



May 28, 2021

Jeff Koses
Senior Procurement Executive
U.S. General Services Administration (GSA)
1800 F Street, NW
Washington, DC 2006

Subject: DRAFT Acquisition Letter on the Procurement of Cloud Computing on a Consumption Basis under the Federal Supply Schedule (FSS)

Dear Jeff,

The Coalition for Government Procurement (“the Coalition”) sincerely appreciates the opportunity to provide industry feedback in response to GSA’s second Draft Acquisition Letter on the Procurement of Cloud Computing on a Consumption Basis under the FSS.

As you know, the Coalition is a non-profit association of firms selling commercial services, products, and solutions to the Federal Government. Our members collectively account for tens of billions of dollars of the sales generated through the GSA Multiple Award Schedules (MAS) program. Coalition members include small, medium, and large businesses that account for more than \$145 billion in Federal Government contracts. The Coalition is proud to have worked with Government officials for more than 40 years towards the mutual goal of common-sense acquisition.

Coalition members appreciate GSA for the continued dialogue with industry on the implementation of a cloud policy that would allow Federal agencies the flexibility to purchase cloud services on a consumption basis under the FSS. We especially appreciate the effort and analysis dedicated to the rationale underlying its proposed consumption-based cloud model. We hope that the following recommendations on the latest Draft Acquisition Letter MV-20-01 will be helpful in refining the applicable special ordering procedures for GSA’s customer agencies and its industry partners.

Member Comments

	Section	Page#	Comments	Recommendations
1	Draft Policy Section 6.a.2 Requirements	4	N/A	Clarify whether preceding section 6.a.1.A.A is a typo and should have been 6.a.1.A.B. A Special Ordering Procedure clause that waives applicable EPA clauses.

2	Draft Policy Section 6.a.2.b Requirements to Incorporate the Special Ordering Procedures Clause	5	<ul style="list-style-type: none"> • The GSA Cloud SIN has offerings that contain data, applications, runtime, middleware, operating system, etc., for as a service type offerings. We assume the purpose of the consumption-based monitoring is specific to Cloud Service Provider resellers providing AWS, Azure, and other Government cloud providers. Please confirm this assumption. • The requirement to implement procedures in GSAM 538.270 for contractors offering consumption based as a service type offering will be burdensome and will result in additional cost to contractors and the Government to put in a process and system in place to track and map the different layers of as a service type offerings. • Given this is a new reporting requirement, will GSA allow contractors to adjust pricing to cover the cost for providing the reports and overhead for meeting the requirements? 	<ul style="list-style-type: none"> • Please specify in the AL whether the cloud consumption policy is specific to Cloud Service Provider resellers. • Please describe the requirements and process on how GSA plans to implement procedures in GSAM 538.270 for contractors offering consumption based as a service type offerings.
3	Draft Policy Section (6)(b)(4) Evaluation of cloud consumption-based pricing by FSS CO	5	Given the number of contractors offering cloud consumption-based services under the Schedules, the requirement for FSS contracting officers to renegotiate pricing “at least once a year” would be an unnecessary burden for both the Government and contractors, especially given that the pricing is set by competition in the commercial market and has historically trended downward given continued efficiencies in cloud service offerings over time.	Update (6)(b)(4) to: <i>GSA FSS contracting officers shall use the procedures in GSAM 538.270 to evaluate FSS contract prices for consumption-based cloud computing offerings at least once every year to ensure prices remain fair and reasonable.</i>
4	Special Ordering Procedures (a)(4) Requirements TO	10	<p>The definition states that a requirements task order is not a requirements contract as described in FAR 16.503. Stakeholders need this distinction clarified. Along these lines, clarity is needed around whether a requirements task order includes similar language referring to limitations, as described in FAR 16.503. For example: FAR 16.503 refers to max and min quantities, applicable to orders \geq \$100M, including options and single source; For advisory and assistance services \geq 3 years and \$15M including options.</p> <p>In addition, stakeholders need to understand whether the Special Ordering Procedures for Requirements TO apply when CLINs are activated for issuance of funds only and no other similar limitations and requirements, as prescribed in FAR 16.503 under Requirements Contract.</p>	<p>GSA has language within the GSA Alliant 2 GWAC that addresses task order type. We suggest referencing that model for more definition around what a requirements-type task order would look like.</p> <p>Specially, we recommend updating the “Requirements Task Order” definition at Special Ordering Procedures (a)(4) and in Attachment B consistent with GSA Alliant 2.</p> <p>See Attachment 1 “GSA Alliant 2 GWAC Excerpt” of the Coalition’s comments for the <i>Requirements Contract Type</i> language from Alliant 2.</p>

