

within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are administrative in nature and only update and reorganize existing GSAR coverage.

#### V. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090-0163.

#### List of Subjects in 48 CFR Parts 501, 515, and 552

Government procurement.

Dated: May 26, 2016.

Jeffrey A. Koses,

Office of Acquisition Policy, Senior Procurement Executive, General Services Administration.

Therefore, GSA is amending 48 CFR parts 501, 515 and 552 as set forth below:

#### PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

##### 501.106 [Amended]

■ 2. Amend section 501.106 by adding to the table, in numerical sequence, GSAR Reference “552.215-73” and its corresponding OMB control number “3090-0163”.

#### PART 515—CONTRACTING BY NEGOTIATION

■ 3. The authority citation for 48 CFR part 515 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c).

■ 4. Revise section 515.204 to read as follows:

##### 515.204 Contract format.

(a) The uniform contract format is not required for leases of real property (See GSAM 570.116).

(b) The Senior Procurement Executive is the agency head’s designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e)).

##### 515.204-1 and 515.205 [Removed]

■ 5. Remove sections 515.204-1 and 515.205.

■ 6. Amend section 515.209-70 by—  
 ■ a. Revising the introductory text of paragraph (a);

■ b. Redesignating paragraph (b) as paragraph (a)(9) and revising newly redesignated paragraph (a)(9); and  
 ■ c. Adding new paragraph (b).

The revisions and addition read as follows:

##### 515.209-70 Examination of records by GSA clause.

\* \* \* \* \*

(a) *Examination of records by GSA clause for other than multiple award schedule (MAS) contracts.* Insert the clause at 552.215-70, Examination of Records by GSA, in all solicitations and contracts above the simplified acquisition threshold, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

\* \* \* \* \*

(9) The contracting officer may modify the clause at 552.215-70 to define the specific area of audit (*e.g.*, the use or disposition of Government-furnished property). Office of General Counsel or the Office of Regional Counsel and the Assistant Inspector General for Auditing or Regional Inspector General for Auditing, as appropriate, must concur in any modifications to the clause.

(b) Insert the clause at 552.215-73, Notice, in all solicitations for negotiated procurements above the simplified acquisition threshold in accordance with FAR part 15.

\* \* \* \* \*

##### 515.5 and 515.70 [Removed]

■ 7. Remove subparts 515.3 and 515.70.

#### PART 552—SOLICITATIONS AND PROVISIONS

■ 8. The authority citation for 48 CFR part 552 continues to read as follows:

**Authority:** 40 U.S.C. 121(c).

■ 9. Amend section 552.215-70 by revising the introductory text and the date of the clause, and removing “exceeding \$100,000” and adding “exceeding the simplified acquisition threshold” in its place.

The revisions read as follows:

##### 552.215-70 Examination of Records by GSA.

As prescribed in 515.209-70(a), insert the following clause:

##### Examination of Records by GSA (JUN 2016)

\* \* \* \* \*

■ 10. Add section 552.217-73 to read as follows:

##### 552.215-73 Notice Regarding Information Collection Requirements.

As prescribed in 515.209-70(b), insert the following clause:

##### Notice (JUN 2016)

(a) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

(b) GSA’s hours of operation are 8:00 a.m. to 4:30 p.m. EST. Requests for pre-award debriefings postmarked or otherwise submitted after 4:30 p.m. EST will be considered submitted the following business day. Requests for post-award debriefings delivered after 4:30 p.m. EST will be considered received and filed the following business day.

(End of clause)

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#### GENERAL SERVICES ADMINISTRATION

#### 48 CFR Parts 511, 538, and 552

[GSAR Change 73; GSAR Case 2010-G511; Docket No. 2014-0008; Sequence No. 1]

RIN 3090-AJ43

#### General Services Administration Acquisition Regulation (GSAR); Purchasing by Non-Federal Entities

**AGENCY:** Office of Government-wide Policy, Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) regulation, Describing Agency Needs, to implement the Federal Supply Schedules Usage Act of 2010 (FSSUA), the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA), the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA), and the Local Preparedness Acquisition Act for Fiscal Year 2008 (LPAA). GSA is also amending the GSAR, Federal Supply Schedule Contracting, and Solicitation Provisions and Contract Clauses, in regard to this statutory implementation to clarify the application of these laws and access privileges of certain Non-Federal Entities purchasing off of Federal Supply Schedules (FSS). Additionally, prescriptions in the GSAR are amended to reflect the correct prescription numbers. This final rule

also updates the web address to correct an inoperable link.

**DATES:** *Effective:* July 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Dana Munson, General Services Acquisition Policy Division, GSA, by phone at 202-357-9652 or by email at [dana.munson@gsa.gov](mailto:dana.munson@gsa.gov). For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR case 2010-G511.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

GSA published a proposed rule with a request for public comments in the **Federal Register** at 79 FR 21691 on April 17, 2014. This rule combined previous GSAR case 2006-G522; Federal Supply Schedule Contracts—Recovery Purchasing by State and Local Governments Through Federal Supply Schedules (Interim Rule), which published in the **Federal Register** at 72 FR 4649 on February 1, 2007 and GSAR Case 2008-G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules (Interim Rule), which published in the **Federal Register** at 73 FR 54334 on September 9, 2008.

This final rule amends the GSAR to implement section 2 of the FSSUA (Pub. L. 111-263), which added subsection 40 U.S.C. 502(e), authorizing the use of the Schedules by the American National Red Cross and other qualified organizations, which includes National Voluntary Organizations Active in Disaster (NVOAD); section 3 of the FSSUA, which added subsection 40 U.S.C. 502(f), requiring all users of the Schedules, including non-Federal users, to use the contracts in accordance with ordering guidance provided by the Administrator of General Services; and section 4 of the FSSUA to include additional purchasing authority for state or local governments.

This final rule amends the GSAR to implement section 101 of NAHASDA (Pub. L. 110-411), codified at 25 U.S.C. 4111(j), which provides that “each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.” As such, tribes or tribally

designated housing entities expending funds from block grants pursuant to NAHASDA may access GSA’s sources of supply, including the Schedules, at their discretion.

The final rule amends GSAR Parts 511, 538, and 552 to implement Section 833 of the NDAA, which amends 40 U.S.C. 502(d)(1) to authorize the Administrator of General Services to provide to state or local governments the use of GSA’s Schedules for the purchase of goods or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

This final rule amends the GSAR to further implement section 833, which also amends 40 U.S.C. 502(d)(2) to require the Secretary of Homeland Security to determine which goods and services qualify before the Administrator provides for the use of GSA’s Schedules. House Report 109-452 of the Committee on Armed Services indicates that section 833 (referred to in the House Report as section 823), builds on the implementation of the Cooperative Purchasing Program authorized in Section 211 of the E-Government Act of 2002, which permitted state or local governments to access GSA’s information technology schedule, known as Schedule 70.

This final rule amends the GSAR to implement the LPAA, which amended 40 U.S.C. 502(c), by authorizing the Administrator of General Services to provide to state or local governments the use of GSA’s Schedules for the acquisition of law enforcement, security, and certain other related items.

The prescriptions at GSAR 552.211-85 through 89 are incorrectly numbered. This final rule reflects the correct prescriptions for GSAR clauses 552.211-85 through 89. This final rule also updates the web address in GSAR clause 552.211-89(d) to correct an inoperable link.

The authority granted under FSSUA is available for use on a voluntary (*i.e.*, non-mandatory) basis. In other words, businesses with Schedule contracts have the option of deciding whether they will accept orders placed by state or local governments, the American National Red Cross, or other qualified organizations.

