



GSA Office of Governmentwide Policy

May 28, 2020

SPE Memo SPE-2020-10
Supplement 1

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES AND HEADS OF CONTRACTING ACTIVITY

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

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SUBJECT: Supplement to the SPE Memo SPE 2020-10 Regarding Purchase Exceptions from the AbilityOne Commission in Response to COVID-19

The purpose of this supplement is to further clarify information contained in the SPE Memo SPE 2020-10, regarding coverage of purchase exceptions issued by the U.S. AbilityOne Commission in response to the COVID-19 pandemic.

GSA and the AbilityOne Commission have been working in tandem to address major disruptions in commercial supply chains resulting from the unprecedented demand for items caused by the nation-wide Novel Coronavirus Disease 2019 (COVID-19) crisis. In instances where AbilityOne nonprofit agencies (NPAs) are unable to meet the ever growing demand for "Procurement List" items, AbilityOne has granted purchase exceptions. These purchase exceptions allow contracting officers to fill requirements utilizing non-Procurement List items (supplies or services) designated by AbilityOne as Essentially the Same (ETS) as those on the Procurement List.

Understanding that it is the most expedient way to acquire items through the national supply system, this updated Memorandum gives authority to temporarily add ETS items to Federal Supply Schedule (FSS) contracts for which purchase exceptions have or will be granted. The purchase exemptions apply to ETS requirements for GSA **only**. This authority is effective only for the duration of the purchase exception covering the respective ETS item(s). At expiration of the purchase exception(s), the ETS item(s) will immediately be removed from the contracts. The [purchase exception list](#) will be updated as changes occur e.g., addition/deletion of purchase exception(s), extension of duration, etc.

Prior to placing an order for ETS items, contracting officers are required to review the [purchase exception list](#) to ensure the procurement exception is still active.

Additionally, the following GSAM provisions and FSS clause are waived under this authority:

- 552-238-88, GSA Advantage! (MAY 2019) - requires submission of new products to Advantage!
- I-FSS-600, Contract Price Lists (OCT 2016) - requires submission of new products to Advantage!
- 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists (MAY 2019) - requires submission of new products to Advantage! and distribution to customers and NCSC.



April 29, 2020

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES JEFFREY KOSES
Senior Procurement Executive
Office of Acquisition Policy (MV)

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Date: 2020.04.29 07:21:24 -04'00'

SUBJECT: Purchase Exceptions From the AbilityOne Program in Response to COVID-19

1. Purpose.

For many years, GSA has had a close partnership with the AbilityOne Program. GSA spends over \$500,000,000 annually on products and services listed on the AbilityOne Procurement List. This spending creates employment opportunities for Americans who are blind or severely disabled.

GSA and the AbilityOne Commission recognize that the Novel Coronavirus Disease 2019 (COVID-19) pandemic has caused great disruption in supply chains and has caused an unprecedented level of demand for items such as cleaners, disinfectants, personal protective equipment and more. There is a clear spill-over impact on other items used as part of the response.

Realizing the importance of GSA's responsibility to Federal agencies, the AbilityOne Commission is partnering with GSA to do everything possible to find capacity within the program. Where that is not possible, they will grant temporary purchase exceptions (PEs) for items on the Procurement List where nonprofit agencies (NPAs) cannot meet GSA's requirements within needed timeframes.

Pursuant to [FAR 8.706](#) and [41 CFR 51-5.4](#), a central nonprofit agency (CNA) (i.e., SourceAmerica, National Industries for the Blind (NIB)) would normally grant a purchase exception to individual contracting activities after obtaining approval from the Commission. In the interest of efficiency for COVID-19, GSA leadership is coordinating all purchase exceptions directly with the AbilityOne Commission.

These purchase exceptions allow contracting officers to fill requirements utilizing non-Procurement List items (supplies or services) designated by the AbilityOne Commission as Essentially the Same (ETS) as those on the Procurement List. The purchase exception authority covers instances when:

- the NPA cannot provide the supplies or services within the time required and commercial sources can provide them significantly sooner in the quantities required, or
- the quantity/service required cannot be produced or provided economically by the NPA.

This memorandum establishes the initial procurement exceptions for COVID-19 related items, the duration, implementing instructions, conditions and the process for obtaining additional exceptions.

