



Office of the State
Chief Information Officer



Report on Implementation of General Services Administration Schedules for State Information Technology Purchases

November 2009



State of North Carolina
Office of the State Chief Information Officer

Beverly Eaves Perdue
Governor

Gerald L. Fralick
State Chief Information Officer

November 5, 2009

The Honorable Katie Dorsett, Chair
The Honorable Joe Tolson, Chair
Joint Legislative Oversight Committee on Information Technology

Dear Sen. Dorsett and Rep. Tolson:

I am pleased to submit this report on implementation of General Services Administration Schedules for State Information Technology Purchases. Under this plan, state agencies and local governments will be able to use the GSA schedules beginning January 1, 2010.

I will be glad to meet with you to discuss this report or any other aspect of information technology in North Carolina.

Thank you for your support in using information technology to serve the citizens more effectively and efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Gerald L. Fralick".

Gerald L. Fralick

cc: Joint Legislative Oversight Committee on Information Technology
Fiscal Research Division

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Executive Summary

A provision in the 2009-2011 budget bill directed the Office of Information Technology Services (ITS) to establish procedures that would allow state agencies and local governments to utilize the General Services Administration (GSA) Cooperative Purchasing Program to acquire information technology. The Program allows state and local government entities to obtain a variety of information technology products, software, and services through federal contracts.

The budget provision also directed ITS to report on its plan for implementing the Program in North Carolina to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division.

By law, ITS is responsible for information technology procurement in North Carolina. In preparing this plan, the Statewide IT Procurement Office at ITS has:

- researched the relevant GSA schedules and state and federal procurement statutes and rules;
- studied the use of GSA schedules by other states;
- tentatively scheduled training for state and local procurement officials and information technology vendors and,
- identified issues that must be addressed before GSA schedules can be utilized by North Carolina agencies and local governments.

This plan proposes enabling state agencies and local government entities to utilize GSA schedules for information technology purchases on January 1, 2010.

Background

Section 211 of the E-Government Act of 2002 (the Act) amended the Federal Property and Administrative Services Act to allow for "Cooperative Purchasing." Under the Program, the Administrator of General Services provides states and localities access to certain items offered through the General Services Administration's (GSA's) [Federal Supply Schedule 70](#), Information Technology (IT), and [Consolidated \(formerly Corporate Contracts\) Schedule](#) contracts, containing IT Special Item Numbers (SINs). The information technology available to state and local governments includes automated data processing equipment (including firmware), software, supplies, support equipment, and services.

Part 538.7001 of the General Services Administration Acquisition Manual (GSAM) offers the following definition of state and local governments:

The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges,

and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

The term does not include contractors or grantees of state or local governments.

How the Schedules Work

Vendor Selection

GSA contractors are selected through an open and continuous qualification process instead of competitive bids and proposals. GSA users seek competition from GSA contractors at the point of sale by obtaining quotes. GSA contracts are based on price ceilings and contractors will often offer further discounts for larger aggregated buys. State and local government entities may be granted additional [price reductions](#) off the schedule.

Only Cooperative Purchasing suppliers have agreed to extend their pricing to state and local governments.

Schedule contractors have the option of deciding whether they will accept orders placed by state and local government buyers. Schedule contractors make this decision on two levels. First, at the contract level, schedule contractors decide whether they want to offer Cooperative Purchasing and, if so, the applicable SINS to be offered. Schedule contractors will then either enter into a mutual agreement with GSA to modify the existing schedule contract or indicate, prior to contract award, their intent to offer their schedule products and services under Cooperative Purchasing.

Second, after an existing contract is modified or a new contract awarded, a schedule contractor retains the right to decline orders received from state and local government entities on a case-by-case basis. Schedule contractors may decline an order, for any reason, within a five-day period after receipt of the order. Credit card orders must be declined within 24 hours.

Each schedule contract price includes an industrial funding fee, which is represented in the prices paid by ordering activities and passed on to GSA by schedule contractors. The fee reimburses GSA for procurement and administrative costs incurred to operate the GSA Schedules Program.

