



Strategic Acquisition Transactions:

*A Guide for Using Federal Supply Schedules Contracts,
Multiple Award Contracts, and
Government-wide Agency Contracts*

November 2010

Introduction

The most important step in the acquisition process is selecting and developing the acquisition strategy. A primary goal in selecting an acquisition strategy is to minimize the time and cost of satisfying an identified need, consistent with common sense and sound business practices.

Over the past decade, the acquisition environment has experienced dramatic change as a result of legislative and regulatory reforms. These changes have led to the introduction of new and innovative acquisition methodologies that afford the acquisition community unprecedented flexibility in the manner in which supplies and services can be acquired. More specifically, the ever increasing universe of supplies and services that are available under the General Services Administration Schedules Program (otherwise known as the Federal Supply Schedules Program or the Multiple Award Schedules Program) and the new acquisition strategies for acquiring services via Multiple Award Contracts and Government-wide Acquisition Contracts, provide contracting professionals and their clients practical strategic alternatives to more costly and time-consuming traditional approaches.

In lieu of overly prescriptive rules and regulations, these new methodologies rely heavily on the exercise of sound business judgment and the principles that ensure the integrity and fairness of the Federal acquisition system. However, the lack of specific procedural requirements has led to some uncertainty within the acquisition community regarding the most effective means to exercise this new discretionary authority, as well as inconsistencies in the manner in which these new strategies have been employed from agency to agency, and even within agencies. In some cases, these uncertainties and inconsistencies have resulted in increased Congressional scrutiny, or have been resolved by judicial fora, such as the General Accounting Office and Boards of Contract Appeals.

Accordingly, this *Strategic Acquisition Transactions Guide* has been developed as a tool to assist acquisition professionals and their clients through the process of identifying, analyzing and choosing among the available alternatives. Moreover, the *Guide* highlights lessons learned and provides information on best practices that is intended to ensure a level of uniformity and consistency to eliminate or mitigate some of the “growing-pains” that have been encountered thus far in using these strategies (e.g., protests, poor quality supplies or services).

Consistent with the principles of continuous learning and improvement, this *Guide* is a “living” document. The *Guide* will be periodically updated to provide new information and guidance as issues arise, and to share additional best practices as they are identified. This version updates the *Guide* from April 2006.

Summary of the changes to update the Guide are as follow:For November 2010:

- ❖ Incorporated inflation adjustment of acquisition related thresholds per Federal Acquisition Regulation Case 2008-024 effective October 1, 2010 through Federal Acquisition Circular 2005-45.

For February 2010:

- ❖ Website references and addresses for the current procedures and information.
- ❖ Part I on Federal Supply Schedules reflect the current General Services Administration's website guidance.
- ❖ Terminology changed from "vendor" to "schedule contractor" throughout Part I to correlate with the termed used by General Services Administration.
- ❖ Incorporated applicable Federal Acquisition Regulation (FAR) changes through Federal Acquisition Circular 2005-38, e.g., limited sources, orders exceeding \$5 million, one item peculiar to a manufacturer, approval requirements for any single source contract award over \$ 103¹ million, fair opportunity changes, market research, ordering procedures, postaward notice, postaward debriefings, protesting orders over \$10 million to the Government Accountability Office, and contractor performance evaluations.
- ❖ Small business preference for orders and references to the DOE Acquisition Guide Chapter 19.
- ❖ Before each part, a table of questions with page numbers was added to help find specific questions easier.
- ❖ Added Part V, Abbreviations and Acronyms.

¹ Dollar threshold is subject to change, see FAR 16.504(c)(ii)(D)(1) for current threshold.

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Part I - Federal Supply Schedules Contracts

What is the Federal Supply Schedule (FSS) Program?

The Federal Supply Schedules Program is also known as the General Services Administration Schedules Program or the Multiple Award Schedules Program. General Services Administration (GSA) establishes long-term governmentwide contracts with commercial firms for commercial supplies or services. These schedules are available for use by any Federal agency requiring the identified supplies or services. There are specialized 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 and the Environmental Services and Products Schedule.

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, and offers Federal agencies a simplified process for getting their required products and services at volume buying prices.

For an overview and complete details about the GSA Schedules Program, go to the GSA website at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=8106.

Why should you use the FSS?

Advantages of using the GSA Schedules Program include --

- Significantly reduced acquisition time.
- When the GSA Schedule ordering procedures are followed, the GSA Schedules Program is considered to have complied with competition requirements.
- 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.
- Quick delivery.
- Schedule orders count toward small business goals.
- Access to state-of-the-art commercial technology and quality services and supplies.
- Compliance with environmental requirements for applicable services and supplies.
- Agencies can establish blanket purchase agreements (BPA) for recurring needs.

What is the maximum order threshold of a schedule?

Each schedule in the FSS has an identified *maximum order threshold*. The maximum order threshold is not meant to limit the amount of your purchase, but represents the level at which you could benefit from better pricing. This threshold is the point where you must seek additional price reductions from the schedule contractor. A schedule contractor can therefore accept any size order, reducing the need for you to conduct duplicative and repetitive procurements for items/services already under order. When asked about further reductions, the schedule contractor may offer you a lower price, offer you the current price, or decline your order.

The maximum order threshold is also the point at which you should solicit, as appropriate, more than three FSS schedule contractors for the required supplies or services. You may consider the complexity, scope, estimated value of the requirement and market search results to help determine the appropriate number of additional schedule contractors.

What is a best practice to consider when placing an order?

Regardless of the value of the order, as a best practice, you should:

- Always seek a price reduction from FSS schedule contractors; and
- Consider soliciting more than three schedule contractors to improve the competitive nature of the purchase.

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.

Procuring Services

What services are available through the FSS?

The FSS offer 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

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

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 require a SOW (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 maximum order threshold, you need to send a RFQ, including the SOW and evaluation criteria, to a minimum of three schedule contractors; the RFQ should 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 Government's needs.

For a service order over a specific schedule's maximum order threshold 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, to an appropriate number of additional schedule contractors that offer services that will meet the needs of the ordering activity; evaluate responses using the evaluation criteria; consider the level of effort and mix of labor proposed to perform a specific task being ordered; seek price reductions; 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 Government's needs. When determining the appropriate number of additional schedule contractors, the ordering activity may consider the complexity, scope, and estimated value of the requirement, and the market search results.

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, the circumstances and rationale for restricting consideration of schedule contractors to fewer than required in these ordering procedures; and the rationale for using other than a firm-fixed price order or a performance-based order. The GSA schedule contract number shall be cited on each ordering document.

Procedures for services that do not require a SOW (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 maximum order threshold, you need to survey at least three schedule contractors through the GSA *Advantage!*® online shopping service or review the catalogs or pricelists of at least three schedule contractors; 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, administrative costs, etc.) to meet the Government's needs; and place the order directly with the schedule contractor.

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

For a service order over a specific schedule's maximum order threshold or when establishing a BPA, follow the same procedures for orders exceeding the micro-purchase threshold, except review additional schedule contractors' pricelists (the GSA *Advantage!*® online shopping service may be used to facilitate this review), seek price reductions, 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 Government's needs. Place the order, or establish the BPA, with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

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, and if applicable, the circumstances and rationale for restricting consideration of schedule contractors to fewer than required in these ordering procedures. The GSA schedule contract number shall be cited on each ordering document.

You can also find this information and more at GSA's website http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA_OVERVIEW

Can you obtain discounts from the established FSS pricing when acquiring services?

As stated previously, you should always attempt to obtain price discounts, regardless of the value of the order. However, when exceeding the maximum order threshold identified in individual schedules, you must solicit price discounts from the schedule contractors.

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.

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
- 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 procedures are as follows:

For a supply order at or below the micro-purchase threshold of \$3,000, you can place orders directly with any schedule contractor that meets your needs. Attempt to distribute the orders among the schedule contractors.

For a supply order over the micro-purchase threshold, but not exceeding the maximum

order threshold, you need to survey at least three schedule contractors through the online shopping service *GSA Advantage!*® or review the catalogs or pricelists of at least three schedule contractors, and 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, administrative costs, etc.) to meet the Government's needs; and place the order directly with the schedule contractor.

A selection based on the best value means that you consider factors other than just the lowest price in determining which schedule contractor receives your order. These other factors may include criteria such as past performance, probable life, warranty, environmental and energy efficiency considerations, maintenance availability, technical qualifications, delivery terms, socioeconomic status and trade-in considerations. Best value considerations are discussed in more detail later in this part.

