

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration are proposing to amend the Federal Acquisition Regulation regarding the procurement of printing. This proposed rule has been sent to the Federal Register for publication and public comment.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, and 52

[FAR Case 2002-011]

RIN: 9000-AJ51

**Federal Acquisition Regulation; Procurement of
Printing and Duplicating through the Government
Printing Office**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The FAR Council is proposing amendments to the Federal Acquisition Regulation (FAR) to implement the policy set forth in Office of Management and Budget (OMB) Memorandum No. M-02-07, Procurement of Printing and Duplicating through the Government Printing Office (GPO) (May 3, 2002). In order to induce competition, save taxpayer money and promote small business opportunities, the memorandum eliminates restrictions that mandated use of GPO as the single source and frees agencies to select printing from a wide array of sources that can demonstrate

their ability to meet the Government's needs most effectively. Moreover, specific new actions are proposed to improve dramatically the depository library system by ensuring that all Government publications are in fact made available to the nation's depository libraries.

DATES: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before **(30 days after publication date)**.

ADDRESSES: Submit written comments to—

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Submit electronic comments via the Internet to—

farcase.2002-011@gsa.gov

Please submit comments only and cite FAR case 2002-011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. The TTY Federal Relay Number for further information is 1-800-877-8973. For clarification of content, contact Mrs. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR Case 2002-011.

SUPPLEMENTARY INFORMATION:

A. Background

1. Overview.

In order to induce competition, save taxpayer money and promote small business opportunities, this proposed rule implements OMB Memorandum No. M-02-07, Procurement of Printing and Duplicating through the Government Printing Office (GPO). The proposed rule amends the FAR by—

- Removing restrictions in FAR 8.8 that mandated exclusive use of GPO for printing and related supplies;
- Providing agencies express authorization to address printing needs by either contracting with a private source or by using the GPO when GPO offers the best value;
- Substantially limiting the circumstances where agencies may rely on in-house or other Executive Branch printing operations;
- Requiring agencies that acquire printing services in excess of \$2,500 directly from private sector sources to use competitive practices that facilitate broad marketplace participation, including a much broader range of opportunities for small businesses;
- Ensuring that agencies can and will purchase printing services that are the “best value” for their specific needs; and
- Improving the depository library system by taking concrete steps to ensure that all Government

publications are in fact provided to the GPO's Superintendent of Documents for distribution to the Federal Depository Library Program (FDLP).

2. Procurement of printing and related supplies.

a. Freedom to choose among different printing sources.

The GPO is a legislative branch agency that was created by Congress and is controlled by the Joint Committee on Printing. While GPO was originally created to fulfill the printing needs of Congress, Congress has since expanded the role of GPO by purporting to require that essentially all Executive Branch printing be done by or through GPO.

In 1996, the Department of Justice's Office of Legal Counsel issued an opinion concluding that the statutes compelling the Executive Branch to utilize GPO constitute are unconstitutional and therefore inoperative. See Memorandum from Walter Dellinger, Assistant Attorney General, to Emily C. Hewitt, General Counsel, General Services Administration, May 31, 1996 at 1, 8. The Justice Department's opinion stated explicitly that the Executive Branch was not bound to follow those statutes. See *id.* at 8. The Justice Department recently reaffirmed its 1996 opinion. See Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President, October 22, 2002. Nonetheless, FAR Subpart 8.8

has perpetuated the use of GPO as a mandatory source. Accordingly, absent the FAR change proposed herein, agencies subject to the FAR currently must issue a FAR deviation pursuant to Subpart 1.4 of the FAR in order to contract with a private printer rather than GPO.

The type of pro-competition reforms to public printing identified herein have a long and broad history of bipartisan support:

- In 1994 President Clinton stated that comprehensive reform of Federal printing could "improve the efficiency and cost-effectiveness of Government printing by maximizing the use of private sector printing capability through open competitive procedures and by limiting Government-owned printing resources to only those necessary to maintain a minimum core capacity." Statement on Signing the Legislative Branch Appropriations Act of 1995, 30 Weekly Comp. Pres. Doc. 1541 (July 22, 1994).
- Alice Rivlin, while serving as Deputy Director of OMB, explained in 1994 that "significant efficiencies, much improved service, and cost savings will be realized by injecting more competition and direct accountability into the area of printing procurement." See Statement of Alice Rivlin, Deputy Director, Office of Management

and Budget, Committee on Rules and Administration, United States Senate (February 3, 1994).