2. Definition.

Essentially the Same (ETS) means a commercial product that is comparable and similar in all the prominent physical, functional or performance characteristics to the product on the Procurement List – such that the Commission deems the product to be covered by the Procurement List Mandate. ETS products can be purchased from AbilityOne commercial distributors. Several of these distributors have Multiple Award Schedule (MAS) contracts. ETS products are not the same as co-brand (sometimes referred to as restricted) products. A co-brand comprises a commercial nationally-recognized brand name (or occasionally, a regionally-recognized brand name) and the JWOD Program's name and/or the SKILCRAFT® brand name (licensed by National Industries for the Blind) on any product that is either proposed for addition or has previously been added to the Procurement List. Further, it includes use of the commercial brand name in the title or description of the item, and/or on the physical product itself and/or its packaging.

3. Applicability.

Based on market research and supporting data provided by GSA, the AbilityOne Commission has approved purchase exceptions for the items found in Attachment A.

Products or services may be added to the purchase exception list in the future. If future increased capacity from NPAs or reduced demand allows NPAs to meet the requirements, products or services may also be removed from the list.

This memo will remain in effect from date of issuance until July 30, 2020. The purchase exception list will be revisited every 30 days for potential adjustments.

The purchase exceptions apply to GSA contracts, and the orders placed against GSA contracts. These purchase exceptions include –

- orders placed but not completed for listed items in back order status.
- orders placed but not completed for listed items where NPAs cannot meet the required delivery date.
- orders that have not yet been issued for requisitions received.

The effective dates for this memo apply to the ordering period, not the period of performance -- delivery or fulfillment of an order may be completed after the expiration of this memo.

4. Contracting Officer Responsibilities.

For open orders where delays in performance due to COVID-19 are determined to be acceptable, contracting officers should continue with the NPA. In addition, performance delays attributable to COVID-19 should not result in a negative performance evaluation for the NPA.

For open orders where required delivery dates cannot be met by the NPA, contracting officers may issue a no-cost cancellation. If the contractor is an AbilityOne authorized reseller, contracting officers may also consider, at their discretion, modifying the order to accept an ETS or other substitute item.

Any ETS items must still comply with contract terms and conditions, including Trade Agreements Act and Buy American Act requirements). Note that [SPE Memo SPE-2020-11](#) provides emergency exceptions for non-availability under these statutes. If necessary, contracting officers may request additional non-availability determinations as outlined in that memo.

Contracting officers are encouraged to employ to the fullest extent possible, all emergency contracting flexibilities issued as a result of COVID-19, including open market contracts, modifications to add items to existing contracts, or establishment of new BPAs.

If use of the purchase exceptions list contained in this memo (see Attachment A) is contemplated, contracting officers must ensure applicable items are still active on the list before placing an order. Contracting officers must annotate the file to indicate purchase exception use and include supporting documentation. The purchase exceptions list will be updated on a regular basis as changes occur.

5. Head of Contracting Activity (HCA) Responsibilities.

HCAs must track contracts and orders that use the purchase exception authority, and provide monthly reports by the 15th of the month to their respective acquisition management offices, for final submission to the GSA SPE at spe.requests@gsa.gov. The reports at a minimum should include copies of the solicitation/order and copies of the annotated bid abstract upon award of the commercial contract/order.

To request additional purchase exceptions, HCAs should provide the following data to GSA's AbilityOne Executive, Millisa Gary at millisa.gary@gsa.gov.

- Item Number (if applicable) and Description
- Current Demand
- Required Delivery Date(s)
- Name of NPA under Contract (if applicable)
- NPA Capacity to Deliver by Required Date

6. Point of Contact.

Questions regarding these GSA procurement exceptions may be directed to Millisa Gary at millisa.gary@gsa.gov .

Attachments Attachment A - [Purchase Exception List](#)

**Purchase Exception List
For SPE Memo SPE-2020-10**

In accordance with 41 CFR 51-5.4, the U.S. AbilityOne Commission has authorized Purchase Exceptions (PEs) for the following items currently on the Procurement List. This list will be reviewed every 30 days for potential adjustments.

