

**9.406-2 Causes for debarment.**

\* \* \* \* \*

(b) \* \* \*

(2) A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the debarment proceedings.

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■ 3. Amend section 9.406-4 by revising the third sentence of paragraph (b) to read as follows:

**9.406-4 Period of debarment.**

\* \* \* \* \*

(b) \* \* \* Debarments under 9.406-2(b)(2) may be extended for additional periods of one year if the Secretary of Homeland Security or the Attorney General determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. \* \* \*

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 8, 38, and 53**

[FAC 2001-24; FAR Case 1999-603; Item V]

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:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending 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:** *Effective Date:* July 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat 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 FAC 2001-24, FAR case 1999-603. The TTY Federal Relay Number for further information is 1-800-877-8973.

**SUPPLEMENTARY INFORMATION:****A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 19294, April 18, 2003, with request for comments. Thirty-four respondents submitted public comments. A discussion of the comments is provided below. The differences between the proposed rule and final rule are addressed in the Councils' response to comments 1 through 9. General changes made to FAR Subpart 8.4 by this rulemaking are provided in the list below. Of particular note, the rule—

- Adds language to make it clear that the contracting officer placing an order on another agency's behalf is responsible for applying that agency's regulatory and statutory requirements; and that the requiring activity is required to provide information on the applicable regulatory and statutory requirements to the contracting officer;
- Adds new coverage on use of statements of work when acquiring services from the schedules;
- Requires that when an agency awards a task order requiring a statement of work, that if the award is based on other than price (best value), the contracting officer shall provide a brief explanation of the basis for the award decision to any unsuccessful contractor that requests such information;

- Refines guidance regarding the use of Governmentwide BPAs;
- Adds language to require the ordering activity to document the results of its BPA review; and
- Reinforces documentation requirements generally and adds new guidance addressing the documentation of orders for services and sole source orders.

In addition, the rule also—

- Adds a definitions section;
- Adds information regarding the Department of Veterans Affairs delegated authority to establish medical supply schedules;

- Adds language to clarify the differences between an Authorized Federal Supply Schedules (FSS) Pricelist and a FSS publication;

- Adds additional information regarding e-Buy, GSA's electronic quote system for the schedules program;

- Clarifies that competition shall not be sought outside the Federal Supply Schedules;

- Adds language stating that the performance period of Blanket Purchase Agreements (BPA) established under the schedules program may cross option periods on the base contracts;

- Adds language that encourages or reminds agencies that they can seek a price reduction at any time, not just when an order exceeds the maximum order threshold;

- Adds additional language to allow for consideration of socio-economic status when identifying the potential competitors for an order;

- Adds new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;

- Reserves the ordering procedures for Mandatory Use Schedules section;

- Clarifies the procedures for termination for cause and convenience; and

- Reorganizes and revises the subpart text for ease of use.

**B. Summary and Discussion of  
Significant Public Comments**

1. *Comment: Ordering offices need not seek further competition.* Several respondents stated that the phrase "Ordering offices shall not seek further competition" is confusing or misleading. In addition, the requirement that agencies need not seek further competition, synopsis the requirement, or consider small business programs when placing orders or issuing Blanket Purchase Agreements under the schedule ordering procedures did not seem fair.

*Councils' response:* Partially concur. The Councils determined that although the language was clear, an additional explanation would be added. The Councils clarified the language at 8.404(a) to indicate that ordering activities need not seek competition outside of the Federal Supply Schedules. Agencies must follow the procedures of Subpart 8.4 to ensure compliance with the requirement for full and open competition as implemented under the Multiple Award Schedules program.

2. *Comment: Use of the term "appropriate number."* Concern was raised regarding the use of the term "appropriate number" at FAR 8.404-1(d)(1) and FAR 8.404-2(c)(2)(ii) of the proposed rule. The term "appropriate number" pertains to the number of

contractors to be considered or contacted as part of the order evaluation and placement process. In general, the respondents were concerned that the language was too vague and did not provide sufficient guidance as to the number of contractors that should be considered or contacted. Further, there was a recommendation that “an appropriate number” be changed to state a specific number or delete the requirement.

