

NEW RULE PERMITS SCHEDULE CONTRACTORS TO PROVIDE OFF-SCHEDULE ITEMS WITHOUT USING THE PREVIOUS “OPEN MARKET” PROCEDURES

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The General Services Administration (“GSA”) issued a new rule that makes it considerably easier for GSA Schedule contractors to supply “non-schedule” materials and services, which are now referred to as “Order-Level Materials” or “OLM”. 83 Fed. Reg 3275 (Jan. 24, 2018). GSA states that this rule provides the same flexibility for the schedules (Federal Supply Schedules, or FSS) program that is currently authorized for other indefinite delivery, indefinite quantity (“IDIQ”) vehicles, which should help reduce administrative costs.

The rule modifies the GSA Acquisition Regulation (“GSAR”) by adding a new Section, GSAR 552.238-82, “Special Ordering Procedures for the Acquisition of Order-Level Materials” and by making changes in GSAR subpart 515.408 and 538.72. Prior to this regulatory change, agencies could only purchase through a Schedule contract non-schedule products and services that had a value below the micropurchase threshold. Here are the major changes:

- 1) Order Level Materials are defined as “supplies and/or services acquired in direct support of an individual task or delivery order placed against an FSS contract, or FSS blanket purchase agreement, when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award.”
- 2) GSA states that OLM are “not open market items,” which are discussed in FAR 8.402(f).
- 3) The cumulative value of OLMs in an individual task or delivery award under an FSS contract may not exceed 1/3 (33 1/3 percent) of the total value of the individual task or delivery order. Travel costs do not count in this 1/3 amount.
- 4) There will be an OLM Special Item Number (“SIN”) for placement of OLM orders.
- 5) The schedule contractor must obtain a minimum of three quotes for each order level material above the simplified acquisition threshold.
- 6) OLMs are not subject to the Commercial Sales Practice disclosure requirements.
- 7) OLMs are exempt from the Economic Price Adjustment Clause (GSAR 552.216-70).
- 8) OLMs are exempt from the Price Reductions Clause (GSAR 552.238-75).
- 9) Travel costs will continue to be governed by FAR 31.205-46.

Takeaway: GSA’s new rule gives significant improvements in flexibility to Schedule contractors, who may now provide limited off-schedule products and services with the above safeguards. In the past, these non-schedule items or services were deemed “open market” and were subject to competition if they exceeded the micropurchase threshold.

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