

Contractor-Use of GSA Fleet Vehicles

- Many agencies/military activities are undergoing commercial activities studies and want to authorize the use of GSA Fleet vehicles by Government contractors.
- The Federal Acquisition Regulation (FAR) provides guidance on contractor use of GSA Fleet vehicles. This guidance can be found at FAR Subpart 51.1 and 51.2.
- The FAR provides guidance to agencies that provide contractors with Government owned or leased motor vehicles. See FAR 45.304.
- There are generally two types of contracts. They are:
 - 1) Cost Reimbursable, or
 - 2) Fixed Price
- Cost Reimbursable Contract: Contractors may be authorized use of GSA Fleet vehicles when the agency's Contracting Officer has complied with the FAR provisions and has provided GSA Fleet the documentation/authorization outlined in the FAR 51.200 – 51.205. This authorized use is contingent upon vehicle availability.
- Fixed Price Contract: Fixed Price Contractors are only eligible to use GSA Fleet vehicles if approved by GSA (see FAR 51.201(c) and 41 CFR 101-39.202(d)). The approval authority has been delegated to the Assistant Commissioner, Office of Vehicle Acquisition and Leasing Services (FF). The agency's Contracting Officer must comply with the requirements of FAR 51.200 – 51.205. In addition, the Contracting Officer's request to GSA must include information demonstrating that such authorization will reduce the cost to the Government rather than serve as a benefit to the fixed price contractor.
- The attached document references relevant FAR provisions and provides information on what GSA Fleet requires from the contracting agency in order to evaluate and approve an agency's request for contractor-use of GSA Fleet vehicles. Satisfying these requirements does not guarantee that GSA Fleet will provide the vehicles – approval is dependent upon vehicle availability.

CONTRACTOR USE OF GSA FLEET VEHICLES

1. APPLICABLE REGULATIONS

Federal Property Management Regulations (FPMR) 41 CFR §101-39.202 – Contractor authorized services – outlines contractor use of GSA Fleet vehicles and references the Federal Acquisition Regulation (FAR) requirements.

Federal Acquisition Regulation (FAR) Subpart 51.1 - Contractor Use of Government Supply Sources – prescribes the policies and procedures for the use of Government supply sources by contractors. Contracting Officers may authorize contractors to use these sources as provided in FAR 51.101. The contracting agency's Contracting Officer is responsible for ensuring it is in the Government's interest to authorize this use. The Contracting Officer must also determine if the supplies and services (i.e., GSA Fleet vehicles) are available to perform the contract (reference FAR 51.101 Policy).

FAR Subpart 51.2 – Contractor Use of GSA Fleet Vehicles – prescribes the specific policies and procedures for the use by contractors of GSA Fleet vehicles and related services and outlines the Contracting Officer's responsibilities related to authorizing such use.

FAR 45.304 – Providing Motor Vehicles - includes guidance to agencies that provide contractors with Government owned or leased motor vehicles.

The contracting agency's Contracting Officer is responsible for complying with the referenced FAR provisions.

FAR Clause 52.251-1 and 52.251-2– Government Supply Sources – must be included in solicitations/requests for proposals and contracts when the Contracting Officer is considering authorizing the contractor to acquire supplies or services from a Government supply source, in this case GSA Fleet vehicles.

2. PRACTICAL CONSIDERATIONS

Not all requests for GSA Fleet vehicles can be supported. Demand for GSA Fleet vehicles is often greater than GSA can supply. The contracting agency should contact the local GSA Fleet Management Center or GSA Regional Office as far in advance as possible prior to issuing a solicitation that includes proposed contractor use of GSA Fleet vehicles (regardless of the type of contract or the number of vehicles involved) in order to assess GSA Fleet vehicle availability.

The only circumstance in which vehicle availability is generally not an issue is when the vehicles to be used by the contractor are already in place, either on assignment to the contracting agency or to a predecessor contractor. Even in such cases, however, all of the applicable requirements for authorization and/or approval of use of GSA Fleet vehicles by the contractor must be satisfied.

Another practical consideration is that the FAR and GSA Fleet make a distinction between different types of contracts: cost reimbursement vs. other types of contracts such as fixed price contracts. There is a special approval requirement that affects contracts other than cost reimbursement contracts.

