

Facts on Recovery Purchasing:

What - Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007(Public Law 109-364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of GSA's Federal Supply Schedules for the purchase of products and services to be used to facilitate recovery from a major disaster, terrorism or nuclear, biological, chemical, or radiological attack.

A "major disaster" is defined by the Act to mean a natural catastrophe in any part of the United States, including its territories, which in the determination of the President causes sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of State and local governments. For more information on the Robert T. Stafford Disaster Relief and Emergency Assistance Act, go to www.fema.gov/about/stafact.shtm.

Section 833 builds on the implementation of the Cooperative Purchasing Program authorized in Section 211 of the E-Government Act of 2002 (Public Law 107-347) which opened GSA's information technology schedule, Schedule 70, for use by State and local government.

Who - Participation in Recovery Purchasing is voluntarily extended to all GSA and VA Schedule contractors.

State and local government entities means: the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

Why - This rule implements section Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007(Public Law 109-364) with the objective of opening GSA's Federal Supply Schedules for use by other governmental entities to facilitate recovery from a major disaster, terrorism or nuclear, biological, chemical, or radiological attack. The goal of the new rule is to make "government" (considering all levels) more efficient by

reducing duplication of effort and utilizing volume purchasing techniques for the acquisition of recovery related products and services.

When - The Interim Rule was published in the Federal Register February 1, 2007. The Recovery Purchasing modification (FX 47) is available through the VSC as of February 12, 2007. On this date, all GSA Schedule contractors awarded as of January 31, 2007, and earlier will be sent an email with instructions for viewing and completing the Modification, if they choose. The Modification will remain available for an extended period. Contracts awarded February 1, 2007 and later will be handled by the awarding Acquisition Center.

The Role of Contract Management (the IOA and the ACO):

Mass Modification FX47 has been released to all Schedule contractors. Department of Homeland Security has identified their primary need for contractors in disaster recovery, terrorism, and wildland fire. Contract Management has identified which schedules would most likely be in this group and will be monitoring participation by those contractors.

The IOAs will not encourage or discourage participation. Our role is to make sure the contractors have the information on Recovery Purchasing (the GSA press release, Mass Mod FX47, as well the interim rule from the Federal Register) and encourage them to make a decision on participation (accept or decline).

Key points for contractors:

- Contractors will be responsible for ensuring that state and local governments are purchasing in response to a Presidentially declared disaster or are prepositioning in anticipation. This should be on the orders.
- Contractor will have to track and report Recovery Purchasing sales separately from other Schedule sales. They need to make sure whatever system or process they use to track and report contract sales can accommodate this.
- The Interim Rule states GSA's anticipated need to collect transaction level data.

Expected Questions:

How is Recovery Purchasing different from the Cooperative Purchasing currently available under Schedule 70?

There are 2 major differences between Recovery Purchasing and the cooperative purchasing currently available under Schedule 70. First, Recovery Purchasing is available to contractors on ALL Schedules. The second difference is in when state and local governments can use the Schedule contracts. Under the Schedule 70 cooperative purchasing, state and local governments may order from the schedule 70 contractors at any time. For Recovery Purchasing state and local governments may place orders against the Schedule contracts only when there is a Presidential declared disaster or for prepositioning in anticipation of a disaster.

If a Schedule 70 contractor has already accepted the Cooperative Purchasing modification, why would they want or need to also accept the Recovery Purchasing modification?

e-Library and GSA *Advantage* will identify contractors who have accepted the Recovery Purchasing modification with a special icon. It is anticipated that customers will search for contractors under this icon.

Do contractors have to report sales on orders from state and local governments?

Yes, contractors will be required to report sales for Recovery Purchasing separately from other schedule sales. Sales will be reported in the VSC against shadow SINS identified by a suffix of "RC." Additionally, it is anticipated that the final rule will include a requirement for contractors to report transaction data such as items and quantities sold, prices, and state or local government placing the order.

If a contractor elects not to participate at the initial offering, can they later accept the modification?

Yes, contractors can choose to accept the modification at a later date. If the contractor has declined the MAS Modification and later decides to accept it, they will need to contact their ACO to have the PIN reset for MAS Mod FX-47.

Questions and Answers

Q1. If state and local governments are allowed to purchase on an “in advance” pretense of an officially declared disaster, how as a contractor are we to determine if these pre-planned purchases qualify for use of the GSA schedule?

A1. Since this modification only authorizes state and local government ordering agencies to use Schedules for “Recovery Purchasing” the customer should state the purchase is for recovery purchasing and tie the order to one of the Presidential declared disasters listed by FEMA. All presidential declared disasters make the national news and FEMA has an archive of disaster declarations. Here’s the link,
http://www.fema.gov/news/disaster_totals_annual.fema.

