

# Subpart 8.4 - Federal Supply Schedules

## 8.401 Definitions.

As used in this subpart-

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

*Multiple Award Schedule (MAS)* means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable *supplies*, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are [41 U.S.C. 152\(3\)](#), Competitive Procedures, and [40 U.S.C. 501](#), Services for *Executive Agencies*.

*Requiring agency* means the agency needing the *supplies* or services.

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

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

## 8.402 General.

(a) The Federal Supply Schedule program is also known as the GSA Schedules Program or the *Multiple Award Schedule* Program. The Federal Supply Schedule program is directed and managed by GSA and provides *Federal agencies* (see [8.004](#)) with a simplified process for obtaining commercial *supplies* and *commercial services* at prices associated with volume buying. Indefinite delivery contracts are awarded to provide *supplies* and services at stated prices for given periods of time. GSA may delegate certain responsibilities to other agencies (*e.g.*, GSA has delegated authority to the VA to procure medical *supplies* under the VA Federal Supply Schedules program). Orders issued under the VA Federal Supply Schedule program are covered by this subpart. Additionally, the Department of Defense (DoD) manages similar systems of schedule-type *contracting* for military items; however, DoD systems are not covered by this subpart.

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

address pertinent topics. *Ordering activities* may request copies of schedules publications by contacting the Centralized Mailing List Service through the Internet at <http://www.gsa.gov/cmls>, submitting written e-mail requests to [CMLS@gsa.gov](mailto:CMLS@gsa.gov); or by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7 SM), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 may also be obtained from the above-referenced points of contact.

(c)

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

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

(d)

(1) *e-Buy*, GSA's electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. *e-Buy* allows *ordering activities* to post requirements, obtain quotes, and issue orders electronically. Posting an RFQ on *e-Buy*—

(i) Is one medium for providing fair notice to all schedule contractors offering such *supplies* and services as required by, [8.405-2](#), and [8.405-3](#); and

(ii) Is required when an order contains brand-name specifications (see [8.405-6](#)).

(2) *Ordering activities* may access *e-Buy* at <http://www.ebuy.gsa.gov>. For more information or assistance on either GSA Advantage! or *e-Buy*, contact GSA at Internet e-mail address [gsa.advantage@gsa.gov](mailto:gsa.advantage@gsa.gov).

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

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

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

(2) The *ordering activity contracting officer* has determined the price for the items not on the

Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule and they conform to the rules for numbering *line items* at subpart [4.10](#); and

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

(g) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the *micro-purchase threshold* are exempt from verification in the *System for Award Management* as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

## 8.403 Applicability.

(a) Procedures in this subpart apply to—

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

(2) BPAs established against Federal Supply Schedule contracts.

(b) GSA *may* establish special ordering procedures for a particular schedule. In this case, that schedule will specify those special ordering procedures. Unless otherwise noted, special ordering procedures established for a Federal Supply Schedule take precedence over the procedures in [8.405](#).

Note: GSA-established ordering procedures for Order-Level Materials can be found at [GSAR subpart 538-72](#) .

(c) In accordance with section 1427(b) of Public Law 108-136 ([40 U.S.C. 1103](#) note), for requirements that substantially or to a dominant extent specify performance of *architect-engineer services* (as defined in [2.101](#)), agencies—

(1) *Shall* use the procedures at [subpart 36.6](#); and

(2) *Shall* not place orders for such requirements under a Federal Supply Schedule.

## 8.404 Use of Federal Supply Schedules.

(a) *General.* [parts 13](#) (except [13.303-2\(c\)\(3\)](#)), [14](#), [15](#), and [19](#) (except for the requirements at [19.102\(b\)\(3\)](#) and [19.202-1\(e\)\(1\)\(iii\)](#)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see [8.405-5](#)). BPAs and orders placed against a MAS, using the procedures in this subpart, are considered to be issued using *full and open competition* (see [6.102\(d\)\(3\)](#)). Therefore, when establishing a BPA (as authorized by [13.303-2\(c\)\(3\)](#)), or placing orders under Federal Supply Schedule contracts using the procedures of [8.405](#), *ordering activities shall* not seek competition outside of the Federal Supply Schedules or synopses the requirement; but see paragraph (g) of this section.

