

*DISCLAIMER: GSA FAS is posting this notification of a planned solicitation refresh or mass modification as a courtesy to industry. All comments on the attached DRAFT document must be submitted in the "Comments" section below within ten (10) business days of this posting. Comments provided elsewhere or after 10 business days will not be considered. GSA FAS will consider all relevant comments and make changes to the DRAFT as appropriate, but will not issue a formal response to industry comments or related inquiries. Interested parties should thoroughly review the final version of the solicitation refresh or mass modification for changes made to this DRAFT.*

### **Purpose of Planned Action**

The General Services Administration (GSA) Federal Acquisition Service (FAS) is planning to refresh all GSA Multiple Award Schedule (MAS) solicitations to add and update clauses and provisions related to implementation of GSAR Case 2016-G506 (OLM Technical Amendment) and FAR Case 2018-010 Use of Products and Services of Kaspersky Lab. Individual Schedules may update additional clauses/provisions to make clarifications, administrative corrections, and other required changes. GSA anticipates that the refresh will occur in November 2018.

### **Summary of Planned Changes**

Below is a high-level description of significant changes to be included in the upcoming MAS refresh and mass modification. A complete listing of all new or updated clauses and provisions not currently available in the FAR, GSAM, or existing Schedule solicitations is provided at the end of this document. Be sure to review the final solicitation refresh and mass modification for full details.

### **GSAR Case 2016-G506 (OLM Technical Amendment)**

On August 16, 2018, GSA issued a [technical amendment](#) to the General Services Administration Acquisition Regulation (GSAR) clarifying the text regarding the application of the 33.33% limitation for order-level materials (OLMs). Specifically, the technical amendment revises the language in clause 552.238-82 to clarify that for a Federal Supply Schedule (FSS) Blanket Purchase Agreement (BPA), the 33.33% limitation applies to the *cumulative* value of OLMs across all BPA orders. There are no significant content changes resulting from this technical amendment.

As a result, all GSA Schedule solicitations will be updated as follows:

The following will be **ADDED/UPDATED**:

- [552.238-82 Special Ordering Procedures for the Acquisition of Order-Level Materials \(JAN 2018\)](#)
- SCP-FSS-007 Special Proposal Instructions for Order-Level Materials Special Item Number (NOV 2018) (full text provided at the end of this document)
- Description for Order-Level Materials SIN (full text provided at end of this document)

**NOTE:** The Order-Level Materials SIN description is included **ONLY** in OLM-authorized Schedule solicitations. Only contractors awarded the Order-Level Materials SIN can offer OLMs.

A listing of these Schedules is maintained at <https://www.gsa.gov/olm>.

## **FAR Case 2018-010 Use of Products and Services of Kaspersky Lab**

On July 16, 2018, DoD, GSA and NASA issued an [interim rule](#) amending the Federal Acquisition Regulation (FAR) to implement section 1634 of the [National Defense Authorization Act for Fiscal Year 2018](#). The interim rule adds FAR [subpart 4.20](#) and a corresponding new contract clause at [52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab or Other Covered Entities](#). The clause prohibits contractors from providing any hardware, software, or services developed or provided by Kaspersky Lab (i.e., covered articles) or its related entities (i.e., covered entities), or using any covered articles in the development of data or deliverables first produced in the performance of the contract after October 1, 2018.

The clause also requires contractors to report any covered articles discovered during contract performance; this requirement flows down to subcontractors. The purpose of the prohibition is to mitigate [the risk that the Russian government could threaten U.S. national security](#) by capitalizing on access provided by Kaspersky products to compromise federal information and information systems.

As a result, all GSA Schedule solicitations will be updated as follows:

The following clause will be **ADDED**:

- [52.204-23 Prohibition on Contracting for Hardware, Software, and Service Developed or Provided by Kaspersky Lab and Other Covered Entities \(Jul 2018\)](#)

The following clauses will be **UPDATED**:

- [52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items \(Nov 2017\) \(Alternate II - Nov 2017\)](#)

## Full Text of New/Updated Clauses and Provisions

### **SCP-FSS-007 SPECIAL PROPOSAL INSTRUCTIONS FOR ORDER-LEVEL MATERIALS SPECIAL ITEM NUMBER (NOV 2018)**

(a) This Schedule is authorized to allow for order-level materials (OLMs) in accordance with GSAR 538.7201. A listing of all OLM-authorized Schedules is available at [www.gsa.gov/olm](http://www.gsa.gov/olm).

