



3/24/2022

GSA Office of Governmentwide Policy

Class Deviation CD-2022-04

MEMORANDUM FOR CHARLOTTE PHELAN
ASSISTANT COMMISSIONER
FAS OFFICE OF TRAVEL, TRANSPORTATION AND LOGISTICS

TRACY MARCINOWSKI
ASSISTANT COMMISSIONER
PBS OFFICE OF ACQUISITION MANAGEMENT

FROM:

JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY

DocuSigned by:
Jeffrey A. Koses
21BD80B9E8AC4A0...

SUBJECT:

FAR Class Deviation
PBS Electric Vehicle Supply Equipment --
Fixed Price Contractor Use of Federal Supply Schedules

1. Purpose.

This memorandum approves a class deviation from Federal Acquisition Regulation (FAR) Subpart 51.1. This class deviation allows contracting officers to authorize General Services Administration (GSA) Public Buildings Service (PBS) fixed-price contractors, in support of current and future fleet electrification projects, to purchase supplies and ancillary services from certain Federal Supply Schedule (FSS) contractors. This class deviation will allow GSA to provide a full solution for electric vehicle infrastructure.

PBS contracts on the Governmentwide Indefinite Delivery Indefinite Quantity (IDIQ) contracts for General Construction with Design/Build Capabilities to Support Electric Vehicle Supply Equipment (EVSE) Installation are authorized to buy from FSS contractors.

2. Background.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405
www.gsa.gov

The United States currently lags behind both China and Europe in electric vehicles, with only about 100,000 public electric vehicle charging stations. To quickly change course it is important the Federal Government take the lead to encourage electric vehicle usage.

Executive Order (E.O.) 14008 calls on Federal agencies to tackle the climate crisis at home and abroad through leading by example. Section 205 specifically calls on GSA, the U.S. Department of Energy, and the White House to develop a Federal Clean Electricity and Vehicle Procurement Strategy using all available procurement authorities to achieve or facilitate clean and zero-emission vehicles (ZEVs) for Federal, State, local, and Tribal government fleets, including vehicles of the United States Postal Service. On December 8, 2022, providing agencies with the blueprint to accomplish this goal, the President signed E.O. 14057 on Catalyzing America's Clean Energy Economy Through Federal Sustainability. Through a coordinated whole-of-government approach, the new E.O. encourages the Federal government to work with American vehicle, battery and charging equipment manufacturers and installers to transform its fleet leveraging its scale and procurement power to achieve 100 percent of light-duty vehicle acquisitions as ZEVs by 2027 and 100 percent of all acquisitions as ZEVs by 2035.

To support these goals and the anticipated influx of electric vehicles, the infrastructure component, including installation of charging stations, is critical. GSA is developing acquisition solutions to procure EVSE and ancillary services to support electric vehicles at Federally owned, managed, and occupied facilities. The Federal Acquisition Service (FAS) Office of Travel, Transportation, and Logistics (TTL) is establishing a multiple-award blanket purchase agreement (BPA) under the FSS Program for the purchase of EVSE and ancillary services. PBS, in turn, is establishing multiple-award government-wide IDIQ contracts for General Construction with Design/Build Capabilities to Support EVSE Installation.

PBS anticipates awarding fixed-priced (FP) orders which can be placed by GSA contracting officers or contracting officers from other agencies with appropriate delegated authority.

Currently FAR Subpart 51.1 limits the use of Government sources of supplies to cost reimbursement type contracts. This deviation will allow contracting officers to authorize the contractors performing FP task orders under the PBS EVSE IDIQ contracts to buy supplies or ancillary services from the FAS BPA holders to provide a total solution.

Allowing the PBS EVSE IDIQ contractors to order from the FAS BPA streamlines and standardizes the EVSE infrastructure rollout, increases opportunities for small business

suppliers and manufacturers, and decreases the burden on the Government by providing efficient and direct access to EVSE supplies and ancillary services in lieu of providing EVSE as government-furnished property. Additional detail on the benefits of this deviation are described in Attachment B.

