



WORKBOOK
SEASON 2023, EPISODE FIVE
March 8, 2023
FAR PARTS 8, 38, 39, AND 51:
SELECTING SOURCES

I. Introduction

In the previous chapter, we discussed the acquisition planning agencies should conduct to determine what products or services to buy and what method to use to procure them. Part of that planning includes determining the proper source—i.e., the entity from which the agency will acquire the good or service. **FAR Part 8** provides important guidance to contracting officers concerning when certain “mandatory” sources of supplies or services should be sought and determining whether the use of such sources will meet the Government’s needs. For example, this portion of the FAR tells us that when considering which source to use for purchasing products, a Government agency must—before planning a procurement—first consider whether it currently has the needed item in its own inventory or the inventory of a sister agency. It also identifies when and how sources such as the Federal Prison Industries, Inc. or AbilityOne participating nonprofit agencies should be utilized as a source of supply. Lastly, it provides contracting officers and contractors plentiful information about when and how the General Services Administration’s Federal Supply Schedules (“FSS”) can be used by executive agencies to procure items deemed “commercial” on a more “commercial-like” basis. The Federal Supply Schedule is generally considered a “discretionary” source of supply but may, as noted in **FAR Part 38**, be a mandatory source of supply for certain items (e.g., when the VA purchases certain medical or nonperishable items). Although not a required source, the Federal Supply Schedule is frequently used to purchase information technology (IT). In those instances, contracting officers need to consider not only **FAR Part 8**, but they also need to be aware of the special IT acquisition requirements set forth at **FAR Part 39**. In addition to the above, the FSS can also be used by prime contractors as a source of supply when permitted by the Government, under **FAR Part 51**.

II. Required Sources of Supplies and Services

Part 8 introduces us to the concept of required sources of supplies and services. As you have likely guessed, the issue of required sources is ultimately about *where* or *from whom* agencies procure supplies and services. As we discussed in the last chapter, before going through all the hoopla (and expense!) of a new full-scale procurement, agencies first must research and determine whether sources mandated by law exist that can satisfy the agencies’ needs. There are several reasons for using these required sources, all of which boil down to adherence to the Guiding Principles of the FAR.

The source that is required depends somewhat on the type of supply or service an agency needs to procure. For most supplies or services, the list of required sources is in **8.002**. For a few specific supplies

and services, like public utility services, the list is in **8.003**. In **8.004**, the FAR addresses use of non-mandatory but preferred sources, such as the Federal Supply Schedules. We will discuss more specific information regarding Federal Supply Schedules in the next section of this chapter.

Question 1– Identify the single contracting entity that is a mandatory source for both supplies AND services. [Hint: Check out **FAR 8.002**].

A. Using Mandatory Sources

So the CO has determined that there's a mandatory source available to satisfy a future need. What next? That depends on what source the CO will use. **Subpart 8.1** deals with using "excess personal property" to fulfill a need. **Subpart 8.5** deals with acquisition of helium. **Subpart 8.6** deals with acquisition from Federal Prison Industries, Inc., more commonly referred to as FPI. **Subpart 8.7** deals with acquisition from nonprofit agencies employing people who are blind or severely disabled (a.k.a., the AbilityOne Program). **Subpart 8.8** deals with acquisition of printing and related supplies. **Subpart 8.11** deals with leasing of motor vehicles. We won't go into great detail about most of these issues, since their general policies and procedures are fairly similar. Instead, we will examine a few of the more significant Subparts, particularly **8.6** and **8.7**.

Before we go any further, though, we want to clear up something that might have raised a few eyebrows in **8.1**—that is, the definition of "excess personal property." This term does *not* refer to property owned by individual Government employees! Instead, it refers to personal property in the legal sense. Essentially, under the law, if it's tangible and not real estate or a building, it's deemed personal property. GSA is generally responsible for keeping track of agencies' excess personal property, and for helping agencies track down such excess. **8.103** and **8.104**.

As you know, **Subpart 8.6** deals with acquisition from the FPI. FPI, which is also sometimes referred to as UNICOR, is a Government-owned corporation in the District of Columbia, which provides training and employment for people in Federal prisons. **8.601(a) and (b)**. We can find a list of supplies and services FPI manufactures and performs on the FPI schedule, which is available [online](#) and by written request to the Department of Justice. (Note, however, that FPI is only a mandatory source for supplies, not services, per **8.605(g)**.) While FPI is a required source, COs must still perform market research and make a written determination that using FPI supplies or services is appropriate under the circumstances. **8.602(a)(1) and (2)**. Remember, competition is key in government contracting; the concepts underlying competition don't go out the window just because we're dealing with a required source! FPI can also issue waivers for purchase of supplies that are in the FPI Schedule, and thereby allow agencies to bypass FPI as a required source. This most often happens if FPI doesn't actually make the supply in question, in which case FPI will issue a blanket waiver, or when FPI issues a formal, specific waiver in response to a

request from an agency. **8.604**. Furthermore, there is a laundry list of exceptions to FPI as a mandatory source in **8.605**. These exceptions do not require a waiver.

Question 2– True or False? Agencies have the authority to require a prime contractor or a subcontractor, at any tier, to use FPI as a subcontractor for performance of a government contract. Explain your answer.

FAR 8.7 sets forth the policy and some of the procedures surrounding acquisition of goods and services from AbilityOne participating nonprofit agencies and is similar to acquisitions from FPI. The Committee for Purchase from People Who Are Blind or Severely Disabled (which we, like the FAR, will refer to as the Committee) maintains a [Procurement List](#) of supplies and services offered by various nonprofit agencies, in much the same way FPI maintains its schedule. **8.703**. There are two ways in which agencies can order from this Procurement List: via direct order and via request for allocation. Direct order allows agencies to order supplies or services directly from participating nonprofit agencies when authorized by a central nonprofit agency. **8.705-2**. A direct order is usually the preferred method of ordering. When the central nonprofit agency has not authorized a direct order, agencies can submit a letter request for allocation. This request asks the central nonprofit agency to designate a participating nonprofit agency to produce the required supplies or perform the required services. **8.705-3(a)**. Of course, there are exceptions to the Procurement List. We can find the parameters for these exceptions in **8.706**.

III. Federal Supply Schedule Contracting

As a result of the passage of the Federal Acquisition Streamlining Act (FASA) and the Federal Acquisition Reform Act (FARA), the FAR Council instituted rules governing when and how the Federal Government should procure “commercial products and commercial services.” We have already learned during our discussion of **FAR Parts 1, 7, 10 and 11** that commercial products and commercial services sources are always preferred whenever practicable. The most popular way contracting officers procure commercial products and commercial services is through the use of a GSA Federal Supply Schedule (FSS) Contract. The FAR actually covers this topic in two different places: **Subpart 8.4** and **Part 38**. These two places deal with the FSS from two different angles; **Subpart 8.4** deals with ordering from the FSS, and **Part 38** deals with how the FSS is established and administered. We will primarily focus on **Subpart 8.4** in our discussion.

A. Using FSS Contracts

As you know, the FSS is not a required source of supplies or services. However, it is a recommended source because of its simplicity and efficiency. The GSA has already done the legwork, so to speak, so other agencies can simply place an order against the existing contracts with approved contractors

without having to otherwise worry about the use of **FAR Part 6** “full and open competition” requirements or publicizing the need via the GPE! **8.404(a)** (see **8.404(g)** for one small exception to this rule). To make the process of ordering from the FSS even easier, GSA maintains its own procurement website called [GSA Advantage!](#), which allows agencies to place orders against the FSS online. **8.402(c)**. It also maintains [e-Buy](#), which is an electronic RFQ system that complements the GSA Advantage! system. The procedures for purchasing from any of the Schedules are in **8.404**. The procedures very specific and we don’t want to get too into the weeds, so we won’t go into them here. However, we do recommend reading through that Section to become familiar with it!

Question 3 – What are the two methods for pricing services under an FSS Contract? [Hint: Check out **FAR 8.404**]

Unlike for other federal Government contracts, contractors performing work under an FSS Contract must work with more than one contracting officer at the same time. First and foremost is the GSA Schedule contracting officer (a.k.a. the Contracting Activity CO) who awarded the FSS Contract to the contractor. This person is responsible for the overall management and administration of the FSS Contract. They are not responsible for the administration of task orders issued under the FSS Contract. Those activities are the responsibility of contracting officers who issue award task or delivery orders under the FSS Contract (a.k.a. Ordering Activity CO). The ordering activity contracting officer’s responsibilities can be found at **FAR 8.406**.

Question 4 – **FAR 8.406-4** requires the Ordering Activity contracting officer to inform the Contract Activity contracting officer of any termination for default of an FSS order or if fraud is expected. Explain why you think providing such notice is required.

B. Special Focus: BPAs

FAR 8.405-3 addresses the Government award and use of Blanket Purchase Agreements (“BPA”) as it relates to FSS Contracts. Contracting officers use BPAs in this context to help reduce contract and order administrative costs and to reduce prices offered by interested FSS Contract holders.

BPAs can be awarded on a single- or multiple-award basis. Generally, the FAR encourages contracting officers to establish multiple-award BPAs instead of single-award BPAs to further reduce offered pricing by the BPA holders. This is in keeping with several Guiding Principles of the FAR, but particularly the one at **1.102(b)(3)**. For that reason, no single-award BPA with an estimated value exceeding \$100 million (including any options) may be awarded unless the agency determines that 1) only one source can provide the required supplies or services, or 2) it is necessary in the public interest to award the BPA to a single source for exceptional circumstances. The agency head must sign off on these determinations *in writing*. Note that the justifications required for this type of single-award BPA are in addition to the justifications required for limited-source procurements at **8.405-6**.

Question 5 –Identify the maximum period of performance of a single-award BPA **AND** a multiple-award BPA?

IV. Acquisition of Information Technology

FAR Part 39 provides specific rules that contracting officers must follow when procuring information technology (IT) for their agencies. It also provides rules that must be followed during the acquisition of electronic information technology (EIT). The FAR draws a distinction between IT and EIT, though it never explicitly states why. Luckily, we can find the answer with some government contracting sleuthing skills. This distinction is all due to an amendment to the Americans with Disabilities Act passed by Congress, which required certain types of IT be accessible to people with disabilities (a.k.a. Section 508 of the Rehabilitation Act of 1973 or “Section 508”). Section 508 required that all Government-procured EIT which Government employees or the public would use must either possess certain features or be compatible with other equipment that would enable EIT use for people who were blind, deaf, or physically handicapped. All of these special requirement/features can be found at the www.Section508.gov.

Question 6 – Under what circumstances is the Government permitted to require minimum experience or education requirement for contractor personnel performing services under a contract subject to **FAR Part 39**?

One special hallmark of IT contracting is called “modular contracting.” Simply put, modular contracting is when an agency breaks up one large IT procurement into several smaller pieces. There are several reasons to break up a procurement in this way, but the FAR points out three major ones: first, modular contracting is sometimes required by statute (**41 U.S.C. 2308**, to be precise); second, it reduces program risk; and third, it incentivizes timely contractor performance and thereby keep up with the Government’s need for up-to-date IT. **39.103(a)**. Some of you might wonder how modular contracting protects the Government against risk. The short answer is that if something goes wildly wrong with one modular contract, it won’t necessarily affect the other contracts. **39.103(b)**. In contrast, if the entire procurement fell under one larger contract, a problem in one portion would likely affect everything else.

V. Contractor Use of Government Supply Sources

We end this chapter with a brief note on contractor use of Government supply sources. For the purposes of **Part 51**, which deals with this issue, Government supply sources are generally FSS contractors. **51.103(a)**. As it turns out, Government agencies are not the only entities permitted to use Government supply sources. Contractors can also use Government supply sources—but only if such use is in the Government’s interest and is approved by the CO. **51.101(a)**. Subcontractors may also be able to use Government supply sources, but both the prime contractor and the CO must authorize such use. **51.102(b)**. Before approving contractor use of Government sources, the CO must generally create a written finding that supports issuance of the approval, and they must place that finding in the contract file, though there are some exceptions to this rule in **51.101(c)**. **51.102(a)**. Contractors may also sometimes make use of Government-owned motor vehicles through the Interagency Fleet Management System, or IFMS. The procedures for such use are in **Subpart 51.2**.

Question 7 –Under what circumstances may a contractor subcontract with “Government Supply Sources” to fulfill its prime contract obligations?

Discussion Questions

1. **FAR 8.003** explains that there is an “other mandatory source” requirement for printed materials. Who is the mandatory source for printed materials, and when may another source be used?

2. What must an Ordering Activity contracting officer do prior to issuing an FSS Contract labor hour or time and material task order? [Hint: Check out **FAR 8.404**]

3. Under what circumstances may an ordering activity issue a single-award BPA that has a contract value that exceeds \$100 million?

4. What access rights are provided to the Government under FAR 52.239-1, Privacy or Security Safeguards **AND** what prohibitions are place on the contractor.

5. Identify the goods and services that are subject to Section 508 EIT requirements. [Hint: Check out www.Section508.gov]

6. What must be included in all BPAs issued under an FSS Contract? [Hint: Check out **FAR 8.405-3(a)(7)**]

7. True or False? A Government buyer is prohibited from asking a GSA FSS Contractor for pricing lower than that offered under its GSA FSS Contract? Explain your answer.

Answer Key

Answer 1 – The Committee for Purchase From People Who Are Blind or Severely Disabled is a required source for both supplies and services. This entity is also now referred to as Ability One.

Answer 2 – False. Per **FAR 8.607**, the mandatory source rules do not require that prime contractors or higher tier subcontractor retain FPI as a subcontractor during the performance of a federal government contract.

Answer 3 – Under an FSS contract, the contractor is required to submit pricing for the performance of services only on a firm fixed price or hourly rate basis only. Note, however, that a contractor is permitted to offer and the Government is permitted to procure services on a time and materials basis if it expects that the contractor expects to incur and will need to be reimbursed for “other direct costs” (e.g., materials, travel, etc.) to support the performance of the requested services. **See FAR 12.207 and FAR 16.6.**

Answer 4 – The Contracting Activity CO must be informed by the Ordering Activity CO of any terminations for default determinations or claims of contractor fraud arising under an order so that the Contracting Activity CO can properly assess (i) whether the contractor’s failure(s) impacts the Government’s initial responsibility determination (which supported award of the GSA contract) and (ii) whether the failure(s) rise to the level that support a determination that terminating the entire GSA contract and/or suspending or debaring the contractor is in the best interest of the Government.

Answer 5 – Per **FAR 8.405-3(d)**, a multiple award BPA “should” not last longer than five years (period may be greater to “meet program requirements”) and the period of a single award BPA shall not exceed one year plus four one-year options.

Answer 6 – Per **FAR 39.104**, the Government is permitted to include a minimum experience or education requirement in a solicitation for IT services only if the CO determines (in a written D&F) that the needs of the agency cannot be met with that requirement or the Government intends to procure the services on an other than performance-based acquisition basis.

Answer 7 – A contractor may subcontract with “Government Supply Sources” to fulfill prime contract obligations when three conditions are met: (i) it has been determined by the Ordering Activity CO to be in the Government’s interest; (ii) the supplies or services required are available from the Government supply source, and (iii) the CO authorizes it. **See FAR 51.101(a)**. Note that the first and third condition may be deemed present if the Government’s solicitation contains **FAR clause 52.251-2 Government Supply Sources**.

Discussion Questions Answer Key

1. The Government Publishing Office is the mandatory source for all Government printed materials unless one of the four exceptions exist.
2. Prior to executing an FSS Contract labor hour or T&M order, the contracting officer must (i) execute a written D&F supporting the use of other than firm-fixed pricing; (ii) include an agreed upon “ceiling price” in the order; and (iii) if the period of performance is greater than three years, obtain the signature and approval of the head of the contracting activity prior to the execution of the order.
3. A single award BPA that has an anticipated value in excess of \$100M may be awarded if one of the following conditions are met: (i) The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work; (ii) the BPA provides only for firm-fixed priced orders; (iii) only one source is qualified and capable of performing the work at a reasonable price to the Government; or (iv) it is necessary in the public interest to award the BPA to a single source for exceptional circumstances.
4. The Contractor shall afford the Government access to the Contractor’s facilities, installations, technical capabilities, operations, documentation, records, and databases to the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data. The Contractor shall not publish or disclose in any matter, without the Contracting Officer’s written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
5. Products and services intended to provide the same level of access to Information and Communication Technology (ICT) as persons who do not have disabilities that must conform to Section 508 Standards identified in Section508.gov are: Products considered ICT, including but not limited to computers, information kiosks and transaction machines, multifunction office machines, telecommunications equipment, software, and electronic documents. Services, including maintenance of ICT, tests for major software version updates, open source content management system (CMS), and revised Section 508 standards.
6. The Ordering Activity Contracting Officer shall include in the BPA file documentation the:
 - Schedule contracts considered, noting the contractor to which the BPA was awarded;
 - Description of the supply or service purchased;
 - Price;
 - Required justification for a limited-source BPA, if applicable;
 - Determination for a single-award BPA exceeding \$100 million, if applicable;
 - Documentation supporting the decision to establish multiple-award BPAs or a single-award BPA;
 - Evidence of compliance with paragraph (b) of this section, for competitively awarded BPAs, if applicable; and

-Basis for the award decision. This should include the evaluation methodology used in selecting the contractor, the rationale for any tradeoffs in making the selection, and a price reasonableness determination for services requiring a statement of work.

7. False. **See FAR 8.404(d), 8.405-4, and 8.405-2.**

APPENDIX

All of the following materials are linked below to PCI's website or to an online link.

[AbilityOne FAQs](#)

AbilityOne.gov is the website for the U.S. Ability One Commission which is among the nation's largest sources of employment for people who are blind or have significant disabilities. This page answers questions regarding the program and contracting under the Ability One Program.

[Beginner's Guide to GSA Schedule Contracts](#)

An information package prepared by Federal Schedules, Inc. regarding the GSA Schedules program, how to get on the GSA Schedules, GSA Schedule Assistance and more.

[GSA FSS BPA Order One Page Checklist](#)

A one-page checklist from GSA on how to order under an established FSS BPA for Professional Services.

[BPA Purchase Agreements Checklist \(DPAP\)](#)

A checklist for Blanket Purchase Agreements including FAR references.

[U.S. AbilityOne Commission: Oversight and Compliance Directorate FAQs](#)

Replacement for the Compliance Manual for the Committee for Purchase from People Who are Blind or Severely Disabled. The Committee staff's manual was used for conducting compliance reviews of Nonprofit Agencies. The compliance manual provided the AbilityOne community with a more detailed description of documentation standards required to ensure compliance with the statutory requirements and the Committee's implementing regulations.

[FPI Purchasing Civilian Agency Decision Path](#)

A decision path chart of civilian agency procedures for purchasing from FPI.

[FPI Purchasing DoD Decision Path](#)

A decision path chart of DoD procedures for purchasing from FPI.

[GSA Schedule Order Checklist \(Nov. 5, 2015\)](#)

GSA Schedule order contract file checklist. This checklist may be used for the award of task or delivery orders against GSA Federal Supply Schedule (FSS) contracts and the establishment of Blanket Purchase Agreements (BPAs) against GSA FSS contracts.

[OFPP Guidance for Service Contract Inventories \(2011\)](#)

Memorandum for Chief Acquisition Officers Senior Procurement Executives regarding service contract inventories from Dec. 19, 2011.

[OMB Circular A-130](#)

OMB Circular to the heads of Executive Departments and Agencies regarding managing information as a strategic resource.

[Section 508](#)

Government's Section 508 website.

[FAR Part 8: Required Sources of Supplies and Services](#)

[FAR Part 38: Federal Supply Schedule Contracting](#)

[FAR Part 39: Acquisition of Information Technology](#)

[FAR Part 51: Use of Government Sources by Contractors](#)

FUN WITH THE FAR
Episode 5
FAR Parts 8, 38, 39, & 51
Summary Outline

I. Introduction

II. FAR PART 8

A. General Observations

B. Required Sources of Supply

C. Federal Supply Schedule Contracting

1. Purpose
2. Systems
3. Ordering
4. Blanket Purchase Agreements
5. Sole Source
6. Small Business Set-Aside
7. Roles of Ordering vs. GSA Contracting Officers

III. FAR PART 38

A. General Observations

B. More on Federal Supply Schedules

IV. FAR PART 39

A. General Observations

B. Special Rules

1. Special Acquisition Requirements

2. Accessibility Requirements

V. FAR PART 51

A. General Observations

B. Rules Governing Use of FSS Contractors as Potential Sources of Supply

VI. Closing Remarks