- David M. Walker, Comptroller General of the United States, testified that "GPO's monopoly-like role in providing printing services perpetuates inefficiency because it permits GPO to be insulated from market forces and does not provide incentives to improve operations that will ensure quality services at competitive prices. Federal agencies could be given the authority to make their own printing policies, requiring GPO to compete with private sector printing service providers." Statement of David M. Walker, U.S. Senate Committee on the Budget, February 1, 2000 at 6-7
- Congressman Tom Davis, Chairman of the Subcommittee on Technology and Procurement Policy of the House Committee on Government Reform wrote, on March 12, 2002, that "a permanent Government-wide solution to the GPO monopoly can be achieved by OMB, under its own authority, taking immediate steps to give agencies the greater 'flexibility' that Deputy O'Keefe called for in his testimony. This authority is evident under a May 31, 1996 Legal Opinion of the Department of Justice Office of Legal Counsel. . . ."

On May 3, 2002, the Director of OMB issued a policy memorandum (No. M-02-07) governing Executive Branch use of

GPO for departmental and agency printing needs. The memorandum points out that while the GPO relied on contractors to handle 84 percent of the printing work it performed in fiscal year 2001, it charged the Executive Branch premiums (above and beyond the private contractors' bids) of between 7 percent and 14 percent, plus various processing fees.

OMB's memorandum concludes that "[t]he time has come for the Executive Branch to liberate its agencies from a monopoly that unfairly penalizes both taxpayers and efficient would-be competitors." It directs agencies to take full advantage of the marketplace, recognizing that "[t]axpayers tend to benefit most from open competition, rather than government monopolies." Rather than having the GPO interact exclusively with private contractors and make decisions for agencies, OMB's new policy gives agencies the freedom to conduct their own competitions and work with private contractors to produce the best possible printed product. In particular, the OMB memorandum allows Executive Branch agencies to choose between GPO and the private sector based upon the "best quality, cost, and time of delivery," i.e., by using "best value" cost-technical tradeoff procurements where appropriate. This freedom will enable agencies to control the cost and quality of the printing services for which they are accountable. Of course, where

GPO provides the best value, it should continue to receive Government orders.

Many commercial printers have expressed their support to OMB for the opportunities its new policy will provide by allowing them to contract directly with Executive Branch agencies. One company in particular wrote to OMB to welcome the passing of an era marked by the use of outdated specifications, the failure to take advantage of cost saving technology, and reliance on costly distribution channels. It is looking forward to a new day of cost-effective quality contracting for printing.

Agencies are also anticipating the benefits of an open environment. During a July 10, 2002 hearing before the Joint Committee on Printing, the Director of OMB offered a few examples of agency frustrations that bear out the inefficiencies perpetuated by forced reliance on a single provider. These inefficiencies include insufficient consideration of quality, inadequate attention to customer satisfaction, and misunderstandings about agency needs that have arisen over the years because GPO's policies generally prevent agencies from communicating directly with its contractors. OMB's new policy is designed to help agencies overcome these shortcomings by giving them the power of choice -- i.e., the ultimate tool to drive printers,

including the GPO, to offer their best products and services and make customer satisfaction job one.

Nonetheless, a handful of legislators who oversee GPO continue to oppose pro-competition reform. For example, Section 4 of the Continuing Resolution for FY 2003, Public Law 107-240 (H.J. Res. 122), included a provision essentially requiring that funds be used in accordance with section 501 of title 44. In an October 22, 2002 opinion, however, the Department of Justice concluded that this language, like other statutory provisions compelling the Executive Branch to use the GPO, is an unconstitutional infringement upon Executive Branch powers and therefore is not binding. See Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President, October 22, 2002.

In order to implement the pro-competition reforms that have long received broad, bipartisan support, this rule removes restrictions in FAR 8.8 that have mandated exclusive use of GPO for printing. In its place, the rule provides agencies express authorization to address printing needs by contracting with a private source, using the GPO, or, in very limited circumstances, relying on in-house or other Executive Branch printing operations.

b. Limited use of in-house or other Executive Branch printing operations.

OMB's memorandum recognizes the need to narrow use of often inefficient in-house printing operations. It allows agencies to consider use of in-house or other Executive Branch printing operations *only* under limited circumstances when in-house printing is the only reasonably available option. The memorandum makes clear that agencies must make decisions based upon a "full account of all costs" and must provide a "full accounting of all costs" in regular reports to OMB. In short, OMB will not permit agencies to use this new policy to make or continue costly investments in printing equipment when more cost-effective solutions are available.

