

Summary Minutes of the U.S. General Service Administration
Multiple Award Schedules Advisory Panel
Public Meeting, May 22, 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, Thomas Essig, Jacqueline Jones, Thomas Sharpe, Jr., Jan Frye, April Stephenson, and Lesa Scott.

Date and Time: May 22, 2008, 9:00am to 4:45pm

Location: U.S. General Services Administration (GSA)
1800 F. Street, N.W., 1st Floor Auditorium
Washington, D.C. 20405

GSA Staff: Pat Brooks, Designated Federal Official

Presenters: Kathleen Sewell, Region 10 Management Services
Center, Federal Acquisition Service, GSA
Tiffani Harris, Center for IT Schedule
Program, Federal Acquisition Service, GSA
Mark Sims, Greater Southwest Acquisition
Center, Federal Acquisition Service, GSA
Harold Jackson, CEO, Buffalo Supply, Inc.
Tony Fuller, Partner, Government Contract
Consulting, Beers +Cutler

Meeting summary:

Contracting staff from the Federal Acquisition Service described similarities and differences in the price reduction clause currently in use at three MAS acquisition centers. Each Panel member was asked to present from their perspective problem statements that the panel should address. Based upon the resulting discussions, the panel decided on topics for upcoming meetings and discussed several options for putting forth recommendations to the GSA Administrator.

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 meeting. The Panel was established in accordance with the provision of the Federal Advisory Committee Act; therefore, public access to participate in meetings, public input to the deliberations, meeting deliberations, etc. will comply with those provisions.

Contracting professionals from three MAS acquisition centers described the policy regarding and the implementation of the price reduction clause currently in use in their respective center.

(1) Kathleen Sewell, Region 10 Management Services Center, FAS Mission Oriented Business Integrated Services (MOBIS) Schedule

Ms. Sewell is responsible for all administrative actions after award. However, she also has prior experience regarding pre-award actions. She stated that the process for MOBIS contract award and subsequent steps are:

Pre-award-

- Prior to award, the contracting officer negotiates the most favored customer (MFC), category of customer, and the discount relationship(s)
- Preaward- attempts to received equal to or better prices as compared with the basis of award (BOA)customer
- MFC pricing provides ability to gain economies of scale, take advantage of negotiations with the commercial customer
- Incorporate basis of award
 - All commercial customers
 - Or narrow to a limited number
 - Federal agencies (last resort)

Post award-

The price reduction clause is triggered when there is a change to the discount relationship between the contractor and the BOA customer. Post award triggers may result from the following actions:

- Options- contracting officer may conduct an informal analysis of the contractor prices; contractor may also be required to submit a new commercial sales practice chart (CSP)
- Recertification of size standard
- Submit another commercial sales practices; this will identify if there is a new MFC
- Adding new products will also require a new SIN or add new labor categories

- Index or price list may trigger a review of the MFC
- Uploads to GSA advantage will identify if new MFC is required
- IOA visits are opportunities to determine if MFC has changed
- Audits

Enforcement of the price reduction clause-

- Based upon available facts, determine if a one time price reduction has occurred
- Negotiate with contractors regarding minor infractions and send auditors out to determine corrective action has taken place.

Ms Sewell's concluding remarks were that:

- The price reduction clause artificially inflate prices
- Contractors stay away from contracts with the price reduction clauses because it impedes their ability to extend or negotiate benefits to large volume, or long term customers without extending benefits to every other MFC
- Contractors can not use staffing, particularly when there is down time
- Contractors increase their labor rates to account for data reporting
- There are a number of firms that don't participate in MOBIS due to the need for the reporting
- Contractors are not educated on the price reduction clause; afraid that lowering prices to a federal agency on a task order will trigger price reductions

In response to questions, Ms. Sewell stated that the clause in MOBIS is GSAM 552.238-75, dated May 2004. Ms. Sewell stated that MOBIS has 1800 contractors. GSA IG auditors have not found violations of the price reduction clause in MOBIS contracts; therefore, GSA has not recovered any money in audits to date. She also stated that three to four large contractors in her region have indicated they will not participate in the MAS program due to the provisions of the clause.

Ms. Sewell further stated that she does not feel the price reduction clause adds value. The MFC is good for setting up the contract; however, competition at the task order level serves the better approach.

When questioned, Ms. Sewell did not have the data to respond to the inquiries regarding how often the government uses all commercial customers as a basis of award. She stated that the offerors provide in their proposals the basis of award customer(s) and MOBIS, to her knowledge, had no data base to collect this information for each award.

Ms Sewell stated that the ordering clause in the contract requires agencies to negotiate better prices when estimated cost of the task order exceed the MOBIS schedule maximum order threshold. However, agencies are encouraged to negotiate prices at any dollar amount.