*Councils’ response:* The Councils partially concur. The rule identifies factors that ordering activities might consider in determining the appropriate number of additional schedule contractors to consider. The intent is to leave it to the discretion of the contracting officer to determine the number of additional contractors to be considered or contacted. The recommendation that a specific number of contractors be identified in place of an “appropriate number” would unnecessarily limit the discretion of the contracting officer. A final note, proposed rule FAR 8.404–1(d)(1) is renumbered in the final rule as FAR 8.405–1(d)(1). Proposed rule FAR 8.404–2(c)(2)(ii) is renumbered FAR 8.405–2(c)(3)(i) in the final rule.

3. *Comment: Price reductions.* A respondent commented that the ordering procedures should be revised to remind agencies that price reductions could be requested at any time for any size order.

*Councils’ response:* Concur. Language was added to the final rule at FAR 8.404(d) reminding agencies that they can ask for price reductions prior to placing an order.

4. *Comment: Quality Assurance Surveillance Plans.* Several respondents raised concerns regarding the guidance on the use of Quality Assurance Surveillance Plans (QASP). The respondents felt that QASP should be required for all service orders regardless of whether the Statement of Work (SOW) is performance based or not. In addition, another respondent indicated that the proposed rule contains two different sections pertaining to QASP, which is redundant and confusing (see 8.404–2(c)(1) and (c)(4) of the proposed rule).

*Councils’ response:* The Councils generally agreed with the observation that the mention of QASPs in two different places was, in fact, redundant and confusing. As a result, the rule was revised to include a reference to FAR Subpart 37.6. See FAR 8.405–2(b) of the final rule. With regard to the suggestion that QASPs be required for all service orders regardless of type, the Councils rejected this suggestion. There is no

FAR requirement that QASPs be developed for all service orders. The FAR only requires the development of QASPs for performance-based service orders.

5. *Comment: Blanket Purchase Agreements.* Several respondents commented that the requirement for each agency to be a signatory when establishing a multi-agency BPA was confusing.

*Councils’ response:* The Councils agreed that the requirement for each agency using a multi-agency BPA to be a signatory to the BPA was unnecessary. The Councils revised the language to state that the agencies and their requirements must be identified in the BPA. The purpose of this change was two-fold; it eliminated the requirement that each agency actually sign the BPA while at the same time ensuring that the planned potential users of the BPA are reflected by including the user agencies’ estimated requirements. Additionally, including information regarding the various agencies’ estimated requirements fosters better pricing and enhances competition.

The Councils also added a new paragraph at 8.405–3(c) regarding the duration of BPAs. Over time, it has become apparent that additional guidance was needed on the length of BPAs. The underlying schedule contracts include a clause that allows BPAs to extend for the life of the contract. The supplemental guidance in the final rule advises agencies that a BPA should generally run for no longer than five years. However, BPAs may exceed five years to meet agency program requirements. The guidance further provides that a BPA can extend beyond the current term of the contract so long as there are option periods remaining on the underlying contract that, if exercised, will cover the BPA’s period of performance. The rule requires that an ordering activity review the BPA at least once per year.

6. *Comment: Small business.* Several respondents raised concerns regarding the ability of agencies to focus their consideration of contractors and their competitions for orders on small businesses. In particular, the Federal Office of Small Disadvantaged Business Utilization (OSDBU) Directors Interagency Council commented that the rule of two should apply to schedule orders and that all orders between \$2,500 and \$100,000 be restricted to small businesses. In addition, another respondent stated that the language regarding the applicability of Part 19 of the FAR needed to be clarified. Another respondent suggested that a 10 percent price evaluation advantage be given to

small businesses when agencies are placing orders.

*Councils’ response:* The Councils do not concur with the comment that the rule of two should apply to orders under the schedules program. Further, the Councils do not concur with the suggestion that all orders under \$100,000 be set-aside for small business. The Councils concluded that these suggestions would fundamentally alter the schedules program in terms of the efficiency and effectiveness of the overall program by increasing the administrative burden on agencies without having demonstrated that the changes would, in fact, benefit small business over the long term. In addition, the basic statutory authority for the program provides that contracts and orders be open to all sources. Creating a set-aside for all such orders would be inconsistent with the program’s basic operating authorities. In addition, the Councils, for the same general reasons, do not agree with the request for a 10 percent evaluation preference for small business.

However, the Councils did examine ways in which the rule could foster even greater small business participation than that which already exists. The Councils added language at FAR 8.405–5(b) that provides that “Ordering activities may consider socioeconomic status when identifying contractor(s) for consideration or competition for award of an order or BPA.” This language provides the flexibility for agencies to conduct their market research focusing on small business concerns and providing them greater opportunity to compete for orders.

The Councils also clarified the language at FAR 8.405–5(a) regarding the applicability of FAR Part 19 and added language that reminds agencies that when reporting an order for purposes of credit towards their socioeconomic goals, the ordering agency may only take credit if the awardee meets the size standard that corresponds to the work performed.

7. *Comments: Documentation requirements.* Several respondents indicated that the documentation requirements at FAR 8.404–6 of the proposed rule were confusing.

*Councils’ response:* The Councils agreed with these comments and revised the rule accordingly. The Councils moved the documentation for services requiring a statement of work from the end of the section to the beginning consolidating minimum documentation requirements for services under FAR 8.405–7(a) and (b) of the final rule. In addition, the sole source document

requirements were placed in a separate heading at FAR 8.405-6 of the final rule. A final note, proposed rule FAR 8.404-6 is renumbered in the final rule as FAR 8.405-7.

8. *Comment: Inspection and acceptance.* One respondent raised significant concerns regarding the inspection and acceptance guidance at FAR 8.405-3 of the proposed rule. The respondent commented that the new provisions regarding the inspection rights of the Government for services were overly broad and unduly burdensome. The provisions provided in part that the Government had the right to inspect services performed at any time and any place, including the contractor's facilities. The respondent indicated that inspection and acceptance are typically negotiated based on the type of service to be provided and are not left so open-ended in the Government's favor.

*Councils' response:* The Councils essentially agreed with the respondent's observations. As a result, the Councils revised the final rule at FAR 8.406-2(b) to state that inspection shall be in accordance with the contract and order terms. The order terms can be negotiated as part of a Quality Assurance Surveillance Plan for an order.

9. *Comment: Remedies for inadequate performance.* One respondent raised several concerns regarding the remedies for inadequate performance guidance included in the proposed rule. In cases where a contractor fails to correct earlier nonperformance of an order, FAR 8.405-4(c) of the proposed rule provided, in part, that the contracting office could reduce the order price to reflect the contractor nonperformance. The respondent commented that FAR 8.405-4(c) of the proposed rule would inappropriately grant agencies the unilateral right to reduce the order price without any mechanisms by which the contracting officer determines the amount of any such price reduction or any mechanism by which the contractor could challenge such a price reduction.

*Councils' response:* The Councils agreed with this comment. The Councils replaced the term "inadequate performance" in the heading with "nonconformance" and revised the rule at FAR 8.406-3(a) to state that the ordering activity shall take appropriate action for nonconformance in accordance with the inspection and acceptance clause of the contract as supplemented by the order.

10. *Comment: Outline factors to consider for services.* Section 8.404-1(c) outlines factors to consider when comparing schedule contractors, which

mainly apply to supplies. Recommend that a factor be added for services.

*Councils' response:* Do not concur. The language of section 8.405-1(c) is sufficient for purposes of a best value evaluation of basic services such as repair, maintenance, and installation. Section 8.405-1 lists various factors as examples of what may be considered in determining best value. The list is written to be inclusive and not exclusive. Therefore, agencies have the discretion to consider any other factor that may be important to their best value decision. In addition, the ordering procedures for services requiring a statement of work require that agencies include the evaluation criteria for selection in the Request for Quotation. Under these ordering procedures, the agencies have the discretion to develop the evaluation criteria that will best meet their needs in determining best value for their requirements.

11. *Comment: Other direct costs.* One respondent commented that the ordering procedures should include guidance regarding the acquisition and evaluation of other direct costs as part of an order.

*Councils' response:* The Councils agree that this is an area that may need additional guidance. However, GSA is currently reviewing the structure for other direct costs under its contracts and will be developing additional training and guidance in this area for agencies. Upon completion of this review, the Councils may revisit the issue as a follow-up to the final rule.

12. *Comment: Time-and-materials and labor-hour orders.* Several respondents raised concerns regarding the lack of clear guidance on the use of time-and-materials or labor-hour orders. The general comment was that the rule failed to fully address whether an order could be issued on a time-and-material or labor-hour basis and the circumstances when the use of such order types was appropriate. In addition, one respondent raised a concern regarding a potential conflict between the FAR and GSA ordering procedures regarding the type of contract that may be used for commercial items. Yet another respondent commented that time-and-materials contracts should not be used unless impossible to estimate accurately the extent or duration of the work or anticipate costs reasonably when placing the order.

*Councils' response:* The Councils agree with the comments that this area requires additional guidance. Currently, the Councils are working on a number of FAR cases to implement various sections of the Services Acquisition

Reform Act of 2003 (Title XIV of Public Law 108-136). The rule resulting from one of these FAR cases will implement Section 1432 (Authorization of additional commercial contracts types), which addresses the use of time-and-material and labor-hour contracts for commercial services. When Section 1432 has been implemented, the Councils will address the time-and-materials/labor-hour issue as it pertains to the Multiple Award Schedules Program as a follow-up to the final rule.

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.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it reads as follows:

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604.

1. Statement of need for, and objectives of, the rule. 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 purpose of the rule is to significantly improve the application of acquisition basics on MAS purchases for services and reinforce sound MAS practices generally. To achieve this result, the rule is amending the Federal Acquisition Regulation to incorporate policies for services and to strengthen the procedures for establishing Blanket Purchase Agreements under the Federal Supply Schedules.

2. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA),

a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. An Initial Regulatory Flexibility Analysis was not performed because the proposed rule did not have significant economic impact on a substantial number of small entities. Thirty-four respondents submitted public comments in response to the proposed rule. None of the comments received identified or addressed any adverse impact on small businesses.

However, the final rule does make an amendment to the FAR that could foster even greater small business participation than that which already exists. The amendment provides the flexibility for agencies to conduct their market research focusing on small business concerns and providing them greater opportunity to compete for orders.

The rule also reminds agencies that when reporting an order for purposes of credit towards their socio-economic goals, the ordering agency may only take credit if the awardee meets the size standard that corresponds to the work performed. This final rule is intended to be beneficial in expanding small business access to an increased number of orders. We see no negative impact on small businesses.

3. Description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available. This rule will apply to all large and small business concerns under the Federal Supply Schedule Program. Although the rule pertains to internal Government procedures, it may increase the number of orders for supplies and services placed by the Government with small business concerns. The net effect of the rule is unknown at this time.

As of fiscal year 2003, according to statistical data maintained by GSA's Federal Supply Service, out of a population of 14,169 national scope schedule contracts, 11,300 Federal Supply Schedule contracts are in effect with small business concerns. Approximately 80 percent of the schedule contractors are small business concerns. In fiscal year 2003, small business schedule contractors received approximately \$9 billion, or 36 percent of total schedule sales. Whereas, in 2002, 8,963 small businesses held contracts out of a population of 11,426 national scope schedule contracts. Small business sales in 2002 were \$7.2 billion, or 34 percent of total schedule sales. The number of small businesses holding Federal Supply Schedules increased 26 percent and sales increased 26.4 percent.

The procedures give small business contractors the opportunity to fairly compete within the broader universe of schedule contractors. These changes ensure that ordering activities have the broad discretion and effective and flexible business solutions to meet agency requirements.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. There are no projected reporting, recordkeeping, or other compliance requirements.

5. Description of steps the agency has taken to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected. There are no known significant alternatives that will accomplish the objectives of the rule. No alternatives were proposed during the public comment period. The impact of the rule is unknown at this time. The rule could benefit small business concerns holding schedule contracts by permitting those concerns to compete for awards that offer products and services that meet the needs of the requiring agency.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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, 38, and 53

Government procurement.

Dated: June 10, 2004.

Ralph De Stefano,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 38, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 38, and 53 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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

■ 2. Revise Subpart 8.4 to read as follows:

##### Subpart 8.4—Federal Supply Schedules

Sec.

8.401 Definitions.

8.402 General.

8.403 Applicability.

8.404 Use of Federal Supply Schedules.

8.405 Ordering procedures for Federal Supply Schedules.

8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

8.405-2 Ordering procedures for services requiring a statement of work.

8.405-3 Blanket purchase agreements (BPAs).

8.405-4 Price reductions.

8.405-5 Small business.

8.405-6 Sole source justification and approval.

8.405-7 Documentation.

8.405-8 Payment.

8.406 Ordering activity responsibilities.

8.406-1 Order placement.

8.406-2 Inspection and acceptance.

8.406-3 Remedies for nonconformance.

8.406-4 Termination for cause.

8.406-5 Termination for the Government's convenience.

8.406-6 Disputes.

#### 8.401 Definitions.

As used in this subpart—

**Ordering activity** means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration's (GSA) Multiple Award Schedule contracts. A list of eligible ordering activities is available at <http://www.gsa.gov/schedules> (click "For Customers Ordering from Schedules" and then "Eligibility to Use GSA Sources").

**Multiple Award Schedule (MAS)** means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authority for the MAS program is derived from both Title III of the Administrative Services Act of 1949 (41 U.S.C. 251, *et seq.*) and Title 40 U.S.C., Public Buildings, Property and Works.

**Requiring agency** means the agency needing the supplies or services.

**Schedules e-Library** means the on-line source for GSA and VA Federal Supply Schedule contract award information. Schedules e-Library may be accessed at <http://www.gsa.gov/elibrary>.

**Special Item Number (SIN)** means a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

#### 8.402 General.

(a) The Federal Supply Schedule program is also known as the GSA Schedules Program or the Multiple Award Schedule Program. The Federal Supply Schedule program is directed and managed by GSA and provides Federal agencies (see 8.002) with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time. GSA may delegate certain responsibilities to other agencies (e.g., GSA has delegated authority to the VA to procure medical supplies under the VA Federal Supply Schedules program). Orders issued under the VA

Federal Supply Schedule program are covered by this subpart. Additionally, the Department of Defense (DoD) manages similar systems of schedule-type contracting for military items; however, DoD systems are not covered by this subpart.

(b) GSA schedule contracts require all schedule contractors to publish an "Authorized Federal Supply Schedule Pricelist" (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request. Also, a copy of the pricelist may be obtained from the Federal Supply Service by submitting a written e-mail request to [schedules.infocenter@gsa.gov](mailto:schedules.infocenter@gsa.gov) or by telephone at 1-800-488-3111. This subpart, together with the pricelists, contain necessary information for placing delivery or task orders with schedule contractors. In addition, the GSA schedule contracting office issues Federal Supply Schedules publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics. Ordering activities may request copies of schedules publications by contacting the Centralized Mailing List Service through the Internet at <http://www.gsa.gov/cmils>, submitting written e-mail requests to [CMLS@gsa.gov](mailto:CMLS@gsa.gov); or by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 may also be obtained from the above-referenced points of contact.

(c)(1) GSA offers an on-line shopping service called "GSA Advantage!" through which ordering activities may place orders against Schedules. (Ordering activities may also use GSA Advantage! to place orders through GSA's Global Supply System, a GSA wholesale supply source, formerly known as "GSA Stock" or the "Customer Supply Center." FAR Subpart 8.4 is not applicable to orders placed through the GSA Global Supply System.) Ordering activities may access GSA Advantage! through the GSA Federal Supply Service Home Page (<http://www.gsa.gov/fss>) or the GSA Federal Supply Schedule Home Page at <http://www.gsa.gov/schedules>.

(2) GSA Advantage! enables ordering activities to search specific information (i.e., national stock number, part

number, common name), review delivery options, place orders directly with Schedule contractors and pay for orders using the Governmentwide commercial purchase card.

(d) *e-Buy*, GSA's electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. *E-Buy* allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Ordering activities may access *e-Buy* at <http://www.ebuy.gsa.gov>. For more information or assistance on either GSA Advantage! or *e-Buy*, contact GSA at Internet e-mail address [gsa.advantage@gsa.gov](mailto:gsa.advantage@gsa.gov).

(e) For more information or assistance regarding the Federal Supply Schedule Program, review the following Web site: <http://www.gsa.gov/schedules>. Additionally, for on-line training courses regarding the Schedules Program, review the following Web site: <http://fsstraining.gsa.gov>.

(f) For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

#### 8.403 Applicability.

(a) Procedures in this subpart apply to—

(1) Individual orders for supplies or services placed against Federal Supply Schedules contracts; and

(2) BPAs established against Federal Supply Schedule contracts.

(b) GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify those special ordering procedures. Unless otherwise noted, special ordering procedures established for a Federal Supply Schedule take

precedence over the procedures in 8.405.

#### 8.404 Use of Federal Supply Schedules.

(a) *General*. Parts 13 (except 13.303–2(c)(3)), 14, 15, and 19 (except for the requirement at 19.202–1(e)(1)(iii)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see 8.405–5). BPAs and orders placed against a 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 BPA (as authorized by 13.303–2(c)(3)), or placing orders under Federal Supply Schedule contracts using the procedures of 8.405, ordering activities shall not seek competition outside of the Federal Supply Schedules or synopses the requirement.