The rule reflects this limitation. It permits an agency to rely on in-house or other Executive Branch printing operations *only* where such Executive Branch operations demonstrate, based upon a full account of all costs and through public-private competition (unless an exception to competition applies), that they offer the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

c. Use of competition to open opportunities.

When GPO decides to pass some of its work to the private sector for printing services on behalf of Executive Branch agencies, GPO's rules call for it to notify private printers

of proposed contract actions through the Internet. With respect to contracts entered into under the FAR, FAR 5.101(a)(1) requires Executive Branch agencies to disseminate proposed contract actions above \$25,000 through the Government-wide point of entry, <http://www.fedbizopps.gov>. (FedBizOpps). Now, to ensure maximum opportunities, especially for small businesses, FedBizOpps will serve as a one-stop Internet gateway to Executive Branch procurement opportunities for every printing contract in excess of \$2,500. This gateway will make the Federal Government more efficient, accessible, and citizen-centric.

Hence, the proposed rule extends the synopsis requirements and response times currently applicable to acquisitions between \$25,000 and the simplified acquisition threshold to acquisitions for printing over \$2,500. As a result, all responsible sources will have an opportunity to submit offers for open market actions over \$2,500. To ensure necessary flexibility, agencies would continue to be able to exercise exceptions to competition as may be necessary, such as for unusual and compelling urgency.

GSA is thinking about creating a multiple award schedule (MAS) to help facilitate the acquisition of printing. This new schedule for printing would be designed to maximize participation by all types of printers, including small

businesses. The proposed rule would impose certain special procedures for the use of this schedule. Specifically, it would require that all MAS printing contractors be given an opportunity to compete to fill agency orders in excess of \$2,500. Ordering offices would be required to use the electronic "e-Buy" system (www.gsaAdvantage.gov) to announce agency printing needs. A copy of all e-Buy notices for printing would be duplicated in FedBizOpps for informational purposes.

To increase further contracting opportunities for the printing community, the rule limits the length of indefinite quantity contracts for printing to one year. Indefinite quantity contracts allow work to be placed through the issuance of orders under the contract. Because consideration for work under an indefinite quantity contract is limited to contract holders for the duration of the contract, non-contract holders must wait for contract renewal before they can compete. Hence, limiting the duration of the underlying contract should enable increased marketplace participation. For similar reasons, the proposed rule would require that blanket purchase agreements (BPAs) for printing that have been established under the MAS also be limited to not more than one year in length. BPAs are used for carrying out repetitive MAS purchases with one or a small number of MAS contractors.

Finally, the proposed rule allows a short transition period during which agencies may opt to use the services of GPO without requiring competition to select GPO. This period is intended to give agencies and printing contractors an opportunity to adjust to the new environment created by OMB's memorandum, where acquisitions will be made both by GPO (which, as noted above, contracts out a significant amount of work required by agencies) and directly by agencies.

d. New opportunities for small businesses.

On March 19, 2002, the President announced his Small Business Agenda, a plan to help create an environment where small businesses can flourish. A critical component of this plan involves efforts to improve access to government contracting opportunities for small businesses, including by limiting the current practice of indefinite-quantity contracts. This proposed rule will help further this important Presidential objective.

Information on contracting opportunities will be provided on what is arguably the most robust one-stop gateway of its kind in the world -- enabling vendors to easily acclimate themselves to the activities of departments and agencies across the Executive Branch.

- FedBizOpps, which serves as the single point of entry on the Internet for business opportunities,

hosts a wide variety of business documents, including notices, solicitations, and other related acquisition information.

- When sellers "click" to a notice, they are also immediately obtaining direct access to all solicitation and related information electronically available at that time on the acquisition.
- E-mail notifications allow interested vendors to automatically receive information about contracting opportunities -- both notices and solicitation information initially available and all subsequent information relating to that procurement. This feature eliminates the need for repeated searches to gain access to up-to-date information.

As noted above, the functionality of FedBizOpps, which is typically focused on actions over \$25,000, will be expanded for printing acquisitions to also cover actions over \$2,500. In addition, the length of indefinite-quantity contracts, which are often used to conduct competitions restricted to pre-qualified contractors, will be limited to give marketplace participants more opportunities to compete. In all, the ability to work directly with agencies on printing jobs of all types and sizes will give small

business printers many new opportunities to demonstrate their abilities for future work.

