

33. Both Viasat and Kepler opposed Kuiper's petition, arguing that Kuiper's proposed rule would undermine the incentive for an operator to engage in the type of inter-system coordination anticipated by the *2020 Orbital Debris Order* and in essence create a first-come, first-serve priority system for orbital regions in LEO, which would advantage the largest, most established satellite operators, and potentially lead to a monopolization of certain sections of LEO. Viasat also stated that Kuiper has not established that an orbital overlap rule is necessary to promote space safety, and that there are alternative approaches the Commission could consider.

34. The Commission continues to take space safety issues seriously, and the *2020 Orbital Debris Order* recognized that issues may arise with respect to large NGSO systems, and the orbits at which they operate. Notably, the *2020 Orbital Debris Order* advises that applicants for large systems may be asked to provide specific information about their planned orbital variance as well as how their system operations would accommodate other spacecraft traveling through or operating in the same region. While Kuiper supported its petition with the "new" fact that applications for large NGSO systems with competing orbits have been filed since adoption of the *2020 Orbital Debris Order*, the Commission found that this circumstance alone is not sufficient justification for it to revisit its decision to allow in the first instance parties to work on an inter-operator coordination agreement. At the time the Commission adopted its *2020 Orbital Debris Order* it had already considered that parties may want to use similar orbits, but it also found that inter-operator coordination could resolve any space safety concerns, and no party has introduced evidence that any such concerns remain unresolved. The Commission has continued to monitor the situation since adoption of the *2020 Orbital Debris Order* and continues to believe that the best solution for maintaining space safety is for operators to have the flexibility to coordinate in a manner that works best for their situation, rather than have the Commission dictate how that coordination should proceed. In addition, the Commission reviews closely applications for new licenses or modifications that may raise overlapping orbital shell issues and works with the applicants and other interested parties to ensure that either coordination has occurred to minimize space safety issues, or changes are made

to the proposed operating parameters to address any remaining concerns. The Commission will continue to monitor the overall orbital separation environment, and to the extent it sees a breakdown in the coordination process or other space safety issues, it will consider at that time whether new general rules are needed to either improve the coordination process or address space safety concerns. Accordingly, the Commission declined to establish an orbital separation requirement, including for large NGSO constellations.

#### IV. Ordering Clauses

35. Accordingly, *it is ordered*, pursuant to 47 U.S.C. 151, 154(i), 154(j), 405, and 47 CFR 1.429(b) that the petitions for reconsideration filed by Boeing, EchoStar, Hughes, Planet, Spire, Telesat, SpaceX, and Kuiper in IB Docket No. 18–313, are *denied*.

36. *It is further ordered* that the *Orbital Debris Reconsideration Order* shall be effective upon publication in the **Federal Register**.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2024–03506 Filed 2–21–24; 8:45 am]

**BILLING CODE 6712–01–P**

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 538 and 552

[GSAR Case 2020–G511; Docket No. GSA–GSAR–2023–0019; Sequence No. 1]

RIN 3090–AK21

#### General Services Administration Acquisition Regulation; Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules

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

**ACTION:** Final rule.

**SUMMARY:** GSA is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to update and clarify the requirements for use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities, such as State and local governments.

**DATES:** Effective March 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Thomas O'Linn, Procurement Analyst, at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov) or 202–445–0390. For information pertaining to status or publication schedules, contact the

Regulatory Secretariat Division at [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov) or 202–501–4755. Please cite GSAR Case 2020–G511.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This final rule amends the General Services Administration Acquisition Regulation (GSAR) to update and clarify the requirements for use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities, such as State and local governments. GSA published a proposed rule at 88 FR 63892 on September 18, 2023.

GSA conducts routine reviews of its acquisition regulations. Routine review of the GSAR, as well as feedback from GSA's operational offices, prompted this change. The review indicated a need to update and clarify GSAR subpart 538.70, Purchasing by Non-Federal Entities.

GSAR subpart 538.70 prescribes the policies and procedures that implement statutory, regulatory, and other provisions that authorize eligible non-Federal entities (e.g., State or local governments as defined in 40 U.S.C. 502(c)(3)) use of Federal Supply Schedule (FSS) contracts.

The GSA Schedule, also known as FSS, and Multiple Award Schedule (MAS), is a long-term governmentwide contract with commercial companies that provide access to millions of commercial products and services at fair and reasonable prices to the Federal Government and other authorized ordering activities.

