

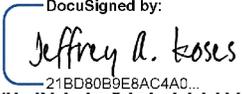


Office of Government-wide Policy

Acquisition Letter MV-21-06

December 16, 2021

MEMORANDUM FOR THE GSA ACQUISITION WORKFORCE

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SUBJECT: Procurement of Cloud Computing on a Consumption Basis under the Federal Supply Schedule Program

**1. Purpose.**

This acquisition letter establishes special ordering procedures for buying commercial cloud computing services on a consumption basis under the Federal Supply Schedule (FSS) program, including the necessary controls and limitations.

This acquisition letter does not replace or restrict existing practices for acquiring cloud computing services, but rather introduces procedures that may be used when an ordering activity wishes to acquire cloud computing on a consumption basis.

These procedures follow many commercial best practices by providing a method to pay for cloud services based on actual consumption without the need to obligate the entirety of available funds at the start of the contract.

This policy is limited to consumption-based offerings under Special Item Number (SIN) 518210C (previously 132-40) or successor SINs within the Information Technology (IT) Category (previously Schedule 70).

The procedures authorized by this acquisition letter cannot be used for the acquisition, maintenance, or modification of capital assets.<sup>1</sup>

<sup>1</sup> Capital assets, as defined in the Office of Management and Budget (OMB) Circular A-11, Capital Programming Guide v3.0 (page 2) "...are land (including parklands), structures, equipment (including motor and aircraft fleets), and intellectual property (including software) which are used by the Federal Government and have an estimated useful life of two years or more. Capital assets exclude items acquired for resale in the ordinary course of operations or held for the purpose of physical consumption,

## 2. Background.

The National Institute of Standards and Technology (NIST) defines “cloud computing” as:

“...a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.”<sup>2</sup>

<b>The NIST Definition of Cloud Computing (Special Publication 800-145)<sup>3</sup></b>		
<i>Essential Characteristics</i>	<i>Service Models</i>	<i>Deployment Models</i>
1. On-demand self-service 2. Broad network access 3. Resource pooling 4. Rapid elasticity 5. Measured service	1. Software as a Service (SaaS) 2. Platform as a Service (PaaS) 3. Infrastructure as a Service (IaaS)	1. Private cloud 2. Community cloud 3. Public cloud 4. Hybrid cloud

Cloud computing’s essential characteristics include on-demand self-service, which allows a customer to provision computing capabilities without human interaction with each service provider; rapid elasticity, which allows customers to quickly increase and decrease their cloud usage as necessary; and measured service, which entails cloud systems automatically controlling and optimizing resource use by leveraging a metering capability, typically on a pay-per-use or charge-per-use basis.

A popular way to acquire cloud computing services in the private sector is on a consumption basis, which has a customer paying for only what it uses. This is a commercial best practice because it promotes cost efficiency and supports technological innovation.<sup>4</sup> Federal agencies generally purchase cloud computing

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such as operating materials and supplies. The cost of a capital asset is its full life-cycle cost, including all direct and indirect costs for planning, procurement (purchase price and all other costs incurred to bring it to a form and location suitable for its intended use), operations and maintenance (including service contracts), and disposal. Capital assets may or may not be capitalized (i.e., recorded on an entity's balance sheet) under Federal accounting standards.” The Capital Programming Guide can be found at: [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/a11\\_current\\_year/a11\\_2017/capital\\_programming\\_guide.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/a11_current_year/a11_2017/capital_programming_guide.pdf)

<sup>2</sup> Special Publication (SP) 800-145, The NIST Definition of Cloud Computing, September 2011: <https://csrc.nist.gov/publications/detail/sp/800-145/final>

<sup>3</sup> Ibid.

<sup>4</sup> For the purposes of this acquisition letter, the terms “consumption basis” or “consumption-based” mean any offering that is metered and accrues charges on a predetermined periodic basis (e.g., per second,

services in a fixed increment for a lump sum, which does not fully leverage all of cloud computing's core benefits, particularly on-demand self-service, rapid elasticity, and measured service.

Cloud computing services are often difficult to estimate because of unanticipated spikes in demand. For example, cloud computing needs may spike when new technologies emerge or in response to external events such as cyber attacks, natural disasters, pandemics, or even enactment of legislation. Consumption-based buying is well suited for these scenarios because it provides the flexibility to match capacity to demand.