Q2. The following clauses are fill-ins and in the SF30 it states, “these clauses are included; delete prior versions of the clauses and replace with the following:”. This creates a problem with three of the clauses, they have blanks and no longer contain either the information that was filled in that was pertinent or in which the contract was negotiated?

1. "552.216-73 ORDERING INFORMATION" is blank and should be filled in with the appropriate contractor information.
2. "552.238-78 SCOPE OF CONTRACT, Paragraph (c) Offerors are requested to check one of the following:" is not checked and should be checked as appropriate.
3. "52.216-19 ORDER LIMITATIONS, Paragraph (b)" is blank and should either reflect the maximum order by SIN as previously agreed or for Schedule 84 contracts state something like: "See specific Product/Services Attachment awarded for maximum order limitation."

A2. This modification is not reopening for negotiation, these clauses should have been established in the basic solicitation and the terms and conditions that were incorporated on the date of award would remain the same. The most important reason we updated most of our clauses within Mass Mod FX47 was to incorporate the following terms and conditions:

"authorized modification of the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government, and to substitute "ordering activity" or similar language when preparing solicitations, and contracts to be awarded, under Federal Supply Schedules for recovery purchasing".

Q3. The statement: “For the Special Item Number (SINs) currently awarded under Multiple Award Schedule...” Does this mean that the contractor can option

not to include future SINs that may be awarded to be included under the Purchase Recovery provisions?

A3. The answer is no. The statement implies, the following Recovery Purchasing SINs have been included with the current SINS already on contract.

Q4. Can contractors use this Act on current or prior disasters like Katrina?

A4. The interim rule is effective; if the contractor accepts mass mod FX47 including the new clauses the state or local government entity may place an order. If not, the contract must first be modified to include the new clauses. The contractor must ensure state and local government ordering agencies provides sufficient documentation to support their claim. With respect to Presidentially-declared disasters, if DHS/FEMA has not closed out the disaster (which is sometimes years after the declaration), so long as the purchase is to be used for recovery, the purchase should be proper.

Q5. Does this Act cover only disasters for 2007 unless it is renewed by Congress or GSA?

A5. Section 833 amended 40 U.S.C. 502, and as such, the statutory change is permanent.

Q6. Will the state or local government be using federal funds if there is a Presidential Declaration of disaster?

A6. If the entities are eligible to purchase under the rule then they may use any monies available to them to purchase from the GSA Schedules for disaster recovery. In order to verify that they can use any specific Federal grant monies to purchase off of GSA Schedule contracts, they must refer back to the office that awarded the grant money to make sure that money may be used to purchase off of Schedule. Outside of the guidelines of Section 833 Disaster Recovery Purchasing, 1122 Counter Drug Program, and IT Schedule 70 Cooperative Purchasing, state and local governments are not eligible to purchase off of GSA Federal Supply Schedules using state and local funds OR Federal funds. Receiving Federal funds does not make these entities eligible to purchase unless they are already eligible under one of the above mentioned programs.

Q7. Do you know if there is any requirement in the modification concerning turnaround time to supply a customer in a disaster?

A7. The disaster recovery purchasing, section 833 modification does not specify turnaround time. While the modification does not stipulate specific delivery times, depending on the disaster and the product/service the vendor offers, turnaround time may be essential, but again, not mandated.

Q8. Will contractors have to report their “Recovery Purchasing” sales separately from their sales under the current SINS on contract?

A8. If a contractor accepts this modification, the contractor will receive separate Special Item Numbers (SINs) for work related to “Recovery Purchasing”. All sales for Disaster Recovery will be on those SINs. The contractor should have a system in place to segregate those orders from their federal orders.

Q9. What should I do if I have accepted modification FX47, under the terms and conditions in accordance with clause 52.247-34 F.O.B. Destination but my existing contract is awarded under F.O.B. Origin terms and conditions?

A9. Once you accepted FX47 on the VSC Website, there is no way to decline or rescind its acceptance. However, if you made an error and wish to rescind your acceptance of FX47, you can contact your PCO to request a bilateral formal modification removing your acceptance to FX47. Another option is to not do anything and when you are contacted by a state or local agency, you can always decline to accept an order if they insist on FOB Destination terms.

Q10. Will GSA assist the vendors with unique identification of Recovery Purchasing by issuing unique purchase order (PO) number assignment?

A10. At this point in time, all Recovery Purchasing orders placed by state and local governments would be coming directly from the state or local government. There is not a way currently for the state and local governments to place orders through GSA. That is being looked at for a possible future implementation.

Q11. Can you advise at this time, to what level of transactional detail GSA will be requiring us to report?

A11. The interim rule says that GSA is seeking to collect transaction data such as items and quantities sold prices, and the state or local government placing the order. Contractors are requested to provide details on what data is available and how they can report this information to GSA. Please review the Recovery Purchasing interim rule in the Federal Register <http://www.gpoaccess.gov/fr/index.html> search on key words "Recovery Purchasing) for information on how to comment on the interim rule.