Item Number (e.g., NSN)	Item Description	Begin Date	End Date	
7930-01-454-1139	Towelette, Phone, Sanitary	April 13, 2020	July 30, 2020	
8520-01-454-1144	Towelette, Heavy Duty, Hand Cleaner	April 13, 2020	July 30, 2020	
8520-01-522-3885	Refill, Sanitizer, Hand, w/Aloe, 800 mL	April 17, 2020	July 30, 2020	
8520-01-522-3886	Purell-Skilcraft, Instant Hand Sanitizer with Aloe, 4 oz	April 17, 2020	July 30, 2020	
8520-01-522-3887	Purell-Skilcraft, Instant Hand Sanitizer with Aloe, 12 oz	April 17, 2020	July 30, 2020	
8520-01-522-3888	Purell-Skilcraft, Instant Hand Sanitizer with Aloe, 1000 mL	April 17, 2020	July 30, 2020	
4510-01-521-9867	Dispenser, GoJo, 800 mL, 12/CS	April 18, 2020	May 4, 2020	
4510-01-521-9870	Dispenser, Purell, Nxt, 1000 mL, 6/CS	April 18, 2020	June 15, 2020	*end date revised via PE dtd 5/27/2020
8520-01-522-0829	Micrell, Anti-Bac Hand Soap, 800 mL	April 18, 2020	June 30, 2020	*end date revised via PE dtd 5/4/2020
8520-01-522-0830	Purell, Adv, Gel, 800 mL	April 18, 2020	May 4, 2020	
8520-01-522-0828	Purell, Adv, Gel, Nxt, 1000 mL	April 18, 2020	May 4, 2020	
8520-01-522-0840	GoJo, Orange Pumice, Hand Clnr, 1/2 gal	April 18, 2020	May 4, 2020	
8520-01-522-0837	GoJo, Lotion Hand Soap, Nxt, 2000 mL	April 18, 2020	May 4, 2020	
8520-01-522-0839	GoJo, Lotion Hand Soap, Pump, 12 oz	April 18, 2020	May 4, 2020	
8520-01-522-0835	Purell, Adv, Gel, Bottle, 2 oz	April 18, 2020	May 4, 2020	
8520-01-556-2576	GoJo, Anti-Bac Hwash, Foam, FMX, 1250 mL	April 18, 2020	May 4, 2020	
8520-01-579-3825	Purell, Adv Bio-Based, Gel, Pump, 2 L	April 18, 2020	June 15, 2020	*end date revised via PE dtd 5/27/2020
8520-01-556-2834	Purell, Adv Grn Cert, Foam, FMX, 1200 mL	April 18, 2020	May 4, 2020	
8415-01-492-0176	Gloves, Disposable	April 20, 2020	July 1, 2020	*end date revised via PE dtd 5/1/2020
8415-01-492-0178	Gloves, Disposable	April 20, 2020	July 1, 2020	*end date revised via PE dtd 5/1/2020
8415-01-492-0179	Gloves, Disposable	April 20, 2020	July 1, 2020	*end date revised via PE dtd 5/1/2020
8415-01-492-0180	Gloves, Disposable	April 20, 2020	July 1, 2020	*end date revised via PE dtd 5/1/2020
8415-01-392-8448	Gloves, Disposable	April 20, 2020	July 31, 2020	*end date revised via PE dtd 5/1/2020
7240-00-060-6006	Pail, Utility, 10-Quart	April 20, 2020	July 31, 2020	
7240-00-061-1163	Pail, Utility, 5-Quart	April 20, 2020	July 31, 2020	
7240-00-246-1097	Pail, Utility, 12-Quart	April 20, 2020	July 31, 2020	
7360-01-167-2610	Packet, Dining	May 1, 2020	June 30, 2020	
8530-01-293-1387	Toothbrush, Adult, Assorted Colors, 6"	May 1, 2020	July 31, 2020	
4510-01-551-2867	Purell/Skilcraft 1200 ml Foam Soap Dispenser	May 5, 2020	June 30, 2020	
7230-00-205-1762	Curtain, Shower, Clear, 50" X 72"	May 22, 2020	June 15, 2020	
7230-00-849-9839	Curtain, Shower, Opaque, 36" x 72"	May 22, 2020	July 30, 2020	

7230-00-247-1280	Curtain, Shower, Opaque, 36" x 78"	May 22, 2020	July 30, 2020			
7230-00-849-9838	Curtain, Shower, Opaque, 72" x 72"	May 22, 2020	July 30, 2020			
6545-01-425-4663	Kit, Body Fluids Barrier	May 22, 2020	June 30, 2020			