MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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

SUBJECT: Retention of Multiple Award Schedule (MAS) GSAR Clauses

1. **Purpose.** This supplement to Acquisition Letter V-09-10 creates class deviations to General Services Administration Acquisition Regulation (GSAR) clause 552.216-70, Economic Price Adjustment - FSS Multiple Award Schedule Contracts, as a result of GSAR Case 2013-G504, Transactional Data Reporting.¹

2. **Background.** On June 23, 2016, GSA published the Transactional Data Reporting final rule. GSA Schedule contracts with Transactional Data Reporting requirements² no longer require basis of award tracking and submission of pricing information through the Commercial Sales Practices (CSP) format. As a result, requirements for basis of award tracking and CSP disclosures contained in the Economic Price Adjustment (EPA) clause (552.216-70) must be removed for contracts with Transactional Data Reporting requirements.

Four versions of the EPA clause are currently used by Schedules to be included in the Transactional Data Reporting pilot. Those Schedules and the corresponding EPA clause variations are as follows:

- Schedule 00Corp: Alternate I (SEP 1999)
- Schedule 03FAC: Basic Version [i.e. 552.216-70 (SEP 1999)]
- Schedule 51V: Alternate I (SEP 1999) and Deviation I (JAN 2007)
- Schedule 58 I: Alternate I (SEP 1999)
- Schedule 70: Alternate I (SEP 1999)
- Schedule 72: Basic Version and Alternate I (SEP 1999)
- Schedule 73: Alternate I (Deviation I - APR 2007)
- Schedule 75: Alternate I (SEP 1999)

¹ The Transactional Data Reporting final rule was published in the Federal Register on June 23, 2016 (81 FR 41104).
² I.e. solicitations containing Alternate I of GSAR clause 552.238-74, Industrial Funding Fee and Sales Reporting.
Accordingly, this Acquisition Letter approves deviations for each of the four versions to remove requirements for basis of award tracking and CSP disclosures. However, these deviations can only be used for Schedules participating in the Transactional Data Reporting pilot (i.e. solicitations containing Alternate I of clause 552.238-74, Industrial Funding Fee and Sales Reporting).

These changes were not addressed through the Transactional Data Reporting rule because the GSAR prescription for the EPA clause was removed as part of a previous rewrite of GSAR Part 516, Types of Contracts. However, Supplement #2 of Acquisition Letter V-09-10 retained the use of the clause. While GSA plans to address FSS economic price adjustments in a separate GSAR case, it is implementing deviations to clause 552.216-70 through an additional supplement to Acquisition Letter V-09-10.

3. **Effective Date.** Immediately.

4. **Termination Date.** Acquisition Letter V-09-10, and Supplement #1, Supplement #2, and Supplement #3 expire upon inclusion of these clauses in the GSAR or by notice from the Senior Procurement Executive.

5. **Instructions/Procedures.**

   (a) The following class deviations must be included in solicitations as follows:
   
   - **Deviation I (JUL 2016):** This clause should be used in place of the basic version of clause 552.216-70 (SEP 1999) when the solicitation contains Alternate I of clause 552.238-74, Industrial Funding Fee and Sales Reporting (i.e. solicitations with Transactional Data Reporting requirements).
   - **Deviation II (JUL 2016):** This clause should be used in place of clause 552.216-70 (ALTERNATE I - SEP 1999) when the solicitation contains Alternate I of clause 552.238-74, Industrial Funding Fee and Sales Reporting (i.e. solicitations with Transactional Data Reporting requirements).
   - **Deviation III (JUL 2016):** This clause should be used in place of clause 552.216-70 (Deviation I – Jan 2007) when the solicitation contains Alternate I of clause 552.238-74, Industrial Funding Fee and Sales Reporting (i.e. solicitations with Transactional Data Reporting requirements).
   - **Deviation IV (JUL 2016):** This clause should be used in place of clause 552.216-70 (SEP 1999) (ALTERNATE I - SEP 1999) (Deviation I – Apr 2007) when the solicitation contains Alternate I of clause 552.238-74, Industrial Funding Fee and Sales Reporting (i.e. solicitations with Transactional Data Reporting requirements).

