

STATE PURCHASING MEMORANDUM

Memorandum No. 01 (2008-2009)

FROM: State Purchasing
DATE: November 19, 2008
RE: Clarification to memorandum No. 02 (2006-2007) – Use of Schedule 70

This memorandum authorizes and guides purchases from GSA Schedule 70. The necessary portions of State Purchasing Memorandum No. 02 (2005-2006) and Memorandum No. 02 (2006-2007) are restated and clarified by this memorandum and agencies need not refer back to the prior memorandum for guidance on GSA Schedule 70 purchases.


The Division of State Purchasing initially approved the use of Schedule 70 as an alternate source contract on April 12, 2006. Since then, agencies and other eligible users have successfully conducted efficient and effective purchases resulting in best value procurements. Because utilization of GSA Schedule 70 continues to be cost-effective and in the best interest of the State of Florida, the Division hereby reaffirms approval of GSA Schedule 70 as an alternate source contract, pursuant to 60A-1.047(3), F.A.C.

SUMMARY

Who is authorized by this memorandum to utilize GSA Schedule 70? State agencies are pre-approved to use Schedule 70 in accordance with this memorandum.

What can be purchased from GSA Schedule 70? Any goods or services available from GSA Schedule 70 that are not available from a state term contract unless otherwise justified pursuant to Rule 60A-1.044(3), F.A.C.

What is the process for purchasing from Schedule 70? When purchasing from Schedule 70, agencies shall follow the ordering procedures of FAR subparts 8.405-1 and 8.405-2, attached as Exhibit 1. In addition, the following Florida specific procedures apply:

- Schedule 70 may not be used for purchases over \$10 million
- If three quotes cannot be obtained, agencies may: 1) conduct a procurement process as approved in s. 287.057, F.S., 2) submit form PUR 7102 to State Purchasing, or 3) if the good or service is available from a single source, the agency may follow the process provided by rule 60A-1.045, F.A.C. and s. 287.057(5)(c), F.S. These three options are explained in more detail later in this memorandum.
- For orders placed through MyFloridaMarketPlace, State Agencies must process the order as a non-catalog direct order and document the transaction.
- Agencies shall only utilize those Schedule 70 vendors with GSA contracts modified for cooperative purchasing as designated by the icon  on the GSA Advantage! and Schedules e-Library Websites.
- Agencies are encouraged to request lower/better pricing from contractors, but are reminded that contractors are not required to comply. (Reference FAR 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 (Blanket Purchase Agreement) 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.)

Ordering from GSA Schedule 70 (additional detail)

The following information is provided to clarify the ordering instructions, particularly in instances when less than three quotes are available from cooperative purchasing contractors under the General Services Administration (GSA) Schedule 70.

Agency buyers using Schedule 70 as an alternate contract source must comply with the FAR Subpart 8.4 ordering procedures, as modified by this memorandum. **IN PARTICULAR, AGENCIES SHALL FOLLOW THE STATE OF FLORIDA ALTERNATE CONTRACT SOURCE AGREEMENT FOR GSA SCHEDULE PURCHASES (COPY ATTACHED AS EXHIBIT 2) AND THE ORDERING PROCEDURES OUTLINED IN FAR SUBPART 8.405-1 AND 8.405-2, COPIES OF WHICH ARE ATTACHED TO THIS MEMORANDUM AS EXHIBIT 1.** At an agency's request with reasonable notice, State Purchasing will deliver on-site training on these ordering procedures.

In addition to the ordering procedures contained in FAR 8.405-1 and FAR 8.405-2 (i.e. in determining to whom to send a RFQ and how many quotes are required,) agencies shall use the following guidelines:

- The "micro-purchase threshold" shall be \$2,500. Below this level, obtain at least one quote and purchase directly from a schedule contractor.
- The "maximum order threshold" shall be \$150,000. At or below this level, provide the RFQ to at least three Schedule 70 contractors. Schedule 70 contractors without the cooperative purchasing designation may be counted for purposes of this requirement provided they respond with a quote.
- For purchases from \$150,000.01 to \$10 million (see State Purchasing Memo #2 2005-2006), provide the RFQ to more than three Schedule 70 contractors. Schedule 70 contractors without the cooperative purchasing designation may be counted for purposes of this requirement, provided they respond with a quote.
- For purchases over \$10 million, agencies shall not use the GSA schedule, and shall instead use one of the traditional procurement methods outlined in s. 287.057, F.S.

The agency should ultimately select the vendor that offers the best value.

What if the required number of quotes are not available from Schedule 70 vendors?

The RFQ process is a critical component of obtaining best value under the schedule program. However, there may be circumstances where, even though it is not possible to obtain multiple quotes, Schedule 70 price represents best value. To ensure that agencies get the best value, the following additional guidance is provided for agencies that cannot obtain the required number of quotes from schedule contractors:

For purchases over \$2,500 but not over \$25,000, the agency may proceed with the purchase based on the receipt of two quotes but shall document its decision per Rule 60A-1.002(3), F.A.C. Documentation may include evidence of quotes from non-schedule contractors, or evidence that no other quotes were available.

- For purchases exceeding \$25,000, if an agency cannot provide the RFQ to the required number of schedule contractors, then the agency may proceed with one of the following options:
 - An agency may conduct a procurement process authorized by s. 287.057, F.S. If the agency wishes to preserve its option to buy from Schedule 70, it shall so indicate in the solicitation documents and expressly specify it will deem responsive only those offers that meet or beat the

Schedule 70 price. If the process designated in s. 287.057, F.S. does not result in an equal or better value as compared to Schedule 70, then the agency may reject all offers and proceed to purchase from the schedule contractor.