(b)

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

(2) For orders over \$600,000, see subpart [17.5](#) for additional requirements for *interagency acquisitions*.

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

(1) Are not exempt from the development of *acquisition* plans (see [subpart 7.1](#)), and an *information technology acquisition* strategy (see [part 39](#));

(2) *Shall* comply with all FAR requirements for a consolidated or bundled contract when the order meets the definition at [2.101\(b\)](#) of "consolidation" or "*bundling*"; and

(3) *Must*, whether placed by the *requiring agency*, or on behalf of the *requiring agency*, be consistent with the *requiring agency's* statutory and regulatory requirements applicable to the *acquisition* of the supply or service.

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

(e) The procedures under subpart [33.1](#) are applicable to the issuance of an order or the establishment of a BPA against a schedule contract.

(f) If the *ordering activity* issues an RFQ, the *ordering activity shall* provide the RFQ to any schedule contractor that requests a copy of it.

(g)

(1) *Ordering activities shall* publicize contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5):

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

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

(2) When an order is awarded or a Blanket Purchase Agreement is established with an estimated value greater than the *simplified acquisition threshold* and supported by a limited-source justification at 8.405-6 (a), the *ordering activity contracting officer must-*

(i) Publicize the action (see 5.301); and

(ii) Post the justification in accordance with 8.405-6 (a)(2).

(h) Type-of-order preference for services.

(1) The *ordering activity shall* specify the order type (*i.e.*, firm-fixed price, time-and-materials, or labor-hour) for the services offered on the schedule priced at hourly rates.

(2) Agencies *shall* use fixed-price orders for the *acquisition of commercial services* to the maximum extent practicable.

(3)

(i) A time-and-materials or labor-hour order *may* be used for the *acquisition of commercial services* only when 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.

(ii) Prior to the issuance of a time-and-materials or labor-hour order, the *contracting officer shall-*

(A) Execute a determination and findings (D&F) for the order, in accordance with paragraph (h)(3)(iii) of this section that a fixed-price order is not suitable;

(B) Include a ceiling price in the order that the contractor exceeds at its own risk; and

(C) When the total performance period, including *options*, is more than three years, the D&F prepared in accordance with this paragraph *shall* be signed by the *contracting officer* and approved by the *head of the contracting activity* prior to the execution of the base period.

(iii) The D&F required by paragraph (h)(3)(ii)(A) of this section *shall* contain sufficient facts and rationale to justify that a fixed-price order is not suitable. At a minimum, the D&F *shall-*

(A) Include a description of the *market research* conducted (see 8.404(c) and 10.002(e));

(B) Establish that it is not possible at the time of placing the order to accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence;

(C) Establish that the current requirement has been structured to maximize the use of fixed-price orders (*e.g.*, by limiting the value or length of the time-and-materials/labor-hour order; or, establishing fixed prices for portions of the requirement) on future *acquisitions* for the same or similar requirements; and

(D) Describe actions to maximize the use of fixed-price orders on future *acquisitions* for the same requirements.

(iv) Prior to an increase in the ceiling price of a time-and-materials or labor-hour order, the *ordering activity shall*-

(A) Conduct an analysis of *pricing* and other relevant factors to determine if the action is in the best interest of the Government and document the order file;

(B) Follow the procedures at 8.405-6 for a change that modifies the general scope of the order; and

(C) Comply with the requirements at 8.402(f) when modifying an order to add open market items.

(i) Ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

(j) *Line items*. When placing orders or establishing BPAs, *ordering activities shall* reference the *special item number* and the corresponding line or *subline item* awarded (established per 4.1005) in the schedule. If an *ordering activity contracting officer* adds an item not on the Federal Supply Schedule in accordance with 8.402(f), establish a new *line item* in accordance with subpart 4.10.

## **8.405 Ordering procedures for Federal Supply Schedules.**

*Ordering activities shall* use the ordering procedures of this section when placing an order or establishing a BPA for *supplies* or services. The procedures in this section apply to all schedules. For establishing BPAs and for orders under BPAs see 8.405-3.

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

(a) *Ordering activities shall* use the procedures of this subsection when ordering *supplies* and services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (*e.g.*, installation, maintenance, and repair). For establishing BPAs and for orders under BPAs see 8.405-3.

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

(c) *Orders exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold*. *Ordering activities shall* place orders with the schedule contractor that can provide the supply or service that represents the *best value*. Before placing an order, an *ordering activity shall*:

(1) Consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors (see 8.405-5); or

(2) Document the circumstances for restricting consideration to fewer than three schedule

contractors based on one of the reasons at 8.405-6 (a);

(d) For proposed orders exceeding the *simplified acquisition threshold*.

(1) Each order *shall* be placed on a competitive basis in accordance with (d)(2) and (3) of this section, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405-6 .

(2) The *ordering activity contracting officer shall* provide an RFQ 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 (see 8.405-1(f)).

(3) The *ordering activity contracting officer shall* -

(i) Post the RFQ on e-Buy to afford all schedule contractors offering the required *supplies* or services under the appropriate *multiple award schedule(s)* an opportunity to submit a quote; or

(ii) Provide the RFQ to as many schedule 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 requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirement, the *contracting officer shall* prepare a written determination explaining that no additional contractors capable of fulfilling the requirement could be identified despite reasonable efforts to do so. The determination *must* clearly explain efforts made to obtain quotes from at least three schedule contractors.

(4) The *ordering activity contracting officer shall* ensure that all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ.

(e) When an order contains brand-name specifications, the *contracting officer shall* post the RFQ on e-Buy along with the justification or documentation, as required by 8.405-6. An RFQ is required when a purchase description specifies a brand-name.

(f) In addition to price (see 8.404 (d) and 8.405-4), when determining *best value*, the *ordering activity may* consider, among other factors, the following:

(1) *Past performance*.

(2) Special features of the supply or service required for effective program performance.

(3) Trade-in considerations.

(4) Probable life of the item selected as compared with that of a comparable item.

(5) *Warranty* considerations.

(6) Maintenance availability.

(7) Environmental and energy efficiency considerations.

(8) Delivery terms.

(g) *Minimum documentation*. The *ordering activity shall* document-

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

was purchased;

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

(3) The amount paid;

(4) When an order exceeds the *simplified acquisition threshold*, evidence of compliance with the ordering procedures at [8.405-1\(d\)](#); and

(5) The basis for the award decision.

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

(a) *General. Ordering activities shall* use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists. For establishing BPAs and for orders under BPAs see [8.405-3](#).

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

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

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

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

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

(ii) The *ordering activity shall* provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that *offer* services that will meet the agency's needs or document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons at [8.405-6](#) (a).

(iii) The *ordering activity shall* specify the type of order (*i.e.*, firm-fixed-price, labor-hour) for the services identified in the statement of work. The *contracting officer should* establish firm-fixed-prices, as appropriate.

(3) For proposed orders exceeding the *simplified acquisition threshold*. In addition to meeting the requirements of [8.405-2\(c\)\(2\)\(i\)](#) and (iii), the following procedures apply:



(i) Each order *shall* be placed on a competitive basis in accordance with (c)(3)(ii) and (iii) of this section, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with 8.405-6 .

(ii) The *ordering activity contracting officer shall* provide an RFQ that includes a statement of work and the evaluation criteria.

(iii) The *ordering activity contracting officer shall-*

(A) Post the RFQ on e-Buy to afford all schedule contractors offering the required services under the appropriate multiple-award schedule(s) an opportunity to submit a quote; or

(B) Provide the RFQ to as many schedule 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 requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the *contracting officer shall* prepare a written determination to explain that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination *must* clearly explain efforts made to obtain quotes from at least three schedule contractors.

(C) Ensure all quotes received are fairly considered and award is made in accordance with the evaluation criteria in the RFQ.

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

(d) *Evaluation.* The *ordering activity shall* evaluate all responses received using the evaluation criteria provided to the schedule contractors. The *ordering activity* is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order with the schedule contractor that represents the *best value* (see 8.404(d) and 8.405-4). After award, *ordering activities should* provide timely notification to unsuccessful *offerors*. If an unsuccessful *offeror* requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision *shall* be provided.

(e) *Use of time-and-materials and labor-hour orders for services.* When placing a time-and-materials or labor-hour order for services, see 8.404(h).

(f) Minimum documentation. The *ordering activity shall* document-

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

(2) A description of the service purchased;

(3) The amount paid;

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

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

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

(7) The rationale for using other than-

- (i) A firm-fixed price order; or
- (ii) A performance-based order; and

(8) When an order exceeds the *simplified acquisition threshold*, evidence of compliance with the ordering procedures at [8.405-2\(c\)](#).

### **8.405-3 Blanket purchase agreements (BPAs).**

(a) *Establishment.*

(1) *Ordering activities may* establish BPAs under any schedule contract to fill repetitive needs for *supplies* or services. *Ordering activities shall* establish the BPA with the schedule contractor(s) that can provide the supply or service that represents the *best value*.

(2) In addition to price (see [8.404\(d\)](#) and [8.405-4](#)), when determining *best value*, the *ordering activity may* consider, among other factors, the following:

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

(3)

(i) The *ordering activity contracting officer shall*, to the maximum extent practicable, give preference to establishing multiple-award BPAs, rather than establishing a single-award BPA.

(ii) No single-award BPA with an estimated value exceeding \$100 million (including any *options*), may be awarded unless the *head of the agency* determines *in writing* that-

(A) The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work;

(B) The BPA provides only for firm-fixed priced orders for-

- (1) *Products* with unit prices established in the BPA; or

(2) Services with prices established in the BPA for specific tasks to be performed;

(C) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(D) It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.

(iii) The requirement for a determination for a single-award BPA greater than \$100 million is in addition to any applicable requirement for a limited-source justification at 8.405-6. However, the two documents *may* be combined into one document.

(iv) In determining how many multiple-award BPAs to establish or that a single-award BPA is appropriate, the *contracting officer should* consider the following factors and document the decision in the *acquisition* plan or BPA file:

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

(B) The benefits of on-going competition and the need to periodically compare multiple technical approaches or prices;

(C) The administrative costs of BPAs; and

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

(4) BPAs *shall* address the frequency of ordering, invoicing, discounts, requirements (*e.g.*, estimated quantities, work to be performed), delivery locations, and time.

(5) When establishing multiple-award BPAs, the *ordering activity shall* specify the procedures for placing orders under the BPAs in accordance with 8.405-3(c)(2).

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

(7) *Minimum documentation*. The *ordering activity contracting officer shall* include in the BPA file documentation the-

(i) Schedule contracts considered, noting the contractor to which the BPA was awarded;

(ii) Description of the supply or service purchased;

(iii) Price;

(iv) Required justification for a limited-source BPA (see 8.405-6), if applicable;

(v) Determination for a single-award BPA exceeding \$100 million, if applicable (see (a)(3)(ii) of this section);

(vi) Documentation supporting the decision to establish multiple-award BPAs or a single-award BPA (see (a)(3)(iv));

(vii) Evidence of compliance with paragraph (b) of this section, for competitively awarded BPAs, if applicable; and

(viii) *Basis for the award decision.* This *should* include the evaluation methodology used in selecting the contractor, the rationale for any tradeoffs in making the selection, and a price reasonableness determination for services requiring a statement of work.

(b) *Competitive procedures for establishing a BPA.* This paragraph applies to the establishment of a BPA, in addition to applicable instructions in paragraph (a).

(1) *For supplies, and for services not requiring a statement of work.* The procedures of this paragraph apply when establishing a BPA for *supplies* and services that are listed in the schedule contract at a fixed price for the performance of a specific task, where a statement of work is not required (*e.g.*, installation, maintenance, and repair).

