APR 17 2003

GSA Office of Governmentwide Policy

MEMORANDUM FOR LAURA SMITH
DIRECTOR
ACQUISITION POLICY DIVISION

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: GSAR Case 2002-G507, Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

Attached are comments received on the subject GSAR case published at FR 68 13212; March 18, 2003.

Response Number	Date Received	Comment Date	Commenter
2002-G507-1	04/11/03	04/11/03	Joan Terry Drucker
2002-G507-2	04/16/03	04/16/03	Coalition for Government Procurement
2002-G507-3	04/16/03	04/16/03	Dan Kanouse
2002G507-4	04/16/03	04/16/03	Craig Szymanski
2002G-507-5	04/16/03	04/16/03	Thomas Walker
2002-G507-6	04/15/03	04/15/03	Marvin Staller
2002-G507-7	04/15/03	04/15/03	Judi Minke
2002-G507-8	04/15/03	04/15/03	Annette Keller Keltek
2002-G507-9	04/16/03	04/16/03	David M. Nadler
2002-G507-10	04/17/03	04/17/03	ITAA

Attachments

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2002g507-1

Sent: Friday, April 11, 2003 10:16 AM
To: 'vendor.support@vsc.gsa.gov'
Cc: Donna Rolland
Subject: GSA .25% price decrease January 1, 2004

I am writing in response to the new ruling re: change in pricing January 1, 2004 to reflect a .25% reduction on all pricing to pass along the savings to the customer.

We may elect to drop our names from this particular program for these products as the price change will require us to put in separate part numbers specifically for GSA .

Unlike the comments shown, we have NOT passed along the 1% fee to our customers. Instead we have taken a reduction in profits. The additional paperwork and monitoring on our part may cost more than it is worth for this product line if this is a requirement. Now we simply identify GSA and pull up a report.

The change could result in more than 5% in profits due to costly systems changes. Or, an increase in GSA pricing of at least 4.25% based strictly on this change and no other factors.

In order to stay in the program we ask that you take our concerns into consideration.

Joan Terry Drucker

Savage Range Systems, Inc.

Joan Terry Drucker
Vice President, General Manager

SAVAGE RANGE SYSTEMS, INC.
100 Springdale Road
Westfield, MA 01085
413-568-7001 Ext. 4114
Direct Dial: 413-642-4114
Fax: 413-562-1152
email: jdrucker@savagearms.com

2002g-507-2

COALITION FOR GOVERNMENT PROCUREMENT
1990 M STREET, NW,
SUITE 400
WASHINGTON, D.C. 20036
202-331-0975

April 16, 2003

General Services Administration
Regulatory Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, D.C 20405
ATTN: Ms. Laurie Duarte

Reference: gsarcase.2002-g507@gsa.gov

Comments by the **Coalition for Government Procurement** on the proposed rule (FR March 18, 2003) to give GSA the unilateral right to change the percentage rate of the Industrial Funding Fee in Multiple Award Contracts; and GSA's intent to modify and combine two existing clauses that implement collection of the IFF by the Federal Supply Service on sales from all Federal Supply Schedule contracts.

The Coalition is supportive of the proposal and of the procedures that the Federal Supply Service proposes to follow to reduce the IFF and assist contractors in adjusting to the new rate.

The Coalition believes it necessary to make only two comments:

Several Coalition members have brought up the subject of existing leases and leaseback arrangements as well as other contractual pricing conditions that may be in a pipeline, and which transcend the October 1, 2003 date whereas contractors are allowed to retain .25% of the 1% IFF. These contractors have expressed their concern that the rule is not explicit enough on the subject of existing leases, leasebacks and other contractual pricing conditions, and could lead to future questions and possible mis-interpretations involving proper IFF collections and remittances beginning on October 1.

The Coalition recommends that GSA maintain an open door and open mind policy with respect to all the possible ramifications, suspected or unsuspected, involving the October 1, 2003 date with respect to leases and lease backs. Because GSA has recognized that contractors will in fact incur costs in association with the reduction in the fee and has made a generous and good faith effort to help ameliorate some of those costs, contractors would urge FSS to accept the October 1 date as the date at which contractors will retain .25% without respect or regard to pricing or leasing agreements in effect.

G507-2

Closely related to this issue is whether a reduction in lease rates will be expected for current leases. Coalition members have stated to us that lease rates are set with either external or internal financing companies without regard to the level of the IFF. Rather, they are financial decisions based on economic indicators, the strength of the contract holder, and then governments contract terms. As such, Coalition members believe that lease rates should not be impacted by the reduction of the IFF.

In addition to IFF rates not being a salient factor in determining lease rates, we believe that requiring a reduction will harm contractors in respect to their relationship with external or internal financing organizations and confuse customers who will have to reconfigure their own internal systems to ensure that, over time, they are paying the correct amount.

We recommend that the final rule clarify GSA's intent on leasing matters to avoid future confusion.

In addition to concern on leasing issues, Coalition members also request clarification on how purchase orders with extended delivery periods will be treated. While there are not many instances in which this issue is a factor, the transactions in question do typically involve larger orders. To illustrate our point, we offer the following example:

> The Department of Defense places a large order for software with a schedule contractor. The task order is issued August 1, 2003. Deliveries against this single task order, though, may take place on September 1st, November 1st, and then February 1st of 2004.

It is the Coalition's belief that the IFF in place at the time the task order was originally placed will determine what IFF is paid, not the subsequent delivery dates. We believe this is GSA's position as well. Please let us know if our interpretation is incorrect and provide additional information in the final rule to guide contractors.

Lastly, because the proposed rule will give GSA the unilateral right to change the IFF after January 1, 2004, the Coalition is concerned that future changes, whether up or down, could be announced and implemented without advance or proper notice. The Coalition recommends that the final rule be explicit with respect to advance warnings, protections and considerations extended to contractors similar to those extended during this particular change.

We appreciate the opportunity to submit these comments and look forward to working with the agency on the implementation of the lower Industrial Funding Fee.

Sincerely yours,

Edward L. Allen
Executive Vice President

2002-g507-3

"Dan Kanouse"
<dkanouse@takechargeinc.com>
04/16/2003 02:23 PM

To: "'gsarcase.2002-g507@gsa.gov'" <gsarcase.2002-g507@gsa.gov>
cc:
Subject: Reference: Comments on the Proposed Rules

As a contractor under MOBIS for several years and other previous contracts over the last 25 years, I would like to ask that consideration be given to modifying the proposed rule changes. I understand that the GSA earned about $650,000,000 through the IFF and now desires to decrease that "profit" for a non-profit entity. (Typically called income over expense).

Commentary

My firm has always participated in paying the IFF since the beginning of the original ruling. We have never built into our pricing the 1% fee to clients in the federal sector because our understanding was that it was not allowed. Additionally, adding the 1% would have shown that our proposed federal rates were not in keeping with the fee differential between commercial and proposed governmental rates. It took us one full year to negotiate our contract with GSA. I would strongly recommend that GSA poll other contractors specifically under MOBIS to see whether or not the IFF fees are built nor their fee schedules.

Our contract, as well as all other such contracts under GSA MOBIS was negotiated with the expressed requirement that our commercial rates be reduced by at least 15-20% to provide a benefit to the US Government agencies. In return, the assumend benefit would be more work from Federal Agencies and marketing support from GSA MOBIS Staff.

The rule change includes a mandated reduction in our pricing schedule which further reduces our potential income. I see no benefit to contractors by this proposed rule change. If contractors do not have the IFF built into their pricing and they are asked to further reduce their fees by .25% it has the effect of a price cut to contractors and the burden of more work to do the conversions to the schedules.

Our recommendation is to reduce the IFF fee, do not ask the contractors to further reduce their fees by .25% and to allow contractors to pass along the IFF to clients. If you are going to make fee adjustments it may be time to allow contractors to include the IFF into their current contracts. Many contractors are small business with a limited number of staff and this process of changing schedules and so on will impose an undue burden on them. Offering a three month "incentive" of charging the 1% and paying only .75% over three months is not an incentive. Typically the last three months of the year there are little or no contracts anyway because of fiscal year changes.

9507-3

It has taken us 6 months to change schedules and up to a year to get approval for our legitimate cost of "living" increase and numerous changes in the internal data base input requirements over the past couple of years.

Above all, the marketing support needs to be beafed up. MOBIS staff needs to undetrstand and convey to agencies the benefits of using MOBIS contractors.

Our firm has an umblemished record of excellence with clients over the years. Many use our services and will not go near MOBIS, for reasons that are sometimes unclear. We can effectively compete in the marketplace without the assistance of MOBIS. We have communicated several times to MOBIS personnel to reach out and talk with specific clients who have sent us RFP's. More often than not, the contacts don't get made. Consequently, the IFF that GSA could get, is lost. However, in all of our contracting, even outside of MOBIS, we employ the MOBIS rates as directed in the current rulings.

I could offer more information and specifics if called upon to do so.

Thanks you for the opportunity to comment.

Sincerely

Daniel N. Kanouse, Ph.D. Executive Vice President, Take Charge Consultants, Inc.
At Take Charge, we provide organizational development services that result in adaptive, self renewing organizations. Let us help you plan and implement change and training that inspires and excites people.
Phone 610-269-9590, dkanouse@takechargeinc.com
Web Site www.takechargeinc.com

2002g-507-4

"Craig Szymanski" <cszymans@whelen.com>

04/16/2003 12:59 PM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: GSAR case 2002-G507

To whom it may concern:

Reference: GSAR case 2002-G507 Industrial Funding Fee (IFF)

It is our understanding that the IFF is going to be reduced from 1% to .75% effective January 1, 2004, and that GSA is also going to require a .25% decrease on GSA contract pricing. Our concern is that when we originally negotiated the contract, we did not increase our prices by 1% to cover the IFF. We opted to absorb the 1% IFF in an effort to keep our distributor and GSA price list pricing exactly the same, so that our staff can easily quote GSA pricing, as well as minimizing associated costs.

We feel that when you reduce the IFF by .25%, Whelen Engineering Company is entitled to the extra dollars generated by the .25%. If we are required to reduce prices to the Government by .25%, we will seriously consider canceling the current GSA contract and renegotiating a new one. We would prefer that you leave the IFF at 1%. Either way, the net change to the GSA would still be "sum zero".

Yet, the cost to Whelen involved with offering a GSA price that differs from our (most favored customer) distributor price list is significant. Our GSA price list has 44 pages of pricing. At this time, we basically just change the title and date of the current distributor price list to generate a GSA price list. Order entry is done with ease as the standard net pricing comes up automatically in our computer system, which eliminates human error. Our large network of authorized managing sales representatives can easily quote with accuracy a GSA customer because they always have a distributor price list available to them. To print two completely different priced sheets (one GSA and one regular Distributor) would require substantial costs relating to labor and administration, as well as new computer programs to be written for the reduction in cost to the GSA price list only.

If you have any further questions, feel free to contact me.

Sincerely,

Craig Szymanski
Bid Analyst
Whelen Engineering Company
Phone: 860 526 9504 Ext. 2304
e-mail: cszymans@whelen.com
GSA Contract # GS-07F-9050D

2002g-507-5

"Thomas Walker" <Thomas.Walker@haworth.com>

04/16/2003 09:28 AM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: [Docket No: 3090-AH79];[FR Doc: 03-06458];[Page 13211-13214]; Acquisition regulations: Industrial funding fee and sales reporting clauses; consolidation and fee reduction

The intent to adjust the IFF from 1 percent to .75 percent has been discussed by GSA and industry for several months.

Our company is in the process of implementing a commercial list price increase for products. This list price increase has been submitted and approved by GSA to apply to our FSS contract, and is scheduled to be introduced on May 3, 2003.

Prior to committing to substantial printing and distribution costs, the issue of the IFF adjustment was presented to both our GSA Contracting Officer and the GSA Quality Partnership Counsel subcommittee.
It was presented by GSA that our organization could proceed with the printing and May 3, 2003 distribution of our price books (containing the 1 percent) without concern of any negative impact or requirement to make adjustment to price lists.

In review of the proposed rule, the revised .75 percent will be enforced on January 1, 2004, and all contractors will be mandated to revise IFF payment accordingly or risk loss of contract.

This is contrary to the information that was provided our company, and the direction that impacted our decision to proceed with a costly price book printing and distribution.

We request that this rule be delayed to permit further evaluated in order to establish a more reasonably acceptable implementation schedule, or at a minimum establish a process by which suppliers are permitted to continue contract supply without interruption or additional cost burden.

2002g-507-6

hidensity
<hidensity@tri-countyelectric.net>

04/15/2003 08:35 PM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: iff change gsar case 2002-g507

To whom it may concern:

Our contract number is GS28F0015M
I read the gsa steps artical on the reduction of the iff. I have several coments. I object to the notion that when we negoatiated our contract hat the iff fee was added to our prices. They were not as we used our commerical price list which did not include the iff fees. This means that the iff fees have been an expense, not an income that was passed on to the fss.

According to the news letter we will have to lower our prices by .25% The cost of doing this for a small company like us, far exceeds the amount that we will save by the iff fee reduction. I do not feel that it is right that we are forced to incure this expense. For example, on the fourth quarter of last year, which was higher than normal, our savings on the iff would have only been $349.00. One of our clurrent problems with getting our dealers to go after the GSA sales, is the low profit that they can make. So they do mostly commercial sales.

I suggest that rather than do this that we have the option to give an additional .25% off of the order net prices. If this could be done until the next contract negotiation for a price increase it would help. Please let me know what can be done.

Sincerely,

Marvin Staller

2002g-507-7

"Judi Minke"
<judi@recordingcharts.com>
04/15/2003 04:33 PM
Please respond to judi

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: Comment on IFF Price Reduction Rule

Our company is Recording Supplies, Inc., GSA Contract No.: GS-02F-0024N awarded December, 2002. We initially began the bid application process in August of 2001, we submitted our bid in March, 2002, and were awarded our contract in December, 2002. We are a generic chart paper and pen supplier for most test and measurement recorders. We have 1,590 part numbers under our GSA contract. We are a small business and to say the least this has been a very time-consuming arduous process.

We were thrilled to finally be awarded our contract, only to then have the task of uploading our pricelist to GSA Advantage, which in itself took several days. We recently received catalog approval and are in the process of having our catalog printed and then we will be doing a mailing. We were supplied 5,400 names and addresses to send our catalog to. This has turned out to be very costly to have the catalogs and envelopes printed along with the cost of postage. We estimate the cost to be approximately $10,000.

We asked our contract administrator if the list could be narrowed down to only those purchasing our specific SIN numbers because we are grouped in with Fax paper users also. But she has told us that the list provided is what we will have to work with.

So you can imagine our dismay when we received the GSA Steps newsletter informing us that there will be an IFF Price Reduction effect January, 2004, and we will have to re-do our pricing, re-enter the pricelist into GSA Advantage AND re-print and re-send our GSA catalog. Another $10,000 in expenses within the 1st year of our contract.

We received an e-mail from the Bush Administration stating that the Federal Government was anxious to do business with small businesses and encouraged us to apply for a GSA contract. It further stated they would be there to assist us and make it as easy as possible. That e-mail has lost all credibility.

I will be spending the next few days making calls and sending e-mails to see if anyone within the GSA network can help us narrow our 5,400 name list down to make the cost of doing business with the Federal Government affordable. So far we are out on a limb, not knowing how profitable this endeavor may be.

My comment is actually a suggestion: Assign a GSA advocate to each GSA applicant from the time they make their initial inquiry call through the second quarter of their contract. The advocate should be graded on the expediency of the contract award and the ease with which the applicant is able to meet all the after-award requirements. I wished we would have kept a log on all calls and e-mails we sent seeking help; most often to be referred to someone else who wasn't in or who didn't immediately respond to your request for information and you had to put the project on hold again. No one person seems to have a handle on the entire process, the process is like a giant cumbersome maze.

2002g-507-8

GSA

Linda K. Nelson

04/15/2003 01:16 PM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: Fw: IFF Reduction comments

----- Forwarded by Linda K. Nelson/MVP/CO/GSA/GOV on 04/15/2003 01:13 PM -----

"Annette Keller" <annette.keller@attbi.com>

04/15/2003 11:27 AM
Please respond to "Annette Keller"

To: linda.nelson@gsa.gov
cc:
Subject: Fw: IFF Reduction comments

Dear Linda, Thank you for your call. I am forwarding my comments to you.

Annette Keller
Keltek
----- Original Message -----
From: Annette Keller
To: gsarcase.2002-g507@gsa.gov
Sent: Monday, April 14, 2003 2:30 PM
Subject: IFF Reduction comments

I am commenting on the IFF Reduction.

I just read about the IFF Reduction in the GSA Steps letter emailed on 4/10. It says that we have until 4/17 to comment. It seems like there could be many hours of work associated with the .25% price reduction on all of our published pricing and the amount GSA is allowing us to keep toward this effort may not be sufficient unless the process is made rather simple.

I hope that some function can be added to the SIP GSA Advantage software before this IFF Reduction is implemented so that it is possible to decrease the price of all items in a vendor's GSA Advantage program by the required amount without the vendors having to either go line by line or go through the export and re-import process!

Please forward my comments to the appropriate person by the April 17th deadline.

I must admit, I am annoyed by the wording in the Steps letter which refers to the IFF as something vendors collect *as opposed to something we pay!* When we were negotiating our MAS contract, our contacts at GSA certainly did NOT say that we could increase our prices 1% to cover that fee - in fact they we should decrease our prices even more below those we charge to our MFC. Further our MFC buys in larger quantities than GSA does and they pay shipping.

Annette Keller
Keltek

2002-G507-9

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: (202) 828-2281
E-Mail Address: NadlerD@dsmo.com

April 16, 2003

Ms. Laurie Duarte
General Services Administration
Regulatory Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, DC 20405

RE: GSAR Case 2002-G507; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

Dear Ms. Duarte:

Dickstein Shapiro Morin & Oshinsky, LLP submits these comments in response to the General Services Administration ("GSA") March 18, 2003 proposed rule and request for comments regarding consolidation of GSA's Industrial Funding Fee ("IFF") and sales reporting clauses, and its proposed reduction in the IFF amount. Our law firm represents interests in the federal information technology industry and GSA's Multiple Award Schedule ("MAS") program. We believe that the proposed rule represents a positive step toward reducing acquisition costs for MAS customers. We do, however, have the following comments and recommendations that we ask that GSA to consider.

I. The Rule Should Address Future IFF Percentage Rate Changes

Future changes in the IFF percentage rate will have a negative impact on MAS customers if the percentage rate is increased, and on MAS contractors regardless of whether the IFF percentage is increased or decreased. As such, GSA should ensure that any upward increase in the IFF percentage is fully justified. MAS contractors will have to make changes to existing price lists and incur reprinting costs, as well as implement changes to their accounting systems each time GSA changes the IFF percentage rate. The proposed rule only addresses the January 1, 2004 IFF rate reduction. To ensure that MAS contractors are adequately compensated each time the IFF percentage rate changes, we recommend that future changes be handled as follows:

IFF Percentage Rate Decreases. GSA would set the effective date of the change which would be the first day of a calendar quarter. Any order dated prior to the effective date would remain in effect at the price stated in the order. All orders issued on, or after the effective date, with the exception of lease options due to be exercised after the effective date which continue at the original price, would be at the new price (with decreased IFF). Contractors would make IFF payments at the new rate for each scheduled payment due after the effective date, regardless of the IFF amount contained in the unit price.

G507-9

For example, as addressed in the proposed rule, contractors receive consideration for all orders issued prior to December 31, 2003 and invoiced after September 30, 2003. MAS customers will have two choices as a result of this implementation if there is concern about an economic windfall to the contractor in the quarter prior to the effective date. The first choice is to delay issuing new orders until after the effective date. MAS contractors wishing to receive orders prior to the effective rate change could issue voluntary price reductions in the quarter prior to the effective date. The second choice concerns orders issued prior to the effective date with a period of performance scheduled to occur after the effective date. MAS customers and contractors can work together to modify those orders where it makes economic sense for both parties. Customers probably will not want to incur the incremental cost to modify a $1,000 order to save $2.50, however, the decision to modify an order would be up to the customer and the contractor. Through this approach, MAS customers would not necessarily be required to incur the expense of modifying existing orders.

IFF Percentage Increases. GSA would set the effective date of the change, which would be limited to the first day of fourth quarter of the government's fiscal year. Many government customers issue annual task orders at the end of the fiscal year to fund the new year. Having the effective date of the IFF increase on this date will ensure the least economic impact for implementation. Any order dated prior to the effective date will remain in effect at the price on the order. All orders on or after the effective date would be at the new price (with increased IFF). This includes lease options due to be exercised after the effective date. The alternative would be for GSA to have multiple IFF percentage rates for leasing transactions. Payment of IFF at the new rate would be delayed two quarters for each 25 basis point IFF increase in which the contractor is required to pay at the new rate (which results in a three month grace period per 25 basis point increase).

For example, if on July 1, 2005, GSA increases the IFF rate to 1%, a 25 basis point increase, FSS contractors would pay .75% in July 2005 (this is for sales recognized prior to the effective date of the fee increase) and October 2005. Effective in January 2006, contractors would pay the increased IFF of 1%. All orders received and invoiced between July 1, 2005 and September 30, 2005 would allow contractors to recover their costs for reprinting price lists and making accounting system changes because they would charge the increased rate, but pay the previous rate. Contractors with longer task orders issued prior to the effective date can work with their customers to modify the orders to the new rate if it makes economic sense for both parties.

II. The Rule Should Provide a Minimum of Nine Months Prior Notice of Any Change in the IFF Percentage Rate

The proposed rule states that GSA shall provide reasonable notice prior to the effective date of any change to the IFF percentage rate. In this first change to the IFF percentage rate, GSA is providing over nine and a half months notice prior to increasing the rate. Many contractors prioritize and budget for accounting system changes on an annual basis. Providing a minimum of nine months notice will allow contractors sufficient

5501-9

time to prioritize system changes as well as ensure price lists are reprinted on a timely and economical basis. This will also ensure that each change will be effective for almost two years after the previous change to help minimize MAS customer and contractor expense. We believe that annual changes to the percentage rate will pose an undue economic hardship on both MAS customers and contractors.

III. The Proposed Rule Should Clarify that Orders that Do Not Reference the Contractor's GSA Schedule Contract Are Not GSA Sales

Proposed GSAR 552.238-74 (Industrial Funding Fee and Sales Reporting) provides that "Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Government Wide Acquisition Contract (GWAC), or a separately awarded FAR Part 12, FAR Part 13 or FAR Part 15 procurement." We have two concerns with this proposed clause.

First, many vendors have state contracts that reference the vendor's GSA Schedule pricing as the basis for the price offered to the state. Now that states are authorized to purchase off of the Group 70 Schedule, it is reasonable to expect that some, if not many, states will continue to insist on receiving the vendor's GSA price, even when the state declines to use the cooperative purchasing provision of the GSA Schedule. We are concerned that although these state contracts are not part of the MAS program, and the sales clearly are not made under the GSA Schedule, GSA auditors may treat them as GSA Schedule sales and claim that the vendor owes IFF for those sales. Thus, in addition to any applicable state agency fees, the vendor could be assessed IFF that is not reflected in its price and which would unfairly erode the vendor's margin.

Second, the proposed rule will make it incumbent upon the vendor to prove that the sale was conducted pursuant to a separate contracting authority or FAR Part 12, 13, or 15 on orders for contract items that do not reference the vendor's GSA Schedule. The practical effect of this is to shift to the vendor the burden to demonstrate that an order is not made pursuant to the GSA Schedule. This is inconsistent with applicable regulations, including Federal Acquisition Regulation ("FAR") 8.4, which requires the ordering activity to identify the contract vehicle against which the order is placed. Moreover, under the GSA Schedule, all users are non-mandatory and, thus, there is no basis for GSA to claim IFF related to undesignated orders for products that may be equally available on other contract vehicles. This provision would provide an inappropriate "windfall" of IFF to GSA and is inconsistent with GSA's stated goal of aligning the IFF to the actual administrative cost of the program.

While the proposed rule may work for orders that reference a contract and designate the contract authority under which the order is placed (i.e. FAR Part 12, 13 or 15), in many cases the order does not designate the authority and vendors may not have the access to information indicating the authority for a procurement. We are concerned that the determination of whether an item is a reportable sale could be based on records outside the vendor's control or access.

G507-9

In order to foreclose any potential confusion in the future, we ask that GSA explicitly state that reportable sales under the contract are those resulting from sales of contract items to authorized users that specifically reference the GSA Schedule number on the order.

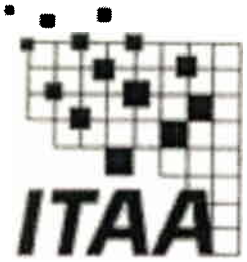
Thank you for the opportunity to submit our comments regarding this proposed rule.

Sincerely,

David M. Nadler

DMN/cma

2002-G507-10



April 17, 2003

Ms. Laurie Duarte
General Services Administration
Regulatory Secretariat (MVA)
1800 F Street, NW; Room 4035
Washington, DC 20405

Dear Ms. Duarte:

Re. GSAR Case 2002-G507; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee.

The Information Technology Association of America ("ITAA") submits these comments in response to the General Services Administration's ("GSA's") March 18, 2003 proposed rule and request for comments regarding the consolidation of GSA's industrial funding fee ("IFF") and sales reporting clauses, and its proposed reduction in the industrial funding fee amount. As discussed in detail below, although the ITAA agrees that the IFF should be pegged to an amount that best approximates the cost of administering the multiple award schedules ("MAS") program, we have serious concerns regarding the manner in which GSA proposes to implement the current-proposed and future IFF revisions. Also, we strongly disagree with the new language in proposed clause 552.238-74 (Industrial Funding Fee and Sales Reporting), which appears intended to treat all contractor sales as MAS sales for sales reporting and IFF purposes, unless the contractor could prove that the ordering agency properly used a different contracting authority.

The ITAA supports the concept that government agencies that use the MAS program should be charged no more for their use than is necessary to finance the program. Here, GSA is seeking to accomplish that aim by reducing the IFF from 1% to .75%. GSA also proposes to permit MAS contractors to retain the .25% difference between the current and the proposed IFF amount for one calendar quarter to compensate contractors for the administrative costs they will incur to implement the proposed change.

Although it is appropriate that MAS contractors be compensated for their incurred costs resulting from the IFF change, GSA's proposed approach to the compensation issue falls far short of what is considered adequate. For a vast majority of MAS contractors, the change in IFF amount will result in MAS contractors incurring administrative expenses well beyond the relief provided by the .25% "spread." The cost of modifying existing accounting systems and procedures, training personnel on the new fee amount and the nuances of transitioning to that amount, and revising and printing new price lists and GSA Advantage! information, is expected to outweigh the minimal relief provided by the .25% spread.

Moreover, the proposed rule provides no indication that GSA has considered the substantial cost impact of modifications to existing orders that will be made necessary by the proposed change. In this regard, the proposed rule indicates that contractors may retain

Information Technology Association of America
1401 Wilson Boulevard, Suite 1100, Arlington, Virginia 22209-2318 ▌ Phone: (703) 522-5055 Fax: (703) 525-2279

G507-10

the .25% spread for only the October 1, 2003 to December 31, 2003 sales period. This limitation strongly suggests that GSA thereafter will require contractors to revise the IFF amount from 1% to the new .75% even for on-going work under orders placed before January 1, 2004. This will have a very significant cost impact. Contractors and ordering agencies will be required to process numerous modifications to existing orders, which will number in the hundreds or even thousands for a single contractor or agency. Despite the severity of this cost impact, it does not appear to have been a consideration in the proposed rule's development.

To mitigate this administrative burden and the associated costs, we recommend that MAS contractors be permitted to continue charging the 1% IFF for orders placed prior to January 1, 2004, unless the ordering agency and the contractor mutually agree to revise the amount to .75%. Permitting the contractor to retain the .25% spread past the January 1, 2004 cut-off date would further simplify the process and mitigate the expenses incurred by the MAS contractors. Although this is not a perfect solution because it still would impose on contractors the burden of having to track two classes of IFF sales (*i.e.*, 1% and .75%), it nevertheless would be less onerous than requiring contractors and ordering agencies to process numerous contract modifications and absorb significant uncompensated administrative costs due to the change.

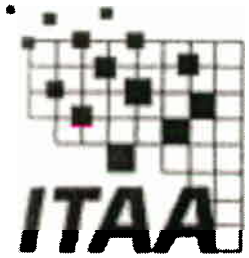
Regarding future revisions to the IFF, the ITAA urges GSA to find some other method of addressing surpluses and deficits resulting from its administration of the MAS program. We understand the pressures on GSA to tie the IFF amount to the costs of operating the MAS program, but the current proposed approach of working the changes through the contractors imposes a significant burden on contractors and, in our view, is not the most efficient mechanism. If, however, circumstances dictate no other way, we urge that GSA show restraint regarding the frequency of IFF revisions and that it clarify the reference to "reasonable notice" in paragraph (b)(2) of proposed clause 552.238-74 to make it clear that such advance "reasonable notice" will be no less than nine months.

Lastly, we strongly disagree with the language included in paragraph (a)(2) of proposed clause 552.238-74. Paragraph (a)(2) provides:

> Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC), or a separately awarded FAR Part 12, FAR Part 13, or FAR Part 15 procurement.

One possible interpretation of this language would be that each sale—including any open market order or micro purchase in which the ordering agency cites to no contracting authority—would be considered a MAS sale, unless the contractor could prove that the ordering agency did in fact properly use a separate contracting authority.

Such an interpretation, however, would unfairly shift to contractors the burden of proving which contracting authority the purchasing agency intended to use when making a purchase. Common sense would dictate that if a purchasing agency does not reference the contractor's



2002-G507-10

MAS contract, and it is not otherwise evident that the agency intended to place the order under the MAS contract, then the MAS contract should not apply and the sale should not be reportable for MAS purposes. Under the MAS program, most schedules are non-mandatory for Federal agency users—thus, there is no basis for GSA to claim IFF related to undesignated orders for products that may be equally available on other contract vehicles. A contractor should pay an IFF to GSA for only those sales in which there is a common understanding between the contractor and the purchasing agency that the purchase is indeed being made under the contractor's MAS contract. It would be grossly unfair for GSA to assume that all Government sales are MAS sales whenever a purchasing agency omitted any reference to a contracting authority on its order. 1/ Consequently, we request that the proposed language be deleted.

In concluding, the ITAA appreciates this initial attempt by the GSA to craft a rule that addresses the concerns expressed by some government officials regarding the amount of the IFF, but we do ask, consistent with our comments above, that GSA's final rule be crafted in a way that is less burdensome to implement.

Thank you for this opportunity to comment on the proposed rule. The ITAA's members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content, systems integration, telecommunications, and enterprise solution fields. We provide global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. The ITAA consists of over 500 corporate members throughout the U.S., and a global network of 47 countries' IT associations. The ITAA plays a leading role in issues of IT industry concern including information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, workforce and education, immigration, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. With respect to government IT procurement, our members have a particularly keen interest in the MAS program. Please visit www.ITAA.org for more information on the ITAA's activities.

We look forward to a continued dialogue with the GSA regarding matters pertaining to the MAS program.

Respectfully submitted,

Harris N. Miller, President
Information Technology Association of America

ITAA

1/ The commentary accompanying the proposed clause attempts to downplay the clause's significance by characterizing it as a mere consolidation and clarification of existing provisions. That, however, does not appear to be the case—the language clearly is new and it is substantive in nature. Given the extremely aggressive positions taken sometimes by GSA auditors during IFF reviews, we view the language as a potential (and unfair) attempt to provide government auditors an additional sword to wield in extracting IFF amounts from contractors on sales (often dating back years) in which the purchasing agency failed to make it clear that it was utilizing non-MAS contracting authority.

2002 G507-11

PROFESSIONAL SERVICES COUNCIL

April 17, 2003

General Services Administration
Regulatory Secretariat (MVA)
Room 4035
1800 F Street, N.W.
Washington, D.C. 20405
Attn: Ms. Laurie Duarte

Re: GSAR Case 2002-G507
Federal Supply Schedule Regulatory Changes

Via e-mail: gsarcase.2002-g507@gsa.gov

Dear Ms. Duarte:

The Professional Services Council (PSC) is pleased to submit these comments on GSA's proposed rule published in the Federal Register on March 18, 2003 (68 F.R. 13212) that would amend the GSAR to consolidate the industrial funding fee and sales reporting clauses and reduce the industrial funding fee. PSC is the leading national trade association representing the professional and technical services industry doing business with the Federal Government. PSC's approximately 140 member companies perform billions in contracts annually with the Federal Government, including under the GSA schedules, from information technology to high-end consulting, engineering, scientific and environmental services. We are strong supporters of the appropriate use of the GSA Schedule and appreciate the opportunity to work with GSA officials in developing appropriate regulatory and administrative guidance on the Schedules.

Summary of Comments

PSC supports the industrial funding fee reduction, but recommends that GSA clarify and expand the procedures to be used in future fee adjustments. In addition, PSC supports the clause consolidation, but is concerned that a burden is imposed on contractors to "prove the negative" -- that sales were not made under the GSA schedule and thus not be subject to the industrial funding fee. Furthermore, we view any change to the industrial funding fee as a material element of the Schedule contract that should only be modified through bilateral amendments.

GSAR-11

Specific Comments

I. Reporting of Federal Supply Schedule Sales

A. Consolidation of Clauses

Under current rules, the GSAR has separate clauses for reporting Schedules sales and for submitting the Industrial Funding Fee (IFF). One clause, 552.238-74, is the "Contractor's Report of Sales." The second clause, 552.238-76, is the Industrial Funding Fee. GSA proposes to consolidate these clauses into a new -74 clause titled "Industrial Funding Fee and Sales Reporting." We generally support the consolidation of the separate clauses into a new single clause. However, it appears that GSA has made significant policy changes through the consolidation from the current clauses that concern us. In addition, current provisions may have been inadvertently dropped while other changes made through the consolidation create new ambiguities that should be corrected before the integrated clause is finalized.

B. Defining Reportable Sales

1. We have several concerns with subparagraph (a) (2) of the new clause that provides:

> Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority...or a separately awarded FAR Part 12, FAR Part 13 or FAR Part 15 procurement.

2. We support GSA's recognition that not all sales are automatically "Schedules sales" that are subject to the IFF. However, the new wording of the proposed clause is a significant change in that it places the burden on the contractor to prove that a sale was made outside of the Schedules rather than on the Government to indicate that they are ordering under the Schedule contract. The GSA ordering procedures explicitly -- and properly -- require government ordering activities to indicate that the purchase is being made under the appropriate Schedule; this rule seems to shift the burden to the contractor to "prove the negative." In effect, we view, and we oppose, the proposed change as requiring industry to treat sales from authorized users as reportable sales unless an alternative "contracting authority" or separately awarded procurement can be demonstrated. We recommend that the reportable sales portion of the revised clause at (a)(2) be amended to read:

> "Reportable sales are those resulting from sales of contract items ordered under this contract, in accordance with any applicable ordering clause(s), as recorded by the contractor. Sales conducted under authority other than this contract are not subject to this clause."

3. Further, as currently drafted, the list of "separately awarded procurements" that would be excluded from reportable sales is too narrow. FAR Part 14 (relating to sealed bidding) should be added to the listing. In addition, there are other contracting authorities outside the FAR that are able to use the Schedules (such as the Training Act, 5 USC 4109) and other federal agency authorized users of the Schedules that are outside the FAR (such as the FAA, the Transportation

G501-11

Security Administration and cooperative purchases by State and local governments from Schedule 70). None of these sales are addressed under the exclusions of revised clause, but each are examples of current exempt sales that would be swept in under the revised coverage because of the "default" position that all orders placed by authorized users are "reportable sales" under the Schedule unless a specific exemption can be cited. At a minimum, we recommend that the lead-in language to the list of separately awarded procurements include the phrase "including but not limited to."

II. Changes to the Industrial Funding Fee

A. Unilateral Right to Change Fee

We agree that GSA may unilaterally revise the IFF, but we do not concede that GSA has the unilateral right to require contractors to modify their contracts to reflect any IFF that GSA may choose to establish. While the IFF is to compensate GSA for the costs of operating the FSS program and recoup its operating costs from ordering activities, GSA has chosen to recoup its fee through an up-charge imposed on contractor sales. GSA has properly proposed to implement the current proposed revision through a bilateral contract modification to be executed electronically. Since the IFF is an essential element of contract pricing, all future changes to the IFF must also be made through bilateral changes to contracts.

B. Designated Official to Revise IFF

1. As the supplementary information notes, the Industrial Funding Fee is not included in the GSAR, but was set once, in 1995, by a GSA Acquisition Letter. GSA proposes to change the GSAR to provide that, effective January 1, 2004, GSA will have the unilateral right to change the IFF rate. The undesignated lead-in sentence to revised Clause –74 (b) requires the contractor to "remit the IFF at the rate set by FSS." See our comments above on the unilateral right to impose the fee change in contracts.

2. Whether that function of revising the IFF is now properly, or in the future should be, vested in the Commissioner of FSS is an internal matter for GSA to resolve. However, the designated authority language here is different from the designated authority language in subparagraph (b)(2) and different from the designated authority language in the summary information accompanying the rule that indicates that the GSA Administrator has the authority to change the IFF, and will consult with OMB prior to any further fee changes. To avoid any potential for ambiguity or inconsistency in determining who has the authority to set the rate, we recommend deleting the phrase "set by FSS" and inserting "set by GSA" in all places.

C. Once A Year Revision of IFF

Revised Clause –74(b)(2) provides, in part, that the FSS Commissioner or the delegated representative has the "unilateral right to change the percentage at any time, but not more than once a year." We strongly support the minimum once a year revision of the fee. In addition, as noted above, whether the FSS Commissioner is the right GSA official to set the fee is an internal matter for GSA, but to avoid any potential for ambiguity or inconsistency in determining who has authority to set the rate, and to insure consistency with the authority described in the undesignated first sentence of subparagraph (b), we recommend deleting the phrase " The

Commissioner of GSA's Federal Supply Schedule, or the Commissioner's designated representative" and inserting "GSA" in all places.

D. Notice Prior to Change
The revised Clause –74(b)(2) also provides that "FSS will provide reasonable notice prior to the effective date of the change." We strongly recommend that the text of the clause include a minimum period of notice, such as "not less than 180 days," before the effective date of the change. As FSS found through its consultations last year with PSC and other industry associations, GSA schedule holders need a significant period of time to adjust contract documents, pricing sheets, accounting systems, websites and related sales aids to reflect any new fee. The one-quarter percent reduction being made in this rule is the only rate change that has ever been made; to its credit, GSA discussed the mechanics of the rate change with industry and is providing more than nine months advance notice of the fee change from the publication of the proposed rule. In our view, it is imperative that sufficient notice be provided to schedule holders, federal agencies and other authorized users to facilitate changes, planning and budgeting.

E. Publication on Website
The revised Clause –74(b)(2) also provides that FSS will post notice of the current IFF fee on a GSA agency website. We support that means of notification, provided it is not the exclusive means of notification. For example, GSA is able to communicate electronically with virtually all of its Schedule holders, with its largest agency users, with associations representing Schedules-holders, the media and others. All of these mechanisms should be used to publish the new date and rate. In addition, the website should maintain all prior rates and the dates those rates are applicable and any new rate and the date that new rate will be applicable. The site should also show the date on which the proposed future rate change was first posted to the website.

F. Contractor Expenses Incurred in Future IFF Changes
1. To its credit, GSA recognizes that contractors will incur expenses as a direct result of this initial IFF change. As the supplemental information accompanying the rule provides, GSA is providing consideration for the bilateral contract change it is proposing – to allow vendors to include the existing one percent IFF until December 31, 2003 but to forward to FSS an IFF of 0.75 percent for reported sales in the last quarter of the fiscal year.

2. We have no basis to know whether the one-quarter percent fee retained by GSA Schedule holders for the one reporting period will be sufficient to compensate contractors for the costs they will include in making the necessary systems and contract changes. Obviously larger Schedules sales in the last quarter will generate more retained fees. PSC will inquire of our members after the fee goes into effect whether the fee retained was sufficient. However, we are particularly concerned about the potential for unrecoverable costs that will be incurred by our small business members by this instant change. We encourage GSA to consult with PSC and other industry associations to assess the costs contractors incurred in making the necessary IFF changes. This will provide GSA with facts on which to make future policy determinations. Furthermore, GSA should discuss with PSC and other industry associations how it would propose to address contractor recovery of costs on subsequent fee adjustments, particularly if a future IFF rate should be increased.

G501-11

3. We also strongly recommend that this grace period for retaining the fee be incorporated into any revised contract clause; without such contract coverage, there will be an unacceptable ambiguity between contract provisions and GSA's permitted practice that puts all Schedules participants at risk for future audit questions, contract compliance and litigation. With the bilateral contract change being made, this one-time grace period on fee remittance should be included in each Schedule-holder's contract.

III. Effective Date

The Background Information on the rule indicates that GSA intends to make the IFF reduction effective on January 1, 2004. While we believe it is implicit in the rule that this change would become effective only for new sales made after that effective date, we recommend that this coverage be explicit in the contract and in the final rule.

IV. Other Issues

1. In proposed Subparagraph (a), we recommend combining paragraphs (1) and (5). They deal with the same issue of the timing of the reporting, yet it creates confusion by having the topic addressed in separate, widely separated provisions. Furthermore, with respect to paragraph (5), we recommend adding at the end thereof the phrase "of the contract," as provided for in proposed subparagraph (b)(1) and in the existing –74(e) language which defines the expiration of the contract as the time when the final reporting of sales, and the final payment of IFF is due.

2. In proposed Subparagraphs (a)(5) and (b)(1), the implication is that the final reporting of sales and the final IFF payment are also due within thirty days of the reporting period. Under the current –74(e) clause, there is separate regulatory coverage of "close out" actions, and a period of 120 days is permitted after the final task order is performed before the final sales report and IFF payment is due. We strongly recommend that the new clause separate the quarterly reporting from the final reconciliation, and that at least 120 days be permitted after the close-out of the contract for the contractor to prepare the report of final sales and make payment of the final IFF.

3. In proposed Subparagraph (b)(2), we recommend deleting the phrase "statutorily-based." The use of this phrase leaves the confusing impression that the IFF is set by statute. The phrase is not in the current rule and is not necessary for the proposed clause.

4. In proposed Subparagraph (c) of the proposed –74 Clause, GSA retains the unilateral right to change, from time to time, the written procedural instructions regarding remitting the IFF, following notification to the contractor. We concur that GSA can unilaterally change these procedural instructions. We recommend that GSA provide at least one reporting period advance notice regarding remitting the fee and that this notification period be included in the contract clause.

5. Today, FSS maintains its own supplemental contract registration system, the Vendor Support System, for electronically reporting sales. The Federal Government is moving towards a single contractor registration system, the "Contractor Central Registration" (CCR). A FAR proposed rule to make this system applicable government-wide was published in the Federal Register on

April 3, 2003 (68 F.R. 16366). We recommend that FSS develop a transition plan to phase out its unique registration requirements under the "Vendor Support System" and develop a mechanism linked to the CCR. PSC would be pleased to assist.

Conclusion

We compliment GSA for the advance notice of the proposed IFF reduction and for recognizing the importance of compensating contractors, at least in part, for the costs incurred in making revisions to their contract pricing sheets and fee reporting systems. We are concerned with the attempt to shift to the contractor the burden of proving that a sale is not reportable under the contract. Further, we are concerned with the lack of completeness in the listing of "separately-awarded procurements" coverage of non-Schedule sales. There are also several inconsistencies in the proposed revisions and other ambiguities that must be corrected before the rule is finalized.

If you have any questions or need any additional information, please do not hesitate to let me know.

Sincerely,

Alan Chvotkin
Senior Vice President and Counsel

APR 17 2003

GSA Office of Governmentwide Policy

MEMORANDUM FOR LAURA SMITH
DIRECTOR
ACQUISITION POLICY DIVISION

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: GSAR Case 2002-G507, Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

Attached are comments received on the subject GSAR case published at FR 68 13212; March 18, 2003.

Response Number	Date Received	Comment Date	Commenter
2002-G507-1	04/11/03	04/11/03	Joan Terry Drucker
2002-G507-2	04/16/03	04/16/03	Coalition for Government Procurement
2002-G507-3	04/16/03	04/16/03	Dan Kanouse
2002G507-4	04/16/03	04/16/03	Craig Szymanski
2002G-507-5	04/16/03	04/16/03	Thomas Walker
2002-G507-6	04/15/03	04/15/03	Marvin Staller
2002-G507-7	04/15/03	04/15/03	Judi Minke
2002-G507-8	04/15/03	04/15/03	Annette Keller Keltek
2002-G507-9	04/16/03	04/16/03	David M. Nadler
2002-G507-10	04/17/03	04/17/03	ITAA

Attachments

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2002g507-1

Sent: Friday, April 11, 2003 10:16 AM
To: 'vendor.support@vsc.gsa.gov'
Cc: Donna Rolland
Subject: GSA .25% price decrease January 1, 2004

I am writing in response to the new ruling re: change in pricing January 1, 2004 to reflect a .25% reduction on all pricing to pass along the savings to the customer.

We may elect to drop our names from this particular program for these products as the price change will require us to put in separate part numbers specifically for GSA .

Unlike the comments shown, we have NOT passed along the 1% fee to our customers. Instead we have taken a reduction in profits. The additional paperwork and monitoring on our part may cost more than it is worth for this product line if this is a requirement. Now we simply identify GSA and pull up a report.

The change could result in more than 5% in profits due to costly systems changes. Or, an increase in GSA pricing of at least 4.25% based strictly on this change and no other factors.

In order to stay in the program we ask that you take our concerns into consideration.

Joan Terry Drucker

Savage Range Systems, Inc.

Joan Terry Drucker
Vice President, General Manager

SAVAGE RANGE SYSTEMS, INC.
100 Springdale Road
Westfield, MA 01085
413-568-7001 Ext. 4114
Direct Dial: 413-642-4114
Fax: 413-562-1152
email: jdrucker@savagearms.com

2002g-507-2

COALITION FOR GOVERNMENT PROCUREMENT
1990 M STREET, NW,
SUITE 400
WASHINGTON, D.C. 20036
202-331-0975

April 16, 2003

General Services Administration
Regulatory Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, D.C 20405
ATTN: Ms. Laurie Duarte

Reference: gsarcase.2002-g507@gsa.gov

Comments by the **Coalition for Government Procurement** on the proposed rule (FR March 18, 2003) to give GSA the unilateral right to change the percentage rate of the Industrial Funding Fee in Multiple Award Contracts; and GSA's intent to modify and combine two existing clauses that implement collection of the IFF by the Federal Supply Service on sales from all Federal Supply Schedule contracts.

The Coalition is supportive of the proposal and of the procedures that the Federal Supply Service proposes to follow to reduce the IFF and assist contractors in adjusting to the new rate.

The Coalition believes it necessary to make only two comments:

Several Coalition members have brought up the subject of existing leases and leaseback arrangements as well as other contractual pricing conditions that may be in a pipeline, and which transcend the October 1, 2003 date whereas contractors are allowed to retain .25% of the 1% IFF. These contractors have expressed their concern that the rule is not explicit enough on the subject of existing leases, leasebacks and other contractual pricing conditions, and could lead to future questions and possible mis-interpretations involving proper IFF collections and remittances beginning on October 1.

The Coalition recommends that GSA maintain an open door and open mind policy with respect to all the possible ramifications, suspected or unsuspected, involving the October 1, 2003 date with respect to leases and lease backs. Because GSA has recognized that contractors will in fact incur costs in association with the reduction in the fee and has made a generous and good faith effort to help ameliorate some of those costs, contractors would urge FSS to accept the October 1 date as the date at which contractors will retain .25% without respect or regard to pricing or leasing agreements in effect.

G507-2

Closely related to this issue is whether a reduction in lease rates will be expected for current leases. Coalition members have stated to us that lease rates are set with either external or internal financing companies without regard to the level of the IFF. Rather, they are financial decisions based on economic indicators, the strength of the contract holder, and then governments contract terms. As such, Coalition members believe that lease rates should not be impacted by the reduction of the IFF.

In addition to IFF rates not being a salient factor in determining lease rates, we believe that requiring a reduction will harm contractors in respect to their relationship with external or internal financing organizations and confuse customers who will have to reconfigure their own internal systems to ensure that, over time, they are paying the correct amount.

We recommend that the final rule clarify GSA's intent on leasing matters to avoid future confusion.

In addition to concern on leasing issues, Coalition members also request clarification on how purchase orders with extended delivery periods will be treated. While there are not many instances in which this issue is a factor, the transactions in question do typically involve larger orders. To illustrate our point, we offer the following example:

> The Department of Defense places a large order for software with a schedule contractor. The task order is issued August 1, 2003. Deliveries against this single task order, though, may take place on September 1st, November 1st, and then February 1st of 2004.

It is the Coalition's belief that the IFF in place at the time the task order was originally placed will determine what IFF is paid, not the subsequent delivery dates. We believe this is GSA's position as well. Please let us know if our interpretation is incorrect and provide additional information in the final rule to guide contractors.

Lastly, because the proposed rule will give GSA the unilateral right to change the IFF after January 1, 2004, the Coalition is concerned that future changes, whether up or down, could be announced and implemented without advance or proper notice. The Coalition recommends that the final rule be explicit with respect to advance warnings, protections and considerations extended to contractors similar to those extended during this particular change.

We appreciate the opportunity to submit these comments and look forward to working with the agency on the implementation of the lower Industrial Funding Fee.

Sincerely yours,

Edward L. Allen
Executive Vice President

2002-g507-3

"Dan Kanouse"
<dkanouse@takechargeinc.com>
04/16/2003 02:23 PM

To: "'gsarcase.2002-g507@gsa.gov'" <gsarcase.2002-g507@gsa.gov>
cc:
Subject: Reference: Comments on the Proposed Rules

As a contractor under MOBIS for several years and other previous contracts over the last 25 years, I would like to ask that consideration be given to modifying the proposed rule changes. I understand that the GSA earned about $650,000,000 through the IFF and now desires to decrease that "profit" for a non-profit entity. (Typically called income over expense).

Commentary

My firm has always participated in paying the IFF since the beginning of the original ruling. We have never built into our pricing the 1% fee to clients in the federal sector because our understanding was that it was not allowed. Additionally, adding the 1% would have shown that our proposed federal rates were not in keeping with the fee differential between commercial and proposed governmental rates. It took us one full year to negotiate our contract with GSA. I would strongly recommend that GSA poll other contractors specifically under MOBIS to see whether or not the IFF fees are built nor their fee schedules.

Our contract, as well as all other such contracts under GSA MOBIS was negotiated with the expressed requirement that our commercial rates be reduced by at least 15-20% to provide a benefit to the US Government agencies. In return, the assumend benefit would be more work from Federal Agencies and marketing support from GSA MOBIS Staff.

The rule change includes a mandated reduction in our pricing schedule which further reduces our potential income. I see no benefit to contractors by this proposed rule change. If contractors do not have the IFF built into their pricing and they are asked to further reduce their fees by .25% it has the effect of a price cut to contractors and the burden of more work to do the conversions to the schedules.

Our recommendation is to reduce the IFF fee, do not ask the contractors to further reduce their fees by .25% and to allow contractors to pass along the IFF to clients. If you are going to make fee adjustments it may be time to allow contractors to include the IFF into their current contracts. Many contractors are small business with a limited number of staff and this process of changing schedules and so on will impose an undue burden on them. Offering a three month "incentive" of charging the 1% and paying only .75% over three months is not an incentive. Typically the last three months of the year there are little or no contracts anyway because of fiscal year changes.

9507-3

It has taken us 6 months to change schedules and up to a year to get approval for our legitimate cost of "living" increase and numerous changes in the internal data base input requirements over the past couple of years.

Above all, the marketing support needs to be beafed up. MOBIS staff needs to undetrstand and convey to agencies the benefits of using MOBIS contractors.

Our firm has an umblemished record of excellence with clients over the years. Many use our services and will not go near MOBIS, for reasons that are sometimes unclear. We can effectively compete in the marketplace without the assistance of MOBIS. We have communicated several times to MOBIS personnel to reach out and talk with specific clients who have sent us RFP's. More often than not, the contacts don't get made. Consequently, the IFF that GSA could get, is lost. However, in all of our contracting, even outside of MOBIS, we employ the MOBIS rates as directed in the current rulings.

I could offer more information and specifics if called upon to do so.

Thanks you for the opportunity to comment.

Sincerely

Daniel N. Kanouse, Ph.D. Executive Vice President, Take Charge Consultants, Inc.
At Take Charge, we provide organizational development services that result in adaptive, self renewing organizations. Let us help you plan and implement change and training that inspires and excites people.
Phone 610-269-9590, dkanouse@takechargeinc.com
Web Site www.takechargeinc.com

2002g-507-4

"Craig Szymanski" <cszymans@whelen.com>

04/16/2003 12:59 PM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: GSAR case 2002-G507

To whom it may concern:

Reference: GSAR case 2002-G507 Industrial Funding Fee (IFF)

It is our understanding that the IFF is going to be reduced from 1% to .75% effective January 1, 2004, and that GSA is also going to require a .25% decrease on GSA contract pricing. Our concern is that when we originally negotiated the contract, we did not increase our prices by 1% to cover the IFF. We opted to absorb the 1% IFF in an effort to keep our distributor and GSA price list pricing exactly the same, so that our staff can easily quote GSA pricing, as well as minimizing associated costs.

We feel that when you reduce the IFF by .25%, Whelen Engineering Company is entitled to the extra dollars generated by the .25%. If we are required to reduce prices to the Government by .25%, we will seriously consider canceling the current GSA contract and renegotiating a new one. We would prefer that you leave the IFF at 1%. Either way, the net change to the GSA would still be "sum zero".

Yet, the cost to Whelen involved with offering a GSA price that differs from our (most favored customer) distributor price list is significant. Our GSA price list has 44 pages of pricing. At this time, we basically just change the title and date of the current distributor price list to generate a GSA price list. Order entry is done with ease as the standard net pricing comes up automatically in our computer system, which eliminates human error. Our large network of authorized managing sales representatives can easily quote with accuracy a GSA customer because they always have a distributor price list available to them. To print two completely different priced sheets (one GSA and one regular Distributor) would require substantial costs relating to labor and administration, as well as new computer programs to be written for the reduction in cost to the GSA price list only.

