

(1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;

(2) Maintain a system of reporting sales under the contract to the manufacturer, which includes—

- (i) The date of sale;
- (ii) The ordering activity to which the sale was made;
- (iii) The service or product/model sold;
- (iv) The quantity of each service or product/model sold;
- (v) The price at which it was sold, including discounts; and
- (vi) All other significant sales data.

(3) Be subject to audit by the Government, with respect to sales made under the contract; and

(4) Place orders and accept payments in the name of the Contractor in care of the dealer.

An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government. (End of clause)

■ 16. Amend section 552.238–71 by adding Alternate I to read as follows:

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

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*Alternate I (May 2003).* As prescribed in 538.273(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *Definition.* For the purposes of this clause, the Mailing List is [Contracting officer shall insert either: “the list of addressees provided to the Contractor by the Contracting Officer” or “the Contractor’s listing of its ordering activity customers”].

■ 17. Amend section 552.238–75 by adding Alternate I to read as follows:

**552.238–75 Price Reductions.**

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*Alternate I (May 2003).* As prescribed in 538.273(b)(2), substitute the following paragraph (c)(2) for paragraph (c)(2) of the basic clause, and substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause.

(c)(2) The Contractor shall offer the price reduction to the eligible ordering activities with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d)(2) To eligible ordering activities under this contract; or

■ 18. Add sections 552.238–77 through 552.238–79 to read as follows:

**552.238–77 Definition (Federal Supply Schedules).**

As prescribed in 538.7004(a), insert the following clause:

Definition (Federal Supply Schedules) (May 2003)

*Ordering activity* (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see 552.238–78) authorized to place orders under Federal Supply Schedule contracts. (End of clause)

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

As prescribed in 538.7004(b), insert the following clause:

Scope of Contract (Eligible Ordering Activities) (May 2003)

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for delivery within the 48 contiguous States and Washington, D.C. For Special Item Number 132–53 Wireless Services ONLY, limited geographic coverage (consistent with the Offeror’s commercial practice) may be proposed. Resultant contracts may also be used for delivery to Alaska, Hawaii, the Commonwealth of Puerto Rico, and overseas locations.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101–26.000);

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(8) Organizations, other than those identified in paragraph (b) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) The following activities may place orders against information technology schedule 70 contracts and Corporate Schedule contracts containing information technology special item numbers, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities:

State and local government, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

(c) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(d) For orders received from activities within the Executive Branch of the Government, each Contractor is obligated to deliver all articles or services contracted for that may be ordered during the contract term, except as otherwise provided herein.

(e) The Contractor is not obligated to accept orders received from activities outside the Executive Branch; however, the Contractor is encouraged to accept such

orders. If the Contractor is unwilling to accept such an order, the Contractor shall decline the order in accordance with 552.238–79(b)(2). Failure to return an order shall constitute acceptance whereupon all provisions of the contract shall apply.

(f) The Government is obligated to purchase under each resultant contract a guaranteed minimum of \$2,500 (two thousand, five hundred dollars) during the contract term. (End of clause)

**552.238–79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.**

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing (May 2003)

(a) If an entity identified in paragraph (b) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies “Compliance with laws unique to Government contracts” (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., FAR 52.212–4 at paragraph (f) and FSS clause I-FSS–249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation or order as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering