

Summary Minutes of the U.S. General Service Administration
Multiple Award Schedules Advisory Panel
Public Meeting, July 21, 2008

Committee Members: See Attachment A

Committee Members Present: Elliott Branch, Judith Nelson, Alan Chvotkin,
David Drabkin, Larry Allen,
Debra Sonderman, Glenn Perry, Thomas Essig,
Thomas Sharpe, Jr., Jan Frye, Don Erickson
April Stephenson, and Lesa Scott.

Date and Time: July 21, 2008, 9:00am to 4:45pm

Location: AIA
1725 New York Avenue
Washington, D.C. 20405

GSA Staff: Pat Brooks, Designated Federal Official

Presenters: Bill Woods, Director
Acquisition & Sourcing Management Team
Government Accountability Office
Jonathan King, Government Accountability Office
Jim Fuquay, Government Accountability Office
Roger Waldron, Mayer & Brown LLP
David Cotton, Chairman
Cotton & Company LLP
Andy Patchan, Assistant Inspector General for
Auditing, U.S. General Services Administration

Meeting summary: Several government and industry stakeholders presented their views on what should be the roles and responsibilities of the schedules program contracting officer vs. the roles and responsibilities of the ordering agency contracting officers.

The GAO team presented its findings and observations based upon previous reviews and assessments of the Multiple Award Schedule (MAS) Program. Bill Woods stated that there is a large dollar volume of procurements that are awarded through the MAS program. The dollar volume has increased significantly over the past ten years. However, the lines of responsibility as to who does what and when have not been particularly clear. Given this environment, GAO has deemed the MAS program as a high risk area since FY2005. Other contributing factors for this high risk assessment is the rapid growth in the use of interagency contracting, increased demands on the acquisition workforce, and fee for service agreements may lead to more emphasis on meeting customer demands and less emphasis on the proper use of these vehicles.

From Jim Fuquay's perspective, there is also an inherent tension between GSA and the vendors. While vendors desire to get on schedule very quickly, GSA must conduct due diligence and utilize tools such as the price reduction clause to protect its customers when negotiating five year contracts. Additionally, findings from one previous study were that pre-award audits had declined, guidance on the use of post awards audits was unclear, and the GSA Acquisition Quality Measurement and Improvement Program has not been emphasized. In spite of the concerns cited above, Mr. Fuquay stated that the price reduction clause does give the government some protection given that contracts are for over a 5 year period and bid protests do not indicate that pricing is a continuing issue.

Some of the issues that Mr. Fuquay suggested that the Panel consider are:

- Whether GSA has the knowledge, performance measures and/or metrics-to determine how federal buyers are using the MAS program contracts
- How schedule prices paid for the same goods or services compare across federal agencies, compare across GWACS and MACs, and compare with other enterprise-wide contracting vehicles
- Whether the pricing tools and performance measures for other contracting vehicles such as GWACS could be used to better ensure reasonable prices.

Jonathan Kang discussed GAO findings related to bid protests-

- BID Protest- approximately 1400 in FY07; not many filed on low dollar value procurements because of the costs of the protest; 100 day time period for resolution of the protest; three benefits of protest (1) fairness of competition(2) preserve the integrity (3) promote competition
- Few protests on the price reduction clause or the Most Favored Customer (MFC)
- 1990 was last time GAO had protest on the price reduction clause
- Most of the protests have been in the area of scope of the schedule

During question and answer session, the GAO team stated that the number of audits per year had declined due to GAO resource issues. There is documented savings of \$3B in those instances where audits were conducted. Contracting personnel who awards MAS contracts do not have a strategic view. Their objective appears to be to get the work done as quickly as possible and the staff did not use the tools available. Furthermore, getting on the schedule is not a competition process; the competition is at the task order level

The GAO presentation is at [Attachment B](#)

Roger Waldron stated that the price reduction clause and MFC are no longer relevant. Mr. Waldron addressed three areas, services, GSA tools, and procedures, which he believes are inherent to the Panel's review.

He stated that initially services accounted for one third of the Schedules program sales. In recent years buys for services has significantly increased; therefore, there is an overall shift in what the government buys.

The tools GSA has implemented such as GSA Advantage and eBuy provides transparency to both the government and industry and the tools have also enhanced competition. DoD is a big user of eBuy.

Procedures, such as Section 803 of the FY2002 National Defense Authorization Act, that apply to DoD and requires DoD to provide fair notice to as many vendors as reasonable to assure that at least 3 offers are received for task orders expected to exceed \$100K. There is a FAR case to have Section 803 apply across the government. The SARA panel also recommended that civilian agencies follow Section 803 procedures.

During the question and answer period, Mr. Waldron stated:

- GSA's role is to establish a federal commercial market place (framework) for products and services. This means GSA negotiates the schedule contracts; provides appropriate tools; provides contract administration support; and provides consulting services to the agencies.
- GSA should provide a central office, single voice, for customers to come to for assistance.
- There are too many schedules.
- The price reduction clause should be eliminated for products and services. Competition provides the protection that the government seeks through the price reduction clause. Competition is at the order level so not certain that prices at schedule level adds value; however setting prices on GSA advantage does provide framework for competition.
- Recommended that vendors should be allowed to post their prices at their discretion without the contracting officer's determination of price reasonable. Price reasonable can be addressed at the task order level.
- There should be a collaborative effort between GSA and its customer agencies to determine a method to provide transparency on pricing at the task order level.

