

GSA U.S. General Services Administration

Federal Acquisition Service

Federal Acquisition Regulation (FAR) Part 51 Deviation:

An Overview for Industry

This course is sponsored by the **Federal Acquisition Institute**
In association with the GSA Federal Acquisition Service




The primary organization providing knowledge and support to the federal acquisition workforce

Federal Acquisition Regulation (FAR) Part 51 Deviation: An Overview for Industry

Welcome!

- Introductions
- Housekeeping
 - Location of restrooms
 - Time schedules (breaks)
 - Refreshments
 - Facilities
- Ground rules
- Any questions?



Federal Acquisition Regulation (FAR) Part 51 Deviation: An Overview for Industry

Learning Objectives

Upon completion of this course, you should be able to:

- Recognize FAR Part 51 terminology
- Identify the authorized deviation from FAR Subpart 51.1 during the procurement process
- Recognize the acquisition and payment process when utilizing the FAR Part 51 Deviation

Federal Acquisition Regulation (FAR) Part 51 Deviation: An Overview for Industry

Topic 1: An Overview of FAR Part 51

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The FAR

- FAR Subpart 51.1, "Contractor Use of Government Supply Sources," prescribes policies and procedures under which contractors may be authorized to use government sources of supply
- In general, the current authority is limited to cost-reimbursement contracts
- On October 8, 2009, a class deviation to FAR Subpart 51.1 was approved in order to better meet the needs of GSA's customer agencies

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Deviation Authority

- ❑ Federal Government contracting officers may authorize GSA contractors to procure items from the Multiple Award Schedule (MAS) program and GSA Global Supply Programs when deemed appropriate for fulfillment of agency requirements
- ❑ "GSA contractors" include Schedule, Public Building Service (PBS), Government-Wide Acquisition Contract(GWAC), and other open market contractors
- ❑ Selling contractors may not add fee or markup to prices of items sold



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Terminology

- ❑ **Federal Government:** The eligible user of the FAR Part 51 deviation
- ❑ **Buying Contractor:** The contractor who receives the primary contract/order from the Federal Government and subsequently acts as the Federal Government's agent when placing an order to the selling contractor
- ❑ **Selling Contractor:** The contractor who receives the secondary order placed under the FAR Part 51 authority from the buying contractor or GSA Global Supply

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Overview of Responsibilities

The Government Must:

- ❑ Use FAR Part 51 deviation appropriately, IAW applicable FAR Parts
- ❑ Ensure all processes and procedures are followed during the ordering process
- ❑ Include supplies/services ordered by the buying contractor in the dollar amount reported to the Federal Procurement Data System IAW FAR 4.606

The Buyer Must:

- ❑ Comply with MAS purchasing procedures
- ❑ Follow the procedures and processes relevant to the buyer in the 19-Step process

The Seller Must:

- ❑ Accept/reject orders from buyers
- ❑ Comply with the 19-Step process (steps 10-12)
- ❑ Comply with FAR Subpart 8.4
- ❑ Assume the financial risk and track sales

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Deviation Limitations

The Class Deviation authority is limited to orders:


- ❑ Placed on a time-and-materials (T&M) or labor-hour (LH) basis - an order placed by the Federal Government to the buying contractor can be partially fixed price, but the portion of the order for the items to be procured using the FAR 51 deviation must be T&M/LH.
- ❑ For ancillary supplies/services that are in support of the overall order such that the items are not the primary purpose of the work ordered, but are an integral part of the total solution offered -Note: There is no dollar value or quantity that defines "ancillary."

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Deviation Limitations (cont.)

The Class Deviation authority is limited to orders:

- ❑ Issued in accordance with the procedures in FAR Subpart 8.405-1, Ordering Procedures for supplies, and services not requiring a statement of work
- ❑ Placed by the Federal Government; authorization cannot be issued from state and local governments



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FAR 51 Authority vs. FAR 51 Deviation Authority