3. Applicability.

This class deviation applies to the PBS IDIQ Contracts for General Construction with Design/Build Capabilities to Support EVSE Installation.

4. 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).

5. Deviation.

See Attachment A for the changes in the FAR text as revised by this deviation, subsections listed below:

- a. Amending FAR 51.101 Policy.
- b. Amending FAR 51.103 Ordering from Government supply sources.

6. Effective Date.

This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR or GSAM.

7. Point of Contact.

Any questions regarding this deviation may be directed to Adina Torbertnsson at GSARPolicy@gsa.gov.

8. Attachments.

Attachment A – FAR Deviation Text

Attachment B – Economy and Efficiency Determination

**Class Deviation CD-2022-04
Attachment A
FAR Deviation Text**

- Additions to baseline made by rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by 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: FAC 2022-04 effective 01/30/2022

Part 51 - Use of Government Sources by Contractors

* * * * *

Subpart 51.1 - Contractor Use of Government Supply Sources

* * * * *

51.101 Policy.

(a) If it is in the Government's interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing-

(1) Government cost-reimbursement contracts; or

[(2) Fixed-price contracts under the GSA Governmentwide IDIQ contracts for General Construction with Design/Build Capabilities to Support Electric Vehicle Supply Equipment (EVSE) Installation; or]

~~—(2) [(3)]~~ Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature; or

[(4)] A contract under 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled, if-

(i) The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government; and

(ii) The supplies or services received are directly used in making or providing a commodity or service, approved by the Committee for Purchase From People Who Are Blind or Severely Disabled, to the Federal Government (see subpart 8.7).

(b) Contractors with fixed-price Government contracts that require protection of security classified information may acquire security equipment through GSA sources (see 41 CFR 101-26.507).

(c) Contracting officers shall authorize contractors purchasing supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7) to purchase such items from the Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) if they are available from these agencies through their distribution facilities. Mandatory supplies that are not available from DLA/GSA/VA shall be ordered through the appropriate central nonprofit agency (see 52.208-9(c)).

[(d) If in the Government's best interest, any supplies and ancillary services required to support electrification of the Federal fleet, to include infrastructure, are available from GSA FSS contractors. Contracting officers may authorize contractors to use these sources when performing fixed-price orders under the GSA Governmentwide IDIQ contracts for General Construction with Design/Build Capabilities to Support Electric Vehicle Supply Equipment (EVSE) Installation.]

* * * * *

51.103 Ordering from Government supply sources.

(a) Contractors placing orders under Federal Supply Schedules shall follow the terms of the applicable schedule and authorization and include with each order-

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(2) The following statement: This order is placed under written authorization from _[insert name of contracting officer]_____ dated _[insert date]_____, **under the GSA Governmentwide IDIQ contracts for General Construction with Design/Build Capabilities to Support Electric Vehicle Supply Equipment (EVSE) Installation.]** In

the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

[(b) Contractors authorized under (a)(2) above to place orders against Federal Supply Schedules, limited to the GSA Travel, Transportation and Logistics Blanket Purchase Agreement, must -

- (i) Only place orders for supplies and/or ancillary services; and**
- (ii) Follow the ordering procedures in FAR Subpart 8.4.]**

~~(b)~~ **[(c)]** Contractors placing orders for Government stock shall-

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the Government activity address code obtained by the contracting officer in accordance with 51.102(e) along with the contractor's assigned access code, when ordering from GSA Customer Supply Centers.

(3) Order only those items required in the performance of their contracts.

* * * * *

Class Deviation CD-2022-04
Attachment B
Economy and Efficiency Determination

In accordance with 40 U.S.C. § 501 (a)(1)(A) the Office of Acquisition Policy¹ determines that it is advantageous to the Federal Government and promotes economy and efficiency in Federal procurement to authorize additional use of Government sources of supply by certain contractors in support of electrification of the Federal fleet.