The Panel requested the following data regarding the MOBIS contract: (1) data on how many contractors have government agencies as the basis of award customers, and (2) how many MOBIS contracts have no sales.

Ms. Sewell's presentation is at Attachment B.

(2) Tiffany Harris, Center for Information Technology Schedule Program Schedule 70- General Purpose Commercial Information Technology Equipment, Software, and Services, discussed the proposal evaluation and contract award process for her Center.

The provisions and operation of the price reduction clause is as follows:

- Schedule 70 utilize GSAM clause 538-273 Alternate 1
- The basis of award customer can be federal sales not awarded under any of the GSA schedule contracts
- All prices reductions for basis of award customers must be reported to the government
- Examples when price reductions are NOT triggered:
 - firm fixed price definite quantity contracts over the maximum order
 - errors
- Contractor can offer price reduction to government at any time
- Contractor responsibilities under the clause include tracking and reporting price reductions; updating sales and discount data; and the submission of written request for a price reduction contract modification.
- Contract file documentation to support a modification for a price reduction includes the contractor request; dated commercial price list; effective date of the price reduction; and the percentage of decrease in price (s).

In response to questions Ms. Harris stated that the Contracting Officer determines the basis of award customer by reviewing the contractor's CSP information to determine what customer(s) is most similar to the government buying.

Ms. Harris did not have the data to respond to the question as to how many price reductions the IT Center had processed over the past fiscal year.

Ms. Harris also stated that the rationale for creating the GSAM clause 538-273 Alternate 1 was due to the creation of the cooperative purchases program which allows for state and local government to buy from Schedule 70 contractors. Also for disaster recovery needs, after the presidential declaration of a national emergency, state and local governments can use Schedule 70 contractors.

Ms. Harris stated that she believes the price reduction clause has value and believes the IT Center has the resources to administer the clause.

Ms. Harris' presentation is at Attachment C

(3) Mark Simms, Greater Southwest Acquisition Center
Schedule 84- Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft, and Emergency/Disaster Response – Marine Craft and Equipment discussed the proposal evaluation and contract award process for his Center.

The provisions and operation of the price reduction clause is as follows:

- The CSP-1 identifies customers, discounts, and terms and conditions for those customers.
- MFC identification then becomes the basis for negotiations.
- MFC may offer value added services that may then make government discounts not equal to that customer.
- Price discount relationship in the final proposal revision is the basis for the contract award
- Violations may be reported by the contractor, IOA, customers, and competitors.
- Reporting of price reductions violations are rare; not sure the cause; audit findings of price reductions violations are rare.
- Violations occur more often in products
- Discounts to any MFC category of customer triggers a price reduction.
- Temporary reductions are not violations of the price reduction clause if the government is offered the same provisions; these are mostly for products
- Examples of no violations to price reduction provisions -orders over the MO; sales to federal agencies; sale to states for drug interdiction and disaster recovery; legitimate mistake.
- Federal agencies are encouraged to get deeper discounts
- Personal opinion of the price reduction clause-
 - Cons- burdensome on the contractor
 - does not allow for integrated solutions
 - Pro- protects the government position for our customers
- If government delete clause, then there must be competition at the task order level

In response to questions, Mr. Sims stated that approximately -10-15% of the 830 contracts that he has oversight for are audited. The 10-15% is relative to the small number of contracts that meet the audit threshold. Audits are conducted by GSA IG, IOAs, and regional auditors.

He believes that many contractors do not totally understand the price reduction provisions. A contracting officer probably spends an hour with the contractor to negotiate; therefore this is not adequate time for the contractor to understand all the

contract administration requirements. He also stated he estimated that less than 30% of Schedule 84 contracts are renegotiated due to price related issues. Typically, renegotiation occurs prior to the exercise of an option.

Mr. Sims was asked to provide data on how many price reductions were offered on Schedule 84.

Mr. Sims' presentation is at Attachment D

An industry perspective on the price reduction clause was presented by Harold Jackson, CEO, Buffalo Supply, Inc. Buffalo Supply, Inc. was awarded a contract by the Department of Veterans Affairs (VA) under its medical supply and equipment schedule. Mr. Jackson's comments included the following:

- Buffalo Supply, Inc. is a woman owned small business
- VA continues to ignore GSA policy; VA does not allow schedule holders to have channel partners/resellers
- VA has an anti distributor policy that contravenes GSA policy to provide best value to the taxpayer
- VA has advisory panel to review the VA IG position
- VA requires distributor & manufacturer CSP data is required
- There is need to have clear policy when manufacturer CSP data is required
- Auditors have negotiated directly with the firms or dictated prices; auditors should not be permitted to act as if they have the warrant.
- If firm cannot provide products, in some instances then there is only one other firm; therefore, this is a sole source award.

