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GSA Office of Governmentwide Policy

8/12/2020

Class Deviation CD-2019-11
Addendum 1

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

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SUBJECT: FAR and GSAR Class Deviation - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

A. Purpose.

With the new interim FAR rule on the subject of this memorandum now issued, this addendum to class deviation CD-2019-11 cancels the clause at General Services Administration Acquisition Regulation (GSAR) 552.204-70 and temporarily suspends the rest of the guidance in the original class deviation.

B. Background.

Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA) contains two prohibitions regarding certain telecommunications and video surveillance services and equipment. The first prohibits agencies from procuring or obtaining certain telecommunications and video surveillance services and equipment and went into effect on August 13, 2019. GSA issued class deviation CD-2019-11 to provide implementing instructions and details.

With the publication of the interim FAR rule on July 14, 2020, the guidance in the original class deviation is now outdated. The requirements contained in the clause at GSAR 552.204-70 are no longer needed as the provision at FAR 52.204-26, created via FAR Case 2018-017, which was published on December 13, 2019, achieves the same purpose. Along with the now-unnecessary GSAR clause, the additional guidance contained in the original class deviation tailored the FAR implementation of the first prohibition in Section 889 to be more consistent with how GSA does business. The supplemental GSA guidance is not needed at this moment and is, therefore, temporarily suspended.

Acquisition Letter MV-20-10, anticipated shortly, will provide updated implementation instructions based on the second prohibition in Section 889.

Until the FAR cases dealing with the prohibitions are finalized, the risk profile developed in the original class deviation may be of significant importance later. Therefore, apart from the cancellation of the clause--which is permanent--the rest of the guidance in the original class deviation is temporarily suspended but is not permanently cancelled.

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C. Effect.

This addendum to the original class deviation CD-2019-11, issued August 13, 2019, is effective August 13, 2020 and will become part of the original class deviation.

First, this addendum cancels the clause at GSAR 552.204-70. The cancellation of the clause at GSAR 552.204-70 means that the clause no longer needs to be added to any solicitations or contracts, the clause no longer requires offerors or contractors to submit any representations or disclosures, and the clause may be removed from solicitations and contracts at contracting officers' convenience.

Second, this addendum temporarily suspends the rest of the guidance in the original class deviation; the entire original class deviation is no longer in effect but could, except for the clause at GSAR 552.204-70, be reinstated later.

D. Effective Date.

This addendum to class deviation CD-2019-11 is effective on August 13, 2020 and remains in effect until rescinded.

E. Service-Level Guidance.

The Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and the Office of Administrative Services (OAS) shall revise applicable policies, such as solicitation and ordering guides, issue implementation guidance, revise contract templates, and provide training, as appropriate, to align with this addendum to class deviation CD-2019-11.

F. Point of Contact.

Questions regarding this class deviation should be directed to gsarpolicy@gsa.gov.

GSA

AUG 1 3 2019

GSA Office of Governmentwide Policy

Class Deviation CD-2019-11

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: FAR and GSAR Class Deviation - Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

A. Purpose.

GSA supports the Federal Government's efforts to combat a national security threat posed by certain telecommunications equipment and services identified by Congress in Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the NDAA). This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) that will accomplish three actions.

First, this class deviation adds to the General Services Administration Acquisition Regulation (GSAR) a requirement for a new annual representation for all GSA contracts, commercial solution opening procurements (CSOs), and lease acquisitions through GSAR Clause 552.204-70.

Second, this class deviation changes the applicability of FAR 4.2105, added through FAR Case 2018-017, under which contractors are required to represent at both the contract and order level whether they will provide covered telecommunications equipment or services to the Government. As a result, certain low and medium risk General Services Administration (GSA) contracts, for which there is a reduced likelihood of covered telecommunications equipment or service being utilized, will require the representation only at the contract level rather than at both the contract and order level.

Finally, this class deviation establishes GSA-specific implementation timelines for new solicitations, for pending awards, and for existing contracts.

B. Background.

The NDAA prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain "any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system."

FAR 4.2105(a) was issued through an interim rule for FAR Case 2018-017. It requires the representation provision at FAR 52.204-24 be inserted into all solicitations issued on or after August 13, 2019 and resultant contracts, including solicitations for orders, or notices of intent to place orders, under indefinite delivery contracts.[1]

The provision at FAR 52.204-24 requires offerors to complete a representation that they "will [or] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation."[2]

Additionally, FAR 4.2105(b), issued as a part of the same interim rule, requires the reporting clause at FAR 52.204-25 to be inserted into all solicitations and contracts. The clause at FAR 52.204-25 requires contractors that identify certain covered telecommunications equipment or services provided during contract performance to report information to the contracting officer.

