



Strategic Acquisition Transactions:

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

April 2006

“... In your continuing role as business advisors, we recognize that procurement is not just following rules and regulations. Rather, it is a process of making sound business decisions. Today we have new rules and operate in a different kind of environment. Your task now is to implement these new tools and develop efficient acquisition strategies ...”

*- Excerpt from GSA's Multiple Award Schedules Program
Owner's Manual*

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 goods and services can be acquired. More specifically, the ever increasing universe of goods and services that are available under the General Services Administration's 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 goods 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.

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Part I - Federal Supply Schedules (FSS)

What is a Federal Supply Schedule?

Federal Supply Schedules (FSS), also known as Multiple Award Schedules (MAS), are listings of vendors awarded contracts for supplies or services by the General Services Administration (GSA). These schedules are available for use by any Federal agency requiring the identified supplies or services. There are also specialized schedules, 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, that allow procuring activities to focus their selection of contractors to special areas of interest.

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 FSS 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.

Why should you use the FSS?

Advantages of using the FSS include -

- Significantly reduced acquisition time.
- GSA has already complied with competition requirements.
 - Pre-solicitation and pre-award requirements like the synopsis, the Service Contract Act review, the Small Business/Labor Set-Aside review, and Equal Employment Opportunity review have already been performed by GSA.
- Volume purchase prices that are fair and reasonable.
- Quick delivery.
- Schedule orders count toward small business goals.
- Access to state-of-the-art technology and quality services and products.
- Compliance with environmental requirements for applicable services and products.
- Agencies can establish Blanket Purchase Agreements (BPA) for recurring needs.

What does the “Maximum Order Threshold” of a schedule tell you?

Each schedule in the FSS has an identified *maximum order threshold*.

This 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 trigger point for you to seek additional price reductions from the schedule vendor. Vendors 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, FSS contractors may either offer you a lower price, offer you the current price, or decline your order.

This threshold is also the point at which you should consider or solicit, as appropriate, more than three FSS vendors for your required supplies or services.

Best Practice - Regardless of the value of the order you should:

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

Must agencies conduct Procurement Planning and Market Research before using an FSS contract?

Not necessarily. As a general rule, obtaining information from the FSS program and FSS vendors themselves is sufficient to satisfy the agency's obligations to conduct procurement planning and market research. However, be sure you select the most appropriate schedule for your program's requirement. For instance, don't use the MOBIS schedule if professional engineering services are required.

What services are available through the FSS?

FSS schedules are categorized by the type of product or services available. Some of the particular types of FSS schedules 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?

The ordering procedure that you use depends on whether or not the type of services you are acquiring requires a Statement of Work (SOW), as well as the dollar amount of your order.

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

For purchases at or below the micro-purchase threshold of \$2,500, you can place orders directly with any FSS contractor that best meets your needs.

For purchases over the micro-purchase threshold of \$2,500, but under the Maximum Order Threshold, you need to send a Request for Quotes (RFQ), including the SOW, to a minimum of three schedule contractors, conduct an evaluation of offers, and then make a “Best Value” selection.

For services over a specific schedule’s Maximum Order Threshold, you must solicit more than 3 schedule contractors and seek price reductions to determine the Best Value selection.

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 transcription services, printing and binding services) -

For purchases at or below the micro-purchase threshold of \$2,500, you can place orders directly with any FSS contractor that best meets your needs.

For purchases over the micro-purchase threshold of \$2,500, but under the Maximum Order Threshold, you need to review the GSA Advantage online electronic ordering system, then make a Best Value determination, or review 3 schedule contractor price lists and select the Best Value.

For services over a specific schedule’s Maximum Order Threshold, you must review more than 3 schedule contractor price lists and seek price reductions to determine the Best Value selection.

Attachments A and B to this Guide include GSA’s detailed ordering procedures for both services and supplies. You can also find this information at GSA’s website

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

What must be included in a Request for Quotes for services?

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

Include the basis of award (e.g., how the vendor’s technical qualifications will be determined, the use of past performance/experience information, price).

GSA also encourages you to request oral presentations from the contractors when appropriate.

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

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 amount of the order. However, when exceeding the Maximum Order Threshold identified in individual schedules, you must solicit price discounts from the vendors.

