

VA



U.S. Department of Veterans Affairs

National Acquisition Center
Federal Supply Schedule Service

Our Top 5 Clauses: All you ever needed (or wanted) to know

July 24, 2013

Course Facilitators



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Webinar Logistics



1. This training will last approximately 2 hours.
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Learning Objectives



- I-FSS-639 Contract Sales Criteria
- 552.243-72 Modifications (MAS)
- 552.238-75 Price Reductions
- 552.216-70 Economic Price Adjustment
- 52.225-5 Trade Agreements

I-FSS-639 Contract Sales Criteria (Mar 2002)

Minimum Contract Sales



I-FSS-639(a): A contract will not be awarded unless anticipated sales are expected to exceed \$25,000 within the first 24 months following contract award, and are expected to exceed \$25,000 in sales each 12-month period thereafter.



Cancellation & Extension Eligibility



I-FSS-639(b): The Government may cancel the contract in accordance with clause 552.238-73, Cancellation, unless reported sales are at the levels specified in paragraph (a) above.



- Section (b) of the clause gives FSS the authority to cancel your contract if the minimum sales stated in (a) are not met.
- The minimum sales criteria is also used as an evaluation tool when determining whether or not to exercise the 5-year option under the contract (not applicable to the 65 I B Schedule).

**552.243-72 Modifications (Multiple
Award Schedule) (Jul 2000)
(Alternate I – Sep 1999) (Tailored)**

Additions – Required Documentation



552.243-72 (b)(1) outlines seven requirements for adding additional items/additional SINs to a contract.

Additions – (b) (1) (i)



- i. Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

- ① **CSP-1 (1)** asks for the dollar value of the sales to the **general** public during the previous 12-month period (or offeror's last fiscal year) as well as the dates for that time period.
- ② **CSP-1 (2)** asks for the dollar value of the **projected sales (or actual sales, if available)** to the **Government** during the same 12-month period. It also asks for an explanation of how the value was calculated.

Additions – (b) (1) (ii)



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- ii. Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

CSP-1 (3) asks you if the **discounts and any concessions** you are offering to the Government are equal to or better than your best price and to provide an explanation if the answer is “no”.

CSP-1 (4) is Figure 515.4-2:

Column 1— Customer	Column 2— Discount	Column 3— Quantity/Volume	Column 4— FOB Term	Column 5— Concessions
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CSP-1 (5) asks you if you have any **deviations** from policies or practices disclosed in Figure 515.4-2 which result in better discounts or concessions than indicated and to provide an explanation if the answer is “Yes”.

Additions – (b) (1) (iii)



- iii. Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212-70, Preparation of Offer (Multiple Award Schedule) is required.

552.212-70 outlines what must be provided for each SIN:

- 1) Provide one copy of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or price list(s) from which discounts are offered.
- 2) Identify the SIN category for each offered item.
- 3) Describe all offered discounts, including prompt payment, quantity/volume, etc.
- 4) Describe any concessions offered to the Government which aren't granted to other customers (e.g. extended warranty, additional services, etc.)
- 5) Identify if any dealers/distributors will be used under the contract.



Additions – (b)(1)(iv)



iv. Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with 552.211-78, Commercial Delivery Schedule (Multiple Award Schedule).



552.211-78 (a) provides the **Government's stated delivery time** (days after receipt of order), and offerors must provide their normal commercial delivery time and the time proposed to the Government.



552.211-78(b) asks for **proposed expedited delivery times**, if available/offered.

Additions – (b)(1)(v) - (vii)



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- v. Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by **52.215-6, Place of Performance** *[AS8005 Manufacturing Facilities/Place of Performance for 65 I B contracts]*.

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- vi. Hazardous Material information (if applicable) must be submitted as required by **52.223-3 (ALT I), Hazardous Material Identification and Material Safety Data**.