Procedures

State and local government entities are encouraged to use GSA's Schedule Ordering Procedures to ensure the best value from GSA Schedule contractors. Using one of the Procedures also makes the GSA Schedules Program a "competitive procedure" under the Competition in Contracting Act of 1984 (CICA). The two procedures are the [Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work](#) (Federal Acquisition Regulation (FAR) 8.405-1) or the [Ordering Procedures for Services Requiring a Statement of Work](#) (FAR 8.405-2).

State and local entities may include terms and conditions required by statute, ordinance, regulation or order to the extent that these terms and conditions do not conflict with the terms and conditions of the GSA Schedule contract. The additional terms and conditions must be included as a part of the Statement of Work (SOW) or the Statement of Objectives (SOO). GSA suppliers are under no obligation to accept additional terms and conditions.

The following contract terms and conditions are not incorporated by reference into Cooperative Purchasing orders:

- Disputes Clause;
- Patent Indemnity Clause;
- Certain Commercial Item Contract Terms and Conditions. Portions of the commercial item contract terms and conditions that specify compliance with laws unique to federal government contracts are not applicable to Cooperative Purchasing orders.

Use in Other States

States that have authorized use of the GSA Schedule 70 contracts for the procurement of information technology goods and services include Virginia, Florida, Oregon, Nebraska, Texas, New Jersey and Georgia. In most of these states, the CIO must approve all purchases from GSA Schedule 70 contracts.

GSA contracts do not always offer the best value when compared with more competitive procurement methods, such as full competition. States typically use GSA Schedule 70 when there are no other existing statewide contracts available for the subject good or service. Most states use the procedures outlined in FAR 8.4 for procuring IT goods and services from GSA Schedule 70.

The Federal Acquisition Regulation (FAR) is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and was issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the

broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

The FAR precludes agency acquisition regulations that unnecessarily repeat, paraphrase, or otherwise restate the FAR, limits agency acquisition regulations to those necessary to implement FAR policies and procedures within an agency, and provides for coordination, simplicity, and uniformity in the Federal acquisition process. It also provides for agency and public participation in developing the FAR and agency acquisition regulation.

The requirements for placing orders against GSA Schedule contracts are outlined in FAR subpart 8.4, Federal Supply Schedules.

Next Steps for North Carolina

The IT Procurement process in North Carolina must be conducted in a manner that attempts to ensure that all qualified suppliers who are willing to submit offers are treated equitably and are not placed at a disadvantage. State IT Procurement rules require all competitive bids to be advertised for a minimum of ten (10) days on the Interactive Purchasing System (IPS), and the use of forms, terms and conditions and advertisement requirements. As in other states, it will be necessary to waive certain requirements in order to implement the GSA Schedule 70 Program.

Training for state agencies and vendors will be necessary to successfully implement GSA Schedule 70 for information technology purchases. GSA will provide some training, including an overview of North Carolina's legal and contracting rules that determine when and how state agencies may use the GSA Schedule 70 Cooperative Purchasing Program. GSA will also explain the Program's general provisions and demonstrate the tools used and the processes to follow when accessing the IT vendors for products and services.

ITS and the North Carolina Technology Alliance are discussing a joint effort to provide training in late November or early December.

Another issue that must be addressed is the .75% Industrial Funding Fee that GSA suppliers pay on all transactions. The state is not responsible for collecting or administering this fee. States that collect an e-procurement administrative fee like North Carolina's have an agreement with the suppliers that they remain subject to the transaction fee in addition to the GSA Industrial Funding Fee.

Many North Carolina vendors and Historically Underutilized Business do not have GSA contracts under Schedule 70. Authorizing agency purchases under GSA contracts may restrict competition unless carefully monitored for appropriate usage.

The following activities are ongoing and are scheduled to be completed before the January 1, 2010, effective date for implementing GSA Schedule 70 for state information technology purchases:

- Drafting policies and procedures
- Scheduling training to take place in November/December 2009 for vendors and users
- Identifying and resolving any legal issues

The IT Statewide Procurement Office and ITS are confident that these actions can be completed in time for the scheduled implementation of the Cooperative Purchasing Program in North Carolina on January 1, 2010.