Mr. Jackson stated that he did not believe it is appropriate for the IG to override the CO decision. He views the requests of the VA IG for cost and pricing data as a form of harassment which purposely delays contract awards. He states the VA IG is requesting data on customers that are beyond those that are the basis of the award customer.

His suggested remedy in those instances when the VA IG does not agree with GSA policy is that there be established a mechanism for VA to obtain a timely interpretation of contract provisions from GSA.

Mr. Jackson stated that previously GSA had agreed with his position. However, Mr. Drabkin, GSA panel member, clarified that GSA does not support any one particular company. The GSA guidance was based upon the facts submitted.

Mr. Frye, panel representative from the VA, stated that the VA has established a working group to look at some of the issues and that it will take 6-18 months for recommendations.

Mr. Jackson's presentation is at Attachment E.

Following the presentations, the Panel discussed the upcoming meeting schedule. The proposed schedule agreed upon was:

June 16th 2008

July 21st 2008

August 18th 2008

It was also agreed that follow on questions for any of the presenters would be submitted to the DFO. The DFO is responsible for obtaining all responses and providing those responses to the panel prior to the next meeting.

Mr. Tony Fuller, Partner, Government Contract Consulting, Beers+Cutler, discussed price provisions from two perspectives, pre-award disclosures and post award performance and compliance with particular attention focused on services.

Mr. Fuller states that he does not believe that the GSA schedules model was designed for services. He believes solicitations are not designed to capture information that is relevant to the firm's size and practices. The process begins with the information submitted on the CSP. Although the CSP requests information regarding firm's standard discounts, services companies don't have standard discounting practices. Therefore, to provide the information to the government requires a detailed historical review. Consequently, there are often deviations from the CSP. In the services area, it is rare to see that there's an established pricelist that would have different discount for different categories of customers.

More of the Schedules should have instructions on cost build up to establish labor rates. This is needed in those instances where the firm is a start up or the firm has only performed work for the federal government

From the post award performance and compliance perspective, Mr. Fuller stated that the current pre-award model leads to the problems that occur during post-award. There are many firms, particularly small business, that don't understand the price reduction provisions. Broadly defined basis of award customers makes it difficult for service contractors to comply with a strict interpretation of the price reduction clause. Contractors cannot comply with the price reduction when all commercial customers are listed as the MFC. Also when the federal customer is the basis of award customer, there is a question as to whether the price reduction clause is rendered moot.

Some of Mr. Fuller's comments pertaining to the OIG were that:

- Auditors select companies with high sales volume up for contract extensions which makes sense for a risk-based audit approach
- Auditors are examining "black and white" when the policy is not set up to be reviewed from a black and white perspective.
- The purpose of the pre-award audit is to review whether disclosures were current, accurate, and complete. Many auditors are going beyond that so that pre – award audits have turn into post award audits.

In response to several questions, Mr. Fuller opined that:

- The provision in the price reduction clause that requires vendors to notify the government within 15 days after the basis of award customer receives a price reduction is too short. Most of the large businesses are huge and decentralized; therefore this is an unrealistic time frame.
- While there is a preference for fixed priced contracting under the Schedules program, there are a lot of time and materials contracts being awarded. For buying services, the Schedules program, with appropriate changes, could accommodate service contracting on an hourly rate. However, the nature of the CSP-1 form and the respective disclosures are not conducive for effective disclosures by the contractor or for the government.
- For services, the pre-award disclosures should include a description of how rates are built up. It is difficult for companies to map their internal labor categories with the labor categories on their GSA schedule. For example, eight to ten labor categories on a GSA schedule may represent in some general way fifty of the firm's 150 labor categories. So the art is to negotiate a narrow basis of award customer class that is fair and reasonable, is reflective of the contractor's business practices as a whole, but doesn't require the contractor to maintain and monitor 3000 separate employees on 793 different projects.
- Would like to see the government and industry collaborate rather than the suggestion that the government directs industry to define standard labor categories and associated rates.

Mr. Fuller's presentation is at Attachment F

For the panel deliberative session, the following areas were discussed: (I) problem statement- each panel member was asked to state from their perspective, problem statements for the panel considerations; (II) potential approaches for the development of the final report; (III) strategy for upcoming meetings;(IV) upcoming meeting dates; (V) data requirements.:

I. Panel Problem Statements

JUDITH:

- The schedules program provide products/services/total solutions but has one price reduction clause.
- There is a need to revise the requirements and mechanisms for contractor disclosure particularly for professional services.

- There are barriers to transparency at the contract level and the task order level.
- There is no reasonable approach for collecting transactional data.

