

## **MAS Consolidation Terms and Conditions Market Research**

### Solicitation Format

Below is a summary of the new proposed solicitation format for the consolidated Schedule.

### **New Multiple Award Schedule Solicitation Proposed Format**

#### **Introduction**

This section introduces the solicitation and points users to relevant information sources on gsa.gov for additional information on Schedules and the offer process.

#### **Table of Contents**

- I. Offer Preparation Instructions and Evaluation Criteria
- II. Available Offerings
- III. Contract Terms and Conditions
- IV. List of Attachments (with BRIEF description of each attachment)

#### **Format Section Details:**

##### **I. Offer Preparation Instructions and Evaluation Criteria**

This section outlines the information that all offerors must provide to GSA in order to be considered for award under the MAS.

##### **II. Available Offerings**

This section includes a summary of the large and subcategory offerings available under Schedule. The individual category attachments included on FedBizOpps will outline:

- Subcategories
- Special Item Numbers with corresponding North American Industrial Classification System (NAICS) codes
- Identification of the following SIN Unique Components
- Transaction Data Reporting Eligibility
- Cooperative Purchasing Eligibility
- Set Aside Eligibility
- Critical Elements by subcategory or SIN
- Category specific evaluation criteria
- Special ordering procedures, etc.

##### **III. Contract Terms and Conditions**

This section outlines solicitation provisions and clauses applicable to Schedule contracts throughout the life of the contract. Please refer back to the instructional provisions within this solicitation, whenever you are making changes or updates to your contract.

Contract terms and conditions are split into two sections for organizational purposes only. Their placement here has no effect on their meaning or application. Rather, the terms and conditions are organized this way merely to help you better manage and understand your Schedule contract. All terms and conditions listed in this solicitation are incorporated into your contract at the Schedule level and flow down to the order level.

A. Terms Related to Schedule Contract Administration - These clauses outline key components that are related to Schedule requirements and administrative contracting components to keep your Schedule up to date.

B. Clauses Related to the Performance of an Order - These clauses outline key components of your contract that flow down to the order level and may impact the ordering activity.

#### **IV. List of Attachments (with BRIEF description of each attachment)**

This section addresses all of the relevant attachments to the solicitation. It will outline the purpose (required attachment, informational, incorporated by reference, etc) and location (FBO, gsa.gov, etc) of each document.

#### **Solicitation Format Questions**

1. Is this format clear? **Yes**
2. Is there a benefit to industry? **Yes**
3. Is there a benefit to ordering agencies? **(no response)**

Solicitation Format Feedback: Do you have any general comments or format suggestions you would like to share? Limit 3000 characters, approximately 1 page.

The outline of the proposed solicitation format is clear and concise. Before the final solicitation is published, it would be helpful to provide industry the opportunity to review a full draft version and to submit comments.

Coalition members also recommend the following:

1. Renumber Part I and Part II to present the Available Offerings before the Offer Preparation Instructions and Evaluation Criteria so that offerings can be easily reviewed before the ordering or pricing procedures.
2. Keep the Introduction Statement as brief as possible.
3. Specify throughout the solicitation which terms and conditions are applicable to products, services and/or solutions. Members have reported that within the current solicitations, there is confusion about whether solutions fit within the scope of some SINs.

#### **Required Terms and Conditions Matrix**

1. Do you agree with including the Required Terms and Conditions in the consolidated MAS solicitation?

(no response)

## 2. Comments...

The Coalition appreciates GSA's efforts to consolidate and streamline the Schedules solicitation to increase ease of use.

In general, it is helpful to have the terms and conditions grouped as Required or Required as Applicable. We agree that this categorization will streamline and expedite the preparation of an offer. FAS's review of the terms and conditions in the current solicitation and removal of unnecessary and duplicative clauses appears to have simplified the planned Consolidated Schedule. However, we suggest that the list of Required and Required as Applicable clauses could be streamlined even further by focusing first on those terms and conditions that have been specifically identified as applicable to commercial items in the GSAR.