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

For a supply order over a specific schedule's maximum order threshold or when establishing a BPA, follow the same procedures for orders exceeding the micro-purchase threshold, except review additional schedule contractors' pricelists (the *GSA Advantage!*® online shopping service may be used to facilitate this review), seek price reductions, 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 Government's needs. Place the order, or establish the BPA, with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

Documentation -- At a minimum, the ordering activity shall document the schedule contracts considered, identify the successful contractor, include a description of the supplies purchased, the price, and if applicable, the circumstances and rationale for restricting consideration of schedule contractors to fewer than required in these ordering procedures. The GSA Schedule contract number shall be cited on each ordering document.

You can also find this information and more at GSA's website http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA_OVERVIEW

Do orders for supplies require a statement of work?

No. SOWs are not required to be developed for the purchase of supplies for FSS. Nor, is it required to develop a RFQ or evaluation factors.

What supports a best value determination for a supply order?

When issuing a supply order over the micro-purchase threshold but not exceeding the maximum order threshold, the contracting officer, to ensure a best value determination is made as required by FAR 8.404(d), shall --

Survey at least three Schedule contractors that are capable of delivering the required

items on time through the online shopping service *GSA Advantage!*® or review the catalogs or pricelists of at least three schedule contractors, and seek additional price reductions where appropriate;

Select the best value; and

Place the order directly with the schedule contractor.

Other Procedures, Issues and Concerns e.g., Blanket Purchase Agreements, Government Accountability Office, Small Business, Best Value, Debriefing, Contractor Performance Evaluation, etc.

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.

Can you establish blanket purchase agreements (BPA) under the FSS?

Yes. GSA does encourage agencies to establish blanket purchase agreements (BPA) (single or multiple) under FSS schedules when an agency needs a simplified method for filling anticipated repetitive needs for services or supplies. 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:

- Establish the BPA through the same ordering procedures for supplies and services with or without a statement of work.
- Address the frequency of ordering, invoicing, discounts, requirements, delivery locations and time.

- For multiple BPAs, the agreement shall specify the procedures for placing orders.
- For an order exceeding the micro-purchase threshold, forward the requirement, or statement of work, and the evaluation criteria to an appropriate number of BPA holders, as established in the ordering procedures.
- Evaluate the responses received, make a best value determination, and place the order with the BPA holder that represents the best value.
- 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.
- 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:
 - 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?

You can find a sample BPA on the GSA website

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8106&contentType=GSA_OVERVIEW.

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.

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.

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.

What is a limited sources order?

A limited sources order occurs when an ordering activity is restricting consideration of schedule contractors to fewer than required under the applicable ordering procedures or restricting the order 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. When an order contains brand name specifications, there are posting requirements along with the RFQ to e-Buy. See FAR 8.405-6 for preparing the limited sources justification and approval documentation and the posting requirements.

Can you award a sole source order or a limited sources order under the FSS Program?

Yes. Orders placed under Federal Supply Schedules are exempt from the requirements in FAR Part 6. However, an ordering activity must justify its action when restricting consideration of schedule contractors to fewer than the number required in 8.405-1 or 8.405-2 or to an item peculiar to one manufacturer. 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 supports this conclusion. The justification must be in writing and approved at the levels specified at FAR 8.405-6(h).

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. You may consider socio-economic status when identifying contractors for consideration or competition for award of an order or a BPA. At a minimum, you should consider, if available, at least one small business, veteran-owned small business, service disable 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.

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...).]

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.

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.*"

How does a best value selection work under the FSS Program?

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. 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 at FAR 8.405-1(c)(3) 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 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 is pricing evaluated when ordering services requiring a statement of work (SOW)?

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 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 the FAR 8.405, 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.

For a service order requiring a SOW which exceeds the maximum order threshold or when establishing a BPA, are the FSS contractors (schedule contractors) entitled to a debriefing at any time before or following the placement of a competitive order under the FSS Program?

As stated previously, 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 offer 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 an order.
- 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.

- Total award value for the order.
- The basis for award to the successful schedule contractor (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 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).

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 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 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 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 8.4.

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).

Part II - Multiple Award Contracts

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Part II - Multiple Award Contracts

What is a multiple award contract?

