

# Leveraging the Federal Supply Schedule to Support the VA Supply Chain

## I. Overview

With over 1 million state-of-the-art commercial products and services, the Federal Supply Schedule (FSS) is one tool that the Department of Veterans Affairs (VA) can use to support its medical supply logistics system through programs like the Medical/Surgical Prime Vendor-Next Generation (MSPV-NG). The FSS is a competitive contracting program<sup>1</sup> offering nearly 1,900 contracts, with a vast array of options among commercial supplies and equipment.

Recent changes to the Micro-Purchase Threshold (MPT) and the Simplified Acquisition Threshold (SAT)<sup>2</sup> make it easier for customers to order from Federal Supply Schedule contracts. The new MPT is \$10,000 for civilian agencies. Up to the MPT, Schedules ordering procedures allow an agency to place an order with any FSS contractor that meets its requirements. See, Federal Acquisition Regulations (FAR) 8.405. Competition among Schedule contractors is not required at that dollar threshold. The new SAT is \$250,000. For orders between the MPT and SAT, the FAR contains a simplified ordering procedure that requires consideration of 3 contractors. When ordering products, a request for quotation (RFQ) is not required.

VA can use, and historically has used through its prime vendor program, the Schedules ordering procedures to efficiently acquire products to support veterans' healthcare. The procedures afford VA sufficient flexibility to implement standardization decisions and negotiate for additional discounts, using BPA's against the FSS. Ordering from BPA's can be a straightforward process for VA customers. When ordering against a multiple award BPA, the FAR allows the following:

- Orders at or below the MPT can be placed with any BPA holder.
- Orders between the MPT and SAT require that each BPA holder have a fair opportunity to be considered. The agency need not contact each BPA holder if information is available to ensure BPA holders are considered (for example price lists or catalogs).

---

<sup>1</sup> FAR 6.102(d)(3) citing 41 U.S.C. 152 specifically provides that the MAS program is considered a competitive procedure under the Competition in Contracting Act. The contract prices under the MAS program are determined fair and reasonable pursuant to the policies and procedures established by the Administrator of GSA.

<sup>2</sup> National Defense Authorization Act, Public Law No: 115-91, 12/12/2017

- VA can also satisfy its small business objectives using the FSS<sup>3</sup>.
  - Ordering activities have the discretion to set aside orders for small business.
  - Ordering activities can consider socio-economic status, for example small veteran-owned business, when identifying contractors for consideration of award or competition.
  - Orders placed against Schedule contracts can be credited to the ordering activity’s small business goals.
- The Supreme Court has stated that, before contracting with a non-veteran owned business, VA must first apply the “Rule of Two”<sup>4</sup>.
- In implementing the decision, VA takes the position that “The Rule of Two” only indicates whether the acquisition is a set-aside. Once the contracting officer decides to set-aside, they must follow the competition procedures applicable to the FAR part under which the acquisition is conducted.<sup>5</sup>
- Specifically, with respect to the FSS, VA policy provides

808.405-5-70 Small business set-asides—the Veterans First Contracting Program

*When issuing BPAs or placing orders against the FSS, the contracting officer shall restrict competition to small businesses owned and controlled by veterans, when market research provides the contracting officer with a reasonable expectation of receiving two or more offers/quotes from verified SDVOSBs or VOSBs and award can be made at a fair and reasonable price that offers best value to the Government.*<sup>6</sup>

- There are several options available to VA when deciding how to best leverage the Schedules program to support the VA’s supply chain. Some options are set forth in section IV below.