Federal agencies often obligate all funds at the start of the contract to ensure funds are available in the event of an unanticipated spike in demand. Upfront obligations do not prevent agencies from buying on a consumption basis, as obligated funds can be drawn down on an on-demand basis. Nevertheless, this practice is comparatively inflexible because any remaining funds cannot be quickly reprovisioned for other uses if actual consumption is lower than expected.

GSA anticipates adding flexibility for new ways to purchase cloud computing on a consumption basis will increase competition, as better alignment with commercial practices will encourage new entrants to the FSS program. With a contract structure more closely tied to actual demand, this approach also provides greater flexibility to take advantage of improved technology and enhanced cyber security.

The key benefits of a consumption model are flexibility and mirroring commercial practice. However, consumption purchasing is not the best fit for every requirement. For example, for users with highly stable and predictable needs, an upfront commitment may lead to better pricing.

GSA's industry stakeholders stated combinations of these pricing models are the best practice. For instance, an organization might have mostly predictable requirements but will occasionally need additional services to respond to unplanned spikes in demand. The best strategy for that organization might be an upfront commitment at discounted rates to satisfy their predictable requirements and then acquiring additional services on a consumption-basis as needed. As such, the Special Ordering Procedures established by this policy support combinations of pricing models within a single task order.

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hour, week, or month) and is billed based on actual usage during an elapsed period with predetermined pricing or discounts.

### 3. Authority.

- a. 41 U.S.C. 152(3) and 41 U.S.C. 501 authorize GSA to establish procedures for the FSS program (see Federal Acquisition Regulation (FAR) 8.401).
- b. FAR 1.102(d), Statement of Guiding Principles for the Federal Acquisition System, states: *“In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive Order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.”*
- c. FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS offering.
- d. General Services Administration Acquisition Regulation (GSAR) section 501.370 authorizes the GSA Senior Procurement Executive to issue an acquisition letter to provide interim acquisition policies, procedures, and guidance for a specific period of time or until such time that it can be incorporated into the General Services Administration Acquisition Manual (GSAM) or FAR, as applicable.
- e. GSAM section 501.404 authorizes the Senior Procurement Executive to issue class deviations to the GSAM, which includes regulatory GSAR sections.

### 4. Effective Date.

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

### 5. Key Concepts.

When buying on a consumption basis, the contracting officer will compete and issue a “requirements task order.” Such a task order is not the same as a requirements contract as described at FAR 16.503, but is a means to provide for all actual purchase requirements of the ordering activity during the specific period.

To ensure fiscal control, establish a task order ceiling and ensure a robust consumption monitoring approach. This may be done through contractor provided tools and dashboards.

To maximize agency flexibility, consumption-based task orders may be incrementally funded based on usage patterns.

The FSS Price Reductions clause is not applicable to buying cloud on a consumption basis.

## 6. Applicability.

This acquisition letter—

- a. Applies to the acquisition of cloud computing services on a consumption basis under Special Item Number (SIN) 518210C (previously 132-40) or successor SINs within the Information Technology (IT) Category (previously Schedule 70); and
- b. May be relied upon by authorized users of GSA sources of supply to the extent that it does not conflict with their own organization-specific procedures.

## 7. Requirements.

- a. *FSS solicitation updates.* The Federal Acquisition Service (FAS) must amend FSS solicitations containing SIN 518210C or 132-40 to incorporate the class deviation shown in Attachment A, which prescribes the following:
  1. A deviation to the Price Reductions clause (GSAR 552.238-81) that makes price reductions inapplicable to cloud computing services offered on a consumption basis under SIN 518210C (previously 132-40) or successor SINs within the IT Category; and
  2. A Special Ordering Procedures clause that contains procedures, limitations, and controls.<sup>5</sup>
- b. *Requirements for incorporating the Special Ordering Procedures clause (GSAR 552.238-99 DEVIATION) and the Price Reductions clause (GSAR 552.238-81) deviation in the contract.*
  1. The contractor must identify in their price list which offerings are available to be ordered on a consumption basis.
  2. The Special Ordering Procedures clause (GSAR 552.238-99 DEVIATION), Price Reductions clause (GSAR 552.238-81) deviation,<sup>6</sup> and price list identifying consumption-based offerings, must be incorporated in the

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<sup>5</sup> Attachment A provides the class deviation needed to implement this acquisition letter. Attachment B provides additional information to explain the policy rationale behind the changes discussed in Attachment A.