The current approach appears to classify clauses required and not required by starting from the status quo universe of clauses potentially applicable. Aside from running the risk of an over- and/or under-inclusion of clauses, it necessitates a line-by-line evaluation of each clause to assess its status.

GSA could reduce its burden and increase the chances for accuracy in the evaluation of these clauses by starting from the core dictates of the GSAR, which manifests the law's requirements. Specifically, GSA should start by following only the dictates of GSAR 48 CFR 552.212-4. Any clauses proposed for addition first should be evaluated for their utility and specifically justified in writing. By starting with what is tantamount to a "clean slate," this approach provides discipline and deliberation that should be attendant to adding processes via contract clauses.

The Coalition also recommends clarification about which clauses and provisions apply to products and services. Members have observed that the Required matrix includes clauses that are applicable to all schedule contracts, and also includes clauses that are applicable only to products or services, but not both. We suggest that clauses that only apply to products or services be moved to the Required as Applicable matrix, and that each clause be identified as applicable to a product or service and grouped accordingly.

Lastly, members recommend the following related to 52.229-3 Federal, State, and Local taxes (Feb 2013):

- a. The Required matrix does not include 52.229-3, although the FAR requires this clause in fixed price contracts over the SAT. Currently, some if not all GSA schedules contain this clause including IT and Professional Services.
- b. The removal of 52.229-3 from the solicitation could be detrimental to contractors. This clause allows the contract price to be increased or decreased if, after award, a federal tax is imposed or relieved. The GSAR clause that GSA proposes to include would not allow an increase after imposed taxes. This change would be burdensome given recent changes related to tariffs.

### **Terms and Conditions - Required as Applicable**

In this section of the RFI, we have identified the specific clauses and provisions to be required as applicable in the MAS solicitation.

Required as Applicable Matrix

2. Do you agree with including the Required as Applicable (RA) clauses in the consolidated MAS solicitation?

**Required as Applicable (RA) Terms and Conditions:**

The clauses attached above are set to be included in the consolidated solicitation for MAS. These clauses and provisions are currently required as applicable in one or more of the 24 Schedule solicitations.

**Comment Section**

Please use the comment box to explain any clauses or provisions that you disagreed with in the matrix. In addition, please feel free to include any overall comments about the required clauses or provisions.

Note: At this time, GSA is not looking for comments to change the way the clause or provision is written. Any responses including comments on the contents of the clause or provision will be noted, but are not pertinent to this RFI.

For industry to identify and comment on which clauses should be “required as applicable,” it would be helpful to understand what has driven applicability. As presented in the survey, members had a two-fold challenge in responding to this section:

- agreement with this categorization could result in the potential over-inclusion of unnecessary clauses, and
- disagreement with this categorization could result in the potential under-inclusion of necessary clauses.

Thus, before classifying clauses in this fashion, it would be helpful if GSA could provide the underlying rationale governing the classification (*e.g.*, which SINs the clauses are applicable to).

The Coalition also recommends that:

1. Clauses that solely apply to either products or services be moved from the “Required” to the “Required as Applicable” matrix and grouped separately.
2. Clauses incorporated via 52.212-5 Commercial Terms and Conditions Required by Statute, not be incorporated twice.
3. Review the clause versions and ensure that they are refreshed to reflect recent mass modifications (*i.e.* 52.222-50 Combat Trafficking in Persons, version should be JAN 2019 as opposed to MAR 2015, etc.) and the clause version should be referenced for every clause (*i.e.* 552.238 series).

**Terms and Conditions - Not Included**

In this section of the RFI, we have identified the specific clauses and provisions that will not be included in the MAS solicitation.

3. Do you agree with the clauses above not included in the consolidated MAS solicitation?

**Not Included Terms and Conditions:**

The clauses attached above are set to be included in the consolidated solicitation for MAS. These clauses and provisions are currently not included in one or more of the 24 Schedule solicitations.