This rule updates and clarifies GSAR subpart 538.70, which supports use of FSS contracts by eligible non-Federal entities. This subpart is being revised to make administrative changes due to changes in some of the underlying authorities supporting use of FSS contracts by eligible non-Federal entities. This rule also updates and clarifies existing requirements supporting use of FSS contracts by eligible non-Federal entities, adds additional key authorities that support such use, and makes additional technical corrections to enhance clarity of existing requirements.

##### II. Discussion and Analysis

###### A. Analysis of Public Comments

GSA provided the public a 60-day comment period (September 18, 2023, to November 17, 2023). There were no public comments submitted in response to the proposed rule. Minor changes were made from the proposed rule to the final rule.

### B. Summary of Minor Changes

The following are the minor changes made from the proposed rule to the final rule:

1. Section 538.273 FSS solicitation provisions and contract clauses. GSAR clause 552.238–117, Price Adjustment—Failure to Provide Accurate Information, did not exist at the time of the proposed rule (*i.e.*, this clause went into effect October 12, 2023, see 88 FR 62473, September 12, 2023), thus was not captured in the proposed rule amendatory text. This GSAR clause is currently prescribed in 538.273(d)(37). The final rule includes the redesignation of this clause from paragraph (d)(37) to paragraph (d)(39). This change ensures the clauses listed in paragraph (d) of GSAR section 538.273 remain in numerical order.

2. Section 538.7001 Definitions. The definition of Preparedness was revised as follows: FROM “from disaster.” TO “from a disaster.” This change ensures clarity of the intent of the requirement.

3. Section 538.7002–6 Indian Self-Determination and Education Assistance Act (ISDEAA) and section 552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts. The citation to 25 U.S.C. 5324 was revised to read as 25 U.S.C. 5324(k). This change provides the proper citation to the authority.

4. Section 538.7002–7 Native American Housing Assistance and Self-Determination Act (NAHASDA) and section 552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts. The citation to 25 U.S.C. 4111 was revised to read as 25 U.S.C. 4111(j). This change provides the proper citation to the authority.

5. Section 552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts. Paragraph (a)(10) of the clause was revised to read as: “(10) 40 U.S.C. 502(c), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purpose of purchasing the types of supplies and services described in 40 U.S.C. 502(c). The types of supplies and services described in 40 U.S.C. 502(c) are limited to those available in the Information Technology Category and the Security and Protection Category (or any successor categories). The GSA program implementing this authority is the Cooperative Purchasing program.” This change integrates the text that was originally identified as (a)(10)(i) into paragraph (10), thereby eliminating the need for paragraph (a)(10)(i). No changes to the text were made.

### III. Expected Impact of the Rule

GSA believes that these changes benefit the FSS program as a whole. For example, these changes provide visibility into the resources and authorities available to eligible non-Federal entities who may be interested in using FSS contracts. Additionally, these changes clarify the requirements for FSS contractors interested in doing business with eligible non-Federal entities under their FSS contract. These changes do not alter the manner in which the FSS contractors conduct business, or the manner in which eligible non-Federal entities may access and use FSS contracts. The rule merely updates and clarifies requirements currently in use in the FSS program, such as updating and clarifying existing statutory, regulatory, and other authorities that enable eligible non-Federal entities use of FSS contracts. GSA assumes these changes will have a positive impact on the FSS program as a whole, including FSS contractors and eligible non-Federal entities.

The qualitative anticipated benefits include, but are not limited to, removal of outdated and redundant information; clarification of the requirements supporting use of FSS contracts by eligible non-Federal entities; clarification of the authorities providing use of FSS contracts by eligible non-Federal entities (*e.g.*, adding the authority provided by the Indian Self-Determination and Education Assistance Act that allows Tribal organizations and Indian Tribes to use FSS contracts under certain conditions); identification of some of the programs created for purpose of implementing some of these authorities (*e.g.*, GSA’s Disaster Purchasing program which implements 40 U.S.C. 502(d)); clarification on who is and who is not considered eligible to use FSS contracts (*i.e.*, providing a definition for ‘eligible’ and ‘non-Federal entity’); and inclusion of hyperlinks to resources that provide additional information about eligibility and use of FSS contracts (*e.g.*, <https://www.gsa.gov/eligibilitydeterminations> includes a list that FSS contractors can use to verify an entity’s eligibility).