All users of GSA’s Schedules, including non-Federal users, shall use the Schedules in accordance with the ordering guidance provided by the

Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in FAR subpart 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

The non-Federal ordering activity is responsible for ensuring that only authorized representatives of its organization place orders and that goods or services ordered are used only for the purposes authorized. Existing Schedule contracts may be modified only by mutual agreement of the parties. After an existing contract has been modified, a Schedule contractor still retains the right to decline orders by non-Federal entities on a case-by-case basis. This applies to future Schedule contractors, as well. Schedule contractors may decline any order from entities outside the Executive Branch (see GSAR 552.238-78). Similarly, the rule places no obligation on non-Federal buyers to use Schedule contracts. They will have full discretion to decide if they wish to make a Schedule purchase, subject however, to any limitations that may be established under state and local laws or organizational policies.

The Federal Government will not be liable for the performance or nonperformance of orders established under the authority of this rule between Schedule contractors and eligible non-Federal entities. Disputes that cannot be resolved by the parties to the new contract can be litigated in any court of competent jurisdiction over the parties.

The prices of supplies and services available on Schedule contracts include an industrial funding fee (IFF). The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee may be periodically adjusted as necessary to recover the cost of operating the program.

Two respondents submitted comments in response to the proposed rule. These comments, along with comments received from the previously published interim rules, are addressed in the Discussion and Analysis Section.

**II. Discussion and Analysis**

The General Services Administration has reviewed the comments received in response to the proposed rule and the previously published interim rules in the development of the final rule. Comments are grouped into categories in order to provide clarification and to better respond to the issues raised. A discussion of all comments received and the changes made to the rule as a result

of those comments is provided as follows:

*Comment:* Asked GSA to “clarify whether the changes in the rule apply to the Federal Supply Schedule functions the General Services Administration has delegated to the U.S. Department of Veterans Affairs?”

*Response:* Yes, the changes apply to all Federal Supply Schedules, including those managed by the Department of Veterans Affairs. Vendors may voluntarily sell to non-Federal entities under their Schedule, in accordance with clause 552.238–78 and acceptance of orders from non-Federal entities is not mandatory. No changes were made to the GSAR text as a result of this comment.

*Comment:* Was directed at United States Code definitions and FAR references.

The respondent suggested the following changes to the GSAR text that included changing definitions to match definitions and terms in various parts of the Federal Acquisition Regulation (FAR) and the United States Code:

- Delete the terms “Preparedness, Recovery, Relief, and Response” found under Subpart 538.7001 Definitions and permit the definitions and legal intentions set forth throughout the FAR, in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to prevail.

- Replace references to Public Law with applicable “40 U.S.C. 502” authority;

- Remove the “Disaster Recovery Purchasing” program from eLibrary and advise contractors to register in System Award Management (SAM) for the “Disaster Response Registry;” and

- Mandate all non-federal entities use GSA Advantage! in order to track and monitor compliance with IFF and to ensure compliance with 40 U.S.C. 502 authority.

*Response:* The comments appear to erroneously conflate Federal acquisitions with the activities governed by this final rule. The parts of the FAR cited in the comments pertain to acquisitions by Federal agencies, and fall under a particular statutory authority, specifically the Defense Priorities and Allocations System (DPAS). That is separate from the changes in this rule, which pertains to the ability of non-Federal entities to access GSA sources of supply. These non-Federal access programs are outside of the scope of and not directly related to defense contracting under DPAS, nor are they related to Federal emergency contracting. The GSA non-Federal entity programs are all separate authorities,

controlled by statute, that do not conflict or overlap with other Federal, disaster-related, programs. Under these authorities, non-Federal entities have optional access to GSA sources of supply, under the authorized scope. Therefore, purchases made by non-Federal entities are not subject to the statutes and FAR requirements cited in the comments. Thus, insofar as the comments appear to misinterpret the scope and effect of the rule, and the statutory authorities that underlie it, GSA does not concur with the recommendations contained in the comments. No change was made as a result of this comment.

*Comment:* Asked if the IFF paid by non-Federal entities is tracked separately from the IFF paid by Federal entities.

*Response:* The IFF paid by non-Federal entities is not tracked separately from the IFF paid by Federal entities. Sales are reported quarterly by the vendor and are tracked by Special Item Number (SIN) and Schedule.

The IFF is tracked separately for sales under the Disaster Purchasing and Cooperative Purchasing Programs. However, it is not tracked separately for other special programs. The Red Cross and other qualified organization sales are reported under Federal sales. GSA is able to track these sales, when made through GSA eTools.