Appendix 1

IMPLEMENT GENERAL SERVICES ADMINISTRATION SCHEDULES FOR STATE INFORMATION TECHNOLOGY PURCHASES

SECTION 6.14A.(a) G.S. 147-33.95(b) is amended by adding a new subdivision to read:

"(2a) Establish procedures to permit State agencies and local government agencies to use the General Services Administration (GSA) Cooperative Purchasing Program to purchase information technology (i) awarded under General Services Administration Supply Schedule 70 Information Technology and (ii) from contracts under the GSA's Consolidated Schedule containing information technology special item numbers."

SECTION 6.14A.(b) By October 1, 2009, the Office of Information Technology Services shall report to the Joint Legislative Oversight Committee on Information Technology and Fiscal Research Division on its plan for implementing GSA Schedules for information technology procurement.

Appendix 2

Subpart 8.4—Federal Supply Schedules

8.401 Definitions.

As used in this subpart—

“Ordering activity” means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts. A list of eligible ordering activities is available at <http://www.gsa.gov/schedules> (click “For Customers Ordering from Schedules” and then “Eligibility to Use GSA Sources”).

“Multiple Award Schedule (MAS)” means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are Title III of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 251](#), *et seq.*) and Title [40 U.S.C. 501](#), Services for Executive Agencies.

“Requiring agency” means the agency needing the supplies or services.

“Schedules e-Library” means the on-line source for GSA and VA Federal Supply Schedule contract award information. Schedules e-Library may be accessed at <http://www.gsa.gov/elibrary>.

“Special Item Number (SIN)” means a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

8.402 General.

(a) The Federal Supply Schedule program is also known as the GSA Schedules Program or the Multiple Award Schedule Program. The Federal Supply Schedule program is directed and managed by GSA and provides Federal agencies (see [8.002](#)) with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time. GSA may delegate certain responsibilities to other agencies (*e.g.*, GSA has delegated authority to the VA to procure medical supplies under the VA Federal Supply Schedules program). Orders issued under the VA Federal Supply Schedule program are covered by this subpart. Additionally, the Department of Defense (DoD) manages similar systems of schedule-type contracting for military items; however, DoD systems are not covered by this subpart.

(b) GSA schedule contracts require all schedule contractors to publish an “Authorized Federal Supply Schedule Pricelist” (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request. Also, a copy of the pricelist may be obtained from the Federal Supply Service by submitting a written e-mail request to schedules.infocenter@gsa.gov or by telephone at 1-800-488-3111. This subpart, together with the pricelists, contain necessary information for placing delivery or task orders with schedule contractors. In addition, the GSA schedule contracting office issues Federal Supply Schedules publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics. Ordering activities may request copies of schedules publications by contacting the Centralized Mailing List Service through the Internet at <http://www.gsa.gov/cmls>,

submitting written e-mail requests to CMLS@gsa.gov; or by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 may also be obtained from the above-referenced points of contact.

(c)(1) GSA offers an on-line shopping service called “GSA Advantage!” through which ordering activities may place orders against Schedules. (Ordering activities may also use GSA Advantage! to place orders through GSA’s Global Supply System, a GSA wholesale supply source, formerly known as “GSA Stock” or the “Customer Supply Center.” FAR [Subpart 8.4](#) is not applicable to orders placed through the GSA Global Supply System.) Ordering activities may access GSA Advantage! through the GSA Federal Supply Service Home Page (<http://www.gsa.gov/fss>) or the GSA Federal Supply Schedule Home Page at <http://www.gsa.gov/schedules>.

(2) GSA Advantage! enables ordering activities to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with Schedule contractors (except see [8.405-6](#)) and pay for orders using the Governmentwide commercial purchase card.

(d) “e-Buy,” GSA’s electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. E-Buy allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Ordering activities shall post an RFQ to e-Buy when an order contains brand name specifications (see [8.405-6](#)). Ordering activities may access e-Buy at <http://www.ebuy.gsa.gov/>. For more information or assistance on either GSA Advantage! or e-Buy, contact GSA at Internet e-mail address gsa.advantage@gsa.gov.

(e) For more information or assistance regarding the Federal Supply Schedule Program, review the following website: <http://www.gsa.gov/schedules>. Additionally, for on-line training courses regarding the Schedules Program, review the following website: <http://fsstraining.gsa.gov/>.

