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Department of Defense

**General Services
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**National Aeronautics and
Space Administration**

48 CFR Parts 8 and 38

**Federal Acquisition Regulation; Federal
Supply Schedules Services and Blanket
Purchase Agreements (BPAs); Proposed
Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 8 and 38**

[FAR Case 1999–603]

RIN 9000–AJ63

**Federal Acquisition Regulation;
Federal Supply Schedules Services
and Blanket Purchase Agreements
(BPAs)**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate policies for services and to strengthen the procedures for establishing Blanket Purchase Agreements under the Federal Supply Schedules.

DATES: Interested parties should submit comments in writing on or before June 17, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.1999-603@gsa.gov.

Please submit comments only and cite FAR case 1999–603 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–603.

SUPPLEMENTARY INFORMATION:**A. Background**

The Multiple Award Schedules (MAS) program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. For much of its history, the MAS focused on the sale of products. In

recent years, however, GSA has sought to facilitate broad access to service contractors. This general transformation of the schedules program has coincided with a trend in Federal procurement towards acquiring managed solutions from the marketplace. The amount of services acquisition from the MAS has grown steadily as agencies increasingly turn to schedule contractors to meet their needs.

To assist its customers, GSA developed “special ordering procedures” that address the acquisition of services.

However, because FAR subpart 8.4 has remained primarily geared towards products, agencies have been inconsistent in adhering to certain basic acquisition requirements when buying services off the MAS, such as in their use of statements of work, effective pricing of orders, application of competition, and proper documentation of award decisions.

The FAR Council seeks to significantly improve the application of acquisition basics on MAS purchases for services and reinforce sound MAS practices generally. To achieve this result, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing numerous amendments to FAR subpart 8.4. In developing these changes, the CAAC and DARC, in coordination with the FAR Council, carefully considered the findings and recommendations made by the General Accounting Office in its report no. GAO–01–125, Contract Management: Not Following Procedures Undermines Best Pricing Under GSA’s Schedule.

Accordingly, the rule proposes to amend FAR subpart 8.4 to—

- Add new coverage on use of statements of work when acquiring services from the schedules;
- Clarify and strengthen the procedures for establishing Blanket Purchase Agreements against the schedules;
- Reinforce documentation requirements generally and address the documentation of sole source orders in particular;
- Highlight the availability of “e-Buy,” GSA’s electronic quote system, to encourage greater transparency through use of electronic media;
- Add new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;
- Clarify the procedures for termination for cause and convenience; and

- Reorganize and revise the subpart text for ease of use.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal Government administrative procedures and does not impose any additional requirements on Government offerors or contractors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 8 and 38 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 38

Government procurement.

Dated: April 14, 2003.

Cecelia L. Davis,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8 and 38 as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 8—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

2. Amend section 8.401 by revising paragraphs (a), (b), and (c); and by removing from the introductory text of paragraph (d) and (d)(2) the word “office” and adding in its place. The revised text reads as follows:

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying (also *see* 8.002). Indefinite delivery contracts are awarded with commercial firms to provide supplies and services at stated prices for given periods of time. The Department of Defense manages a similar system of schedule-type contracting for military items. The Department of Defense systems are not covered by this subpart.

(b) The GSA schedule contracting office issues Federal Supply Schedules publications containing the information necessary for placing delivery or task orders with schedule contractors. Ordering offices issue orders directly to the schedule contractors. Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the—

GSA Centralized Mailing List Service
(7CAFL), PO Box 6477, Fort Worth,
TX 76115.

Copies of GSA Form 457 also may be obtained from this address.

(c) GSA offers an on-line shopping service called "GSA Advantage!" It enables ordering offices to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with contractors (or ask GSA to place orders on the agency's behalf), and pay contractors for orders using the Governmentwide commercial purchase card (or pay GSA). Ordering offices may access the "GSA Advantage!" shopping service at <http://www.gsaadvantage.gov>. GSA's electronic quote system, "e-Buy," which may be accessed through GSA Advantage!, provides a medium for transmitting notice to contractors of the ordering office's needs. For more information or assistance, contact GSA at Internet e-mail address: gsa.advantage@gsa.gov.

* * * * *

3. Revise section 8.402 to read as follows:

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. GSA may have established special ordering procedures for a particular schedule in which case that schedule will specify those special ordering procedures.

4. Add section 8.403 to read as follows:

§ 8.403 Use of Federal Supply Schedules.

(a) *General.* Parts 13, except 13.303–2(c)(3), 15, and 19 do not apply to orders placed against Federal Supply Schedules (*see* 8.404–5). Orders and Blanket Purchase Agreements placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (*see* 6.102(d)(3)). Therefore, when establishing a Blanket Purchase Agreement or placing orders under Federal Supply Schedules using the procedures of 8.404, ordering offices need not seek further competition, synopsise the requirement, or consider small business programs.