APRIL:

- Do the GSA schedule prices represent fair and reasonable prices? Or is there an expectation that customers adjust the prices when awarding task/delivery orders?
- Should processes used to establish prices for goods be different than services? If yes, what processes should be changed/improved?

JACQUELINE:

- How do you maintain competitive prices at the schedules level if the price reduction clause is eliminated?
- What were the IG findings related to price reduction compliance?
- Are 20 year contracts realistic given the constantly changing commercial environment?

LARRY:

- There are schedule mechanisms/provisions that don't serve the need for anyone. The price reduction clause as currently constructed is outdated.
- The EPA clause puts a cap on the level prices can be raised. The cost of metals such as copper are driving firms to either remove items from the schedules or not put them on schedules.
- There is a need to streamline the mod process.
- There is a need for more customer outreach to increase the knowledge of GSA pricing and the role of GSA in establishing those prices.
- GSA should establish better ways to identify a legitimate schedule buyer.

DEBORAH:

- Ordering agencies do not get consistent responses from GSA staff.
- There is too much burden on industry to disclose. Therefore, there is a disincentive for industry to participate in the Schedules program. The result may be a reduction in the level of and quality of competition.

- The Schedules program is not agile enough to meet current and future challenges.

THOMAS

- FAR 804.3 is inconsistent with reality.
- Are the costs to place a schedule order worth it?
- Should other FAR language, such as FAR Part 12, be incorporated in the schedules program.

THEDLUS

- There is not a clear understanding of the permeations of the pricing clause.
- We need to better understand the needs of our different customers (ordering agency, program managers, contractor, etc)
- There is a need for a clear distinction between the provisions for services and the provisions for products.
- Contracts and orders must result in the lowest overall cost alternative.

GLENN:

- There is a need for a clear distinction between the provisions for services and the provisions for products.
- Clarify what is the GSA role and what else must the customer agency do to be able to obtain the lowest overall price.
- What are the expectations for GSA such that there is confidence in GSA's role.
- There is overlap in the labor categories across several schedules.

LESA:

- The price reduction clause is reactive rather than proactive.
- The schedules program may not reflect current commercial practices.
- Should prices be set at the contract level vs. the task order level.

TOM:

- What is the criteria for determining that the price is fair and reasonable?
- Do the schedules provide value for the services area?
- Structural concerns- (1) do we understand the economic impact of the price reduction clause?; and (2) what reliance have we created for the ordering contracting officers to rely on the prices negotiated?

DAVID:

- How should schedules be priced initially; should GSA be setting the price in the marketplace?
- Should GSA pre-negotiate quantity discounts?
- There is a need to distinguish between services, products, personal services.
- Should industry determine labor categories for services?
- How do we improve management and oversight of contract pricing?

ALLAN:

- Improve the transparency at the task order level.
- Should review process related to structure and use of the schedules.

ELLIOTT:

- There is need to change the application of a single price reduction provision for three different industries.
- Our stakeholders do not have a common understanding of what constitutes commercial prices.
- How do you distinguish between fair and reasonable vs. most favored customer?
- Is there a common expectation of schedule pricing?

II. The Panel then discussed the potential approaches for the report to the GSA Administrator:

Option 1. The report format will be as follows:

- Observations
- Recommendations
- Range of options.

Option 2 The report format will be similar to decision paper:

- Identify issue
- State facts
- Discussion
- Recommendations

III. Strategy for Upcoming meetings:

Based upon the discussion, the panel identified three topical areas for stakeholder feedback:

- Stakeholder expectations
- Roles and responsibilities
- Fair and reasonable price determinations

The one day meeting for 16 June 2008 will be lengthened to two days, June 16 &17, 2008. The subject for that meeting is stakeholder expectations. A Federal Register notice will be published to note the expanded meeting time frame and solicit comments from all stakeholders on their respective expectations. It was also recommended that the panel specifically invite GAO, IG(GSA & VA) and congressional oversight staff. Panel members were also asked to encourage their respective staffs or members to register for a presentation.

IV. Meeting Dates

- 16 June 2008- AIA, 1725 New York Avenue
- 17 June 2008 – Jury’s Washington Hotel, 1500 New Hampshire Ave, N.W.
- 21 July 2008- AIA, 1725 New York Avenue
- 18 August 2008 - AIA, 1725 New York Avenue

V. Data Requirements

- Percent/number of contracts that had not sales during the last 2 fiscal years (FY 06 and FY07)
- Percent/number of contract holders that have federal sales only
- Number of orders over the maximum order

Data and information provided in response to requests from prior meetings are at Attachment G.

Public attendees are at Attachment H

Elliott B. Branch
Elliott Branch
Chairman, MAS Advisory Panel

8/18/2008
Date