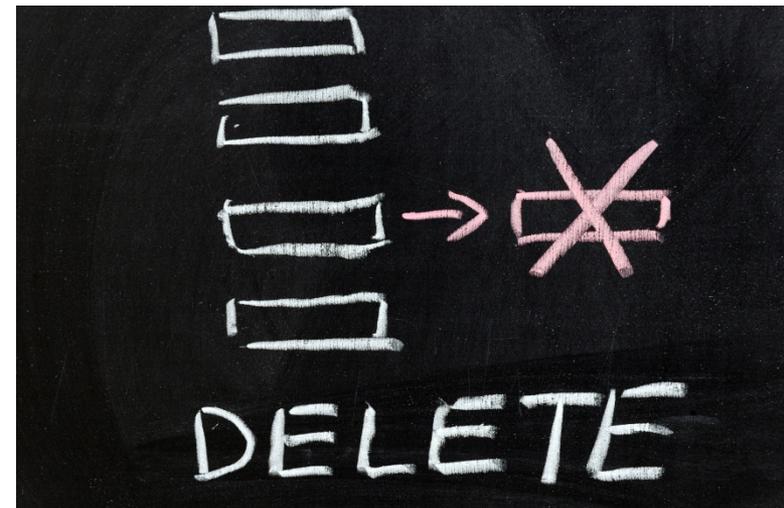
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- vii. Any information requested by 52.212-3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with **FAR 52.225-5, Trade Agreements**.

Deletions – (b)(2)



552.243-72(b)(2): Deletions. The Contractors shall provide an explanation for the deletion. The Government **reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period,** if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.



Price Reductions – (b)(3)



552.243-72(b)(3): Price Reduction. **The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-75.** If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

Effective Dates* – (c)



552.243-72(c): Effective dates. The effective date of any modification **is the date specified in the modification**, except as otherwise provided in the Price Reductions clause at 552.238-75.

NOTE: The effective dates for approved modifications will be determined on the following basis:



- If the Contracting Officer approves the modification request **between the 11th and the 25th** of the month, the effective date **will be the 1st** of the following month.



- If the Contracting Officer approves the modification request **between the 26th of the current month and the 10th of the following month**, the effective date **will be the 15th** of the following month.

*This does not apply to NDC changes and product additions under the 65 I B Schedule.

Electronic File Updates – (d)



552.243-72(d): Electronic File Updates. **The Contractor shall update electronic file submissions to reflect all modifications.** For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-75.



FSS Price List Updates – (e)(1)



552.243-72(e)(1): The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

- (i) Distribute a supplemental paper Federal Supply Schedule Price List **within 15 workdays after the effective date of each modification.**
- (ii) **Distribute quarterly cumulative supplements.** The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February—April, and every 3 month period after. The Contractor must distribute each quarterly cumulative supplement **within 15 workdays from the last day of the calendar quarter.**

FSS Price List Updates – (e)(2)



552.243-72(e)(2): At a minimum, **the Contractor shall distribute each supplement to those ordering activities that previously received the basic document.** In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and ~~one copy to the FSS Schedule Information Center.~~

**552.238-75 Price Reductions (May
2004) (Alternate I – May 2003)**

Tracking Customer & Ratio – (a)



552.238-75(a): Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). **This relationship shall be maintained throughout the contract period.** Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.



Tracking Customer = The Customer or category of customers which will be the basis of award.

Tracking Customer Ratio = The Government's price or discount relationship to the identified customer or category of customers.

Government Price *divided by* TC Price = TC Ratio

Reporting Requirement – (b)



552.238-75(b): During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.



All price reductions to the Tracking Customer **must be reported** to the Contracting Officer.

Circumstances Requiring Reductions – (c)



552.238-75(c)(1): A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor --



(i) **Revises the commercial catalog, pricelist,** schedule or other document upon which contract award was predicated to reduce prices;



(ii) **Grants more favorable discounts or terms and conditions** than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or



(iii) **Grants special discounts to the customer** (or category of customers) *[the tracking customer]* that formed the basis of award, **and the change disturbs the price/discount relationship** *[the tracking customer ratio]* of the Government to the customer (or category of customers) that was the basis of award.

