

Summary Minutes of the
U.S. General Services Administration
Multiple Award Schedule Advisory Panel
Public Meeting
May 5, 2008

Committee Members: See Attachment A

Committee Members Present: Elliott Branch, Judith Nelson, Alan Chotvkin, David Drabkin, Thedlus Thompson, Larry Allen, Deborah Sonderman, Glenn Perry, Don Erickson, Jacqueline Jones, Thomas Sharpe, Jr., and April Stephenson

Date & Time: May 5, 2008, 10:00am – 4:30pm

GSA Staff: Pat Brooks, Designated Federal Official

Presenters: David Bibb, Acting Administrator, GSA
Robin Bourne- Federal Acquisition Service
Christopher Pockney- Ernst & Young
Christopher Yukin- George Washington University
Law School
Linda Rodden, Director of GSA Compliance,
Fedlink
Steve Charles, President, Immix Group
Kevin Adams, Computer Discount Warehouse
Direct, LLC

Meeting Summary: This was the initial meeting of Multiple Award Schedule (MAS) Advisory Panel. Consistencies in application across the MAS program, transparency, do no harm, and actionable recommendations were recurring points made thorough the session.

Opening of Public Meeting:

Pat Brooks, Designated Federal Official (DFO) for the MAS Advisory Panel opened the meeting.

Ms Brooks made administrative announcements and outlined the process and procedures for the meetings. The Panel was established in accordance with the provision of the Federal Advisory Committee Act; therefore, public participation in meetings, public input

to the deliberation process, and meeting deliberations, etc. will comply with those provisions.

Mr. David Bibb, Acting Administrator of GSA, thanked the Panel members for committing their time and expertise to this initiative. He stated that the Schedules program is a GSA success story and in many ways the backbone of GSA's contracting vehicles. Through the Schedules program GSA negotiates fair and reasonable prices for client agencies on items they need to fulfill their missions. He also stated several goals for the Panel:

- (1) provide independent advice and recommendations to GSA on pricing and price reduction provisions of the MAS Program;
- (2) determine whether changes to the policies and provisions are required or advisable; and
- (3) provide a balanced assessment.

Mr. Bibb's comments are at Attachment B

After the introduction of the Panel Chairman, Mr. Elliot^t Branch, the Panel members were asked to introduce themselves and give their thoughts on what the success of the panel would look like. The statements by the Panel members include, but not limited to:

- Panel recommendations should result in the most competitive prices for the taxpayer;
- Panel recommendations must also strike a balance for the contractor, that is provide a fair return to their stakeholders and owners;
- Ensure that the Panel process is transparent;
- Provide clarity in pricing policies for both products and services;
- Ensure that the deliberations will also include data analysis which should also help to get to the root cause of issues;
- Provide consistent pricing policies and consistent application of those policies across the schedules program for evaluating and awarding contracts;
- Develop actionable recommendations that will keep the Schedules program at the forefront of the Government's commercial item and service acquisition scheme;
- Ensure that recommendations are consistent with the schedules statutory authority which is to provide contracts and orders that result in the lowest overall cost alternative; and
- Do no harm to the government users of the schedules program, the contracting community, the taxpayer and to the principles of competition and fair and reasonable pricing.

Mr. Robin Bourne, Director, Policy Implementation Branch, Federal Acquisition Service provided a history and evolution of the MAS Program. Key points from this historical perspective are: (a) GSA has statutory authority to provide supplies and non-personal services for use of executive agencies in the proper discharge of their responsibilities; (b) "competitive procedures" as defined by the Competition in Contracting Act includes MAS program awards; (c) the current price reduction provision were implemented in

October 1994;(d) the MAS program has expanded from nationwide to world wide; (e) Evergreen contracting expanded contract period of performance to a 5 year base period and three 5 year option periods, thus providing for longer period of uninterrupted service and reduction of contract administration costs for the contractor. Mr. Bourne's presentation is at Attachment C.

