

Subpart 538.70—Cooperative Purchasing

SOURCE: 68 FR 24378, May 7, 2003, unless otherwise noted.

538.7000 Scope of subpart.

This subpart prescribes policies and procedures that implement statutory provisions authorizing non-federal organizations to use Schedule 70 and Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers (SINs).

538.7001 Definitions.

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.

Schedule 70, as used in this subpart, means Schedule 70 information technology contracts, and Consolidated Products and Services Schedule contracts containing information technology SINs. The Consolidated Products and Services Schedule is a compilation of multiple individual Federal Supply Schedules; therefore, only the SINs that fall under Schedule 70 of the Consolidated Products and Services Schedule will apply to Cooperative Purchasing. No other Schedules, or SINs, containing information technology outside of Schedule 70 SINs, and Consolidated Products and Services Schedule contracts containing Schedule 70 SINs, will apply.

State and local government entities, as used in this subpart, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does

not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(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) contracts and Consolidated Products and Services

General Services Administration

538.7004

Schedule contracts containing information technology SINS. A listing of the participating contractors and SINS for the products and services that are available through Schedule 70 and Consolidated Products and Services Schedule contracts containing information technology SINS, is available in GSA's Schedules e-Library at web site <http://fss.gsa.gov/elibrary>. Click on Schedules e-Library and then click on the ICON labeled Cooperative Purchasing, State and Local. The contractors and the products and services available for cooperative purchasing will be labeled with the ICON.

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70 and the Consolidated Products and Services Schedule containing information technology SINS, 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 Schedule 70 and the Consolidated Products and Services Schedule containing information technology SINS. 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:

- (a) 52.212-4, Contract Terms and Conditions—Commercial Items.
- (b) 52.216-18, Ordering.
- (c) 52.216-19, Order Limitations.
- (d) 52.229-1, State and Local Taxes.
- (e) 52.229-3, Federal, State, and Local Taxes.
- (f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232-17, Interest.
- (h) 52.232-19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration
- (j) 52.232-36, Payment by Third Party.
- (k) 52.237-3, Continuity of Services.
- (l) 52.246-4, Inspection of Services—Fixed Price.
- (m) 52.246-6, Inspection-Time-and-Material and Labor-Hour.
- (n) 52.247-34, F.O.B. Destination.
- (o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.

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 and the Consolidated Products and Services Schedule contracts containing information technology SINS.
- (b) The contracting officer shall insert the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for Schedule 70 and the Consolidated Products and Services Schedule contracts containing information technology SINS.
- (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 and the Consolidated Products and Services Schedule contracts containing information technology SINS.
- (d) See 552.107-70 for authorized FAR deviations.