(i) *If the estimated value of the BPA does not exceed the simplified acquisition threshold.*

(A) *The ordering activity shall:*

(1) Consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors (see [8.405-5](#)); or

(2) Document the circumstances for restricting consideration to fewer than three schedule contractors based on one of the reasons at [8.405-6\(a\)](#).

(B) *The ordering activity shall* establish the BPA with the schedule contractor(s) that can provide the *best value*.

(ii) *If the estimated value of the BPA exceeds the simplified acquisition threshold.* The *ordering activity contracting officer:*

(A) *Shall* provide an RFQ 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.

(B) (1) *Shall* post the RFQ on e-Buy to afford all schedule contractors offering the required *supplies* or services under the appropriate *multiple award schedule(s)* an opportunity to submit a quote; or

(2) *Shall* provide the RFQ to as many schedule 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 requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the *contracting officer shall* prepare a written determination explaining that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination *must* clearly explain efforts made to obtain quotes from at least three schedule contractors.

(C) *Shall* ensure all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ. After seeking price reductions (see [8.405-4](#)), establish the BPA with the schedule contractor(s) that provides the *best value*.

(D) The BPA *must* be established in accordance with paragraphs (b)(1)(ii)(B) and (C) of this section, unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with [8.405-6](#).

(2) *For services requiring a statement of work.* This applies when establishing a BPA that requires services priced at hourly rates, as provided by the schedule contract. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

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

(ii) *Type-of-order preference.* The *ordering activity shall* specify the order type (i.e., firm-fixed price, time-and-materials, or labor-hour) for the services identified in the statement of work. The *contracting officer should* establish firm-fixed priced orders to the maximum extent practicable. For time-and-materials and labor-hour orders, the *contracting officer shall* follow the procedures at [8.404\(h\)](#).

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

(iv) *If the estimated value of the BPA does not exceed the simplified acquisition threshold.* The *ordering activity shall* provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that *offer* services that will meet the agency's needs.

(v) *If estimated value of the BPA exceeds the simplified acquisition threshold.* The *ordering activity contracting officer-*

(A) *Shall* post the RFQ on e-Buy to afford all schedule contractors offering the required *supplies* or services under the appropriate multiple-award schedule an opportunity to submit a quote; or

(B) *Shall* provide the RFQ, which includes the statement of work and evaluation criteria, to as many schedule 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 requirements. When fewer than three quotes are received from schedule contractors that can fulfill the requirements, the *contracting officer shall* document the file. The *contracting officer shall* prepare a written determination explaining that no additional contractors capable of fulfilling the requirements could be identified despite reasonable efforts to do so. The determination *must* clearly explain efforts made to obtain quotes from at least three schedule contractors.

(vi) The *ordering activity contracting officer shall* ensure all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ. The *ordering activity* is responsible for considering the level of effort and the mix of labor proposed to perform, and for determining that the proposed price is reasonable.

(vii) The BPA *must* be established in accordance with paragraph (b)(2)(iv) or (v), and with paragraph (b)(2)(vi) of this section, unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with [8.405-6](#).

(viii) The *ordering activity contracting officer shall* establish the BPA with the schedule

contractor(s) that represents the *best value* (see [8.404\(d\)](#) and [8.405-4](#)).

(3) After award, *ordering activities* should provide timely notification to unsuccessful *offerors*. If an unsuccessful *offeror* requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision *shall* be provided.

(c) *Ordering from BPAs*. The procedures in this paragraph (c) are not required for BPAs established on or before May 16, 2011. However, *ordering activities* are encouraged to use the procedures for such BPAs.

(1) *Single-award BPA*. 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.

(2) *Multiple-award BPAs*.

(i) Orders at or below the *micro-purchase threshold*. The *ordering activity* *may* place orders at or below the *micro-purchase threshold* with any BPA holder that can meet the agency needs. The *ordering activity* *should* attempt to distribute any such orders among the BPA holders.

(ii) Orders exceeding the *micro-purchase threshold* but not exceeding the *simplified acquisition threshold*.

(A) The *ordering activity* *must* provide each multiple-award BPA holder a fair opportunity to be considered for each order exceeding the *micro-purchase threshold*, but not exceeding the *simplified acquisition threshold* unless one of the exceptions at [8.405-6\(a\)\(1\)\(i\)](#) applies.