Executive Order (E.O.) 14008 calls on Federal agencies to tackle the climate crisis at home and abroad through leading by example. Section 205 specifically called on GSA, the U.S. Department of Energy, and the White House to develop a Federal Clean Electricity and Vehicle Procurement Strategy using all available procurement authorities to achieve or facilitate clean and zero-emission vehicles (ZEVs) for Federal, State, local, and Tribal government fleets, including vehicles of the United States Postal Service. On December 8, 2022, providing agencies with the blueprint to accomplish this goal, the President signed E.O. 14057 on Catalyzing America's Clean Energy Economy Through Federal Sustainability. Through a coordinated whole-of-government approach, the new E.O. encourages the Federal government to work with American vehicle, battery and charging equipment manufacturers and installers to transform its fleet leveraging its scale and procurement power to achieve 100 percent of light-duty vehicle acquisitions as ZEVs by 2027 and 100 percent of all acquisitions as ZEVs by 2035.

To support an influx of electric vehicles, the infrastructure component, including installation of charging stations, is critical. To accomplish this GSA is developing acquisition solutions to procure electric vehicle supply equipment (EVSE) and ancillary services to support electric vehicles at Federally owned, managed, and occupied facilities. GSA's Federal Acquisition Service (FAS) Office of Travel, Transportation, and Logistics (TTL) is establishing a multiple-award blanket purchase agreement (BPA) under the Federal Supply Schedule (FSS) Program for the purchase of EVSE as well as ancillary services. Because installation may require design and construction, which is not included in the scope of the FSS Program, GSA's Public Buildings Service (PBS) is establishing multiple-award Governmentwide IDIQ contracts, referred to as the General Construction with Design/Build Capabilities to Support Electric Vehicle Supply Equipment (EVSE) Installation (General Construction), for design and construction services related to installation. The PBS contracts anticipate fixed-priced (FP) orders which can be placed by GSA contracting officers or contracting officers from other agencies with delegated authority.

¹ As delegated by the Administrator of General Services through GSA Order ADM P 5450.39D

Currently FAR Subpart 51.1 limits the use of Government sources of supplies to cost reimbursement type contracts. This deviation will enable contracting officers to authorize the General Construction contractors to buy equipment or services from the FAS BPA holders to provide a total solution.

Allowing the General Construction contractors to order from the FAS BPA streamlines and standardizes the EVSE infrastructure rollout, increases opportunities for small business suppliers and manufacturers, and decreases the burden on Government by providing efficient and direct access to EVSE products and services in lieu of providing EVSE as government-furnished property.

This approach will allow the Government to leverage EVSE materials (such as the charging terminals) which have already been vetted for Trade Act Agreement compliance and GSA cyber security requirements. Products on the Federal Supply Schedule must adhere to trade agreement terms as well as meet GSA's supply chain risk management (SCRM) requirements. There is an associated cost with vetting companies for cybersecurity purposes, which this deviation alleviates for Government contractors.

The deviation will promote the economy by encouraging the use of the Federal Supply Schedule Program by the General Construction contractors who are carrying out installation work that requires design and construction.

In the absence of this deviation, PBS could achieve the economic benefits of the EVSE supplies by directly buying the EVSE products from the BPA and providing them to its contractors as Government furnished equipment (GFE). However, this approach would result in additional procurement processes and administrative costs for agencies as well as additional risk for GSA to manage and coordinate multiple contractors. Instead, permitting the General Construction contractors to directly buy the EVSE products and ancillary services from the BPA holder reduces the necessity for GFE, which is labor intensive to properly administer. Additionally, permitting the General Construction contractors to directly buy the EVSE supplies and ancillary services from the BPA holders reduces procurement processes, administrative expense, saves time, and reduces risk, thus promoting efficiency.

This analysis of the economic impact of this deviation is based on GSA's subject matter expertise and GSA's review and analysis of mitigating risk factors involved in electric charging stations, specifically with regards to cyber security requirements and the additional costs associated with ensuring that these products are acceptable to the Government.