

Federal Supply Schedules



Guiding Principles

- Recent FAR subpart 8.4 changes strengthen the competition requirements for placing orders under Federal Supply Schedule (FSS) to include blanket purchase agreements (BPAs).
- There are 3 categories of orders:
 - At or below the micro-purchase threshold;
 - Exceeding micro-purchase threshold but not exceeding the simplified acquisition threshold (SAT); and
 - Exceeding the SAT.
- There are new competition procedures for creating multiple-award BPAs under FSS contracts and placing orders under the BPAs.
- FAR subpart 17.5 – Interagency Acquisitions apply to FSS orders in excess of \$500,000.

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- Acquisition Letter 2011-03 – Interagency Acquisitions

This chapter has two sections. Section I provides an overview of the following – (1) Federal Supply Schedules (FSS); (2) two statutory requirements from Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417); (3) the executive policy for acquisitions pursuant to multiple-award contracts to include FSS; (4) a summary of Federal Acquisition Circular (FAC) 2005-50 revisions; and (5) a summary of blanket purchase agreements against the GSA Schedule contracts. Section II is the FSS questions and answers from Acquisition Guide Chapter 38.1 revised to incorporate interim rule 2007-012, changes published in FAC 2005-50.

Section I.**Overview**

The Federal Acquisition Regulation (FAR) subpart 8.4- Federal Supply Schedules regulates the use of the Federal Supply Schedule (FSS) Program. The FSS Program is also known as the General Services Administration Schedules Program or the Multiple Award Schedules Program. General Services Administration (GSA) establishes long-term government-wide contracts with commercial firms for commercial supplies or services. These schedules are available to Federal agencies and provide a simplified process for obtaining commercial supplies and services at prices associated with volume buying.

There are schedules that allow procuring activities to focus their selection of contractors to special areas of interest, such as the Management, Organizational and Business Improvement Services (MOBIS) Schedule; the Professional Engineering Services Schedule; the Information Technology Schedule; the Environmental Services; and products.

In a competitive procurement process, the GSA awards schedule contracts to commercial firms that give the Government the same or better discounts than they give their best customers. These discounts are then passed on to other agencies through the various schedules. This program mirrors commercial buying practices more than any other procurement process in the Federal Government.

For an overview and complete details about the GSA Schedules Program, go to the GSA website at <http://www.gsa.gov/portal/content/197989>.

Statutory Requirements and Executive Policy for Acquisitions Pursuant to Multiple-Award Contracts to include FSS

Effective May 16, 2011, Federal Acquisition Circular (FAC) 2005-50 amends FAR Parts 5, 8, 16, 18, and 38 to implement sections 863 and 865 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) enacted on October 14, 2008, and Executive Policy for multiple-award contracts to include its orders.

➤ *Statutory Requirements*

Section 863 mandated the development and publication of regulations in the FAR to enhance competition for the award of orders placed under multiple-award contracts to include FSS. Section 863 specified enhancements included —

- Strengthening competition rules for placing orders under FSS and other multiple-award contracts to ensure both the provision of fair notice to contract holders and the opportunity for contract holders to respond (similar to the procedures implemented for section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107)); and
- Providing notice in FedBizOpps of certain orders placed under multiple-award contracts, including FSS.

Section 865 expanded requirements for all interagency acquisitions to support the decision to use an interagency acquisition with a determination that such action is the “best procurement approach” and requires written agreements to assign contract administration and management responsibilities. FAR Subpart 17.5 – Interagency Acquisitions implements this statute which includes FSS orders in excess of \$500,000.

➤ *Executive Policy*

In considering regulatory changes to strengthen the use of competition in task- and delivery-order contracts, the FAR Council implemented FAR changes that take increased and more effective advantage of competition, consistent with the general competition principles addressed in the President’s March 4, 2009, Memorandum on Government Contracting (available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government), while still preserving the efficiencies of these contract

vehicles. For this reason, the FAR addresses several issues that are not expressly addressed in section 863, such as competition for the establishment and placement of orders under FSS blanket purchase agreements (BPAs). The changes, however, are not applicable to BPAs awarded pursuant to FAR part 13 or to orders awarded under FAR procedures other than those in FAR subparts 8.4 and 16.5.

Summary of FAC 2005-50 Revisions to the FAR that Affect FSS

Specifically, FAR subpart 8.4, interim rule 2007-012 published in FAC 2005-50 —

- Amends the procedures for ordering supplies and services under FSS contracts at FAR 8.405–1 and 8.405–2, when the order is above the SAT, to require that ordering activities —
 - Receive at least three quotes, as a general matter, that can fulfill the requirement and fairly consider all quotes received; and
 - Document the file to explain efforts made to obtain quotes from at least three FSS contractors that can fulfill the requirements if fewer than three quotes were received and e-Buy, an electronic FSS requirements posting tool, was not used.
- Establishes new competition procedures at FAR 8.405–3 for creating BPAs under FSS contracts and placing orders under the BPAs that —
 - Create a preference for multiple-award BPAs, rather than single-award BPAs, generally modeled after the preference for multiple-award task and delivery-order contracts in FAR 16.505;
 - Allow single-award BPAs if
 - The agency considered multiple awards and the decision to make a single award is explained and documented in the acquisition plan and contract file,
 - The estimated value of the BPA does not exceed \$103 million (including any options), with limited exception, and
 - The ordering activity prepares a written determination before exercising an option and secures the approval of its competition advocate.
 - Establish competition requirements for placing orders under multiple-award BPAs that require the ordering activity to —
 - Provide a Request for Quotation (RFQ) to all BPA holders offering the required supplies or services under the BPA for orders over the SAT that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made;

- Afford all BPA holders an opportunity to submit a quote;
- Fairly consider all responses received; and
- Make award in accordance with the selection procedures.
- Restrict the circumstances when a BPA may be established based on a limited-source justification (*see also* FAR 8.405–6(a)(1)(i)).
- Amends the contract award synopsis provisions at FAR 5.301 (with conforming changes at FAR 5.406, 8.405–6(a)(2), and 16.505(b)(2)(ii)(D)) to require publication and posting of actions supported by exceptions to fair opportunity at FAR 16.505(b)(2) for non-FSS task- and delivery-order contracts and for limited-sources justifications at FAR 8.405–6 for FSS contracts, except when disclosure would compromise national security or create other security risks;
- Clarifies that ordering activities may seek a price reduction under FSS contracts at any time and that they shall seek a price reduction when placing an order or establishing a BPA that exceeds the SAT (*see* FAR 8.405–4); and
- Adds language explaining that the protest procedures found at FAR subpart 33.1 are applicable to the issuance of an order or the establishment of a BPA against an FSS contract.

Blanket Purchase Agreements under GSA Schedule Contracts

In accordance with FAR 8.405-3, ordering activities may establish Blanket Purchase Agreements (BPAs) under any Federal Supply Schedule (GSA Schedule) contract. These schedule contracts simplify the filling of recurring needs for supplies and services, while leveraging ordering activities' buying power by taking advantage of quantity discounts, saving administrative time, and reducing paperwork.

BPAs offer an excellent option for federal agencies and schedule contractors alike, providing convenience, efficiency, and reduced costs. Contractual terms and conditions are contained in GSA Schedule contracts and are not to be re-negotiated for GSA Schedule BPAs. Therefore, as a purchasing option, BPAs eliminate such contracting and open market costs as the search for sources; the need to prepare solicitations; and the requirement to synopsize the acquisition.

BPAs also:

- Provide opportunities to negotiate improved discounts;
- Satisfy recurring requirements;
- Reduce administrative costs by eliminating repetitive acquisition efforts;
- Permit ordering activities to leverage buying power through volume purchasing;
- Enable ordering activities streamlined ordering procedures;

- Permit ordering activities to incorporate Contractor Team Arrangements (CTAs);
- Reduce procurement lead time; and
- Permit ordering activities the ability to incorporate terms and conditions not in conflict with the underlying contract.

A BPA can be set up for field offices across the nation, thus allowing them to participate in a customer's BPA and place orders directly with GSA schedule contractors. In doing so, the entire agency reaps the benefits of additional discounts negotiated into the BPA.

Important factors to consider before applying for a BPA are: (1) the costs of the purchases; (2) the administrative and processing costs; and (3) the qualifications of the respective agency and the vendors from whom the agency anticipates it will purchase products and services. Accurate and detailed record keeping is also required. Agencies that do not have the staff or skill to maintain organized records for all orders placed to the BPA account might not be best suited for the BPA.

For an overview and complete details about the use of BPAs under the GSA Schedules Program, go to the GSA website at <http://www.gsa.gov/portal/content/199353>.

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Why should you use the FSS?

Advantages of using the GSA Schedules Program include:

- It significantly reduces the acquisition time.
- The Service Contract Act review, the small business set-aside review, and the Equal Employment Opportunity review have already been performed by GSA.
- GSA has determined prices under FSS to be fair and reasonable; volume purchasing allows the buyer to seek additional price reductions at any time.
- Synopses are not required for schedule purchases under the simplified acquisition threshold. Unless it is for item(s) peculiar to one manufacturer, there is a posting requirement with the request for quotation.
- There is quick delivery.
- The schedule orders count towards small business goals.
- There is access to state-of-the-art commercial technology and quality services and supplies.
- There is compliance with environmental requirements for applicable services and supplies.
- An agency can establish blanket purchase agreements (BPA) for recurring needs.

What FAR changes are made by Interim Rule FAR 2007-012, Requirements for Acquisitions Pursuant to Multiple-Award Contracts, under Federal Acquisition Circular (FAC) 2005-50 that affect FSS actions?

Section I of this chapter provides a summary of the FAC. In short, for FSS actions FAR subpart 8.4, FAC 2005-50 —

- Amends the procedures for ordering supplies and services under FSS contracts at FAR 8.405-1 and 8.405-2, when the order is above the simplified acquisition threshold (SAT);
- Establishes new competition procedures at FAR 8.405-3 for creating BPAs under FSS contracts and placing orders under the BPAs;
- Amends the contract award synopsis provisions at FAR 5.301 (with conforming changes at FAR 5.406, 8.405-6(a)(2), and 16.505(b)(2)(ii)(D)) to require publication and posting of actions supported by exceptions to fair opportunity at FAR 16.505(b)(2) for non-FSS task- and delivery-order contracts and limited-sources justifications at FAR 8.405-6 for FSS contracts, except when disclosure would compromise national security or create other security risks;
- Clarifies that ordering activities may seek a price reduction under FSS contracts at any time and that they shall seek a price reduction when placing an order or establishing a BPA that exceeds the SAT (see FAR 8.405-4); and

- Adds language explaining that the protest procedures found at FAR subpart 33.1 are applicable to the issuance of an order or the establishment of a BPA against an FSS contract.

When is Interim Rule FAR 2007-012, Requirements for Acquisitions Pursuant to Multiple-Award Contracts, published in Federal Acquisition Circular 2005-50 applicable and effective?

Interim rule FAR 2007-012 is applicable and effective as follows:

- The changes apply to solicitations issued and contracts awarded on or after May 16, 2011 (see FAR 1.108(d)(1)).
- The changes also apply to orders issued on or after the effective date of this regulation, without regard to whether the underlying contracts were awarded before May 16, 2011.
- The changes apply to Blanket Purchase Agreements (BPAs) established under FSS contracts on or after May 16, 2011.
- The ordering procedures for BPAs in FAR 8.405–3(c) are mandatory for BPAs established under FSS contracts on or after May 16, 2011 and discretionary for BPAs established under FSS contracts prior to the effective date.

Are FSS orders in excess of \$500,000 considered interagency acquisitions?

Yes. FAR Subpart 17.5 – Interagency Acquisitions provides the policies and procedures applicable to all interagency acquisitions to include FSS orders in excess of \$500,000. As part of the acquisition planning for an FSS order, the procedures at FAR subpart 17.5 must be complied with and documented accordingly. In addition to the FAR, follow the guidance in Acquisition Letter 2011-03 – Interagency Acquisitions.

When ordering supplies, and services that do not require a statement of work, what are the 3 categories of purchase?

Based on FAC 2005-50, FAR 8.405-1 retains three categories of purchases but no longer employs the maximum-order threshold limitation as a point of reference to define the boundaries of the categories. Instead, the second and third categories are bounded by the simplified acquisition threshold (SAT). With respect to the competition requirements, existing requirements are retained in some instances and changed in others, as follows:

- *Orders at or below the micro-purchase threshold.* Because the competition standards under section 863 begin at the SAT, there are no changes needed to the procedures for orders at or below the micro-purchase threshold, *i.e.*, orders may be placed with any FSS contractor that can meet the agency's needs.

- *Orders exceeding the micro-purchase threshold but not exceeding the SAT.* In this category, an ordering activity may place an order with the FSS contractor that represents the best value after surveying at least three FSS contractors through GSA Advantage! by reviewing the catalogs or price lists of at least three FSS contractors, or by requesting quotations from at least three schedule contractors.
- *Orders exceeding the SAT.* The competition requirements in this category conform to the section 863 competition standards. The ordering activity must provide the RFQ to as many FSS contractors as practicable, consistent with market research appropriate to the circumstances, **to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirement and further ensure that all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ.**

When ordering services that require a statement of work, what are the 3 categories of purchase?

Based on FAC 2005-50, FAR 8.405-2 retains three categories of purchases but no longer employs the maximum-order threshold limitation as a point of reference to define the boundaries of the categories. Instead, the second and third categories are bounded by the simplified acquisition threshold (SAT). With respect to the competition requirements, existing requirements are retained in some instances and changed in others, as follows:

- *Orders at or below the micro-purchase threshold.* There are no changes needed to the procedures for orders at or below the micro-purchase threshold, *i.e.*, orders may be placed with any FSS contractor that can meet the agency's needs.
- *Orders exceeding the micro-purchase threshold but not exceeding the SAT.* In this category, an ordering activity must provide the request for quotation (RFQ), including the statement of work (SOW) and evaluation criteria) to at least three FSS contractors that offer services that will meet the agency's needs. Otherwise, it is necessary to document the circumstances for restricting consideration of fewer than 3 schedule contractors.
- *Orders exceeding the SAT.* The ordering activity must provide the RFQ to include the SOW and evaluation criteria (e.g., experience and past performance) to FSS contractors that offer services that will meet the agency's needs or posting the RFQ on e-Buy.

Must an agency conduct acquisition planning and market research before using a FSS contract (schedule contract)?

The agency should perform acquisition planning and conduct market research as is appropriate to the circumstances. As a general rule, obtaining information from the FSS Program and schedule contractors themselves may be sufficient to satisfy the agency's obligations to perform acquisition planning and to conduct market research. However, be sure you select the most appropriate schedule for your program's requirement. For instance, don't use the consolidated schedule if professional engineering services are required.

Ordering activities may consider socioeconomic status when identifying contractors for consideration or competition for award of an order or a 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, woman-owned small business, or small disadvantaged business schedule contractor.

Can you obtain additional price reductions (discounts) from the established FSS pricing when acquiring supplies and/or services?

Yes. Always attempt to obtain additional price reductions.² When the order or BPA exceeds the SAT, you shall seek price reductions from the schedule contractors.³

When acquiring services via the issuance of a RFQ, rather than requesting one discount rate for all labor categories, you should request the schedule contractors to propose discounts by individual labor category. This will allow schedule contractors the opportunity to propose varying discounts across the different labor categories. Frequently, you can obtain larger price discounts on the higher priced labor categories.

When teaming arrangements are proposed, each schedule contractor should be required to propose their individual labor category rates and individual discount rates. Quotes that offer an average discount rate for all team members may not result in the greatest savings for the Government. Additionally, FSS contracts require team members to propose only their own rates and, therefore, may discount only their own prices.

When an order exceeds the SAT, what are the additional documentation requirements?

When an order exceeds the SAT, the documentation must show the evidence of compliance with the applicable ordering procedures.⁴ For example, there should be documentation to show whether at least three quotes were received. If fewer than three quotes were received, and e-Buy was not used, then the contracting officer must clearly explain, in the file documentation, the efforts made to obtain quotes from at least three FSS contractors that can fulfill the requirement.

Can e-Buy be used to satisfy the fair notice requirement?

Yes. E-Buy is one of the mediums available to provide fair notice. Posting the RFQ on e-Buy allows all FSS holders with the referenced FSS Special Item Number (SIN) to view the posting, thus satisfying the requirements for fair notice when placing an order or establishing a BPA under FAR subpart 8.4.⁵

² FAR 8.404(d) and 8.405-4

³ FAR 8.405-4

⁴ FAR 8.405-1(g)(4) or FAR 8.405-2(e)(8)

⁵ FAR 8.402(d)(1)

How do you ensure that fair notice is provided to all schedule contractors?