Due to these benefits, GSA estimates the following annual reduction in burden due to the proposed clarifications: GSA estimates it takes 3 hours for FSS contractors to familiarize (read and understand the applicable GSAR requirements of this proposed rule) themselves with the regulations. Therefore, for FSS contractors:

Prior to the revisions: the current estimated total cost is 3 hours \* \$61.29 (GS–12 Step 5 base pay plus “Rest of US

Locality Pay” plus “Fringe”) \* 13,000 approximate number of current FSS contractors = \$2,390,310.00.

After the revisions: the estimated total cost is 2.5 hours \* \$61.29 (GS–12 Step 5 base pay plus “Rest of US Locality Pay” plus “Fringe”) \* 13,000 approximate number of current FSS contractors = \$2,191,117.50.

Resulting in a reduction in burden of \$199,192.50.

### IV. Executive Order 12866, 13563 and 14094

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. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

### V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined this rule is not a “major rule” under 5 U.S.C. 804(2).

### VI. Regulatory Flexibility Act

GSA does not expect this rule to 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 this rule is to: (1) update and

clarify existing requirements supporting use of FSS contracts by eligible non-Federal entities; (2) clarify GSAR clause requirements (e.g. rename clauses, remove redundant or duplicative information); (3) reflect changes based on some of the underlying authorities that provide eligible non-Federal entities use of FSS contracts; (4) add additional authorities that support such use; and (5) include hyperlinks to resources that provide information about eligibility and use of FSS contracts.

The purpose of the changed text remains the same, and therefore any burden would have been identified previously. Additionally, participation by both FSS contractors and eligible non-Federal entities remains voluntary.

There were no comments submitted and therefore no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to revise GSAR subpart 538.70 in its entirety in an effort to: (1) update and clarify existing requirements supporting use of FSS contracts by eligible non-Federal entities; (2) clarify GSAR clause requirements (e.g. rename clauses, remove redundant or duplicative information); (3) reflect changes based on some of the underlying authorities that provide eligible non-Federal entities use of FSS contracts; (4) add additional authorities that support such use; and (5) include hyperlinks to resources that provide information about eligibility and use of FSS contracts.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors. In addition, 41 U.S.C. 152 provides GSA authority over the FSS program.

The rule applies to both large and small businesses, which are awarded FSS contracts and decide to do business with eligible non-Federal entities who decide to use FSS contracts (i.e., participation by all parties is voluntary).

Information obtained from the FSS program was used as the basis for estimating the number of FSS contractors that the rule may apply. For fiscal year 2022, approximately 12,000 GSA FSS contractors reported over \$780 million in sales to eligible non-Federal entities. Of the number of FSS contractors that did business with eligible non-Federal entities approximately 10,700 (89 percent) were small business FSS contractors.

It is anticipated that these changes will increase awareness of the authorities that allow eligible non-Federal entities use of FSS contracts as well as the resources available. It is anticipated that these changes will clarify the requirements for FSS contractors choosing to do business with eligible non-

Federal entities under their FSS contracts. Altogether, GSA assumes these changes will have a positive impact on the FSS program as a whole, including FSS contractors and eligible non-Federal entities.

The rule does not implement new or change reporting, recordkeeping, or other compliance requirements for FSS contracts. The rule merely updates and clarifies existing FSS requirements, such as updating and clarifying existing statutory, regulatory, and other authorities that enable eligible non-Federal entities use of FSS contracts. This rule does not implement new or changed requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors because the policies and procedures prescribed in existing FSS clauses are already being followed. The rule merely updates and clarifies existing statutory, regulatory, and other authorities related to the use of FSS contracts by non-Federal entities.

The Regulatory Secretariat will be submitting 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.

## VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 538 and 532

Government procurement.

#### Jeffrey A. Koses,

*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

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

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

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

### PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

- 2. Amend section 538.273 by—
  - a. Redesignating paragraphs (d)(36) and (37) as paragraphs (d)(38) and (39); and
  - b. Adding new paragraphs (d)(36) and (37) to read as follows:

#### 538.273 FSS solicitation provisions and contract clauses.

\* \* \* \* \*

(d) \* \* \*  
(36) 552.238–112, Definitions—  
Federal Supply Schedule Contracts.

