



Section 876 and Cooperative Purchasing

Professor Christopher R. Yukins
Presentation on GSA's Advance
Notice of Proposed Rulemaking
(ANPR)

October 20, 2020



Section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232)

If an executive agency issues a **solicitation for one or more contracts for services to be acquired on an hourly rate basis . . .** and the executive agency **intends to make a contract award to each qualifying offeror** and the contract or contracts will **feature individually competed task or delivery orders based on hourly rates--**

“(A) the contracting officer for contract award; and **need not consider price as an evaluation factor**

“(B) if . . . price is not considered as an evaluation factor for contract award, **cost or price to the Federal Government shall be considered in conjunction with the issuance . . . any task or delivery order** under any contract resulting from the solicitation.

Practical Effect, per GSA ANPR

“Not having to demonstrate price reasonableness for hourly rates at the Schedule contract level should **reduce costs for offerors to enter into the FSS program.** Not having to track sales under the price reduction clause should reduce the administrative cost of contract compliance. Not having to justify price changes under the economic price adjustments clause should reduce costs of administrative compliance.”

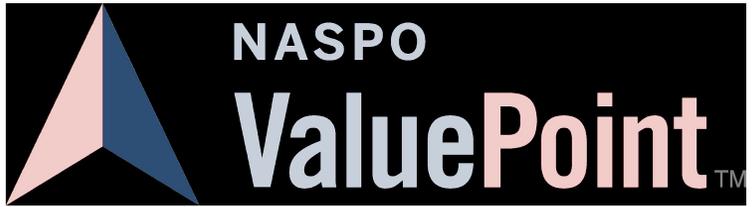
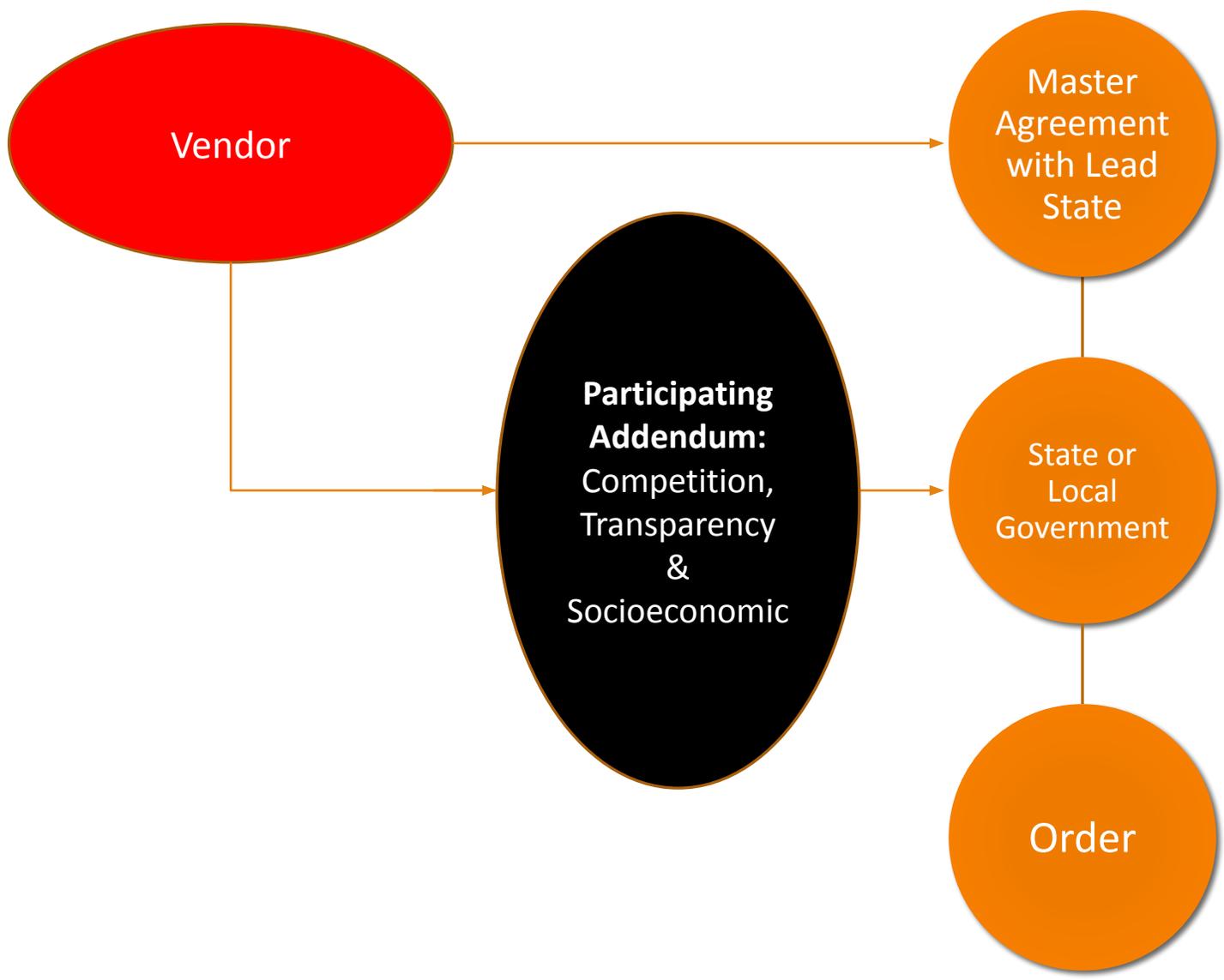
Additional Benefits of No-Price Master Contracts

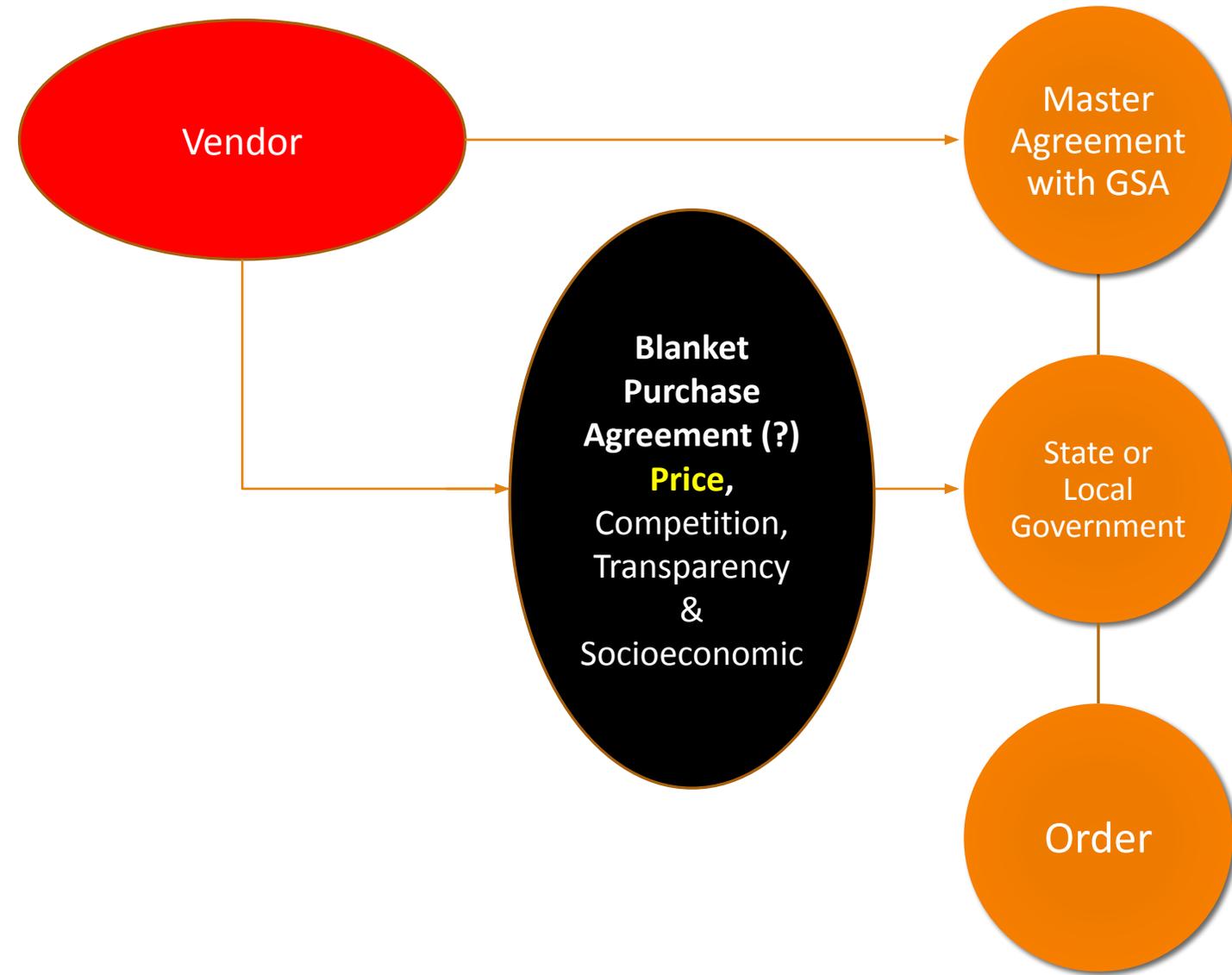
- Reduced costs and legal exposure from most-favored-customer pricing make it easier for small businesses to participate
- Eliminating most-favored-customer pricing eliminates false “buoying” of prices
- Adaptable pricing may reduce small business resistance to cooperative purchasing by state and local governments through the GSA Multiple Award Schedule

GSA Cooperative Purchasing

The Cooperative Purchasing Program allows state, local, and tribal governments to purchase **IT, security, and law enforcement products and services** offered through specific Schedule contracts







Potential
Structure

Conclusion

CHRISTOPHER YUKINS

CYUKINS@LAW.GWU.EDU