3. Information Distribution.

Effective dissemination of Government information is a cornerstone of citizen-centric Government. For this reason, OMB's memorandum recognizes the need to improve distribution to the Federal Depository Library Program (FDLP). The 1,300 depository libraries operating throughout the country that make up the FDLP help to ensure that the public has equal, efficient, permanent, and ready access to government publications. Unfortunately, many Government publications (as many as 50 percent by some estimates) become so-called "fugitives," never making their way to the Superintendent of Documents, who is responsible for indexing, cataloging and distributing documents to the public through the FDLP. Searching for a publication that cannot be easily located (e.g., because it has not been indexed and catalogued) is a time-consuming, if not fruitless, exercise. Until sufficient attention is given to this issue, the public's access to government publications will be unnecessarily impaired. The proposed rule is designed to improve this unacceptable record.

The proposed rule addresses the "fugitive documents" problem by specifying mandatory steps for meeting the requirement that Executive Branch agencies provide

publications to the Superintendent of Documents for distribution to the depository libraries. Each publication would be transmitted using electronic means unless such means are unavailable. Agencies' obligation to provide Government publications to the Superintendent applies regardless of the source that prints the publications.

The FAR Council is considering whether the FAR should include a clause that contracting officers would be required to insert in contracts for the printing of Government publications where a contractor will assist the Government in ensuring the Superintendent receives a copy of the publication. A clause might read as follows:

INFORMATION DISTRIBUTION (DATE)

To assist the Government in ensuring effective distribution of Government publications printed under this contract, the contractor shall submit one copy of each Government publication, as identified by the Government in the contract, to the Superintendent of Documents from the Government Printing Office. Transmission shall be made using electronic means unless such means are unavailable. The public is invited to comment on the need for an information distribution clause.

The proposed rule also recognizes that when agencies contract directly with private sector printers, the GPO may wish to purchase copies of Government publications from such printers for depository libraries or for the public sales

program or, if economical, may wish to print additional copies in house at GPO. Accordingly, the rule provides that, whenever feasible, agencies should consult with the GPO before issuing a solicitation to determine the number of copies the GPO may wish to obtain. When GPO elects to order from an agency's selected contractor, a proposed FAR clause will require that the contractor submit invoices directly to the GPO for payment.

In addition to the new FAR coverage, OMB will take steps to address the fugitive document problem. Among other things, agencies will be required, as part of their reporting on printing, to report to OMB on compliance with their obligation to make information available to the public, including through the FDLP. This requirement will be set forth in OMB guidance. OMB, in consultation with interested stakeholders, will also determine whether current policies or practices related to the publication of Government information need to be changed to ensure maximum possible reliance on distribution in cost-effective electronic formats.

4. Executive Order 12866.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Council does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Today, private sector printers, including small businesses, who wish to perform printing for the Federal Government must contract with the GPO. This proposed change to the FAR should create new opportunities for private printers of all sizes by giving them the opportunity to contract directly with Executive Branch agencies.

With respect to purchases handled directly by the Executive Branch pursuant to the FAR, agencies would be required to provide notice using FedBizOpps for purchases over \$2,500. In addition, the FAR imposes a mandatory set-aside for small businesses for actions between \$2,500 and \$100,000 (reflecting statutory requirements in the Small Business Act).

The rule would only authorize agencies to use in-house or other Executive Branch printing operations in lieu of either a small or large private sector printer in limited circumstances. OMB has made clear that its policy is not to be used to shift work to in-house performance. OMB will require agencies to provide a full accounting of all costs appropriately attributed to work performed in house, to be

compared with the costs of work contracted directly to the private sector or performed at GPO.

The Council recognizes that agencies may seek to acquire printing services through the use of indefinite quantity contracts, including through GSA's MAS, where opportunities to receive agency orders for work are limited to pre-qualified contract holders (as opposed to the printing marketplace at large). To increase opportunities for marketplace participation (including by small businesses), the rule would limit the length of indefinite quantity contracts for printing to one year. This limitation would not apply to MAS contracts, which already permit new participants through continuous open seasons. However, the FAR would require that all MAS printing contractors be given an opportunity to compete to fill agency orders over \$2,500. In addition, blanket purchase agreements (used for repetitive MAS purchases) would be limited to not more than one year in length.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments on the impact of the proposed FAR revision on small entities. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2002-011) in correspondence. In addition, the Council will consider

comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 8, and 52

Government procurement.

