



November 8, 2016

General Services Administration
Regulatory Secretariat Division
ATTN: Ms. Hada Flowers
1800 F St. NW, 2nd Floor
Washington, DC 20405

Subject: GSAR Case 2016-G506

Dear Ms. Flowers,

Thank you for the opportunity to provide comments in response to the General Services Administration (“GSA”) proposed rule, *General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule, Order-Level Materials*.

The Coalition for Government Procurement (“the Coalition”) is a non-profit association of firms selling commercial services and products to the Federal Government. Our members collectively account for a significant percentage of the sales generated through General Services Administration (“GSA”) contracts including the Multiple Award Schedules program. Coalition members include small, medium, and large business concerns. The Coalition is proud to have worked with Government officials for more than 35 years towards the mutual goal of common sense acquisition.

ITAPS, a division of the Information Technology Industry Council (ITI), is an alliance of leading technology companies building and integrating the latest innovative technologies for the public sector market. With a focus on the federal, state, and local levels of government, as well as on educational institutions, ITAPS advocates for improved procurement policies and practices, while identifying business development opportunities and sharing market intelligence with our industry participants. Visit itaps.itic.org to learn more.

The proposed rule amends the GSAR to establish special ordering procedures for the acquisition of Order-Level Materials (OLM). These procedures clarify the existing authority of the Federal Acquisition Regulations to acquire OLM’s when placing an order or establishing a blanket purchase agreement (BPA) against a Federal Supply Schedule contract. GSA states that the purposes of the proposed rule are to:

- create parity between Schedule contracts and commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts,
- reduce the need to conduct less efficient procurement transactions,
- lower barriers of entry to the federal marketplace, and

- make it easier to do business with the federal government.

The Coalition and ITAPS have long supported adding the authority to acquire OLM's to the Schedules program. Our members agree that, appropriately implemented, this functionality could offer customer agencies and contractors greater flexibility to seek, compete, award, and perform commercial-based solutions to meet agency mission requirements. The result would make the Schedules an exceptional acquisition program offering unparalleled access to innovation from the commercial marketplace. Our members are excited about this long-awaited change. They are, however, concerned that the proposed rule adds processes that complicate and add cost to current FAR Procedures. Specifically, the proposed rule:

- requires contractors proposing OLM's to submit a minimum of three quotes for each OLM above the micro-purchase threshold, and requires the order activity to determine all prices for OLM's are fair and reasonable,
- requires OLM's to be purchased under a separate Special Item Number (SIN),
- prohibits OLM's from being the primary basis of the order; limits the value of the OLMs to 33% of the overall order value.

Our members report that these additional steps are not commonly imposed by other federal agencies using similar acquisition vehicles.

While the Coalition and ITAPS support the inclusion of the authority for OLM's in the Schedules, we recommend that GSA remove burdensome provisions and clarify some ambiguous provisions of the proposed rule.

Detailed Comments

1) The proposed rule does not establish parity with other Government Contract vehicles.

The proposed rule is based on the premise that it will give the GSA Schedules parity with other IDIQs. Currently, most commercial indefinite-delivery/indefinite-quantity (IDIQ) contracts provide the flexibility to easily acquire order-level materials. The current FSS program does not have equal flexibility and unfortunately the changes proposed by this rule will not result in a program equally as flexible as the Schedule's competitor vehicles. Specifically, other Government-wide IDIQs that compete with the Schedule, for example Alliant, CIO-SP3, ITES-2S, and ENCORE 3:

- a) do not have requirements to send three quotes,
- b) do not require reporting of order-level materials and
- c) *do* allow contractors to recover indirect cost (and even a fee in the fixed price environment)

If the proposed rule is implemented, as drafted, the Schedules program will remain more difficult for federal customers to use than other Governmentwide IDIQ contracts and the Schedules will remain more burdensome for contractors offering solutions than other similar contract vehicles.

2) The FAR does not require the procedures that GSA proposes to adopt.

GSA uses its authority to establish special ordering procedures for the Schedules Program to implement processes related to OLM. The procedures are based on FAR Clause 52.212-4 Alternate 1. According to the rule, all provisions of that clause that apply to materials, apply to the acquisition of order level materials under the GSA Schedule. The FAR-based clause already authorizes a contract mechanism for acquiring and paying contractors for material, at the order level, for ODCs, materials and indirect costs. The FAR clause addresses:

- paying for commercial items at prices not to exceed established catalog or market price
- conditions for reimbursing contractors for actual cost
- the task order agency's option for deciding if indirect costs will be reimbursed.