---

<sup>3</sup> FAR 8.405-5

<sup>4</sup> Kingdomware Technologies, Inc. V. U.S. No. 14-916, (June 16, 2016)

<sup>5</sup> Veterans First Contracting Post-Kingdomware FAQs

<https://www.va.gov/osdbu/faqs/veterans-first-contracting-post-kingdomware.asp#FAQ2>

<sup>6</sup> Class Deviation—Implementation of the Veterans First Contracting Program as a Result of the U.S. Supreme Court Decision (Class Deviation—Veterans First Contracting Program (VFCP 2016) July 25, 2016

## II. Background

The VA FSS program is currently the largest integrated “market” within the Federal government for the sale and distribution of medical products and supplies. The VA FSS manages multiple award Schedules for medical equipment, supply, pharmaceutical and service contracts under delegated authority by the General Services Administration (GSA). There are currently 9 Schedules that

VA Schedule Programs	
65 I B	Drugs, Pharmaceuticals & Hematology Related Products
65 II A	Medical Equipment & Sales
65 II C	Dental Equipment & Sales
65 II F	Patient Equipment & Sales
65 V A	X-Ray Equipment & Sales
65 VII	Invitro Diagnostics, Reagents, Test Kits & Test Sets
66 III	Cost-Per-Test, Clinical Laboratory Analyzers
621 I	Professional & Allied Healthcare Staffing Services
621 II	Medical Laboratory Testing & Analysis Services

generate over \$14 billion in sales and offer more than 1 million innovative products and services to meet the healthcare needs of the VA and other agencies<sup>7</sup>.

Use of the VA FSS program for ordering healthcare products and supplies results in time and cost efficiencies for Federal agencies, compared to establishing a new contract. FSS contract items have already been determined to be fair and

reasonable at the Schedule contract level by the VA, and Federal agencies can achieve even greater discounts through negotiations at the order level. In addition, orders may be set-aside for small businesses consistent with the VA’s “rule of two”. Healthcare products and services on the FSS also meet certain socio-economic and other government requirements, including the Trade Agreements Act (TAA).

Use of existing contracts, like the Schedules program, further the Federal government’s efforts to increase spend under management and reduce contract duplication. The VA can take advantage of the aforementioned administrative and cost efficiencies by maximizing use of the FSS (as one tool in the toolbox) across the Department and as a potential source for programs like the MSPV-NG and MSPV 2.0.

---

<sup>7</sup> See VA Federal Supply Schedule homepage at <https://www.fss.va.gov>.

### III. Discussion of FAR 8.405 Ordering Procedures

This section is limited to a discussion of the Schedule ordering procedures (FAR 8.405) as it relates to the acquisition of products since this paper does not address the delivery of healthcare services under the FSS program.

1. The FY18 National Defense Authorization Act (NDAA) increased the standard micro-purchase threshold (MPT) for civilian agencies from \$3,000 to \$10,000<sup>8</sup>. FAR 8.405-1(b) provides that an agency can place an order valued up to the MPT with any FSS contractor that can meet its needs. As a result of the change to the MPT, an agency can order products, valued up to \$10,000 without a direct competition among Schedule holders.

FY18 NDAA
\$10,000 New Micro-purchase Threshold for Civilian agencies
\$250,000 New Simplified Acquisition Threshold

2. FY18 NDAA increased the Simplified Acquisition Threshold from \$150,000 to \$250,000<sup>9</sup>. This change significantly reduces the number of Schedule orders that are subject to the more complex regulations applicable to high dollar orders.
  - a. Purchases below the MPT for FY 2017 were about approximately 12% of VA contract spend. With the increase of the MPT to \$10,000, an even greater percentage of orders for healthcare products could well be below the new MPT.
  - b. VA should examine whether any MSPV orders exceed \$250,000.
3. The process for ordering below the MPT is simple.
  - a. An agency can place an order with any Schedule contractor that meets its needs. See FAR 8.405-1(b)
  - b. Competition among Schedule contractors is not required. Ordering agencies are merely encouraged to "...[a]ttempt to distribute orders among schedule contractors"
  - c. An agency may ask for a price reduction. See FAR 8.405-4.

---

<sup>8</sup> The statutory change has not been implemented by regulation. Pending a change to FAR, GSA and other agencies are pursuing a deviation to implement the increase to the MPT and SAT.

<sup>9</sup> The statutory change has not been implemented by regulation. Pending a change to FAR, GSA and other agencies are pursuing a deviation to implement the increase to the MPT and SAT.

