

Federal Acquisition Regulation

8.405-6

schedule users a price reduction extended only to an individual ordering activity for a specific order or BPA.

[76 FR 14555, Mar. 16, 2011]

8.405-5 Small business.

(a) Although the preference programs of part 19 are not mandatory in this subpart, in accordance with section 1331 of Public Law 111-240 (15 U.S.C. 644(r))—

(1) Ordering activity contracting officers may, at their discretion—

(i) Set aside orders for any of the small business concerns identified in 19.000(a)(3); and

(ii) Set aside BPAs for any of the small business concerns identified in 19.000(a)(3).

(2) When setting aside orders and BPAs—

(i) Follow the ordering procedures for Federal Supply Schedules at 8.405-1, 8.405-2, and 8.405-3; and

(ii) The specific small business program eligibility requirements identified in part 19 apply.

(b) Orders placed under 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 North American Industry Classification System code assigned to the order in accordance with 19.102(b)(3). Ordering activities should rely on the small business representations made by schedule contractors at the contract level (but see section 19.301-2(b)(2) concerning rerepresentation for an order).

(c) 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/fas> contain information on the small business representations of Schedule contractors.

(d) 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.

[69 FR 34234, June 18, 2004, as amended at 76 FR 68034, Nov. 2, 2011; 77 FR 204, Jan. 3, 2012; 85 FR 11756, Feb. 27, 2020]

8.405-6 Limiting sources.

Orders placed or BPAs established under Federal Supply Schedules are exempt from the requirements in part 6. However, an ordering activity must justify its action when restricting consideration in accordance with paragraph (a) or (b) of this section—

(a) *Orders or BPAs exceeding the micro-purchase threshold based on a limited sources justification*—(1) *Circumstances justifying limiting the source.* (i) For a proposed order or BPA with an estimated value exceeding the micro-purchase threshold not placed or established in accordance with the procedures in 8.405-1, 8.405-2, or 8.405-3, the only circumstances that may justify the action are—

(A) An urgent and compelling need exists, and following the procedures would result in unacceptable delays;

(B) Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or

(C) In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

(ii) See 8.405-6(c) for the content of the justification for an order or BPA exceeding the simplified acquisition threshold.

(2) *Posting.* (i) Within 14 days after placing an order or establishing a BPA exceeding the simplified acquisition threshold that is supported by a limited-sources justification permitted under any of the circumstances under paragraph (a)(1) of this section, the ordering activity shall—

(A) Publish a notice in accordance with 5.301; and

(B) Post the justification—

(1) At the GPE <https://www.fbo.gov>;

(2) On the Web site of the ordering activity agency, which may provide access to the justification by linking to the GPE; and

(3) For a minimum of 30 days.

(ii) In the case of an order or BPA permitted under paragraph (a)(1)(i)(A) of this section, the justification shall be posted within 30 days after award.

(iii) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 “Predisclosure Notification Procedures for Confidential Commercial Information” does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a)(2)(i) and (ii) of this section.

(iv) This posting requirement does not apply when disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information) or create other security risks.

(b) *Items peculiar to one manufacturer.* An item peculiar to one manufacturer can be a particular brand name, product, or a feature of a product, peculiar to one manufacturer. A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer.

(1) Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government’s requirements, and market research indicates other companies’ similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency’s needs.

(2) *Documentation.* (i) For proposed orders or BPAs with an estimated value exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer shall document the basis for restricting consideration to an item peculiar to one manufacturer.

(ii) For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold, see paragraph (c) of this section.

(iii) The documentation or justification must be completed and approved at the time the requirement for a brand-name item is determined. In addition, the justification for a brand-name item is required at the order level when a justification for the brand-name item was not completed for the BPA or does not adequately cover the requirements in the order.

(3) *Posting.* (i) The ordering activity shall post the following information along with the Request for Quotation (RFQ) to e-Buy (<http://www.ebuy.gsa.gov>):

(A) For proposed orders or BPAs with an estimated value exceeding \$25,000, but not exceeding the simplified acquisition threshold, the documentation required by paragraph (b)(2)(i) of this section.

(B) For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold, the justification required by paragraph (c) of this section.

(C) The documentation in paragraph (b)(2)(i) of this section and the justification in paragraph (c) of this section is subject to the screening requirement in paragraph (a)(2)(iii) of this section.

(ii) The posting requirement of paragraph (b)(3)(i) of this section does not apply when—

(A) Disclosure would compromise the national security (*e.g.*, would result in

disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(B) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access through e-Buy; or

(C) The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest.

(4) When applicable, the documentation and posting requirements in paragraphs (b)(2) and (3) of this section apply only to the portion of the order or BPA that requires a brand-name item. If the justification and approval is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(c) *An order or BPA with an estimated value exceeding the simplified acquisition threshold.* (1) For a proposed order or BPA exceeding the simplified acquisition threshold, the requiring activity shall assist the ordering activity contracting officer in the preparation of the justification. The justification shall cite that the acquisition is conducted under the authority of the Multiple-Award Schedule Program (*see* 8.401).

(2) At a minimum, each justification shall include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a "Limited-Sources Justification."

(ii) Nature and/or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) The authority and supporting rationale (*see* 8.405-6(a)(1)(i) and (b)(1)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

(v) A determination by the ordering activity contracting officer that the order represents the best value consistent with 8.404(d).

(vi) A description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.

(vii) Any other facts supporting the justification.

(viii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

(ix) The ordering activity contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(x) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for limited sources) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(xi) For justifications under 8.405-6(a)(1), a written determination by the approving official identifying the circumstance that applies.

(d) *Justification approvals.* (1) For a proposed order or BPA with an estimated value exceeding the simplified acquisition threshold, but not exceeding \$700,000, 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.

(2) For a proposed order or BPA with an estimated value exceeding \$700,000, but not exceeding \$13.5 million, the justification must be approved by the advocate for competition of the activity placing the order, or by an official named in paragraph (d)(3) or (4) of this section. This authority is not delegable.

(3) For a proposed order or BPA with an estimated value exceeding \$13.5 million, but not exceeding \$68 million (or, for DoD, NASA, and the Coast Guard, not exceeding \$93 million), the justification must be approved by—

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(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer; or

(B) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (d)(4) of this section.

(4) For a proposed order or BPA with an estimated value exceeding \$68 million (or, for DoD, NASA, and the Coast Guard, over \$93 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting as the senior procurement executive for the Department of Defense.

[76 FR 14555, Mar. 16, 2011, as amended at 77 FR 193, Jan. 3, 2012; 79 FR 24199, Apr. 29, 2014; 80 FR 38296, July 2, 2015; 83 FR 42572, Aug. 22, 2018; 84 FR 19844, May 6, 2019]

8.405-7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Government-wide commercial purchase card (but see 32.1108(b)(2)).

[74 FR 65604, Dec. 10, 2009]

8.406 Ordering activity responsibilities.

8.406-1 Order placement.

(a) Ordering activities may place orders orally, except for—

(1) Supplies and services not requiring a statement of work exceeding the simplified acquisition threshold;

(2) Services requiring a statement of work (SOW); and

(3) Orders containing brand-name specifications that exceed \$25,000.

(b) Ordering activities may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedule contracts.

(c) 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)).

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Prior to placement of the order, the ordering activity shall ensure that the regulatory and statutory requirements of the requiring agency have been applied.

(d) Orders shall include the following information in addition to any information required by the schedule contract:

(1) Complete shipping and billing addresses.

(2) Contract number and date.

(3) Agency order number.

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

(5) Discount terms.

(6) Delivery time or period of performance.

(7) Special item number or national stock number.

(8) Line item or subline item.

(9) 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).

(10) Quantity and any variation in quantity.

(11) Number of units.

(12) Unit price.

(13) Total price of order.

(14) Points of inspection and acceptance.

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

(16) Marking requirements.

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

[76 FR 14557, Mar. 16, 2011, as amended at 82 FR 4713, Jan. 13, 2017]

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,