When acquiring services via the issuance of an RFQ, rather than requesting one discount rate for all labor categories, you should request the vendors to propose discounts by individual labor category. This will allow vendors 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.

What about supplies on the FSS?

The FSS offers many categories of products for federal agencies to buy, including:

- 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?

The ordering procedure that you use under the FSS schedules depends on the dollar amount of the supplies you are acquiring, as follows -

For purchases at or below the micro-purchase threshold of \$2,500, you can place orders directly with any FSS contractor that meets your needs.

For supplies over the micro-purchase threshold of \$2,500, but under the Maximum Order Threshold, you need to review a minimum of three price lists to select the “Best Value” taking into consideration price plus administrative costs.

For supplies over a specific schedule’s Maximum Order Threshold, you must review more than 3 price

lists to determine the Best Value. At this threshold, GSA's procedures require you to seek additional price reductions from the vendors. Regardless of whether the acquisition will be at or above the Maximum Order Threshold, you should always seek price reductions from vendors.

In repetitive buys, you should attempt to vary the contractor and price lists selected. A selection based on the Best Value means that you consider factors other than just the lowest price in determining which 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, and trade-in considerations. (Best Value considerations are discussed in more detail below.)

Do orders for supplies also require a statement of work?

No. Statements of Work are not required to be developed for the purchase of products under the FSS. Neither are an RFQ or evaluation factors. When ordering products over \$2,500, the Contracting Officer is required to either -

Review the GSA Advantage online shopping service and make a best value determination.

Or, review 3 Schedule contractors' price lists (more than 3 if the order will exceed the Maximum Order Threshold), select the best value, and place the order directly with the Schedule contractor.

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 Information Technology (IT) Professional Services. When procuring IT services under SIN 132-51, for instance, you are allowed to reserve the order for award to only small business concerns.

Additionally, FAR 8.404(c) outlines the ordering procedures you must follow for mandatory use schedules. These schedules do not allow certain agencies to test the market solely for the purpose of seeking alternative sources to the FSS program. Presently, DOE is not required to use any of the mandatory FSS schedules.

As previously addressed, GSA has also established special ordering procedures for services that require a Statement of Work. These special ordering procedures take precedence over the procedures in FAR 8.404(b)(2) through (b)(3). Attachment A outlines these ordering procedures for services.

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 place multiple awards under the FSS?

No, but GSA does encourage agencies to establish blanket purchase agreements (BPA) 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 a BPA, remember that -

- Prices must be compared among at least three schedule vendors (more than three if the total value of the order is expected to exceed the Maximum Order Threshold) before issuing a BPA.
- All BPA-holders must be given an opportunity to submit a quote whenever a requirement arises.
- 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.
- The ordering activity that established the BPA shall review it at least once a year to determine whether the schedule contract, upon which the BPA was established, is still in effect; the BPA represents the best value; and estimated quantities/amounts have been exceeded and additional price reductions can be obtained. The ordering activity shall document the results of its review.
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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 products or services that are not identified on a particular schedule?

Yes, but only with certain restrictions. According to FAR 8.401(d), you may add items that are not included on the schedule contract, called *open market items*, to an FSS BPA or an individual task/delivery 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.
- 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?

Yes. To ensure that agencies receive the streamlining advantages of the FSS program, all teaming partners and subcontractors must be FSS contractors.

Do FAR Part 15 requirements apply to FSS orders?

No. But GAO has stated that where an agency conducts a competition under the MAS Program, it 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 MAS program.

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

Must agencies consider alternative offers from vendors that do not have an FSS contract?

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

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

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

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

You should, however, be careful to ensure that such further interactions do not enter the realm of holding “discussions,” as that term is used in FAR 15.306(d). Such interactions should not be undertaken with the intent of allowing offerors to revise their proposals (e.g. do not advise vendors 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 interactions with vendors should be conducted for the purposes of permitting vendors an opportunity to clarify any ambiguities or inconsistencies found in one or more parts of its proposal/quotation, so that the agency can make a clear and objective evaluation.

Can you award a Sole Source Order under the MAS Program?

Orders placed under Federal Supply Schedules are exempt from the requirements in FAR Part 6. However, ordering activities shall procure sole source requirements only if the need to do so is justified in writing and approved at the levels specified at FAR 8.405-6(b).

Although the products/services that are available under the MAS 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.

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

Yes. Awards to FSS vendors 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 MAS?

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.

DOE Acquisition Letters 2000-02 and 2001-05 set forth Departmental policy addressing small business programs and strategies for maximizing contracting opportunities for small businesses. AL 2000-02 requires Contracting Officers to maximize the award of purchases to those small businesses holding contracts with the FSS. Contracting Officers are required to target FSS order competitions to small business firms, and must coordinate with program offices to identify three or more small businesses that hold relevant FSS contracts. FSS order competitions should be further limited, when appropriate, to specific socio-economic categories of small businesses, such as woman-owned or small disadvantaged businesses.

When necessary, program and procurement personnel should coordinate with DOE's Office of Economic Impact and Diversity (ED) and 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 schedules to small businesses are counted as DOE accomplishments for its socioeconomic contract goaling purposes. Contracting Officers should actively assist their program customers in identifying vendors that will help meet the program's procurement requirements.

The integration of PRO-Net and DOD's Central Contractor Registration (CCR) databases has created one portal for entering and searching small business sources. This integration assists small businesses with marketing their goods and services to the federal government. <http://www.ccr.gov/>

Is it appropriate to set-aside an Order under the MAS for Small Businesses?

No - it is neither appropriate nor necessary. FAR Part 19 does not apply to FSS orders, therefore set-aside requirements are not appropriate. However, certain GSA schedules allow orders to be reserved exclusively for small business vendors under the schedule. Moreover, if FAR Part 19 procedures or provisions are used, such as the limitation on subcontracting, incorporation of NAICS codes, or request for small business representation, the Small Business Administration (SBA) will likely view the transaction as a set-aside. This practice would open up the deal for a potential size protest under which SBA would take jurisdiction.

When selecting only small business contractors for potential award of an FSS order, you should -

- Rely on size certifications made by the contractor to GSA at award of the FSS contract.
- Rely on the NAICS code identified in the GSA FSS contract.
- Not include a NAICS code in an FSS Order.
- Not use the term "small business set-aside" in the RFQ.
- Not use set-aside provisions or clauses in the RFQ or contract.
- Not do anything that may imply the order is a formal small business set-aside.

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 to ensure that the majority of the work that is performed by a small business vendor is accomplished over all of their orders, not just a single order.

Notwithstanding that neither GSA's procedures nor a vendor's 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 vendor 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 task order, at least fifty-one percent of the total price paid under this task order (excluding the amount

paid for other direct costs) shall be paid for work performed by the employees of the prime contractor.”

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. 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 an MAS 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 MAS program.

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

No. The ordering agency determines which vendor sources 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 MAS Program?

A best value selection is a process used to select services or 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.

In following the procedures set forth in FAR Subpart 8.4, GSA’s MAS Program owners manual, and schedule-specific ordering procedures to place orders under the MAS program, Contracting Officers should consider the following in making Best Value selections -

- The basis on which an agency will make its selection must be identified in the RFQ.
- Use oral presentations in lieu of written proposals to maximum extent practicable.

- 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 Best Value criteria can you use when ordering services?

The following are sample best value 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, 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 Quality Assurance Engineer developing Environmental Impact Statements; and, the Senior Nuclear Engineer conducting and managing research studies.

How is price evaluated in a Best Value Selection when acquiring services?

For requirements in excess of the micro-purchase threshold, the Contracting Officer should document the evaluation of the vendor's price quotations that formed the basis for the selection, and document the rationale for any trade-offs in making the selection.

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 an FSS vendor's labor rates alone does not provide an adequate basis for determining which vendor is the most competitive since it 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.

When using a performance-based SOW, you should generally avoid dictating the number of labor hours and skill mix against which FSS vendors should propose. Rather, vendors should be permitted to propose the labor skill mix and the level of effort (LOE) it considers necessary against the performance-based SOW. In selecting the contractor which offers the best value and the lowest cost alternative to meet the department's needs, the Contracting Officer should evaluate the vendor's proposed skill mix and LOE.

