

FAR Issues Interim Rule to Increase Competition for Multiple Award Contracts

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With thousands of contractors offering an array of goods and services, the GSA's Multiple Award Schedule (MAS) program has grown into one of the most widely used contracting vehicles in the federal marketplace. As agencies' use of MAS Contracts has expanded, various measures have been implemented in recent years to ensure that agencies are obtaining increased competition at the task-order level. Continuing this trend, the FAR Councils issued an interim rule on March 16, 2011, that imposes a number of additional procedures designed to further increase the level of competition for orders placed under MAS Contracts and other multiple award contracts.

The latest interim rule, which was published at 76 Fed. Reg. 14548, was mandated by the National Defense Authorization Act of Fiscal Year 2009 (NDAA FY 2009). Similar to the procedures that were adopted by DoD pursuant to Section 803 of the FY02 NDAA, this latest rule amends the ordering procedures in FAR 8.405-1 and 8.405-2 to require civilian agencies to take various steps to enhance competition when placing orders under FSS contracts. Among other things, these enhanced procedures require civilian agencies to post their Request for Quotes (RFQs) to eBuy, or to provide the RFQ "to as many schedule contractors as practicable," to ensure that quotes will be received from at least three contractors; if fewer than three quotes are received, the rule requires the ordering activity to prepare a written determination explaining that no additional contractors are capable of fulfilling the requirement.

In addition, the interim rule establishes new competition procedures for creating and placing BPAs under FSS contracts. The new procedures, which are contained at FAR 8.405-3, include:

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- A preference for multiple award BPAs over single award BPAs;
- Limitations on single award BPAs, which cannot exceed \$100 million, must be limited in duration to one year (but may include up to four one-year options), and must be justified with written documentation;
- Requirements for placing orders under multiple-award BPAs that require the ordering activity to provide an RFQ to all BPA holders and afford all BPA holders an opportunity to submit quotes and be fairly considered;
- Restrictions on when a BPA may be established, based on a limited-source justification.

The interim rule applies to solicitations issued and contracts awarded on or after May 16, 2011, and to orders and BPAs issued on or after May 16, 2011, regardless of whether the underlying contract was issued prior to May 16, 2011. Comments are due May 16, 2011.