3. THE TWO TYPICAL TYPES OF CONTRACTS

A. Cost Reimbursement Contracts:

An authorized contractor may be provided GSA Fleet vehicles when the contracting agency has complied with the FAR provisions and provided the documentation/authorization required by the FAR. (See FAR 51.200 - 51.205). However, compliance with these FAR provisions does not guarantee that GSA Fleet will provide vehicles; it merely makes the contractor eligible to use GSA Fleet vehicles. Vehicles may not be available to fill the request. This is why it is important for Contracting Officers to contact GSA Fleet about vehicle availability at the earliest time possible during the procurement process, and certainly before a solicitation is issued.

To obtain GSA Fleet vehicles, the Contracting Officer or an authorized contractor must provide the servicing GSA Fleet Management Center (FMC) with the written agency authorization. In the case of a request for more than five (5) vehicles, the written agency authorization, containing the information specified in the FAR is to be sent to the General Services Administration, FFF, Washington, DC 20406. (See FAR 51.203(a).) The Contracting Officer's authorization must contain all of the specific information outlined in FAR 51.202. GSA Fleet will not negotiate with an agency's contractor on behalf of the soliciting/contracting agency to obtain the necessary information for the required authorization, as this is the contracting agency's responsibility under the FAR.

Upon receipt of a Contracting Officer's authorization, GSA Fleet will review the authorization and request for GSA Fleet vehicles and will determine if resources are available to support the contract.

B. Fixed Price Contracts:

FAR 51.201(c) requires specific approval by GSA for use of GSA fleet vehicles and related services by a fixed price contractor. The purpose of this approval process is to ensure that savings accrued through the use of GSA Fleet vehicles is realized by the Government.

In order for GSA to consider a request from the soliciting/contracting agency for use of GSA Fleet vehicles by a fixed price contractor, the Contracting Officer must comply with all of the requirements for cost reimbursement

contracts, as outlined above. In addition, the Contracting Officer must do one of the following:

- (1) provide to GSA Fleet a cost study and resultant Findings/Determination that demonstrates the cost savings (in dollars) that will result through the use of GSA Fleet vehicles by the fixed price contractor and written assurance that the savings will accrue to the Government; or
- (2) include language in the solicitation/request for proposals informing prospective offerors that the Government will consider allowing the contractor to use GSA Fleet vehicles and related services in performance of the contract if such use will result in a significant savings to the Government and GSA Fleet vehicles are available. In such cases, the contracting agency should consider requesting alternate offers: a) an offer that reflects the contract price with contractor provided vehicles, and; b) an offer that reflects the contract price with Government furnished (GSA Fleet) vehicles; or
- (3) include the provision of GSA Fleet vehicles for use by the contractor as a separate, cost-reimbursable line item in the solicitation/request for proposals. In this case, the contract is treated in the same manner as a cost-reimbursement contract if this cost reimbursable portion of the contract is a substantial dollar portion of the contract. (See FAR 51.101(a)(2).) If this alternative is used, and the vehicle portion of the contract is not a substantial dollar portion of the overall contract, the agency must then request specific approval from GSA Fleet; or,
- (4) include a provision that the vehicles are being provided as Government Furnished Property (GFP). The vehicles will remain assigned to the contracting agency and the actual GSA Fleet bill is paid by the agency. This scenario functions the same as a cost reimbursement contract in one aspect, namely that the prospective contractor's offer does not include vehicles (and associated pricing for vehicles) because the contracting agency will provide GSA Fleet vehicles to be used by the contractor in performance of the contract. The provisions of FAR 45.304 apply to this scenario.

The four options above, related to fixed-price contractor use, all require approval of GSA, with the exception of (3) if the cost reimbursable portion of the contract constitutes a substantial dollar portion of the contract. Regardless of the option chosen, the Contracting Officer is responsible for ensuring that the cost to the Government is reduced through the use of GSA Fleet vehicles, and the contract file must document the projected savings.

The first option above is the most time consuming, as it requires a cost study (see the requirements for a cost study, 4A below). The second option effectively eliminates the need for a cost study because the alternate offers, one with contractor supplied vehicles and the other with GSA Fleet vehicles, will clearly show any savings. The pricing for the alternate offers should be provided to GSA Fleet, in lieu of a cost study, to demonstrate the projected savings to the Government. The third option simplifies the process, as it makes the provision of GSA Fleet vehicles a cost reimbursable line item and therefore treated on the same basis as cost reimbursement contracts if the cost reimbursable portion of the contract is a substantial dollar portion of the contract. Under the fourth option, the contracting agency provides motor vehicles as Government furnished property and therefore vehicles are not part of the contractor's offer.