- An agency may request approval to use an Alternate Contract Source from the Division of State Purchasing pursuant to rule 60A-1.047, F.A.C., by submitting form PUR 7102 together with supporting evidence that fewer than three companies with the ability to meet specifications are available on the GSA Schedule 70. In addition, the agency must provide evidence that GSA Schedule 70 pricing is lower than, or equivalent to, open market pricing. Such evidence may include open market quotations or other published pricing from companies not participating in Schedule 70. This option is available to accommodate situations in which, for business reasons, manufacturers designate less than three companies in Schedule 70 to sell certain products even when the products are available from more than one source in the open market. NOTE: This option may not be used to circumvent the single source process provided in Section 287.057(5)(c), F.S. and Section 60A-1.045, F.A.C.
- When the agency believes that the product is available only from a single source, the agency may follow the process provided by rule 60A-1.045, F.A.C. and s. 287.057(5)(c), F.S. An agency may not utilize the FAR 8.405-6 Sole Sources Justification and Approval to circumvent the sole source process required by state law.

EXHIBIT 1

FAR 8.405

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 schedules 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.*

(1) 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 at least three schedule contractors through the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see [8.405-5](#)).

(2) When an order contains brand name specifications, the contracting officer shall post the Request for Quote (RFQ) along with the justification or documentation as required by [8.405-6](#).

(3) In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:

- (i) Past performance.
- (ii) Special features of the supply or service required for effective program performance.
- (iii) Trade-in considerations.
- (iv) Probable life of the item selected as compared with that of a comparable item.
- (v) Warranty considerations.
- (vi) Maintenance availability.
- (vii) Environmental and energy efficiency considerations.
- (viii) 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 (except see (c)(2) of this subsection) 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.

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

- (1) The schedule contracts considered, noting the contractor from which the supply or service was purchased;
- (2) A description of the supply or service purchased; and
- (3) The amount paid.

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.

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

- (1) The schedule contracts considered, noting the contractor from which the service was purchased;
- (2) A description of the service purchased;
- (3) The amount paid;
- (4) The evaluation methodology used in selecting the contractor to receive the order;
- (5) The rationale for any tradeoffs in making the selection;
- (6) The price reasonableness determination required by paragraph (d) of this subsection; and
- (7) The rationale for using other than—
 - (i) A firm-fixed price order; or
 - (ii) A performance-based order.

EXHIBIT 2

**STATE OF FLORIDA
ALTERNATE CONTRACT SOURCE
AGREEMENT FOR GSA SCHEDULE PURCHASES**

This Agreement, effective the last date signed below, is made by and between the agency ("Buyer") and vendor ("Seller") identified below with respect to the following.

WHEREAS, pursuant to section 287.042(16)(a), *Florida Statutes* (2008), State Purchasing within the Department of Management Services ("DMS") has evaluated the multiple award schedule program administered by the U.S. General Services Administration ("GSA") and determined that it is cost-effective and in the best interest of the State to allow agencies to purchase from Schedule 70 in accordance with State Purchasing Memorandum No. 1 (2008-09); and

WHEREAS, Buyer has followed the process outlined in State Purchasing Memorandum No. 1 (2008-09) and desires to enter into this Agreement with Seller.

THEREFORE, in consideration of the foregoing and the mutual promises contained in the contract documents, Buyer and Seller hereby enter into this Agreement.

(1) The statement of work is attached hereto as Attachment A and is hereby characterized as the type checked below:

- Simple. The order is for commodities, or services valued at \$25,000 or less, which are listed in the GSA schedule at a fixed price for the performance of a specific task (e.g., installation, maintenance, repair). Transaction details are included in the statement or are incorporated by reference to the associated purchase order.
- Detailed. The order is for services priced at hourly rates established in the GSA schedule. The statement describes the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; any special requirements (e.g., security clearance, travel, special knowledge); and any detail required by paragraphs (a)-(f) of section 287.058(1), *Florida Statutes* (2008), which is hereby incorporated by reference.

(2) The underlying GSA schedule is either attached as or incorporated by reference into Attachment B. Neither GSA, nor any other agency of the United States, is a party to this Agreement or to any related purchase order.

(3) To effect a purchase under this Agreement, Buyer may issue a direct order in MyFloridaMarketPlace referencing this Agreement.

(4) Seller has registered as a vendor with MyFloridaMarketPlace. Rule 60A-1.031, Florida Administrative Code (F.A.C.), is hereby incorporated by reference. All transactions are subject to a transaction fee of 1.0% pursuant to the rule, which is in addition to, and not in lieu of, any obligation Seller has with the regard to the GSA industrial funding fee.

(5) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. Payment terms are governed by sections 215.422 and 287.0585, *Florida Statutes* (2008).

(6) Seller shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Seller shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

(7) The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply, and the parties waive any right to jury trial.

(8) All transactions are subject to the terms of the following documents, which, in case of conflict, shall have the order of precedence listed:

- a) This Agreement
- b) The related GSA schedule (Attachment B)
- c) The statement of work (Attachment A)
- d) The direct order(s) that effects a transaction under this Agreement

SO AGREED:

BUYER:

[Agency name and address]

By: _____
Title: _____

Date

SELLER:

[Vendor name and address]

By: _____
Title: _____

Date

Attachment A

<Statement of Work (simple or detailed)>

Attachment B

The related GSA Schedule is either (check one):

Attached (attach schedule)

Incorporated by reference:

Schedule No.: _____

Date: _____