

Defined terms and conditions. Under proposed GSAR clause 552.238–79, which would be incorporated into covered schedule contracts of participating contractors, a new contract would be formed when the schedule contractor accepted an order from a State or locality. However, with certain exceptions provided in this rule, terms and conditions of the underlying schedule contract would be incorporated by reference into the new contract between the State or locality and the contractor. Buyers would not be permitted to place additional requirements on schedule contractors.

With respect to payment, proposed GSAR clause 552.232–81 would provide that the terms and conditions of a State's prompt payment law apply to orders placed by eligible non-federal ordering activities. If the ordering activity is not otherwise subject to a State prompt payment law, the activity would be covered by the Federal Prompt Payment Act, 31 U.S.C. 3901, *et seq.*, as implemented in the FAR (*see* subpart 32.9), in the same manner as Federal ordering activities.

The Federal government would not be liable for the performance or nonperformance of contracts established under the authority of this rule between schedule contractors and eligible non-federal entities. Disputes that could not be resolved by the parties to the new contract could be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable and appropriate.

The prices of supplies and services available on schedule contracts include an administrative fee. The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee is periodically adjusted as necessary to recover the cost of operating the program.

Interested parties are encouraged to attend a public meeting that will be held on February 4, 2003, to discuss the contents of the proposed GSAR rule and other ideas regarding the implementation of section 211. GSA is developing a training plan to help acclimate parties with cooperative purchasing. Additional non-regulatory guidance will also be developed as necessary.

Finally, GSA intends to track the level of cooperative purchasing, including participation by small business schedule contractors. It will also monitor the effect of cooperative purchasing on Federal purchasing, including any changes in access for Federal customers and the impact on

GSA's ability to negotiate favorable pricing and terms and conditions.

As required by section 211(c) of the E-Government Act, a report will be submitted to Congress by December 31, 2004, on the implementation and effects of cooperative purchasing.

The following statutes and Executive orders do not apply to this rulemaking: Unfunded Mandates Reform Act of 1995; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; and Executive Order 13132, Federalism.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not 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.

C. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the IRFA are available from the Regulatory Secretariat. GSA will consider comments from small entities concerning the affected GSAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (GSAR 2002–G505), in correspondence. The IRFA indicates that the proposed rule will affect large and small entities including small businesses that are awarded Schedule 70 contracts under the GSA Federal supply schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts. The analysis is as follows:

Initial Regulatory Flexibility Analysis GSAR Case 2002–G505

Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Governments Through Federal Supply Schedules

Implementation of Section 211, Authorization for Acquisition of Information Technology by States and Local Governments through Federal Supply Schedules

This Initial Regulatory Flexibility Analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. Description of the reasons why action by the agency is being considered.

To implement section 211, Authorization for Acquisition of Information Technology By States and Local Governments Through

Federal Supply Schedules, of the E-Government Act of 2002 (Pub. L. 107–347). Section 211 amends section 502 of title 40, United States Code, to authorize the Administrator to provide for use by State or local governments of Federal Supply Schedules of the General Services Administration for automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed rule will implement section 211 of the E-Government Act of 2002 with the objective of opening the Federal supply schedule 70 for use by other governmental entities to enhance intergovernmental cooperation. 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 IT products and services.

3. Description of, and where feasible, estimate of the number of small entities to which the proposed rule will apply.

The proposed rule will affect large and small entities including small businesses, that are awarded Schedule 70 contracts under the GSA Federal supply schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under Schedule 70 contracts. Approximately sixty-eight percent (2,300) of GSA Schedule 70 contractors are small businesses. All of those small business Schedule 70 contractors will be allowed, at the schedule contractor's option, to accept orders from State and local governments. Obviously, the expanded authority to order from Schedule 70 contracts could increase the sales of small business schedule contractors. It is difficult to identify the number of non-schedule small businesses that currently sell directly to State and local governments. The ability of governmental entities to use Schedule 70 may affect the competitive marketplace in which those small businesses operate. State and local government agencies could realize lower prices on some products and services, less administrative burden and shortened procurement lead times. The rule does not affect or waive State or local government preference programs. Finally, small governmental jurisdictions will also be affected. The 50 states, 3139 counties, 19,365 incorporated municipalities, 30,386 minor subdivisions, 3,200 public housing authorities, 14,178 school districts, 1,625 public educational institutions of higher learning, and 550 Indian tribal governments would be among those affected if they chose to order from Schedule 70 contracts. Federal supply schedule contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small governmental entities to order from Schedule 70 holds out the potential for significant cost savings for those organizations.

4. Description of projected reporting, recordkeeping, and other compliance