The FAR provision went through the rulemaking process nearly nine years ago and is widely used throughout the federal government. The processes that GSA proposes to add will introduce complexity, add cost, and may not be necessary to ensure the integrity of the schedules program.

3) Submitting three quotes to task order agencies is a burdensome and unnecessary process for Schedule contractors.

Obtaining quotes is an expensive process for contractors and is a direct cost to companies. A contractor will require resources to among other things identify sources, develop an RFQ, obtain quotes, vet quotes, negotiate quotes, and record quotes. This process also adds responsibilities to the task order contracting officer who according to the rule must receive the quotes and determine that the prices of the OLM are fair and reasonable.

The process for ordering OLM, in some cases, could be more burdensome than the MAS ordering procedures. The proposed rule requires a minimum of 3 quotes for all OLM in excess of the micro-purchase threshold. FAR 8.4 only requires an RFQ for services that require a statement of work; and for products and other services, over the simplified acquisition threshold (SAT). Open market items are acquired using procedures applicable to the dollar threshold of the acquisition. At a minimum, GSA should revise the proposed rule to acquire a minimum of 3 quotes in excess of the SAT.

The Schedule program is subject to continuous competition. At the contract level, GSA negotiates fair and reasonable pricing based on commercial sales practices and increasingly, horizontal price comparisons. Task order agencies must follow the procedures of FAR 8.4 to obtain specific pricing for their requirements. The Price Reduction Clause demands price decreases in certain circumstances. Agency BPA's and the competitiveness of the Schedules market create vibrant and constant competition at the transactional level. This competition provides incentive for schedule contractors to offer competitive pricing in all aspects of their quotes including pricing for OLM. Notwithstanding the rigorous competition, GSA has continued efforts to leverage prices downward. We assume these efforts are the basis for the requirements for three quotes. We believe there are less onerous ways of ensuring reasonable prices for OLM. We recommend that GSA eliminate the requirement for 3 quotes and consider alternatives such as:

- a) Establishing best practices for pricing OLM that can be posted on the Acquisition Gateway in the relevant Hallways.
- b) Encourage agencies and contractors to acquire OLM using Government supply sources as authorized by FAR Part 51 and the deviation, which allows contracting officers to authorize all GSA contractors, who are performing on a time-and-material or labor-hour basis, to purchase ancillary supplies and services from Schedule contractors or process requisitions through the GSA Global Supply Program.
- c) Exempt contractors with a Contractor Purchasing System Review (CPSR) from the requirement to submit 3 quotes. See FAR 44.3. Contractors with such systems obtain and document competitive quotes, but there would be no requirement that the quotes be sent to the contracting activity for a determination of fair and reasonable pricing.

4) Reporting of order-level materials is an information collection burden which should be borne by the Government

The proposed rule requires that all OLM be provided through a separate SIN. This process is established solely to facilitate GSA's ability to collect data. The process does not enhance the agency's ability to acquire items, nor does it facilitate a contractor's ability to offer quality products or services. This process does, however, add cost to the schedule contractors. Contractors must update internal systems to capture the information and to report for IFF purposes. Both small and large businesses will experience economic impact as the value of the resources expended to quote, execute orders, and record the information for the SIN sales is not recognized. We urge GSA to consider alternative means of collecting data to assess the effectiveness and utility of the change. GSA has government resources that can be used to evaluate the effectiveness of the new ordering procedures, such as the Technology Transformation Service (TTS)—as its first priority, TTS could pursue a comprehensive data modernization effort to include OLM data. See Attachment 1.

5) The Proposed rule should not preclude agencies from allowing indirect costs.

Proposed GSAR 538.7103(a)(3) states: "Insert 'none' in FAR clause 52.212-4 (i) (1) (ii) (d) (2)." The implication is that Contractors will not be able to add any mark-up on order level materials that are procured. GSA apparently assumes that the indirect cost of providing the materials is built into the labor rates on a GSA schedule contract. Fully burdened GSA rates do not include general and administrative costs for acquiring order level materials.

Obtaining quotes requires resources (to identify sources, develop an RFQ, obtain quotes, vet quotes, negotiate quotes, record quotes) and is a direct cost to the company. In addition, successful offerors must continue the process through the execution of purchase orders, tracking of delivery, receipt/validation of invoices from suppliers, and execution of payment to suppliers. This process requires people and systems, and they are an expense to the company. After award, these order-level materials will need to be reported in the new Order-Level Materials SIN, again requiring manpower and systems.