(b) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(c) *Acquisition planning*. Orders placed under a Federal Supply Schedule contract—

(1) Are not exempt from the development of acquisition plans (see subpart 7.1), and an information technology acquisition strategy (see Part 39);

(2) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (see 2.101(b)); and

(3) Must, whether placed by the requiring agency, or on behalf of the requiring agency, be consistent with the requiring agency's statutory and regulatory requirements applicable to the acquisition of the supply or service.

(d) *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 activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by 8.405–2(d). By placing an order against a schedule contract using the procedures in 8.405, the ordering activity has

concluded that the order represents the best value (as defined in FAR 2.101) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs. Although GSA has already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order (see 8.405-4).

#### **8.405 Ordering procedures for Federal Supply Schedules.**

Ordering activities shall use the ordering procedures of this section when placing an order or establishing a BPA for supplies or services. The procedures in this section apply to all schedules.

##### **8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.**

(a) Ordering activities shall use the procedures of this subsection when ordering supplies and services that are listed in the schedule contracts at a fixed price for the performance of a specific task, where a statement of work is not required (e.g., installation, maintenance, and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. Although not required to solicit from a specific number of schedule contractors, ordering activities should attempt to distribute orders among contractors.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering activity shall consider reasonably available information about the supply or service offered under MAS contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.405-5). In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:

- (1) Past performance.
- (2) Special features of the supply or service required for effective program performance.
- (3) Trade-in considerations.
- (4) Probable life of the item selected as compared with that of a comparable item.
- (5) Warranty considerations.
- (6) Maintenance availability.

(7) Environmental and energy efficiency considerations.

(8) Delivery terms.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the ordering activity shall 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 BPA (see 8.405-3), ordering activities shall—

(1) Review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);

(2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (see 8.404(d)); and

(3) After seeking price reductions (see 8.405-4), place the order with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

##### **8.405-2 Ordering procedures for services requiring a statement of work.**

(a) *General.* Ordering activities shall use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

(b) *Statements of Work (SOWs).* All Statements of Work shall include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge). To the maximum extent practicable, agency requirements shall be performance-based statements (see subpart 37.6).

(c) *Request for Quotation procedures.* The ordering activity must provide the Request for Quotation (RFQ), which includes the statement of work and evaluation criteria (e.g., experience and past performance), to schedule contractors that offer services that will meet the agency's needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy (see 8.402(d)).

(1) *Orders at, or below, the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that

can meet the agency's needs. The ordering activity should attempt to distribute orders among contractors.

(2) *For orders exceeding the micro-purchase threshold, but not exceeding the maximum order threshold.* (i) The ordering activity shall develop a statement of work, in accordance with 8.405-2(b).

(ii) The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs.

(iii) The ordering activity should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(3) *For proposed orders exceeding the maximum order threshold or when establishing a BPA.* In addition to meeting the requirements of 8.405-2(c)(2), the ordering activity shall—

(i) Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the ordering activity. When determining the appropriate number of additional schedule contractors, the ordering activity may consider, among other factors, the following:

(A) The complexity, scope and estimated value of the requirement.

(B) The market search results.

(ii) Seek price reductions.

(4) The ordering activity shall provide the RFQ (including the statement of work and the evaluation criteria) to any schedule contractor who requests a copy of it.

(d) *Evaluation.* The ordering activity shall evaluate all responses received using the evaluation criteria provided to the schedule contractors. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order, or establish the BPA, with the schedule contractor that represents the best value (see 8.404(d)). After award, ordering activities should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

##### **8.405-3 Blanket purchase agreements (BPAs).**

(a)(1) *Establishment.* Ordering activities 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 established is within the discretion of the ordering activity establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider—

- (i) The scope and complexity of the requirement(s);
- (ii) The need to periodically compare multiple technical approaches or prices;
- (iii) The administrative costs of BPAs; and
- (iv) The technical qualifications of the schedule contractor(s).

(2) Establishment of a single BPA, or multiple BPAs, shall be made using the same procedures outlined in 8.405–1 or 8.405–2. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (*e.g.* estimated quantities, work to be performed), delivery locations, and time.

(3) When establishing multiple BPAs, the ordering activity shall specify the procedures for placing orders under the BPAs.

(4) Establishment of a multi-agency BPA against a Federal Supply Schedule contract is permitted if the multi-agency BPA identifies the participating agencies and their estimated requirements at the time the BPA is established.

