



**U.S. General Services Administration**

A large, stylized American flag with red, white, and blue stripes and stars, waving in the wind. The flag is set against a dark blue background that transitions into a solid dark blue bar at the bottom of the slide.

# **FAR Part 51 Deviation**

# Overview

- FAR Part 51.1 Contractor Use of Government Supply Sources, prescribes policies and procedures under which contractors may use government sources of supply
- In general, the current authority is limited to cost-reimbursement contracts
- On October 8, 2009, a class deviation to FAR Part 51 was approved in order to better meet the needs of GSA's customer agencies

# FAR Part 51 Deviation

- Federal Government contracting officers may authorize GSA contractors to procure items from the Federal Supply Schedule (FSS) and GSA Global Supply Programs when deemed appropriate for fulfillment of agency requirements

# FAR 51 vs. FAR 51 Deviation

	FAR 51	FAR 51 Deviation
<b>Contract Type</b>	Cost reimbursement	Time & Materials
<b>Ordering Process</b>	8.405-1(Supplies & Services not Requiring a Statement of Work) 8.405-2 (Supplies & Services Requiring a Statement of Work)	FAR 8.405-1(Supplies & Services not Requiring a Statement of Work)
<b>What can be ordered?</b>	Supplies- FAR 8.405.1/8.405-2 Services- FAR 8.405.1/8.405.2	Supplies- FAR 8.405.1 Services- FAR 8.405.1
<b>Who can order?</b>	Federal agencies and authorized buying contractors	Federal agencies and authorized buying contractors

# Deviation Parameters

- The authority is limited to orders:
  - Placed on a time-and-materials (T&M)/labor-hour (LH) basis—an order placed by the Federal Government to the buying contractor can be partially fixed price, but the portion of the order for the items to be procured using the FAR 51 deviation must be T&M/LH;

# Deviation Parameters

- The authority is limited to orders:
  - For ancillary supplies/services that are in support of the overall order such that the items are not the primary purpose of the work ordered, but are an integral part of the total solution offered;

# Deviation Parameters

- The authority is limited to orders:
  - Issued in accordance with the procedures in FAR 8.405-1, Ordering Procedures for supplies, and services not requiring a statement of work;

# Deviation Parameters

- The authority is limited to orders:
  - Placed by the Federal Government. The authorization is **NOT** available to state and local governments.

# Terminology

- Federal Government: The eligible user of the FAR Part 51 deviation
- Buying Contractor: The contractor who receives the primary order from the Federal Government and subsequently acts as the Federal Government's agent when placing an order to the selling contractor
- Selling Contractor: The contractor who receives the secondary order placed under the FAR Part 51 authority from the buying contractor

# Terminology

- Authorization: Written approval from the Federal Government for the contractor to use a Government supply source
- Time and Materials: A time-and-materials contract provides for acquiring supplies or services on the basis of— direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and actual cost for materials (FAR16.601(b))
- Labor Hour: A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor (FAR 16.602)

# Responsibilities – Federal Government

- Use the FAR 51 deviation appropriately and in accordance with applicable FAR Parts
- Include Clause 52.251-1, Government Supply Sources, in solicitations
- State that items may be proposed on a T&M/LH basis using the FAR Part 51 authority
- Issue a written authorization to the buying contractor in accordance with FAR Subpart 51.102
- Ensure that the buying contractor is in compliance with the written authorization and has followed the ordering procedures in FAR 8.405-1 to promote competition
- Include the items ordered by the buying contractor in the dollar amount reported to Federal Procurement Data System (FPDS-NG)
- Assign the AAC or DODAAC if the contractor will be using the GSA Global Supply Program

# Responsibilities – Buying Contractor

- Identify those ancillary items that are proposed to be purchased under the FAR Part 51 authority on the proposal/quote and subsequent invoice
- Purchase items at the Schedule contract price (or lower) with no fee/surcharge/markup. Ensure that the products and/or services procured under FAR 51 procedures are ancillary to the overall project/order
- Provide a copy of the written authorization from the Federal Government with each applicable order to the selling contractor
- Ensure that the buying contractor's Schedule contract number is on each order issued to the selling contractor
- Remit full payment to the selling contractor
- Submit documentation of the transmittal of full payment to the selling contractor when invoicing the Federal Government
- Follow any applicable FSS or GSA Global Supply Program ordering procedures in addition to procedures outlined in FAR 8.405-1 and FAR Part 51