GSA is committed to the most effective and efficient implementation of the prohibitions in Section 889(a)(1)(A) of the NDAA while maintaining its ability to meet its mission and to support the mission needs of Federal agencies across the Government.

This class deviation takes a risk-based approach by: (i) requiring the use of a new representation clause at GSAR 552.204-70 in all existing and new GSA contracts, including existing indefinite delivery contracts, CSOs, and lease acquisitions; (ii) changing the applicability of FAR 4.2105(a)'s order-level representation requirement; and (iii) establishing a GSA-specific implementation timeline for contracting officers to modify existing contracts, recognizing the difficulty associated with modifying over 18,000 indefinite delivery contracts and thousands of non-indefinite delivery contracts. GSA will update this class deviation as necessary.

First, this class deviation requires a new representation clause at GSAR 552.204-70 that applies to all existing and new GSA contracts. This new GSAR representation clause will be included in all existing and new GSA contracts, including existing indefinite delivery contracts, as well as existing task and delivery orders under indefinite delivery order contracts that are not covered by the FAR deviation as they are modified to extend their periods of performance, including the exercise of options, or by March 31, 2020, whichever is sooner. For lease acquisitions, the GSAR representation clause and the FAR reporting clause at FAR 52.204-25 shall be included in all new leases and existing leases as they are modified to extend their periods of performance, including the exercise of options.

Second, this class deviation changes the applicability of FAR 4.2105. Due to the tremendous volume of orders (resulting from notices of intent to place an order or solicitations for an order) flowing through GSA indefinite delivery contracts at this time, and the limited likelihood of prohibited items being involved, GSA is not applying the order-level representation requirement

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[1] Contracting officers are also required to include the provision in solicitations issued before August 13, 2019 where award of the resulting contract occurs on or after August 13, 2019, and in solicitations for an order, or notices of intent to place an order, under indefinite delivery contracts where performance will occur on or after August 13, 2019.

[2] Covered telecommunications equipment and services is defined at FAR 52.204-25(a).

in FAR 4.2105 to the majority of orders placed under indefinite delivery contracts that have a low or medium risk of including covered telecommunications equipment or services.

For indefinite delivery contracts that have a low or medium risk of including covered telecommunications equipment or services, including single-award indefinite delivery contracts, this class deviation will only require a representation at the contract level, and will not require an additional, duplicative representation from the same contractor at the order level, unless the contracting officer determines that the order could potentially include information technology or communication technology. Contracting officers have full discretion to apply the FAR representation requirement at the order level and shall do so for any order likely to include information technology or communication technology.

Finally, this class deviation tailors the implementation of the representation requirement at FAR 4.2105(a)(2) in order to recognize GSA's unique Federal Supply Schedule program, multi-agency contracts (MACs), and other Governmentwide indefinite delivery contracting vehicles and the nature of end-of-fiscal-year demands. GSA is also amending the GSAR to apply the same protections to CSOs and lease acquisitions.

As part of the implementation timeline, this class deviation requires that the new GSAR representation clause and the FAR reporting clause be included in all existing GSA indefinite delivery contracts as soon as practicable, and in all cases no later than the first quarter of Fiscal Year 2020.

This risk-based approach is intended to ensure that all GSA contractors follow, and are aware of, the prohibition against supplying covered telecommunications equipment and services. This class deviation will pave the way for proposed changes to the System for Award Management (SAM) and GSA's implementation of the prohibition in paragraph (a)(1)(B) of Section 889 of the NDAA, which prohibits the Federal Government from entering into, extending, or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, and will be effective on August 13, 2020.

To promote clarity, the effects of this class deviation are discussed in the paragraphs below.

1. GSA's High Risk Procurements -- No FAR Deviation.

The existing representation provision at FAR 52.204-24 will continue to apply to all orders under GSA indefinite delivery contracts that have a high risk of including covered telecommunications equipment or services. Because this class deviation requires all GSA contracts to include the new GSAR representation clause, GSA high risk procurements will include not only the representation provision at FAR 52.204-24 but also the new GSAR representation clause. GSA will amend this class deviation if other high risk GSA procurements are identified. Additional high risk procurements should be brought to the attention of GSA's Senior Procurement Executive, via the point of contact in Section G (below).

The following are GSA's high risk procurements, to which the FAR deviation does not apply:

- Telecommunications Contracts (Networx, Enterprise Infrastructure Solutions, Connections II, and Local Telecommunications)
- Federal Supply Schedules 36, 58 I, 70, and 84 (or the equivalent SINs under the MAS Reform Structure)
- IT Governmentwide Acquisition Contracts (GWACs) (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III)
- Commercial Solution Opening Procurements (CSOs)

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

2. GSA's Medium Risk Procurements -- FAR Deviation, Except for Certain Orders.

For orders under GSA indefinite delivery contracts that have a medium risk of including covered telecommunications equipment or services, the representation provision at FAR 52.204-24 will generally not apply. However, if GSA contracting officers consider there may be potential for information technology or communication technology, they shall include FAR 52.204-24 in the notice of intent to place an order or the solicitation for an order under a medium risk indefinite delivery contract. All GSA contracts will include the new GSAR representation clause.

