



**SEC. _____. PROVIDING BEST VALUE THROUGH THE MULTIPLE
AWARD SCHEDULE PROGRAM.**

(a) COMPETITIVE PROCEDURES. — Section 152(3) of title 41, United States Code, is amended by—

- (1) striking subparagraph (B); and
- (2) inserting the following new subparagraph:

“(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;”.

(b) CONFORMING AMENDMENTS. — Section 3012(3) of title 10, United States Code, is amended by—

- (1) striking subparagraph (B); and
- (2) inserting the following new subparagraph:

“(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;”.

Section-by-Section Analysis

This legislative proposal would update the 1984 statutory standard for the U.S. General Services Administration (GSA) Multiple Award Schedule (MAS) program. Specifically, “lowest overall cost alternative” would be updated with a plain-language “best value” standard to provide clarity for acquisition stakeholders. “Best value,” as defined by the Federal Acquisition Regulation (FAR) 2.101, “means the expected outcome of an acquisition that, in the

Government's estimation, provides the greatest overall benefit in response to the requirement.”

The current “lowest overall cost alternative” standard is sometimes inaccurately equated with “lowest price.” Plainly, “price” is simply the price, but “lowest overall cost alternative” includes consideration of price as well as administrative costs, etc. The proposed amendments would provide clarity for federal agencies and industry and align with Congressional mandates for acquisition to place less emphasis on price and more emphasis on best value. “Best value” also reflects the current realities of how ordering activities use the GSA MAS program per its ordering procedures in the FAR.¹ Putting the GSA MAS program on a level playing field with other acquisition procedures would expand opportunities for small businesses in the GSA MAS program, increase competition, and help GSA better fulfill public policy objectives that contribute to the price of a product or service, particularly in terms of supply chain risk management.

Background

GSA’s MAS program is the Government’s most-used contracting vehicle for acquiring commercial products and services. It offers federal agencies a simplified process for acquiring over 28 million commercial products and services offered by more than 14,000 contractors, over 80% of which are small businesses. It accounted for more than 5 percent of all federal contract dollars, with \$40 billion spent through the program in fiscal year 2022.²

GSA awards contracts with five-year base terms and multiple option periods that can extend a contract for up to 20 years under the GSA MAS program. It establishes the terms and conditions, which include approved products and services, relevant contract clauses and provisions, and ceiling prices. Federal agencies and other eligible users place orders directly with the contractors in accordance with the streamlined competitive procedures at FAR subpart 8.4.

The Competition in Contracting Act of 1984 (“CICA”) established competitive procedures that continue to serve as the bedrock of the Federal

¹ See FAR 8.404(d).

² GSA has delegated authority to procure medical supplies to the Department of Veterans Affairs (VA) under the VA Federal Supply Schedules Program. The figures in this proposal do not include the VA program.

Acquisition System. CICA stipulated that the GSA MAS program satisfies those competition requirements if—

- (A) participation in the program has been open to all responsible sources; and
- (B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government.³

The “lowest overall cost alternative” standard applies to “orders and contracts,” which includes the GSA MAS contracts between GSA and the contractor and subsequent orders placed by agencies against those contracts.

Outdated Emphasis on Price

When CICA was enacted in 1984, the GSA MAS program was centered on products, often built to federal specifications, so a product’s price was usually its differentiating factor and, accordingly, GSA MAS procedures that implemented CICA were geared toward capturing a contractor’s lowest price. The modern acquisition system, built on the foundation laid by CICA, evolved over nearly four decades through further statutory reform, such as the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103-355) and the resulting procedures in FAR part 12, which aim to “establish policies more closely resembling those of the commercial marketplace.” Additionally, Congress began to place less emphasis on price, where appropriate, and emphasize, for example, “best value” as the Government’s preferred acquisition objective.⁴

In 2016, GSA launched the Transactional Data Reporting (TDR) pilot as an alternative way of ensuring GSA MAS contracts result in the “lowest overall cost alternative.” The TDR pilot requires participating contractors to report transactional data (such as prices paid) from GSA MAS orders instead of complying with the legacy pricing requirements. To date, the TDR pilot has resulted in better prices, lower reporting burdens, and more robust small business participation.

However, GSA’s MAS pricing procedures are its most burdensome information collections under the Paperwork Reduction Act (44 U.S.C. Chapter 35), with public reporting costs estimated to be a combined \$130 million per year

³ 41 U.S.C. 152(3).

⁴ Examples include sections 813, 814, and 892 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328) and sections 822, 832, 882, and 1002 of the FY 2018 NDAA (Pub. L. 115-91).

as of 2022⁵. GSA MAS contractors claim that these requirements increase their administrative costs, which leads them to charge the Government higher prices. Burdensome pricing procedures—the legacy pricing procedures in particular—also pose a barrier to entry for small businesses to the federal marketplace and can hinder GSA’s ability to add new products and services to GSA MAS when agencies need them. Finally, contractors also single out the legacy procedures as among the most complicated and burdensome requirements in federal contracting.

Order-level Competition

While GSA MAS contracts are awarded to responsible sources, the orders against them are placed in a highly competitive environment guided by regulatory ordering procedures and fueled by a suite of e-tools that connect buyers and sellers. It is at the order level where agencies customize acquisition strategies to meet their specific mission needs and objectives (such as how buyers define how the product or service will be used, set an appropriate small business usage strategy, identify necessary cybersecurity measures, set delivery timeframes, and customize other technical requirements). GSA’s efforts at the contract-level ensure that buyers are getting a fair and reasonable price, but order-level competition is where the Government gets its best value.

Delivering Best Value

GSA is already working within the existing statutory framework to ensure that the GSA MAS program provides best value products and services. However, the anachronistic “lowest overall cost alternative” standard, and varying interpretations of its meaning, are limiting the Government’s ability to fully embrace 21st century practices that align with recent Congressional action. Even FAR section 1.102(a), which states the “vision for the Federal Acquisition System is to deliver on a timely basis the *best value* product or service to the customer...” [emphasis added], communicates a more muddled message for GSA MAS orders by requiring them to result in “best value” and be the “lowest overall cost alternative.” (FAR 8.404(d)).

The proposed amendments would improve GSA’s ability to better leverage

⁵ As part of the most recent Office of Management and Budget (OMB) approvals for the information collections associated with the legacy pricing procedures (OMB control number 3090-0235; 77 FR 15370) and TDR pilot (OMB control number 3090-0306; 87 FR 51418), GSA estimated the annual reporting burdens to be \$117.8 million for the legacy pricing procedures and \$13.3 million for the TDR pilot.

modern technology, such as data analytics and artificial intelligence, and provide more value to its customers while reducing administrative burdens for itself and its contractors. They would allow the GSA to manage the program holistically, prioritizing activities at the contract level that best support agencies at the order level.

Budget Implications: The proposal addresses only procurement processes and not the amounts appropriated for the procurement of products or services.

Resubmission Information: This is the first time this proposal has been submitted.

Changes to Existing Law: This proposal would make the following amendment to 41 U.S.C. 152(3):

In division C, the term "competitive procedures" means procedures under which an executive agency enters into a contract pursuant to full and open competition. The term also includes—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(2) the competitive selection of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of those proposals;

(3) the procedures established by the Administrator of General Services for the multiple awards schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

~~(B) orders and contracts under those procedures result in the lowest overall cost alternative to meet the needs of the Federal Government;~~

(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for those procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of that Act (15 U.S.C. 638).

This proposal would also amend 10 U.S.C. 3012(3) as follows:

In this part, the term "competitive procedures" means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(1) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(2) the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(3) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

~~(B) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;~~

(B) contracts and orders under such program result in the award of best value products and services for the Federal Government;

(4) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(5) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).