(B) The *ordering activity* need not contact each of the multiple-award BPA holders before placing an order if information is available to ensure that each BPA holder is provided a fair opportunity to be considered for each order.

(C) The *ordering activity contracting officer* *shall* document the circumstances when restricting consideration to less than all multiple-award BPA holders offering the required *supplies* and services.

(iii) Orders exceeding the *simplified acquisition threshold*.

(A) The *ordering activity* *shall* place an order in accordance with paragraphs (c)(2)(iii)(A)(1), (2) and (3) of this paragraph, unless the requirement is waived on the basis of a justification that is prepared and approved in accordance with [8.405-6](#). The *ordering activity* *shall*-

(1) 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;

(2) Afford all BPA holders responding to the RFQ an opportunity to submit a quote;  
and

(3) Fairly consider all responses received and make award in accordance with the selection procedures.

(B) The *ordering activity shall* document evidence of compliance with these procedures and the basis for the award decision.

(3) *BPAs for hourly-rate services.* 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. For time-and-materials and labor-hour orders, the *contracting officer shall* follow the procedures at 8.404(h). All orders under the BPA *shall* specify a price for the performance of the tasks identified in the statement of work. 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 through appropriate analysis techniques, and documenting the file accordingly.

(d) *Duration of BPAs.*

(1) Multiple-award BPAs generally *should* not exceed five years in length, but *may* do so to meet program requirements.

(2) A single-award BPA *shall* not exceed one year. It *may* have up to four one-year *options*. See paragraph (e) of this section for requirements associated with *option* exercise.

(3) 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.

(e) *Review of BPAs.*

(1) The *ordering activity contracting officer shall* review the BPA and determine *in writing*, at least once a year (*e.g.*, at *option* exercise), whether-

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

(ii) The BPA still represents the *best value* (see 8.404(d)); and

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

(2) The determination *shall* be included in the BPA file documentation.

## **8.405-4 Price reductions.**

*Ordering activities may* request a price reduction at any time before placing an order, establishing a BPA, or in conjunction with the annual BPA review. However, the *ordering activity shall* seek a price reduction when the order or BPA exceeds the *simplified acquisition threshold*. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual *ordering activity* for a specific order or BPA.

## **8.405-5 Small business.**

(a) Although the preference programs of part 19 are not mandatory in this subpart, in accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r))-

(1) *Ordering activity contracting officers may*, at their discretion-

- (i) Set aside orders for any of the small business concerns identified in 19.000(a)(3); and
- (ii) Set aside BPAs for any of the small business concerns identified in 19.000(a)(3).

(2) When setting aside orders and BPAs-

(i) Follow the ordering procedures for Federal Supply Schedules at 8.405-1, 8.405-2, and 8.405-3; and

(ii) The specific small business program eligibility requirements identified in part 19 apply.

(b) Orders placed under schedule contracts *may* be credited toward the *ordering activity's* small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency *may* only take credit if the awardee meets a size standard that corresponds to the North American Industry Classification System code assigned to the order in accordance with 19.102(b)(3). *Ordering activities should* rely on the small business representations made by schedule contractors at the contract level (but see section 19.301-2(b)(2) concerning rerepresentation for an order).

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

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

## **8.405-6 Limiting sources.**

Orders placed or BPAs established under Federal Supply Schedules are exempt from the requirements in part 6. However, an *ordering activity must* justify its action when restricting consideration in accordance with paragraph (a) or (b) of this section—

(a) Orders or BPAs exceeding the *micro-purchase threshold* based on a limited sources justification.

(1) Circumstances justifying limiting the source.

(i) For a proposed order or BPA with an estimated value exceeding the *micro-purchase threshold* not



placed or established in accordance with the procedures in, 8.405-2, or 8.405-3, the only circumstances that *may* justify the action are-

(A) An urgent and compelling need exists, and following the procedures would result in unacceptable delays;

(B) 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

(C) In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA *must* not have been previously issued under sole-source or limited-sources procedures.

