

New York State Office Of General Services
Procurement Services Group
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://www.ogs.state.ny.us>

PURCHASING MEMORANDUM

GENERAL INFORMATION BULLETIN - GSA SCHEDULE 70

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PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES

Donald Greene

Assistant Director

(518) 474-3418

don.greene@ogs.state.ny.us

OTHER AUTHORIZED USERS

Customer Services

(518) 474-6717

customer.services@ogs.state.ny.us

SUBJECT: GSA Schedule 70 IT Products and Services Update

TO ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

BACKGROUND:

The Federal Government recently issued a rule allowing State and local governments to utilize Schedule 70 (IT Products IT Services) GSA contracts. There are significant issues, enumerated below, that relate to New York State's ability to take advantage of these Federal GSA contracts.

ISSUES:

There are a number of legal and practical obstacles to using the GSA contracts directly at this time. Some of the more significant hurdles include:

1. Reciprocal Legislation Required:

Most states, including New York, are not yet able to take full advantage of the Federal GSA program because the states do not yet have reciprocal legislation allowing purchase orders to be issued directly against Federal contracts. For example, in NYS, State Finance Law (SFL) §163 allows OGS to issue statewide contracts for use by state agencies and local governments and General Municipal Law §103 permits local governments to take advantage of contracts issued under SFL §163. While direct orders to GSA Schedule 70's is not possible, New York is more fortunate than many states because of the "piggyback" legislation in §163.10.e & f detailed below.

2. Industrial Funding Fee:

GSA contracts currently contain a 1% fee added to the price of the contract. When OGS issues piggyback agreements under §163.10.e&f, in most instances the fee is netted out of the price. Permitting agencies to purchase directly from GSA schedules will add 1% cost to the State of New York, which across many agencies would prove to be a financial burden.

3. Optional Vendor Delivery and Fulfillment:

Under the GSA program, vendors have the sole option to accept, fill and deliver the product from a purchase order made by a state or local government agency. The contractors also have the option not to accept orders. Again, under OGS piggyback contracts, contractors are required to fill all orders and therefore does not have the option to allow one entity but not another to buy. Any future adoption of the GSA Schedule 70 program would need to resolve this significant issue.

4. Term and Conditions:

While the GSA Schedule 70 program does permit states to add their legal terms and conditions to the GSA contracts, it is at the discretion of the contractor, and does not permit the addition of terms or conditions that conflict with the GSA contract. Typically piggyback agreements do have additional terms that better protect New York State. For example, in the area of hardware and software, OGS typically adds terms such as "Acceptance." In New York, acceptance is defined as 30 days after delivery while in GSA contracts, acceptance is typically defined as "upon delivery".

OPTIONS AVAILABLE TO YOU:

There is a strong likelihood you will, if you have not already, receive calls and other types of correspondence from Schedule 70 contract holders indicating you can now buy from their contracts. Although the option for direct purchase orders against Schedule 70's is not available, we do want to remind you that Sections 163 10.e&f continue to govern use of other public entity contracts. Following are the referenced excerpts:

e. The commissioner may authorize purchases required by state agencies or other authorized purchasers by letting a contract pursuant to a written agreement, or by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states.

f. The commissioner is authorized to let centralized contracts, in accordance with the procedures of this section, for joint purchasing by New York State and any department, agency or instrumentality of the United States government and/or any state including the political subdivisions thereof; provided however that any entity incurring a liability under such contract shall be responsible for discharging said liability.

If you have questions regarding piggybacking in general or the specific applicability to GSA Schedule 70's, please contact the person listed above.