The following are GSA's medium risk procurements:

- One Acquisition Solution for Integrated Services (OASIS) and OASIS Small Business
- Human Capital and Training Solutions (HCaTS)
- Building Automation System (BAS) orders under:
    - 03FAC Facilities Maintenance and Management
    - Building Maintenance and Operations (BMO)
    - Other Operations and Maintenance Indefinite Delivery Contracts
    - Repair and Alteration Indefinite Delivery Contracts

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

3. GSA's Low Risk Procurements -- FAR Deviation, Except for Certain Orders.

All other GSA indefinite delivery contracts are considered to have a low risk of including covered telecommunications equipment or services. For these low risk procurements, the FAR deviation will apply. However, if GSA contracting officers consider there may be potential for information technology or communications technology, they shall include the representation provision at FAR 52.204-24 in the notice of intent to place an order or the solicitation for an order under a low risk indefinite delivery contract. All GSA contracts will include the new GSAR representation clause.

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

4. GSA's Real Property Lease Acquisitions -- FAR Applies.

GSA interprets Section 889 of the NDAA to apply to leases and extends the requirements of Section 889 of the NDAA to GSA's lease acquisitions via this class deviation.

See Attachment C for additional information about the GSAR change which makes the FAR rule applicable.

5. GSA's Assisted Acquisition Services -- No FAR Deviation.

GSA performs assisted acquisition services in both the Federal Acquisition Service (FAS) and the Public Buildings Service (PBS). When providing assisted acquisitions on behalf of other Federal agencies under FAS programs, GSA contracting officers are required to follow the funding agency's rules. When performing acquisitions on behalf of the Department of Defense (DoD), FAS and PBS contracting officers are required to follow DoD's rules and this FAR deviation will not apply.

See Attachment C for additional information about the application of the FAR interim rule and this GSA class deviation to GSA procurement programs.

C. Applicability.

1. Deviation Implementation.

a. FAR Class Deviation.

The FAR class deviation to the order-level representation requirement at FAR 4.2105(a)(2) applies to GSA orders under GSA indefinite delivery contracts except the following high risk procurements: (1) telecommunications contracts (Networx, EIS, Connections II, and Local Telecommunications); (2) Federal Supply Schedules 36, 58 I, 70, and 84 (or the equivalent SINs under the MAS Reform Structure); (3) IT GWACs (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III); and (4) CSOs. The FAR class deviation also does not apply to orders under medium or low risk procurements that could potentially include information technology or communication technology. See Attachment A for the FAR deviation text implementing this class deviation.

Note that some Governmentwide users may request order-level representations when placing orders under deviated GSA indefinite delivery contracts. In this case, contractors must comply with ordering agency requirements.

Additionally, when providing assisted acquisitions on behalf of other Federal agencies under FAS programs, GSA contracting officers are required to follow the funding agency's rules. When performing acquisitions on behalf of DoD, FAS and PBS contracting officers are required to follow DoD's rules.

b. GSAR Class Deviation.

The first part of the GSAR class deviation, requiring the inclusion of the representation clause at GSAR 552.204-70 in new and existing contracts, applies to all GSA contracts, including

indefinite delivery contracts, CSOs, and lease acquisitions. The second part of the GSAR class deviation applies the representation and reporting requirements at FAR 4.2105 to CSOs and lease acquisitions. See Attachment B for the GSAR deviation text implementing this class deviation.

2. Implementation Timelines.

a. Representation Provision at FAR 52.204-24.

All new contract-level solicitations, issued on or after August 13, 2019, shall, per FAR 4.2105(a)(1), include the representation provision at FAR 52.204-24.

All new order-level solicitations, issued on or after August 13, 2019, under indefinite delivery contracts not covered by the FAR deviation, shall, per FAR 4.2105(a)(2), include the representation provision at FAR 52.204-24.

For solicitations that were issued prior to August 13, 2019 that have not closed, or awards that have not been made by August 13, 2019, the contracting officer shall either amend the solicitation to include the representation provision at FAR 52.204-24 or incorporate it into the award of the apparent successful offeror.

b. Reporting Clause at FAR 52.204-25.

All contracts awarded on or after August 13, 2019 shall, per FAR 4.2105(b), include the reporting clause at FAR 52.204-25.