(ii) See 8.405-6(c) for the content of the justification for an order or BPA exceeding the *simplified acquisition threshold*.

(2) Posting.

(i) Within 14 days after placing an order or establishing a BPA exceeding the *simplified acquisition threshold* that is supported by a limited-sources justification permitted under any of the circumstances under paragraph (a)(1) of this section, the *ordering activity shall*-

(A) Publish a notice in accordance with 5.301; and

(B) Post the justification-

(1) At the GPE <https://www.sam.gov>;

(2) On the Web site of the *ordering activity* agency, which *may* provide access to the justification by linking to the GPE; and

(3) For a minimum of 30 days.

(ii) In the case of an order or BPA permitted under paragraph (a)(1)(i)(A) of this section, the justification *shall* be posted within 30 days after award.

(iii) *Contracting officers shall* carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public *inspection*. *Contracting officers shall* also 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 24.202 in determining whether other data *should* be removed. Although the submitter notice process set out in Executive Order 12600 "Predisclosure Notification Procedures for Confidential Commercial Information" does not apply, if the justification appears to contain proprietary data, the *contracting officer should* provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public *inspection*, redacted as necessary. This process *must* not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a)(2)(i) and (ii) of this section.

(iv) This 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.

(b) *Items peculiar to one manufacturer.* An item peculiar to one manufacturer can be a particular brand name, product, or a feature of a product, peculiar to one manufacturer. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer.

(1) 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.

(2) *Documentation.*

(i) For proposed orders or BPAs with an estimated value exceeding the *micro-purchase threshold*, but not exceeding the *simplified acquisition threshold*, the *ordering activity contracting officer shall* document the basis for restricting consideration to an item peculiar to one manufacturer.

(ii) For proposed orders or BPAs with an estimated value exceeding the *simplified acquisition threshold*, see paragraph (c) of this section.

(iii) The documentation or justification *must* be completed and approved at the time the requirement for a brand-name item is determined. In addition, the justification for a brand-name item is required at the order level when a justification for the brand-name item was not completed for the BPA or does not adequately cover the requirements in the order.

(3) *Posting.*

(i) The *ordering activity shall* post the following information along with the Request for Quotation (RFQ) to e-Buy (<http://www.ebuy.gsa.gov>):

(A) For proposed orders or BPAs with an estimated value exceeding \$25,000, but not exceeding the *simplified acquisition threshold*, the documentation required by paragraph (b)(2)(i) of this section.

(B) For proposed orders or BPAs with an estimated value exceeding the *simplified acquisition threshold*, the justification required by paragraph (c) of this section.

(C) The documentation in paragraph (b)(2)(i) of this section and the justification in paragraph (c) of this section is subject to the screening requirement in paragraph (a)(2)(iii) of this section.

(ii) The posting requirement of paragraph (b)(3)(i) of this section does not apply when-

(A) 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;

(B) 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

(C) The agency's *senior procurement executive* makes a written determination that

access through e-Buy is not in the Government's interest.

(4) When applicable, the documentation and posting requirements in paragraphs (b)(2) and (3) of this section apply only to the portion of the order or BPA that requires a brand-name item. If the justification and approval is to cover only the portion of the *acquisition* which is brand-name, then it *should* so state; the approval level requirements will then only apply to that portion.

(c) An order or BPA with an estimated value exceeding the *simplified acquisition threshold*.

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

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

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

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

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

(iv) The authority and supporting rationale (see [8.405-6\(a\)\(1\)\(i\)](#) and (b)(1)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

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

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

(vii) Any other facts supporting the justification.

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

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

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

(xi) For justifications under [8.405-6\(a\)\(1\)](#), a written determination by the approving official identifying the circumstance that applies.

(d) *Justification approvals.*

(1) For a proposed order or BPA with an estimated value exceeding the *simplified acquisition threshold*, but not exceeding \$750,000, the *ordering activity contracting officer's* certification that the justification is accurate and complete to the best of the *ordering activity contracting officer's* knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order or BPA with an estimated value exceeding \$750,000, but not exceeding \$15 million, the justification *must* be approved by the advocate for competition of the activity placing the order, or by an official named in paragraph (d)(3) or (4) of this section. This authority is not delegable.