David Cotton stated that he considers his firm a Schedules program success story. The firm was one of the initial awardees on the Financial and Business Solutions Schedule. Mr. Cotton had six recommendations, primarily in the services area, for the Panel:

- (1) Revise FAR 8.4 regarding price reasonableness- clarify that Schedule price rates are not the only variable for price reasonableness. The contracting officer should consider 3 variables for services (a) labor rates; (b) quality; and (c) level of effort.
- (2) Make buying agencies the sole focal point for competition, increase the competition required, and optimize the levels of competition required- all government agencies should be required to optimize competition. Tools such as eBuy and GSA Advantage are already available to facilitate this.
- (3) Eliminate the MFC and price reduction- the current clauses were written for product buys and not for professional services. If agencies are required to maximize competition, there is no need for the price reduction clause. The government can and should rely on market forces to assure it receives the best price for any procurement at any point in time.
- (4) GSA should establish standard labor categories under each services schedule so that buying agencies can make meaningful price comparisons- presently price comparisons are meaningless because of the differences in the definition of the labor categories. Currently, the highest price for a labor category may be 400% higher than the lowest price for that same labor category.
- (5) GSA role in the government procurement process should be defined as being (and restricted to) that of providing the marketplace where willing buyers and willing sellers come together- Since the GSA schedule contracting offices does not actually buy anything, their role should be managing the shopping mall by providing vendors access and rights to sell at the mall and not the pricing police.
- (6) If GSA decides to retain the MFC or price reduction clauses, GSA should take steps to assure that these clauses are interpreted consistently- application across the agency.

Mr. Cotton's presentation is at [Attachment C](#)

Andy Patchan presented an overview of the MAS program, results of preaward MAS reviews, and most favored clause and price reduction clause issues.

The 1949 Act that established GSA also provided that GSA is the centralized procurement buyer for the federal government. The objective of MAS is to achieve MFC thereby giving the government the best price when compared to other commercial customers of similar buying habits. However, the buying purchasing power of government does not come into play at the MAS contract level. The GSA contracting officer does not leverage the government's purchasing power during negotiation of the schedule contract.

The IG conducts pre award reviews and post award reviews. The pre award reviews are conducted for new contracts or at time of option exercise. The majority of the reviews are conducted prior to the exercise of options. These reviews provide information for the contracting officer to use during negotiations. Examples of the areas the IG reviews includes the commercial sales practices (CSP) data, sales monitoring and billing systems, and labor category mapping. The IG has only an advisory role in negotiations.

Post award reviews are conducted to determine if the contractor, for instance, complied with the MAS contract; complied with pricing; passed along price reductions; and paid the appropriate industrial funding fee (IFF).

Pre award IG findings included:

- CSP is not clear, accurate & complete;
- Tracking and reporting of sales and discounts inadequate
- Employees do not possess education and experience for labor categories
- Frequency of findings for FY2007 reviews-
 - 70% CSP not accurate
 - 71% GSA not offered MFC pricing
 - 34% unreported price reductions
 - 48% proposed price reduction clause is ineffective
 - 34% vendor billing system inadequate

Contract audit results:

- Pre- award audits have resulted in cost avoidance for FY 2005 through FY 2007
- Post-award audits have resulted in cost recoveries for FY 2005 through FY 2007

Examples of MAS contract audit pricing:

- MFC not disclosed by vendor
- PRC clause negotiated by the GSA contracting officer provides very little protection to the government
- Burden is on the individual agencies to negotiate more favorable discounts at the order level
- Many services vendors have no commercial sales for their GSA schedules labor categories; there are few price reductions for services
- Current practices costs the taxpayers millions of dollars
- Resellers do not pass on their low acquisition costs to GSA nor fully grant rebates to GSA customers

The IG only reviewed 10% of MAS contracts; therefore, is very concerned about the 90% not reviewed.

During questions Mr. Patchan stated:

- The IG conducted 70 pre award reviews that cover about 10% of sales. This is 70 contracts out of 15K. About half of the contracts are for products and half are services.
- There is value in the MAS program; however there are improvements needed in the program such as GSA needs to improve its ability to get at MFC.
- The average workload for a GSA schedule contracting officer increased 3 to 4 times since 1990.
- MFC does not require profit analysis. However, since some of the services firms do not have commercial sales, then the cost build up which includes profit analysis is one way of determining price reasonableness. Also, the MFC for services has a different application if the firm does not have commercial sales.
- IG does not have the resources to do all the audits it would like to given increases in regulatory audits such as Sarbanes Oxley.
- Would like to see client agencies use MAS rather than establish their own contracts.
- The only recourse that the GSA contracting officer has when the vendor does not have adequate sales and reporting systems in place is to work with the vendor to establish a corrective action plan to bring system(s) up to date.
- Do not agree with vendors alleging it is impossible to track data. The MAS provides vendors with a one stop source to sell products across the entire federal government and the MAS provides access to large sales volumes. The tracking is a cost of doing business.

Mr. Patchan's presentation is at [Attachment D](#)

After much discussion the panel agreed that the upcoming deliberations would focus on these four questions below from the perspective of: (a) the acquisition of services; (b) the acquisition of products; (c) the acquisition of solutions which consists of for professional services and products; for this area the preponderance of the mix is also a factor; and (d) the acquisition of non-professional services such as guards, janitors, etc. The panel will discuss and make recommendations on the services area first, then go through the same analysis for products.

1. Given that the competition primarily takes place at the task order level, does a fair and reasonable price at the contract level really matter?