	FAR 51	FAR 51 Deviation
Contract Type	Cost reimbursement	Time & Materials
Ordering Process	FAR Subpart 8.405-1(Supplies & Services not Requiring a Statement of Work) 8.405-2 (Supplies & Services Requiring a Statement of Work)	FAR Subpart 8.405-1(Supplies & Services not Requiring a Statement of Work)
What can be ordered?	Supplies- FAR Subpart 8.405.1/8.405-2 Services- FAR Subpart 8.405.1/8.405.2	Supplies- FAR Subpart 8.405.1 Services- FAR Subpart 8.405.1
Who can order?	Federal agencies and authorized buying contractors	Federal agencies and authorized buying contractors

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Benefits to the Community

- ❑ Allows GSA contractors to provide a total contract solution to meet customers' needs with readily available products and services
- ❑ Expands upon existing benefits of GSA vehicles
- ❑ Reduces agency procurement and contract administration costs
- ❑ Provides agencies opportunities to increase utilization of small businesses
- ❑ Reduces the necessity for government furnished equipment (GFE)
- ❑ Simplifies market research via existing GSA eTools
- ❑ Encourages competition among contractors
- ❑ Enables use of supply funds by contractors

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Considerations for Using FAR Part 51

- ❑ Administrative costs
- ❑ Impact of delays
- ❑ Lowest available cost of items
- ❑ Suitability of available items
- ❑ Delivery factors
- ❑ Contractor recommendations
- ❑ Risk involved to the buying contractor

GSA www.gsa.gov/far51deviation

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Exercise – Can the FAR Deviation Be Used?

Company XYZ has received a contract award from the Government. He must provide some items under the contract and he now sees that there are a number of GSA Schedule contracts in place for those items at really good prices. If the Schedule vendor is asked by Company XYZ for a quotation, what should the vendor do?

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Topic 2: The Procurement Process Using the FAR Subpart 51.1 Deviation

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Procurement Process Overview

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    graph TD
      1[1. Create the RFQ/Solicitation] --> 2[2. Create the quote/proposal]
      2 --> 3[3. Submit quote/proposal]
      3 --> 4[4. Review quote/proposal]
      4 --> 5[5. Add Finding to contract file]
      5 --> 6[6. Award order/contract; authorize]
      6 --> 7[7. Request AAC or DoDAAC]
      7 --> 8[8. Receive Award w/ authorization]
      8 --> 9[9. Place order]
      9 --> 10[10. Accept/Reject offer]
      10 --> 11[11. Fulfill Order]
      11 --> 12[12. Track sales; remit IFF]
      12 --> 13[13. Remit $ to Seller per FAR 51 Deviations]
      13 --> 14[14. Invoice the Government]
      14 --> 15[15. Review invoice, ordering procedures, documentation]
  
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■ Government ■ Buyer ■ Seller

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Procurement Process Overview

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    graph LR
      16[16. Inspection and Acceptance] --> 17[17. Authorization Issue Payment]
      17 --> 18[18. Receive Payment]
      18 --> 19[19. Ensure authorization and ordering was properly done]
  
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Of this 19-step process, some steps apply specifically to Industry.


Let's take a look at each step...

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Procurement Process: Step 1 ■ Government

1. The Government Issues the RFQ/Solicitation

The RFQ/Solicitation **MUST** include clause 52.251-1, Government Supply Sources and a statement to indicate that items to be procured under the FAR Part 51 deviation may be proposed as part of the quote/proposal



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Procurement Process: Step 2 and 3 ■ Buyer

2. The Contractor Prepares a Quote/Proposal

- Prepare quote/proposal in accordance with the RFQ/solicitation requirements
- Clearly identify the items to be procured using the FAR Part 51 deviation and separate those items from the proposed, fixed price schedule items
- The quote/proposal should include the Multiple Award Schedule that will be used or otherwise state that a requisition will be placed through the Global Supply Program

3. Submit Quote/Proposal

- Submit the quote or proposal to the Government

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Procurement Process: Steps 4-7 ■ Government

The Government:

4. Evaluates the quotes/proposals
5. Adds a written finding to the contract file
6. Awards the order/contract
7. Requests an AAC or DoDAAC if the contractor will be requisitioning through the GSA Global Supply Program

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Procurement Process: Step 8 and 9 ■ Buyer

8. The buying contractor receives the award with authorization

- The award package must contain a written authorization from the Federal Government contracting officer to use the FAR Part 51 deviation authority