All existing indefinite delivery contracts shall, per FAR 4.2105(b), be modified to include the reporting clause at FAR 52.204-25 as soon as practicable, and in all cases no later than the first quarter of Fiscal Year 2020.

All existing non-indefinite delivery contracts and task and delivery orders under indefinite delivery order contracts that are not covered by the FAR deviation, shall, per FAR 4.2105(b), be modified to include the reporting clause at FAR 52.204-25 as they are modified to extend their periods of performance, including the exercise of options, or by March 31, 2020, whichever is sooner.

All existing lease acquisitions shall, per FAR 4.2105(b), be modified to include the reporting clause at FAR 52.204-25 as they are modified to extend their periods of performance, including the exercise of options.

c. Representation Clause at GSAR 552.204-70.

All contracts awarded on or after August 13, 2019 shall include the representation clause at GSAR 552.204-70.

All existing indefinite delivery contracts shall be modified to include the representation clause at GSAR 552.204-70 as soon as practicable, and in all cases no later than the first quarter of Fiscal Year 2020.

All existing non-indefinite delivery contracts and task and delivery orders under indefinite delivery order contracts that are not covered by the FAR deviation, shall be modified to include the representation clause at GSAR 552.204-70 as they are modified to extend their periods of performance, including the exercise of options, or by March 31, 2020, whichever is sooner.

All existing lease acquisitions shall be modified to include the representation clause at GSAR 552.204-70 as they are modified to extend their periods of performance, including the exercise of options.

D. Authority.

This class deviation is issued under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404.

This class deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

E. Effective Date.

This class deviation is effective on August 13, 2019 and remains in effect until rescinded or incorporated into the GSAR. See Section C.2 for implementation timelines.

F. FAS, PBS, and Office of Administrative Services Guidance.

Upon approval of this class deviation, FAS, PBS, and the Office of Administrative Services will revise applicable policies, such as solicitation and ordering guides, issue implementation guidance, revise contract templates, and provide training, as appropriate, to align with this class deviation.

G. Point of Contact.

Questions regarding this class deviation should be directed to gsarpolicy@gsa.gov.

Attachment A - FAR Deviation Text
Attachment B - GSAR Deviation Text
Attachment C - GSA Program-By-Program Explanation

ATTACHMENT A

FAR Deviation Text

- Additions to baseline made by proposed rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by proposed rule are indicated by ~~strikethroughs~~
- Five asterisks (* * * * *) indicate that there are no revisions between the preceding and following sections
- Three asterisks (* * *) indicate that there are no revisions between the material shown within a subsection

FAR Baseline: Change 2019-05 effective 08/13/2019

Part 4-Administrative and Information Matters

* * * * *

Subpart 4.21-Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

* * * * *

4.2105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

~~(1)~~ **[i]**~~I~~n all solicitations for contracts**[, not including**~~; and~~

~~(2) Under indefinite delivery contracts, in all~~ notices of intent to place an order~~,~~ or solicitations for an order **[under indefinite delivery contracts]**(i.e., subpart 8.4 and 16.505).

* * * * *

ATTACHMENT B

GSAR Deviation Text

- Additions to baseline made by proposed rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by proposed rule are indicated by ~~strikethroughs~~
- Five asterisks (* * * * *) indicate that there are no revisions between the preceding and following sections
- Three asterisks (* * *) indicate that there are no revisions between the material shown within a subsection

GSAR Baseline: Change 101 effective 07/17/2019

Part 504-Administrative Matters

* * * * *

[Subpart 504.21-Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

504.2101 [Reserved]

504.2102 [Reserved]

504.2103 Procedures.

If an offeror or contractor provides an affirmative response to the representations at, or discloses information in accordance with paragraphs (c) and (d) of, the provision at FAR 52.204-24 or the clause at GSAR 552.204-70, follow the procedures at 504.70.

504.2104 [Reserved]

504.2105 Contract clause.

The contracting officer shall insert the clause at 552.204-70, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and resulting contracts.]

* * * * *

Part 552-Solicitation Provisions and Contract Clauses

* * * * *

Subpart 552.2-Text of Provisions and Clauses

* * * * *

[552.204-70 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 504.2105, insert the following clause:

REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DATE)

(a) *Definitions.* As used in this clause-
"Covered telecommunications equipment or services", "Critical technology", and "Substantial or essential component" have the meanings provided in FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Representation.* [Contractor to complete and submit to the Contracting Officer] The Offeror or Contractor represents that it [ ] will or [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract, order, or other contractual instrument resulting from this contract. This representation shall be provided as part of the proposal and resubmitted on an annual basis from the date of award.

