

schedule. Orders shall include the following information in addition to any information required by the schedule:

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10. Revise sections 8.405-3 and 8.405-4, 8.405-5, and 8.405-6 and their section headings to read as follows:

**8.405-3 Inspection and acceptance.**

(a) *Supplies.* (1) Consignees shall inspect supplies at destination except when—

(i) The schedule indicates that mandatory source inspection is required by the schedule contracting agency; or

(ii) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of the supplies, or the past performance of the supplier).

(2) When the schedule contracting agency performs the inspection, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(3) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(4) Unless otherwise provided in the schedule, acceptance is conclusive, except as regards for latent defects, fraud, or gross mistakes as that amount to fraud.

(b) *Services.* (1) The ordering office has the right to inspect and test all services called for by the order, to the extent practicable, at all times and places during the period of the order. The ordering office shall perform inspections and tests as specified in the quality assurance surveillance plan in a manner that will not unduly delay the work.

(2) If the ordering office performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in order price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

**8.405-4 Remedies for inadequate performance.**

(a) If the contractor fails to perform an order, the ordering office may terminate for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate).

(b) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering office may require the contractor to correct the defect by reperformance, at no increase in order price.

(c) If reperformance will not correct the defects or is not possible, the ordering office may require the contractor to ensure that future performance conforms to order requirements and may reduce the order price to reflect its reduced value.

(d) If the contractor does not promptly perform or does not take action to ensure conformity for future performance, the ordering office may terminate the order for cause. Ordering offices shall follow the procedures at 8.405-5 when terminating an order for cause.

**8.405-5 Termination for cause.**

(a) An ordering agency contracting officer may terminate individual orders for cause. Terminations for cause shall comply with FAR 12.403. (b)(1) The schedule contracting office shall be notified of all cases where an ordering agency contracting officer has terminated an individual order by a Federal Supply Schedule contractor for cause or if fraud is suspected.

(2) If the contractor claims that the failure was excusable, the ordering agency contracting officer shall consider the question of the failure to be a contract dispute (*see* 8.405-7). If the contractor does not claim that the failure was excusable, the ordering office may charge the terminated contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as low a price as reasonable considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of \_\_\_\_\_ [insert contractor's name] under Order \_\_\_\_\_ [insert number] under Contract \_\_\_\_\_ [insert number].

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering agency contracting officer is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the repurchase contractor.

(i) The notice shall include the following information about the terminated order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) The notice shall also include the following information about the repurchase contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(c) Only the schedule contracting officer may terminate for cause any or all supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any items covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor unless terminated for the convenience of the Government by the ordering agency contracting officer.

**8.405-6 Termination for the Government's convenience.**

(a) Ordering agency contracting officer may terminate individual orders for the convenience of the Government. Terminations for convenience shall comply with FAR 12.403.

(b) Only the schedule contracting officer may terminate any or all supplies or services covered by the schedule contract for the convenience of the Government.

(c) Before terminating orders for convenience, the ordering agency contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

**8.405-7 [Amended]**

11. Amend section 8.405-7 by removing from the introductory text of paragraph (a)(1) and paragraphs (a)(2) and (b) the word "office" and adding "agency" in its place.

**PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING**

12. Revise section 38.000 to read as follows:

**38.000 Scope of part.**

This part prescribes policies and procedures for contracting for supplies