5	Special Ordering Procedures (b) Ordering Procedures	10	Many agencies are restricting RFQs for follow-on task orders for IaaS services to resellers for the incumbent cloud service provider based on the misperception that it is too difficult to shift workloads. To the contrary, the cloud offers more flexibility in services and solutions than on-premises infrastructure, and moving from cloud-to-cloud is easier than moving information within legacy systems. Accordingly, restricting these procurements raises CICA violation issues, as well as concerns that they are contrary to OMB's directive that agencies should avoid vendor lock-in. All told, they risk depriving agencies access to technological innovations and competitive pricing.	Insert under (b) Ordering Procedures: <i><u>(3) The Ordering Activity shall use full and open competition in awarding Task Orders for cloud services. Orders not awarded pursuant to full and open competition shall be made only following the issuance of a written J&A consistent with the Competition in Contracting Act.</u></i>
6	Special Ordering Procedures (e)(3) Review of cloud consumption based pricing by Ordering Activity CO	11	See previous comment #3	Remove the requirement at (e)(3) for Ordering Activity COs to review pricing at least once a year.
6	Special Ordering Procedures (f)(2)(B) Estimated Total Quantity	12	Estimating "quantities" of cloud services is not practical given the broad range of services available for consumption and the range of metrics used to measure and price consumption. It would be more straightforward for the agency to provide the estimate based on the amount the ordering activity estimates will be spent on cloud consumption during the task order period.	Update (f)(2)(B) on pg. 12 to: <i><u>(B) The Ordering Activity Contracting Officer must state a realistic estimate of the total quantity amount in dollars to be expended on cloud consumption in the task order solicitation and the resulting task order.</u></i> <i><u>(i) This estimate is not a representation to an Offeror or Contractor that the estimated quantity-consumption will be required or ordered, or that conditions affecting requirements will be stable or normal</u></i>
7	Special Ordering Procedures (f)(2)(B)(iii) Equitable Price Adjustments on Estimates	12	As drafted, this section requires the contractor to accept all the risk of any inaccurate estimates, the development of which is completely outside their control. Contractors will be relying on these estimates to propose competitive pricing. 20% provides a fairer allocation of risk.	Update (f)(2)(B)(iii) to: <i><u>(iii) If the Government's actual consumption requirements underrun do not meet this consumption estimate, that fact shall not constitute the basis for an equitable price adjustment provided the deviation is less than 20%.</u></i>