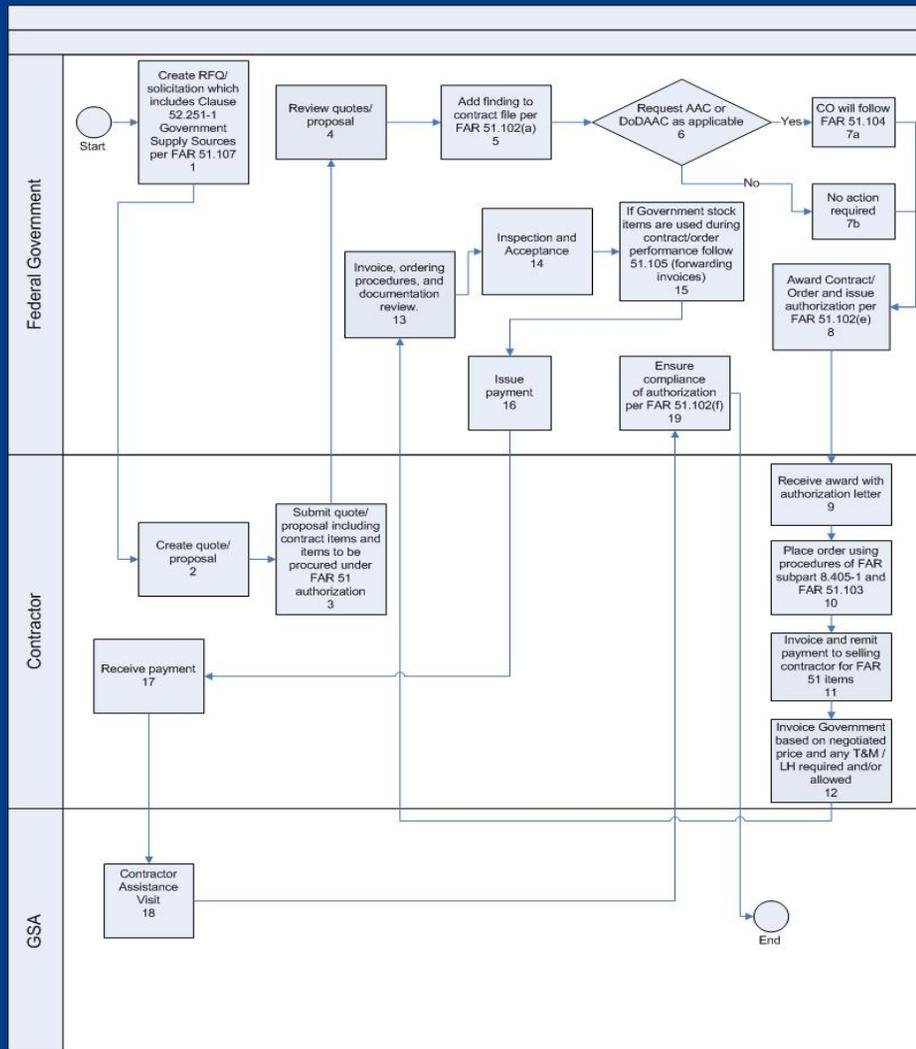
# Responsibilities – Selling Contractor

- Have the ability to accept or reject orders from the buying contractor
- Ensure that a copy of the written authorization from the Federal Government is included in the order issued by the buying contractor
- Ensure that the buying contractor's contract number is shown on each order
- Sell to the buying contractor at the MAS contract price or lower
- Understand that a purchase made under the authority of FAR Part 51 does not trigger a price reduction under GSAR clause 552.238-75, Price Reductions
- Include on each invoice the language, "in care of '[name of government agency]' under written authorization from \_\_\_\_\_ dated \_\_\_\_\_"
- Assume the financial risk and other risks of selling directly to another contractor
- Track and report sales as Schedules contract sales, and remit the Industrial Funding Fee (IFF) accordingly

# Responsibilities – Global Supply

- Accept all orders from buying contractors, provided the contractor provides evidence that he has the proper authorization and an Activity Address Code (AAC) or Department of Defense Activity Address Code (DODAAC)
- Charge the standard price
- Follow normal requisition processes using assigned AAC or DODAAC
- For more information on placing orders with GSA Global Supply, visit [www.gsaglobalsupply.gsa.gov](http://www.gsaglobalsupply.gsa.gov)

# Process Map



# Buying Contractor

- Determine whether or not to participate in the procurement
- Create and submit proposal/quote
- Receive award
- Place order for FAR Part 51 items to selling contractor
- Remit payment to selling contractor
- Invoice the Federal Government

# Receive Solicitation

- RFQ/RFP from Federal Government should contain:
  - Clause 52.251-1 Government Sources of Supply and;
  - A clear statement that the deviation authority may be used
- Things to consider when responding to the RFQ/RFP
  - You may choose not to participate in the procurement
  - Consider whether the use of the deviation authority is the best way to fulfill the Federal Government's requirements