(37) 552.238–113, Authorities  
Supporting Use of Federal Supply  
Schedule Contracts.

\* \* \* \* \*

- 3. Revise subpart 538.70 to read as follows:

#### Subpart 538.70—Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities

- 538.7000 Scope of subpart.
- 538.7001 Definitions.
- 538.7002 Authorities.
- 538.7002–1 Cooperative purchasing program.
- 538.7002–2 Disaster purchasing program.
- 538.7002–3 Public health emergencies program.
- 538.7002–4 Qualified nonprofit agencies for the blind or other severely disabled.
- 538.7002.5 Qualified relief or disaster assistance organizations.
- 538.7002–6 Indian Self-Determination and Education Assistance Act (ISDEAA).
- 538.7002–7 Native American Housing Assistance and Self Determination Act (NAHASDA).
- 538.7002–8 Urban Indian organizations.
- 538.7002–9 Tribally controlled schools.
- 538.7002–10 1122 Program.
- 538.7003 Non-Federal entity requirements.
- 538.7004 GSA responsibilities.
- 538.7005 Contract clause.

#### Subpart 538.70—Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities

##### 538.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementing statutory, regulatory, and other authorities that authorize use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities.

##### 538.7001 Definitions.

As used in this subpart—  
*Eligible* means an entity that meets the requirements prescribed by statute, regulation, or other authority for purposes of being able to use FSS contracts. Information about GSA's FSS eligibility process is available at <https://www.gsa.gov/eligibilitydeterminations>.

*Non-Federal entity* means any State, local, territorial, or Tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education); and any other non-Federal organization (e.g., a qualified nonprofit agency as defined in 40 U.S.C. 502(b)).

*Preparedness* means actions that may include, but are not limited to:

planning, resourcing, organizing, equipping, training, and conducting exercises to improve, build and sustain the capabilities necessary to prevent, protect, mitigate, respond, and recover from a disaster.

*Recovery* means actions taken to assist communities affected by an incident to recover effectively. This includes, but is not limited to, actions to restore, redevelop, and revitalize the health, social, economic, natural, and environmental fabric of the community. Recovery may begin while response is still occurring.

*Response* means actions taken during a disaster, or in its 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 enable recovery from a disaster.

#### **538.7002 Authorities.**

Various laws, regulations, and other authorities allow eligible non-Federal entities to use FSS contracts. This section identifies some of the common authorities allowing eligible non-Federal entities to use FSS contracts. See <https://www.gsa.gov/eligibility-determinations> for additional information about the authorities available.

#### **538.7002-1 Cooperative purchasing program.**

40 U.S.C. 502(c) allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase the types of supplies and services described in 40 U.S.C. 502(c). The supplies and services described in 40 U.S.C. 502(c) are limited to those available under the Information Technology Category, and the Security and Protection Category (or successor category(ies)). The GSA program that implements this authority is called the Cooperative Purchasing program.

#### **538.7002-2 Disaster purchasing program.**

(a) 40 U.S.C. 502(d) allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase supplies or services that are to be used to facilitate—

(1) Disaster preparedness or response;

(2) 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

(3) Recovery from terrorism, nuclear, biological, chemical, or radiological attack.

(b) The GSA program that implements this authority is called the Disaster Purchasing program.

#### **538.7002-3 Public health emergencies program.**

42 U.S.C. 247d allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase supplies and services when expending Federal grant funds in response to a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program that implements this authority is called the Public Health Emergencies program.

#### **538.7002-4 Qualified nonprofit agencies for the blind or other severely disabled.**

40 U.S.C. 502(b) allows qualified nonprofit agencies for the blind or other severely disabled, as defined by 41 U.S.C. 8501, that are providing a commodity or service to the Government under 41 U.S.C. chapter 85, to purchase supplies or services. Purchases under this authority must be used directly in making or providing to the Government a commodity or service that has been determined by the Committee for Purchase From People Who Are Blind or Severely Disabled under 41 U.S.C. 8503 to be suitable for procurement by the Government.

#### **538.7002-5 Qualified relief or disaster assistance organizations.**

40 U.S.C. 502(e) allows the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3), to purchase supplies or services. Purchases under this authority by the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in 36 U.S.C. 300102. Purchases under this authority by other qualified organizations shall be used 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.

