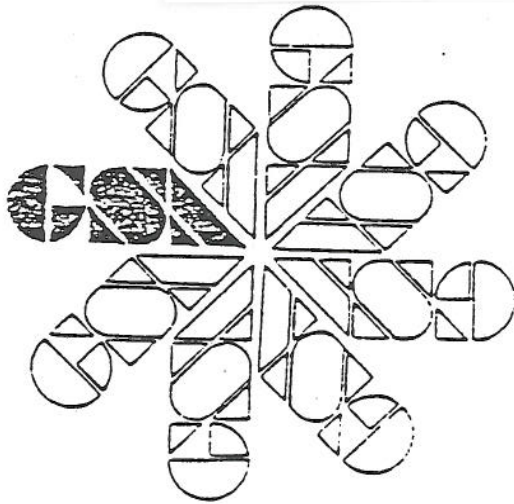


POLICY STATEMENT
ON
MULTIPLE AWARD SCHEDULE



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CONTRACT PRICING ARRANGEMENTS

I. INTRODUCTION.

This policy statement addresses issues concerning the establishment and maintenance of pricing arrangements on multiple award schedule (MAS) contracts for supplies and services. These issues are the most complex of all the issues associated with the MAS program. Continued interest by Congress, General Accounting Office, this Agency's management, and business and industry, made it apparent that a number of problems exist with respect to negotiating pricing arrangements in MAS contracts. Except where otherwise stated, this policy statement applies to the ADTS and FSS MAS contracts.

The contract pricing policies in this document are those which appear to us to require special attention. None of these policies contravene existing Federal Procurement Regulations nor do they obviate the requirements of existing regulations that are not covered in this document.

In providing supply support to our customer agencies, GSA is responsible for determining the method of support. GSA will continue to emphasize the reduction of the number of items on MAS contracts and to increase the use of competitive procurement methods in providing supply support for items currently in the MAS program. While striving toward this goal, we will continue to use the MAS program, where appropriate, to support our customer agencies.

When GSA provides supply support through the MAS program, it acts as the contracting agent for all Government organizations authorized to use the MAS contracts. Our customer agencies, when they purchase items from the schedules, should be able to buy those items at prices that are better than they could obtain from any other source under similar circumstances. In its role as the contracting agent, GSA will attempt to obtain the best pricing arrangement, i.e., discount(s) from commercial price lists, giving full consideration to the Government's large volume of purchases, in the negotiation process.

II. MAS CONTRACT PRICING ARRANGEMENTS.

The Government's goal when negotiating MAS contract pricing arrangements is to obtain a discount from a firm's established catalog or commercial price list which is equal to or greater than the discount given to that firm's most favored customer. The most favored customer (MFC) discount is equal to the best discount given by a firm to any entity with which that firm conducts business, other than the original equipment manufacturers (OEM), or participating dealers, and distributor's discount.

Consideration may be given to awarding an MAS contract where the Government's discount is not equal to or greater than a firm's MFC discount. This recognizes that there are situations where the Government's terms and conditions may be different from those given the firm's most favored customer. Offerors may cite factors that they claim make the Government different from other customers with which they do business. In these situations, it is the offeror who must provide information identifying such factors, the valuation of the factors identified and the method ~~used for~~ developing the valuation. Contracting officers shall obtain information necessary to judge whether these factors and their valuation are reasonable.

Offerors and contracting officers should understand that there is no guarantee that every offeror who submits an offer will receive a contract. In the event that the Government's negotiation objective cannot be met, the contracting officer must exercise judgment in deciding whether to reject an offer. In exercising this judgment, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs.

GSA will not award an MAS contract to a firm that does not give the Government a price equal to the best price given or available to its large volume end user customers with comparable terms and conditions except where the Government's overall volume of purchases does not warrant the best price given to end user customers.

In all MAS contracts, the contracting officer is required to make an affirmative determination that the prices offered to the Government are fair and reasonable (FPR 1-3.807-2).