Dated:

DAVID A. DRABKIN,
Deputy Associate Administrator
for Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 6, 8, and 52 as set forth below:

1. The authority citation for 48 CFR parts 6, 8, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

6.302-5 [Amended]

2. Amend section 6.302-5 in paragraph (b) by removing paragraph (b)(3) and redesignating paragraphs (b)(4), (b)(5), and (b)(6) as paragraphs (b)(3), (b)(4), and (b)(5), respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.003 [Amended]

3. Amend section 8.003 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

4. Revise subpart 8.8 to read as follows:

Subpart 8.8—Acquisition of Printing and Related Supplies

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

8.801 Policy.

(a) Agencies are not required to satisfy requirements for Government printing and related supplies from or through

an exclusive source. Agencies may address needs for Government printing and related supplies by—

(1) Contracting with a private source;

(2) Using the Government Printing Office (GPO), in accordance with the requirements of subsection (c); or

(3) Relying on in-house or other executive branch printing operations, but only where such executive branch operations demonstrate, based upon a full account of all costs and through public-private competition (unless an exception to competition applies), that they offer the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

(b) (1) Except as provided in paragraph (2), agencies shall make awards for Government printing in accordance with applicable parts of the FAR, including Parts 5, 6, 10, 12, 13, 14, 15, 17 and 19 and Subpart 8.4.

(2) (i) Synopsis and response time. Synopsizing requirements and response times currently applicable to acquisitions over \$25,000 but less than the simplified acquisition threshold (see 5.101(a) (1) and subpart 5.2) shall also apply to acquisitions for printing over \$2,500.

(ii) Use of Federal Supply Schedules. (A) Notwithstanding 8.404(b) (2) and (3), all schedule contractors participating on the schedule for printing shall

be given notice using the General Services Administration's electronic quote system, "e-Buy" (www.gsaAdvantage.gov) and an opportunity to compete for any order over \$2,500.

Ordering offices shall ensure that—

(1) e-Buy notices are forwarded to the GPE for publication; and

(2) the forwarded notice is identified on the GPE as being provided for informational purposes only.

(B) Any blanket purchase agreement entered into pursuant to FAR 8.404(b)(4) shall not exceed one year in length.

(iii) Use of indefinite-quantity contracts (other than the Federal Supply Schedules) and requirements contracts.

(A) Contracting officers shall ensure that—

(1) a notice is forwarded to the GPE for publication before an order for printing is placed under either an indefinite-quantity contract or a requirements contract; and

(2) the forwarded notice is identified on the GPE as being provided for informational purposes only.

(B) Notwithstanding any other FAR provision, indefinite-quantity and requirements contracts (see 16.5) for printing shall not exceed 1 year in length.

(c) Until January 1, 2004, agencies may use the services of the GPO without conducting a competition. However, agencies shall not obtain printing services from GPO after January 1, 2004 unless GPO demonstrates through public-

private competition (unless an exception to competition applies) that it offers the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

(d) For each Government publication to be printed, the agency shall ensure a copy of the publication is provided to the GPO's Superintendent of Documents for distribution to the Federal Depository Libraries and any other official use as may be necessary for the GPO to carry out its responsibilities. When transmitting the publication, the agency shall state that the copy is being provided so that GPO may produce however many copies the Superintendent of Documents has determined are necessary for distribution to the Federal Depository Libraries. Transmission to the Superintendent shall be made using electronic means unless such means are unavailable.

(e) Whenever feasible, the agency should consult with the GPO's Public Printer before issuing a solicitation for a printing acquisition to determine the number of copies of a Government publication the GPO may wish to obtain and the agency shall take reasonable and appropriate steps to assist GPO if GPO wishes to purchase copies from a private contractor employed by the agency.

8.802 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.208-XX, Purchases by GPO, in all solicitations and contracts for Government printing of a Government publication where the GPO timely advises the agency before issuance of the solicitation that it will seek to make purchases under the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.208-XX to read as follows:

52.208-XX Purchases by GPO.

As prescribed in 8.802, insert the following clause:

Purchases by GPO (Date)

As specified in the contract, the contractor, on written request from the Public Printer of the Government Printing Office (GPO), shall furnish up to [INSERT number] of the following publications [INSERT DESCRIPTION] to the GPO. Invoices for such purchases shall be submitted to the GPO's Public Printer. Payment will be made directly by the Public Printer.

(End of clause)

[BILLING CODE 6820-EP]