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3 The Rewrite of GSAR Part 516 final rule was published in the Federal Register on July 15, 2010 (75 FR 41097).
(b) AbilityOne (formerly Javits-Wagner-O'Day [JWOD]) items are not covered by the Economic Price Adjustment clause, including alternate and deviated versions. The Committee for Purchase from People who are Blind or Severely Disabled is responsible for determining fair market prices are paid by the Government customers for AbilityOne (formerly JWOD) items, the Distributor must agree to charge prices that are acceptable to the Committee. The Committee for Purchase from People who are Blind or Severely Disabled will administer price changes on an annual basis.

6. Attachments.

- Attachment I: Line-in/Line-out (LILO)
- Attachment II: Conformed Clauses
Attachment I: Line-in/Line-out (LILO)

Changes to the current text are shown by [additions] and deletions.

Deviation I

552.216-70 ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999) [DEVIATION I - JUL 2016]

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall [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 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 *[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.]* 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 [Documentation supporting the reasonableness of the price increase] 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 [smaller increases] 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 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.

(End of clause)

*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 40 percent must be approved by the contracting director.

**Deviation II**

552.216-70 ECONOMIC PRICE ADJUSTMENT - FSS MULTIPLE AWARD SCHEDULE CONTRACTS [(DEVIATION II - JUL 2016)] (SEP 1999) (ALTERNATE I-SEP 1999)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall [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)](2) 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.

[(1)](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 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).

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

[(3)](4) At least 30 days elapse between requested increases.
(c) In 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) The following material [Documentation supporting the reasonableness of the price increase] 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 [smaller increases] 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.

(End of Clause)

*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.*
Deviation III

552.216-70 ECONOMIC PRICE ADJUSTMENT - FSS MULTIPLE AWARD
SCHEDULE CONTRACTS [(DEVIATION III - JUL 2016)] (SEP-1999) (Deviation I—Jan 2007)

Price adjustments include price increases and price decreases and will be considered as shown below.

1. AbilityOne (formerly Javits-Wagner-O'Day [JWOD]) items are not covered by this Economic Price Adjustment Clause. The Committee for Purchase from People who are Blind or Severely Disabled is responsible for determining fair market prices are paid by the Government customers for AbilityOne (formerly JWOD) items, the Distributor must agree to charge prices that are acceptable to the Committee. The Committee for Purchase from People who are Blind or Severely Disabled will administer price changes on an annual basis.

2. Catalog price 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)] Contractors shall refresh or reissue their schedule catalogs simultaneously with the refreshment or reissue of the same catalogs to the General Public including the customer designated for purposes of the Price Reduction clause.
   [(c)] The effective date of any price increase on this contract will be no earlier than the effective date of the refreshed or reissued catalog to the General Public or the designated Customer.
   [(d)] The aggregate of the increases in any contract unit price under this clause 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 per contract year (evaluated on a case-by-case basis). The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support the increase.
   [(e)] The following [Documentation supporting the reasonableness of the price increase] 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 Practices 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 subsequent submission.
      (3) Documentation supporting the reasonableness of the price increases.
Upon the receipt of the contractor's submission described in paragraph 4(e) above, the Government may exercise one of the following options:

(i) Accept the Contractor's price increases as requested[.], when all conditions of paragraphs (2), (3), and (4) (b), (c), and (d) of this clause are satisfied;

(ii) Negotiate [smaller increases] more favorable discounts from the new-commercial-prices when the total increase requested is not supported, made retroactive to the appropriate effective date.

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

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.