Additional Time and Material Pricing Considerations

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

While 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 MAS Program?

You should document the files sufficiently to demonstrate that your evaluation of the vendor's response to an 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, that are appropriate to the acquisition bearing in mind the intended streamlined nature of the FSS process.

Attachment C illustrates a sample selection statement.

Are FSS vendors entitled to a debriefing at any time before or following the placement of a competitive order under the MAS Program?

As stated above, the statutory/regulatory requirements associated with competitive negotiated acquisitions in FAR Part 15, do not apply to orders placed against an FSS contract. However, 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 vendor information about the evaluation of the vendor's offer (e.g., to avoid a potential protest; provide the vendor relevant information that may improve its competitive capabilities for future DOE requirements).

While not required, the Contracting Officer may, at his/her sole discretion, elect to provide additional information to an unsuccessful FSS vendor(s). When electing to do so, the Contracting officer should consider the following -

- The timing for conducting such interactions are at the convenience of the agency, 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 vendor 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 15 pertaining to the debriefing of unsuccessful offerors.

You should consult with your procurement attorney about your planned approach.

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 FSS vendor's proposal, in writing, when providing notice to a vendor that it was not the successful offeror. Information may include the following:

Name and address of the successful FSS vendor.

Total award value for the Order.

The basis for award to the successful FSS vendor (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 vendor's evaluated strengths and weaknesses.

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

What is "Scope Creep?"

Task Orders are awarded 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 a task 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 doesn't perform adequately?

The GSA's FSS contracts include the same termination provisions that are prescribed in FAR Part 12.

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. 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).

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

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 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 provides the regulatory procedures and guidance regarding the award and administration of multiple award contracts.

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 products/services.
- Allowing the Government to leverage its buying power to get best value, to receive high quality goods and services, and to take advantage of latest technological changes in the marketplace.
- Streamlining the Order closeout process.

When should you use multiple award contracts?

The FAR requires you to make multiple awards for recurring supplies and services *to the maximum extent practicable*.

For advisory and assistance services, you are *required* to make multiple awards if the amount of the services exceeds \$10,000,000 and the period of performance will exceed three years.

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 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.

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 receive every Order that exceeds \$2,500 that is issued under the multiple award contracts.

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 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.

FAR 16.505(b) prescribes requirements and guidelines you should follow for developing Ordering procedures.

Attachment D illustrates a sample multiple award Ordering clause that establishes procedures for providing each awardee “fair opportunity”.

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

Contracting Officers 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 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/delivery Orders thereunder.

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 Order to evidence that your Ordering practices adhere to the Ordering procedures set forth in the contract.

Inform all awardees if you plan to use an exception to fair opportunity that may occur in the placement of an 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 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.

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

Each 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.

At a minimum, the following should be considered when making a selection for the issuance of an Order

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- Past performance on earlier Orders under the contract, including quality, timeliness, and cost control.
- Potential impact on other 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 Orders.
- Whether contractors could be encouraged to respond to potential 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 individual task Orders 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 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 individual task/delivery Orders are 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 products, 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?

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.

What documentation is required when placing an Order?

For each 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).

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 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 a 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, 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 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 FEDBIZOPS 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 Orders among small businesses (see Attachment D, paragraph b.5.).

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 Reimbursable) in the master contract if you anticipate the issuance of Task Orders on these bases.

Be pro-active. Conduct a post-award meeting with the technical team and a post-award 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 post-award 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 a 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 very few instances when sole source task Orders/modifications are appropriate (See FAR 16.505(b)(2)).

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 contract.

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

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

Part III – Government-wide Agency Contracts

What is a Government-wide Agency Contract (GWAC) ?

A Government-wide 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 products 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 in 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, to establish GWACs. Currently there are only four OMB designated GWAC agencies - GSA, National Institutes of Health, National Aeronautics and Space Administration, and the 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.
- Orders against GWACs are not protestable.
- 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.
- There are over 60 GWACs from which an agency can choose its specific requirements. Attachment D. provides a listing of all current GWACs that have been established and are available for use by DOE and other agencies.

What types of products are available on GWACs?

Many IT products 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 IT 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 .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.

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

Yes. GWACs offer total IT 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.

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