

GSA Schedules vs. Open Market

Student Guide



List of Acronyms and Websites

Below are acronyms that appear in this guide. The corresponding website addresses are listed when available.

BPA	Blanket Purchase Agreement
CICA	Competition in Contracting Act
COR	Contracting Officer's Representative
CTA	Contractor Teaming Arrangements
IDIQ	Indefinite Delivery Indefinite Quantity
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation www.acquisition.gov/far/index.html
FAS	Federal Acquisition Service www.gsa.gov/fas
FedBizOpps	Federal Business Opportunities
FSS	Federal Supply Schedules (A.K.A. Multiple Award Schedules)
GSA	General Services Administration www.gsa.gov
IFB	Invitation for Bids
JOFOC	Justification for Other than Full and Open Competition
LH	Labor Hours
LSJ	Limited Source Justification
MAS	Multiple Award Schedule www.gsa.gov/schedules
QASP	Quality Assurance Surveillance Plan
RFP	Request for Proposal
RFQ	Request for Quotation
SAT	Simplified Acquisition Threshold
SDB	Small Disadvantaged Business
SOW	Statement of Work
T&M	Time and Materials

**For additional websites, please see the end of this guide.*

Course Introduction

Welcome to GSA's course on *GSA Schedules vs. Open Market*. This course will familiarize you with three commonly-used methods of acquisition: issuing task or delivery orders under GSA's Multiple Award Schedules (MAS) under FAR Subpart 8.4, and negotiating a stand-alone order or contract under FAR Parts 13 or 15 respectively. All are methods of procurement, which may be considered when the requirement is not suitable for a sealed bid, and may be used for both competitive and non-competitive acquisitions. These methods are not your only options, but together they comprise a considerable share of federal acquisitions.

FAR Subpart 8.4 acquisitions rely on MAS contracts that are already negotiated, and task or delivery orders may be issued under these contracts when the scope and terms of the existing contracts are appropriate for your requirement. Typically, the schedules include multiple vendors with pre-negotiated prices for supplies, tasks, or hourly rates. You may compete your requirement among these vendors, requesting further discounts and using performance-based methods that look for the best solution to a defined objective or problem where appropriate.

FAR Part 13 methods for simplified acquisitions are available when existing contracts do not meet your needs and the dollar value of the acquisition is below the Simplified Acquisition Threshold (SAT) (\$150,000). FAR Part 15 methods are also available any time an existing contract does not address your needs, sealed bidding is not appropriate, and the dollar value exceeds the simplified acquisition amounts. This procedure enables you to select a contractor based on price alone (from among technically acceptable offerors), price and past performance, or any combination of price and non-price (technical, management, etc.) factors.

This course will explore the differences and similarities between Subpart 8.4 and Parts 13 and 15 procedures, advantages and disadvantages for various situations, and help you analyze the alternatives as you develop your acquisition strategy. In addition, the course explains how to utilize FAR Part 13 in conjunction with FAR Part 8.4 when open market items are needed to complete your overall requirement.

Course Outline

This course has seven main Topics.

- Topic 1: Introduction to the MAS Program**
- Topic 2: Benefits of the MAS Program**
- Topic 3: Types of Schedules and Characteristics**
- Topic 4: Overview of FAR Parts 8.4, 13, and 15**
- Topic 5: FAR Subpart 8.4 and FAR Part 13**
- Topic 6: FAR Subpart 8.4 and FAR Part 15**
- Topic 7: Advantages and Restrictions**

Course Objectives

Upon completion of this course, you should be able to:

- ❖ Describe the purpose and benefits of the Multiple Awards Schedule (MAS) program
- ❖ Describe FAR Subpart 8.4, Part 13, and Part 15 procedures, and the role of each in acquisition strategy and planning
- ❖ Identify the similarities and differences between FAR Subpart 8.4 and Part 13 procedures
- ❖ Identify the similarities and differences between FAR Subpart 8.4 and Part 15 procedures
- ❖ Identify the advantages and restrictions associated with using FAR Subpart 8.4, Part 13, and Part 15



NUTS AND BOLTS TIP

These tips, identified by the icon shown here, are “how-to’s” designed to enhance the student’s learning experience.



MAS Desk Reference

As you read through this manual, look for these references for more detailed information on a particular subject.

Topic 1: Introduction to the MAS Program

What is a Multiple Award Schedule?

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- Governmentwide contract vehicle for **commercial** products, services, and solutions
- Also known as “Federal Supply Schedule (FSS),” “GSA Schedules” or “MAS”
- Standing solicitations posted on FedBizOpps
- Awarded using FAR Part 12 procedures

GSA Schedules

The MAS program provides eligible ordering activities with a simplified process for obtaining supplies and services. Schedule contracts are multiple award, indefinite delivery/indefinite quantity (IDIQ) contracts, which are awarded to responsible companies that offer commercial supplies or services at fair and reasonable prices. Products and services are ordered directly from Schedule contractors.

Multiple Award Schedules are also known colloquially as “GSA numbers”, “GSA Schedules”, “GSA contracts”, “Federal Supply Schedules (FSS)”, and the “GSA list.” All of these terms are used synonymously within the federal contracting community to refer to the GSA MAS program. Through the MAS program, GSA contracts with thousands of commercial businesses that provide access to a vast array of professional services, such as management, financial, engineering, environmental, accounting, graphic design, and landscaping services. In addition to commercial services, commercial supplies range from computer hardware to office supplies.

FSS website: www.gsa.gov/schedules

MAS Contract Characteristics

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- Multiple Award IDIQ (5 year award, three 5 year options)
- Fixed Price EPA
- Fair and reasonable pricing
 - Price reductions may be applied at the order level
- Performance requirements established at the order level

Quantity and Delivery/Performance Requirements

As IDIQ contracts, the Schedules themselves contain no specific quantities, other than minimum and maximum threshold amounts. The ordering activity sets specific order quantities and specific delivery/performance dates when issuing an order under the Schedule contract. When issuing an order:

- ❖ Delivery or performance periods and all other order requirements must conform to the applicable terms and conditions of the Schedule contract, but
- ❖ An ordering activity may add additional terms and conditions as long as they do not conflict with the Schedule contract.

Limits on Order Placement and Timing

In accordance with FAR 8.405-1 and 8.405-2, Schedule users:

- ❖ May issue orders for supplies, or by services not requiring a statement of work (SOW) orally, by facsimile, by paper order, or electronic commerce methods.
- ❖ May not issue oral orders when ordering services requiring an SOW. Orders by facsimile, by paper order, or electronic commerce methods are authorized.
- ❖ May place an order anytime during the effective period of the Schedule contract. Any order not completed within the period of the Schedule contract must be completed within the time specified in the order.
- ❖ May not issue oral orders for brand name items when the order exceeds \$25k.
- ❖ May not place repetitive orders for the same items, to attempt to avoid exceeding the Simplified Acquisition Threshold (SAT) and holding a proper competition.

Negotiating Reductions from Schedule Prices

- ❖ Permitted at any time. Vendor may offer reduced prices based on specific quantities, overall volume, delivery requirements and other order-specific conditions and terms.
- ❖ REQUIRED for the government buyer to REQUEST reductions for any requirement (order or BPA) in excess of the SAT.

Vendors not required to agree to any reductions.

Regulatory Foundation

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The Federal Acquisition Regulation (FAR)

FAR	Provides	Applicability
Subpart 8.4	Ordering procedures for GSA Schedules	Federal Government Ordering Activities
Part 12	Acquisition of Commercial Items	GSA awards Schedule contracts under Part 12
Subpart 6.102(d)(3)	Defines orders placed against Schedules as a competitive procedure	All

The **Federal Acquisition Regulation (FAR)** provides the primary regulatory guidance for the GSA Schedules program. The **General Services Administration Acquisition Regulation (GSAR)** is the GSA FAR supplement. The GSAR provides guidance tailored to GSA **acquisitions**, including GSA Schedules contracting. GSAR guidance primarily affects GSA Schedules by providing supplementary guidance to the Contracting Officers awarding and administering GSA Schedule contracts.

FAR Subpart 8.4, Federal Supply Schedules, prescribes procedures that federal government ordering activities must follow when issuing orders using GSA Schedules. Orders placed following these procedures are considered to be issued using full and open competition. (See FAR 8.404(a)).

FAR Part 12, Acquisition of Commercial Items, prescribes policies and procedures unique to the acquisition of commercial items. It implements the federal government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

FAR 6.102(d)(3), Competition Requirements, this subpart pertains to use of competitive procedures. It states use of MAS issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the MAS program of the General Services Administration is a competitive procedure.