(f) For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.*, publicizing ([Part 5](#)), competition requirements ([Part 6](#)), acquisition of commercial items ([Part 12](#)), contracting methods ([Parts 13, 14, and 15](#)), and small business programs ([Part 19](#)));

(2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

8.403 Applicability.

(a) Procedures in this subpart apply to—

(1) Individual orders for supplies or services placed against Federal Supply Schedules contracts; and

(2) BPAs established against Federal Supply Schedule contracts.

(b) GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify those special ordering procedures. Unless otherwise noted, special ordering

procedures established for a Federal Supply Schedule take precedence over the procedures in [8.405](#).

(c) In accordance with section 1427(b) of Public Law 108-136, for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in [2.101](#)), agencies—

- (1) Shall use the procedures at [Subpart 36.6](#); and
- (2) Shall not place orders for such requirements under a Federal Supply Schedule.

8.404 Use of Federal Supply Schedules.

(a) *General.* [Parts 13](#) (except [13.303-2\(c\)\(3\)](#)), [14](#), [15](#), and [19](#) (except for the requirement at [19.202-1\(e\)\(1\)\(iii\)](#)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see [8.405-5](#)). BPAs and orders placed against a MAS, using the procedures in this subpart, are considered to be issued using full and open competition (see [6.102\(d\)\(3\)](#)). Therefore, when establishing a BPA (as authorized by [13.303-2\(c\)\(3\)](#)), or placing orders under Federal Supply Schedule contracts using the procedures of [8.405](#), ordering activities shall not seek competition outside of the Federal Supply Schedules or synopsise the requirement; but see paragraph (e) for orders (including orders issued under BPAs) funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(c) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract—

- (1) Are not exempt from the development of acquisition plans (see [Subpart 7.1](#)), and an information technology acquisition strategy (see [Part 39](#));
- (2) Must comply with all FAR requirements for a bundled contract when the order meets the definition of “bundled contract” (see [2.101\(b\)](#)); and
- (3) Must, whether placed by the requiring agency, or on behalf of the requiring agency, be consistent with the requiring agency’s statutory and regulatory requirements applicable to the acquisition of the supply or service.

(d) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by [8.405-2\(d\)](#). By placing an order against a schedule contract using the procedures in [8.405](#), the ordering activity has concluded that the order represents the best value (as defined in FAR [2.101](#)) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government’s needs. Although GSA has already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order (see [8.405-4](#)).

(e) Publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5):

(1) Notices of proposed MAS orders (including orders issued under BPAs) that are for “informational purposes only” exceeding \$25,000 shall follow the procedures in [5.704](#) for posting orders.

(2) Award notices for MAS orders (including orders issued under BPAs) shall follow the procedures in [5.705](#).

8.405 Ordering procedures for Federal Supply Schedules.

Ordering activities shall use the ordering procedures of this section when placing an order or establishing a BPA for supplies or services. The procedures in this section apply to all schedules.

8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

(a) Ordering activities shall use the procedures of this subsection when ordering supplies and services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (*e.g.*, installation, maintenance, and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency’s needs. Although not required to solicit from a specific number of schedule contractors, ordering activities should attempt to distribute orders among contractors.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.*

(1) Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering activity shall consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see [8.405-5](#)).

(2) When an order contains brand name specifications, the contracting officer shall post the Request for Quote (RFQ) along with the justification or documentation as required by [8.405-6](#).

(3) In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:

- (i) Past performance.
- (ii) Special features of the supply or service required for effective program performance.
- (iii) Trade-in considerations.
- (iv) Probable life of the item selected as compared with that of a comparable item.
- (v) Warranty considerations.
- (vi) Maintenance availability.
- (vii) Environmental and energy efficiency considerations.
- (viii) Delivery terms.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the ordering activity shall seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a BPA (see [8.405-3](#)), ordering activities shall—

(1) Review (except see (c)(2) of this subsection) the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);

(2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (see [8.404\(d\)](#)); and

(3) After seeking price reductions (see [8.405-4](#)), place the order with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

(e) *Minimum documentation.* The ordering activity shall document—

(1) The schedule contracts considered, noting the contractor from which the supply or service was purchased;

(2) A description of the supply or service purchased; and

(3) The amount paid.

8.405-2 Ordering procedures for services requiring a statement of work.