(b) *Ordering from BPAs*—(1) *Single BPA*. If the ordering activity establishes 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 activity establishes multiple BPAs, before placing an order exceeding the micro-purchase threshold, the ordering activity shall—

- (i) Forward the requirement, or statement of work and the evaluation criteria, to an appropriate additional number of BPA holders, as established in the BPA ordering procedures; and
- (ii) Evaluate the responses received, make a best value determination (see 8.404(d)), and place the order with the BPA holder that represents the best value.

(3) *BPAs for hourly rate services*. If the BPA is for hourly rate services, the ordering activity shall develop a statement of work for requirements covered by the BPA. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

(c) *Duration of BPAs*. BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be

awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.

(d) *Review of BPAs*. (1) The ordering activity that established the BPA shall review it at least once a year to determine whether—

(i) The schedule contract, upon which the BPA was established, is still in effect;

(ii) The BPA still represents the best value (see 8.404(d)); and

(iii) Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

(2) The ordering activity shall document the results of its review.

#### 8.405–4 Price reductions.

In addition to seeking price reductions before placing an order exceeding the maximum order threshold (see 8.405–1(d)), or in conjunction with the annual BPA review, there may be other reasons to request a price reduction. For example, ordering activities 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 individual orders, 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 ordering activity for a specific order.

#### 8.405–5 Small business.

(a) Although the mandatory preference programs of Part 19 do not apply, orders placed against schedule contracts may be credited toward the ordering activity's small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

(b) Ordering activities may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order or BPA. At a minimum, ordering activities should consider, if available, at least one small business, veteran-owned small business, service disabled veteran-owned small business, HUBZone small business, women-owned small business, or small disadvantaged business

schedule contractor(s). GSA Advantage! and Schedules e-Library at <http://www.gsa.gov/fss> contain information on the small business representations of Schedule contractors.

(c) For orders exceeding the micro-purchase threshold, ordering activities should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

#### 8.405–6 Sole source justification and approval.

Orders placed under Federal Supply Schedules are exempt from the requirements in Part 6. However, ordering activities shall—

(a) Procure sole source requirements under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (b) of this section; and

(b) Prepare sole source justifications using the information at 6.303–2, modified to cite that the acquisition is conducted under the authority of Section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 501).

(1) For proposed orders exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer may solicit from one source, if the ordering activity contracting officer determines that the circumstances deem only one source is reasonably available (*e.g.*, urgency, exclusive licensing agreement, industrial mobilization). The contracting officer shall approve the justification unless a higher approval level is established in accordance with agency procedures.

(2) For proposed orders exceeding the simplified acquisition threshold, but not exceeding \$500,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(3) For a proposed order exceeding \$500,000, but not exceeding \$10 million, 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. This authority is not delegable.

(4) For a proposed order exceeding \$10 million but not exceeding \$50 million, the head of the procuring activity or an official described in 6.304(a)(3)(i) or (ii) shall approve the

justification. This authority is not delegable.

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

#### **8.405-7 Documentation.**

(a) *Minimum documentation.* The ordering activity shall document—

(1) The contracts considered, noting the contractor from which the supply or service was purchased;

(2) A description of the supply or service purchased;

(3) The amount paid; and

(4) If applicable, the circumstances and rationale for restricting consideration of schedule contractors to fewer than that required in 8.405-1 or 8.405-2 (see 8.405-6). Justifications for such restrictions may include—

(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 placed in accordance with 8.405-1 or 8.405-2 (excluding orders placed previously under sole source requirements);

(iii) The item is peculiar to one manufacturer. A brand name item, available on various schedule contracts, is an item peculiar to one manufacturer; or

(iv) An urgent and compelling need exists and following the ordering procedures would result in unacceptable delays.

(b) *Additional documentation for services.* In addition to the documentation requirements of paragraph (a) of this section, when acquiring services using the procedures at 8.405-2, the ordering office shall also document—

(1) The evaluation methodology used in selecting the contractor to receive the order;

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

(3) The price reasonableness determination required by 8.405-2(d); and

(4) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

#### **8.405-8 Payment.**

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

#### **8.406 Ordering activity responsibilities.**

##### **8.406-1 Order placement.**

Ordering activities may place orders orally (except for services requiring a statement of work (SOW)) or use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedule contracts. The ordering activity shall place an order directly with the contractor in accordance with the terms and conditions of the pricelists (see 8.402(b)). Prior to placement of the order, the ordering activity shall ensure that the regulatory and statutory requirements of the requiring agency have been applied. Orders shall include the following information in addition to any information required by the schedule contract:

(a) Complete shipping and billing addresses.

