

Document	Retention period	Document	Retention period
(iii) Related records or documents, including successful proposals, except for contractor's payrolls (see (b)(4)(iv)).	Same as contract file.	(10) Investigations, cases pending or in litigation (including protests), or similar matters.	Until final clearance or settlement, or, if related to a document identified in (b)(1)–(9), for the retention period specified for the related document, whichever is later.
(iv) Contractor's payrolls submitted in accordance with Department of Labor regulations, with related certifications, anti-kickback affidavits, and other related papers.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.	[FR Doc. 00–13820 Filed 6–1–00; 4:00 pm] <b>BILLING CODE 6820–EP–P</b>	
<b>DEPARTMENT OF DEFENSE</b>			
<b>GENERAL SERVICES ADMINISTRATION</b>			
<b>NATIONAL AERONAUTICS AND SPACE ADMINISTRATION</b>			
<b>48 CFR Parts 8 and 38</b>			
<b>[FAC 97–18; FAR Case 1998–609 (98–609); Item V]</b>			
<b>RIN 9000–AI48</b>			
<b>Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities</b>			
<b>AGENCIES:</b> Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).			
<b>ACTION:</b> Final rule.			
<b>SUMMARY:</b> 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 enhance the participation of small business concerns under the Federal Supply Schedules (FSS) program.			
<b>DATES:</b> <i>Effective Date:</i> August 7, 2000. <i>Applicability Date:</i> The FAR, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.			
<b>FOR FURTHER INFORMATION CONTACT:</b> The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (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 97–18, FAR case 1998–609.			
<b>SUPPLEMENTARY INFORMATION:</b>			
<b>A. Background</b>			
The rule—			
• Amends FAR subpart 8.4 to encourage ordering offices to consider			
(5) Solicited and unsolicited unsuccessful offers, quotations, bids, and proposals:	If filed separately from contract file, until contract is completed. Otherwise, the same as related contract file.		
(i) Relating to contracts above the simplified acquisition threshold.			
(ii) Relating to contracts at or below the simplified acquisition threshold.	1 year after date of award or until final payment, whichever is later.		
(6) Files for canceled solicitations.	5 years after cancellation.		
(7) Other copies of procurement file records used by component elements of a contracting office for administrative purposes.	Upon termination or completion.		
(8) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.		
(9) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements other than simplified acquisitions, and information required under 4.601.	5 years after submittal to FPDS.		

concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order;

- Amends FAR Part 38 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before a solicitation is issued; and
- Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** on September 14, 1999 (64 FR 49948). Thirty-two respondents submitted public comments. We considered all comments and converted the proposed rule to a final rule with minor changes.

This rule was not subject to Office of Management and Budget 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 prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with 5 U.S.C. 604. Because this rule may impact small businesses, we are providing the FRFA in its entirety as follows:

This Final Regulatory Flexibility Analysis has been prepared consistent with the criteria stated in 5 U.S.C. 604.

### 1. Statement of need for, and objectives of, the rule.

The purpose of this rule is to promote the growth of Federal procurement sales opportunities for small business concerns under the Federal Supply Schedules. The rule amends FAR Subparts 8.4 and 38.1 to encourage ordering offices to consider small business concerns, if available, when conducting evaluations before placing an order. The rule also recognizes the recent change made by the Small Business Administration requiring inclusion of Federal Supply Schedule orders in agencies' small business goals. Effective fiscal year 1999, agencies must include the dollar value of orders expected to be placed against the General Services Administration's (GSA) Federal Supply Service (FSS) Schedules and report accomplishments against those goals.

### 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.

We received one public comment that specifically addressed the Initial Regulatory Flexibility Analysis. The public comment expressed concerns that the data presented

did not adequately detail the impact the rule will have on small business concerns. Specifically, the respondent stated that although well represented in the Federal Supply Schedule program, small Federal Supply Schedule contractors cannot adequately compete with large Federal Supply Schedule contractors. In response, it is important to note that while sales under the program have increased to large businesses, sales to small businesses have increased as well. The Federal Supply Schedule program recognizes that in certain instances small business may not have the capability to meet some requirements of Federal agencies. However, the program permits schedule contractors to team with other schedule contractors to provide a solution to meet agency needs. A team can be any combination of large and small businesses. Therefore, small businesses can compete against large businesses by forming teams that can provide supplies and services tailored to address agency needs. The Federal Supply Schedules program is one of the most successful Government procurement programs; a program where small businesses can experience continuous growth.

We did not change the rule as a result of the comment. The rule encourages ordering offices to consider the availability of small business concerns under the schedule when conducting evaluations before placing an order. The preference for awarding an order to a small business "when two or more items at the same delivered price" will continue to apply. This final rule is intended to be beneficial by expanding small business consideration under Federal Supply Schedule orders.