A contracting officer can ensure that fair notice is provided to all schedule contractors offering the required supplies and/or services and still keep the process simple and streamlined by following these guidelines:

- Ensure that requiring program customers fully understand the concept of fair notice and their role in ensuring that it is achieved for each order (supply or service).
- Use e-Buy to provide fair notice.
- Avoid using ordering practices that preclude fair notice - such as the *allocation of orders among schedule contractors*, and the *direction of orders to preferred schedule contractors*. These practices are prohibited and result in less than fair consideration.
- Document the file for each order to evidence that your ordering practices adhere to the ordering procedures set forth at FAR subpart 8.4.
- Maximize the use of firm-fixed-price orders.
- Keep in mind that the placement of an order may be protested in accordance with the procedures under subpart 33.1⁶

Do you need to get representations and certifications from FSS contractors?

No. Schedule contractor representations and certifications have already been received and reviewed by GSA during the competitive process prior to awarding FSS contracts. However, agency-specific representations and certifications may need to be obtained for agency-specific requirements such as Facility Clearance/Foreign Ownership, Control or Influence over Contractors, and Organizational Conflicts of Interest.

Procuring Services**What services are available through the FSS?**

The FSS offers many categories of services. Some of the services available are --

- Engineering services - including planning, design, integration and testing;
- Financial services - including auditing, management and reporting;
- Environmental advisory services - including planning, compliance, and waste management;
- Energy management services;
- Management and organizational improvement services;
- Document and records management services;

⁶ FAR 8.404(e)

- Personal property management services;
- Information technology services;
- Travel and transportation services;
- Marketing, media, and public information services;
- Laboratory, scientific and medical services and products;
- Language services; and
- Vehicle acquisition and leasing services.

How do you place orders for services under the FSS and document the order?

The ordering procedure that you use depends on whether or not the type of services requires a statement of work (SOW) and the dollar value of the order. All services ordered shall be within the scope of the GSA schedule contract.

- ❖ Procedures for services that **do not** require a SOW⁷ (e.g., services that are priced on a firm-fixed-price basis for a specific task, such as installation, maintenance, repair, transcription services, printing and binding services) -
 - For services at or below the micro-purchase threshold of \$3,000, you can place orders directly with any schedule contractor that best meets your needs. Attempt to distribute the orders among the schedule contractors.
 - For services over the micro-purchase threshold, but not exceeding the SAT, you need to:
 - Consider reasonably available information about the service offered under the schedule contracts by:
 - Surveying at least three schedule contractors through the GSA Advantage![®] online shopping service;
 - Reviewing the catalogs or pricelists of at least three schedule contractors; or
 - Requesting quotations from at least three schedule contractors to include small business.
 - When an order contains brand-name specifications, the ordering activity shall post the RFQ on e-Buy along with the justification or documentation required by FAR 8.405-6;
 - Seek additional price reductions, where appropriate;
 - Evaluate the order to conclude that the order represents the best value and results in the lowest overall costs alternative (considering price, special features, past performance, trade-in considerations, administrative costs, etc.) to meet the

⁷ FAR 8.405-1

Government's needs; and

- Place the order directly with the schedule contractor.
- For a service order exceeding the SAT or when establishing a BPA, follow the same procedures for orders exceeding the micro-purchase threshold, except:
 - Transmit the RFQ package, which includes a description of the services to be performed and the basis upon which the selection will be made:
 - By posting RFQ on e-Buy to afford all schedule contractors offering the required services under the appropriate schedule an opportunity to submit a response; **OR**
 - By providing the RFQ to as many schedule contractors as practicable that offer services that will meet the needs of the ordering activity consistent with the market research appropriate to the circumstances; (If less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes.);
 - When an order contains brand-name specification post the RFQ on e-Buy along with justification or required documentation;
 - Ensure all responses received are fairly considered;
 - Evaluate responses using the selection basis described in the RFQ to conclude that the order represents the best value and results in the lowest overall costs alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs;
 - Seek price reductions before placing the order; and
 - Place the order with the schedule contractor that represents the best value. The GSA schedule contract number shall be cited on each order.

Documentation -- At a minimum, the ordering activity shall document the schedule contracts considered; identify the successful contractor; include a description of the service purchased; the price; if applicable, if less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes; and if applicable, the circumstances and rationale for limiting sources of schedule contractors to fewer than three based on one of the reasons at FAR 8.405-6; and the basis for the award decision. See limiting sources questions and responses for additional guidance.

❖ Procedures for services that require a SOW⁸ (e.g., professional services based on hourly rates) -

For professional services based on hourly rates, you must prepare a Request for Quotation (RFQ) that includes a *performance-based* description of the work you want performed.

- For services at or below the micro-purchase threshold of \$3,000, you can place orders directly with any schedule contractor that best meets your needs. The micro-purchase threshold for construction is \$2,000 subject to the Davis-Bacon Act and the threshold for services is \$2,500 subject to the Service Contract Act. See FAR 2.101 for the micro-purchase threshold definition for other exceptions. Attempt to distribute orders among the schedule contractors.
- For services over the micro-purchase threshold, but not exceeding the simplified acquisition threshold (SAT), you need to send a RFQ, including the SOW and evaluation criteria, to a minimum of three schedule contractors that offer services that will meet the agency's needs or document the circumstances for restricting consideration to fewer than 3 schedule contractors in accordance with FAR 8.405-6; the RFQ should specify the type of order (i.e., firm-fixed price, labor-hour) for the services and request that contractors submit firm-fixed prices; conduct an evaluation of responses using the evaluation criteria; and evaluate the order to conclude that the order represents the best value and results in the lowest overall costs alternative (considering price, special features, administrative costs, etc.) to meet the agency's needs.
- For a service order exceeding the SAT or when establishing a BPA, follow the same procedures for orders exceeding the micro-purchase threshold, except:
 - Transmit the RFQ package, which includes the SOW and evaluation criteria which should consider the level of effort and mix of labor proposed to perform a specific task being ordered:
 - By posting on e-Buy to afford all schedule contractors offering the required services an opportunity to submit a response; (Posting an RFQ on e-Buy satisfies the requirement to provide fair notice.); **OR**
 - By providing the RFQ to as many schedule contractors as practicable that offer services that will meet the needs of the ordering activity consistent with the market research appropriate to the circumstances; (If less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes.);
 - Ensure all responses received are fairly considered;
 - Evaluate responses using the evaluation criteria to conclude that the order represents

⁸ FAR 8.405-2

the best value and results in the lowest overall costs alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs;

- Seek price reductions before placing the order; and
- Place the order with the schedule contractor that represents the best value. The GSA schedule contract number shall be cited on each order.

For services requiring a SOW, a firm-fixed price order shall be requested, unless the ordering activity makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. When such a determination is made, a labor-hour or time-and-materials quotation may be requested. The firm-fixed price of the order should also include any travel costs or other direct charges related to performance of the services ordered, unless the order provides for reimbursement of travel costs at the rates provided in the Federal Travel or Joint Travel Regulations. A ceiling price must be established for labor-hour and time-and-material orders.

You may use incentive or award fee arrangements only if the schedule's terms allow it and a fixed-price order is issued.

Documentation -- At a minimum, the ordering activity shall document the schedule contracts considered; identify the successful contractor; include a description of the service purchased; the price; the evaluation methodology used in selecting the successful contractor; the rationale for any tradeoffs in making the selection; the fair and reasonable price determination; if applicable, if less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes; if applicable, the circumstances and rationale for limiting sources of schedule contractors to fewer than three based on one of the reasons at FAR 8.405-6; and the rationale for using other than a firm-fixed price order or a performance-based order. See limiting sources questions and responses for additional guidance.

What is "Scope Creep?"

An order is issued for a specific pre-determined and authorized effort to be performed by the contractor. "*Scope creep*" refers to an undesired and unauthorized expansion of the scope of work under an order. For example, if the scope of work for an order were for environmental restoration work, expanding the work to include fossil energy support services would be considered scope creep, and not authorized.

What supports a best value determination for a service order not requiring a statement of work?

For orders to procure services not requiring a statement of work, a selection based on the best value means that you consider factors other than price in determining which schedule contractor receives the order. These other factors may include criteria such as past performance, special features of the service required for effective program performance, warranty, environmental and energy efficiency considerations, maintenance availability, technical qualifications, and

socioeconomic status.⁹ For more information on best value, see evaluation criteria and best value questions and responses.

