



MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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SUBJECT: GSAR Class Deviation - GSAR Clause 552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts

1. Purpose. This memorandum approves a class deviation to the General Services Administration Acquisition Regulation (GSAR) for the purposes of retaining certain clauses regarding economic price adjustments for Federal Supply Schedule (FSS) contracts.
2. Background. For purposes of supporting the Multiple Award Schedule (MAS) Reform solicitation, GSA identified several clauses dealing with economic price adjustment that are currently in use. These clauses are in some form or another deviations from the GSAR clause 552.216-70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts. The clauses that are being retained for purposes of the MAS Reform solicitation are as follows:
 - a. 552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts (SEP 1999) (DEVIATION II - JUL 2016), which supports Transactional Data Reporting (TDR) requirements.
 - i. This clause is being taken from Acquisition Letter V-09-10 Supplement #3, which included four deviated versions to GSAR clause 552.216-70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
 - b. I-FSS-969 Economic Price Adjustment—FSS Multiple Award Schedule (Oct 2014); and
 - c. I-FSS-969 Economic Price Adjustment – FSS Multiple Award Schedule (Oct 2014) (Alternate II – Jul 2016)¹

¹The clauses in paragraphs (b) and (c) of this section are from Federal Acquisition Service (FAS) policies that have not been addressed by the GSAM or other SPE memorandum. See FSS Acquisition Letter FX-02-1 Supplement No. 1 / Acquisition Letter (AL) FC-02-1 and FAS Policy and Procedure (PAP) 2016-11 for further details on these clauses.

The issuance of this class deviation will have little to no impact on MAS contractors as these clauses are currently being used by the FSS program. The class deviation simply recognizes the current state. Any other deviations or alternative versions of these clauses which may have been used in the Federal Supply Schedules are eliminated.

Issuance of this class deviation is in the best interest of the GSA as it standardizes the baseline until such time as formal rulemaking process for purposes of updating the GSAR, or another form of review and update, can be completed.

3. Applicability. This class deviation applies only to MAS Program contracts where the use of such clauses applies (see Attachment A of this document for the applicable clause prescriptions).
4. Authority. This class deviation is issued under the authority of GSAM 501.404.
5. Deviation. See Attachment A of this document for the Line-In/Line-Out GSAR text as revised by this class deviation². The following is a summary:
 - a. The addition of a prescription in 516.203-4 for GSAR clause 552.216-70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, and its Alternate I;
 - b. The addition of Deviation II to GSAR clause 552.216-70 and its corresponding prescription;
 - c. The addition of I-FSS-969 and its corresponding prescription; and
 - d. The addition of I-FSS-969 Alternate II and its corresponding prescription.
6. Effective Date. This class deviation is effective October 1, 2019 and remains in effect until rescinded or incorporated into the GSAR.
7. Cancellations. Not applicable.
8. Point of Contact. Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.

Attachment A - GSAR Deviation Line-In/Line-Out Text

²The titles as well as the current text of these clauses are being retained, at this point in time, as originally prescribed in order to support the MAS Reform solicitation and in consideration of system limitations. These clauses may be subsequently revised and reformatted upon incorporation into the GSAR, MAS Reform solicitation refresh, or other subsequent actions taken by the SPE.

ATTACHMENT A

GSAR DEVIATION LINE-IN/LINE-OUT TEXT
FOR CLASS DEVIATION CD-2019-14

GSAR Baseline: Change 103 effective 09/16/2019

- Additions to baseline made by deviation are indicated by [bold text in brackets]
- Deletions to baseline made by deviation 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

PART 516 - TYPES OF CONTRACTS

Subpart 516.2 - Fixed Price Contracts

516.203-4 Contract clauses.

[(c)Federal Supply Schedule (FSS) Contracts.

(1) In single-year FSS solicitations and contracts, insert the clause at 552.216-70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts.

(2) In multiyear FSS solicitations and contracts based on commercial price lists without Transactional Data Reporting requirements, use clause 552.216-70 with Alternate I.

(3) In multiyear FSS solicitations and contracts based on commercial price lists with Transactional Data Reporting requirements, use clause 552.216-70 Deviation II.

(4) In multiyear FSS solicitations and contracts not based on commercial price lists without Transactional Data Reporting requirements, use I-FSS-969.

(5) In multiyear FSS solicitations and contracts not based on commercial price lists with Transactional Data Reporting requirements, use I-FSS-969 with Alternate II.]

PART 552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 552.2 - Text of Provisions and Clauses

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552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
As prescribed in 516.203-4(a)~~[(c)(1)]~~, insert the following clause:

Economic Price Adjustment—FSS Multiple Award Schedule Contracts (SEP 1999)

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 under the following conditions:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) Only three increases will be considered during the contract period.

(3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) The aggregate of the increases in any contract unit price under this clause shall not exceed * percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/pricelist 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/pricelist, 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.

(e) 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 product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist has been mailed to the addressees previously furnished by 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.

*Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appropriate. Any ceiling other than 10 percent must be approved by the contracting director.

(End of clause)

Alternate I (Sep 1999). As prescribed by 516.203-4(a)(2)~~[(c)(2)]~~, substitute the following for paragraphs (b) and (c) of the clause:

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract.(For succeeding contract periods of less than 12months, up to three increases will be considered subject to the other conditions of this paragraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) Any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed _____* 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.

*Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the Contracting Director.

* * *

[As prescribed in 516.203-4(c)(3), insert the following clause:

552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts (SEP 1999) (DEVIATION II - JUL 2016).

(a) Contractors may 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 to be effective on or after the first 12 months of the contract period providing all of the conditions are met:

(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 this subparagraph (b).

(2) Increases are requested before the last 60 days of the contract period.

(3) At least 30 days elapse between requested increases.

(c) Any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed _____ *[Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the Contracting Director.]* 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.

(d) Documentation supporting the reasonableness of the price increase shall be submitted with the request for a price increase.

(e) 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 smaller increases when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) 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)

As prescribed in 516.203-4(c)(4), insert the following clause:

**I-FSS-969 ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD
SCHEDULE (OCT 2014)**

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 Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. 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), below.

(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), below. 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), below. 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 above, 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 paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extraordinary 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 above.:

(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 (* _____ *%) 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 above:

(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 552.238-81, Modifications (Federal Supply Schedule).

(h) All MAS contracts remain subject to contract clauses GSAR 552.238-75, "Price Reductions"; and 552.215-72, "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)

As prescribed in 516.203-4(c)(5), insert the following clause:

**I-FSS-969 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE AWARD
SCHEDULE (OCT 2014) (ALTERNATE II – JUL 2016)**

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 Reductions clause.

(b) There are two types of economic price adjustments (EPAs) possible under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. 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), below.

(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), below. 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), below.

(c) Notwithstanding the two economic price adjustments discussed above, 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 paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extraordinary 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 above:

(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 (* _____ *%) 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 above:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) 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: The increased contract prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)]

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