Labor Statistics' Employment Cost Index).

(3) Adjustments based on established pricing (e.g., a contractor's commercial price list, commercial catalog, or other standard market pricing).

(4) Adjustments based on unforeseeable significant changes in market conditions.

(b) *Exceptions.* The following types of price adjustments are not EPAs:

(1) Adjustments based on statute, Executive Order, or regulation (e.g., Service Contract Labor Standards ([41 U.S.C. chapter 67](#)) and AbilityOne procurements ([FAR subpart 8.7](#))).

(2) Adjustments based on a change clause (e.g., paragraph (c) of [552.212-4](#)).

(3) Price reductions based on [552.238-81](#), Price Reduction.

(4) Adjustments based on [552.238-117](#), Price Adjustment-Failure to Provide Accurate Information.

(5) Adjustments based on a contract clause that authorizes an adjustment based on specified actions or conditions.

(c) *General requirements.*

(1) The solicitation owner may establish EPA solicitation instructions and requirements (e.g., establish a ceiling percentage for a specified category).

(2) The FSS contracting officer is responsible for—

(i) Evaluating the proposed EPA method;

(ii) Incorporating the agreed-upon EPA method into the resultant contract; and

(iii) Processing EPA requests in accordance with [552.238-120](#) and FAS policy.

## **538.271 FSS contract awards.**

(a) FSS awards will be for commercial products and commercial services. Negotiate contracts as a discount from established catalog prices.

(b) Before awarding any FSS awards determine that the offered prices are fair and reasonable (see FAR Subpart 15.4 and [538.270](#)). Document the negotiation and your determination using FAR 15.406-3 as guidance.

## **538.272 MAS price reductions.**

(a) *Applicability.* This section applies when the contract contains the basic clause [552.238-80](#) Industrial Funding Fee and Sales Reporting.

(b) The basic clause and Alternate I of [552.238-81](#), Price Reductions, requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities and the offeror's customer or category of customers on which the contract award was predicated (see [538.271](#)). 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 eligible ordering activities and this customer or category of customers, the change constitutes a "price reduction."

(c) Ensure that the contractor understands the requirements of section [552.238-81](#) and agrees to report all price reductions to the Contracting Officer as provided for in the clause.

## **538.273 FSS solicitation provisions and contract clauses.**

The following clauses and provisions apply to FSS solicitations and contracts, unless otherwise excepted (see 538.001) or as otherwise stated below. For example, if only used in solicitations, the prescription will clearly state this. If the language does not specify “solicitations” then the clause applies to both FSS solicitations and contracts.

(a) Insert the following provisions in FSS solicitations:

- (1) 552.238-70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations.
- (2) 552.238-71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.
- (3) 552.238-72, Information Collection Requirements. Use in all FSS solicitations.
- (4) 552.238-118, Single-use Plastic Free Packaging Identification.

(b) Insert the following clauses and provisions in FSS solicitations and contracts] as an addendum to FAR 52.212-1, Instructions to Offerors - Commercial Products and Commercial Services:

- (1) 552.238-73, Identification of Electronic Office Equipment Providing Accessibility for Individuals with Disabilities. Use only in FSS solicitations for electronic office equipment.
- (2) 552.238-74, Introduction of New Supplies and Services Special Item Number (SIN). Only for those solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) Insert the following provisions in FSS solicitations as an addendum to FAR 52.212-2, Evaluation—Commercial Products and Commercial Services:

- (1) 552.238-75, Evaluation - Commercial Products and Commercial Services (Federal Supply Schedules). Use in FSS standing solicitations.
- (2) 552.238-76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) Insert the following clauses in FSS solicitations and contracts as an addendum to FAR Clause 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services:

- (1) 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule Price Lists.
- (2) 552.238-78, Identification of Products that have Environmental Attributes. Use only in solicitations and contracts that contemplate products with environmental attributes.
- (3) 552.238-79, Cancellation.
- (4) 552.238-80, Industrial Funding Fee and Sales Reporting. Use Alternate I for FSS with Transactional Data Reporting requirements. Clause 552.238-81 Alternate I should also be used when vendors agree to include clause 552.238-80 Alternate I in the contract.

- (5) 552.238-81, Price Reductions. Use Alternate I for FSS with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.
- (6) 552.238-82, Modifications (Federal Supply Schedules).
- (i) Use Alternate I for FSS that only accept eMod.
- (ii) Use Alternate II for FSS with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.
- (7) 552.238-83, Examination of Records by GSA (Federal Supply Schedules).
- (8) 552.238-84, Discounts for Prompt Payment.
- (9) 552.238-85, Contractor's Billing Responsibilities.
- (10) 552.238-86, Delivery Schedule. Use only for supplies.
- (11) 552.238-87, Delivery Prices.
- (12) 552.238-88, GSA Advantage!®. This clause is not required for the Department of Veterans Affairs Federal Supply Schedules.
- (13) 552.238-89, Deliveries to the U.S. Postal Service. Use only for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.
- (14) 552.238-90, Characteristics of Electric Current. Use only when the supply of equipment which uses electrical current is contemplated.
- (15) 552.238-91, Marking and Documentation Requirements for Shipping. Use only for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.
- (16) 552.238-92, Vendor Managed Inventory (VMI) Program. Use only for supplies when a VMI Program is contemplated.
- (17) 552.238-93, Order Acknowledgement. Use only for supplies.
- (18) 552.238-94, Accelerated Delivery Requirements. Use only for supplies.
- (19) 552.238-95, Separate Charge for Performance Oriented Packaging (POP). Use only for products defined as hazardous under Federal Standard No. 313.
- (20) 552.238-96, Separate Charge for Delivery within Consignee's Premises. Use only for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.
- (21) 552.238-97, Parts and Service.
- (22) 552.238-98, Clauses for Overseas Coverage. Use only when overseas acquisition is contemplated. Choose the most appropriate clause(s) to the contract scenario. For example there are multiple free on board (F.o.b.) clauses. Select those that apply best to what is being procured. The GSAR clauses and GSAR provisions in paragraphs (d)(22)(i) through (xi) of this section shall also be inserted in full text, when applicable.

- (i) FAR 52.214-34 Submission of Offers in the English Language.
- (ii) FAR 52.214-35 Submission of Offers in U.S. Currency.
- (iii) [552.238-90](#) Characteristics of Electric Current.
- (iv) [552.238-91](#) Marking and Documentation Requirements for Shipping.
- (v) [552.238-97](#) Parts and Service.
- (vi) [552.238-99](#) Delivery Prices Overseas.
- (vii) [552.238-100](#) Transshipments.
- (viii) [552.238-101](#) Foreign Taxes and Duties.
- (ix) FAR 52.247-29 F.o.b Origin
- (x) FAR 52.247-34 F.o.b. Destination.
- (xi) FAR 52.247-48 F.o.b. Destination-Evidence of Shipment
- (23) [552.238-99](#), Delivery Prices Overseas. Use only when overseas acquisition is contemplated.
- (24) [552.238-100](#), Transshipments. Use only when overseas acquisition is contemplated.
- (25) [552.238-101](#), Foreign Taxes and Duties. Use only when overseas acquisition is contemplated.
- (26) [552.238-102](#), English Language and U.S. Dollar Requirements.
- (27) [552.238-103](#), Electronic Commerce. This clause is not required for Department of Veterans Affairs Federal Supply Schedules.
- (28) [552.238-104](#), Dissemination of Information by Contractor.
- (29) [552.238-105](#), Deliveries Beyond the Contractual Period-Placing of Orders.
- (30) [552.238-106](#), Interpretation of Contract Requirements.
- (31) [552.238-107](#), Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies, This clause is not required for vehicles.
- (32) [552.238-108](#), Spare Parts Kit. Use only for products requiring spare part kits. This information is to be specified at the order level.
- (33) [552.238-109](#), Authentication Supplies and Services. Use only for information technology associated with the Homeland Security Presidential Directive 12 (HSPD-12).
- (34) [552.238-110](#), Commercial Satellite Communication (COMSATCOM) Services. Use only for COMSATCOM services.
- (35) [552.238-111](#), Environmental Protection Agency Registration Requirement. Use only for supplies when products may require registration with the Environmental Protection Agency.
- (36) [552.238-112](#), Definitions—Federal Supply Schedule Contracts.

(37) [552.238-113](#), Authorities Supporting Use of Federal Supply Schedule Contracts.

(38) [552.238-116](#), Option to Extend the Term of the FSS Contract. Use when appropriate.

(39) [552.238-117](#), Price Adjustment—Failure to Provide Accurate Information. Use only in FSS solicitations and contracts under the MAS program. This clause is used when the contract contains the basic clause [552.238-80](#) Industrial Funding Fee and Sales Reporting.

(40) [552.238-119](#), Single-use Plastic Free Packaging Availability.

[552.238-120](#), Economic Price Adjustment—Federal Supply Schedule Contracts. (41)

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR [52.216-22](#), Indefinite Quantity: “the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period”.