(d) *Disclosures.* If the Offeror or Contractor has responded affirmatively to the representation in paragraph (c) of this clause, the Offeror or Contractor shall provide the following additional information to the Contracting Officer--

(1) All covered telecommunications equipment and services offered or provided (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of clause)]

* * * * *

Part 570-Acquiring Leasehold Interests in Real Property

* * * * *

Subpart 570.1-Applicability
(a) * * *

(c) The following GSAM provisions apply to acquisitions of leasehold interests in real property. These are in addition to the GSAR requirements identified in 570.101(b).

GSAM Applicable to Acquisitions of Leasehold Interests in Real Property
* * * **[504.21** **504.70]** * * *

* * * * *

Subpart 570.7-Solicitation Provisions and Contract Clauses

* * * * *

570.701 FAR provisions and clauses.

Include provisions or clauses substantially the same as the FAR provisions and clauses listed below.

[(a)

For all GSA lease acquisitions...	**Include...**

	52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. **52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.**

(b)]

If...	Then include...

* * *

570.703 GSAR contract clauses.

* * *

[552.204-70	**Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.]**
* * *	

* * * * *

Part 571-Pilot Program for Innovative Commercial Items

Subpart 571.1-General

571.101 Scope.

* * *

(c) Procurements under the CSO Pilot Program must be compliant with the requirements in this part and the requirements in the GSA Procurement Innovation Resource Center (PIRC) CSO Guide available at https://www.gsa.gov/pirc.

[(d) Procurements under the CSO Pilot Program must be compliant with the requirements at FAR 4.21 and GSAR 504.21.]

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ATTACHMENT C

GSA Program-By-Program Explanation

This attachment provides a description and high-level risk assessment for select General Services Administration (GSA) procurement programs.

A. FAS Programs.

1. Federal Supply Schedules.

GSA Federal Supply Schedules (FSS) are long-term governmentwide contracts with commercial firms providing Federal, state, and local government buyers access to more than 11 million commercial supplies and services at volume discount pricing. GSA has conducted a preliminary risk assessment of its FSS contracts considering scope, GSA*Advantage!* catalog data, and potential mission impact and critical data compromise. The vast majority of GSA's FSS contracts are considered low risk contracts because they do not involve information technology or communication technology. GSA, however, has identified several schedules as high risk, based on the scope of the schedule's offerings and a review of GSA*Advantage!* product catalog data for potentially prohibited items. Orders under these schedules are more likely to include information technology or communication technology and have a higher likelihood of mission impact or critical data compromise. The schedules identified as high risk are:

- Schedule 36 *The Office, Imaging, and Document Solution*
- Schedule 58 I *Professional Audio/Video Telemetry/Tracking, Recording/Reproducing and Signal Data Solutions*
- Schedule 70 *General Purpose Commercial Information Technology Equipment, Software, and Services*;
- Schedule 84 *Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response*

In addition, GSA has identified Schedule 03FAC *Facilities Maintenance and Management* as medium risk based on the scope of offerings. Under Schedule 03FAC, GSA offers a vast array of innovative, customer-focused facilities products and services. Services offered under this schedule include smart building service integration, building management services, commissioning services, elevator maintenance, heating, ventilation, and air conditioning (HVAC) maintenance, electrical maintenance, and fire alarm system maintenance and repair. Given that many of these services may involve building control systems with embedded communications technology and many enabled via the Internet, GSA considers orders placed under Schedule 03FAC medium risk.

2. GSA FAS Office of General Supplies and Services.

a. GSA Global Supply and GSA Retail Operations.

Under the GSA General Supplies and Services Program (Global Supply) and GSA Retail Operations, GSA fulfills hundreds of thousands of requisition orders per year in support of the Department of Defense and other Federal agencies. To the extent possible, GSA pre-positions

contracts and Blanket Purchase Agreements (BPAs), so that orders are placed on a first-pass basis. When there is not a pre-positioned solution in place, however, GSA issues solicitations for individual orders. Under FAR 4.2105(a)(2), this process could result in contractors completing numerous representations per week, greatly disrupting the ordering process, slowing vital product delivery, and increasing costs. These programs are considered low risk because few orders for hardware supplies and office products are likely to involve information technology or communication technology.

b. Building Maintenance & Operations (BMO) Strategic Sourcing Solution.

The Building Maintenance and Operations (BMO) strategic sourcing solution is a comprehensive and flexible solution covering all high-demand BMO services. It is an open market, multiple-award, indefinite-delivery/indefinite-quantity (IDIQ) contract vehicle supporting the strategic sourcing initiative to reduce costs and drive efficient purchasing by Federal agencies. There are both unrestricted and small business (SB) set-aside programs available in the BMO vehicle to allow for large and small business participation.