9. The buying contractor places the order

- Comply with FAR Subpart 8.405-1 when purchasing from Multiple Award Schedules
- For Schedule buys, provide a copy of the written authorization that you received from the Government to the selling contractor
- Follow the normal requisition process when purchasing from the GSA Global Supply program (**skip to step 16**)
- Follow best practices outlined in FAR Part 51 deviation ordering guide

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Competition Requirements

Summary of FAR Subpart 8.405 Competition Requirements :

1. While some references to the maximum order limit (MOL) are still relevant, current guidance uses the simplified acquisition threshold (SAT) as a marker
2. For orders up to the SAT (\$150,00), 3 written quotations must be received → Take action to ensure 3 written quotes. If fewer than 3 are received, document the file as to what steps were taken to ensure adequate competition.
3. For orders over the SAT, post the RFQ on eBuy, and provide the RFQ to as many Schedule vendors as possible
4. Make a best value award decision

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Procurement Process: Step 10 ■ Seller

10. The selling contractor accepts/rejects the order

- A GSA contractor acting under the authority of the FAR Part 51 class deviation is authorized to use GSA as a source of supply as an eligible ordering activity
- The selling contractor (Schedule contractor) is not obligated to accept orders from activities outside of the Executive Branch (i.e., not from state or local agencies)
- Selling contractors must consider the financial risk and other risks of selling directly to another contractor
- GSA Global Supply must accept all orders

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Procurement Process: Step 11 ■ Seller

11. The selling contractor or GSA Global Supply fulfills the order

For Schedule orders:

- Ensure that a copy of the written authorization from the Contracting Officer is included
- Ensure that the buying contractor's contract number is on the order
- Sell to the buying contractor at the MAS contract price or lower pursuant to FAR Subpart 8.4
- Include on each invoice the language, "in care of [name of government agency] under written authorization from _____ dated _____"

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Procurement Process: Step 12 ■ Seller

12. The selling contractor reports Schedule

- Sales made to the buying contractor are Schedule sales that need to be reported
- Sales are subject to the IFF
- A sale made under the authority of FAR Part 51 does not trigger a price reduction (GSAR 552.238-75)



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Procurement Process: Step 13 and 14 ■ Buyer

13. The buying contractor remits payment to the selling contractor

- For Schedule orders, the buying contractor must remit full payment to the selling contractor prior to invoicing the Federal Government

14. The buying contractor invoices the Government


- Invoice reflects the agreed upon pricing
- Purchase price of items procured under FAR Part 51 is passed through to the Government with no fee or markup
- FAR Part 51 items should be identified and separated from the rest of the items on the invoice
- Provide appropriate documentation that the selling contractor has been paid in full

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Procurement Process: Steps 15-17 ■ Government

The Government:


- 15. Reviews the invoice and ensures that the buying contractor followed ordering procedures
- 16. Inspects and accepts the items
- 17. Pays the buying contractor



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Procurement Process: Step 18 ■ Buyer

18. The buying contractor receives payment



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Procurement Process: Step 19 ■ Government

19. The Government ensures that authorization and ordering procedures are followed properly.



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Knowledge Checks

- ❓ Is the deviation only available for use for Schedule contractors?
- ❓ If the buying contractor is a Schedule contractor, does he have to report sales to GSA and remit the IFF?
- ❓ Does the Price Reduction clause apply?
- ❓ Can I add a fee or markup to the items I'm procuring using the deviation?

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Lesson Summary


You should now be able to:

- ✔ Recognize FAR Part 51 terminology
- ✔ Identify the authorized deviation from FAR Subpart 51.1 during the procurement process
- ✔ Recognize the acquisition and payment process when utilizing the FAR Part 51 Deviation

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Web Resources

- ❑ FAR Part 51 Deviation at www.gsa.gov/far51deviation
- ❑ FAR Part 51 Ordering Guide dated 2/5/2010 at <https://apps.fas.gsa.gov/cmils/viewpdf.cfm?47595D4441545E0E48554B15575D675D5342055B454448400B1F175A5F435147541E5E52421E5F40501E5F5C471F5B5E5D43675A5F435147541F4857571F0D1E000150301020D001F405C55>
- ❑ FAR Part 51/DFARS Part 251 at www.acquisition.gov/far
- ❑ Global Supply Information at www.gsaqglobalsupply.gsa.gov



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