8	Special Ordering Procedures ((f)(2)(C) Defined Scope for CLINs	12	Aligning for consistency with the comment on Row 7.	Update (f)(2)(C) to: <i>(C) All CLINs within the task order must include a defined scope with all items consumption metrics priced at time of award, i.e., [PLACEHOLDER for additional description].</i>
9	Special Ordering Procedures ((f)(2)(D) Obligation of Funds	12	Change to clarify the intent allow ongoing purchases.	Update (f)(2)(D) to: <i>(D) The Ordering Activity may obligate funds on an ongoing basis as the bona fide need arises for predefined and established fixed-priced procurement requirements on individual CLINs and sub-CLINs.</i>
10	Special Ordering Procedures (g)(1)(B) Notification of Potential to Exceed Ceiling Price	13	“At any time the Contractor has reason to believe” that a certain percentage of the ceiling price will be exceeded is too vague. Consumption varies month to month, making predictions/beliefs unreliable.	Update (g)(1)(B) to: <i>(B) Notify the Ordering Activity Contracting Officer at any time the Contractor has reason to believe that total costs in performing this task order when the total consumption will exceed reaches 85 percent of the ceiling price, or another percentage as agreed upon by the Contractor and the Ordering Contracting Officer, within the next succeeding 30 days.</i>
11	Special Ordering Procedures (g)((2) “Adequate Protection” of Consumption Monitoring	13	The consumption monitoring section includes a requirement that “(2) The Ordering Activity Contracting Officer shall determine that the offered consumption monitoring capabilities will provide adequate protection to the Government before awarding a task order in accordance with this clause.” The term “adequate protection” is undefined and may have the consequence of determining who is awarded a task order. The term should either be defined within the AL, or within task order solicitations in order to establish what is considered adequate. For example, within the DFARS clause 252.204-7012 the term “adequate security” is defined and makes clear what is required in order to meet it.	Update section (a) Definitions to include a definition of the term “adequate protection.”

Special Ordering Procedures (h) Limitation of Funds	13	As drafted, we are concerned that (h)(1) describing the Limitation of Funds puts customer agencies at significant risk. If Government workloads are running in the cloud and the Government fails to timely increase funding, is the Government willing to accept that the CSP will be required by this clause to shut down Government operations and disrupt Government missions?	Update (h)(1) to: <i>(1) The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the task order, and the Contractor shall not be obligated to continue performance if doing so would exceed the ceiling price set forth in the task order, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased for performance under this task order <u>or otherwise provides written direction to the Contractor to continue performance based on a commitment to increase the funding of the task order.</u></i>
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Thank you again for the opportunity to provide industry feedback in response to GSA’s Draft Acquisition Letter on the Procurement of Cloud Computing on a Consumption Basis. If there are any questions, please contact me at rwaldron@thecgp.org or (202) 331-0975.

Sincerely,



Roger Waldron
President

Attachment 1
GSA Alliant 2 GWAC Excerpt

B.9.1 Requirements Contract Type

A Requirements contract type (FAR Subpart 16.503) provides for filling all actual purchase requirements of designated Government activities for services or supplies during a specified contract period, with performance or deliveries to be scheduled by placing orders with the Contractor. The contracting officer states a realistic estimated total quantity in the Task Order solicitation and the resulting order. All Requirements contract type CLINS within a Task Order must include a defined scope with all items priced at time of award, i.e., Fixed-priced by unit/rate, size or type as defined by the issuing agency. Established pricing is not subject to any adjustment on the basis of the contractor's cost experience in performing the Task Order, and established Contractor prices will not be subsequently discounted at the Government's request once negotiated at Task Order award. The agency will direct the Contractor to deliver a specified quantity of the in-scope Government requirement by use of a Call, which activates a pre-priced CLIN or SubCLIN during the term of the Task Order.

Requirements Task Order type under an IDIQ Master Contract: A Requirements contract type Task Order is a single contract award issued under this indefinite-delivery, indefinite-quantity (IDIQ) Master Contract vehicle. Executing and funding individual CLINS and SubCLINS under this Task Order type are not considered to be second-tier instruments issued under the awarded Task Order. Also, the agency's clearly defined Requirements Task Order procurement, as with any contract type listed in Section B.9, must be within the scope of the Master Contract's Section C.

Pursuant to the terms and conditions of this Master Contract, the use of Requirements contract types of Task Orders is further restricted to the following: The term of the Task Order (including Options) should not exceed the remaining ordering period of the Master Contract (including the Option) at the time of Requirements Task Order award.

