MEMORANDUM FOR DONNA M. JENKINS
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

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

SUBJECT: Class Deviation to Federal Acquisition Regulation (FAR) Part 51

Pursuant to the authority in General Services Administration Acquisition Manual (GSAM) 501.404(c) and 517.204(c)(2), the attached request for a class deviation to FAR Part 51 is approved, effective for five (5) years from the date of signature. This class deviation allows contracting officers to authorize all GSA contractors, who are performing on a time-and-material or labor-hour basis, to purchase ancillary supplies and services from Federal Supply Schedule (FSS) contractors or process requisitions through the GSA Global Supply Program.

This memorandum also serves as evidence of consultation with the Chair of the Civilian Agency Acquisition Council as provided in General Services Administration Acquisition Regulation (GSAR) 501.404(a).

I. Background.

Federal Acquisition Regulation (FAR) Part 51 currently permits contractors to use Government sources of supply and services in performing cost-reimbursement contracts; 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; and fixed price contracts for protection of security classified information and related security equipment. Otherwise, FAR 51.101 does not authorize access to Government sources of supply for fixed price, time-and-material, or labor-hour contracts.
On September 16, 2009, the GSA Senior Procurement Executive (SPE) granted a class deviation to FAR Part 51 to permit contracting officers to authorize GSA FSS contractors, who are performing an order on a time-and-material or labor-hour basis, to purchase supplies and services from other FSS contractors or process requisitions through the GSA Global Supply Program. On October 8, 2009, the GSA SPE issued a class deviation expanding the authority to all GSA contractors; that deviation superseded the September 16, 2009 deviation and was effective for five years.

II. Conditions.

The approval of this deviation is contingent upon the Federal Acquisition Service (FAS) meeting the following requirements:

1. Submit a formal business case by February 28, 2015 to request consideration to open a General Services Administration Acquisition Regulation (GSAR) case to make the deviation permanent. In preparing this business case, FAS must consult with Office of Acquisition Policy staff.

2. Develop FAR Part 51 deviation guidance to address whether the deviation can be authorized in instances where the buying contractor will be purchasing supplies or services in line with FAR 8.405-6.

3. Update the FAR 51 Deviation ordering guide and other relevant publications to describe the FAR Subpart 8.4 procedures a buying contractor must follow when acquiring ancillary products and services from Federal Supply Schedules. The buying contractor must follow the ordering procedures found at—
   a. FAR 8.405-1 when performing under a non-FSS time-and-materials or labor-hours contract;
   b. FAR 8.405-1 when performing under an FSS time-and-materials or labor-hours order and buying items from another FSS vendor's contract (i.e. selling contractor's contract) that are available on the buying contractor's FSS contract;
   c. FAR 8.402(f) when performing under an FSS time-and-materials or labor-hours order and buying items from another FSS vendor's contract (i.e. selling contractor's contract) that are not available on the buying contractor's FSS contract.

4. Provide an annual report to the Office of Acquisition Policy on the deviation's usage and effectiveness.

5. Submit a revised deviation request if relevant regulations are amended (e.g. FAR Subpart 8.4).
Note that a deviation to GSAR 552.238-75, Price Reductions, is not approved in this deviation to FAR Part 51. Since the Price Reductions clause is not triggered by sales made "to eligible ordering activities under [that Schedule] contract", a deviation to the clause is not required for use of the FAR Part 51 deviation authority.

Questions regarding this memorandum should be directed to Mr. Matthew McFarland, Program Analyst, General Services Acquisition Policy Division, at 202-690-9232 or email matthew.mcfarland@gsa.gov.

Attachment
ATTACHMENT 1

The baseline for the following line-in/line-out text is Federal Acquisition Circular (FAC) 2005-76, effective August 25, 2014. Additions are shown in [bold/bracketed] text. Asterisks are used to show that the preceding or following coverage currently in the Federal Acquisition Regulation remains unchanged.

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Subpart 51.1 – Contractor Use of Government Supply Sources

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51.101 Policy.

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[(d) If it is in the Government's interest, and if ancillary supplies or services required in the performance of a Government contract are available from General Services Administration (GSA) Federal Supply Schedule (FSS) contracts or GSA Global Supply, contracting officers may authorize contractors to use these sources in performing—
(1) GSA time-and-materials or labor-hour contracts; or
(2) Time-and-materials or labor-hour orders placed against GSA indefinite-delivery indefinite-quantity (IDIQ) contracts, including FSS contracts.]

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51.103 Ordering from Government supply sources.

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[(b) Contractors placing orders under Federal Supply Schedules must—
(1) Only place orders for ancillary supplies and services that do not require a statement of work.
(2) Follow the ordering procedures for supplies and services in FAR Subpart 8.4.

[(c)] Contractors placing orders for Government stock shall—

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