No Price Reduction Required – (d)



552.238-75(d): There shall be no price reduction for sales *[i.e. Sales under the following circumstances will not trigger the Price Reductions Clause as set forth in (b) and (c)]* --



(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery **in excess of the maximum order threshold** specified in this contract;



(2) **To eligible ordering activities** under this contract;



(3) **Made to State and local government entities** when the order is placed under this contract (and the State and local government entity is the agreed upon customer or category of customer that is the basis of award); or

(4) **Caused by an error** in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

Voluntary Reductions – (e)



552.243-72(e): The Contractor may offer the Contracting Officer a **voluntary** Governmentwide price reduction **at any time** during the contract period.

Notification Timeframe – (f)



552.243-72(f): The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but **not later than 15 calendar days after its effective date.**

Contract Modification – (g)



552.243-72(g): The **contract will be modified** to reflect any price reduction which becomes applicable in accordance with this clause.

**552.216-70 Economic Price
Adjustment - FSS Multiple Award
Schedule Contracts (Sep 1999)
(Alternate I – Sep 1999) (Deviation I
– Apr 2007)**

Price Decreases – (a)



552.216-70(a): Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be **handled in accordance with the provisions of the Price Reduction Clause.**

Price Increase Conditions – (b)



552.216-70(b): Contractors may request price increases providing **all** of the following conditions are met:

- 1) Increases resulting from a **reissue or other modification of the Contractor's commercial catalog/pricelist** that was used as the basis for the contract award.
- 2) Increases are requested **before the last 60 days of the contract period.**
- 3) At least **30 days elapse** between requested increases.



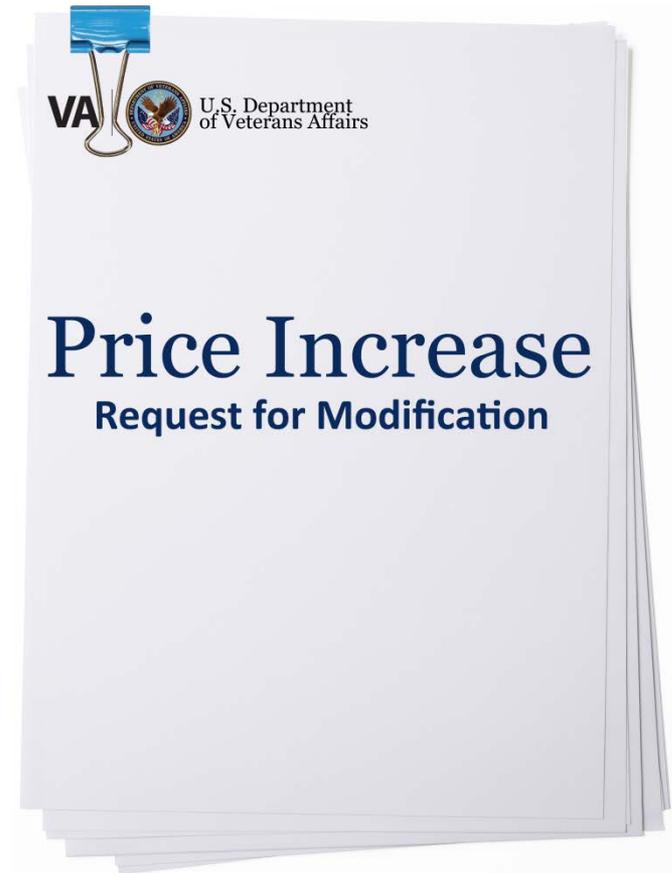
The price increase is also limited by the Tracking Customer ratio, as set forth in 552.238-75 (a) Price Reductions. The ratio acts as a “cap” on the price to the Government.