(b) Clauses 552.212-4 *Contract Terms and Conditions - Alternate I* and 552.238-82 *Special Ordering Procedures for the Acquisition of Order-Level Materials* provide additional information on inclusion of OLMs in task and delivery orders placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA).

(c) OLMs are only authorized for inclusion at the order level under a Time-and-Materials (T&M) or Labor-Hour (LH) Contract Line Item Number (CLIN) and are subject to a Not To Exceed (NTE) ceiling price.

(d) Offerors proposing the Order-Level Materials Special Item Number (SIN) are not required to propose items or pricing at the contract level, since by definition OLMs are *unknown* at the time of FSS contract award. The ordering activity contracting officer is responsible for defining OLMs and determining proposed OLM pricing fair and reasonable for a particular order.

(e) OLMs are purchased under the authority of the FSS Program and are not "open market items."

(f) Items awarded under ancillary supplies/services and other direct cost (ODC) SINs are not OLMs. These SINs are reserved for items that can be defined and priced *up-front* at the FSS contract level.

(g) The Order-Level Materials SIN cannot be the only SIN awarded on a contract. The Order-Level Materials SIN is only authorized for use in direct support of another awarded SIN.

(h) The Order-Level Materials SIN is exempt from CSP-1 *Commercial Sales Practices* disclosure requirements.

(i) The Order-Level Materials SIN is exempt from the following clauses:

- 552.216-70 *Economic Price Adjustment - FSS Multiple Award Schedule Contracts*
- I-FSS-969 *Economic Price Adjustment - FSS Multiple Award Schedule*
- 552.238-71 *Submission and Distribution of Authorized FSS Schedule Pricelists*
- 552.238-75 *Price Reductions*

(j) Terms and conditions that otherwise apply to the FSS contract also apply to the Order-Level Materials SIN. Examples include but are not limited to::

- Trade Agreements Act (TAA)
- Sales reporting and Industrial Funding Fee (IFF) remittance
- Environmental Attributes clauses
- AbilityOne Program Essentially the Same (ETS) compliance

(k) Prices for items provided under the Order-Level Materials SIN must be inclusive of the IFF. The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under an FSS contract, shall not exceed 33.33%.

(l) There are no administrative, technical, or price proposal requirements for the Order-Level Materials

SIN (i.e., Section I - Administrative/Contract Data, Section II - Technical Proposal, and Section III - Price Proposal). The Order-Level Materials SIN will be awarded when proposed by an offeror, provided that (1) the Schedule is authorized for inclusion of OLMs, and (2) the Order-Level Materials SIN will not be the only awarded SIN under the contract.

**NOTE:** The Order-Level Materials SIN description is included *ONLY* in OLM-authorized Schedule solicitations. Only contractors awarded the Order-Level Materials SIN can offer OLMs.

### **Updated Order-Level Materials SIN Description**

Order-Level Materials (OLMs) are supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA). OLMs are not defined, priced, or awarded at the FSS contract level. They are unknown before a task or delivery order is placed against the FSS contract or FSS BPA. OLMs are only authorized for inclusion at the order level under a Time-and-Materials (T&M) or Labor-Hour (LH) Contract Line Item Number (CLIN) and are subject to a Not To Exceed (NTE) ceiling price. OLMs include direct materials, subcontracts for supplies and incidental services for which there is not a labor category specified in the FSS contract, other direct costs (separate from those under ODC SINs), and indirect costs. OLMs are purchased under the authority of the FSS Program and are not “open market items.”

Items awarded under ancillary supplies/services or other direct cost (ODC) SINs are not OLMs. These items are defined, priced, and awarded at the FSS contract level, whereas OLMs are unknown before an order is placed. Ancillary supplies/services and ODC SINs are for use under all order type CLINs (Fixed-Price (FP), T&M, and LH), whereas the Order-Level Materials SIN is only authorized for use under T&M and LH order CLINs.

The Order-Level Materials SIN is only authorized for use in direct support of another awarded SIN. Price analysis for OLMs is not conducted when awarding the FSS contract or FSS BPA; therefore, GSAR 538.270 and 538.271 do not apply to OLMs. OLMs are defined and priced at the ordering activity level in accordance with GSAR clause 552.238-82 Special Ordering Procedures for the Acquisition of Order-Level Materials. Prices for items provided under the Order-Level Materials SIN must be inclusive of the Industrial Funding Fee (IFF). The value of OLMs in a task or delivery order, or the cumulative value of OLMs in orders against an FSS BPA awarded under an FSS contract, cannot exceed 33.33%.