- d. There is no requirement to justify and post justifications to limit sources. See FAR 8.405-6.
  - e. The requirement to give preference to small business does not apply to orders under the micro-purchase threshold. The buyer, however, has discretion to set-aside orders for small business. The ordering agency has discretion to use socio-economic status when identifying contractors for consideration or competition for award. An example of socio-economic status is “veteran owned small business.” See FAR 8.405-5.
4. The process for ordering products, between the MPT and the SAT is a streamlined ordering procedure. See FAR 8.405-1(c).
- a. The ordering activity must consider information about at least 3 Schedule contractors before placing an order. This requirement is satisfied by:
    - i. reviewing GSA Advantage! or
    - ii. reviewing pricelists or catalogs of 3 contractors, or
    - iii. requesting 3 quotations.
  - b. The agency is not required to issue an RFQ for an order.
  - c. The agency must justify circumstances to limit sources to less than 3, and appropriately document the file.
  - d. An agency may limit sources under the following circumstances:
    - i. An urgent and compelling need exists and following the procedures would result in unacceptable delays;
    - ii. There is only one capable source at the level of quality required because the supplies are unique or highly specialized;
    - iii. In the interest of economy and efficiency, the new work is a logical follow-on. See FAR 8.405-6.
  - e. An agency may ask for a price reduction. See FAR 8.405-4.
  - f. The ordering agency shall place orders with the Schedule contractor that can provide the supply that represents the best value.

5. Orders over the SAT (now \$250,000) are subject to more complex ordering procedures set forth below. This process is still substantially streamlined compared to a full and open competition. See FAR 8.405-1(d).
  - a. Each order shall be placed on a competitive basis unless this requirement is waived in accordance with 8.405-6.
  - b. The ordering activity must
    - i. Issue an RFQ that describes the product solicited and the basis upon which the selection will be made.
    - ii. Post the RFQ:
      1. on e-Buy to the appropriate Schedule offering contractors an opportunity to submit a quote; or
      2. provide the RFQ to as many Schedule contractors as practicable, to reasonably ensure that quotes will be received from at least three contractors
      3. If an order contains brand-name specifications, also post with the justification for limiting sources, as required by FAR 8.405-6
      4. An agency may limit sources under the following circumstances:
        - a. An urgent and compelling need exists and following the procedures would result in unacceptable delays
        - b. There is only one capable source at the level of quality required because the supplies are unique or highly specialized;
        - c. In the interest of economy and efficiency, the new work is a logical follow-on. FAR 8.405-6
    - iii. Seek a price reduction. See FAR 8.405-4.
    - iv. Ensure that all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ.

- v. Determine best value based on price and other factors. See 8.405-1(f).
  - vi. Document the file to show the award decision and compliance with the requirements above.
6. Establishing a BPA over the SAT. The process for establishing a BPA over the SAT is substantially the same as that described in 3 above.
- a. Each BPA shall be placed on a competitive basis unless this requirement is waived in accordance with 8.405-6
  - b. The ordering activity must
    - i. Issue an RFQ that includes
      - a. a description of the products to be delivered
      - b. the basis upon which the selection will be made
      - c. The procedures for placing orders under the BPA
    - ii. Post the RFQ
      - a. on e-Buy under the appropriate multiple award schedule or
      - b. provide the RFQ to as many schedule contractors as practicable, to reasonably ensure that quotes will be received from at least three contractors
    - iii. Ensure all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ.
    - iv. Seek a price reduction. See FAR 8.405-4.
    - v. Establish the BPA with the schedule contractor(s) that provides the best value based on price and other factors. See 8.405-1(f).
    - vi. Document the file to show the award decision and compliance with the requirements above.
7. Preference for Multiple Award BPA's

- a. Multiple award BPA's are preferred to the maximum extent practicable
- b. A single award BPA over \$112 million must be approved by the head of the agency considering the following factors
  - i. The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work;
  - ii. The BPA provides only for firm-fixed priced orders;
  - iii. Only one source is qualified and capable of performing the work at a reasonable price to the Government; or
  - iv. It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.

8. Ordering from BPA's

- a. Single award – Place order directly with the BPA holder
- b. Multiple award
  - i. Order at or below MPT - Place with any BPA holder; attempt to distribute among BPA holders. Note according to GAO 2016 report<sup>10</sup> most MSPV orders will be in this category.
  - ii. Orders between MPT and SAT
    - a. Give each BPA holder a fair opportunity to be considered. Need not contact each BPA holder if information is available to ensure BPA is considered (For example, price list or catalog).
  - iii. Orders over the SAT
    - a. Provide an RFQ to all BPA holders offering the required products to include a description of the items to be delivered and the basis upon which the selection will be made;

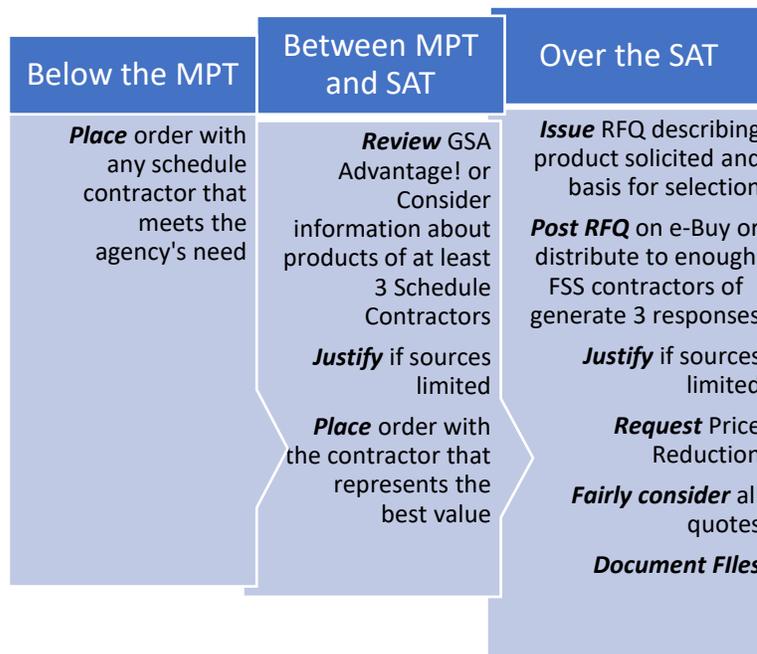
---

<sup>10</sup> See footnote 7

- b. Afford all BPA holders responding to RFQ an opportunity to submit a quote;
- c. Fairly consider all responses received and make award in accordance with the selection procedures.
- d. Document evidence of compliance with these procedures and the basis for the award decision

*OVERVIEW*

*Federal Supply Schedule Ordering*



IV. VA established supplemental procedures for placing orders against the FSS<sup>11</sup> that do not clearly implement the streamlined ordering procedures of FAR 8.4.

The VA procedures state that the "... requirements in FAR 8.405-1, 8.405-2 and 8.405-3, apply, except only verified SDVOSBs or VOSBs, will be considered." This statement is consistent with the VA position that

---

<sup>11</sup>See footnote 6, Class Deviation (July 25, 2016), 808.405-70 VA Rule of Two ordering procedures for Federal Supply Schedules— the Veterans First Contracting Program.

“The Rule of Two” only indicates whether the acquisition is a set-aside. Once the contracting officer decides to set-aside, they must follow the competition procedures applicable to the FAR part under which the acquisition is conducted.<sup>12</sup>

VA Policy
Does not leverage the streamlined processes applicable to Schedule orders under the MPT and the SAT

Unfortunately because the VA supplemental procedures are in some places imprecisely written, the rules may be construed to require an ordering office to take the following steps when placing any order against the schedule, without regard to dollar value.

1. Issue an RFQ
2. Post the RFQ on e-Buy or provide the RFQ to as many eligible Schedule contractors as practicable, and
3. Afford all eligible Schedule contractors offering the required supplies or services an opportunity to submit a quote
  - a. FAR 8.405-1 does not require that the steps enumerated above be applied under the MPT, SAT or for the acquisitions of products.
  - b. For VA’s MSPV program, items that are acquired are products. GAO reports have suggested that the value of orders under the MSPV is largely under the MPT.