Required Documentation – (c)



552.216-70(c): The following material shall be submitted with the request for a price increase:

- 1) **A copy of the commercial catalog/pricelist** showing the price increase and the effective date for commercial customers.
- 2) **Commercial Sales Practice format** regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/pricelist, **or a certification that no change has occurred** in the data since completion of the initial negotiation or a subsequent submission.
- 3) **Documentation supporting the reasonableness** of the price increase



Government Options – (d)



552.216-70(d): The Government reserves the right to exercise one of the following options:

- 1) **Accept the Contractor's price increases as requested** when all conditions of (b), (c), and (d) of this clause are satisfied;
- 2) **Negotiate more favorable discounts** from the new commercial prices when the total increase requested is **not supported**; or,
- 3) **Remove the product(s) from contract** involved pursuant to the Cancellation Clause of this contract, when the increase requested is **not supported**.



Effective Dates – (e)



552.216-70(e): The contract modification reflecting the price adjustment shall be made effective upon signature of the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. **The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.**

Effective Dates:



• **The 1st of the month:** If approved by the CO **between the 11th and the 25th.**



• **The 15th of the month:** If approved by the CO **between the 26th and the 10th.**

*This does not apply to NDC changes and product additions under the 65IB Pharmaceutical Schedule.

52.225-5 Trade Agreements (Nov 2012)

Applicability



The current threshold for the applicability of the Trade Agreements Act (for a supply or service contract) is \$202,000. The U.S. Trade Representative revises this threshold approximately every two years (refer to FAR 25.402(b)). **GSA applies the threshold on a Schedule-wide basis; therefore, the Trade Agreements Act applies to all Schedule contracts and orders.**

* This clause does not apply to set-aside SINs A-13a and A-13c under the 65 II A Medical Equipment & Supply Schedule.

Designated Country Requirement



- All Schedule products and services must come from the U.S. or a designated country.
- Designated countries fall under four categories:
 - 1) **World Trade Organization Procurement Agreement (WTO) countries**
 - 2) **Free Trade Agreement (FTO) countries**
 - 3) **Least Developed countries**
 - 4) **Caribbean Basin countries**



World Trade Organization Countries*



Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the WTO as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), and the United Kingdom

***Listing is current as of 7/15/2013**

Least Developed Countries*



Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, and Zambia

***Listing is current as of 7/15/2013**

Caribbean Basin & Free Trade Agreement Countries*



Caribbean Basin Countries:

Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, and Trinidad and Tobago

Free Trade Agreement Countries:

Australia, Bahrain, Canada, Chile, Columbia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

***Listing is current as of 7/15/2013**

Responsibility



It is the responsibility of the offeror/contractor to verify that all proposed products are from the US or a designated country.

Substantial Transformation



When an item consists of components from various countries and the components are assembled in an additional country, the test to determine country of origin is “substantial transformation” (**FAR 25.001(c)(2)**).

Offerors requiring a determination on substantial transformation can go to the US Customs and Border Protection **Office of Regulations and Rulings** (<http://www.cbp.gov/xp/cgov/trade/legal/rulings/>).

More Information



Website	Link
FSS Web Portal	http://www.fss.va.gov
Pricelist Requirements	http://www.va.gov/oal/business/fss/pricelist.asp
VA Schedule Programs	http://www.va.gov/oal/business/fss/schedules.asp
Current Contractors	http://www.va.gov/oal/business/fss/contactors.asp
Request for Modification Process	http://www.va.gov/oal/business/fss/rfmprocess.asp
Modification Forms	http://www.va.gov/oal/business/fss/modforms.asp
Compliance	http://www.va.gov/oal/business/fss/compliance.asp
Contractor Responsibilities	http://www.va.gov/oal/business/fss/responsibilities.asp

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Upcoming Webinars



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8/21 Vendor Guide to the CSP

9/25 eSRS Reports

10/30 FSS "state of the Union"

11/13 subcontracting plans

11/20 PL 102-585 2014 season