Christopher Pockney, Director of Government Contracts, Ernst & Young suggested that the panel review the price reduction clause and pricing policy in the context of established government pricing policies, particularly , the Truth in Negotiations Act (TINA). The underlying premise of TINA is that competition is the most effective way to control prices. The Schedules are competitive as evident by the number of contractors on each schedule. Given that the Schedules are competitive, Mr. Pockney questions why GSA applies price adjustments retroactive to competitive orders.

Mr. Pockney further suggested that the panel review whether the price reduction provisions are redundant in those instances where certain schedules or Special Item Numbers (SINs) have a large number of vendors.

The schedules are moving away from commodity procurements to bundled services and solutions, particularly for IT solutions. When there is bundled pricing, Mr. Pockney stated that it is almost impossible to apply the price reduction clause.

Mr. Pockney also suggested that the panel look at the pricing on reseller contracts. These type contracts are priced based upon a negotiated mark up from the estimated acquisition cost. The further states that auditors try and apply pricing on the basis of a retroactive look at actual cost of an order.

During questions from the Panel, Mr. Pockney stated that in the commercial market place, price reductions are offered every day. The problem on the government side is the requirement to keep track of potentially thousands of individual line items on GSA schedules, keeping track of the thousands of customers, and tracking those individual sales and discounts. This requires a huge IT or manual effort on the part of the contractor. Government auditors look at the beginning of the contract and identify individual transactions that they suggest were not reported but would have resulted in a price reduction had they been properly reported. Mr. Pockney's presentation is at Attachment D.

Christopher Yukins, co-director of the Government Procurement Law Program, George Washington University, compared the GSA schedules program to various aspects of a European procurement program. Mr. Yukins discussed the three models of IDIQ contracts which are the same as those under the United Nations Commission on International Trade Law. In the first model there is a fixed term and the basis of subsequent awards are determined in the initial award. In the second model, there are a limited number of awardees with mini competitions which are similar to IDIQ contracts under FAR Part 16; and the third model, the mini competitions are similar to the GSA Schedules program.

The price reduction clause has several effects: (1) it is very cumbersome and expensive; (2) it subject contractors to extensive audits that may result in driving contractors away from the schedules program; and (3) discourages discounts in the private sector. Mr. Yukins further recommended that GSA increase transparency in competitions for schedule holders through mandatory use of eBuy to publicize task and delivery orders and also publicized in FED BIZ OP in order to ensure promote competition rather than a favorite contractor. Transparency, competition, and accountability are critical for GSA to survive. Mr. Yukin's presentation is at Attachment E.

The Chairman then opened the meeting for comments from members of the public who had not pre-registered in accordance with the Federal Register notice. The following public comments were received:

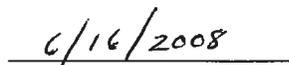
Linda Rodden, Director of GSA Compliance, Fedlink- Ms Rodden suggested that the Panel look at whether price reduction and most favored customer should apply at the catalog price level or at the task order level particularly in the services area. Tying the price reduction clause and most favored customer to a labor hour rate does not necessarily provide the intended results. Moreover, this reduces industry flexibility to propose the right person to do the job and the best solution vs. having to propose a skill area so as not to invoke the price reduction provisions.

Steve Charles, President of Immix Group- First, Mr. Charles expressed his concern that in GSA's attempt to get consistency across the schedules program, GSA might lose the fact that there is a difference from industry to industry, company to company, and products vs. services. The schedules program was premised on reflecting the contractor's commercial practices and not driving its pricing. Second, in response to questions from the panel, Mr. Charles stated that the unique terms and conditions of the government, such as ENERGY STAR, is an example where the Schedules program differs from and does not reflect commercial practices.

Kevin Adams, Computer Discount Warehouse Direct, LLC- Mr. Adams compared the signing of the contract in the commercial market with that of the schedules program. He stated in the commercial market when the contract is signed, the revenue starts to flow. In the Schedules program, his expenses flow due to the need for marketing and additional sales staff to develop relationships in the government market place. Additionally every government unique requirements adds a cost for his firm. Mr. Adams also stated that his firm is limiting the products and services being put on the GSA schedule in order to preclude contract audits.

Public attendees are at **Attachment F**.


Elliott Branch
Chairman, MAS Advisory Panel


Date