<sup>6</sup> Alternate I of the Price Reductions clause will still apply to the contract if the contract contains Transactional Data Reporting requirements.

contract at the time of award or via a bilateral contract modification in order to take effect.

- c. *Requirements for contracts without access to transactional data.* GSA FSS contracting officers shall use the procedures in GSAM 538.270-1 to evaluate FSS contract prices for consumption-based cloud computing offerings to ensure prices remain fair and reasonable prior to exercising an option for a contract that contains the Special Ordering Procedures clause (GSAR 552.238-99 DEVIATION) and the Price Reductions clause (GSAR 552.238-81) deviation.
- d. *Program activities.*
  1. *Ordering Guide.* The FAS Office of IT Category (ITC) will release an ordering guide to assist ordering activities purchasing cloud computing on a consumption basis under the FSS program.
    - i. The guide will provide instructions on how to implement the controls contained within the Special Ordering Procedures clause prescribed in Attachment A;
    - ii. The guide will describe how ordering activities may request assistance for applying these procedures; and
    - iii. The guide will be posted on GSA.gov.
  2. *Program Management.* This authority is contingent upon FAS administering all FSS Special Item Numbers with consumption-based cloud computing offerings within a single division.

## **8. Evaluation.**

GSA seeks to understand the benefits and challenges of buying cloud computing on a consumption basis. Accordingly, FAS ITC shall brief the Office of Acquisition Policy within one year of implementation, and at least annually thereafter, on whether use of this policy results in cost transparency and efficiency, increased cyber security and more robust competition.

## **9. Point of Contact.**

Any questions regarding this acquisition letter may be directed to the General Services Acquisition Policy Division at [GSARPolicy@gsa.gov](mailto:GSARPolicy@gsa.gov).

**Attachments**

Attachment A - GSAR Class Deviation

Attachment B - Rationale for Policy Changes

**Attachment A**  
**General Services Administration Acquisition Regulation (GSAR) Class Deviation**

The baseline for the following line-in/line-out text is Change 140, effective November 5, 2021.

Additions are in **[bold/bracketed]** text. Deletions are in ~~[strikethrough]~~ text.

Asterisks are used to show that the preceding or following coverage currently in the GSAR remains unchanged:

- Five asterisks (\* \* \* \* \*) indicates a whole paragraph, including its subordinate paragraphs, is not changed.
- Three asterisks (\* \* \*) indicates the text at a subordinate level has changed but the higher-level paragraphs remain unchanged.

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**PART 538 - FEDERAL SUPPLY SCHEDULE CONTRACTING**

**Subpart 538.2 - Establishing and Administering Federal Supply Schedules**

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

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(d) As prescribed in this paragraph, insert the following clauses as an addendum to Clause 52.212-4, Contract Terms and Conditions-Commercial Items:

\* \* \* \* \*

(5) 552.238-81, Price Reductions.

**[(i)]** Use Alternate I for Federal Supply Schedules with Transactional Data Reporting requirements. This alternate clause is used when vendors agree to include clause 552.238-80 Alternate I in the contract.

**[(ii) Except when contracts contain Alternate I, use DEVIATION DECEMBER 2021 when clause 552.238-99, Special Ordering Procedures Applicable when Procuring Cloud Computing on a Consumption Basis (DEVIATION DECEMBER 2021) is included in the contract.]**

\* \* \* \* \*

**[(36) 552.238-99, Special Ordering Procedures Applicable When Procuring Cloud Computing on a Consumption Basis (DEVIATION DECEMBER 2021). Use only in FSS solicitations and contracts for cloud computing services offered on a consumption basis under Special Item Number (SIN) 518210C (previously 132-40) or successor SINs within the Information Technology (IT) Category (previously Schedule 70).]**

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## **PART 552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 552.2 - Text of Provisions and Clauses**

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#### **552.238-81 Price Reductions (DEVIATION DECEMBER 2021).**

As prescribed in 538.273(d)(5) insert the following clause:

##### **Price Reductions (MAY 2019) (DEVIATION DECEMBER 2021)**

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238-113 when the order is placed under this contract (and the Eligible Ordering Activities

identified in GSAR Clause 552.238-113 is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer; ~~or~~

**(5) Cloud computing services offered on a consumption basis under Special Item Number (SIN) 518210C (previously 132-40) or successor SINs within the Information Technology (IT) Category (previously Schedule 70).]**

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Alternate I (MAY 2019). As prescribed in 538.273(d)(5), substitute the following paragraph (a) and (b) for paragraphs (a), (b), (c), (d), (e), (f) and (g) of the basic clause:

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

\* \* \* \* \*

**[552.238-99 Special Ordering Procedures Applicable when Procuring Cloud Computing on a Consumption Basis (DEVIATION DECEMBER 2021)**

**As directed by Acquisition Letter MV-21-06, GSA FSS Contracting Officers shall insert the following clause in contracts offering cloud computing services on a consumption basis under Special Item Number (SIN) 518210C (previously 132-40) or successor SINs within the Information Technology (IT) Category (previously Schedule 70):**

**SPECIAL ORDERING PROCEDURES APPLICABLE WHEN PROCURING CLOUD COMPUTING ON A CONSUMPTION BASIS (DEVIATION DECEMBER 2021)**

**(a) Definitions.**

(1) "Capital asset" has the meaning given the term by Office of Management and Budget (OMB) Circular A-11 Capital Programming Guide and any amendatory or superseding document(s) thereto.

(2) “Cloud computing” has the meaning given the term by the National Institute of Standards and Technology in Special Publication (SP) 800–145 and any amendatory or superseding document(s) thereto.

(3) “Consumption basis” or “consumption-based” means any offering that is metered with charges that accrue on a predetermined periodic basis (e.g., per second, minute, hour, week, month, or another per-unit basis) and is billed based on actual usage during an elapsed period with predetermined pricing or discounts.

(4) “Requirements task order” means a task order that provides for filling all actual purchase requirements of a designated Ordering Activity during a specified contract period, with performance by the Contractor being scheduled when the Ordering Activity awards, or exercises options for, individual contract line items (CLINs) under the task order.

(i) This task order type is appropriate when the Ordering Activity anticipates recurring requirements but cannot predetermine the precise quantities of services that it will need during a definite period.

(ii) A requirements task order issued under a FSS contract is a single contract award as defined FAR 2.101. Individual CLINs executed and funded under this task order type are not considered to be second-tier instruments issued under the awarded task order.

(iii) A requirements task order is not a requirements contract as described at FAR 16.503.

**(b) *Ordering procedures.***

(1) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS offering.

(2) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

**(c) *Applicability.***

(1) The Ordering Activity Contracting Officer shall follow the procedures contained within this clause when placing an incrementally funded task order under this contract for cloud computing services on a consumption basis.

(2) The Ordering Activity Contracting Officer is permitted, but not required to, use the procedures contained within this clause for task orders that are not incrementally funded.

(3) The Ordering Activity Contracting Officer shall not use the procedures contained within this clause for the acquisition, maintenance, or modification of capital assets.

**(d) Pricing.**

(1) The Ordering Activity Contracting Officer shall establish a task order ceiling price for all estimated requirements.

(2) All cloud computing services offered under this FSS contract are considered fixed-price.

(e) *Task order type.* The Ordering Activity Contracting Officer shall use a requirements task order for cloud computing services procured on a consumption basis in accordance with this clause.

(1) This task order type may include other contract types, such as firm-fixed-price, when procuring other offerings under this contract that are not being procured on a consumption-basis.

(2) *Estimates for cloud computing services to be procured on a consumption basis.*

(i) The Ordering Activity Contracting Officer must state a realistic estimate of—

(A) The consumption of cloud computing services in the task order solicitation; and

(B) The total amount in dollars to be expended on cloud consumption in the task order.

(ii) This estimate is not a representation to an Offeror or Contractor that the estimated consumption will be required or ordered, or that conditions affecting requirements will be stable or normal.