The scope of BMO and BMO SB includes the primary services required to provide a total solution to maintain and operate Federal buildings and assets, including building management services, commissioning services, elevator maintenance, heating, ventilation, and air conditioning (HVAC) maintenance, electrical maintenance, and fire alarm system maintenance and repair. Given that many of these services may involve building control systems with embedded communications technology and many enabled via the Internet, GSA considers orders placed under BMO contracts medium risk.

c. GSA Emergency Response and Recovery.

GSA Emergency Response and Recovery provides on-site support to the Department of Homeland Security and other response agencies in all activities related to emergency response operations such as natural disasters, technological emergencies, terrorism consequences, resource shortages, and other disasters. Under this program, GSA fulfills requisition requests, provides assisted acquisition services, and awards GSA contracts and other GSA funded orders in support of customer agencies. Orders placed by GSA for the purpose of fulfilling a Government-to-Government requisition are covered by this class deviation. When buying on behalf of another Federal agency, GSA contracting officers are required to follow the funding agency's rules; this class deviation does not apply to assisted acquisition services.

Generally, GSA purchases recovery related items such as hygiene kits, tents, stoves and office supplies under this program. Since this program does not generally purchase products or services that involve information technology or communication technology, GSA has determined that this program is low risk. Furthermore, requiring representation at the order level would slow the delivery of mission-critical products. Therefore, this class deviation applies to GSA-funded orders awarded using the flexibilities in FAR Subpart 18.2 in support of an emergency declared by the President.

3. GSA Travel, Transportation and Logistics (TTL) Category.

a. GSA Fleet.

As the mandatory source for all non-tactical motor vehicles for the Government worldwide, GSA Fleet owns over 219,000 vehicles and purchases around 45,000 new vehicles each year. GSA Fleet is comprised of various vehicle types including, but not limited to, sedans, station wagons, sport utility vehicles, full & mid-size pickup trucks, full & mid-size vans, ambulances, law enforcement vehicles, school & transport buses, medium and heavy duty trucks, and wrecker & carrier transport vehicles. A high volume of individual vehicle requisitions are placed each year. Risk associated with delivery, cost, and performance is primarily managed at the indefinite delivery contract level. Since order-level representation does not substantially mitigate any additional risk and will significantly impact efficiency and cost sustainability, GSA has categorized GSA Fleet low risk and will only require contractor representation at the indefinite contract level.

GSA Fleet also maintains maintenance control and accident management centers. GSA Fleet executes approximately 1.2 million GSA-funded repair transactions each year, of which only 6,000 cost more than $2,500. The vast majority of these repairs do not involve information technology or communication technology. In fact, since the beginning of 2018, only nine of over two million transactions involved telecommunications (specifically, the installation and removal of law enforcement radio equipment). Furthermore, cameras installed in vehicles are part of a "closed loop system" which means they do not transmit data outside of the vehicle. GSA has categorized repair transaction through GSA Fleet's maintenance control and accident management centers as low risk. Requiring order level representation would not mitigate additional risk and would unduly burden customer agencies and businesses, most of which are small, providing the repair service. As provided in this class deviation, for those very few instances when information technology or communication technology is involved, the contracting officer will add the order level representation requirement.

b. GSA City Pair.

GSA awards contracts to airlines for Federal employees to travel under the City Pair Program. Under the City Pair Program, delivery, cost, and performance risk is managed at the contract level. Orders under the City Pair Program are transactional in nature and are placed directly by Federal travelers when they purchase a seat on a particular flight. Because Federal travelers place hundreds of thousands of orders every year and risk is primarily managed at the contract level, GSA will leverage the existing framework and require contractor representation at the indefinite delivery contract level only. Representations at the individual flight level are not required by the FAR rule as no order level solicitation is issued.

4. GSA Professional Services and Human Capital (PSHC) Category.

a. GSA SmartPay.

The GSA SmartPay "master" contracts provide for commercial payment services which enable the participating agency to acquire a broad spectrum of products and services from a wide

range of vendors through purchase, travel, and fleet charge accounts. Annual program volume totals more than $30 billion through 100 million transactions.

Representations will not be required for GSA task orders under the master contracts because repetitive representations will not mitigate additional risk and will significantly reduce efficiency and increase costs. The Center for Charge Card Management will ensure contractor bank master contract representations are made available for inspection by GSA SmartPay participating agencies. When placing task orders on behalf of a participating agency, GSA contracting officers are required to follow the participating agency's rules.

b. One Acquisition Solution for Integrated Services (OASIS).

OASIS and OASIS Small Business (OASIS SB) are multiple award, indefinite-delivery/indefinite-quantity (IDIQ) contracts that provide flexible and innovative solutions for complex professional services. The core disciplines within the scope of these contracts include program management, management consulting, logistics, engineering, scientific, and financial services. OASIS and OASIS SB are designed to address agencies' need for a full range of service requirements that integrate multiple professional service disciplines and ancillary services/products with the flexibility for all contract types and pricing at the task order level.