(b) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract are not exempt from the development of acquisition plans (*see* subpart 7.1), and an information technology acquisition strategy (*see* Part 39).

(c) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates or at a fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services and rates for services offered at hourly rates under schedule contracts to be fair and reasonable. Therefore, ordering offices are not required to make a separate determination of fair and reasonable pricing except for a price evaluation as required by 8.404–2(c)(3). By placing an order against a schedule contract using the procedures in 8.404, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

5. Revise section 8.404 and the section heading to read as follows:

§ 8.404 Ordering procedures for Federal Supply Schedules.

Ordering offices shall use the ordering procedures of this section when placing an order or establishing a Blanket Purchase Agreement (BPA) for supplies or services. The procedures in this section, other than those in 8.404–8, apply to all optional and mandatory use schedules. The procedures in 8.404–8 apply only to mandatory use schedules.

6. Add sections 8.404–1 and 8.404–2 to read as follows:

§ 8.404–1 Ordering procedures for supplies and fixed-price services.

(a) Ordering offices shall use the procedures of this subsection for

ordering supplies and for ordering services that are listed in the schedule contracts as a fixed price for the performance of a specific task (*e.g.*, installation, maintenance and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering offices may place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering office shall consider reasonably available information about the supply or service offered under MAS contracts by using the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (*see* 8.404–5). Select the delivery and other options available under the schedule that offers the best value to meet the agency's needs. The ordering office may consider among other factors—

(1) Special features of the supply or service required for effective program performance;

(2) Trade-in considerations;

(3) Probable life of the item selected as compared with that of a comparable item;

(4) Warranty considerations;

(5) Maintenance availability;

(6) Past performance; and

(7) Environmental and energy efficiency considerations.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a Blanket Purchase Agreement (BPA) (*see* 8.404–3), ordering offices shall—

(1) Review an appropriate number of additional schedule contractors' catalogs or pricelists, or use the GSA Advantage! on-line shopping service;

(2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (*see* 8.403); and

(3) After seeking price reductions, place the order with the schedule contractor that provides the best value (*see* 8.403). If further price reductions are not offered, an order may still be placed.

§ 8.404-2 Ordering procedures for services using a statement of work.

(a) Ordering offices shall use the procedures in this subsection when ordering services priced at hourly rates in the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's catalogs/pricelists.

(b) *Orders at or below the micro-purchase threshold.* Ordering offices may place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs.

(c) *For orders exceeding the micro-purchase threshold.* The ordering office shall develop a statement of work. All statements of work shall include the work to be performed, location of work, period of performance, deliverable schedule, applicable standards, and any special requirements (e.g., security clearances, travel, special knowledge).

(1) Agencies shall use performance-based statements of work to the maximum extent practicable. When preparing statements of work, ordering offices shall, to the maximum extent practicable—

(i) Describe the requirements in terms of results required rather than the methods of performance of the work;

(ii) Rely on the use of measurable performance standards and financial incentives to encourage innovative and cost effective methods of performing the work; and

(iii) Develop a quality assurance surveillance plan that will be used to monitor performance.

(2)(i) For proposed orders not expected to exceed the maximum order threshold, the ordering office must provide the statement of work, and selection criteria (e.g., experience and past performance) to at least three schedule contractors. Schedule contractors should be requested to submit firm-fixed prices to perform the services identified in the statement of work.

(ii) For proposed orders exceeding the maximum order threshold or for establishing a BPA (see 8.404-3), the ordering office shall, in addition to meeting the requirements of paragraph (c)(2)(i), provide the statement of work and selection criteria to an appropriate number of additional schedule contractors that offer services that will meet the agency needs.

(iii) The ordering office shall provide the statement of work and selection criteria to any schedule contractor who requests a copy of it.

(3) The ordering office shall evaluate responses received against the selection

criteria provided to the schedule contractors. The ordering office is responsible for considering the level of effort and mix of labor proposed to perform a specific task being ordered and for making a determination that the total price is reasonable. Place the order or establish the BPA with the schedule contractor that represents the best value (see 8.403).

(4) To the maximum extent practicable, ordering offices shall develop quality assurance surveillance plans (see 37.602-2) when using a performance-based statement of work. These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

7. Revise section 8.404-3 and the section heading to read as follows:

8.404-3 Blanket purchase agreements (BPAs).

(a)(1) *Establishment.* Ordering offices may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be awarded is within the discretion of the office establishing the BPA. The number of BPA awards should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to award, consider—

(i) The scope and complexity of the requirement(s);

(ii) The technical qualifications of the Schedule contractor(s);

(iii) The administrative costs of BPAs; and

(iv) The need to periodically compare multiple technical approaches or prices.

