

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government* means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal supply schedules of the GSA by a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) State and local governments are authorized to procure only from the information technology Federal supply schedule (Schedule 70) as follows:

(1) Information technology products that fall under the Federal supply classification code group 70 (ADP equipment (including firmware), software, supplies and support equipment);

(2) Services that fall under Federal Supply Classification Code d3 (ADP and telecommunication services); and

(3) Support items for these classifications listed in paragraphs (c)(1) and (c)(2) of this section.

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70 for use by eligible non-federal

entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation 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 Schedule 70. When such changes are made, the word “(VARIATION)” shall be added at the end of the title of the provision or clause.

(a) 52.212–4, Contract Terms and Conditions—Commercial Items.

(b) 52.216–19, Order Limitations.

(c) 52.216–22, Indefinite Quantity.

(d) 52.229–1, State and Local Taxes.

(e) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.

(f) 52.232–17, Interest.

(g) 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration.

(h) 52.232–36, Payment by Third Party.

(i) 52.246–2, Inspection of Supplies (Fixed Price).

(j) 52.246–4, Inspection of Services—Fixed Price.

(k) 52.246–6, Inspection-Time-and-Material and Labor-Hour.

(l) 52.246–16, Responsibility for Supplies.

(m) 52.247–1, Commercial Bill of Lading Notations.

(n) 52.247–34, F.O.B. Destination.

(o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

(p) 52.247–53, Freight Classification Description.

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules), in solicitations and schedule contracts for Schedule 70.

(b) The contracting officer shall insert the clause at 552.238–78, Eligible Ordering Activities, in solicitations and contracts for Schedule 70.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Certain

Entities—Cooperative Purchasing, in solicitations and Schedule 70 contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211–75 [Amended]

6. Amend section 552.211–75 by revising the date of the clause to read “(Date)” and removing from the last sentence of the clause “ordering agency” and adding “ordering activity” in its place.

552.211–77 [Amended]

7. Amend section 552.211–77 by—

a. Revising the date of the clause to read “(Date)”;

b. Removing from paragraph (a)(3) the word “Government” and adding the words “Ordering activity” in its place; and

c. Removing from the introductory text of paragraph (b) the word “Government” and adding the words “ordering activity” in its place.

552.216–72 [Amended]

8. Amend section 552.216–72 by—

a. Revising the date of the clause to read “(Date)”;

b. Removing from the last sentence of paragraph (c) of the clause “other agencies” and adding “other ordering activities” in its place; and

c. Removing from the first sentence of paragraph (d) “Federal agency” and adding “ordering activity” in its place, and removing from the last sentence “Federal agencies” and adding “Ordering activities” in its place.

552.232–8 [Amended]

9. Amend section 552.232–8 by revising the date of the clause to read “(Date)” and removing paragraph (d) and redesignating paragraphs (e), (f), and (g) as (d), (e), and (f), respectively.

10. Amend section 552.232–77 by revising the section and clause headings and paragraphs (a) and (b); and in paragraphs (b) and (c) of Alternate I by removing “Governmentwide commercial purchase card” and adding “credit card” in its place. The revised text reads as follows:

552.232–77 Payment by Credit Card.

Payment by Credit Card (Date)

(a) *Definitions.* *Credit card* means any credit card used to pay for purchases, including the Governmentwide Commercial Purchase Card.

Governmentwide commercial purchase card means a uniquely numbered credit card issued by a Contractor under GSA’s Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.