While the scope of these contracts does not directly require the use of telecommunications and video surveillance equipment, OASIS and OASIS SB orders could have small or large ancillary information technology or communication technology components offered to the Government as a part of a total solution. As a result, GSA has categorized orders under OASIS contracts as medium risk.

c. Human Capital and Training Solutions (HCaTS).

HCaTS is comprised of two indefinite-delivery/indefinite-quantity (IDIQ) governmentwide contract vehicles: HCaTS Unrestricted (HCaTS U) and HCaTS Small Business (HCaTS SB). These vehicles provide reliable, flexible, fast, and efficient ways to obtain best-value, customized solutions for human capital management and training requirements. HCaTS services include customized training and development, customized human capital strategy, and customized organizational performance improvement.

While the scope of these contracts does not directly require the use of telecommunications and video surveillance equipment, HCaTS orders could have small or large ancillary information technology or communication technology components offered to the Government as part of a total solution. As a result, GSA has categorized orders under HCaTS as medium risk.

5. Office of Information Technology Category (ITC).

a. Telecommunications Contracts (Networx, Enterprise Infrastructure Solutions, Connections II, and Local Telecommunications).

GSA establishes indefinite delivery contracts for GSA's various telecommunications programs, including Networx, Enterprise Infrastructure Solutions (EIS), Connections II, and Local

Telecommunications. Agencies compete and award orders under each indefinite delivery contract and then place service requests (e.g., to move, add, change, or disconnect phone lines) under the agency orders. Agency orders under these contracts are high risk because they are more likely to include the use of covered telecommunications equipment or services than other GSA contracts. This class deviation, therefore, does not apply to GSA's telecommunications contracts and for the purposes of FAR 4.2105(a), representations are required both at the contract level and at the agency order level.

Individual service orders or service requests, such as the addition, cancellation, or removal of lines do not result from a separate solicitation. Per the FAR, no representation is required for individual service orders or service requests.

b. IT Governmentwide Acquisition Contracts (Alliant 2, Alliant 2 SB, VETS 2, and 8(a) STARS III).

GSA offers several Governmentwide Acquisition Contracts (GWACs) that allow the Government to buy cost-effective, innovative solutions for IT requirements. Orders under these contracts are high risk because they are more likely to include the use of information technology or communication technology than other GSA contracts and, therefore, have a higher likelihood of mission impact or critical data compromise. This class deviation, therefore, does not apply to these contracts and representations are required at the contract level and at the order level for all GWACs, to include Alliant 2, Alliant 2 SB, VETS 2 and 8(a) STARS III.

6. FAS Technology Transformation Services (TTS) Acquisitions.

The Technology Transformation Service (TTS) mission is to improve the public's experience with the Government by helping agencies build, buy, and share technology that allows them to better serve the public. TTS is delegated authority to conduct GSA-funded acquisitions and a limited number of assisted acquisitions. Because TTS acquisitions support IT modernization, software development, cloud migration, and other IT-related solutions, this class deviation does not apply to TTS acquisitions unless placing orders under a GSA contract vehicle that is otherwise covered.

When buying on behalf of another Federal agency, TTS contracting officers are required to follow the funding agency's rules.

7. Commercial Solution Opening (CSO) Procurements.

GSA has established a pilot program in accordance with Section 880 of the National Defense Authorization Act for Fiscal Year 2017 and GSA Acquisition Manual (GSAM) Part 571 to competitively procure innovative commercial items, technologies, and services using commercial solution opening procurements (CSOs). This program has been implemented outside the normal FAR requirements to engage traditional and non-traditional Government contractors and provide a streamlined approach for acquiring innovative commercial products and services. CSOs are designated as high risk because of the high likelihood that CSOs may involve information technology or communication technology.

B. PBS Programs.

1. Major Construction Projects.

Major construction projects could potentially include the installation of building automation system (BAS) hardware that falls into the category of information technology or communication technology. These projects can number up to thirty per year and are typically procured through individual contracts rather than indefinite delivery contracts. Because there are typically no orders to consider, the standard FAR requirements apply and representations are required at the contract level.