FAR Applicability to Schedules

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FAR	Title	Applicable
Part 13	Simplified Acquisition Procedures	NO (except allows for MAS BPAs)
Part 14	Sealed Bidding	NO
Part 15	Contracting by Negotiation	NO
Part 19	Small Business Programs	NO (except Bundling)
Part 36	Construction and A&E	NO
Part 7	Acquisition Planning	YES
Part 10	Market Research	YES
Subpart 17.5	Interagency Acquisitions	YES
Subpart 33.1	Protests	YES
Subpart 37.6	Performance Based Acquisition	YES
Part 39	Acquisition of Information Technology	YES

Topic 2: Benefits of the MAS Program

FAR Subpart 8.4 Simplifies the Solicitation Process

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Schedule Orders are:

- ✓ Faster
- ✓ Easier
- ✓ More Economical

In contrast to FAR Part 15, Schedule orders do not require:

- ⊘ Formal evaluation (SSEB not required)
- ⊘ Cost analysis (commercial pricing at the Schedule level)
- ⊘ Extensive documentation (less formal process)
- ⊘ Debrief (may provide feedback)
- ⊘ Competitive range determination

FAR Subpart 8.4 provides ordering procedures for placing orders against a GSA Schedule. FAR Part 13, *Simplified Acquisition Procedures*, Part 15, *Contracting by Negotiation*, and FAR Part 19, *Small Business Programs* [except for 19.202-1(e)(1)(iii)], are **NOT** applicable to orders placed against Multiple Award Schedules. (Except that FAR 13.303-2(c)(3) allows for BPAs to be established with Multiple Award Schedule contractors, if not inconsistent with the terms of the applicable Schedule contract.)

Under FAR Subpart 8.4 ordering activities do NOT:

- ❖ Conduct a formal “negotiated procurement”
- ❖ Issue a “solicitation” for 30 days (or any other pre-determined time)
- ❖ Conduct “discussions”
- ❖ Conduct formal “debriefings”
- ❖ Use FAR Subpart 15.3 concepts and procedures

Not using FAR Subpart 15.3 concepts and procedures has the following implications for your task order selection process:

- ❖ There is no requirement to follow the FAR 15.305 requirement to “evaluate competitive proposals and then assess their relative qualities.” In other words, your evaluation system can immediately compare (and remember, we don’t say “compete” because the CICA requirements have already been met) one quote to another in order to determine the rank ordering for selection.
- ❖ You are not bound by the rules in FAR Subpart 15.3 for evaluating past performance, such as the requirement to provide a neutral rating to a quote without any past

performance. Further, if you choose not to use past performance as an evaluation factor, there is no requirement to document the file with your rationale.

- ❖ There is no requirement to capture “the relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation...” as required in FAR 15.305. This means your evaluation system can be very streamlined. There is no requirement to set a competitive range using all the published evaluation factors. This means that you can save yourself and the Schedule contractor considerable time and money by phasing your procurement in a manner that uses the least costly factors to initially down-select the quoters.
- ❖ Because a competitive range is not established, there is no need to be overly focused on the nature of exchanges with the quoter. You can engage in detailed exchanges about any aspect of a quote at any time. Naturally, you should make every effort to treat each quoter equitably. You must not be biased, arbitrary, or capricious and your decisions must be adequately (but not overly) documented.



NUTS AND BOLTS TIP

If an agency issues a Schedule order using FAR Part 15 terminology and procedures, protest review authorities, such as the GAO and the courts, may sustain a protest against the order using FAR Part 15 procedures.

GSA Schedules Conform with Competitive Contracting

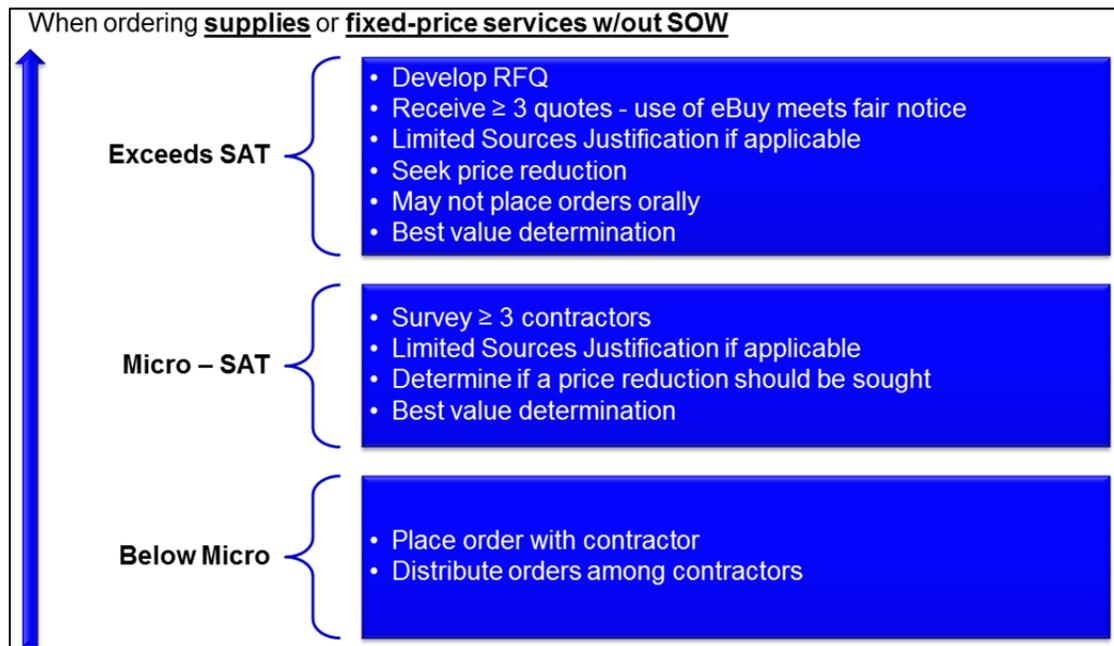
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Schedule users shall not:

- Seek further competition outside of the MAS program
- Synopsise the requirement

Ordering Procedures - FAR 8.405-1

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When Is an SOW Not Required?

According to FAR 8.405-1, when acquiring fixed-price services or supplies through GSA Schedules, an SOW is not required when the dollar value of the order or BPA:

- ❖ **Is at or below the micro-purchase threshold.** You may place the order directly with the selected vendor. FAR procedures for acquisitions at or below the micro-purchase threshold emphasize simplicity and fair treatment. Supporting documentation, including extensive information, collection, and evaluation, is not required. However, the Schedule user should attempt to distribute orders among Schedule contractors.
- ❖ **Exceeds the micro-purchase threshold, but not the simplified acquisition threshold.** You should obtain at least three (3) quotes (always documenting your contract file and select the best value quote).
 - Survey at least three Schedule contractors, considering price and other identified best value factors.
 - Consider ordering from contractors that help you meet your agency's socio-economic goals.
 - Use an RFQ only if it is the most efficient method for gathering the information needed to evaluate solutions available under GSA Schedules. When using an

RFQ, the Schedule user must provide the RFQ, including the evaluation criteria, to any contractor under the appropriate Schedule that requests a copy.

- The Schedule user should seek a price reduction when:
 - Market research reveals that the supply or service is available elsewhere at prices lower than those available from Schedule contractors.
 - The Schedule contractor has been or will be selected to provide recurring requirements and the size of the recurring orders appears to merit a price reduction.
 - Market research identifies other information indicating that a price reduction is appropriate.

Exceeds the Simplified Acquisition Threshold, or when establishing a BPA. The ordering activity shall seek a price reduction, survey more than three contractors, and select the best value quote. If further price reductions are not offered, an order may still be placed. eBuy shall be used as one method to ensure at least 3 written quotations are received. If fewer than 3 are received, the Contracting Officer must document the file as to the actions taken to ensure competitive quotations, and what can be done in future acquisitions to enhance competition. New procedures also apply for DoD agencies when the value of the order exceeds the simplified acquisition threshold (\$150,000) and only one offer was received (**DFARS 208.404 and 208.405–70**). If less than 30 days for offer submission was allowed, the CO must consider promoting competition by revising the requirements document to eliminate any barriers and by permitting more time for receipt of offers when fewer than 30 days was initially allowed. The contracting must either resolicit for 30 days or more or request a waiver. If the contracting officer still faces only one offer, they must determine prices to be fair and reasonable through price or cost analysis or enter negotiations with the offeror.



NUTS AND BOLTS TIP

Schedule contractors are not required to pass on to all GSA Schedule users a one-time spot price reduction provided to a single agency.



NUTS AND BOLTS TIP

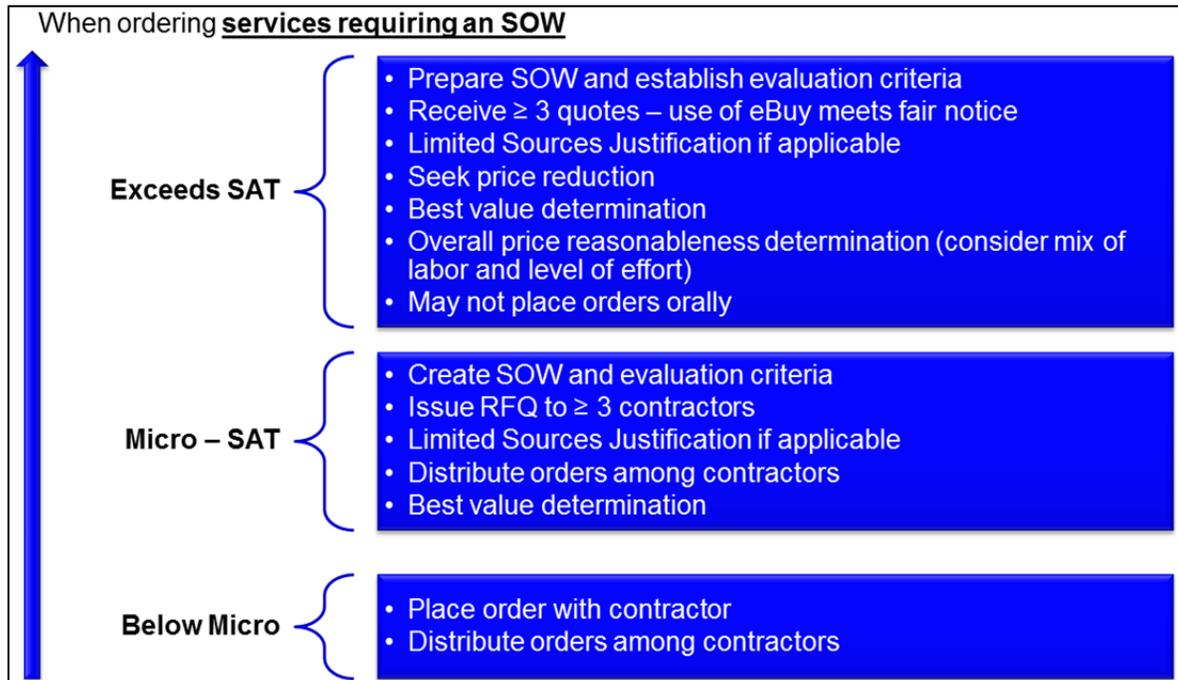
FAR 9.405-1(b) prohibits ordering from any Schedule contractor that is debarred, suspended, or proposed for debarment unless the agency head makes a written determination of the compelling reasons for such action.

A Schedule user can review the contractor's information page in GSA eLibrary (www.gsaelibrary.gsa.gov) or) to determine whether the prospective contractor is debarred, suspended, or proposed for debarment.

The FAR was also amended (through [Interim Rule 2012-013](#)) to prohibit the award of contracts using Fiscal Year (FY) 2012 appropriated funds to any Inverted Domestic Corporation (IDC). While this currently is limited to FY 12, a similar restriction applied to several preceding years and may apply also to future FYs. An IDC is a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country. This applies to all ordering agencies using appropriated funds on task orders. Two ways exist to comply with this restriction - include the provision [52.209-2](#) Prohibition on Contracting with Inverted Domestic Corporations—Representation in RFQs when using FY12 appropriated funds or check the contractor's ORCA and see if provision 52.209-2 is included in their ORCA record. If the provision is included in ORCA, the contractor is representing that it is *not* an IDC and therefore eligible for an award.

Ordering Procedures - FAR 8.405-2

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When is an SOW Required?

For services offered in Schedule contracts at hourly rates, Schedule users must create Requests for Quotations (RFQs) and include the SOW and evaluation criteria to Schedule contractors that offer services that will meet the agency's needs. The SOW and RFQ requirements differ by dollar value. The RFQ may be posted through eBuy.

If an order requires an SOW, the first step in the decision process is to review the quotes. The price quote review focuses on the quality of the vendor's capabilities or products, the proposed solution, the prices, and any other pre-determined evaluation criteria.

If an SOW/PWS/SOO is not required, the first step is to compare prices from appropriate Schedule contractors.

If the order requires an SOW/PWS/SOO, the ordering activity has the option to ask quoters to give oral presentations after quotation submission. The oral presentations can help the ordering activity clarify details, become acquainted with the contractors' personnel, and provide additional comparison points for decision making.

After comparing prices and other factors, the ordering activity chooses the contractor who can provide the best value to the government.

Topic 3: Types of Schedules and Characteristics

MAS Schedule Facts

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- ❑ GSA offers over 20 million supplies and services
- ❑ 39 open and standing solicitations published on FedBizOpps (including 9 managed by VA)
- ❑ Over 19,000 Schedule contracts
 - 80% are small businesses
 - Orders and BPAs can be set aside for small businesses
- ❑ \$50 Billion total annual spend (including VA)

GSA Schedules provide access to over 20 million commercial supplies (products) and services at volume discount pricing. The Schedule List in the GSA eLibrary contains a list of all GSA and VA Schedules. The generic categories of supplies and services available under each Schedule may be viewed by clicking on the Schedule number in the Source column. Supplies and services are identified in each Schedule by SIN.

Special Item Numbers (SINs)

Within each Schedule are specific SINs. SINs are groups of similar (but not identical) supplies or services that are intended to meet similar customer requirements; SINs are also known as categories.

Each Schedule is comprised of multiple SINs. For example, *Schedule 874, Mission Oriented Business Integrated Services (MOBIS)*, has ten SINs:

- ❖ 874-1, Consulting Services
- ❖ 874-2, Facilitation Services
- ❖ 874-3, Survey Services
- ❖ 874-4, Training Services
- ❖ 874-5, Ancillary Supplies and/or Services
- ❖ 874-6, Acquisition Management Services
- ❖ 874-7, Program and Project Management
- ❖ 874-8, DAU and FAI Certified DAWIA Training
- ❖ 874-9, Off the Shelf and Customizable Print, Audio, and Visual Instructional Training Devices
- ❖ 874-99, New Services

GSA Schedules are awarded on an indefinite delivery and indefinite quantity (IDIQ) basis. The total quantity of services or supplies that will be acquired under the Schedule contract and the

specific time for delivery of those items are not set in the contract. Schedule solicitations only include estimated total Schedule acquisition dollars for each SIN.

The quantity and names of Schedules and SINs change from time to time. GSA eLibrary (www.gsaelibrary.gsa.gov) provides a current listing of all Schedule contracts and links to additional information about each Schedule.

What Services are Available on Schedule?

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- | | |
|--|---|
| <input type="checkbox"/> Environmental Services | <input type="checkbox"/> Information Technology Services |
| <input type="checkbox"/> Professional Engineering Services | <input type="checkbox"/> Advertising and Marketing Services |
| <input type="checkbox"/> Logistics Services | <input type="checkbox"/> Financial and Business Solutions |
| <input type="checkbox"/> Language Services | <input type="checkbox"/> Security Solutions |
| <input type="checkbox"/> Management and Consulting Services (including Training) | <input type="checkbox"/> Facilities Maintenance |
| <input type="checkbox"/> Temporary Administrative and Professional Services | <input type="checkbox"/> Disaster Relief |

Note: For a comprehensive list of services please visit [GSA eLibrary](#).

GSA Schedule Contract Fundamentals

Solicitations for GSA Schedule contracts are “standing solicitations” issued through FedBizOpps. Vendors wishing to become GSA Schedule contractors may submit an offer at anytime. More information on Schedule solicitations may be found at www.gsa.gov/schedulesolicitations.

GSA Schedule contracts have a base period of five years, with three additional five-year option periods. Options are exercised in accordance with FAR 17.207.

Ordering activities issue delivery or task orders against the contract. For services, the task orders specify the scope, milestones, timeframe, and price for the requirements. Options may be included on orders placed against Schedule contracts and options may be exercised, provided that:

- ❖ Funds are available
- ❖ The requirement covered by the option fulfills an existing government need
- ❖ Prior to exercising an option, the ordering activity ensures that it is still in the government’s best interest, with price and other factors considered
- ❖ The order options do not extend beyond the period of the Schedule contract options

Acquisition of Commercial Services

FAR 11.002(a)(2)(iii) requires that, to the maximum extent practicable, offerors of commercial items be provided an opportunity to compete for any government contract acquisition. If the use of commercial services is precluded, purchasers may lose the benefits of commercial item innovations. Failure to define a service requirement as a commercial item will also prevent purchasers from using Schedule contracts and participating in the related benefits.

Purchasers should describe services requirements in a way that permits sellers providing commercial services to compete. Preferably, a performance-based approach should be used, in accordance with FAR Subpart 37.6, so that results sought are stated, versus how the work should be done.



MAS Desk Reference

For more information, refer to the [MAS Desk Reference: Section 12:List of GSA Multiple Award Schedules.](#)

What Supplies are Available on Schedule?

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- | | |
|--|---|
| <input type="checkbox"/> Office Supplies and Equipment | <input type="checkbox"/> Information Technology Products |
| <input type="checkbox"/> Tools and Hardware | <input type="checkbox"/> Vehicles and support equipment |
| <input type="checkbox"/> Building and Industrial Materials | <input type="checkbox"/> Appliances and Food Services |
| <input type="checkbox"/> Furniture | <input type="checkbox"/> Law enforcement, Fire, and Security Products |
| <input type="checkbox"/> Scientific Equipment | |

Note: For a comprehensive list of services please visit GSA eLibrary.

Commercial Items and MAS

The FAR definition of “commercial items” as found at FAR 2.101(b) includes both supplies/commodities and services. It is very broad and encompassing and includes all of the following types of items as commercial items:

Nongovernmental items: A supply of a type customarily used by the general public or by nongovernmental entities for other than governmental purposes and has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public.

Evolved nongovernmental items: A nongovernmental item that:

- ❖ Evolved from an item customarily used for nongovernmental purposes through advances in technology or performance; and
- ❖ Will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation.

Modified versions of either of these item types: An item that would be considered a nongovernmental item or an evolved nongovernmental item if it were not for one of the following:

- ❖ Modifications of a type customarily available in the commercial marketplace
- ❖ Minor modifications of a type not customarily available in the commercial marketplace that must be made to meet federal government requirements

A minor modification does not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final item. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.



MAS Desk Reference

For more information, refer to the [MAS Desk Reference: Section 12: List of GSA Multiple Award Schedules](#).

Topic 4: Overview of FAR Parts 8.4, 13, and 15

An Overview of the Parts

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- ❑ FAR Subpart 8.4, Part 13, and Part 15 provide alternative means for getting your requirements on contract:
 - FAR Subpart 8.4 addresses the Multiple Award Schedules (MAS), pre-priced contracts negotiated by GSA and available to all federal agencies
 - FAR Part 13, is used when the dollar value is between \$3000 and the simplified acquisition threshold (SAT), and use of the GSA Schedules is not possible
 - FAR Part 15 is for use when a stand-alone contract is needed and sealed bidding procedures are inappropriate
- ❑ Neither procedure to select sources is used for Architect-Engineer services as prescribed in FAR Part 36

These are among the tools in your toolkit; they have similarities and differences, and this class will give you the information to decide which approach to take.

These contracts provide for a wide variety of supplies and services. You will also see these referred to as Federal Supply Schedules and GSA Schedules; it is all the same thing. For this course, we will refer to them as the Multiple Award Schedules (MAS).

Neither MAS nor the selection process for Part 15 is used for Architect-Engineer services (see FAR 8.403(c)). When Architect-Engineer services are required, FAR Subpart 36.6 procedures must be used.

FAR Part 13, Simplified Acquisition Procedures for other than micro-purchases, is used when the dollar value is between \$3000 (micro-purchase threshold of \$3,000 except SCA applies for services [\$2,000] and construction when Davis Bacon Act applies [\$2,500]) and the simplified acquisition threshold (SAT), and use of the GSA Schedules is not possible. The FAR 13.5 test authority to use simplified acquisition procedures for commercial items up to \$6.5 million expired Jan 1, 2012– the test authority may be re-instated at some future point based on justification for use, but was not in use at the time of publication.

Schedules are pre-priced contracts negotiated by GSA and available to all federal agencies. It's important to recognize when doing procurements of any type that the FAR was amended (through [Interim Rule 2012-013](#)) to prohibit the award of contracts using Fiscal Year (FY) 2012 appropriated funds to any Inverted Domestic Corporation (IDC). While this currently is limited to FY 12, a similar restriction applied to several preceding years and may apply also to future FYs.

An IDC is a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, So check and be certain the proposed contractor is not an IDC.

You can do this in one of two ways – use the FAR prescribed certification [52.209-2](#), “Prohibition on Contracting with Inverted Domestic Corporations—Representation” in solicitations when using FY12 appropriated funds or check the contractor’s ORCA and see if provision 52.209-2 is included in their ORCA record. It’s also important to note GSA does not include this certification in their Schedule solicitations since GSA cannot reflect offers from IDCs. This is because the prohibition applies only to use of appropriated funds and the Schedules utilize non-appropriated funding. Consequently the responsibility for compliance with Schedules resides with the ordering activities.

What is FAR Subpart 8.4?

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FAR Subpart 8.4 addresses the GSA Multiple Award Schedule (MAS) program, specifically:

- Description of the contracts
- Delivery orders vs. Task Orders
- Use and ordering procedures for supplies and services not requiring Statement of Work (SOW)
- Use and ordering procedures for services requiring SOW
- Blanket Purchase Agreements (BPAs) for repetitive buys
 - Establishing BPAs
 - Ordering under BPAs

The MAS program provides a streamlined way to acquire many supplies and services. It is a Government-wide program centrally managed by GSA for commercial supplies and services that are commonly used throughout the Government.

Delivery Orders are placed for supplies; Task Orders are placed for services against MAS contracts, which are indefinite delivery indefinite quantity (IDIQ) contracts.

Orders for supplies and services not requiring a SOW are placed based upon pricing information from sources such as GSA Advantage, contractor's pricelist, or contractor's responses to Requests for Quotation (RFQ).

Orders for services requiring an SOW are based upon contractor's responses to SOWs issued as part of an RFQ.

If you will need a series of orders for the same supplies or services, negotiating one or more blanket purchase agreements (BPAs) against a schedule may be a feasible approach. BPAs based on MAS contracts use the procedures in FAR 8.405-3, in contrast to open market BPAs, which are negotiated under FAR Part 13.

Fair Opportunity

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- ❑ Fair Opportunity is a basic element of FAR Subpart 8.4 and required when the value of a procurement exceeds the SAT.
- ❑ FAR Opportunity requires:
 - RFQ posted on e-Buy to afford all schedule contractors under the appropriate multiple award schedule(s) an opportunity to submit a quote; or
 - Provide RFQ to as many schedule contractors as practicable to reasonably ensure quotes will be received from at least three
- ❑ It has 3 exceptions that require a Limited Sources Justification (LSJ):
 - Urgent and compelling need
 - Only one qualified source
 - Logical follow-on to a fully competitive order
- ❑ Over the SAT, LSJ must be posted within 14 days after award on Federal Business Opportunities (FedBizOpps) with a link to the agency website
 - If urgent and compelling, posting can be up to 30 days after award

Unlike the seven exceptions provided by FAR 6.302 for use under FAR Part 15, there are only three exceptions from fair opportunity requirements available under FAR Subpart 8.4.

- ❖ Urgent and compelling need; competing would unacceptably delay
- ❖ Only one qualified source; supplies or services are unique or highly specialized
- ❖ Logical follow-on to a fully competitive order.

Note that the “logical follow-on” exception is available only once; the existing order must have been awarded under fair opportunity procedures.

FAR Subpart 8.4 Competition Thresholds: With and Without an SOW

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Threshold	SOW*	No SOW
Below Micro Purchase (< \$3,000)	Award to any MAS vendor	Award to any MAS vendor
Between Micro Purchase and SAT (\$3,000 - \$150,000)	Provide RFQ to at least 3 vendors	Survey at least 3 vendors or use RFQ
Exceeding SAT (> \$150,000)	Post RFQ on eBuy or send to as many vendors as practicable	Post RFQ on eBuy or send to as many vendors as practicable
	Document best value	Document award decision

*SOW= *Statement of Work*

Below the micro-purchase level, you can select any MAS vendor.

When the order exceeds the micro-purchase threshold but is less than the simplified acquisition threshold (SAT) and a Statement of Work (SOW) is not required or you are buying supplies, you should consider at least three schedule contractors by obtaining information from either searching GSA *Advantage!* on-line shopping service, reviewing the catalogs or pricelists of at least three schedule contractors, or requesting quotations from at least three schedule contractors. When you are buying services that does require an SOW, prepare an RFQ with evaluation criteria and an SOW and solicit at least three MAS contractors.

When the order exceeds the SAT, post the RFQ on e-Buy to afford all schedule contractors offering the required supplies or services under the appropriate multiple award schedule(s) an opportunity to submit a quote; or provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements.

What is FAR Part 13?

(slide)

- Simplified acquisition procedures can be used for acquisitions below the SAT.
 - Solicitation may be an oral or written RFQ
 - Results in issuance of a Purchase Order , a Purchase Card transaction, or call against a Blanket Purchase Agreement (BPA)
 - Used when dollar value is less than \$150,000
- Procedures are simple and straightforward and award is most often made on basis of lowest price; however other factors may be utilized including technical capability and past performance. Also it involves a minimum of contract terms and conditions.
- Items and services to be acquired are “open market,” i.e., not available from required sources of supply such as GSA Schedule contracts
- All such open-market acquisitions between the micro purchase level and the SAT are reserved for small businesses

The goals of these procedures are to:

- a) Reduce administrative costs;
- b) Improve opportunities for small businesses to obtain a fair share of federal contracts;
- c) Promote efficiency and economy in contracting; and
- d) Avoid unnecessary burdens for agencies and contractors.

In short, simplified acquisition procedures provide a streamlined way for agencies to acquire lower dollar value services and products

What is FAR Part 15?

(slide)

- Negotiated procurements
 - Solicitation is a Request for Proposal (RFP)
 - Results in stand-alone contracts, IDIQs or BPAs
 - Used when sealed bidding is not suitable
- Contains rules for source selection, including cost/technical tradeoffs
- Pricing rules and procedures

Negotiated Procurements

FAR Part 15 is for use when a stand-alone contract is needed and sealed bid procedures are inappropriate. This means:

- ❖ Over the Simplified Acquisition Threshold (SAT) (otherwise Part 13 applies)
- ❖ Development is involved, or goods or services are otherwise unavailable through existing contracts, including MAS
- ❖ One or more of the following applies:
 - Factors other than price are to be considered
 - Discussions will be necessary
 - Specifications are inadequate for sealed bidding

“Best value continuum” refers to the importance of price in the best value decision. It means that in some cases, e.g. where there is a complete specification and little risk of unsuccessful performance, price or cost will be the major determining factor for award; where there is greater risk or innovative approaches to the work are needed, other factors, including past performance and technical capability assume a greater importance. The best value continuum ranges from the lowest price, technically acceptable to higher price, technically superior using the tradeoff process.

The process for sealed bidding is described in FAR 14, using an Invitation for Bids (IFB). IFBs shall be used when the conditions listed below are met, per FAR 6.401.

- (a) Contracting officers shall solicit sealed bids if—
- (1) Time permits the solicitation, submission, and evaluation of sealed bids;
 - (2) The award will be made on the basis of price and other price-related factors;
 - (3) It is not necessary to conduct discussions with the responding offerors about their bids; and
 - (4) There is a reasonable expectation of receiving more than one sealed bid.

(b) Competitive proposals. (See Part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) of this section.

(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States and its outlying areas. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

Pricing Rules and Procedures

Price is considered in every award; FAR Subpart 15.4 describes requirements and procedures for cost and price analysis in negotiated procurements. For a cost type contract, most probable cost analysis is required; for a complex requirement, an experienced cost/price analyst will be a great help.

When a Request for Proposal (RFP) is issued, proposals received are bona-fide offers from the contractors, which may be accepted by the government and are binding to the contractor. However, a quotation received in response to a Request for Quote (RFQ) is for information purposes and is not binding on the contractor until an order is issued and accepted by the contractor.

FAR 8.4 Applicability

(slide)

- Requirement is for commercial products and services being solicited through the GSA MAS Program
- Sufficient numbers and quality of sources
- Terms and conditions meet agency needs
- Allowable contract types meets your needs
- GSA approved a deviation to FAR Part 51, Use of Government Sources by Contractors, that now permits all contractors to use GSA supply services, under certain conditions, if approved by the agency Contracting Officer

Your specific requirement and market research will drive the decision regarding whether to use the MAS. Generally if your need is for commercial products and services and is used by the Government, it most likely is available from the GSA MAS Program. If it is, it probably is in your benefit to utilize GSA MAS and MAS is particularly beneficial when time is of the essence. Review the terms and conditions of the contracts, and determine the appropriate contract type. For most needs, MAS orders can be priced on a firm fixed priced based. However, for support and other types of services for which the exact level of support is unknown, T&M or LH type orders may be appropriate in these cases.

In addition, GSA authorized a FAR Part 51 deviation that expands the authority of contractors to utilize GSA supply sources including MAS. Previously only contractors performing cost reimbursement contracts were authorized to use GSA sources. Now Federal Government contracting officers are authorized to give all GSA contractors access to the MAS when deemed appropriate for fulfillment of their agency requirements. This authority is limited to contracts/orders:

- ❖ Placed on a time-and-materials T&M)/labor-hour (LH) basis—a contract awarded or an order placed by the Federal Government to the buying contractor can be partially fixed price, but the portion of the contract/order for the items to be procured using the FAR 51 deviation must be T&M/LH;
- ❖ For ancillary supplies/services that are in support of the overall contract/order such that the items are not the primary purpose of the work ordered, but are an integral part of the total solution offered;
- ❖ Issued in accordance with the procedures in FAR 8.405-1, Ordering Procedures for supplies, and services not requiring a statement of work (applicable only to orders placed against Schedule contracts); and
- ❖ Placed by the Federal Government. The authorization is NOT available to state and local governments.

For more information about the FAR Part 51 deviation see www.gsa.gov/far51deviation.

FAR Part 13 Applicability

(slide)

- ❑ Acquisition of specialized goods and/or services, such as construction, R&D, and agency unique training. When under SAT, use FAR part 13 instead of parts 14 or 15.
- ❑ Set-asides *under the SAT* with:
 - 8(a) firms
 - HUBZone small businesses
 - Service-disabled veteran-owned small businesses (SDVOSB)
 - Women-owned small businesses (WOSB)
 - Economically disadvantaged women-owned small businesses (EDWOSB))does *not* apply)

Simplified acquisition procedures are used for acquiring goods and services not available under GSA MAS such as construction, R&D, and specialized training. This also includes most non-commercial services and specialized products.

The procedures are used in situations when agencies need to award their own contracts using FAR parts 14 and 15 procedures except FAR part 13 allows a much more streamlined process when the procurement is valued less than \$150,000.

FAR Part 15 Applicability

(slide)

- When “open market” over SAT
- When the requirement cannot be filled from MAS offerings without substantial modification
- When a cost-type or incentive contract is necessary

Any time that any of these situations apply, Part 15 will be a better fit for your needs.

Remember, some MAS vendors may be willing to modify their offerings to make a sale, but if much modification is required, you could find yourself in the middle of a complex negotiation better suited to Part 15 procedures. If this happens and there is a protest, GAO may apply Part 15 standards in evaluating your decisions.

For cost and incentive share arrangements, Part 15 negotiations are necessary.

Topic 5: FAR Subpart 8.4 and FAR Part 13

Acquisition Planning - FAR Part 7

(slide)

- Acquisition planning is required regardless of chosen strategy, over the SAT:
 - Planning required for all acquisitions, but under Part 13, formal planning requirements are limited to economic purchase quantities (FAR Part 7.202)
 - Written planning and coordination required based on dollar amount, contract type and complexity, competition strategy (agency procedures)
- Market research will drive planning decisions; acquisition plans capture this information
- Performance-based preference for services

Planning

Based on the procedures and thresholds established by your agency, you will need to accomplish acquisition planning regardless of whether you use the MAS contracts or award a purchase order using FAR part 13. While a formal written plan may not be required, planning is always essential. Your acquisition file should also contain notes on the essential aspects of planning including such things as why you choose FAR part 13 as the acquisition approach rather than FAR part 8.4 if it's not self-evident.

Providing for Full and Open Competition

(slide)

FAR Subpart 8.4	FAR Part 13
May compete on LPTA or trade-off	May compete on LPTA or trade-off
Pre-competed Schedules, so prices are fair and reasonable	Price reasonableness must be determined by the CO
“Fair Opportunity” required; Limited Source Justification (LSJ) otherwise, if over the SAT	Competition can be limited if urgent, exclusive license agreement, brand name, or industrial mobilization. CO must prepare a memo for the file.
CICA requirements are met at the GSA contract levels	CO must promote competition and attempt to solicit at least 3 sources when over the micro purchase threshold

When the acquisition value is below the micro purchase threshold (>\$3,000), you are free to go to any source. When the acquisition value exceeds \$3,000 up to the SAT, you should solicit responses from three sources. When you solicit, you can use either LPTA or trade-offs. If you select trade-offs, it's important to use only a limited number of key factors and avoid the use of subfactors, especially with FAR part 13. Also when using simplified acquisition procedures, the “trade-off” method can be as straight-forwards as technical (capability of the item offered to simply meet the agency intended need that is conveyed in the solicitation and avoiding the use of subfactors), price and past performance.

Solicitation Procedures

(slide)

	FAR Subpart 8.4	FAR Part 13
Commercial item products and services	Yes	Yes
Construction and R&D		Construction projects in excess of \$2000 require a written solicitation
Prepare a solicitation	RFQ can be used when a SOW is not required (FAR 8.405-1 and supplies and services for task performance are fixed price) and must be used when a SOW is required (FAR 8.405-2 and services are priced at hourly rates)	Oral or electronic preferred – use RFQ when over \$25,000 and FedBizOps notice required
May require consideration of factors other than price/costs – identify factors	Yes	May utilize factors other than price but typically is low price technically acceptable
Best value source selection recommended	Yes	May be used
Add additional clauses and provisions if requirement includes open market (non-Schedule) items	Yes	

A key thing to keep in mind is when FAR Part 13 procedures are used to buy open market items (non-MAS items required to satisfy the full overall requirement), you need to add appropriate clauses/provisions for the open market items of FAR Part 13 just like you would with a stand-alone open market order. In essence you are combing an open market buy with MAS on the same order. In addition you must also comply with all FAR Parts 5, 6, and 13 requirements for publicizing and competition.

Evaluation Procedures

(slide)

	FAR Subpart 8.4	FAR Part 13
Limit to small business below SAT	CO discretion	Yes
Discretionary reservation to small business over SAT	Yes	N/A – exceeds FAR 13 limitations and would be done through FAR Part 14 or 15 procedures unless FAR 13.5 test procedures are reinstated
May require some level of technical evaluation	Yes	Normally low price but may utilize technical evaluation for more complex purchases
Evaluate all responses and recommend best value source selection	Yes	May utilize best value
Ensure vendor’s quote complies with all special terms and conditions of RFQ and ordering activity complies with all open market requirements including FAR parts 5, 6, 13, etc.	Must ensure quote complies with RFQ. FAR Parts 5,6, and 13 do not apply.	Yes

The last item assumes again you are combing FAR Part 13 with 8.4 to acquire your “complete need” – some open market items are needed besides what is available on MAS. You need to ensure the vendor’s open market part of the quote and associated process you followed complies with FAR parts 5, 6 and 16 for publicizing and competition.

Management/Administration

(slide)

	FAR Subpart 8.4	FAR Part 13
Monitoring of performance - commercial items (usually simple inspection & acceptance)	Yes	Yes
Monitoring of performance – complex services even though commercial	Yes - appoint Contracting Officer's Representative (COR) especially for higher dollar value and long duration	Usually not required due to the limited dollar value under SAT and short duration
Delivery and invoicing in accordance with contractual agreement	Yes	Yes
Application of the Prompt Payment Act	Yes	Yes
Order close-out	Yes	Yes

A COR should be appointed for FAR Subpart 8.4 orders, especially when you acquire complex services of higher dollar value and long duration. Appoint a COR using similar criteria if you followed FAR Part 15 requirements.

Major Differences

(slide)

Though there are several similarities between FAR Subpart 8.4 and Part 13, there are also many differences. The major differences are in the way you:

- Plan the acquisition
- Develop and issue an RFQ, including dollar thresholds (Part 13 orders and calls under Part 13 BPAs cannot exceed the SAT)
- Publish the RFQ
- Consider a quotation under FAR Part 13
- Acquire non-commercial items

For Acquisition Planning, FAR Subpart 8.4 requires an acquisition plan if the total price will exceed the SAT. Since FAR Part 13 orders cannot exceed the SAT, formal acquisition planning is not required, though documentation requirements are up to the agency. Agencies must also consider economic purchase quantities per FAR 7.202.

Publication requirements differ:

- ❖ Subpart 8.4 uses eBuy to notify Schedule contractors
- ❖ Part 13 uses FedBizOpps for requirements over \$25,000

FAR Subpart 8.4 requires development and issuance of an RFQ:

- ❖ If the order includes a statement of work (SOW) or
- ❖ If the order exceeds the SAT (with or without an SOW)

Orders issued under a Schedule contract must comply with all the statutes included in the Schedule contract; FAR Part 13 orders are exempt from many clauses and statutes. Written RFQs under FAR Part 13 are recommended for actions exceeding \$30,000; oral solicitations are preferred under that amount, if no synopsis is required. Construction projects in excess of \$2000 under FAR Part 13 require a written solicitation.

Publishing Requirements:

- ❖ FAR Subpart 8.4, published on FedBizOpps if it's a limited sources requirement over the SAT, or a brand name requirement at any amount; FAR Subpart 8.4 requirements, as necessary, are posted to GSA's eBuy system
- ❖ FAR Part 13, requirements over \$25,000 are published at FedBizOpps; allows for a combined synopsis/solicitation when acquiring commercial items

Consideration of a Quotation

Under FAR Part 13, a quotation is not an "offer" and cannot be accepted to form a binding contract. Issuance of an order by the Government does not establish a contract, under Part 13:

- ❖ The order is an "offer" to the contractor

- ❖ A binding contract is formed when the supplier accepts the offer (i.e., order).

Under FAR Subpart 8.4, a quotation *does* serve as an “offer” and issuance of an order or BPA establishes a binding contract.

Acquire Non-Commercial Items

Per FAR Subpart 8.402(f), items not on Schedules can be acquired as “open market” items, as long as the conditions in that section have been met. These items do not have to be commercial items, but all applicable terms and conditions must be included in the Schedule order. Items **must be clearly labeled** as “open market” items.

FAR Part 13 allows the acquisition of non-commercial items. Orders up to the SAT may include commercial and non-commercial items, as may BPAs (no dollar limit).

Topic 6: FAR Subpart 8.4 and FAR Part 15

Acquisition Planning

(slide)

- Acquisition planning is required regardless of chosen strategy:
 - Planning required for all acquisitions (FAR 7.102)
 - Additional planning considerations if IT (FAR Part 39)
 - Written planning and coordination required based on dollar amount, contract type and complexity, competition strategy (agency procedures)
- Market research will drive planning decisions, including the consideration of a small business set-aside; acquisition plans capture this information
- Performance-based preference for services

Planning

Based on the procedures and thresholds established by your agency, you will need to accomplish acquisition planning regardless of whether you use the MAS contracts, negotiate a stand-alone contract, or award through sealed bidding.

Whether a written plan is required, and how formal the review and coordination needs to be, will not depend on whether you are using Subpart 8.4 or Part 15. While there are other streamlining opportunities available when using Subpart 8.4 (which we will address later), cutting corners on planning is not among them.

Performance-based

Regardless of what procedures or contract vehicle you use, performance-based acquisition is preferred over preparing a detailed specification full of “how-to’s.” Establishing metrics for success and setting up a workable monitoring system is as necessary under a MAS order as under a stand-alone contract. These metrics and monitoring system and procedures are established and administered through a Quality Assurance Surveillance Plan (QASP).

Providing for Full and Open Competition

(slide)

FAR Subpart 8.4	FAR Part 15
May compete on LPTA or tradeoff process	May compete on LPTA or tradeoff process
Schedules already competed	Competition strongly preferred
“Fair Opportunity” required; Limited Source Justification (LSJ) otherwise	Full and open competition; Justification for Other than Full and Open Competition (JOFOC) otherwise; “Fair Opportunity” also required when placing orders under multiple award IDIQ contracts including GWACS
CICA requirements are met at the GSA contract levels and do not apply to the order level	CICA requirements must be met during the procurement process

Approval levels for LSJ and JOFOC are the same

Competition

Orders under MAS contracts or negotiated procurements may achieve competition based on low price technically acceptable (LPTA) or the tradeoff method.

While the MAS contracts are already considered competitive, procedures recently incorporated into FAR enhance the fair opportunity requirements, particularly for requirements over the SAT.

Both Subpart 8.4 and Part 15 require justifications when limiting competition.

Competition in Contracting Act (CICA), April 1, 1984 is applicable to FAR Part 15 contracts by the contracting officer, however CICA requirements are met by GSA at the Schedule level and when orders are placed IAW FAR Subpart 8.4 procedures.

Solicitation Procedures

(slide)

	FAR Subpart 8.4	FAR Part 15
Commercial item products and services	Yes	Yes
All other non-commercial supplies and services		Yes
Prepare solicitation	Prepare Request for <u>Quote (RFQ)</u>	Prepare Request for Proposal (RFP) with all required terms and conditions
May require consideration of technical factors other than price/costs – identify factors	Yes	Yes
Best value source selection recommended	Yes	Yes
Prepare formal source selection plan	Not required	Yes
Solicit sources	If over SAT, solicit sufficient sources to anticipate at least 3 responses or use eBuy – do not synopsise in FBO	Synopsise in FBO and provide to all interested firms

Procedures

In addition to the different solicitation formats, it is important to remember that the procedures of FAR Subpart 8.4 are not set up for complex negotiations; in that case, FAR Part 15 may be better suited.

FAR Subpart 8.4

Under Subpart 8.4 all quotes must be fairly considered, but the more stringent requirements of meaningful discussions, allowing companies to revise their proposals to address identified weaknesses, etc. do not apply. Using these procedures could subject the ordering agency to a protest since they would be treating acquisition as a FAR Part 15 requirement. GAO decisions and other case law states that they will look at the overall process an ordering agency utilizes in conducting the procurement and apply the corresponding procedures in reviewing/.deciding

protests. Instead of a detailed evaluation, compare prices and terms, evaluate the level of effort and labor mix proposed if applicable, and as part of the solicitation, request any additional discounts the company can offer.

FAR Part 15

Under FAR Part 15, you can reserve the option by a solicitation provision to award without discussions, but the door is left open for discussions if they are needed. A competitive range is established before discussions, and once discussions begin they must be meaningful (must include significant weaknesses, deficiencies, and any adverse past performance information to which the offeror has not had an opportunity to respond). The rules are complex, and are detailed in FAR 15.306.

Under FAR Part 15, if two or more small businesses are capable of performing the requirement, it should be set-aside, and if it is currently being done under the 8(a) program, it normally remains 8(a). Your organization's Small and Disadvantaged Business (SDB) Utilization Specialist will coordinate during acquisition planning and may propose additional sources.

Under FAR Part 15, 8(a)s can be sole source under the competition thresholds; there are special rules for Alaska Native Corporations. There are also requirements for considering small/SDB participation in subcontracting.

Award to small business or SDB always counts against agencies goals.

Criteria

Under both procedures, the criteria for award must be clearly stated, and the contracting office must follow through on the criteria and procedures as stated in the solicitation. If any material changes are made after the solicitation is issued, an amendment to the solicitation must be issued and offers or quoters given an opportunity to respond.

Evaluation Procedures

(slide)

	FAR Subpart 8.4	FAR Part 15
Evaluate consistent with solicitation	Yes	Yes
Prepare formal source selection plan	Not required or suggested	Yes
Evaluation and source selection documentation	Streamlined evaluation - capture relative benefits of each response	Requirements are for much more detailed documentation including identifying all strengths, weaknesses, and deficiencies of each offeror
Treat all offerors or quoters fairly	Yes	Yes
Debriefings are available upon request	Not required but good practice to provide feedback	Yes

Evaluation and Award

Evaluations must always include price, but should be a simpler matter in a FAR Subpart 8.4 acquisition than in one under FAR Part 15.

Under FAR Subpart 8.4, a task or delivery order (or BPA) is awarded, which uses the terms and conditions of the basic MAS contract. Under FAR Part 15, a standalone contract is awarded, which has its own terms and conditions in accordance with the FAR and agency regulations. In both procedures, the decisions made in the planning process should be reflected in the solicitation, and evaluation must be in accordance with the solicitation. In both procedures, the basic rules of impartiality and protection of proprietary information apply. Both procedures allow for clarifications and exchanges (although there are differences, which we will discuss shortly).

Unlike the case with multiple award task orders under FAR Subpart 16.5, there are no restrictions on protests with Subpart 8.4 orders. This means that you will still need to document the file carefully and be prepared to explain the logic of your decisions.

Management/Administration

(slide)

	FAR Subpart 8.4	FAR Part 15
Management/administration guidance	FAR 8.4	FAR 42
Monitoring of performance - commercial items (Usually simple inspection & acceptance)	Yes	Yes
Monitoring of performance – complex services and supplies	Appoint Contracting Officer's Representative (COR)	Appoint COR; may require use of sophisticated monitoring tools/techniques including PM, EVM, etc.
Delivery and invoicing in accordance with contractual agreement	Yes	Yes
Application of the Prompt Payment Act	Yes	Yes
Order/contract close-out	Yes	Yes

Management/Administration

Regardless of the contract vehicle used, you need to consider how to determine the product or service is acceptable, who will make the determination, and how the contractor will be informed of any necessary corrections.

For anything more complex than an order for commercial products that can be simply inspected for compliance, it is advisable to develop a plan for contract monitoring, appoint personnel to do the monitoring, and establish a schedule for inspecting deliverables and requesting corrections. For a performance-based order or contract, that plan will be the quality assurance surveillance plan (QASP), which details the performance standards against which the contractor will be measured, how frequently, and how sub-standard performance will be handled.

Delivery, invoicing, and payment will be governed by the basic contract as well as the task or delivery order in the case of a FAR Subpart 8.4 order. A FAR Part 15 contract needs to specify everything within the contract itself. Orders and contracts are both subject to the Prompt Payment Act.

Major Differences

(slide)

Though there are several similarities between FAR Subpart 8.4 and Part 15, there are also many differences. The major differences are in the way you:

- Publicize requirements
- Compete requirements fairly
- Evaluate and award the contract

Publicizing Requirements

(slide)

	FAR Subpart 8.4	FAR Part 15
Synopsis Required	NO <i>However, if a Limited Sources Justification was prepared and order exceeded the SAT and post-award synopsis must be posted to FBO. (See FAR 8.405-6).</i>	Yes – over \$25k IAW FAR Part 5

FAR Subpart 8.4

This is one of the major streamlining features of FAR Subpart 8.4. A synopsis is not required, except for:

Awarded orders or BPAs over the SAT which used a limited sources justification (LSJ) other than brand name (award notice in accordance with FAR 5.301, within 14 days of award)

Part 15

For Part 15, there are a series of exceptions to the requirement for publication listed in FAR 5.202(a)(1) through (14).

An exception may also be made upon a written determination by the head of the agency, “after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.”

Competition Requirements

(slide)

FAR Subpart 8.4:

Orders and BPAs are considered as full and open competition [FAR 8.404(a)]

- Under the micro-purchase threshold, place an order with any Schedule holder; rotate contractors
- Between the micro-purchase threshold and SAT: Survey price lists or solicit three MAS contractors and make a best value award
- Over the SAT: Post the RFQ on eBuy or send to as many contractors on that Schedule as practicable to ensure receipt of 3 quotes – document file if fewer than 3 are received
- Free to pick which sources to solicit and may use one of more factors to down select firms

Far Part 15:

- Contracts shall be fully competed unless a FAR Part 6 exception applies and any interested source can respond
- All responses must be fully evaluated against all factors in solicitation

Every acquisition over the micro-purchase threshold must be competed to some extent. Generally, under the SAT, the ordering activity must survey at least 3 vendors. Over that threshold, fair opportunity applies for FAR subpart 8.4 (all contract holders notified via eBuy or sufficient number of sources solicited to ensure that at least three responses anticipated), unless one of the LSJ exceptions applies for MAS orders/BPAs, or one of the FAR Part 6.3 exceptions applies for negotiated acquisitions.

Solicitation

(slide)

FAR Subpart 8.4 (With or without an SOW over the SAT)	FAR Part 15
Issue a Request for Quotations (RFQ) – give vendors an appropriate amount of time to respond	Issue a Request for Proposals (RFP) – offerors have 30 days to submit a proposal
Any clarifications or discussions should be limited in scope	May be awarded with or without discussions; establish competitive range
Fairly consider all quotes	Evaluate in accordance with RFP
Request a price reduction	Negotiate cost or price
FAR Part 19 does not apply, though orders/BPAs may be set aside	“Rule of two” requires a set-aside per FAR 19.502-2(b)
Agencies may consider Small or Small Disadvantaged Business (SDB) status	8(a) must only be competed over \$6.5M for manufacturing; over \$4M for services
Most schedules include large and small businesses	Small business subcontracting plan is required for large bus. If over \$650k

SOW vs. No SOW

Unlike with FAR Part 15 procedures, FAR Subpart 8.4 provides different procedures depending on whether an SOW is needed.

Since the MAS include price lists for products and labor rates, an SOW may not be needed if the requirement for products and/or services is already completely priced and is below the SAT in value. The differences in treatment show up mainly between the micropurchase threshold and the SAT. Since prices are already established, the agency may be able to use *GSA Advantage!* to survey the prices and determine the best value without issuing a solicitation.

Over the SAT, with or without an SOW, the contracting officer must request a price reduction. An RFQ is also required to be issued and quoters provided a reasonable amount of time to prepare a response. This is different under a Request for Proposal for which offerors must be provided a minimum of 30 days to prepare a response.

Note the recent change in the treatment of thresholds: maximum order limit in contract is no longer used; levels at which procedures change are only the micropurchase threshold and the SAT.

Discussions and clarifications should be kept to a minimum under FAR Part 8.4; however should they be necessary under FAR Part 15, formalized rules apply including the need to establish a competitive range prior to holding discussions, make offerors aware of weaknesses and any deficiencies as well as adverse past performance information, and establish a common cutoff date for receipt of proposal revisions including any revisions to negotiated cost/price. When the solicitation value exceeds the SAT, MAS contractors should be requested to provide a price reduction.

Regardless of which method of acquisition is used, offerors/quoters responses must be evaluated consistent with the stated solicitation requirements.

Evaluation/Award

(slide)

FAR Subpart 8.4	FAR Part 15
Contractor Teaming Arrangements (CTA) may be allowed (Not IAW FAR 9.6)	Joint Ventures may be allowed
Simplified evaluation	Evaluation may be as complex as needed
Award a task or delivery order (or one or more BPAs)	Award one or more stand-alone contracts
Terms and conditions of the Schedule contract apply	Terms and conditions must be included in the contract
Feedback	Debriefs

FAR Subpart 8.4 does not cover Contractor Teaming Arrangements (CTA), but they are described on the GSA website as an arrangement that is available to allow contractors to work together to offer the government a complete solution.

Details of CTAs are beyond the scope of this module; we cover it in a separate course. Evaluations must always include price, but should be a simpler matter in a FAR Subpart 8.4 acquisitions.

Under FAR Subpart 8.4, a task or delivery order (or BPA) is awarded, which uses the terms and conditions of the basic MAS contract (agencies may add their own terms and conditions at the order level as long as they do not conflict with contract terms and conditions). Under FAR Part 15, a standalone contract is awarded, which has its own terms and conditions in accordance with the FAR and agency regulations.

Topic 7: Advantages and Restrictions

Advantages of FAR Subpart 8.4

(slide)

- Saves time
 - Full and open competition has already been obtained
 - Small business set-asides are permissible (Part 19 does not apply)
 - Publication on Federal Business Opportunities (FedBizOpps) website is not generally required
 - Reasonable prices have already been negotiated
 - Terms and conditions are already in place
- Awards to Small/SDBs count toward socioeconomic program goals
- Flexible purchase options: orders and BPAs
- Contractor teaming agreements allow for complete solutions

Saves Time

If you do have a situation in which only one company is capable of meeting your requirement, the LSJ is a simpler document than a JOFOC, although the same levels of approval are required.

For a task priced on the basis of labor hours, you will need to evaluate the level of effort and labor mix quoted, but the fully loaded labor rates have already been determined reasonable. The only additional thing you need to do is ask for a further discount.

Awards to Small/SDBs

While FAR Part 19 does not apply to MAS orders on a mandatory basis, set-asides are permitted at the Contracting Officer's discretion; set-aside procedures are outlined in FAR 8.405-5. Alternatively, it is perfectly acceptable to choose small businesses for awards under the micropurchase threshold, solicit three small businesses for requirements between the micropurchase threshold and the SAT, and ensure that small businesses have every opportunity to quote on all requirements. Awards to small and small disadvantaged businesses, of course, count toward your agency's goals.

Features of the MAS

(slide)

- GSA Advantage!
- eBuy
- Pre-priced lists
- SmartBUY
- FSSI

GSA Advantage!

The GSA Advantage! is particularly useful for purchases of commercial supplies and well-defined services. The general descriptions on the left side of the page link to descriptions of the applicable schedules. It is located at

https://www.gsaadvantage.gov/advantage/main/start_page.do

eBuy

eBuy is a component of GSA Advantage. It is an electronic Request for Quote (RFQ) / Request for Proposal (RFP) system that allows government buyers to request information, find sources, and prepare RFQs/RFPs, online, for millions of services and products offered through GSA's Multiple Award Schedule (MAS) and GSA Technology Contracts. Government buyers can use eBuy to obtain quotes or proposals for services, large quantity purchases, big ticket items, and purchases with complex requirements. It is available at

<http://www.gsa.gov/portal/content/104675>.

eLibrary

eLibrary is a great market research tool to find out what companies sell what is needed, their socio-economic status, their prices and offerings, etc.

Pre-priced lists

Each company with a MAS contract must publish an Authorized Federal Supply Schedule Pricelist, containing all items or services offered under the schedule, prices, and terms & conditions for each SIN.

SmartBUY

For software, GSA has negotiated a set of BPA's called the SmartBUY Program website (available at <http://www.gsa.gov/portal/category/25726>). OMB, issuance of Memorandums M-03-14 (available at http://www.whitehouse.gov/omb/memoranda_m03-14_and_M-04-08) (available at http://www.gsa.gov/graphics/fas/Maximizing_SmartBUY.pdf), requires the use of GSA SmartBUY agreements and with the stringent requirements of the waiver process, has effectively made use of the SmartBUY BPAs mandatory.

FSSI

FSSI encourages cross-government collaboration and adoption of industry best practices. This allows the government to aggregate requirements, streamline processes and leverage its buying power. As a result, best value and repeatable processes are created that can be used in any acquisition environment to drive down the cost of commonly purchased commodities. Currently GSA has awarded FSSI BPAs for print management services, domestic delivery services, wireless communications expense management, and office supplies. See www.gsa.gov/fssi for more information.

FAR Part 13 Summary

(slide)

- Combined solicitation/synopsis for commercial items under the SAT
- Fast acquisition of products and/or services not available on Schedule (i.e., construction and R&D) under the SAT
- Ability to set up a BPA for recurring needs:
 - Funding must be available at the time of an order, but not when the BPA is established
 - Orders under FAR Part 13 BPAs cannot exceed the SAT
- Small business set-asides are permissible
- Evaluation procedures in Parts 14 and 15 may be used
- Orders cannot exceed the SAT unless FAR 13.5 test authority is re-instated in the future
- Since quotations are not legally binding, agencies must wait until contractor accepts order to know if there's a binding contract

FAR 12.6 provides a streamlined process for commercial items where the FedBizOpps notice and solicitation are combined into a single document. It also permits a prompt method of evaluation where the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. This reduces the time required to solicit as well as to evaluate offers.

It is important to remember that quotations, solicited either verbally, electronically, or in response to an RFQ are not legally binding. Quotes generally become the basis of the government issued purchase order, which legally is an offer from the government to buy the described products and services at the stated price. The arrangement does not become a binding contract until the contractor

FAR Part 15 Summary

(slide)

- Flexibility to conduct negotiations
 - One or more competitive range decisions
 - Downselect procedures
- Flexibility in terms and conditions
 - Anything permitted by FAR may be negotiated under FAR Part 15
- Full range of contract types
- Time-consuming
- Resource-intensive
- Best done by an experienced team
- More prone to protests

Negotiations

For complex requirements, for example specialized system development or research, FAR Part 15 gives you full flexibility to negotiate any approach to the work, contract type (including hybrid types with fixed price CLINs and cost-type CLINs, if necessary), and terms & conditions.

Terms and Conditions

If extensive discussions may be required, or you need to review proposals in phases (rather than simple capability statements), you can conduct an advisory multi-step process under Part 15.202, FAR Part 15. This allows you to advise offerors of their viability to successfully proceed with the acquisition and they may elect to opt out from further participation.

The constraints of FAR and your agency supplement are the only limits on what you can negotiate under FAR Part 15.

The flexibility that FAR Part 15 offers has a downside, of course.

- ❖ A complex FAR Part 15 negotiation can take several months to complete.
- ❖ An evaluation team often requires many functional specialists, sometimes dedicated to a source selection for months at a time.
- ❖ Negotiating well is an art that is learned on the job; a good practice is to have the negotiation team led by an experienced contracting officer, with junior contracting personnel in attendance as a learning experience. If an office is not adequately staffed, this may not be possible. The more complex the requirement, the more important it is to have an experienced integrated project team (IPT) assigned.

FAR Subpart 8.4 Summary

(slide)

- Must be fixed price, T&M or LH (no cost-type orders are allowed)
- Requirement must fit with pre-priced commercial products, tasks, and labor hours – minimal modification allowed
- Must be in accordance with terms and conditions of the Schedule contract

FAR Subpart 8.4 procedures are not a good fit when:

- ❖ You need a cost type instrument (e.g. research, system development).
- ❖ Clauses (for example, relating to intellectual property or financial arrangements) in the basic schedule contracts are unsuitable for your needs.

Keep in mind that FAR Subpart 8.4 has a strong capability for your commercial requirements. For complex non-commercial developments, FAR Part 15 may be a better fit.

If you begin with a FAR Subpart 8.4 procedure, discover unanticipated problems or complications during the source selection, and find yourself conducting a detailed evaluation as is done under a FAR Part 15 source selection, there is an additional consideration:

If there is a protest, GAO may evaluate your actions by FAR Part 15 standards (see the Uniband decision at <http://redbook.gao.gov/17/fl0083699.php>)

Exercise 1

Situation:

The deputy program manager (DPM) of the Biosecurity program stops by your office with a requirements package he is drafting. They are planning to buy a suite of sensors and automated analysis equipment that will be deployed in various cities, take and analyze air samples, feed data in real time to a central database, and issue alerts if specified biological agents are detected. They also need the system to be reconfigurable in response to evolving threats. The market research that the DPM has completed indicates that the sensors and automated analyzers are available on GSA Schedule 66 (with just a little tweaking to the hardware). Some new software will be needed to make the commercial products compatible with the existing government-owned database, and the alarm system needs to be completely rebuilt. Existing systems are also not easily reconfigurable.

You scan the documents, and note that the hardware seems to have a lot of government-unique requirements. The existing database, with which everything must be compatible, was custom developed for the agency. It is difficult to tell how much software development is needed. Because the requirement is urgent, the DPM wants to use the MAS and go sole source to Company X, who has “done a great job in the past on some of our laboratory projects -- been really cooperative when we needed custom configurations.”

Question:

What is your recommended strategy and why? Discuss the pros and cons of the DPM's preferred approach in your workgroups and present a group recommendation, along with the rationale.

Answer:

Exercise 2

Scenario:

The U.S. Geological Survey (USGS) has a requirement for a hydrologic analyst to review, analyze, and summarize all scientific journal and other publications discussing hydrologic issues within the 48 contiguous states. The period for which reviews are required includes calendar years 2010 and 2011. Findings and recommendations shall be clearly stated, with supporting documentation. The period of performance for this work is 90 days from the date of award, and the Government estimate for the work is \$36,750.

Question:

How would you recommend that the procurement be conducted?

Answer:

Exercise 3

Scenario:

Your agency's headquarters finance and budget organization, with over 300 people, is moving into a new office. The move committee chairperson and one of the other committee members come to your office with a draft requirement package for the new office furniture. They have the approved floor plan, with specific requirements for the executive suite, conference rooms, supervisors' offices, and cubicles. The committee has also developed detailed plans for how the furniture is to be configured, and the chairperson stresses that the CFO is very interested in making sure that the office presents a professional appearance and a pleasant atmosphere. "We have all been in too many government offices where the furniture was so old or tacky or badly arranged that it was positively a detriment to morale," she states, shaking her head. "How can we make sure that we end up with an office that people are happy to come to work in while jumping through all these procurement hoops?"

You review the documents, and see that while the committee has developed some very specific requirements, there is nothing especially unique or unusual about them.

Question:

How do you recommend that the procurement be conducted?

Answer:



Knowledge Check 1

Reasonable prices with pre-established terms and conditions already in place are advantages to using which of the below?

- eBay
- Multiple Award Schedules
- Open market vendors



Knowledge Check 2

What are some major disadvantages to using FAR Part 15 over FAR Subpart 8.4 or Part 13?

Answer:

Web Resources

- ❖ MAS Training Student Guides www.gsa.gov/mastrainingstudentguides
- ❖ MAS Desk Reference www.gsa.gov/masdeskreference
- ❖ Multiple Award Schedules www.gsa.gov/schedules
- ❖ eLibrary www.gsaelibrary.gsa.gov
- ❖ GSA *Advantage!* www.gsaadvantage.gov
- ❖ eBuy www.ebuy.gsa.gov
- ❖ MAS News www.gsa.gov/masnews
- ❖ Federal Acquisition Regulation (FAR) www.acquisition.gov/far