The instruction to insert “none” for the reimbursement of indirect costs is particularly problematic, in light of the cost imposed by the rule. Contractors will not have a mechanism for recovering costs for providing these materials.

Under current procedures, some agencies allow contractors to mark-up ODCs on GSA task orders, when that is their commercial practice. GSA’s apparent assumption that the costs of providing materials is built into the labor rate will not allow contractors to break even when providing order level materials. The effort to obtain the quotes and later to execute and report the orders are directly related to the contract, and should not be overlooked by GSA.

We urge that GSA allow customer agencies to retain the discretion of the current FAR to allow indirect cost at the task order level.

6) The proposed rule should eliminate the requirement that OLM be Limited to 33% of the order

The proposed rule states: “The cumulative value of order-level materials awarded under an FSS order shall not exceed 33 percent of the total value of the order.” We understand the concept that OLM should not be the primary base of the order. A limitation specifically to 33% of the order, however, seems arbitrary and over time may be difficult to maintain.

This part of the rule could also have a negative impact on Advertising & Integrated Marketing Solutions (AIMS) Special Item Numbers (SINs) on Federal Supply Schedule 99: All Professional Services. Many contractors who are currently awarded SINs for AIMS are also awarded SIN 541 1000 Other Direct Costs (ODCs). There is currently no limit to the value of the materials ordered under these SINs. Because of the nature of the task orders under AIMS SINs the value of OLM may exceed 33% of the total value of the order. Contractors who provide public relations services and conference and tradeshow planning services are probably most affected because the products or services provided for these projects can often exceed 33%.

It is unclear how will the General Services Administration Acquisition Regulation (GSAR) amendment address the need for Contractors to provide materials for projects if a value limit is imposed.

7) The Proposed Rule poses questions that GSA should address prior to issuing a final rule.

Our members have raised the following questions:

- a) What impact will the proposed rule have on SINs under existing Schedules for Ancillary Products and Services and Other Direct Costs? Given the comments raised above, we suggest that GSA retain those SINs until it has additional experience and analysis of the OLM procedures. For example, SIN 711 95 for Office Furniture Installation Services under Schedule 71 and SIN 541 1000 Other Direct Costs under AAIMS.
- b) 552.238-XX, Paragraph (d)(6) requires that customer agencies follow the procedures of FAR 8.404(h) prior to placing an order that includes OLM. That section of the FAR requires agencies acquiring services to specify the type of order that they will use (i.e., firm-fixed price, time-and-materials, or labor-hour). Is this provision intended to require agencies to specify to MAS

contractors the type of request for quotations that they must use in obtaining quotations for OLM?

- c) The proposed rule states that the OLMs will be reported under a separate SIN. Is the schedule holder required to pay IFF on the sales of that SIN?
- d) If GSA is administering a schedule using the Price Reductions Clause / Commercial Sales Practice disclosures for contract compliance, how will GSA use the lump sum dollar value associated with the IFF reported in the 72a system to evaluate appropriate usage for that SIN?
- e) If a Schedule 70 holder has accepted the Transactional Data Reporting (TDR) modification, will TDR reporting be required for sales under the OLM SIN?
- f) At the task order level, where the rule states that the schedule holder must obtain 3 quotes and submit with their TO proposal, what price is proposed in the TO price proposal for that opportunity? Does the offeror assume the lowest price for price evaluation purposes?
- g) Proposed states 552.238-XX(d)(2) states:

The ordering activity shall follow procedures under the Federal Travel Regulation and FAR Part 31 when order-level materials include travel.

Most MAS contracts contain clause C-FSS-370 CONTRACTOR TASKS / SPECIAL REQUIREMENTS which says contractors may either be reimbursed in accordance with the travel regulations or travel can be priced as a fixed price item on orders placed under the Schedule. Will the OLM ordering procedure contain the same flexibility?

- h) Can GSA define the "open market" acquisition?
- i) What is the process for getting on the OLM SIN? Will it be automatic where all Schedule holders are added and contractors will not have to submit modifications to be added to the SIN?

Thank you for the opportunity to provide public comments in response to the proposed rule. If there are any questions, please contact Roger Waldron at rwaldron@thecgp.org or Trey Hodgkins at thodgkins@itic.org.

Sincerely,



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