(3) For a proposed order or BPA with an estimated value exceeding \$15 million, but not exceeding \$75 million (or, for DoD, NASA, and the Coast Guard, not exceeding \$100 million), the justification *must* be approved by-

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

(ii) A designee who-

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

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

(iii) An official named in paragraph (d)(4) of this section.

(4) For a proposed order or BPA with an estimated value exceeding \$75 million (or, for DoD, NASA, and the Coast Guard, over \$100 million), the justification *must* be approved by the *senior procurement executive* of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for *Acquisition* and Sustainment, acting as the *senior procurement executive* for the Department of Defense.

## **8.405-7 Payment.**

Agencies *may* make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card (but see [32.1108\(b\)\(2\)](#)).

## **8.406 Ordering activity responsibilities.**

### **8.406-1 Order placement.**

(a) *Ordering activities may* place orders orally, except for-

(1) *Supplies* and services not requiring a statement of work exceeding the *simplified acquisition threshold*;

(2) Services requiring a statement of work (SOW); and

(3) Orders containing brand-name specifications that exceed \$25,000.

(b) *Ordering activities* may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order *supplies* or services from schedule contracts.

(c) The *ordering activity* shall place an order directly with the contractor in accordance with the terms and conditions of the price lists (see 8.402(b)). Prior to placement of the order, the *ordering activity* shall ensure that the regulatory and statutory requirements of the *requiring agency* have been applied.

(d) Orders shall include the following information in addition to any information required by the schedule contract:

(1) Complete shipping and billing addresses.

(2) Contract number and date.

(3) Agency order number.

(4) F.o.b. delivery point; *i.e.*, origin or destination.

(5) Discount terms.

(6) Delivery time or period of performance.

(7) *Special item number* or national stock number.

(8) *Line item* or *subline item*.

(9) A statement of work for services, when required, or a brief, complete description of each item (when ordering by model number, features and *options* such as color, finish, and electrical characteristics, if available, *must* be specified).

(10) Quantity and any variation in quantity.

(11) Number of units.

(12) Unit price.

(13) Total price of order.

(14) Points of *inspection* and acceptance.

(15) Other pertinent data; *e.g.*, delivery instructions or receiving hours and size-of-truck limitation.

(16) Marking requirements.

(17) Level of preservation, packaging, and packing.

## **8.406-2 Inspection and acceptance.**

(a) *Supplies*.

(1) Consignees *shall* inspect *supplies* at destination except when-

(i) The schedule contract indicates that mandatory source *inspection* is required by the schedule *contracting* agency; or

(ii) A schedule item is covered by a product description, and the *ordering activity* determines that the schedule *contracting* agency's *inspection* assistance is needed (based on the ordering volume, the complexity of the *supplies*, or the *past performance* of the supplier).

(2) When the schedule *contracting* agency performs the *inspection*, the *ordering activity* will provide two copies of the order specifying source *inspection* to the schedule *contracting* agency. The schedule *contracting* agency will notify the *ordering activity* of acceptance or rejection of the *supplies*.

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

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

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

### **8.406-3 Remedies for nonconformance.**

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

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

### **8.406-4 Termination for cause.**

(a)

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Reporting*. An *ordering activity contracting officer*, in accordance with agency procedures,

*shall* ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a *termination for convenience*, or is otherwise withdrawn, the *contracting officer shall* ensure that a notice of the conversion or withdrawal is reported. All reporting *shall* be in accordance with [42.1503\(h\)](#).

#### **8.406-5 Termination for the Government's convenience.**

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

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

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

#### **8.406-6 Disputes.**

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

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

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

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

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

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

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

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

#### **8.406-7 Contractor Performance Evaluation.**

*Ordering activities must* prepare at least annually and at the time the work under the order is completed, an evaluation of contractor performance for each order that exceeds the *simplified acquisition threshold* in accordance with [42.1502\(c\)](#).