# Create and Submit Quote/Proposal

- Prepare quote/proposal in accordance with the RFQ/solicitation requirements
- Clearly identify the items to be procured using the FAR 51 deviation and separate those items from the proposed, fixed price schedule items
- Items procured using the deviation authority must be proposed on a T&M/LH basis with an established ceiling price
  - The quote/proposal should include the FSS schedule that will be used or otherwise state that a requisition will be placed through the Global Supply Program

# Receive Award

- The award package must contain a written authorization from the Federal Government contracting officer to use the FAR Part 51 deviation authority

# Place Order for FAR Part 51 Items

- Place order using proper procurement procedures
  - Comply with FAR 8.405-1 when purchasing from the Federal Supply Schedules
  - Follow the normal requisition process when purchasing from the GSA Global Supply program
  - Follow best practices outlined in FAR Part 51 deviation ordering guide
  - Provide a copy of the written authorization issued by the contracting officer in the order to the selling contractor
  - Orders should not be issued to a contractor's own firm(s), subsidiary(s), subcontractors or teaming partners in order to maximize competition

# Place Order for FAR Part 51 Items

- **FAR 8.405-1 - Ordering procedures for supplies, and services not requiring a statement of work.**
  - (a) Ordering activities shall use the procedures of this subsection when ordering supplies and services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (e.g., installation, maintenance, and repair).
  - (b) Orders at or below the micro-purchase threshold. Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. Although not required to solicit from a specific number of schedule contractors, ordering activities should attempt to distribute orders among contractors.

# Place Order for FAR Part 51 Items

- **FAR Part 8.405-1**

- (c) **Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.** Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an Federal Government shall consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.405-5).

**In addition to price, when determining best value, the Federal Government may consider, among other factors, the following:**

- (1) Past performance.
- (2) Special features of the supply or service required for effective program performance.
- (3) Trade-in considerations.
- (4) Probable life of the item selected as compared with that of a comparable item.
- (5) Warranty considerations.
- (6) Maintenance availability.
- (7) Environmental and energy efficiency considerations.
- (8) Delivery terms.
- (9) Expertise of offeror
- 10) Socio-Economic status

# Place Order for FAR Part 51 Items

- **FAR 8.405-1**

**(d) Orders exceeding the maximum order threshold.** Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the Federal Government shall seek a price reduction.

**In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a BPA (see 8.405-3), ordering activities shall—**

- (1) Review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);
- (2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (see 8.404(d)); and
- (3) After seeking price reductions (see 8.405-4), place the order with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

**(e) Minimum documentation.** The Federal Government shall document—

- (1) The schedule contracts considered, noting the contractor from which the supply or service was purchased;
- (2) A description of the supply or service purchased; and
- (3) The amount paid.

# Remit Payment to Selling Contractor

- The buying contractor must remit full payment to the selling contractor prior to invoicing the Federal Government

# Invoice the Federal Government

- Invoice reflects the agreed upon pricing
- Purchase price of items procured under FAR Part 51 is passed through to the Government with no fee or markup
- FAR 51 items should be identified and separated from the rest of the items on the invoice
- Provide appropriate documentation that the selling contractor has been paid in full

# Selling Contractor

- Accept or reject order from the buying contractor
- Fulfill order
- Track and report sales/remit Industrial Funding Fee (IFF)

# Accept/Reject Order

- A GSA contractor acting under the authority of the FAR Part 51 class deviation is authorized to use GSA as a source of supply as an eligible ordering activity
- The selling contractor is not obligated to accept orders from activities outside of the Executive Branch
  - GSAR clause 552.238-78 Scope of Contract (Eligible Ordering Activities)
- Consider the financial risk and other risks of selling directly to another contractor

# Fulfill Order

- Review the order
- Ensure that a copy of the written authorization from the Contracting Officer is included
  - GSA Industrial Operations Analyst (IOA) will conduct routine Contractor Assistance Visits (CAVs) to verify
- Ensure that the buying contractor's contract number is on the order
- Sell to the buying contractor at the MAS contract price or lower pursuant to FAR 8.4
- Include on each invoice the language, "in care of '[name of government agency]' under written authorization from \_\_\_\_\_ dated \_\_\_\_\_"

# Track and Report Sales/Remit IFF

- Sales made to the buying contractor are schedule sales that need to be reported
- Sales are subject to the IFF
  - If necessary, ensure that your sales tracking system has the capability to identify these sales as Federal sales
- A sale made under the authority of FAR Part 51 does not trigger a price reduction
  - GSAR clause 552.238-75, Price Reductions

- Questions
- For more information, contact:

Sheri Meadema  
Schedules Program Office  
[sheri.meadema@gsa.gov](mailto:sheri.meadema@gsa.gov)  
703-605-2577