#### **538.7002-6 Indian Self-Determination and Education Assistance Act (ISDEAA).**

(a) 25 U.S.C. 5324(k) allows Tribal organizations, as defined in 25 U.S.C. 5304, that have an active ISDEAA contract, grant, or cooperative agreement to purchase supplies or services for the purposes of carrying out the ISDEAA contract, grant, or cooperative agreement.

(b) 25 U.S.C. 5370 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying out the ISDEAA compact or funding agreement.

(c) 25 U.S.C. 5396 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying out the ISDEAA compact or funding agreement.

#### **538.7002-7 Native American Housing Assistance and Self Determination Act (NAHASDA).**

25 U.S.C. 4111(j) allows Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, that have an active NAHASDA contract, grant, or cooperative agreement to purchase supplies and services for the purposes of carrying out the NAHASDA contract, grant, or cooperative agreement.

#### **538.7002-8 Urban Indian organizations.**

25 U.S.C. 1660g(e) allows Urban Indian organizations, as defined in 25 U.S.C. 1603, that have an active contract or grant pursuant to 25 U.S.C. chapter 18 subchapter IV to purchase supplies and services for the purposes of carrying out the contract or grant.

#### **538.7002-9 Tribally controlled schools.**

25 U.S.C. 2507(a)(6) allows tribally controlled schools, as defined under 25 U.S.C. 2511, that have an active grant pursuant to 25 U.S.C. chapter 27 to purchase supplies or services for the purposes of carrying out the grant.

#### **538.7002-10 1122 Program.**

10 U.S.C. 281 allows States and units of local government, as defined in 10 U.S.C. 281, to purchase equipment suitable for counter-drug, homeland security, and emergency response activities through the Department of Defense. GSA, in coordination with the Secretary of Defense, produces and maintains a catalog in accordance with the procedures established by the Secretary of Defense. The catalog includes access to equipment available under FSS contracts. States and units of local government interested in using the 1122 program should contact their designated State point of contact.

#### **538.7003 Non-Federal entity requirements.**

Only non-Federal entities that are eligible may use FSS contracts. Use of FSS contracts by eligible non-Federal entities is voluntary. The following requirements apply to eligible non-Federal entities who decide to use FSS contracts:

(a) FSS contractors are not obligated to accept orders or enter into blanket purchase agreements; however, they are encouraged to do so.

(b) Purchases cannot be made for personal use.

(c) Purchases cannot be for resale, unless specifically authorized.

(d) At a minimum, purchases shall comply with—

(1) FSS ordering guidance.

Information about GSA’s FSS contracts, including ordering guidance is available at <https://www.gsa.gov/schedules>; and

(2) Any conditions of the underlying authority(ies) supporting the use of FSS contracts (e.g., 40 U.S.C. 502(c) limits purchases to specific supplies and services available under the FSS program).

(e) An eligible non-Federal entity’s eligibility cannot be transferred to a third party (e.g., a subcontractor) or successor entity.

**538.7004 GSA responsibilities.**

(a) *Eligibility determination process.* GSA may need to make a determination of eligibility to support a non-Federal entity’s use of FSS contracts. See [https://www.gsa.gov/eligibility determinations](https://www.gsa.gov/eligibility-determinations) for information about eligibility.

(b) *Oversight.* To ensure proper use of and access to FSS contracts by eligible non-Federal entities, GSA may take any action within its authority as deemed necessary to deny, limit, or restrict use of FSS contracts, in whole or in part. Reasons may include, but are not limited to—

(1) A change in an underlying authority;

(2) A change in the terms and conditions of the FSS program or FSS contracts;

(3) A failure by an eligible non-Federal entity to comply with the requirements of 538.7003; or

(4) Use by an ineligible non-Federal entity.

**538.7005 Contract clause.**

Insert the clause at 552.238–114, Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities, in FSS solicitations and contracts.

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

■ 4. Amend section 552.238–105 by revising the date of the clause and the first sentence to read as follows:

**552.238–105 Deliveries Beyond the Contractual Period—Placing of Orders.**

\* \* \* \* \*

**Deliveries Beyond the Contractual Period—Placing of Orders (Mar 2024)**

In accordance with the GSAR clause at 552.238–113, Authorities Supporting Use of Federal Supply Schedule Contracts, this contract covers all requirements that may be

ordered, as distinguished from delivered during the contract term. \* \* \*

■ 5. Revise 552.238–112 through 552.238–114 to read as follows:

\* \* \* \* \*

552.238–112 Definitions—Federal Supply Schedule Contracts.

552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts.

552.238–114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities.

\* \* \* \* \*

**552.238–112 Definitions—Federal Supply Schedule Contracts.**

As prescribed in 538.273(d) insert the following clause:

**Definitions-Federal Supply Schedule Contracts (Mar 2024)**

As used in this contract,

*Eligible* means an entity that meets the requirements prescribed by statute, regulation, or other authority for purposes of being able to use Federal Supply Schedule (FSS) contracts. Information about FSS eligibility is available at <https://www.gsa.gov/eligibility-determinations>.

*Ordering activity* (also called “ordering agency” and “ordering office”) means an entity that is eligible to place orders or establish blanket purchase agreements (BPA) under this contract.

(End of clause)

**552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts.**

As prescribed in 538.273(d), insert the following clause:

**Authorities Supporting Use of Federal Supply Schedule Contracts (Mar 2024)**

(a) Ordering activities are able to use Federal Supply Schedule (FSS) contracts based upon a number of statutes, regulations, and other authorities. Authorities allowing ordering activities use of FSS contracts include, but are not limited to:

(1) 25 U.S.C. 1660g(e), which provides for the use by urban Indian organizations, as defined in 25 U.S.C. 1603, for the purposes of carrying out a contract or grant pursuant to 25 U.S.C. chapter 18, subchapter IV.

(2) 25 U.S.C. 2507, which provides for the use by tribally controlled schools, as defined in 25 U.S.C. 2511, for the purposes of carrying out a grant pursuant to 25 U.S.C. chapter 27 (known as the Tribally Controlled Schools Act).

(3) 25 U.S.C. 4111(j), which provides for the use by Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, for the purposes of carrying out a contract, grant, or cooperative agreement pursuant to 25 U.S.C. chapter 43 (known as the Native American Housing Assistance and Self Determination Act (NAHASDA)).

(4) 25 U.S.C. 5324(k), which provides for the use by Tribal organizations, as defined in 25 U.S.C 5304, for the purposes of carrying out a contract, grant, or cooperative

agreement pursuant to 25 U.S.C. chapter 46 (known as the Indian Self-Determination and Education Assistance Act (ISDEAA)).

(5) 25 U.S.C. 5370 and 25 U.S.C. 5396, which provides for the use by Indian Tribes, as defined in 25 U.S.C. 5304, for the purpose of carrying out a compact or funding agreement pursuant to 25 U.S.C. chapter 46 (known as ISDEAA).

(6) 40 U.S.C. 113(d), which provides for the use by the Senate, the House of Representatives, and the Architect of the Capitol (including any building, activity, or function under the direction of the Architect of the Capitol).

(7) 40 U.S.C. 501, which provides for the use by executive agencies as defined in 5 U.S.C. 105.

(8) 40 U.S.C. 502(a), which provides for the use by Federal agencies as defined in 40 U.S.C. 102, the District of Columbia, and mixed-ownership Government corporations as defined in 31 U.S.C. 9101.

(9) 40 U.S.C. 502(b), which provides for the use by qualified nonprofit agencies for other severely disabled, as defined in 41 U.S.C. 8501(6), and qualified nonprofit agencies for the blind, as defined in 41 U.S.C. 8501(7), for the purposes of making or providing to the Government a commodity or service that has been determined by the Committee for Purchase From People Who Are Blind or Severely Disabled under 41 U.S.C. 8503 to be suitable for procurement by the Government.

(10) 40 U.S.C. 502(c), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purpose of purchasing the types of supplies and services described in 40 U.S.C. 502(c). The types of supplies and services described in 40 U.S.C. 502(c) are limited to those available in the Information Technology Category and the Security and Protection Category (or any successor categories). The GSA program implementing this authority is the Cooperative Purchasing program.

(11) 40 U.S.C. 502(d), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purposes of facilitating disaster preparedness or response, facilitating 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 facilitating recovery from terrorism, nuclear, biological, chemical, or radiological attack. The GSA program implementing this authority is the Disaster Purchasing program.

(12) 40 U.S.C. 502(e), which provides for the use by the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3). Purchases under this authority by the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in 36 U.S.C. 300102. Purchases under this authority by other qualified organizations shall be used 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.