GSA Industrial Operating Analysts and Administrative Contracting Officers work with the GSA vendor community to ensure that all GSA vendors, including authorized non-Federal Entities, are aware of the reporting requirements under the separate programs and that orders are properly tracked and reported on the quarterly 72A forms. No change was made as a result of this comment.

*Comment:* Raised a number of issues about GSA eTools and how orders under this rule are tracked via the eTools.

*Response:* GSA eTools web portal provides a one-stop resource where federal and non-federal customers learn about GSA products and services.

GSA eTools, GSA Advantage!® and eLibrary, provide a list of current contractors, products, and services available to eligible non-Federal entities. Schedule contractors that have opted to sell under these programs have agreed to do so at the contract level and their agreement is noted in the eTools with a “COOPPURCH” or “DISASTRECOV” icon.

When requested, buyers only see contractors that have agreed to participate in the program. This information displays into GSA

Advantage!® and its component system eBuy, which facilitates the request for submission of quotations for commercial products and services.

Use of eTools is not mandatory for non-Federal entities and requiring mandatory use of eTools, as suggested in the comments, would be a barrier to use for some state and local government entities. Some entities require use of their own systems to process and execute orders and some entities do not support use of credit cards. Mandating the use of a system, like GSA Advantage!®, that requires credit cards, would prohibit some legally authorized users from accessing these contracts.

*Comment:* Suggested that ordering procedures require a FEMA disaster declaration number to place an order.

*Response:* Such a requirement would not take into account a non-Federal entity’s ability to purchase for preparation of a disaster, which necessarily pre-dates the declaration of an emergency. However, all entities placing orders under the Disaster Purchasing Program must include the mandatory order language on the purchase order to confirm that the order is being placed under GSA’s Disaster Purchasing Program and under the appropriate scope. No change was made as a result of this comment.

*Comment:* Included a number of statements and questions regarding the 1122 Program and Wildland Fire Program.

*Response:* These programs are outside the scope of the proposed rule because the laws being implemented do not cover these GSA Schedules. Therefore, these comments are not addressed. Information on these programs can be found here: [www.gsa.gov/1122program](http://www.gsa.gov/1122program) and [www.gsa.gov/fireprogram](http://www.gsa.gov/fireprogram).

*Comment:* Suggested editorial updates to sections and subparts of the GSAR to address the deletion of GSAR 538.71.

*Response:* The GSAR text of the final rule is amended to reflect the deletion of GSAR 538.71, Submission and Distribution of Authorized FSS Schedule Pricelists by removing and reserving section 552.238–76, Definition (Federal Supply Schedules)—Recovery Purchasing.

*Comment:* Expressed concern in regards to the Recovery Purchasing program on topics such as advanced purchasing or qualified products.

*Response:* These questions are directed towards a component of the program that is no longer relevant since the Federal Supply Schedules Usage Act dictates that purchasing may be made in support of preparation for disasters in addition to disaster recovery.

*Comment:* Opposes the inclusion of the Veteran Administration pharmaceutical contracts because the contracts are the only ones that are set via statutorily mandated pricing system.

*Response:* The statutes implemented by this rule do not exclude the ability for certain non-federal entities to have access to VA pharmaceutical contracts. Vendors may voluntarily sell to non-Federal entities under their Schedule, in accordance with GSAR clause 552.238–78. Participation in the program and acceptance of orders from non-Federal entities is not mandatory.

*Comment:* The commenter is opposed to GSA allowing local and state governments to purchase directly off the schedules for competitive and economic reasons.

*Response:* The Statutes cited in this rule allow access to the Schedules. Schedules access is a direct relationship between the ordering entity and the Schedule vendor.