A multiple award contract is a type of indefinite-quantity contract which is awarded to several contractors from a single solicitation. Delivery of supplies, or performance of services, is then made via an individual task/delivery order placed with one of the contractors pursuant to procedures established in the contract. All contractors receiving awards under a solicitation are given a fair opportunity to be considered for each task/delivery order issued during the life of the contract.

FAR Subpart 16.5, Indefinite-Delivery Contracts, provides the regulatory procedures and guidance regarding the award and administration of an indefinite-delivery contract to include the preference for multiple award contracts.²

What are the benefits of using multiple award contracts?

Multiple award contracts offer many advantages that result in more efficient and effective buying of recurring supplies and services, including:

- Streamlining the awarding and ordering process.
- Ensuring fast delivery of the required supplies of quicker performance of required services.
- Allowing the Government to leverage its buying power to get best value, to receive high quality supplies and services, and to take advantage of latest technological changes in the marketplace.
- Streamlining the order closeout process.

How can I see if there are multi-agency Indefinite Delivery Vehicles (IDV) available for ordering?

The Interagency Contract Directory (ICD) is a central repository of Indefinite Delivery Vehicles (IDV) awarded by the Federal agencies where the IDV is available for use at both the intra agency and interagency levels. The website is www.contractdirectory.gov.

When should you use multiple award contracts?

The FAR requires you to make multiple awards of indefinite-quantity contracts for recurring supplies and services to the maximum extent practicable.³

For advisory and assistance services, you are required to make multiple awards if the amount of the services exceeds \$12,500,000, including all options, and the period of

² FAR 16.504(c)

³ FAR 16.504(b) and 16.504(c)(1)(i)

performance will exceed three years.⁴

Proper advance planning and market research will help you make appropriate decisions regarding when to use multiple awards, as well as when multiple awards are not appropriate. FAR 16.504(c) identifies several conditions when you should not use multiple award contracting methods. Some of the factors to be considered in making these decisions include:

- Complexity and scope of the requirement.
- Duration of the effort.
- Required resources.
- Ability to achieve and maintain the competitive nature of a multiple award contract among awardees throughout the period of performance.

Before pursuing multiple awards, ensure that there are two or more contractors that are capable of performing the required work. If you were to make awards to contractors that only specialize in certain areas of the requirement, the competitive nature of such contracts in the placement of orders after contract award would be impaired.

Be sure to document the contract file with your rationale for the decisions you make in planning for and awarding multiple award contracts, or, conversely, when multiple awards are determined not to be appropriate. If the estimated amount of the task or delivery order contract exceeds \$103 million, including all options, no contract may be awarded to a single source unless the head of agency determines in writing that a single award is approved.⁵ FAR 16.504(c)(1)(ii)(D) states what needs to be included in the determination and the Congressional notification requirements. This non-delegable written determination by the head of agency is in addition to the requirements of FAR Subpart 6.3.

How should funds be obligated for an indefinite-delivery contract?

The obligation of funds is against an individual order, not at contract execution. In the event some funds need to be obligated at contract execution, it should be only for the stated minimum quantity of supplies or services designated in the schedule. In the event minimum funds were obligated at contract execution, the Contracting Officer shall ensure that the minimum quantity of supplies was delivered or services were performed.

What is fair opportunity?

“Fair opportunity” does not mean “competition” as that term is used in FAR Part 6. The concept of providing fair opportunity for all multiple award contractors refers to your responsibility as the contracting officer to ensure that once a multiple award contract is awarded, each contractor is given an opportunity to be considered for each task or delivery order that exceeds \$3,000 that is issued under the multiple award contracts.⁶ For task or delivery orders exceeding \$5 million, FAR 16.505(b)(1)(iii) prescribes additional requirements to provide all

⁴ FAR 16.504(c)(2)(i)

⁵ Dollar threshold is subject to change, see FAR 16.504(c)(ii)(D)(1) for current threshold.

⁶ FAR 16.505(b)(1)(i)

awardees a fair opportunity for each award.

When do you conduct market research for an order?

Conduct market research before awarding a task or delivery order in excess of the simplified acquisition threshold.⁷

How do you establish ordering procedures that provide for “Fair Opportunity”?

Solicitations and contracts for multiple awards must state the procedures and selection criteria that you will use to give awardees a fair opportunity to be considered for each task or delivery order. You have broad discretion in developing appropriate order placement procedures, and you should use streamlined procedures, including oral presentations and minimal information submission requirements as you determine are necessary. When developing the procedures, you will need to consider whether any of the orders will exceed \$5 million.

FAR 16.505(b) prescribes requirements and guidelines you should follow for developing ordering procedures. For orders exceeding \$5 million, a summary of the additional requirements to provide all awardees a fair opportunity are a notice of the order to include a clear statement of the requirement; a reasonable response period; disclosure of significant factors and subfactors to be used to evaluate; if best value is used, a statement documenting the basis of award; and an opportunity for a postaward debriefing.⁸

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

A contracting officer can ensure that fair opportunity exists for all awardees and still keep the multiple award process simple and streamlined by following these guidelines:

- Ensure that requiring program customers fully understand the concept of fair opportunity and their role in ensuring that it is achieved for each task or delivery order, e.g., evaluating contractor capabilities pursuant to the established ordering procedures. This is done through proper advance planning and adequate documentation of the decisions made in the award of multiple contracts and in the issuance of task or delivery order.
- Avoid using ordering practices that preclude fair opportunity - such as the *allocation of orders among awardees*, and the *direction of orders to preferred awardees*. These practices are prohibited and result in less than fair consideration being given to all awardees under a multiple award contract.
- Clearly spell out the entire ordering process in the solicitation and contract.
- Document the file for each task or delivery order to evidence that your ordering practices adhere to the ordering procedures set forth in the contract.

⁷ FAR 10.001(a)(2)(v)

⁸ FAR 16.505(b)(4)

- Inform all awardees if you plan to use an exception to fair opportunity that may occur in the placement of a task or delivery order.
- Issue follow-on/add-on orders only when they constitute a logical follow-on, provided that all awardees were given a fair opportunity to be considered for the original task or delivery order.
- Maximize the use of firm-fixed-price orders.
- Keep in mind that formal evaluation plans and the scoring of quotes/offers is not required. However, for a task or delivery order exceeding \$5 million, there are minimum requirements to consider and documentation for each task or delivery order including postaward notices and debriefing of awardees.
- Keep in mind that the placement of a task or delivery order (order) may be protested on the grounds that the order increases the scope, period of performance, maximum value of the contract under which the order is issued; or when an order is valued in excess of \$10 million. For an order in excess of \$10 million, a protest may only be filed with the Government Accountability Office. See 16.505(a)(9) for authority and its expiration.

What do you need to consider in placing orders under a multiple award contract for services?

Each task order must clearly describe all services to be performed so that the total cost or price of performance can be established.

Use performance-based work statements to the maximum extent practicable.

Keep contractor submission requirements, e.g., task order proposals, to a minimum.

For task orders exceeding \$5 million, at a minimum, the following should be considered when making a selection for the issuance of a task order --

- Past performance on earlier task orders under the contract, including quality, timeliness, and cost control.
- Potential impact on other task orders placed with the contractor, i.e., potential impacts on the contractor's resources.
- Minimum ordering requirements of the contract.
- The amount of time contractors will need to make an informed business decision on whether to respond to potential task orders.
- Whether contractors could be encouraged to respond to potential task orders by performing outreach intended to promote exchanges of information, e.g., request

comments on draft work statements.

➤ Price or cost.

The basis for selection of an awardee for an individual task order can be based on best value or low cost/technically acceptable depending on the complexity of the requirement and the needs of the program. The basis for selection is usually specified in the request for task order but could also be specified in the multiple award contract.

How is price evaluated in awarding a multiple award contract?

Although final pricing of supplies or services is not determined until orders are issued, you are still required to consider cost or price to the Government in the initial evaluation of offers leading to the award of multiple contracts. The Comptroller General has reiterated that competitive solicitations must include cost or price to the Government as an evaluation factor, and you must consider cost or price to the Government in evaluating competitive proposals, even for multiple award contracts.

You can not eliminate proposals from consideration for award of a contract without taking into account the relative cost of that proposal to the Government. This is a statutory requirement that is not satisfied by the practice of considering cost or price only after contract award, when an individual task or delivery order is issued.

You must develop a basis upon which the evaluation of cost/price factors can be considered in the initial award of multiple contracts to assess the Government's best estimate of the likely relative cost to the Government.

For supplies, you can request offerors to submit fixed prices for the term of the contract, which would allow for an appropriate evaluation.

For services, you can use a combination of several approaches to provide the most comprehensive way to accomplish the required cost evaluation. Proposed labor rates and mark-up rates can be requested for evaluation purposes. Offerors may also be directed to provide a fully detailed cost proposal for a sample task order for one or more of the services to be performed under the contract. Agency historical information that addresses similar past projects can be used to estimate the labor mix and materials. Offerors' responses to the sample task order can provide insight into their technical and staffing approach and can therefore provide a reasonable basis to assess the relative cost of the competing proposals.

How are orders priced under multiple awards?

Task or delivery orders that are placed under multiple award contracts are usually priced using both fixed price and cost reimbursement type methods, depending on the degree in which the work requirements can be specified. However, you should use firm-fixed-price orders to the maximum extent practicable.

Are there concerns with limiting pass-through charges on task or delivery orders?

Yes. FAR 15.408(n) implements policy that minimizes excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value. This limitation ensures that neither a contractor nor a subcontractor receives indirect costs or profit/fee (i.e., pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value. Contract clause 52.215-23, Limitations on Pass-through Charges, shall be included in task or delivery orders when the total estimated order value exceeds the simplified acquisition threshold and the contract type is a cost-reimbursement. The clause requires the contractor to identify the percentage of work that will be subcontracted. When the subcontract costs will exceed 70 percent of the total cost of the work to be performed, the contractor must provide information on indirect costs, profit/fee and the value added with regard to the subcontract work.

What documentation is required when placing a task or delivery order?

For each task or delivery order (order) issued, the contract file shall contain a record which documents the rationale for placement of the order and cost/price of the order. Specifically, you should document the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision.

The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical, e.g., in terms of scope, period of performance, or value.⁹

What should be considered in determining whether work is a logical follow-on to a previously issued task order?

All awardees under the multiple award contract must have been provided a fair opportunity to receive the original task order (order) under which the work will be added. If another authority was used to issue the original order on a sole-source basis (e.g., to satisfy a minimum guarantee), then additional work can not be added to the original order as a logical follow-on.

A new requirement can be added to an existing task, if the requirement is within the scope of the initial task order and the work is not severable. For example, when a contractor is providing administrative support services to an organization and a new sub-organization is formed due to reorganization, an additional contractor employee may be required. It would then be prudent to have the same contractor perform the work, provided the task is modified to add this requirement.

The criteria contained in FAR 6.302-1(a)(ii) can be used as a guide in determining whether additional work constitutes a logical follow-on to a previously issued task. Specifically,

⁹ FAR 16.505(b)(5)

if the issuance of a new order would result in a substantial duplication of costs to the Government that is not expected to be recovered through the “fair opportunity” process established for the contract, or in unacceptable delays in fulfilling the agency’s requirements, then such work would be considered as an appropriate logical follow-on to the original order.

How can opportunities for small businesses be maximized under multiple award contracts?

Opportunities for maximizing the use of small businesses under multiple award contracts can be accomplished in several ways:

- A solicitation can be structured as a total set-aside where market research has indicated there will be adequate competition.
- Partial set-asides may also be appropriate.
- Opportunities can also be made available by reserving the issuance of task or delivery orders under specific functional areas of the statement of work exclusively for award to small business concerns.

In an unrestricted competition, small business participation can be maximized by employing several techniques:

- Issuing a sources sought synopsis in FedBizOpps inviting interested small businesses to submit comprehensive capability statements for specific functional areas of the statement of work.
- Issuing a draft solicitation for industry comment.
- Breaking down functional requirements of the statement of work to their lowest level (e.g., subfunctional elements) to increase small business opportunities to propose against discrete elements of a multiple award contract.
- Conducting small business outreach conferences to market a program to the small business community.
- Including provisions in the fair opportunity procedures of the solicitation/contract which permit the contracting officer to reserve the issuance of certain task or delivery orders among small businesses

Does the contracting officer need to issue postaward notices and conduct debriefings for task or delivery orders?

Yes, if the task or delivery order exceeds \$5 million, the contracting officer shall notify unsuccessful awardees. FAR 15.503(b)(1) describes the procedures for postaward notification to unsuccessful awardees. FAR 15.506 describes the procedures for postaward debriefing to unsuccessful awardees.