(b) Contract number and date.

(c) Agency order number.

(d) F.o.b. delivery point; *i.e.*, origin or destination.

(e) Discount terms.

(f) Delivery time or period of performance.

(g) Special item number or national stock number.

(h) A statement of work for services, when required, or a brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).

(i) Quantity and any variation in quantity.

(j) Number of units.

(k) Unit price.

(l) Total price of order.

(m) Points of inspection and acceptance.

(n) Other pertinent data; *e.g.*, delivery instructions or receiving hours and size-of-truck limitation.

(o) Marking requirements.

(p) Level of preservation, packaging, and packing.

##### **8.406-2 Inspection and acceptance.**

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

(i) The schedule contract 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 activity 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 activity will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering activity 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 kind, count, and condition on receipt.

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

(b) *Services.* The ordering activity has the right to inspect all services in accordance with the contract requirements and as called for by the order. The ordering activity shall perform inspections and tests as specified in the order's quality assurance surveillance plan in a manner that will not unduly delay the work.

##### **8.406-3 Remedies for nonconformance.**

(a) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering activity shall take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order.

(b) If the contractor fails to perform an order, or take appropriate corrective action, the ordering activity may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Ordering activities shall follow the procedures at 8.406-4 when terminating an order for cause.

##### **8.406-4 Termination for cause.**

(a)(1) An ordering activity contracting officer may terminate individual orders for cause. Termination for cause shall comply with FAR 12.403, and may include charging the contractor with excess costs resulting from repurchase.

(2) The schedule contracting office shall be notified of all instances where an ordering activity contracting officer has terminated for cause an individual order to a Federal Supply Schedule contractor, or if fraud is suspected.

(b) If the contractor asserts that the failure was excusable, the ordering activity contracting officer shall follow the procedures at 8.406-6, as appropriate.

(c) If the contractor is charged excess costs, the following apply:

(1) 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].

(2) When excess costs are anticipated, the ordering activity may withhold funds due the contractor as offset security. Ordering activities shall minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.

(3) If an ordering activity is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the 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 purchase 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.

(d) Only the schedule contracting officer may modify the contract to terminate for cause any, or all, supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any supplies or services 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 activity contracting officer.

#### **8.406-5 Termination for the Government's convenience.**

(a) An ordering activity contracting officer may terminate individual orders for the Government's convenience. Terminations for the Government's convenience shall comply with FAR 12.403.

(b) Before terminating orders for the Government's convenience, the ordering activity contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

(c) Only the schedule contracting officer may modify the schedule contract to terminate any, or all, supplies or services covered by the schedule contract for the Government's convenience.

#### **8.406-6 Disputes.**

(a) *Disputes pertaining to the performance of orders under a schedule contract.* (1) Under the Disputes clause of the schedule contract, the ordering activity contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering activity contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering activity contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see 33.204 and 33.214).

#### **PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING**

■ 3. 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). GSA may delegate certain responsibilities to other agencies (e.g., GSA has delegated authority to the Department of Veterans Affairs (VA) to procure medical supplies under the VA Federal Supply Schedules Program). The VA Federal Supply Schedules

Program is covered by this subpart. Additionally, the Department of Defense manages a similar system of schedule contracting for military items; however, the Department of Defense systems are not a part of the Federal Supply Schedule program.

■ 4. Amend section 38.101 by revising paragraph (a) to read as follows:

#### **38.101 General.**

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3)(A), provides Federal agencies with a simplified process of acquiring commercial supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts are awarded using competitive procedures to firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedule publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics.

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#### **PART 53—FORMS**

##### **53.213 [Amended]**

■ 5. Amend section 53.213 in paragraph (f)(4) by removing "8.405-2" and adding "8.406-1" in its place.

[FR Doc. 04-13622 Filed 6-17-04; 8:45 am]

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#### **DEPARTMENT OF DEFENSE**

##### **GENERAL SERVICES ADMINISTRATION**

##### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

##### **48 CFR Parts 22, 25, and 52**

[FAC 2001-24; FAR Case 2004-008; Item VI]

RIN 9000-AJ96

##### **Federal Acquisition Regulation; Designated Countries—New European Communities Member States**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council