**Comment Section**

Please use the comment box to explain any clauses or provisions that you disagreed with in the matrix. In addition, please feel free to include any overall comments about the required clauses or provisions.

The Coalition recommends that the following clauses remain at the Schedule level and not be deleted:

52.216-19 Ordering Limitations – Required clause for IDIQ contracts; used as supporting documentation with ordering agencies to verify the intent of the maximum order threshold (MOT) assigned to SINs and it is referenced in the Price Reductions Clause (PRC) 552.238-75. Paragraph d) of the PRC clause states that ‘There shall be no price reduction for sales—(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract.’

In accordance with FAR 8.404(b) (3), the Maximum Order Threshold (MOT) represents the point where it is advantageous for customers to seek a price reduction. In fact, after a customer reviews the pricelist(s) or GSA Advantage!®, the FAR instructs customers to generally seek price reductions for orders exceeding this threshold from Schedule contractor(s) appearing to provide the best value (considering price and other factors).

Lastly the Price Reduction Clause does not apply to orders exceeding the MOT, and Schedule holders have more flexibility in pricing their commercial orders over the MOT.

52-229-1 State and Local Taxes and 52-229-3 Federal State and Local Taxes should remain. Both clauses allow for compensation of applicable taxes via tax exemption certificate or possible reimbursement.

**Ancillary Repair & Alterations, Installation and Site Prep Special Item Number (SIN) Terms and Conditions**

Multiple Award Schedule MAS Clause Applicability Matrix Final Required Ancillary Repair & Alterations, Installation and Site Prep Special Item Numbers SIN

**Comment Section**

Please use the comment box to explain any clauses or provisions that you disagreed with in the matrix. In addition, please feel free to include any overall comments about the Ancillary Repair & Alterations, Installation and Site Prep SIN terms and conditions.

This matrix is well organized by topic. Perhaps the Required and Required as Applicable matrices could be categorized similarly.

**New Required Provision SCP-FSS-001**

As part of the new consolidated MAS solicitation, the Solicitation Coverage Provisions (SCPs) have been streamlined to make it easier for offerors to know what to submit with their offer. This new provision gets rid of duplication and will employ standardized requirements across the program, such as project experiences and past performance. Please review the clause text below and let us know if you have any comments or questions.

**New Required Provision SCP-FSS-001 Comment Section**

Please feel free to include any specific or overall comments on the new provision.

Please see the attached for comments on SCP-FSS-001.

## **Attachment 1 COMMENTS to SCP-FSS-001—Instructions Applicable to All Offerors**

The Coalition for Government Procurement appreciates GSA’s efforts to simplify proposal instructions for new offers under the Schedules program. The instructions are much easier to follow and will likely streamline the proposal process for both industry and contracting officers. The following are specific recommendations and questions that members had concerning SCP-FSS-001.

### **Introduction**

1. Paragraph (e)(2) states “Sales under the existing contract have averaged a minimum of \$25,000 per year for the previous five years of reported sales.” Will the authority of GSA clause I-FSS-639 Contract Sales Criteria clause paragraphs (a) and (b), which state “A contract will not be awarded unless anticipated sales are expected to exceed \$25,000 within the first 24 months following contract award, and are expected to exceed \$25,000 in sales each 12-month period thereafter. (b) The Government may cancel the contract in accordance with clause 552.238-73, Cancellation, unless reported sales are at the levels specified in paragraph (a) above” be modified accordingly []. As written, the clause contradicts itself.

### **Section I—Administrative/Contract Data**

2. Section 1(i)—Suggest the removal of “who is also a company officer (*e.g.*, President, CEO, CFO, *etc.*)” In large companies, this level may be unreasonably high and, in those circumstances, an authorized negotiator who can make decisions for the company may be designated.
3. Section 1(ii)—Suggest the removal of “must be completed by a company officer (*e.g.*, President, CEO, CFO, *etc.*)” and substitute “authorized negotiator.” In large companies this level may be unreasonably high and, in those circumstances, an authorized negotiator who can make decisions for the company may be designated.

### **Section II—Technical Proposal**

4. Factor Two – Past Performance. Having additional options is good but suggest that the language be streamlined as it is very confusing as written.
5. (A)(3)—Suggest that this requirement be removed. Commercially, there is no requirement for contractors to demonstrate compliance with any applicable laws, regulations, Executive Orders, OMB Circulars, professional standards, *etc.* when responding to Statements of Work or Contracts. As a practical matter, it is difficult to affirmatively demonstrate compliance.
6. Section II(iv)(A) states ‘If the Offeror was previously awarded a Schedule contract for these services that was cancelled or allowed to expire due to low or no sales, the Offeror’s relevant project must be a Federal prime contract valued in excess of \$25,000.’ Whereas, the PSS Solicitation (p7) requires sales from a federal entity as shown below:
  - a. (C) If a contract was previously awarded under THIS Schedule, and it was subsequently cancelled or allowed to expire due to low sales, a detailed description of the steps the

offeror plans to take to generate sales through a new contract that includes the following:

- 2) Current Federal sales in excess of \$25,000, as evidenced by copies of contractual documents that identify the Federal entity and the date and value of the product or services provided.

The two solicitation clauses are contradictory. Is the intent to require federal entity sales?

### **Section III—Price Proposal**

7. Pricing proposal does not address fixed price services or solutions. Rather, it appears that it is focused on labor hour rates only, and this approach is not how many commercial companies go to market.
8. This Price Proposal section contains several asterisks explaining that specific provisions are not applicable to Transactional Data Reporting. The references are not always clear. We suggest that GSA have two Price Proposal sections – Commercial Sales Reporting and Price Proposal – Transaction Data Reporting. This separation would greatly benefit offerors who choose to offer TDR, as they will not have to read and understand the rather complex policy related to CSP. GSA has already indicated that it will have an attachment with instructions regarding TDR. That attachment may be an appropriate document to contain TDR price proposal instructions.
9. Section III (i, viii)—Please remove the statement “offers that propose MFC pricing that is not highly competitive will not be considered for award” when pricing should be determined based on offerors commercial practices under similar terms and conditions.
10. Section III(i)—Suggest GSA remove the statement regarding the U.S. GAO. It is not a clause, provision, or even a written GSA policy. The statement is not appropriate here.
11. Section III(iii)—The instruction to provide supporting documentation for EACH product item is not practical, particularly for an offer that may contain thousands of products. Suggest that the wording be changed to, perhaps, “a sampling of invoicing.”
12. Section III(vii)—States that, “the offeror must provide a full and broad array of proposed products/services.” Recommend that this clause be removed. Offers should have the ability to propose items that they believe will sell under the MAS Schedule.
13. Section III(xii, a)—Suggest the wording, “allow the contracting officer to conduct cost analysis ...” be changed to “allow the contracting officer to conduct price analysis....”
14. Section III – Price Proposal, viii. Applicable to both product and service offers. Fair and Reasonable Pricing states, “To determine fair and reasonable pricing, the GSA contracting officer may consider many factors, including pricing on competitor contracts, historical pricing, and currently available pricing in other venues.” The Coalition requests that GSA identify the other venues that will be used to determine fair and reasonable pricing.

### **Miscellaneous**

15. GSA is creating additional burden on contractors when requiring Subcontracting Plans, Corporate Experience, Quality Control Plans, and Relevant Project Experience narrative information be completed directly through the eOffer application by responding to eOffer prompts. Such data can be easily uploaded as separate documents in a government directed

format. Responding to prompts in the GSA eOffer is an unnecessarily time-consuming method and could be made much easier by allowing for document uploads.