III. DISCOUNT SCHEDULE AND MARKETING DATA.

All MAS solicitations will require offerors to submit information on sales, discounts and marketing practices. The required information will be used to determine whether products or services offered meet the tests of commerciality and will be used by the Government in the evaluation of the offeror's proposal and the price reasonableness determination. The offeror will certify to the completeness, accuracy and currency of the data at the conclusion of negotiations. Failure to submit the required sales, discount and marketing data will result in no award. If the data is not found to be complete, current and accurate subsequent to award, the defective pricing clause will be activated and consideration will be given to cancelling the MAS contract if still in effect.

Before a catalog price exemption to the need for submission of cost or pricing data can be granted for products or service offered on MAS solicitations, the tests of commerciality must be met. (FPR 1-3.807-1). FPR 1-3.807-2(d) references ASPM No. 1 which contains the quantified criteria (located in ASPM No. 1, Chapter 8) for these tests and shall be used as the basis for the catalog price exemption.

Offerors will be able to certify to those products or services meeting these tests of commerciality in the discount schedule and marketing data sheets. Information will only be required on a representative sample of the best selling items. Data will be required on all other items offered under the solicitation that are not certified as commercial in accordance with the aforementioned criteria. Cost or pricing data shall be required where sales of a product or service to the general public do not exceed 35 percent of total sales of that product or service; or, where the price cannot be considered "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public in accordance with FPR 1-3.807-1(b)(2)(iii).

Even though an item qualifies for an exemption from the submission of cost or pricing data, price analysis must be performed to determine the reasonableness of price and the need for further negotiations (FPR 1-3.807-1(b)(2)(iv)).

IV. OEMs AND DEALER/DISTRIBUTOR DISCOUNTS AND MARKETING DATA.

Information on OEM and dealer/distributor discount or pricing arrangements will be obtained where the same or similar product or service is offered to the Government under the MAS contract.

Where an offeror markets through dealers or distributors, the contracting officer shall require the offeror to provide sufficient information on the functions or services performed and whether these functions or services will be performed under the MAS contract.

Where an offeror sells to OEMs and claims that there is considerable difference in physical or performance characteristics of the products or services sold to OEMs and the products or services offered to the Government, the offeror must provide sufficient information to substantiate such a claim in lieu of OEM discount or pricing data. Where the contracting officer determines that the offeror's claim is not substantiated, the offeror is required to furnish OEM discount or pricing information.

The contracting officer will use the OEM and dealer/distributor data in the price analysis that result in the Government's negotiation position.

V. QUANTITY AND AGGREGATE DISCOUNTS.

In establishing negotiation objectives and in the negotiation process, emphasis will be placed on obtaining discounts based on the aggregate volume of sales for an MAS contract. Negotiation objectives will be established to obtain volume discounts in line with the discounts available to the offeror's other customers. In developing negotiation objectives based on the aggregate volume of sales, consideration may be given to taking discounts on aggregate volume of sales at the conclusion of the contract period, although it is preferred that the discounts be obtained when orders are placed.

VI. MAXIMUM ORDER LIMITATION (MOL).

All MAS contracts will contain an MOL. The level at which the MOL is established will depend upon the Government's discount arrangement under the schedule and the estimate of sales volume above which suppliers are likely to quote lower prices in other types of contracts. The contracting officer will establish the MOL level for the contract at the conclusion of negotiations.

VII. PRICE REDUCTIONS.

All MAS contracts will contain the price reductions clause contained in this document. The price reductions clause is intended to maintain the relationship that was established at the time of award between the Government and the offeror's customer or category of customer upon which the MAS contract was predicated. Any changes in pricing practices by the contractor resulting in a less advantageous relationship between the Government and the customer or category of customer upon which the MAS contracts was predicated shall result in a price reduction to the Government to the extent necessary to retain the original relationship.

The following price reductions clause will be used in all MAS contracts:

PRICE REDUCTION CLAUSE 1/

a. General. This price reductions clause is intended to ensure that throughout the term of the contract, the Government shall maintain its relative price/discount [and/or term and condition] advantage in relation to the Contractor's commercial customer(s) price/discount upon which this contract award was predicated. The customer or category of customers upon which the contract award is predicated will be identified at the conclusion of negotiations.

1/ NOTE: Language in brackets apply to ADP/Communications/Teleprocessing Solicitations/Contracts Only.

b. Pricing Reductions to Customers Other than the Federal Agencies.

(1) ~~Prior to the award of contract, the contracting officer and the offeror shall reach an agreement as to the price relationship between the Government and the offeror's identified customer or category of customers upon which the contract award is predicated.~~ This relationship shall be maintained throughout the contract period. Any change in the contractor's commercial pricing arrangement for the identified customer or category of customers which disturbs this relationship will constitute a price reduction.

(2) The contractor shall report all price reductions made during the contract period to the contracting officer along with an explanation of the conditions under which the reductions were made. Those reductions which do not disturb the Government's price position relative to the contractor's identified customer or category of customers will not be subject to the provisions of this clause. However, the information will be used in conjunction with the negotiations for the following contract period.

(3) If, after the date of the conclusion of negotiations, ~~the contractor~~ (i) reduces the prices contained in the commercial catalog, pricelist, schedule, or other documents [or grants any more favorable terms and conditions] offered by the contractor and used by the Government to establish the prices with the contract; or (ii) reduces the prices through special discounts to the identified customer or category of customers upon which the award was predicated so as to disturb the relationship of the Government to that identified customer or category of customers, a price reduction shall apply to this contract for the remainder of the contract period, or until further reduced, or, in the case of temporary price reductions, for the duration of any temporary price reduction period.

(4) This clause will not apply to contractor's firm fixed price Definite Quantity contracts with specified delivery in excess of the Maximum Order Limitation specified in the contract.

(5) The contracting officer may exempt from the application of this clause any sale at a price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the contractor immediately following the discovery of the error.

c. Price Reductions to Federal Agencies. [This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Services contracts entered into with Federal Agencies.]

Except for temporary "Government-only" price reductions described below, if, after the effective date of this contract, the contractor reduces the price of any contract item to any Federal agency and the sale falls within the contract maximum order limitation, an equivalent price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until the price is further reduced. The contractor may offer to the contracting officer a temporary "Government-only" price reduction which has a duration of 30 calendar days or more, except during the last month of the contract period when any such offer must be for the remainder of the contract period.

d. Effective Dates and Notifications. [This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Contracts entered into with Federal Agencies.]

(1) Any price reduction pursuant to b. above, shall be effective for the Government at the same time as the price reduction to the other customer. Any price reduction pursuant to c. above, shall be effective at the time of initial purchase in the Federal Agency (Government) at the reduced price, except in the case of a temporary "Government-only" price reduction which shall be effective at the time of acceptance by the contracting officer. The contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reduction Clause until such time as this contract is modified.

(2) The contractor shall notify the contracting officer in writing of any price reduction as soon as possible but not later than 10 calendar days after the effective date. Failure to give timely notice shall require that such price reduction (including temporary price reductions) apply to the contract for the duration of the contract period, or until the price is further reduced, and may constitute a basis for termination of the contract as provided in the Default Clause of the contract. 10

e. Contractor's Statement of Price Reductions. (This paragraph does not apply to Non-Schedule ADP/Communications/-Teleprocessing Contracts entered into with Federal Agencies.)

The contractor shall furnish within 10 calendar days after the end of the contract period a statement certifying either (1) that there was no applicable reduction; or (2) that any price reduction was reported to the contracting officer. For each reported price reduction, the contractor shall show the date when the contracting officer was so notified.

VIII. ECONOMIC PRICE ADJUSTMENTS.

An economic price adjustment (EPA) clause will be used in FSS MAS contracts where uncertainty exists as to the stability of market prices during the term of the contract. The contracting officer will determine whether items under the MAS contract are subject to unforeseen price fluctuations, thus warranting the use of an EPA clause. The contracting officer's determination on the use of an EPA clause will be made in the negotiation process.