(2) Award of a single BPA or multiple BPAs shall be made using the procedures of 8.404-1 or 8.404-2. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (e.g. estimated quantities, work to be performed), delivery locations, and time. In addition, multiple BPAs shall specify the procedures for placing orders under the BPA.

(3) Establishment of a multi-agency BPA against a Federal Supply Schedule is permitted if all participating agencies are signatories to the BPA.

(b) *Ordering from blanket purchase agreements (BPAs)—(1) Single award BPA.* If the ordering office awards one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple BPAs.* If the ordering office awards multiple BPAs, before placing an order exceeding \$2,500, the ordering office shall—

(i) Forward the requirement or statement of work along with the selection criteria to the number of BPA holders according to the procedures provided in the BPA;

(ii) Evaluate the responses received and make a best value determination (see 8.403); and

(iii) Award the order to the schedule contractor that represents the best value.

(3) If the BPA is for hourly rate services, the ordering office shall develop a statement of work for requirements covered by the BPA, unless the BPA contains fixed prices for specific tasks. All orders under the BPA shall specify a price for the performance of the specific task identified in the statement of work.

(c) *Review of BPAs.* Ordering offices shall review BPAs at least once a year. The purpose of the review is to determine whether the BPA still represents the best value (see 8.403). During the annual review, agencies shall consider whether additional price reductions could be obtained if estimated quantities/amounts have been exceeded and seek price reductions where possible.

8. Add sections 8.404-4, 8.404-5, 8.404-6, 8.404-7, and 8.404-8 to read as follows:

8.404-4 Price reductions.

In addition to the circumstances in paragraph 8.404-1(d), there may be other reasons to request a price reduction. For example, ordering offices should seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

8.404-5 Small business.

When conducting evaluations or establishing a BPA and before placing an order, consider including, if available, one or more small business, veteran-owned small business, service-

disabled veteran-owned small, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement. Ordering offices should survey GSA Advantage! and the Schedules e-Library at <http://www.fss.gsa.gov> for specific size status information for all schedule contractors.

8.404-6 Documentation.

(a) The ordering office shall document, at a minimum—

(1) The number and identity of the contracts reviewed and considered and the contractor from whom the supply or service was purchased;

(2) The supply or service purchased;

(3) The amount paid; and

(4) The circumstances and rationale for restricting consideration of schedule contractors to less than that required in 8.404-1 or 8.404-2, such as—

(i) Only one source is capable of responding due to the unique or specialized nature of the work;

(ii) The new work is a logical follow-on to an existing order provided that the original order was awarded in accordance with 8.404-1 or 8.404-2; or

(iii) An item peculiar to one manufacturer. A brand name item available on various schedule contracts is an item peculiar to one manufacturer.

(5) *Sole source requirements.* (i) Orders placed under the Federal Supply Schedules are exempt from the requirements in Part 6. However, ordering offices shall—

(A) Conduct sole source requirements, as defined in 2.101, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(5)(ii) of this section; and

(B) Prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of Section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 501).

(ii) Justifications and approvals are required only for sole source requirements.

(A) For proposed orders exceeding \$100,000, but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval

level is established in accordance with agency procedures.

(B) For a proposed order exceeding \$500,000, but not exceeding \$10,000,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(C) For a proposed order exceeding \$10,000,000 but not exceeding \$50,000,000, the head of the ordering agency or the official described in 6.304(a)(3) and (a)(4) shall approve the justification and approval. This authority is not delegable.

(D) For a proposed order exceeding \$50,000,000, the official described in 6.304(a)(4) shall approve the justification and approval. This authority is not delegable, except as provided in 6.304(a)(4).

(b) Additionally, for services acquired using the procedures at 8.404-2, the ordering office shall also document, at a minimum—

(1) The evaluation methodology used in selecting the contractor for award;

(2) The rationale for any tradeoffs in making the award decision;

(3) The price reasonableness determination required by 8.404-2(c)(3); and

(4) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

8.404-7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card.

8.404-8 Ordering procedures for mandatory use schedules.

(a) This subsection applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures provided in this section for optional use schedules, as appropriate.

(b) Ordering offices shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.

(c) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—

(1) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;

(2) The order is below the minimum order thresholds;

(3) The order is above the maximum order limitation;

(4) The consignee is located outside the area of geographical coverage stated in the schedule; and

(5) A lower price for an identical item (*i.e.*, same make and model) is available from another source.

(d) After any consultation required by the schedule, ordering offices are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

(e)(1) When an ordering office that is a mandatory user under a schedule determines that supplies or services available from the schedule will not meet its specific needs, but similar supplies or services from another source will, it shall submit a request for waiver to the—Commissioner, Federal Supply Service (F), GSA, Washington, DC 20406.

