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GSA

Proposed GSA Rule Could End ‘Elaborate Workarounds’ in MAS Process

The General Services Administration has issued a new proposed rule designed to eliminate long-standing confusion and “elaborate workarounds” in the Multiple Award Schedule (MAS) process, and simplify the government purchasing system for agencies and contractors.

The GSA’s proposed General Services Acquisition Regulation rule, published in the Sept. 9 Federal Register, would incorporate “order-level materials,” also known as “other direct costs,” into MAS contracts, which are awarded to multiple companies that supply similar goods and services at different prices.

The proposed rule would set up special procedures that clarify the authority to acquire order-level materials. These are materials that can be directly traced to an order but are incidental to the main purchase. These include ancillary supplies and services, such as commercial items that complement the main purchase; travel-related reimbursement items; and “open market items,” commercial items not awarded under a MAS contract but which also support an order.

An existing rule within the Federal Acquisition Regulation (FAR) that addresses open market items not on the Federal Supply Schedule (FSS) has led contracting officers to conclude that they need to conduct separate, open market competitions for all materials not specifically awarded in the underlying contract.

“As a result, FSS ordering activities have struggled with how to properly handle orders for which the exact items and quantities of materials is unknown,” GSA officials wrote in the proposed rule. “Years of confusion have, in turn, led to the creation of elaborate workarounds and the application of inconsistent policies and procedures.”

Market Forces. In a press statement, GSA officials said the proposed rule would result in better value for agencies and contractors.

The addition of order-level materials to the MAS program “is good for government,” said GSA Federal Acquisition Service Commissioner Tom Sharpe in the statement.

“This new flexibility will improve our customers’ abilities to meet their mission needs while ensuring that the Schedules program can respond to ever-changing market forces to provide government with a streamlined, value-based contracting solution,” Sharpe said.

Government contractor advocates, including attorneys who represent contracting businesses, mostly agreed that the GSA is on the right path with the new proposed rule, which they said should enhance the efficiency of the MAS program.

“Customer agencies and MAS contractors will have greater flexibility to seek, compete, award and perform commercial based solutions to meet agency mission requirements,” Roger Waldron, president of The Coalition for Government Procurement, told Bloomberg BNA in an e-mailed statement. “The result will drive competition and access to innovation from the commercial market place through the MAS program, reducing unnecessary contract duplication.”

“I think GSA is trying to make good strides here in terms of better accommodating Other Direct Costs (ODCs) on the Schedules program,” Larry Allen of Allen Federal Business Partners told Bloomberg BNA in an e-mailed comment. “This is important to keep the Schedules competitive with other (Indefinite-Delivery/Indefinite-Quantity contracts) that can handle ODC’s.”

But Allen said contractors may be concerned about the requirement in the rule that companies provide three quotes for open market items. “Though one quote can be for their own products, requiring industry to come up with three quotes seems like it would be a burden,” he said.

Stephen Ruscus, a partner with Morgan, Lewis & Bockius LLP in Washington, told Bloomberg BNA that the current FSS system, with its exclusion of order-level materials, has made selling to the government a lengthier and more convoluted process than necessary — not to mention that it’s been at odds with the way most other commercial sales systems function.

By eliminating the need for new competitions, Ruscus said the proposed rule should make life easier for his contractor clients. “I think this is a good step in terms of streamlining the system,” he said.

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