(13) 42 U.S.C. 247d, which provides for the use by State or local governments, as defined

in 40 U.S.C.502(c)(3)(A), when a public health emergency has been declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program implementing this authority is the Public Health Emergencies program.

(14) FAR subpart 51.1, which provides for the use by contractors, including subcontractors, when such use is authorized pursuant to FAR subpart 51.1.

(b) [Reserved]

(End of clause)

#### **552.238–114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities.**

As prescribed in 538.7005, insert the following clause:

#### **Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities (Mar 2024)**

(a) *Definition—Non-Federal entity*, as used in this clause, means any State, local, territorial, or Tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education); and any other non-Federal organization (e.g., a qualified nonprofit agency as defined in 40 U.S.C. 502(b)).

(b) *Responsibilities*. Eligible non-Federal entities are responsible for complying with—

(1) FSS ordering guidance. Information about GSA's FSS contracts, including ordering guidance is available at <https://www.gsa.gov/schedules>; and

(2) Any conditions of the underlying authority(ies) supporting the use of FSS contracts (e.g., 40 U.S.C. 502(c) limits purchases to specific supplies and services available under FSS contracts).

(c) *Acceptance*. (1) The Contractor is encouraged, but not obligated, to accept orders from eligible non-Federal entities under this contract. The Contractor may, within 5 business days of receipt of an order, reject an order from an eligible non-Federal entity for any reason. However, purchase card orders must be rejected within 24 hours of receipt of the order. Failure to reject an order within these timeframes shall constitute acceptance.

(2) The Contractor is encouraged, but not obligated, to enter into blanket purchase agreements (BPAs) with eligible non-Federal entities under the terms of this contract. The Contractor should respond to any requests to enter into a BPA within 5 business days of receipt of the request.

(d) *Conditions of acceptance*. If the Contractor accepts an order from or enters into a BPA with an eligible non-Federal entity under this contract, the following conditions apply:

(1) For orders, a separate contract is formed between the Contractor and the eligible non-Federal entity (herein "the parties"). For BPAs, a separate agreement is formed between the parties.

(2) The resultant order or BPA shall incorporate by reference all the terms and conditions of this contract except for:

(i) FAR clause 52.233–1, Disputes, and

(ii) Paragraphs (d) Disputes, (h) Patent indemnity, and (r) Compliance with laws

unique to Government contracts, of GSAR clause 552.212–4, Contract Terms and Conditions—Commercial Products and Commercial Services.

(3) The U.S. Government is not liable for the performance or nonperformance of any order or BPA entered into under this contract by the parties. Disputes which cannot be resolved by the parties 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, the parties are encouraged to resolve disputes through alternative dispute resolution.

(4) Neither party will look to, primarily or in any secondary capacity, or file any claim against the U.S. Government or any of its agencies with respect to any failure of performance by the other party.

(e) *Additional terms and conditions*. Terms and conditions required by statute, ordinance, regulation, or as otherwise required by an eligible non-Federal entity may be made a part of an order or a BPA to the extent that these terms and conditions do not conflict with the terms and conditions of this contract. The Contractor should review any such additional terms and conditions prior to accepting an order or entering into a BPA with an eligible non-Federal entity.

(f) *Payment*. (1) The Contractor is responsible for obtaining all payments due to the Contractor from the eligible non-Federal entity under the terms and conditions of the order or the BPA entered into under this contract, without recourse to the U.S. Government or any of its agencies that awarded this contract or administer this contract.

(2) If an eligible non-Federal entity is subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such entities. If an eligible non-Federal entity is not subject to a State prompt payment law, the terms and conditions of paragraph (i) of the GSAR clause at 552.212–4, apply to such entities in the same manner as to Federal entities.

(g) *Fee and sales reporting*. The requirements of the GSAR clause at 552.238–80, Industrial Funding Fee and Sales Reporting, apply to any sales to eligible non-Federal entities under this contract.

(End of clause)

[FR Doc. 2024–03605 Filed 2–21–24; 8:45 am]

**BILLING CODE 6820–61–P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 230224–0053; RTID 0648–XD654]

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2024 total allowable catch (TAC) of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), February 19, 2024, through 1200 hours, A.l.t., June 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Adam Zaleski, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2024 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA is 1,182 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023) and inseason adjustment (88 FR 88840, December 26, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2024 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,175 mt and is setting aside the remaining 7 mt