(a) *General.* Ordering activities shall use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

(b) *Statements of Work (SOWs).* All Statements of Work shall include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge). To the maximum extent practicable, agency requirements shall be performance-based statements (see [Subpart 37.6](#)).

(c) *Request for Quotation procedures.* The ordering activity must provide the Request for Quotation (RFQ), which includes the statement of work and evaluation criteria (e.g., experience and past performance), to schedule contractors that offer services that will meet the agency's needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy (see [8.402\(d\)](#)).

(1) *Orders at, or below, the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. The ordering activity should attempt to distribute orders among contractors.

(2) *For orders exceeding the micro-purchase threshold, but not exceeding the maximum order threshold.*

(i) The ordering activity shall develop a statement of work, in accordance with [8.405-2\(b\)](#).

(ii) The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs.

(iii) The ordering activity should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(3) *For proposed orders exceeding the maximum order threshold or when establishing a BPA.* In addition to meeting the requirements of [8.405-2\(c\)\(2\)](#), the ordering activity shall—

(i) Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the ordering activity. When determining the appropriate number of additional schedule contractors, the ordering activity may consider, among other factors, the following:

(A) The complexity, scope and estimated value of the requirement.

(B) The market search results.

(ii) Seek price reductions.

(4) The ordering activity shall provide the RFQ (including the statement of work and the evaluation criteria) to any schedule contractor who requests a copy of it.

(d) *Evaluation.* The ordering activity shall evaluate all responses received using the evaluation criteria provided to the schedule contractors. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order, or establish the BPA, with the schedule contractor that represents the best value (see [8.404\(d\)](#)). After award, ordering activities should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

(e) *Minimum documentation.* The ordering activity shall document—

(1) The schedule contracts considered, noting the contractor from which the service was purchased;

(2) A description of the service purchased;

(3) The amount paid;

(4) The evaluation methodology used in selecting the contractor to receive the order;

(5) The rationale for any tradeoffs in making the selection;

(6) The price reasonableness determination required by paragraph (d) of this subsection;

and

(7) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

8.405-3 Blanket purchase agreements (BPAs).

(a)(1) *Establishment.* Ordering activities may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider—

(i) The scope and complexity of the requirement(s);

(ii) The need to periodically compare multiple technical approaches or prices;

(iii) The administrative costs of BPAs; and

(iv) The technical qualifications of the schedule contractor(s).

(2) Establishment of a single BPA, or multiple BPAs, shall be made using the same procedures outlined in [8.405-1](#) or [8.405-2](#). BPAs shall address the frequency of ordering, invoicing, discounts, requirements (e.g. estimated quantities, work to be performed), delivery locations, and time.

(3) When establishing multiple BPAs, the ordering activity shall specify the procedures for placing orders under the BPAs.

(4) Establishment of a multi-agency BPA against a Federal Supply Schedule contract is permitted if the multi-agency BPA identifies the participating agencies and their estimated requirements at the time the BPA is established.

(b) Ordering from BPAs—

(1) *Single BPA.* If the ordering activity establishes one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple BPAs.* If the ordering activity establishes multiple BPAs, before placing an order exceeding the micro-purchase threshold, the ordering activity shall—

(i) Forward the requirement, or statement of work and the evaluation criteria, to an appropriate number of BPA holders, as established in the BPA ordering procedures; and

(ii) Evaluate the responses received, make a best value determination (see [8.404\(d\)](#)), and place the order with the BPA holder that represents the best value.

(3) *BPAs for hourly rate services.* If the BPA is for hourly rate services, the ordering activity shall develop a statement of work for requirements covered by the BPA. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

(c) *Duration of BPAs.* BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.

(d) Review of BPAs.

(1) The ordering activity that established the BPA shall review it at least once a year to determine whether—

(i) The schedule contract, upon which the BPA was established, is still in effect;

(ii) The BPA still represents the best value (see [8.404\(d\)](#)); and

(iii) Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

(2) The ordering activity shall document the results of its review.

8.405-4 Price reductions.

In addition to seeking price reductions before placing an order exceeding the maximum order threshold (see [8.405-1\(d\)](#)), or in conjunction with the annual BPA review, there may be other reasons to request a price reduction. For example, ordering activities should seek a price reduction when the supply or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of individual orders, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order.

8.405-5 Small business.