What are some helpful lessons learned for awarding and administering multiple award contracts?

Be sure to consider bundling issues when planning for a multiple award contract. GAO has recently decided several cases where the agency bundled requirements traditionally acquired from small businesses. Awards were made to only large companies, as small businesses were precluded from proposing effectively.

Be sure to include relevant clauses that address various contract types (i.e., firm-fixed price, time & material/labor-hour, cost reimbursement) in the master contract if you anticipate the issuance of task orders on these bases.

Be pro-active. Conduct a postaward meeting with the technical team and a postaward conference with each contractor to communicate to the contractor and technical team the process of how tasks will be awarded and administered.

When key personnel are listed in the contract, be sure to state at the postaward conference that you will only authorize key personnel changes in advance of task proposals being submitted, if applicable.

Be sure to brief technical monitors on their roles and responsibilities as technical monitors. Also, make sure the contracting officer representatives (COR) and technical monitors are informed, in writing, that they aren't authorized to have the contractor perform services outside the scope of the task unless it has been priced out and approved by the contracting officer via a task modification in advance of the services being performed, otherwise the action is an unauthorized commitment and requires ratification.

The issuance of all task orders must adhere to the ordering procedures set forth in the contract to ensure that fair opportunity is provided to all awardees under a multiple award contract. There are few exceptions to fair opportunity process for orders exceeding \$3,000. See FAR 16.505(b)(2) for these exceptions. For example, if a contractor has not received tasks sufficient to meet a minimum ordering guarantee of the contract, an order may be placed directly with the contractor without providing a fair opportunity to the other contractors under the multiple award contracts. Per GAO, this should only be applied at the end of an ordering period and not to the first few orders under the contract.

It should be noted that there is no statutory or regulatory authority which permits the issuance of a sole-source task order under a multiple award contract on the basis of socioeconomic considerations (e.g., 8(a) concerns).

For an individual task order, you should include pricing for option years when the initial task order is awarded to help the COR and technical monitors estimate funding requirements in advance.

Is a contractor performance evaluation required for a task or delivery 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. Consolidation of the evaluation is appropriate if orders are similar in scope. See FAR 42.1502(c).

Part III - Governmentwide Agency Contracts

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Part III – Governmentwide Agency Contracts

What is a Governmentwide Agency Contract (GWAC) ?

A Governmentwide Agency Contract (GWAC) is a multiple award contract issued by one host agency that may be used by other Federal agencies to procure information technology supplies and services. GWACs offer total technology solutions including hardware, software, systems integration, asset management, and security and program management.

The use of GWACs is subject to the indefinite-delivery contracts requirements prescribed at FAR Subpart 16.5. However, GWACs are not subject to the requirements and limitations of the Economy Act, as specified in FAR Subpart 17.5 - Interagency Acquisitions Under the Economy Act.

Host agencies are designated pursuant to the authority of the Director, Office of Management and Budget (OMB), to establish GWACs. Currently, there are six OMB designated GWAC agencies - GSA, National Institutes of Health, National Aeronautics and Space Administration, Environmental Protection Agency, Department of Defense and Department of Commerce.

Although DOE is not a designated GWAC agency, the Department can fully utilize GWACs that are administered by host agencies.

Are there any limitations imposed on the user agency?

Currently, each host agency has established a maximum value for their respective GWAC which is equal to the estimated Government usage for a ten-year period.

Each GWAC has an established limitation on how much of the total contract value one

agency can use. This amount varies by GWAC and is determined by the host agency, which normally adds a small administrative, or user fee to cover its cost of administering the GWAC.

What are the advantages of using GWACs?

GWACs offer Federal agencies the advantage of flexibility in meeting their various information technology requirements through one umbrella contract. Specific advantages include -

- GWACs are administratively less burdensome than if an agency were to conduct its own series of individual procurements.
- Procuring agencies realize savings through reduced procurement and administrative costs and through volume buying pricing.
- GWACs utilize performance-based contracts focusing on outcome solutions.
- The host agency has already conducted the competition resulting in one or more contract awards to the best-in-class IT product and service providers.
- Provide the broadest availability of IT products and services.
- The ordering award process takes approximately one-fourth of the lead-time required for traditional competitive acquisitions, using FAR Part 15 procedures.
- Individual prices are based upon competition in establishing the umbrella GWAC and are predetermined to be fair and reasonable for the placement of orders.
- Small, minority and women-owned businesses, as well as large businesses are represented.
- There are no FedBizOpps posting requirements for the ordering agency.
- Task orders may be firm-fixed price, time and material/labor-hour, level of effort or cost reimbursement depending upon the specific GWAC and the nature of the work to be performed.