In addition to all other provisions of this clause this paragraph specifically applies to tool kits. Adjustments may be made to tool kits customized for Government use due to changes in the composition of the kits or changes in the price of the components:

(a) Where the change in the composition of the kits is at the direction of a Government agency, price adjustments shall be made upon notification of the contractor and confirmation from the ordering Government agency. The contractor shall submit a revised bill-of-material itemizing the changes made. The price of the revised kit will be no more than the previous price of the kit, plus any additional component, less any deleted components, plus any price change for modifications to the box and/or inserts and any additional requirements such as, but not limited to, etching etc.

(b) Price reductions that occur at the request of the contractor, changes in component prices or changes in the composition of the kits, shall be reported by the contractor to the contracting officer within 15 days of the change. Upon acceptance by the contracting officer, the resultant price change will be made retroactive to all orders received as of the effective date of the change.

(c) Price increases that occur at the instigation of the contractor or as the result of changes in commercial prices of parts may be proposed annually during a period mutually agreed to by the contractor and the contracting officer. The effective date[s] of these price increases will be the date of the modification accepting the change. No price increases will be permitted for components based on other than commercial prices.

5. All "Other Government" items—Adjustments to any items uniquely manufactured or assembled for Government use and any items whose sales to the Government consist of greater than 60% of total sales for that item will be subject to additional scrutiny as well as the conditions and requirements of paragraphs 2(a) through (g) of this clause. Items that meet the "Other Government" item criteria must be uniquely identified by the Contractor in all requests for price adjustments under the contract.
Deviation IV


Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall [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 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) Increases are requested before the last 60 days of the contract period.
   (3) At least 30 days elapse between requested increases.

(c) The following material [Documentation supporting the reasonableness of the price increase] 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.

(d) 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 paragraphs (b) and (c) of this clause are satisfied;
   (2) Negotiate [smaller increases] 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.

(e) The contract modification reflecting the price adjustment shall be made effective upon signature of 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.
Attachment II: Conformed Clauses

The LILO changes shown in Attachment I have been incorporated into the following:

Deviation I

552.216-70 ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999) (DEVIATION I - JUL 2016)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(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 under the following conditions:
   (1) Only three increases will be considered during the contract period.
   (2) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.
   (3) 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 *___* [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.] 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) 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)
Deviation II

552.216-70  ECONOMIC PRICE ADJUSTMENT - FSS MULTIPLE AWARD
SCHEDULE CONTRACTS (DEVIAITION II - JUL 2016)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(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 following 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) In 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)
Deviation III

552.216-70 ECONOMIC PRICE ADJUSTMENT - FSS MULTIPLE AWARD SCHEDULE CONTRACTS (DEVIAION III - JUL 2016)

Price adjustments include price increases and price decreases and will be considered as shown below.

(a) Catalog price adjustments will be considered as follows:
   (1) 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 Reductions Clause.
   (2) The effective date of any price increase on this contract will be no earlier than the effective date of the refreshed or reissued catalog to the General Public or the designated Customer.
   (3) The aggregate of the increases in any contract unit price under this clause 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 per contract year (evaluated on a case-by-case basis). The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support the increase.
   (4) Documentation supporting the reasonableness of the price increase shall be submitted with the request for a price increase.
   (5) Upon the receipt of the contractor’s submission described in paragraph (4) above, the Government may exercise one of the following options:
      (i) Accept the Contractor’s price increases as requested, when all conditions of paragraphs (2), (3), and (4) of this clause are satisfied;
      (ii) Negotiate smaller increases when the total increase requested is not supported, made retroactive to the appropriate effective date.
      (iii) Remove the product(s) from the contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported
(b) The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.
Deviation IV

552.216-70 ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE CONTRACTS (DEVIAITION IV - JUL 2016)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(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 providing all of the following conditions are met:
   (1) Increases are requested before the last 60 days of the contract period.
   (2) At least 30 days elapse between requested increases.

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

(d) 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 paragraphs (b) and (c) 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.

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