### III. Applicability

This rule provides certain Non-Federal Entities with access to GSA Schedules under the following conditions and authorities:

1. Disaster Purchasing-Authorized under Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA) (Pub. L. 109–364) and the Federal Supply Schedules Usage Act of 2010 (FSSUA) (Pub. L. 111–263), provides State and local use of Federal Supply Schedules for the purchase of goods or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

2. Cooperative Purchasing—Authorized previously under the eGovernment Act of 2002 (Pub. L. 107–347), expanded here under the Local Preparedness Acquisition Act of 2008 (Pub. L. 110–248), provides State and local government use of Federal Supply Schedules for the acquisition of law enforcement, security, and certain other related items by State and local governments. This expansion is limited to Schedule 84, Total Solutions for Law Enforcement, Security, facilities management, fire, rescue, marine craft, and Emergency/Disaster Response. Schedule 70 for Information Technology products and Services was previously authorized under this program.

3. American National Red Cross—Authorized under the Federal Supply Schedules Usage Act of 2010 (Pub. L.

111–263), provides the American National Red Cross access to Federal Supply Schedules, when purchasing in furtherance of the purposes of the American National Red Cross set forth in section 300102 of title 36, United States Code.

4. Other Qualified Organizations—Authorized under the Federal Supply Schedules Usage Act of 2010 (Pub. L. 111–263), provides access to Federal Supply Schedules for “other qualified organizations” when purchasing in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency (FEMA). GSA, in consultation with FEMA has determined that, at this time, the National Voluntary Organizations Active in Disaster (NVOAD), may utilize Federal Supply Schedules in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief.

5. Tribal Government Access to Schedules—authorized under Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA) (Pub. L. 104–330), provides that “each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.” As such, tribes or tribally designated housing entities expending funds from block grants pursuant to NAHASDA may access GSA’s sources of supply, including the Schedules, at their discretion. This Final Rule does not grant any additional authority for non-Federal entities to use Federal Supply Schedules other than those listed above.

### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant

regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### V. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because implementing the authorities enumerated herein will expand or add the ability for additional other qualified organizations to procure from GSA’s Schedule contracts as identified in the relevant laws. For small businesses that hold a Schedule contract their sales may increase for orders placed, by authorized non-federal entities, in order to support disaster preparation and response.

GSA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) Part 511, Describing Agency Needs, to implement the Federal Supply Schedules Usage Act of 2010 (FSSUA), the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA), the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA), and the Local Preparedness Acquisition Act for Fiscal Year 2008 (LPAA), to provide non-Federal entity access to GSA’s Federal Supply Schedules (Schedules).

Prior to the Federal Supply Schedules Usage Act of 2010 (hereinafter, “Act”), state and local governments and the American National Red Cross were authorized to procure from Schedules, but only for limited purposes and specific scopes. “Other qualified organizations” were not previously authorized to procure from Schedules contracts.

Under the Act, the scope of authorized users of FSS contracts is expanded to include “other qualified organizations,” which is in addition to the already authorized state and local governments and the American National Red Cross (ANRC). Access to Schedules for each of these entities varies. The ANRC may access Schedules in support of their Federal charter; state and local governments may use the Schedules to prepare, respond, and recover from major disasters; and “other qualified organizations” may use the Schedules for emergency preparedness and disaster relief.

It should be noted that this is an optional program under the FSS program. This final rule applies to all FSS contractors that agree to sell goods and services to these eligible entities, under the appropriate scope of use. A modification will be issued outlining if a

contractor wishes to sell to each of the 3 user groups, under the assigned scope. There are no additional compliance requirements for contractors than what is already required; therefore, there is no additional cost to small business if they decide to participate.

Further, the final rule amends the GSAR to implement section 101 of NAHASDA, codified at 25 U.S.C. 4111(j), which provides that “each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency.” As such, tribes or tribally designated housing entities expending funds from block grants pursuant to NAHASDA may access GSA’s sources of supply, including the Schedules, at their discretion.

Additionally, the final rule amends the GSAR to implement Section 833 of the NDAA, which amends 40 U.S.C. 502(d)(1) to authorize the Administrator of General Services to provide to state or local governments the use of GSA’s Schedules for the purchase of goods or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

Finally, the final rule amends the GSAR to implement the LPAA, which amended 40 U.S.C. 502(c), by authorizing the Administrator of General Services to provide to state or local governments the use of GSA’s Schedules for the acquisition of law enforcement, security, and certain other related items.

The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat Division.

**VI. Paperwork Reduction Act**

The final rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 511, 538 and 552**

Government procurement.

Dated: May 27, 2016

**Jeffrey A. Koses,**  
*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, GSA amends 48 CFR parts 511, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

**PART 511—DESCRIBING AGENCY NEEDS**

■ 2. Amend section 511.204 by revising paragraphs (b)(2) and (c) to read as follows:

**511.204 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(b) \* \* \*

(2) The contracting officer shall include the clause at 552.211–75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

\* \* \* \* \*

(c) *Supply contracts.* The contracting officer shall include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING**

■ 3. Amend section 538.273 by revising paragraphs (a)(2) and (b)(2) to read as follows:

(a) \* \* \*

(2) 552.238–71, Submission and Distribution of Authorized FSS Schedule Pricelists.

\* \* \* \* \*

(b) \* \* \*

(2) 552.238–75, Price Reductions.

\* \* \* \* \*

**Subpart 538.70—Purchasing by Non-Federal Entities**

■ 4. Revise the heading of subpart 538.70 to read as set forth above.

■ 5. Amend section 538.7000 by adding paragraph (d) to read as follows:

**538.7000 Scope of subpart.**

\* \* \* \* \*

(d) Other Federal Supply Schedules as authorized in this subpart.

■ 6. Amend section 538.7001 by adding in alphabetical order, the definitions “Preparedness”, “Recovery”, “Relief”, and “Response” to read as follows:

**538.7001 Definitions.**

\* \* \* \* \*

*Preparedness* means actions that may include, but are not limited to planning, resourcing, training, exercising, and organizing to build, sustain, and improve operational disaster response capabilities. Preparedness also includes the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction-specific plans for delivering capabilities when needed for an incident.

*Recovery* means actions including, but not limited to, the development, coordination, and execution of service- and site-restoration plans; the reconstitution of Government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post-incident reporting; and development of initiatives to mitigate the effects of future incidents.

*Relief* means disaster “response” and “recovery.” Please see the full definitions for these terms in this section.

*Response* means immediate actions taken during a disaster, or in its immediate aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery.

\* \* \* \* \*

■ 7. Amend section 538.7002 by revising paragraph (d); and adding paragraphs (e) through (g) to read as follows:

**538.7002 General.**

\* \* \* \* \*

(d) Public Law 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007 authorizing state and local governments, to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate for recovery from terrorism or nuclear, biological, chemical, or radiological attack. Public Law 111–263, the Federal Supply Schedules Usage Act of 2010 authorizing state and local governments to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate disaster preparedness or response.

(e) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter (36 U.S.C. 300102).

(f) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency. Other qualified organizations must meet the requirements of 42 U.S.C. 5152.

(g) A listing of the participating contractors and SINS for the goods and services that are available under these authorized Federal Supply Schedules, is available in GSA’s e-Library at [www.gsa.gov/elibrary](http://www.gsa.gov/elibrary).

■ 8. Amend section 538.7003 by revising the introductory text to read as follows:

**538.7003 Policy.**

*Preparing solicitations when schedules are open to eligible non-federal entities.* When opening authorized Federal Supply Schedules for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/ clauses to delete “Government” or similar language referring to the U.S. Government and substitute “ordering activity” or similar language when preparing solicitations and contracts to be awarded under authorized Federal Supply Schedules. When such changes are made, the word “(DEVIATION)” shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

\* \* \* \* \*

■ 9. Revise section 538.7004 to read as follows:

**538.7004 Solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules)–Non-Federal Entity in solicitations and contracts for all Federal Supply Schedules.

(b) The contracting officer shall insert the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.

(d) See 552.101–70 for authorized FAR deviations.

**Subpart 538.71—[Removed and Reserved]**

■ 10. Remove and reserve subpart 538.71.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**552.211–85 [Amended]**

■ 11. Amend section 552.211–85 by removing from the introductory text “511.204(b)(5)” and adding “511.204(b)(4)” in its place.

**552.211–86 [Amended]**

■ 12. Amend section 552.211–86 by removing from the introductory text “511.204(b)(6)” and adding “511.204(b)(5)” in its place.

**552.211–87 [Amended]**

■ 13. Amend section 552.211–87 by removing from the introductory text “511.204(b)(7)” and adding “511.204(b)(6)” in its place.

**552.211–88 [Amended]**

■ 14. Amend section 552.211–88 by removing from the introductory text “511.204(b)(8)” and adding “511.204(b)(7)” in its place.

■ 15. Amend section 552.211–89 by:  
■ a. Removing from the introductory text “511.204(b)(4)” and adding “511.204(b)(8)” in its place;  
■ b. Revising the date of the clause; and  
■ c. Removing from paragraph (d) “<http://www.dla.mil/j-3/j-3311/DLAD/rev5.htm>” and adding “<http://farsite.hill.af.mil/archive/Dlad/Rev5/PART47.htm>” in its place.

The revision reads as follows:

**552.211–89 Non-manufactured wood packaging material for export.**

\* \* \* \* \*

**Non-Manufactured Wood Packaging Material for Export (JUL 2016)**

\* \* \* \* \*

■ 16. Amend section 552.238–71 by:  
■ a. Revising the date of the clause;  
■ b. Removing from paragraph (a) “Federal Government” and adding “ordering activity” in its place; and  
■ c. Removing Alternate I.

The revision reads as follows:

**552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.**

\* \* \* \* \*

**Submission and Distribution of Authorized FSS Schedule Pricelists (JUL 2016)**

\* \* \* \* \*

■ 17. Amend section 552.238–75 by:  
■ a. Revising the date of the clause and paragraph (d)(3); and  
■ b. Removing Alternate I.

The revisions read as follows:

**552.238–75 Price Reductions.**

\* \* \* \* \*

**Price Reductions (JUL 2016)**

\* \* \* \* \*

(d) \* \* \*

(3) Made to Eligible Ordering Activities identified in GSAR clause 552.238–78 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR clause 552.238–78 is the agreed upon customer or category of customer that is the basis of award); or

\* \* \* \* \*

**552.238–76 [Removed and Reserved]**

■ 18. Remove and reserve section 552.238–76.

■ 19. Amend section 552.238–77 by:  
■ a. Revising the section and clause headings; and  
■ b. Removing from the definition “Ordering activity” the phrase “(see 552.238–78)” and adding “(see 552.238–78),” in its place.

The revisions read as follows:

**552.238–77 Definition (Federal Supply Schedules)—Non-Federal Entity.**

\* \* \* \* \*

**Definition (Federal Supply Schedules)—Non-Federal Entity (JUL 2016)**

\* \* \* \* \*

■ 20. Amend section 552.238.78 by—  
■ a. Revising the date of the clause;  
■ b. Redesignating paragraphs (a)(7) and (8) as paragraphs (a)(8) and (9), respectively;  
■ c. Adding a new paragraph (a)(7);  
■ d. Revising paragraph (d);  
■ e. Adding paragraph (h); and  
■ f. Removing Alternate I.

The revisions and additions read as follows:

**552.238-78 Scope of Contract (Eligible Ordering Activities).**

\* \* \* \* \*

**Scope of Contract (Eligible Ordering Activities) (JUL 2016)**

(a) \* \* \*

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

\* \* \* \* \*

(d) The following activities may place orders against Schedule 70 contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T.

Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for goods or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

\* \* \* \* \*

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

■ 21. Amend section 552.238-79 by revising the section and clause headings to read as follows:

**552.238-79 Use of Federal Supply Schedule Contracts by Non-Federal Entities**

\* \* \* \* \*

**Use of Federal Supply Schedule Contracts by Non-Federal Entities (JUL 2016)**

\* \* \* \* \*

**552.238-80 [Removed and Reserved]**

■ 22. Remove and reserve section 552.238-80.

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