(a) Although the mandatory preference programs of [Part 19](#) do not apply, orders placed against schedule contracts may be credited toward the ordering activity's small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

(b) Ordering activities may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order or BPA. At a minimum, ordering activities should consider, if available, at least one small business, veteran-owned small business, service disabled veteran-owned small business, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s). GSA Advantage! and Schedules e-Library at <http://www.gsa.gov/fss> contain information on the small business representations of Schedule contractors.

(c) For orders exceeding the micro-purchase threshold, ordering activities should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

8.405-6 Limited sources justification and approval.

(a) Orders placed under Federal Supply Schedules are exempt from the requirements in [Part 6](#). However, an ordering activity must justify its action when restricting consideration—

(1) Of schedule contractors to fewer than required in [8.405-1](#) or [8.405-2](#); or

(2) To an item peculiar to one manufacturer (e.g., a particular brand name, product, or a feature of a product, peculiar to one manufacturer). A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer. Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(b) Circumstances that may justify restriction cited in paragraph (a)(1) of this subsection include—

(1) Only one source is capable of responding due to the unique or specialized nature of the work;

(2) The new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order must not have been previously issued under sole source or limited source procedures;

(3) An urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays.

(c) Ordering activities shall procure such requirements only if the need to do so is justified in writing and approved at the levels specified in paragraphs (f) and (h) of this subsection.

(d) Except as provided in paragraph (e) of this subsection, when an order contains brand name specifications, the ordering activity shall post the following information along with the Request for Quotation (RFQ) to e-Buy (<http://www.ebuy.gsa.gov/>):

(1) For proposed orders exceeding \$25,000, but not exceeding the simplified acquisition threshold, the documentation required by paragraph (f) of this subsection.

(2) For proposed orders exceeding the simplified acquisition threshold, the justification required by paragraph (g) of this subsection.

(e) The posting requirement of paragraph (d) of this subsection does not apply when—

(1) Disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(2) The nature of the file (e.g., size, format) does not make it cost-effective or practicable for contracting officers to provide access through e-Buy; or

(3) The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest.

(f) *Orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold as defined in [2.101](#).* For proposed orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer shall document the circumstances when restricting consideration.

(g) Orders exceeding the simplified acquisition threshold.

(1) For proposed orders exceeding the simplified acquisition threshold, the requiring activity shall assist the ordering activity contracting officer in the preparation of the justification. The justification shall cite that the acquisition is conducted under the authority of the Multiple Award Schedule Program (see [8.401](#)).

(2) As a minimum, each justification shall include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a "Limited Source Justification."

(ii) Nature and/or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) Identification of the justification rationale (see [8.405-6\(a\)](#) and (b)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

(v) A determination by the ordering activity contracting officer that the order represents the best value consistent with [8.404\(d\)](#).

(vi) A description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.

(vii) Any other facts supporting the justification.

(viii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

(ix) The ordering activity contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(x) Evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or requirements or other rationale for limited sources) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(h) Justification approvals.

(1) For proposed orders exceeding the simplified acquisition threshold, but not exceeding \$550,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order exceeding \$550,000, but not exceeding \$11.5 million, the justification must be approved by the competition advocate of the activity placing the order, or by an official named in paragraph (h)(3) or (h)(4) of this subsection. This authority is not delegable.

(3) For a proposed order exceeding \$11.5 million, but not exceeding \$57 million (or, for DoD, NASA, and the Coast Guard, not exceeding \$78.5 million), the justification must be approved by—

(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (h)(4) of this subsection.

(4) For a proposed order exceeding \$57 million (or, for DoD, NASA, and the Coast Guard, over \$78.5 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

8.405-7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card.

8.406 Ordering activity responsibilities.

8.406-1 Order placement.