(iii) The Ordering Activity Contracting Officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

**(iv) If the Government's requirements do not meet this estimate, that fact shall not constitute the basis for an equitable price adjustment.**

**(3) All CLINs within the task order must include a defined scope with all services priced at the time of award.**

***(f) Incremental funding.***

**(1) The Ordering Activity may allot funds incrementally as the bona fide need arises for predefined and established fixed-priced procurement requirements on individual CLINs.**

**(2) The Ordering Activity shall ensure sufficient funds are allotted to the task order—**

**(i) At the time of award to cover the total amount payable to the Contractor for the awarded CLIN(s); and**

**(ii) At the time an optional CLIN is exercised to cover the total amount payable to the Contractor for that optional CLIN.**

**(3) Nothing in this clause shall be construed to supersede the Ordering Activity's contract funding policies.**

***(g) Consumption monitoring.***

**(1) The Contractor shall—**

**(i) Provide, at no additional cost to the Government, access to tools that enable the Government to track its usage of cloud computing services offered on a consumption basis; or**

**(ii) Notify the Ordering Activity Contracting Officer when total consumption reaches—**

**(A) 50 percent and 75 percent of the ceiling price for each CLIN for consumption-based cloud computing services, or other milestones as agreed upon by the Contractor and the Ordering Activity Contracting Officer; and**

**(B) 50 percent and 75 percent of the task order ceiling price, or other milestones as agreed upon by the Contractor and the Ordering Activity Contracting Officer.**

**(2) The Ordering Activity Contracting Officer shall determine that the consumption monitoring capabilities offered by the Contractor will enable the**

**Government to adequately track its incurred costs before awarding a task order in accordance with this clause.**

**(h) *Limitation of funds.***

**(1) The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the task order, and the Contractor shall not be obligated to continue performance if doing so would exceed the ceiling price set forth in the task order.**

**(2) The Ordering Activity Contracting Officer may use a Limitation of Funds clause when CLINs under the task order are incrementally funded.**

**(i) *Scope reviews.***

**(1) The Ordering Activity Contracting Officer is encouraged to request a scope review from the GSA Federal Acquisition Service (FAS) Office of Information Technology Category (ITC) before placing a task order in accordance with these special ordering procedures.**

**(2) The purpose of a scope review is to analyze whether the planned acquisition is—**

**(i) compatible with the scope of Special Item Number (SIN) 518210C (previously 132-40) or successor SINs;**

**(ii) utilizing recommended best practices; and**

**(iii) not for the acquisition, maintenance, or modification of capital assets.**

**(3) The Ordering Activity Contracting Officer may request a scope review by contacting FAS ITC at [cloud-sin-rfi@gsa.gov](mailto:cloud-sin-rfi@gsa.gov).**

**(End of clause)]**

## **Attachment B Rationale for Policy Changes**

### **A. Price Reductions Clause (GSAR 552.238-81)**

GSA has historically used a vertical pricing model to establish price reasonableness when awarding and managing FSS contracts. This model entails comparing a contractor's prices and price-related terms and conditions with those offered to other customers. These prices are collected through Commercial Sales Practice disclosures that include a broad disclosure of discounts offered to customers for similar products or services. GSA then establishes a favorable pricing relationship in comparison to one of the customers or categories of customers.

Contractors are required, under the basic version of the Price Reductions clause (PRC), to monitor the pricing over the life of the contract and to provide the Government with the same price reductions that they give to the class of the customer upon which the original contract was predicated. The PRC also allows vendors to voluntarily reduce the price to the Government and allows for the Government to request a price reduction at any time during the contract period.

Commercial pricing for cloud computing offerings changes frequently, often multiple times per day. In addition, cloud computing pricelists are extensive, consisting of potentially hundreds of thousands of items with various units of measure. As such, the PRC's traditional price monitoring and reporting requirements are not practical for this marketplace. Consequently, this policy contains a PRC deviation that makes price reductions inapplicable to cloud computing services offered on a consumption basis under SIN 518210C (previously 132-40) or successor SINs within the IT Category.

### **B. Requirements Task Order**

The requirements task order concept is similar to, but not the same as, a requirements contract (FAR 16.503). In a typical requirements contract, the Government will award a contract with the obligation to purchase its future requirements under that contract but does not obligate funds for estimated usage upfront; instead, the actual requirements are then satisfied through orders against the contract.

The concept established by the Special Ordering Procedures clause is different in that the Government's obligation to satisfy its requirements is limited to a task order issued against an FSS contract; instead of orders against a requirements contract, future

**Attachment B: Rationale for Policy Changes**

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requirements will be satisfied by activating CLINs on a task order. From a fiscal standpoint, this concept is similar to a typical requirements contract in that the Government will allot enough funds to cover the total amount payable to the Contractor at the time of award for awarded CLINs and at the time optional CLINs are exercised.