(2) Ordering offices shall not initiate action to acquire similar supplies or services from nonschedule sources until a request for waiver is approved by the Commissioner of the Federal Supply Service, except as otherwise provided in inter-agency agreements. Requests shall contain the following information:

(i) A complete description of the required supply or service, whenever possible; *e.g.*, descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(ii) A comparison of prices and the technical differences between the requested supply or service and the schedule supply or service, identifying as a minimum the—

(A) Inadequacies of the schedule supply or service to perform required functions; and

(B) Technical, economic, or other advantages of the supply or service requested.

(iii) Quantity required.

(iv) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.

9. Amend section 8.405-2 by revising the introductory paragraph; and by removing from paragraph (h) "must" and adding "shall" in its place. The revised text reads as follows:

8.405-2 Order placement.

Ordering offices may place orders orally or use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedules. The ordering office shall place orders directly with the contractor within the limitations specified in each

schedule. Orders shall include the following information in addition to any information required by the schedule:

* * * * *

10. Revise sections 8.405-3 and 8.405-4, 8.405-5, and 8.405-6 and their section headings to read as follows:

8.405-3 Inspection and acceptance.

(a) *Supplies.* (1) Consignees shall inspect supplies at destination except when—

(i) The schedule indicates that mandatory source inspection is required by the schedule contracting agency; or

(ii) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of the supplies, or the past performance of the supplier).

(2) When the schedule contracting agency performs the inspection, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(3) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(4) Unless otherwise provided in the schedule, acceptance is conclusive, except as regards for latent defects, fraud, or gross mistakes as that amount to fraud.

(b) *Services.* (1) The ordering office has the right to inspect and test all services called for by the order, to the extent practicable, at all times and places during the period of the order. The ordering office shall perform inspections and tests as specified in the quality assurance surveillance plan in a manner that will not unduly delay the work.

(2) If the ordering office performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in order price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

8.405-4 Remedies for inadequate performance.

(a) If the contractor fails to perform an order, the ordering office may terminate for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate).

(b) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering office may require the contractor to correct the defect by reperformance, at no increase in order price.

(c) If reperformance will not correct the defects or is not possible, the ordering office may require the contractor to ensure that future performance conforms to order requirements and may reduce the order price to reflect its reduced value.

(d) If the contractor does not promptly perform or does not take action to ensure conformity for future performance, the ordering office may terminate the order for cause. Ordering offices shall follow the procedures at 8.405-5 when terminating an order for cause.

8.405-5 Termination for cause.

(a) An ordering agency contracting officer may terminate individual orders for cause. Terminations for cause shall comply with FAR 12.403. (b)(1) The schedule contracting office shall be notified of all cases where an ordering agency contracting officer has terminated an individual order by a Federal Supply Schedule contractor for cause or if fraud is suspected.

(2) If the contractor claims that the failure was excusable, the ordering agency contracting officer shall consider the question of the failure to be a contract dispute (*see* 8.405-7). If the contractor does not claim that the failure was excusable, the ordering office may charge the terminated contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as low a price as reasonable considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____ [insert contractor's name] under Order _____ [insert number] under Contract _____ [insert number].

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering agency contracting officer is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the repurchase contractor.

(i) The notice shall include the following information about the terminated order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) The notice shall also include the following information about the repurchase contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(c) Only the schedule contracting officer may terminate for cause any or all supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any items covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor unless terminated for the convenience of the Government by the ordering agency contracting officer.

8.405-6 Termination for the Government's convenience.

(a) Ordering agency contracting officer may terminate individual orders for the convenience of the Government. Terminations for convenience shall comply with FAR 12.403.

(b) Only the schedule contracting officer may terminate any or all supplies or services covered by the schedule contract for the convenience of the Government.

(c) Before terminating orders for convenience, the ordering agency contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

8.405-7 [Amended]

11. Amend section 8.405-7 by removing from the introductory text of paragraph (a)(1) and paragraphs (a)(2) and (b) the word "office" and adding "agency" in its place.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

12. Revise section 38.000 to read as follows:

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies

and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration (*see* Subpart 8.4, Federal Supply Schedules, for additional information). The Department of Defense manages a similar system of schedule contracting for military items.

The Department of Defense systems are not a part of the Federal Supply Schedule program.

38.101 [Amended]

13. Amend section 38.101 in the first sentence of paragraph (a) by removing “commonly used” and adding

“commercial” in its place; in the second sentence by removing the parenthetical “(including requirements contracts)”; and in the last sentence of paragraph (e) by removing “(see 8.404)” and adding “(see 8.403)” in its place.

[FR Doc. 03-9554 Filed 4-17-03; 8:45 am]

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