2. Architect and Engineer (A/E) Services.

Architect and engineer (A/E) contracts for GSA construction and alteration projects entail development and review of drawings produced by a contractor, supplier, manufacturer, or subcontractor that show how a design is intended to be implemented and installed. A/E services may be provided through independent contracts or indefinite delivery contracts and typically do not involve information technology or communication technology. As such, A/E services are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

3. Repair and Alteration (R&A) Projects.

Much of the repair and alteration work in GSA-owned buildings involves tenant improvements, including installation or modification of framing, walls, doors, paint, and carpet and the repair or replacement of specific building systems and components such as roofs, plumbing system equipment and components, or exterior paving. This work does not involve the installation of information technology or communication technology used by tenant agencies. In addition, each tenant agency directly contracts for its own information technology or communication technology.

Most of GSA's repair and alteration work is accomplished via task orders issued under indefinite delivery contracts. Only a small subset of task orders under these indefinite delivery contracts may involve the installation or repair of building automation system (BAS) systems, heating, ventilation, and air conditioning (HVAC), lighting, fire protection, or elevator systems that may contain information technology or communication technology components. As such, repair and alteration contracts are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

4. Custodial and Landscaping Services.

Custodial contracts for GSA-owned buildings entail services such as cleaning restrooms and restocking them with supplies, cleaning floors by sweeping, mopping, or vacuuming them, and emptying trash bins. Most of GSA's custodial contracts are with AbilityOne Program providers, for whom a key mission is to provide employment for individuals with disabilities. Landscaping contracts for GSA-owned buildings involve tasks such as mowing, trimming, edging, removing trash, mulching, and weed control. As such, custodial and landscaping services are considered

low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

5. Building Operation and Maintenance (O&M) Services.

Each GSA-owned building is operated and maintained via a recurring service contract for preventive and corrective maintenance of electrical systems and equipment, mechanical, plumbing, heating, ventilation, and air conditioning (HVAC) systems and equipment, fire protection and life safety systems and equipment, architectural and structural systems, fixtures, and equipment, landscape irrigation systems, elevator and vertical transportation systems, and roofing.

Operations and maintenance (O&M) services are typically provided through single-award indefinite delivery contracts. If this type of contract is used, GSA normally issues one initial task order under the indefinite delivery contract for performance of routine O&M services and additional task orders for above-standard O&M services. Although above-standard O&M services may be frequent in large buildings, much of this work will be activities that do not involve information technology or communication technology. As such, building O&M services are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

If O&M services are acquired through a Blanket Purchase Agreement (BPA) under the 03FAC Schedule, order level representations are required for orders that could potentially include information technology or communication technology, including the procurement of address building control systems with embedded technology.

6. Energy and Water Conservation Measures.

Under Energy Savings Performance Contracts (ESPCs), agencies can contract with an energy service company to improve energy efficiency in Federal facilities at no direct cost to the Government. Energy service companies finance the capital costs of implementing energy and water conservation measures and receive, in return, a contractually determined share of the cost savings that result. Under Utility Energy Service Contracts (UESCs), agencies contract with regulated utility companies for energy management services that produce measurable energy or water reductions or measurable amounts of demand reduction. Energy conservation measures under both ESPCs and UESCs may include installation or modification of information technology or communication technology, but are considered low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

7. Utility Services.

Utility services involve the provision of electricity, gas, water, sewer, and steam services to GSA-owned buildings. GSA has approximately 5,000 accounts for regulated and deregulated utility services. Regulated utilities purchased by GSA are no longer subject to all FAR Part 41

requirements.[3] Regulated and non-regulated utility procurements are low-risk contracts because they normally do not involve information technology or communication technology. Representations, therefore, will not be required for any GSA task orders under areawide contracts because repetitive representations will not mitigate additional risk and will significantly reduce efficiency and increase costs.

8. GSA Leases.

GSA holds 8,100 real property leases. About half (185 million square feet) of GSA's building space is leased. GSA's lessors do not provide information technology or communication technology (e.g. building automation system (BAS) or video surveillance service) directly to the government as part of the lease, but they may be required by the lease to provide WiFi service or other information technology or communication technology to GSA in GSA-leased space, which adds a degree of risk to leases. In addition, GSA occasionally exercises an option to purchase a leased building, which could include BAS components. Lease acquisitions do present some risk in this area, and GSA extends the requirements of Section 889 of the NDAA to GSA's lease acquisitions its class deviation to mitigate this risk.

9. GSA Leasing Support Services (GLS).

Under the GSA Leasing Support Services (GLS) Program, GSA has established multiple-award indefinite delivery contracts with leasing brokers to provide leasing support services (e.g., market surveys, site visits, document preparation, negotiation) for GSA's lease contracting officers. Almost 350 task orders are issued under these contracts each year. The services provided under these task orders do not typically involve information technology or communication technology and are, therefore, low risk. Representations are required at the contract level and for any orders that could potentially include information technology or communication technology.

[3] FAR and GSAM Class Deviation - Streamlined Procedures for Acquiring Utility Services from Regulated Utilities, Class Deviation 2019-06.