

MV1106014



*Chambers  
Part 32*

GSA Federal Acquisition Service

June 3, 2011

MEMORANDUM FOR JOSEPH A. NEURAUTER  
SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY (V)

FROM: HOUSTON W. TAYLOR *[Signature]*  
ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Request for GSAR Deviation to Clause 552,<sup>232</sup>~~238~~-8, Discounts  
for Prompt Payment

The purpose of the deviation to GSAR clause 552,<sup>232</sup>~~238~~-8, Discounts for Prompt Payment (Appendix 1), is to permit ordering activities to negotiate away Prompt Payment Discount (PPD) terms established at the Multiple Award Schedule (MAS) contract level in exchange for better pricing in the form of a temporary price reduction at the order level.

The deviation to this clause (Appendix 2) will legitimize a customer business practice, particularly when establishing Blanket Purchase Agreements (BPAs), in order to achieve greater overall acquisition savings.

Based on the foregoing findings and in accordance with FAR Subpart 1.404 a deviation is granted. See Appendix A for rationale.

Approved:

\_\_\_\_\_  
Senior Procurement Executive

Date: \_\_\_\_\_

Attachment

*Shari Meademi*

**APPENDIX 1**

**552.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989) (DEVIATION FAR 52.232-8) (ALTERNATE I — MAY 2003)**

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(e) ~~Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.~~

→ [ (e) , , , ]

(f) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

## APPENDIX 2

### 552.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989) (DEVIATION FAR 52.232-8) (ALTERNATE I — MAY 2003)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

*Bold* (e) Discounts incorporated into the resulting contract are binding on the Contractor for all orders placed against the contract, except as set forth below. When binding, the Contractor is required to document the discount terms on all invoices. However, an ordering activity may elect to negotiate away a discount established at the contract level in exchange for further pricing reduction(s) or other valuable consideration at the ordering level. Any such election at the ordering level will be considered to be temporary and will be binding on the Contractor only with respect to the particular order. Both the ordering activity and the Contractor are required to document, on the order and on the resulting invoice(s), the fact that the discount has been negotiated away for valuable consideration.

(f) In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

## APPENDIX A

### A. RATIONALE FOR CHANGE

Prompt payment discounts (PPDs) allow customers to realize additional savings when payments are made to contractors in accordance with PPD terms or earlier. PPDs are negotiated at the Multiple Award Schedule (MAS) contract level. However, it's becoming a more common practice for ordering activities to negotiate away PPD at the order level in exchange for lower pricing or other more favorable terms and conditions.

FAR clause 52.212-4, Contract Terms and Conditions – Commercial Items and GSAR clause 552.232-8 Discounts for Prompt Payment, outline the requirements for prompt payment terms in MAS contracts. Any negotiated PPD in a MAS contract is binding for all orders placed under the contract. In the absence of discount terms incorporated into a contract, discounts can also be offered on individual invoices and are binding only for the particular invoice on which the discount is offered.

The GSA Inspector General (IG) issued Report Number A090026/Q/7/P10001, Review of Multiple Award Schedule Vendors' Invoicing Practices Relative to Prompt-Payment Discounts, on March 15, 2010. Among other findings, the report noted that some MAS customers negotiate away PPD terms in exchange for other discount considerations even though the MAS contract is ambiguous as to their authority to do so. Specifically, the IG found that some ordering activities negotiate away PPD terms when entering into Blanket Purchases Agreements (BPAs).

There are many variables that may affect the Government's ability to obtain PPD. For example, payments made in accordance with GSAR 552.232-77(e) Payment by Government Commercial Purchase Card, are not eligible for PPD. In instances where a contractor properly includes PPD terms on an invoice, the finance office may fail to submit payment on time to obtain the PPD, and in instances where a contractor does not include PPD terms on an invoice, the finance office would not know of the PPD terms and would fail to reject the invoice.

Because PPD may not be taken advantage of at the order level, FAS Office of Acquisition Management issued a Procurement Information Notice (2011-03) to Federal Supply Schedule (FSS) Contracting Officers advising them to establish negotiation objectives that seek to obtain PPDs as greater upfront pricing discounts to provide "ordering activities with the benefit of obtaining better pricing and discounts without having to rely exclusively on PPD terms being correct, cited on invoices, and paid on time by the finance office."

The current language incorporated into GSA MAS contracts does not specifically grant or deny ordering activities the authority to change or negotiate away PPD terms. The GSA IG takes the position that a PPD in a MAS contract is binding for all

orders placed under the contract, including BPAs, in accordance with GSAM clause 552.232-8. The GSA IG's report goes on to state that the inclusion of clause 552.232-8, among other major clauses, implies its significance as a material contract term that should not be negotiated away by ordering activities without proper FAS authorization.

FAS views PPD terms as an element of price that, when negotiated away in exchange for other discounts at the order level, amounts to a temporary price reduction. It is a proven best practice that ordering activities should seek additional price reductions/increased discounts and/or concessions when placing an order under a GSA Schedule contract (See FAR 8.404 (d) Pricing and FAR 8.405-4, Price reduction). The ability to seek additional price reductions and concessions allows the government not only to leverage its combined requirements to obtain favorable prices, terms, and conditions, but also to leverage agency requirements to take advantage of quantity or spot discounts available in a fluid, commercial pricing atmosphere. Reasons to seek price reductions include instances where the ordering activity has determined that a supply or service is available elsewhere at a lower price, or when establishing Blanket Purchase Agreements (BPAs) to fill recurring requirements.

Assuming that a deviation is granted, contractors, FSS acquisition personnel, and customers need to be notified of the change. The deviated clause will be incorporated into solicitations through the refresh process and into existing contracts through a mass, bilateral modification to all Schedule contractors. QV will issue an Instructional Letter (IL) to provide guidance to the acquisition workforce on the change in policy. Customers can view the contract clause in eLibrary using the Contracts Online tool. In addition, QV will use social media tools, e.g. Interact for customers, to further disseminate the information.

**B. EFFECT ON CONTRACTING OFFICERS**

MAS contracting officers may continue to negotiate and award PPD terms at the MAS contract level in accordance with the guidance provided in Procurement Information Notice 2011-03. No additional training or change in business process is required.

**C. EFFECT ON CONTRACTORS**

Contractors can continue to offer PPD at the contract/offer level; however, having the flexibility to offer better pricing in exchange for PPD terms at the order level may potentially be a competitive advantage.

**D. EFFECT ON CUSTOMERS**

Customers will benefit from either taking advantage of the PPD terms established at the contract level or negotiating the PPD terms away in exchange for better pricing. The flexibility to decide how to maximize acquisition savings on each task order is advantageous to both the customer and taxpayer.

**E. IMPACT ON SMALL BUSINESS (POSITIVE OR NEGATIVE)**

Generally, the impact on large and small businesses is equivalent. However, there may be a marginal negative impact on small businesses that may prefer to honor PPD terms in order to maximize cash flow.

**F. NUMBERS OF CONTRACTORS AFFECTED BY THE CHANGE**

All MAS contractors are affected.

**G. NUMBERS OF SMALL BUSINESSES AFFECTED BY THE CHANGE**

There are approximately 13,000 MAS small business contractors.