Application of Requirements Contract Type: A Requirements contract type approach satisfies the requirement for the issuance of a binding Task Order under Master Contract. This contract type can provide Task Order issuing agencies with maximum flexibility when ordering IT services while obligating funds as needed only on individual calls as the bona fide need arises for predefined and established priced procurement requirements on awarded Requirements contract type Task Orders by individual CLINS and SubCLINS.

A Requirements contract type Task Order may be appropriate for acquiring flexible IT solution services, including ancillary services or goods when the Government anticipates recurring requirements but cannot predetermine the precise quantities that Government activities will need during a definite period. The below list are a few examples of IT services that may be considered to procure using a Requirements contract type:

- Data Center & Virtualization Services - Consolidation and migration.
- Cloud Migration and Storage.
- IT Disaster Recovery - Recovery, backup and replication services.
- IT Managed Services - Continuous monitoring, managing and/or problem resolution for the IT systems within a business.
- IT Helpdesk Services.
- Intrusion Monitoring and Prevention - threat monitoring and response.
- Telepresence.

B.9.1.1 Distinction of a Requirements Contract to Other Contract Types and Agreements

a) IDIQ Contracts - A Requirements contract type Task Order issued under this Master Contract is not an IDIQ contract. There are distinct structural differences between a Requirements contract and an IDIQ and distinct differences in the nature and legal effect of the different types of orders that are placed against these different contract vehicles. A Requirements contract type in this Master Contract is one in which the Government (buyer) agrees to purchase all of its needs for a particular item or service during the Task Order period from the Contractor (seller), and the seller agrees to fill all of the buyer's needs for the goods or services described in the Task Order. Thus, unlike an IDIQ, an essential element of a Requirements contract type is the promise by the buyer to purchase all the subject matter within this contract type of Task Order exclusively from one seller, Whereas with an IDIQ, once the minimum is met, the buyer is not obligated to place any additional orders. Additionally, the multiple award preference requirement does not apply as it does with an IDIQ, under FAR 16.504(c)(1). An IDIQ is also different from a Requirements contract type in the following: (1) A Requirements contract's guaranteed minimums are not required; (2) The Task Order solicitation of a Requirements contract must state realistic estimated quantities, and; (3) The buyer and seller are obligated to buy and sell on a Requirements at the prices negotiated at time of award.

(b) A Basic Ordering Agreement (BOA), under the rules of FAR Subpart 16.703, is not a contract. It is a written instrument of understanding used when contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed. Thus, a BOA, unlike a Requirements contract, does not require a clearly defined scope or required pricing established at time of award. And because a defined scope and established pricing is required for any Task Order issued under this Master Contract, BOAs are unsuitable methods of procurement for purposes of this GSA GWAC program.

(c) A traditional Blanket Purchasing Agreement (BPA) falls under the rules of FAR Subpart 13.303, Simplified Acquisition Procedures, and a Multiple Award Schedule BPA (also known as a GSA Schedule BPA) falls under the rules of FAR Subpart 8.4 Federal Supply Schedules (FSS). Task Orders should be issued in accordance with the rules under FAR Subpart 16.505, not FAR Subpart 13.303 or 8.4. Neither of the two BPA types fall under FAR Part 16 Types of Contracts because they are agreements similar to BOAs. BPAs neither obligate funds nor require placement of any orders against it. The award of a BPA lacks mutuality of consideration at the time of BPA award. Like BOAs, BPAs are not suitable as a Task Order contract type. Therefore, including IDIQ, BPA and BOA Task Order Contract Types into Section B.8 are not in the best interest of the Government for this Master Contract.

B.9.1.2 Additional Terms and Conditions for Requirements Contract Type for Commercial Items

At any time during the term of the Master Contract, the Requirements Contract type as an available Task Order type (listed in Section B.9) may be removed from the Master Contract via a unilateral contract modification if the GSA GWAC PCO determines that its use as an available contract type is no longer in the best interest of the Government.