

threshold is defined so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency's needs.

(c) *Ordering procedures for mandatory use schedules.* (1) This paragraph (c) applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures in paragraphs (a) and (b) of this section.

(2) In the case of mandatory schedules, ordering offices shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.

(3) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—

(i) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;

(ii) The order is below the minimum order thresholds;

(iii) The order is above the maximum order limitation;

(iv) The consignee is located outside the area of geographic coverage stated in the schedule; or

(v) A lower price for an identical item (i.e., same make and model) is available from another source.

(4) *Absence of follow-on award.* Ordering offices, after any consultation required by the schedule, are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

[59 FR 53716, Oct. 25, 1994, as amended at 59 FR 60319, Nov. 23, 1994; 60 FR 34747, July 3, 1995; 62 FR 44818, Aug. 22, 1997; 62 FR 64917, Dec. 9, 1997; 63 FR 34079, June 22, 1998; 64 FR 10536, Mar. 4, 1999; 65 FR 36024, June 6, 2000; 67 FR 56119, Aug. 30, 2002]

8.404-1—8.404-2 [Reserved]

8.404-3 Requests for waivers.

(a) When an ordering office that is a mandatory user under a schedule determines that items available from the schedule will not meet its specific needs, but similar items from another source will, it shall submit a request for waiver to the Commissioner, Federal Supply Service (F), GSA, Washington, DC 20406, except as provided in (b) below. Requests shall contain the following information:

(1) A complete description of the required items, whenever possible; e.g., descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(2) A comparison of prices and the technical differences between the requested item and the schedule item, identifying as a minimum the—

(i) Inadequacies of the schedule item to perform required functions; and

(ii) Technical, economic, or other advantages of the item requested.

(3) Quantity required.

(4) Estimated annual usage or a statement that the requirement is non-recurrent or unpredictable.

(b) Ordering offices shall not initiate action to acquire similar items from nonschedule sources until a request for waiver is approved, except as otherwise provided in interagency agreements.

[48 FR 42129, Sept. 19, 1983, as amended at 54 FR 29280, July 11, 1989]

8.405 Ordering office responsibilities.

8.405-1 [Reserved]

8.405-2 Order placement.

Ordering offices may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule:

(a) Complete shipping and billing addresses.

(b) Contract number and date.

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

[48 FR 42129, Sept. 19, 1983, as amended at 60 FR 34737, July 3, 1995]

8.405-3 Inspection and acceptance.

- (a) Consignees shall inspect supplies at destination except when—
 - (1) The schedule provides for the schedule contracting agency to perform source inspection (in this case, the schedule will indicate that mandatory source inspection is required); or
 - (2) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (inspection assistance may be based on the ordering volume, the complexity of items, or the past performance of the supplier).
- (b) When the schedule contracting agency performs the inspection, as specified in the schedule, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.
- (c) 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 inspec-

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- tion to quantity and condition on receipt.
- (d) Unless otherwise provided in the schedule, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

8.405-4 Delinquent performance.

If the contractor fails to perform on the order, the ordering office may terminate the order for default or give the contractor further opportunity to perform by modifying the order to establish a new delivery date (obtaining consideration as necessary).

[48 FR 42129, Sept. 19, 1983, as amended at 59 FR 53717, Oct. 25, 1994]

8.405-5 Termination for default.

- (a)(1) An ordering office may terminate any one or more orders for default in accordance with part 49, Termination of Contracts. The schedule contracting office shall be notified of all cases where an ordering office has declared a Federal Supply Schedule contractor in default or fraud is suspected.
- (2) Should the contractor claim that the failure was excusable, the ordering office shall promptly refer the matter to the schedule contracting office. In the absence of a decision by the schedule contracting office (or by the head of the schedule contracting agency, on appeal) excusing the failure, the ordering office may charge the contractor with excess costs resulting from repurchase.
- (3) Any repurchase shall be made at as reasonable a price as possible 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 Delivery Order _____ [insert number] under Contract _____ [insert number]".
- (4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.