Ordering activities may place orders orally (except for services requiring a statement of work (SOW) or orders containing brand name specifications that exceed \$25,000) or use [Optional Form 347](#), an agency-prescribed form, or an established electronic communications format to order supplies or services from schedule contracts. The ordering activity shall place an order directly with the contractor in accordance with the terms and conditions of the pricelists (see [8.402\(b\)](#)). Prior to placement of the order, the ordering activity shall ensure that the regulatory and statutory requirements of the requiring agency have been applied. Orders shall include the following information in addition to any information required by the schedule contract:

- (a) Complete shipping and billing addresses.
- (b) Contract number and date.
- (c) Agency order number.
- (d) F.o.b. delivery point; *i.e.*, origin or destination.
- (e) Discount terms.
- (f) Delivery time or period of performance.
- (g) Special item number or national stock number.
- (h) A statement of work for services, when required, or a brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).
- (i) Quantity and any variation in quantity.
- (j) Number of units.
- (k) Unit price.
- (l) Total price of order.
- (m) Points of inspection and acceptance.
- (n) Other pertinent data; *e.g.*, delivery instructions or receiving hours and size-of-truck limitation.
- (o) Marking requirements.
- (p) Level of preservation, packaging, and packing.

8.406-2 Inspection and acceptance.

- (a) Supplies.
 - (1) Consignees shall inspect supplies at destination except when—
 - (i) The schedule contract indicates that mandatory source inspection is required by the schedule contracting agency; or
 - (ii) A schedule item is covered by a product description, and the ordering activity determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of the supplies, or the past performance of the supplier).
 - (2) When the schedule contracting agency performs the inspection, the ordering activity will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering activity of acceptance or rejection of the supplies.

(3) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to kind, count, and condition on receipt.

(4) Unless otherwise provided in the schedule contract, acceptance is conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(b) *Services*. The ordering activity has the right to inspect all services in accordance with the contract requirements and as called for by the order. The ordering activity shall perform inspections and tests as specified in the order's quality assurance surveillance plan in a manner that will not unduly delay the work.

8.406-3 Remedies for nonconformance.

(a) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering activity shall take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order.

(b) If the contractor fails to perform an order, or take appropriate corrective action, the ordering activity may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Ordering activities shall follow the procedures at [8.406-4](#) when terminating an order for cause.

8.406-4 Termination for cause.

(a)(1) An ordering activity contracting officer may terminate individual orders for cause. Termination for cause shall comply with FAR [12.403](#), and may include charging the contractor with excess costs resulting from repurchase.

(2) The schedule contracting office shall be notified of all instances where an ordering activity contracting officer has terminated for cause an individual order to a Federal Supply Schedule contractor, or if fraud is suspected.

(b) If the contractor asserts that the failure was excusable, the ordering activity contracting officer shall follow the procedures at [8.406-6](#), as appropriate.

(c) If the contractor is charged excess costs, the following apply:

(1) Any repurchase shall be made at as low a price as reasonable, considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____ [*insert contractor's name*] under Order _____ [*insert number*]
under Contract _____ [*insert number*].

(2) When excess costs are anticipated, the ordering activity may withhold funds due the contractor as offset security. Ordering activities shall minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.

(3) If an ordering activity is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the contractor.

(i) The notice shall include the following information about the terminated order:

- (A) Name and address of the contractor.
- (B) Schedule, contract, and order number.
- (C) National stock or special item number(s), and a brief description of the item(s).
- (D) Cost of schedule items involved.
- (E) Excess costs to be collected.
- (F) Other pertinent data.

(ii) The notice shall also include the following information about the purchase contract:

- (A) Name and address of the contractor.
- (B) Item repurchase cost.
- (C) Repurchase order number and date of payment.
- (D) Contract number, if any.
- (E) Other pertinent data.

(d) Only the schedule contracting officer may modify the contract to terminate for cause any, or all, supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any supplies or services covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor, unless terminated for the convenience of the Government by the ordering activity contracting officer.

8.406-5 Termination for the Government's convenience.

(a) An ordering activity contracting officer may terminate individual orders for the Government's convenience. Terminations for the Government's convenience shall comply with FAR [12.403](#).

(b) Before terminating orders for the Government's convenience, the ordering activity contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

(c) Only the schedule contracting officer may modify the schedule contract to terminate any, or all, supplies or services covered by the schedule contract for the Government's convenience.

8.406-6 Disputes.

(a) Disputes pertaining to the performance of orders under a schedule contract.

(1) Under the Disputes clause of the schedule contract, the ordering activity contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering activity contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering activity contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see [33.204](#) and [33.214](#)).

8.406-7 Contractor Performance Evaluation.

Ordering activities must prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold in accordance with [42.1502\(c\)](#).