Procuring Supplies

What supplies are available on the FSS?

The FSS offers many categories of products. Some of the products available are –

- Office supplies;
- Paper products;
- Furniture;
- Office equipment;
- Scientific equipment;
- Hardware, tools and appliances;
- Information technology products;
- Software;
- Copying equipment and supplies; and
- Telecommunications equipment.

How do you place orders for supplies under the FSS?

All supplies ordered shall be within the scope of the GSA schedule contract. In repetitive buys, you should attempt to vary the schedule contractor and price lists selected.

The ordering procedures that you use under the schedule depend on the dollar value of the supplies you are acquiring. The ordering procedures are as follows:¹⁰

- For a supply order at or below the micro-purchase threshold of \$3,000, you can place orders directly with any schedule contractor that best meets your needs. Attempt to distribute the orders among the schedule contractors.
- For supply orders over the micro-purchase threshold, but not exceeding the SAT, you need to:
 - Consider reasonably available information about the supply offered under the schedule contracts by:
 - Surveying at least three schedule contractors through the *GSA Advantage!*® online shopping service;
 - Reviewing the catalogs or pricelists of at least three schedule contractors; or

⁹ FAR 8.405-1(f)

¹⁰ FAR 8.405-1

- Requesting quotations from at least three schedule contractors to include small business.
 - When an order contains brand-name specifications, the ordering activity shall post the RFQ on e-Buy along with the justification or documentation required by FAR 8.405-6;
 - Seek additional price reductions, where appropriate;
 - Evaluate the order to conclude that the order represents the best value and results in the lowest overall costs alternative (considering price, special features, past performance, trade-in considerations, administrative costs, etc.) to meet the Government's needs; and
 - Place the order directly with the schedule contractor.
- For a supply order exceeding the SAT or when establishing a BPA, follow the same procedures for orders exceeding the micro-purchase threshold, except:
- Transmit the RFQ package with a description of the supplies to be delivered and basis upon which selection will be made:
 - By posting on e-Buy to afford all schedule contractors offering the required supply an opportunity to submit a response; (Posting an RFQ on e-Buy satisfies the requirement to provide fair notice.); **OR**
 - By providing the RFQ to as many schedule contractors as practicable that offer the supply that will meet the needs of the ordering activity consistent with the market research appropriate to the circumstances; (If less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes.);
 - Ensure all responses received are fairly considered;
 - Evaluate responses using the evaluation criteria to conclude that the order represents the best value and results in the lowest overall costs alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs;
 - Seek price reductions before placing the order; and
 - Place the order with the schedule contractor that represents the best value. The GSA schedule contract number shall be cited on each order.

Documentation -- At a minimum, the ordering activity shall document the schedule contracts considered; identify the successful contractor; include a description of the supply purchased; the price; if applicable, if less than three quotes are received, the contracting officer shall prepare a

written determination explaining the efforts made to obtain quotes; and if applicable, the circumstances and rationale for limiting sources of schedule contractors to fewer than three based on one of the reasons at FAR 8.405-6; and the basis for the award decision. See limiting sources questions and responses for additional guidance.

Are there special posting requirements when an order contains brand-name specifications?

Yes. When an order contains brand-name specifications, the ordering activity shall post the RFQ on e-Buy along with the justification or documentation required by FAR 8.405-6.

Do orders for supplies require a statement of work (SOW)?

No. SOWs are not required for the purchase of supplies.

What supports a best value determination for a supply order?

A selection based on the best value means that you consider factors other than price in determining which schedule contractor receives the order. These other factors may include criteria such as past performance, special features of the supply, probable life, warranty, environmental and energy efficiency considerations, maintenance availability, technical qualifications, delivery terms, and trade-in considerations.¹¹ For more information on best value, see evaluation criteria and best value questions and responses.

Blanket Purchase Agreements**Can you establish blanket purchase agreements (BPA) under the FSS?**

Yes. GSA encourages agencies to establish blanket purchase agreements (BPA) (multiple-award BPAs are preferred over single-award BPA) under FSS schedules when an agency needs a simplified method for filling anticipated repetitive needs for services or supplies.¹² BPAs are actually a type of an account established with schedule contractors to allow agencies to leverage their buying power. Based upon the potential volume of sales, schedule contractors may offer increased discounts over the prices identified in their FSS contracts. If you do pursue establishing a BPA, remember to:

- Give preference to establishing multiple-award BPAs, to the maximum extent practicable.¹³
- Have head of agency determination, or as delegated, for any single-award BPA with an estimated value exceeding \$103 million including any options.¹⁴ Plus need to comply with limited-source justification.

¹¹ FAR 8.405-1(f)

¹² FAR 8.405-3

¹³ FAR 8.405-3(a)(3)(i)

¹⁴ FAR 8.405-3(a)(3)(ii)

- Establish the BPA through competitive procedures for supplies and services with or without a statement of work.¹⁵
- Consider scope and complexity of requirements, benefits of on-going competition along with the need to periodically compare multiple technical approaches or prices, administrative costs and technical qualifications of the schedule contractors. Document the decision in the acquisition plan or the BPA file.¹⁶
- Address the frequency of ordering, invoicing, discounts, requirements, delivery locations and time.¹⁷
- For multiple-award BPAs, the agreement shall specify the procedures for placing orders.¹⁸
- 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.¹⁹
- At least once a year, the ordering activity shall review the BPA and document the results of the review. The review shall determine, among other factors, the following:²⁰
 - Is the schedule contract still in effect?
 - Does the BPA still represent the best value?
 - Have the estimated quantities or amounts been exceeded?
 - Can additional price reductions be obtained?
 - If a single-award BPA, the determination must be approved by the competition advocate prior to exercising the option to extend the term.

You can find a sample BPA on the GSA website <http://www.gsa.gov/portal/content/199353>.

Procedures for establishing BPA(s)

How do you plan and establish multiple-award BPAs and document the BPA file?

As you plan, establish, and compete multiple-award BPAs, you must consider and document the decision in the acquisition plan or BPA file for the following:

- Dollar value of the requirement(s);

¹⁵ FAR 8.405-3(b)

¹⁶ FAR 8.405-3(a)(3)(iv)

¹⁷ FAR 8.405-3(a)(4)

¹⁸ FAR 8.405-3(a)(5)

¹⁹ FAR 8.405-3(d)

²⁰ FAR 8.405-3(e)

- Scope and complexity of the requirement(s); all supplies or services within the scope of the GSA schedule contracts;
- Frequency of ordering, invoicing, discounts, requirements, delivery locations and time
- Benefits of on-going competition and the need to periodically compare multiple technical approaches or prices;
- Administrative cost of the BPAs;
- Technical qualifications of the schedule contractors;
- Whether the requirement is for supplies or services not requiring a statement of work (SOW) or for service requiring a SOW;
- Use the competitive procedures to establish the BPA;
- Specify the procedures for placing orders; and
- Basis for award decision – include evaluation methodology for selecting the contractor, the rationale for any tradeoffs, and price reasonableness determination for services requiring a SOW.

Documentation -- At a minimum, the BPA file shall document the following: schedule contracts considered; identify the successful contractor(s); include a description of the supply or service purchased; the price; if applicable, required justification for limited-source BPA, decision to establish multiple-award BPAs, evidence of compliance with competitive procedures to establish a BPA, and the basis for the award decision.²¹ See limiting sources questions and responses for additional guidance.

When establishing BPAs what should you consider when determining best value?

When determining best value for BPAs, you should consider the following:²²

- Price to include seeking price reductions;
- Past performance;
- Special features of the supply or service required for effective program performance;
- Trade-in considerations;
- Probable life of the item selected as compared with that of a comparable item;
- Warranty considerations;
- Maintenance availability;
- Environmental and energy efficiency considerations;
- Delivery terms; and
- Other factors.

What are the competitive procedures to establish multiple-award BPAs?

The competitive procedure that you use depends on the dollar value of the requirement, if the requirement is for supplies, or whether or not the type of services require a statement of work (SOW).

²¹ FAR 8.405-3(a)(7)

²² FAR 8.405-3(a)(2)

- ❖ *Procedures for supplies or services that **do not** require a SOW.*²³ It is for supplies and services that are listed in the schedule contract at a fixed price for performance of a specific task (e.g., services that are priced on a firm-fixed-price basis for a specific task, such as installation, maintenance, repair, transcription services, printing and binding services).
- Estimated value of the BPA does not exceed the SAT, you need to:
- Consider reasonably available information about the supply or service offered under the schedule contracts by:
 - Surveying at least three schedule contractors through the GSA Advantage!® online shopping service;
 - Reviewing the catalogs or pricelists of at least three schedule contractors; or
 - Requesting quotations from at least three schedule contractors to include small business; **OR**
 - When the requirement is limiting sources, document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons at FAR 8.405-6(a).
 - When the requirement contains brand-name specifications, post the RFQ on e-Buy along with the justification or documentation required by FAR 8.405-6;
 - Establish the BPAs with the schedule contractors that can provide the best value.
 - Seek additional price reductions, where appropriate.
- For requirements exceeding the SAT, you need to:
- Provide the RFQ package that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made, as follows:
 - By posting on e-Buy to provide afford all schedule contractors offering the required supplies or services under the appropriate schedules an opportunity to submit a response; **OR**
 - By providing the RFQ to as many schedule contractors as practicable that offer supplies or services that will meet the needs of the ordering activity consistent with the market research appropriate to the circumstances; (If less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes.); **OR**

²³ FAR 8.405-3(b)

- If any of the above requirements to post or provide the RFQ are waived, the basis of the justification shall be prepared and approved in accordance with FAR 8.405-6;
 - Ensure all responses received are fairly considered;
 - After seeking price reductions, establish the BPAs with the schedule contractors that provide the best value. The GSA schedule contract number shall be cited on each BPA.
- ❖ *Procedures for services that require a SOW.*²⁴ These procedures apply when establishing a BPA that require services priced at hourly rates which are identified in the FSS publications and the contractor's pricelists. You must prepare a SOW to include, to the maximum extent practicable, a *performance-based* description of the work to be performed; specify the order type (i.e., firm-fixed price, labor-hour) for the services; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements. You must provide the RFQ package that includes the SOW 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 e-Buy.
- Estimated value of the BPA does not exceed the SAT, you need to:
- Provide the RFQ to at least three schedule contractors that offer services that will meet the agency's needs. If the RFQ is not provided to at least three schedule contracts, the requirement must be waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6;
 - Ensure all responses received are fairly considered;
 - Consider the level of effort and the mix of labor proposed to perform, and for determining that the proposed price is reasonable.
 - Ensure award is made on the basis for selection in the RFQ.
 - Establish the BPAs with the schedule contractors that provide the best value. The GSA schedule contract number shall be cited on each BPA.
- Estimated value of the BPA exceeds the SAT, you need to:
- Provide the RFQ package that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made, as follows:

²⁴ FAR 8.405-3(b)(2)

- By posting on e-Buy to provide afford all schedule contractors offering the required supplies or services under the appropriate schedules an opportunity to submit a response; **OR**
 - By providing the RFQ to as many schedule contractors as practicable that offer supplies or services that will meet the needs of the ordering activity consistent with the market research appropriate to the circumstances; (If less than three quotes are received, the contracting officer shall prepare a written determination explaining the efforts made to obtain quotes.); **OR**
 - If any of the above requirements to post or provide the RFQ are waived, the basis of the justification shall be prepared and approved in accordance with FAR 8.405-6;
- Ensure all responses received are fairly considered;
 - Consider the level of effort and the mix of labor proposed to perform, and for determining that the proposed price is reasonable.
 - Ensure award is made on the basis for selection in the RFQ. The GSA schedule contract number shall be cited on each BPA.

What are the requirements to justify a decision to establish a single-award BPA?

The preference is to establish multiple-award BPAs. The ordering activity should consider the factors at FAR 8.405-3(a)(3)(iv) and document the decision in the acquisition plan or BPA file to support a multiple-award BPAs or a single-award BPA. When it has been determined that a single-award BPA is required to fulfill the agency's needs, the ordering activity must:

- For single-award BPAs with an estimated value exceeding the micro-purchase threshold but not exceeding \$103 million including options, prepare the limited sources justification which addresses:
 - One of the following circumstances that justify the action –
 - An urgent and compelling need exists, and following the procedures at FAR 8.405-3 would result in unacceptable delays;
 - Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or
 - In the interest of economy and efficiency, the new work is a logical follow-on to an original FSS BPA provided that the original BPA was placed in accordance with the applicable FAR 8.405-3 and FSS ordering procedures. The original BPA

must not have been previously issued under sole-source or limited-sources procedures.

- For single-award BPAs with an estimated value exceeding \$103 million including any options, in addition, to the limited sources justification described above, the requirement for a head of agency written determination is required.²⁵ The head of agency determination addresses:
 - The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work;
 - The BPA provides only for firm-fixed priced orders for—
 - Products with unit prices established in the BPA; or
 - Services with prices established in the BPA for specific tasks to be performed;
 - Only one source is qualified and capable of performing the work at a reasonable price to the Government; or
 - It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.

See limiting sources questions and responses for additional guidance.

Ordering from BPAs

When do the ordering procedures for multiple-award BPAs described in this guide chapter apply?

The BPA ordering procedures applies to BPAs established on or after May 16, 2011. Before this date, ordering activities are encouraged to use the procedures for multiple-award BPAs.

What are the ordering procedures for a single-award BPA under FSS?

If the ordering activity establishes a single-award BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

What are the ordering procedures for multiple-award BPAs for supplies or services, that do not require an hourly-rate?

The ordering procedure that you use depends on what you are ordering and the dollar value of the order. All orders shall be within the scope of the GSA schedule contract.

- For orders for supplies or services, that do not require an hourly-rate, at or below the micro-purchase threshold of \$3,000, you can place orders directly with any schedule

²⁵ FAR 8.405-3(a)(3)(ii)

contractor that best meets your needs. Attempt to distribute the orders among the schedule contractors.

- For orders for supplies or services, that do not require an hourly-rate, over the micro-purchase threshold, but not exceeding the SAT:
 - You need to provide each multiple-award BPA holder a fair opportunity to be considered for each order, unless an exception at FAR 8.405-6(a)(1)(i) applies and is documented.
 - You do not need to contact each of the multiple-award BPA holder before placing an order if information is available to ensure that each holder is provided a fair opportunity to be considered for each order.
 - When restricting consideration to less than all multiple-award BPA holders offering the required supplies and services, you need to document the circumstances.
- For orders for supplies or services, that do not require an hourly-rate, exceeding the SAT:
 - Follow the order procedures for orders that are over the micro-purchase threshold, unless the requirement is waived on the basis of a limiting sources justification that is prepared and approved in accordance with FAR 8.405-6. See limiting sources questions and responses for additional guidance.
 - For limiting sources requirements, you need to:
 - Prepare and approve the limiting sources justification in accordance with 8.405-6.
 - Provide an RFQ to all BPA holders offering the required supplies or services under the multiple-award BPAs, to include a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made;
 - Afford all BPA holders responding to the RFQ an opportunity to submit a quote; and
 - Fairly consider all responses received and make award in accordance with the selection procedures.
 - Document evidence of compliance with these procedures and the basis for the award decision.

What are the ordering procedures for single-award or multiple-award BPAs for hourly-rate?

If the BPA is for hourly-rate services, the ordering activity shall develop a statement of work for each order covered by the BPA. Ordering activities should place these orders on a firm-fixed price basis to the maximum extent practicable. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

For orders requiring hourly-rate services under a multiple-award BPAs, apply the same dollar thresholds to seek competition or to limit sources.

What are the documentation requirements for limiting sources when ordering against a BPA?

See the limiting sources section for documentation requirements for orders.

Limiting Sources**What is a limited-source order or a limited-source blanket purchase agreement (BPA)?**

A limited-source order or limited-source BPA occurs when an ordering activity is restricting consideration of schedule contractors to fewer than required under the applicable ordering procedures, applicable BPA establishment procedures, or restricting the order or BPA to an item peculiar to one manufacturer, including brand-name items, regardless if the item is available from one or more schedule contracts. The ordering activity must justify in writing and approve this type of order or BPA. When an order or BPA contains brand-name specifications, there are posting requirements along with the RFQ to e-Buy. The documentation requirement depends on whether the order or BPA exceeds the micro-purchase threshold or whether it exceeds the simplified acquisition threshold. See FAR 8.405-6 for preparing the limited-sources justification and approval documentation and the posting requirements. See questions and responses below for more information on this topic and approval thresholds for limited-sources justification.

Can you award an order (to include BPA orders) or establish a BPA exceeding the micro-purchase threshold based on a sole source or limiting sources under the FSS Program?

Yes. Orders placed or BPAs established under FSS are exempt from the requirements in FAR Part 6. However, when the proposed order or BPA is neither placed nor established in accordance with FAR 8.405-1, 8.405-2, or 8.405-3; the ordering activity must prepare a limited-sources justification to justify its action when restricting consideration of schedule contractors to fewer than the number required or to a brand-name specification (item peculiar to one manufacturer). Depending whether the order or BPA is limited-sources and/or item peculiar to one manufacturer and the dollar amount, FAR 8.405-6 describes the required level of documentation. There are two separate posting requirements for the justifications (1) to support items peculiar to one manufacturer, and (2) when restricting consideration of schedule contractors. These posting requirements are discussed in two questions and responses later in this section.

- For proposed orders or BPAs based upon circumstances justifying limiting the source and exceeding the micro-purchase threshold, the ordering activity prepares the limited-sources justification which addresses one of the following circumstances that justify the action –
 - An urgent and compelling need exists, and following the procedures at FAR 8.405-3 would result in unacceptable delays;
 - Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or
 - In the interest of economy and efficiency, the new work is a logical follow-on to an original FSS BPA provided that the original BPA was placed in accordance with the applicable FAR 8.405-3 and FSS ordering procedures. The original BPA must not have been previously issued under sole-source or limited-sources procedures.
- Item(s) peculiar to one manufacturer.²⁶ Although the products/services that are available under the FSS program are considered commercial, you must ensure that the Government's requirements are not unduly restrictive and that the minimum salient characteristics of the products/services being acquired are necessary and justified. 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.
 - For proposed orders or BPAs based upon item(s) peculiar to one manufacturer circumstances justify limiting the source and exceeding the micro-purchase threshold but not the exceeding the simplified acquisition threshold, the ordering activity prepares the limited-sources justification to address the basis for restricting consideration to an item peculiar to one manufacturer.
 - For proposed orders or BPAs based upon item(s) peculiar to one manufacturer circumstances justify limiting the source and exceeding the simplified acquisition threshold, the ordering activity prepares the limited-sources justification to address the basis for restricting consideration to an item peculiar to one manufacturer with one of the following circumstances that justify the action –
 - An urgent and compelling need exists, and following the procedures at FAR 8.405-3 would result in unacceptable delays;
 - Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or

²⁶ FAR 8.405-6(b)

- In the interest of economy and efficiency, the new work is a logical follow-on to an original FSS BPA provided that the original BPA was placed in accordance with the applicable FAR 8.405-3 and FSS ordering procedures. The original BPA must not have been previously issued under sole-source or limited-sources procedures.

What is the documentation requirement for a limiting sources justification for an order (to include BPA orders) or to establish a BPA exceeding the simplified acquisition threshold based on a sole source or limiting sources under the FSS Program?

In addition to the above response for proposed orders or BPAs over the micro-purchase threshold and exceeding the simplified acquisition threshold, at a minimum, the limited-sources justification must:²⁷

- Cite that the acquisition is conducted under the authority of the Multiple-Award Schedule Program;
- Identify the agency and the contracting activity, and specific identification of the document as a Limited-Sources Justification;
- State the nature and/or description of the action to include the supplies or services required to meet the agency's needs including the estimated value being approved;
- State the authority and supporting rationale to justify when restricting consideration of schedule contractors to fewer than the number required or to a brand-name specification (item peculiar to one manufacturer) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service;
- Determine that the order or BPA represents the best value consistent with FAR 8.404(d);
- Describe the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted;
- Present any other facts supporting the justification;
- State what action(s), 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;
- Certify that the justification is accurate and complete to the best of the contracting officer's knowledge and belief; and
- Provide 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

²⁷ FAR 8.405-6(c)

justification have been certified as complete and accurate by the technical or requirements personnel.

For justifications under 8.405–6(a)(1), based on limiting the source, a written determination by the approving official identifying the circumstance that applies must be in writing and approved in accordance with FAR 8.405-6(d). The approval levels are based on the following dollar thresholds²⁸:

- If the action is less than \$650,000, the Contracting Officer;
- Between \$650,000 but less than \$12,500,000, the Contracting Activity Competition Advocate;
- If the action is \$12,500,000 or greater but not exceeding \$50,000,000, the Head of the Contracting Activity (HCA), in accordance with the HCA's Delegation of Authority/Designation memorandum; and
- If the action is \$50,000,000 or greater, the Senior Procurement Executive.

What are the posting requirements for items peculiar to one manufacturer?

For items peculiar to one manufacturer justification, the ordering activity shall post the following information along with the RFQ to e-Buy (<http://www.ebuy.gsa.gov>):

- For proposed orders or BPAs with an estimated value exceeding \$25,000, but not exceeding the simplified acquisition threshold, the documentation that addresses the basis for restricting consideration to an item peculiar to one manufacturer.
- For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold, the limited-sources justification required at FAR 8.405-6(c) which is summarized in the above response on limiting sources justification documentation requirement.

There are circumstances when the posting requirement does not apply when:

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

²⁸Acquisition Guide Chapter 6.1 and HCA's Delegation of Authority/Designation memorandum

What are the posting requirements for limited-sources justifications, other than items peculiar to one manufacturer?

For limited-sources orders or BPAs exceeding the simplified acquisition threshold, there is a posting requirement for a minimum of 30 days at the GPE <http://www.fedbizopps.gov>; and on the Web site of the ordering activity agency, which may provide access to the justification by linking to the GPE. The DOE link to www.fedbizopps.gov is at http://management.energy.gov/business_DOE.htm.

Depending on the circumstances for limited-sources justifications, there are two posting timeline. These two timelines are as follows:

- To support circumstances described at FAR 8.405-6(a)(1)(i)(B) or (C) for either only one source is capable of providing the required supplies or services, or new work is a logical follow-on to an original FSS order, respectively, the ordering activity shall post the justification within 14 days after placing an order or establishing a BPA in accordance with FAR 5.301.
- To support circumstances described at FAR 8.405-6(a)(1)(i)(A) an urgent and compelling need exists and would result in unacceptable delay, the ordering activity shall post the justification within 30 days after placing an order or establishing a BPA in accordance with FAR 5.301.

In order to post a limited-source justification on the www.fedbizopps.gov website, this website has a notice type called "Justification & Approval (J&A)" at the Opportunities section. Within DOE only the designated contracting activity personnel are allowed to post to the www.fedbizopps.gov website the standalone limited-source justification. Note: The designated DOE personnel are not allowed to delete/modify a posted limited-source justification. The Office of Management Systems, MA-623, should be contacted for assistance.

The HCA shall ensure that each limited-sources justification document is redacted, as appropriate, and posted to the website at www.fedbizopps.gov. The contracting officer shall carefully screen a limited-sources justification for all contractor proprietary and other sensitive data and remove it if such data exists, including such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Also, the contracting officer shall be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in FAR 24.202 in determining whether other data should be removed. Before posting the justification, the contracting officer shall coordinate the redacted justification as needed with the local Counsel's Office and the local FOIA officer.

The posting requirement does not apply when 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.

Other Procedures, Issues and Concerns

Special ordering procedures, representations and certifications, FAR Part 15, and open market requirements

Are there any other special ordering procedures?

Yes. FAR 8.402 contemplates that GSA may occasionally find it necessary to establish special ordering procedures for individual schedules, or, for some Special Item Numbers (SINs) within a schedule. You can find these special ordering procedures in the individual affected schedules.

One example of a schedule that contains unique ordering procedures is Schedule #70 for General Purpose Commercial Information Technology Equipment, Software, and Services. When procuring information technology services under SIN 132-51 for Information Technology Services, for instance, you are allowed to reserve the order for award to only small business concerns.

As previously addressed, GSA has also established special order procedures for service that require a statement of work. These special ordering procedures are found at FAR 8.405-2. A contracting officer placing an order on another agency's behalf is responsible for applying that agency's regulatory and statutory requirements and the requiring activity is required to provide information on the applicable regulatory and statutory requirements to the contracting officer.

Are teaming partners all required to be FSS contractors (schedule contractors)?

Yes. To ensure that an agency receives the streamlining advantages of a FSS Contractor Team Arrangements, all team partners must be schedule contractors. For more information on Contractor Team Arrangements, go to the GSA website www.gsa.gov/contractorteamarrangements.

Do FAR Part 15 requirements apply to FSS orders?

No. But the Government Accountability Office (GAO) has stated that where an agency conducts a competition under the FSS Program, GAO will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation (i.e., the RFQ). When GAO does review an agency's actions, it tends to look at the agency's use of competitive procedures, and whether the agency's evaluation and award process is consistent with the RFQ.

The simple rule is - you should not use the formal FAR Part 15 competitive negotiated process, or anything similar to it, when buying under the FSS program.

If you do adopt FAR Part 15 procedures when placing an FSS order, GAO will likely consider any protest actions under the FAR Part 15 requirements, as well as its own previous decisions on competitive negotiated acquisitions.

Open market actions**Can you buy supplies or services that are not identified on a particular schedule?**

Yes, but only with certain restrictions. According to FAR 8.402(f), you may add items that are not included on the schedule contract, called *open market items*, to a FSS BPA or an individual order only if --

- All applicable FAR regulations pertaining to the purchase of the items that are not on the schedule have been followed, including publicizing (FAR Part 5), competition (FAR Part 6), commercial items (FAR Part 12), contracting methods (FAR Parts 13, 14, and 15), and small business programs (FAR Part 19);
- The contracting officer has determined the price for the items that are not on the FSS is fair and reasonable;
- The items are clearly labeled on the order as items that are not on the FSS; and
- All clauses that are applicable to the items that are not on the FSS are included in the order.

Must agencies consider alternative offers from schedule contractors that do not have an FSS contract (schedule contract) for a specific RFQ?

No. The GAO has repeatedly found that, when an agency intends to acquire products or services under the FSS Program, that agency is not required to consider products or services that are offered by contractors that are not available under a schedule contract.

Do you need to “equalize” information gathering, or be concerned with equal treatment of schedule contractors being considered for FSS orders (schedule orders)?

No. While all potential offerors should certainly be treated fairly, the GAO has found that agencies may properly place an order under the FSS Program without meeting any of the statutory and regulatory requirements associated with conducting a negotiated, competitive procurement. So, you need not engage in “equal exchanges” with schedule contractors, nor must you equalize the information gathering process among schedule contractors.

You may have further “exchanges” with offerors prior to award of a schedule order to solicit clarifying information from one or more schedule contractors. You can also solicit such information from only one schedule contractor without affording another schedule contractor a similar opportunity if there is no basis to do so.

You should, however, be careful to ensure that such further exchanges do not enter the realm of holding “discussions,” as that term is used in FAR 15.306(d). Such exchanges should not be undertaken with the intent of allowing offerors to revise their proposals (e.g. do not advise

contractors of weaknesses in their technical proposal or enter into negotiations that would result in revisions of its proposals, permitting an offeror to improve its standing in the evaluation).

Further exchanges with schedule contractors should be conducted for the purposes of permitting schedule contractors an opportunity to clarify any ambiguities or inconsistencies found in one or more parts of its response to the RFQ, so that the agency can make a clear and objective evaluation.

Small Business

Can an agency count awards under the FSS to small business concerns toward agency socioeconomic goals?

Yes. Awards to schedule contractors which fall into the various socioeconomic groups may be reported against an agency's annual socioeconomic accomplishments. However, 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.

How can you maximize opportunities for small businesses under the FSS?

FAR Parts 8 and 38 prescribe that small businesses holding contracts under the FSS program are to be afforded the maximum practicable opportunity to compete for and receive orders. This FAR guidance encourages contracting officers to consider the availability of small business concerns when planning for FSS acquisitions and placing FSS orders.

The DOE Acquisition Guide, Chapter 19, sets forth Departmental policy addressing small business programs and strategies for maximizing contracting opportunities for small business. FAR 8.405-5(b) states that 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. In addition, if no small businesses are identified for a proposed order against a schedule contract exceeding \$3 Million, then DOE Acquisition Guide Chapter 19, requires that the Small Business Review Form, DOE F 4220.2 (May 2006), shall be reviewed and concurred by DOE's Office of Small and Disadvantaged Business Utilization (OSDBU) under the Office of Economic Impact and Diversity. Despite the fact that orders against schedules are not subject to Federal Socio-Economic regulations, at DOE, the OSDBU review is Departmental policy.

The request for OSDBU review will include the following: requisition with the statement of work, the list of schedule contractors to be solicited, and a statement of the reason(s) that no small business has been identified. The contracting officer shall submit the request for review to the OSDBU allowing 10 business days for the review process. This requirement does not apply to the National Nuclear Security Administration.

When necessary, program and procurement personnel should coordinate with OSDBU and the Small Business Administration (SBA) representatives to identify responsible and qualified small businesses for their services and supplies requirements.

The SBA and GSA have teamed to further help small businesses participating in SBA's 8(a) Business Development program to become more competitive and more profitable. This partnership agreement, originally signed in June 2000, is a joint effort by both SBA and the GSA to increase participation of 8(a) firms in the FSS program, boost the number of contract dollars awarded to 8(a) firms, and allow Federal agencies to count the awards given to 8(a) firms toward their own 8(a) goals.

Orders placed under GSA's FSS to small businesses are counted as DOE accomplishments for its socioeconomic contract goals. Contracting officers should actively assist their program customers in identifying schedule contractors that will help meet the program's procurement requirements.

Is it appropriate to set-aside an order under the FSS for small businesses?

No, it is not necessary. FAR Part 19 does not apply to FSS orders, therefore set-aside requirements are not appropriate.

However, you may consider socio-economic status when identifying contractors for consideration or competition for award of an order or a BPA in the best value determination. See the GSA Small Business website at <http://www/gsa/gov/portal/content/202261> for details. This site also provides sample RFQ language. At a minimum, you 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 contractors.

Furthermore, 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.

When placing a FSS order, what should you consider to help support DOE's small business goals?

When the estimated value of the order exceeds the micro-purchase threshold consider the following to help support DOE's small business goals:

- Use an evaluation factor to consider socio-economic status for the order. See the GSA Small Business website at <http://www/gsa/gov/portal/content/202261> for details. This site also provides sample RFQ language.
- Award all requirements to small businesses, unless the contracting officer determines there will be no acceptable offer from two or more small businesses, provided that the award will be considered fair and reasonable in terms of price, quality and delivery,

available from any schedule small business.

How can you ensure that an order placed with a small business prime is not a “pass-through” for large business subcontractors?

GSA is responsible for administering the FSS contracts (schedule contracts) to ensure that the majority of the work that is performed by a small business schedule contractor is accomplished over all of their orders, not just a single order.

Notwithstanding that neither GSA’s procedures nor a schedule contract require that an FSS small business contractor perform 51% of the work on individual orders to preclude a pass through of funds from small business contractors to large business contractors, you may include a requirement that the small business prime contractor make its best effort to accomplish the majority of the work on individual orders. A valuable tool would be the use of an evaluation criterion defining the amount of small business participation that the schedule contractor must commit to.

A model clause you may use to accomplish this is:

Principal Performance of the Effort

To ensure technical efficiency and accountability in the performance of this order, at least fifty-one percent of the total price paid under this order (excluding the amount paid for other direct costs) shall be paid for work performed by the employees of the prime contractor.

[Note: In lieu of specifying a minimum percentage, you may wish to adjectivally describe a minimal level of performance by the prime (e.g., ...a majority of the total price...).]

Evaluation criteria and best value selection

What evaluation criteria can you use when ordering services?

The following are sample evaluation criteria which may be used for ordering services off the FSS:

- *Understanding the requirement* - To what extent does the contractor’s technical approach demonstrate full understanding of the effort to be performed under the task?
- *Quality of performance/past performance* – To what extent did the contractor demonstrate compliance with prior contract requirements for similar work and scope, accuracy of reports, timely delivery, and technical excellence?
- *Cost performance* – To what extent did the contractor perform within or below cost on past similar requirements?

- *Schedule performance* – To what extent did the contractor meet milestones, was responsive to technical direction, and completed services on time and in accordance with established schedules?
- *Business relations* – To what extent is the contractor flexible, cooperative, proactive, and committed to customer satisfaction?

Should “Key Personnel” be evaluated when placing an order for services?

Yes, key personnel should be evaluated when certain personnel are considered critical to the success of the project; key personnel may be evaluated, for both the prime contractor and subcontractors/team members. Examples of efforts requiring the identification of key personnel may include: the Program Manager and the Quality Assurance Engineer developing the Environmental Impact Statements or the Senior Nuclear Engineer conducting and managing research studies.

How does a best value selection work for FSS orders to include BPAs for supplies or for services not requiring a statement of work?

A best value selection is a process used to select services or supplies (products) that best meet the buyer’s need. A best value selection trades off price and other evaluation factors such as past performance, understanding the requirement, technical qualifications, trade-in considerations, warranty, and environmental and energy efficient considerations, if applicable.²⁹ In a best value selection, low price does not necessarily assure selection.

When determining best value, in addition to price, the ordering activity may consider the factors in addition to schedule-specific ordering procedures and the following factors.

- Evaluation criteria should be kept to the minimum necessary to objectively evaluate a contractor’s ability to successfully fulfill the government’s stated requirements.
- Formal rating plans are not required, but in certain circumstances may be helpful to ensure consistency with the evaluation factors for award that are stated in the RFQ.
- Contractor quotations need not be point scored.

What is evaluated when ordering services requiring a statement of work (SOW)?

In addition to the best value selection considerations addressed in the above question, for service orders requiring a SOW in excess of the micro-purchase threshold, the contracting officer should document the evaluation of the schedule contractor’s pricing that formed the basis for the selection, and document the rationale for any trade-offs in making the selection.

When using a performance-based SOW, you should generally avoid dictating the number of

²⁹ FAR 8.405-1(f), FAR 8.405-3(a)(2)

labor hours and skill mix that the schedule contractor should propose. Rather, the schedule contractor should be permitted to propose the labor skill mix and the level of effort it considers necessary against the performance-based SOW.

While you may rely on GSA's determination that the fixed hourly rates on a schedule contract are fair and reasonable, GSA has not determined that the level of effort or mix of labor proposed in response to a specific requirement are adequate and appropriate, nor that they represent the best value.

Relying on the predetermined reasonableness of a schedule contractor's labor rates alone does not provide an adequate basis for determining which schedule contractor is the most competitive. Since the schedule contract does not reflect the full cost of the potential order, or critical aspects of the services offered, such as the level of effort and the skill mix of labor required to complete the work, the contracting officer is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being order and for determining that the total price for the proposed work on the instance order is reasonable.

What are other considerations for time and material (T&M) pricing of services requiring a statement of work?

With the growing use of service contracts under the General Services Administration's (GSA) FSS by government agencies, both the GAO and the Office of the Inspector General continuously identify risks in implementing commercial practices for contract pricing.

When ordering services requiring a SOW, GSA has determined that the fixed hourly rates on a T&M schedule contract are fair and reasonable. FAR 8.405-2(d) states that "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."

To ensure that the price evaluation complies with FAR 8.405-2(d), the contracting officer should consider if the proposed labor categories correspond with the work to be accomplished, including an assessment of the proposed hours as well as the proper experience levels and education.

To help with assessing the reasonableness of the total proposed amount, the contracting officer should consider answering the questions below:

- Are there other contractual vehicles providing similar supplies or services that may be used as a basis of comparison?
- Do the proposed labor skill levels correspond to the work required by the SOW?
- Are the labor rates reasonable given the skill level and the geographic location of the performance?

- Will the performance occur in a location other than the one in the contractor's office or plant?
- Is the proposed material quantity reasonable and consistent with the technical proposal?
- Are the proposed material costs reasonable and realistic?

What level of detail is required to document a best value selection under the FSS Program?

In addition to the minimum documentation required by FAR 8.405-1(f), 8.405-2(d), and 8.405-3(a)(2), you should document the files sufficiently to demonstrate that your evaluation of the schedule contractor's response to a RFQ was reasonable and in accordance with the criteria outlined in the RFQ. The extent of the documentation is largely dependent upon the size, scope and complexity of the acquisition. There is no requirement that you quantify a cost/technical tradeoff in dollars.

Agencies should use whatever evaluation approach, such as narrative or adjectival ratings, which are appropriate to the acquisition bearing in mind the intended streamlined nature of the FSS process.

Debriefing and protests

For services requiring a SOW under the FSS program as a competitive order, to include a BPA order, or the establishment of a multiple-award BPA, can an unsuccessful schedule contractor request a debriefing after award?

Yes. The statutory and regulatory requirements associated with competitive negotiated acquisitions in FAR Part 15, do not apply to orders placed against an FSS contract. However after award, the ordering activity 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. It may be in the Department's best interest to provide an unsuccessful FSS schedule contractor information about the evaluation of the schedule contractor's response to the RFQ (e.g., to provide the schedule contractor relevant information that may improve its competitive capabilities for future DOE requirements).

While not required, the contracting officer may elect to provide additional information to an unsuccessful schedule contractor. When electing to do so, the contracting officer should consider the following:

- The timing for conducting such interactions are at the convenience of the ordering activity, but should be conducted after the award of the BPAs.
- Such post-award interactions may be conducted in whatever format is considered appropriate by the contracting officer (i.e., in writing, face-to-face, or via telephone).

- The level of information conveyed is at the discretion of the contracting officer and should be limited to that necessary for the schedule contractor to understand why it wasn't selected for the order. As stated above, such interactions need not comply with the requirements set forth in FAR Part 15 pertaining to the debriefing of unsuccessful offerors. You should consult with your procurement attorney about your planned approach.

When the award was based on factors other than price alone, a best practice that has been successful on prior FSS acquisitions has been to communicate relevant information regarding the Government's evaluation of an unsuccessful schedule contractor's response to the RFQ, in writing, when providing notice to a schedule contractor that it was not the successful offeror. Information may include the following:

- Name and address of the successful schedule contractor(s).
- Estimated total award value.
- The basis for award to the successful schedule contractor(s) (e.g., lowest priced-technically acceptable offer).
- Although not required, if quotes are rated during the evaluation, include the unsuccessful offeror's rating.
- A summary of the unsuccessful schedule contractor's evaluated strengths and weaknesses.

Information that is provided should relate only to the successful schedule contractor(s) and the unsuccessful schedule contractor receiving the notice. That is, do not include technical ratings or evaluated prices for any other unsuccessful schedule contractor(s). However, you may elect to identify the relative ranking of the unsuccessful schedule contractor's evaluated technical rating and price (e.g., third highest technical score and highest evaluated price).

Can companies without a FSS contract protest an agency's decision to use the FSS Program ?

No. GAO has held that a protestor who does not have an FSS contract is not an interested party, and therefore, does not have standing to challenge an agency's determination to use the FSS program.

Can an incumbent contractor, previously awarded an order under the FSS program, protest its exclusion from a follow-on competition?

No. The ordering agency determines which schedule contracts are solicited. In a U.S. Court of Federal Claims decision (48 Fed. Cl. 638, filed February 14, 2001, Cybertech Group, Inc. v. the U.S. and Intellidyne), the court concluded that the Government was under no obligation to solicit an incumbent contractor. The court's decision states, in part, "*plaintiff has been unable to*

cite any regulation, statutory provision, or applicable precedent requiring an incumbent to be solicited on delivery orders from an FSS schedule contract.”

Contractor performance information

What happens if the FSS contractor (schedule contractor) doesn't perform adequately?

The FSS contract includes the same termination provisions that are prescribed in FAR Part 12. If a schedule contractor delivers a supply or performs a 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. If the schedule contractor fails to deliver or 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).

As an alternative to terminating an order, the contracting officer may elect to not exercise any remaining options under the order.

When the ordering activity contracting officer has terminated for cause an individual order to a FSS schedule contractor, or if fraud is suspected, the GSA Schedule contracting officer shall be notified of all instances by the ordering activity. See FAR 8.406-4.

Is a termination for cause for a FSS order reported into the Federal Awardee Performance and Integrity Information System (FAPIIS)?

Yes. In accordance with FAR 8.406-4 and Acquisition Guide Chapter 42.16, the contracting officer shall ensure that information related to termination for cause notices and any amendments are reported within 3 business days into FAPIIS. This includes reporting any subsequent notice of the conversion to a termination for convenience or withdrawal.

Is a contractor performance evaluation required for an FSS order?

Yes. For each order exceeding the simplified acquisition threshold, the ordering activity prepares an evaluation of the contractor's performance using the Contractor Performance Assessment Reporting System (CPARS). This evaluation does not include an assessment of the contractor's performance against the contractor's small business subcontracting plan. See FAR 8.406-7 and FAR 42.1502(c).