#### V. Alternatives for using FSS to support Veteran’s Healthcare

The VA is seeking to increase the number of Formulary items under the current MSPV-NG program as well as developing the acquisition strategy for MSPV 2.0 in the future. To maximize effective use of the streamlined Schedule ordering rules, the VA should consider one or more of the following strategies to support the medical supply chain, as a whole, including the requirements of the MSPV program and the Formulary. The Coalition would welcome an opportunity to engage in a discussion to further explore options that would be beneficial to VA customers and that are consistent with the capabilities of commercial suppliers.

1. Clarify VA supplemental FSS ordering procedures for ordering activities to take advantage of FAR 8.4 streamlined procedures below the MPT and SAT. Training regarding FAR 8.4 FSS ordering procedures could be beneficial.

---

<sup>12</sup> Veterans First Contracting Post-Kingdomware FAQs  
<https://www.va.gov/osdbu/faqs/veterans-first-contracting-post-kingdomware.asp#FAQ2>

2. Delegate authority to medical centers/buying activities to buy up to the micro-purchase threshold. When implemented by regulation the MPT will increase from \$3,500 to \$10,000.
  - a. FAR allows the ordering activity to place an order with any eligible schedule contractor, so there is little risk of non-compliance
  - b. In view of VA's Veteran's first policy, ordering agencies could be instructed to give preference to small businesses owned and controlled by veterans.
  - c. With the increase in the MPT to \$10,000, most orders will likely fall below this amount
  - d. Ordering activities can ask for Price Reductions, to further leverage contract level prices
3. Request that schedule contractors voluntarily offer price reductions and volume discounts for sales through the prime vendor program. To the extent practicable the prime vendor would utilize those contractors who have offered price reductions/volume discounts.
4. Establish Multiple BPA's over the SAT, but limit the value of orders to below the MPT
  - a. Establish set-asides as required by VA Veterans First Contracting program.
  - b. Limiting the value of orders to below the SAT, allows VA to take advantage of the simplified procedures associated with that dollar value.
  - c. Solicit for equipment based upon VA's technical requirements. Describe generically. This option may require that VA justify limiting sources. State VA specific need/terms and conditions. For example, due to needs of the hospitals and medical centers various manufactures may be needed. Because of the need to acquire compatible equipment, parts and replacement products, ordering activities may need access to entire product lines. This approach offers flexibility to satisfy the needs of VA clinicians.
  - d. Include as a selection criterion – BPA holder to offer volume discount after sales under the BPA reach a specified level. This pricing method leverages volume for all VA customers without having extensive upfront price negotiation.
5. Establish Multiple BPA's over the SAT, without limit on the size of the order
  - a. Same as 2 above
  - b. Negotiate for additional discounts and volume discounts

- c. Award to those offering the best value
  - d. Most orders are likely to be below the MPT – orders can be placed with any BPA holder
  - e. The vast majority of orders are likely to be below the SAT – allowing for use of the streamlined ordering procedures
  - f. Number of BPAs - sufficient number to get all manufacturers needed – based on standardization/technical requirement
  - g. This is the best option to leverage VA volume, while also allowing for streamlined ordering procedures. This process will be harder to get through because of need to negotiate discounts. Larger BPA's likely to attract more attention and scrutiny.
6. Alternative for enhancing participation by veteran-owned contractors
- a. Solicit all Schedule contractors capable of supplying the equipment needed and complying with VA needs (i.e., without regard to status as manufacturer/dealer/distributor)
  - b. Evaluation factors
    - i. Extent to which veteran owned small businesses are used
      - 1. Veteran owned businesses given most points;
      - 2. Large businesses with best past record using veteran owned businesses and/or plans to use such businesses under the BPA rated favorably

These evaluation factors are in accordance with 852.215-70 Service-disabled veteran-owned and veteran-owned small business evaluation factors.