As with cost reimbursement contracts, satisfaction of these requirements does not guarantee that GSA Fleet will provide vehicles; it only makes the contractor eligible to use GSA Fleet vehicles, subject to availability.

4. OTHER ISSUES AND INFORMATION

A. Cost Study Requirements (Fixed-Price Contracts only):

The purpose of the cost study is to ensure that the savings, if any, accrue to the Government; otherwise there is no justification for providing Government owned or leased motor vehicles to the contractor.

Cost studies to support the provision of GSA Fleet vehicles to fixed-price contractors should compare use of GSA Fleet vehicles and the alternative most likely to be used, whether leasing from a commercial source, purchase of vehicles by the contractor, use of vehicles owned by the contracting agency, etc. The study should address all elements of cost over either the base period of the contract or the life cycle of the vehicles requested, whichever is shorter. Elements of cost that should be included for both options under study are, at minimum, fixed monthly lease cost including overhead, projected fuel and maintenance expense, incidental expenses (accident and maintenance management, car washes, etc.) any up-front outlays required (down payment or deposit), and any end-of-lease outlays required (excess mileage penalties, etc.). (Note: GSA Fleet monthly and mileage rates include fuel and maintenance, while commercial lease rates typically do not. Also, GSA Fleet requires no up-front outlays or end-of-lease payments, while some commercial lease contracts do.) The cost study should be based on actual numbers and types of vehicles and their projected utilization (miles traveled). The complete study, including all assumptions used (discount factors, tax rates, etc.), not merely the study results, must be provided to GSA Fleet for consideration.

NOTE: GSA Fleet is responsible for maintaining GSA Fleet vehicles. Therefore, contracting agencies cannot include requirements for the provision of maintenance and repair services related to GSA Fleet vehicles.

B. Billing/Payment (All Contractors):

Use of GSA Fleet vehicles and related services provided to authorized/GSA approved Government contractors will be billed to the responsible agency. However, if requested by the contracting agency, GSA can direct bill and receive payment from an authorized/approved contractor. See FAR 51.203(5) and 41 CFR 101-39.207(c). In case of nonpayment by a contractor, the contracting agency will be responsible for payment of the contractor's use of GSA Fleet vehicles and related services. See 41 C.F.R. §101-39.207(c).

C. Lease Commencement (All Contractors):

If GSA Fleet vehicles are already in place, assigned either to the contracting agency or a predecessor contractor, the vehicles will be available at contract start-up. However, if vehicles must first be acquired by GSA Fleet for provision to the contractor, the vehicles may not be available immediately. GSA Fleet typically orders new vehicles in the Fall and Winter for delivery the following Spring. It may be necessary for the contracting agency or contractor to make short-term arrangements to fill any gap caused by vehicle acquisition lead-times. This potential problem may be avoided by coordinating early with GSA Fleet, and starting the authorization process well in advance of contract start-up.

D. Lease Termination (All Contractors):

GSA Fleet vehicles and related services are available to agency authorized/GSA approved contractors for the contract period only. GSA Fleet vehicles cannot be used past the contract termination date and cannot be used to support any other contract other than that for which the vehicles were provided. Therefore, prior to contract termination, a contingency plan must be developed by the contracting agency to either: 1) transition to a new authorized/GSA approved contractor, or; 2) notify GSA of the contracting agency's plans to return the vehicles to GSA.

E. Use of GSA Fleet Vehicles (All Contractors):

FAR 51.204 applies to both cost reimbursement and fixed price contractor use. Contractors that are authorized to use GSA Fleet vehicles shall comply with the requirements of 41 CFR 101-39, the GSA Fleet Operators Guide, and GSA Fleet policies/procedures.

The Federal Management Regulation (FMR) at 41 CFR 102-34.230 applies to all contractors authorized to use Government owned or leased vehicles. (This provision was formerly codified at 41 CFR 101-38.301-1.)

FAR 51.202(a)(2) requires the Contracting Officer to ensure that the contractor has obtained motor vehicle liability insurance to cover bodily injury and property damage to protect the contractor and the Government against third-party claims arising from the use of GSA Fleet vehicles.

NOTES:

- The Interagency Fleet Management System (IFMS) has been renamed "GSA Fleet." This name change has not yet been incorporated into the FAR or the FPMR.
- GSA's Web Site for GSA Fleet leasing rates is: <http://www.fss.gsa.gov/vehicles/leasing/>
- The FAR can be accessed @ <http://www.arnet.gov/far/>
- CFR references can be accessed @ <http://www.access.gpo.gov/nara/cfr>