What supplies are available on GWACs?

Many information technology supplies are available on GWACs, including --

- Mainframes
- Desktop computers
- Portable computers
- Hardware
- Peripherals
- Software

Bar coding systems

What services are available on GWACs?

There are also many types of information technology services available on GWACs, including --

Hardware/Software Maintenance

Training

Software Application

Digitizing

Technical support

What do user fees pay for?

User fees are the revenue collected by the host agency to cover the costs associated with awarding and administering the stable of GWAC contracts, as well as the administrative costs of servicing the use of the GWAC contract by other, ordering agencies.

User fees are higher for those agencies that require the host agency to award and administer the tasks issued in support of the ordering agency, while user fees are lower for those agencies willing to administer the tasks that are awarded by the host agency.

How much are the user fees?

User fees that are paid to the host agency normally range between 0.5% and 4%. However, user fees are negotiable. Some GWACs provide for annual ceilings on user fees that can result in greatly reduced aggregate fee percentages. You should validate that the host agency is providing value commensurate with the fee charged.

For information technology integration service requirements, are GWACs preferred over the FSS program?

Yes. GWACs offer total information technology solutions through performance-based contracts. If agencies and contractors are focused on the desired outcome rather than the individual pieces involved, GWAC contractors can generally deliver better service. GWACs are specifically focused on providing for outcome-oriented solutions.

How do you ensure that the host agency complies with its commitments?

This may be accomplished through the Interagency Agreement (IA) between the host agency and user agency and an accompanying memorandum of understanding (MOU) between the two agencies. The IA/MOU should detail the performance expectations of the two agencies. The IA/MOU may be negotiated to provide for a reduction in the fee paid to the host agency, in the event that the expectations committed to by the host agency are not maintained.

Are orders issued against a GWAC protestable?

Yes. Orders against GWACs are protestable on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or when an order is valued in excess of \$10 million. For an order in excess of \$10 million, a protest may only be filed with the Government Accountability Office. See 16.505(a)(9) for the authority and its expiration.

Is a contractor performance evaluation required for a GWAC task or delivery 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. Consolidation of the evaluation is appropriate if orders are similar in scope. See FAR 42.1502(c).

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Part IV - References

Doing Business with GSA – GSA website: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=8106

GSA Multiple Award Schedules Program Owners Manual – GSA website: http://www.gsa.gov/gsa/cm_attachments/GSA_BASIC/mashandfinal_R2F-q23_0Z5RDZ-i34K-pR.pdf

Office of Federal Procurement Policy Guide Best Practices for Multiple Award Task and Delivery Order Contracting (February 1999 Revision) – OMB website: http://www.whitehouse.gov/omb/procurement/interagency_acq/best_practices_multiple_award_task_contracting.html

Federal Acquisition Regulation (Parts 2, 7, 6, 8, 9, 10, 12, 13, 15, 16, 19, 23, 33, 37, 38, 42, and 49)

GSA Multiple Award Schedules – GSA website: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=8106

Governmentwide Acquisition Contracts (GWACs) – GSA website: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=16146

Interagency contract directory - Governmentwide database of contracts website: <http://www.contractdirectory.gov>

Part V - Abbreviations and Acronyms

BPA	blanket purchase agreement
COR	contracting officer representative
CPARS	Contractor Performance Assessment Reporting System
DOE	Department of Energy
FAR	Federal Acquisition Regulation
FSS	Federal Supply Schedules
GSA	General Services Administration
GAO	Government Accountability Office
GWAC	Governmentwide Agency Contract
IA	Interagency Agreement
IDV	indefinite delivery vehicle

IT	information technology
MOBIS	Management, Organizational and Business Improvement Services
MOU	Memorandum of Understanding
MAS	Multiple Award Schedules
OSDBU	Office of Small and Disadvantaged Business Utilization
RFQ	request for quotation
SIN	special item number
SOW	statement of work
T&M	time and material