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 small business concerns under the Federal Supply Schedules program. Although the rule pertains to internal Government procedures, it is intended to increase the number of orders for supplies and services placed by the Government with small business concerns. Based on "Small Business Vital Statistics" found on SBA's homepage ([www.sba.gov/aboutsba/](http://www.sba.gov/aboutsba/)), SBA estimated that there are approximately 23 million small businesses in the United States that provide 47 percent of all sales in the country. Clearly, not all of the businesses that are considered small seek to participate in the Federal Supply Schedules program. However, according to fiscal year 1999 statistical data maintained by GSA's Federal Supply Service, small business concerns hold 5,705 national scope schedule contracts out of a total population of 7,431 national scope schedule contracts. Thus, approximately 77 percent of the schedule contractors are small business concerns. In fiscal year 1999, small business schedule contractors received approximately \$3.2 billion or 31 percent of total schedule sales. This exceeds the current Governmentwide small business goal. During fiscal year 1998, 4,900 small businesses held contracts out of a total of 7,000 national scope schedule contracts. Small business sales in 1998 were \$2.5 billion or 33 percent of total schedule

sales. Between fiscal year 1998 and fiscal year 1999, the number of small businesses holding FSS contracts increased 6 percent and small business sales increased 28 percent. The increased sales to small businesses total almost  $\frac{3}{4}$  of a billion dollars. SBA reports that in 1998 the small business share of all Federal prime contract dollars dropped to 20.6 percent. Clearly, small businesses are receiving a greater market share under the schedules.

The General Services Administration (GSA) has radically restructured the schedules program over the past 4 years. GSA has streamlined both contracting and ordering processes for industry and for Government users of the program. The changes made to the program over the last 4 years provide small business vendors easy access to the Federal community and provide users with streamlined procedures. 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. The rule also supports continued increases in small business sales.

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 the steps the agency has taken to minimize the 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 one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

We considered various alternative approaches, as well as the adverse and beneficial impacts upon large businesses, small business, and the Government. One alternative that we considered was to apply small business set-asides to the FSS ordering process, including mandatory application of the rule of two for orders at certain dollar thresholds. Another alternative we considered was to allow agencies, at their discretion, to limit consideration of schedule orders to small business concerns. A third alternative we considered was to set-aside a significant number of Federal Supply Schedules for small businesses by applying the rule of two. However, contracting officers under the FSS program already issue solicitations that comply with the requirements of FAR Parts 5, 6, and 19. Determinations regarding small business set-asides are made during acquisition planning and solicitation preparation. All schedule solicitations must be reviewed by the Small Business Administration Procurement Center Representative (PCR) before issuance. For the reasons provided, we considered these alternatives inappropriate for adoption.

We determined that the alternatives offered by respondents to the proposed rule would be detrimental to the effectiveness and flexibility of the schedules program. We are converting the proposed rule to a final rule because it enhances the participation of small business in the Federal Supply Schedules program and provides a mechanism to increase the sales to small business under the FSS program.

The rule encourages ordering offices to consider the availability of small business concerns under the schedule and when conducting evaluations before placing an order. We expect sales to small businesses under the Federal Supply Schedules to increase because agencies are encouraged to include small business when conducting evaluations for an order and because agencies may credit small business schedule orders towards agency small business goals. The rule also ensures that all sectors of the economy may participate in the Federal Supply Schedules program. After we publish the final rule, we will track sales to verify if this rule has a positive impact on small business.

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

### C. 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 and 38

Government procurement.

Dated: May 26, 2000.

**Edward C. Loeb,**

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 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. Revise section 8.402 to read as follows:

#### 8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. Occasionally, GSA may establish special ordering procedures. The affected Federal Supply Schedules will outline these procedures.

3. In section 8.404—

a. Revise paragraph (a);

- b. Remove from paragraph (b)(1) "Ordering Offices can place" and add "Place" in its place;
- c. Revise the introductory text of paragraph (b)(2);
- d. Revise paragraph (b)(2)(i);
- e. Remove from the last sentence of the introductory text of paragraph (b)(3) ", ordering offices shall";
- f. Revise paragraph (b)(3)(i);
- g. Revise the first sentence in paragraph (b)(3)(iii); and
- h. Revise paragraphs (b)(4), (b)(5), and (b)(6) to read as follows:

#### 8.404 Using schedules.

(a) *General.* Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303–2(c)(3). Orders 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, ordering offices need not seek further competition, synopses the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, 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.

(b) \* \* \*

(2) *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, 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(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, the ordering office may consider—

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

\* \* \* \* \*

(3) \* \* \*

- (i) Review additional schedule contractors' catalogs or pricelists, or use the "GSA Advantage!" on-line shopping service;

\* \* \* \* \*

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). \* \* \*

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303–2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, 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, offer 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.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, women-owned small, and/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.

\* \* \* \* \*

#### PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

4. Revise section 38.101 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 commonly used supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial 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 Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (e.g., Parts 5, 6, and 19). The requirements of Parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule solicitation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

[FR Doc. 00–13821 Filed 6–1–00; 4:00 pm]

BILLING CODE 6820–EP–P

#### DEPARTMENT OF DEFENSE

##### GENERAL SERVICES ADMINISTRATION

##### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 25 and 52

[FAC 97–18; FAR Case 2000–004; Item VI]

RIN 9000–AI78

##### Federal Acquisition Regulation; Trade Agreements Thresholds

**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 implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement