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 synopsize 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 $750,000, 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 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.

Parent topic: Subpart 8.4 - Federal Supply Schedules