If you have any further questions, feel free to contact me.

Sincerely,

Craig Szymanski
Bid Analyst
Whelen Engineering Company
Phone: 860 526 9504 Ext. 2304
e-mail: cszymans@whelen.com
GSA Contract # GS-07F-9050D

2002g-507-5

"Thomas Walker" <Thomas.Walker@haworth.com>

04/16/2003 09:28 AM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: [Docket No: 3090-AH79];[FR Doc: 03-06458];[Page 13211-13214]; Acquisition regulations: Industrial funding fee and sales reporting clauses; consolidation and fee reduction

The intent to adjust the IFF from 1 percent to .75 percent has been discussed by GSA and industry for several months.

Our company is in the process of implementing a commercial list price increase for products. This list price increase has been submitted and approved by GSA to apply to our FSS contract, and is scheduled to be introduced on May 3, 2003.

Prior to committing to substantial printing and distribution costs, the issue of the IFF adjustment was presented to both our GSA Contracting Officer and the GSA Quality Partnership Counsel subcommittee.
It was presented by GSA that our organization could proceed with the printing and May 3, 2003 distribution of our price books (containing the 1 percent) without concern of any negative impact or requirement to make adjustment to price lists.

In review of the proposed rule, the revised .75 percent will be enforced on January 1, 2004, and all contractors will be mandated to revise IFF payment accordingly or risk loss of contract.

This is contrary to the information that was provided our company, and the direction that impacted our decision to proceed with a costly price book printing and distribution.

We request that this rule be delayed to permit further evaluated in order to establish a more reasonably acceptable implementation schedule, or at a minimum establish a process by which suppliers are permitted to continue contract supply without interruption or additional cost burden.

2002g-507-6

hidensity
<hidensity@tri-countyelectric.net>

04/15/2003 08:35 PM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: iff change gsar case 2002-g507

To whom it may concern:

Our contract number is GS28F0015M
I read the gsa steps artical on the reduction of the iff. I have several coments. I object to the notion that when we negoatiated our contract hat the iff fee was added to our prices. They were not as we used our commerical price list which did not include the iff fees. This means that the iff fees have been an expense, not an income that was passed on to the fss.

According to the news letter we will have to lower our prices by .25% The cost of doing this for a small company like us, far exceeds the amount that we will save by the iff fee reduction. I do not feel that it is right that we are forced to incure this expense. For example, on the fourth quarter of last year, which was higher than normal, our savings on the iff would have only been $349.00. One of our clurrent problems with getting our dealers to go after the GSA sales, is the low profit that they can make. So they do mostly commercial sales.

I suggest that rather than do this that we have the option to give an additional .25% off of the order net prices. If this could be done until the next contract negotiation for a price increase it would help. Please let me know what can be done.

Sincerely,

Marvin Staller

2002g-507-7

"Judi Minke"
<judi@recordingcharts.com>
04/15/2003 04:33 PM
Please respond to judi

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: Comment on IFF Price Reduction Rule

Our company is Recording Supplies, Inc., GSA Contract No.: GS-02F-0024N awarded December, 2002. We initially began the bid application process in August of 2001, we submitted our bid in March, 2002, and were awarded our contract in December, 2002. We are a generic chart paper and pen supplier for most test and measurement recorders. We have 1,590 part numbers under our GSA contract. We are a small business and to say the least this has been a very time-consuming arduous process.

We were thrilled to finally be awarded our contract, only to then have the task of uploading our pricelist to GSA Advantage, which in itself took several days. We recently received catalog approval and are in the process of having our catalog printed and then we will be doing a mailing. We were supplied 5,400 names and addresses to send our catalog to. This has turned out to be very costly to have the catalogs and envelopes printed along with the cost of postage. We estimate the cost to be approximately $10,000.

We asked our contract administrator if the list could be narrowed down to only those purchasing our specific SIN numbers because we are grouped in with Fax paper users also. But she has told us that the list provided is what we will have to work with.

So you can imagine our dismay when we received the GSA Steps newsletter informing us that there will be an IFF Price Reduction effect January, 2004, and we will have to re-do our pricing, re-enter the pricelist into GSA Advantage AND re-print and re-send our GSA catalog. Another $10,000 in expenses within the 1st year of our contract.

We received an e-mail from the Bush Administration stating that the Federal Government was anxious to do business with small businesses and encouraged us to apply for a GSA contract. It further stated they would be there to assist us and make it as easy as possible. That e-mail has lost all credibility.

I will be spending the next few days making calls and sending e-mails to see if anyone within the GSA network can help us narrow our 5,400 name list down to make the cost of doing business with the Federal Government affordable. So far we are out on a limb, not knowing how profitable this endeavor may be.

My comment is actually a suggestion: Assign a GSA advocate to each GSA applicant from the time they make their initial inquiry call through the second quarter of their contract. The advocate should be graded on the expediency of the contract award and the ease with which the applicant is able to meet all the after-award requirements. I wished we would have kept a log on all calls and e-mails we sent seeking help; most often to be referred to someone else who wasn't in or who didn't immediately respond to your request for information and you had to put the project on hold again. No one person seems to have a handle on the entire process, the process is like a giant cumbersome maze.

2002g-507-8

GSA

Linda K. Nelson

04/15/2003 01:16 PM

To: gsarcase.2002-g507@gsa.gov
cc:
Subject: Fw: IFF Reduction comments

----- Forwarded by Linda K. Nelson/MVP/CO/GSA/GOV on 04/15/2003 01:13 PM -----

"Annette Keller" <annette.keller@attbi.com>

04/15/2003 11:27 AM
Please respond to "Annette Keller"

To: linda.nelson@gsa.gov
cc:
Subject: Fw: IFF Reduction comments

Dear Linda, Thank you for your call. I am forwarding my comments to you.

Annette Keller
Keltek
----- Original Message -----
From: Annette Keller
To: gsarcase.2002-g507@gsa.gov
Sent: Monday, April 14, 2003 2:30 PM
Subject: IFF Reduction comments

I am commenting on the IFF Reduction.

I just read about the IFF Reduction in the GSA Steps letter emailed on 4/10. It says that we have until 4/17 to comment. It seems like there could be many hours of work associated with the .25% price reduction on all of our published pricing and the amount GSA is allowing us to keep toward this effort may not be sufficient unless the process is made rather simple.

I hope that some function can be added to the SIP GSA Advantage software before this IFF Reduction is implemented so that it is possible to decrease the price of all items in a vendor's GSA Advantage program by the required amount without the vendors having to either go line by line or go through the export and re-import process!

Please forward my comments to the appropriate person by the April 17th deadline.

I must admit, I am annoyed by the wording in the Steps letter which refers to the IFF as something vendors collect *as opposed to something we pay!* When we were negotiating our MAS contract, our contacts at GSA certainly did NOT say that we could increase our prices 1% to cover that fee - in fact they we should decrease our prices even more below those we charge to our MFC. Further our MFC buys in larger quantities than GSA does and they pay shipping.

Annette Keller
Keltek

2002-G507-9

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: (202) 828-2281
E-Mail Address: NadlerD@dsmo.com

April 16, 2003

Ms. Laurie Duarte
General Services Administration
Regulatory Secretariat (MVA)
1800 F Street, NW
Room 4035
Washington, DC 20405

RE: GSAR Case 2002-G507; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee

Dear Ms. Duarte:

Dickstein Shapiro Morin & Oshinsky, LLP submits these comments in response to the General Services Administration ("GSA") March 18, 2003 proposed rule and request for comments regarding consolidation of GSA's Industrial Funding Fee ("IFF") and sales reporting clauses, and its proposed reduction in the IFF amount. Our law firm represents interests in the federal information technology industry and GSA's Multiple Award Schedule ("MAS") program. We believe that the proposed rule represents a positive step toward reducing acquisition costs for MAS customers. We do, however, have the following comments and recommendations that we ask that GSA to consider.

I. The Rule Should Address Future IFF Percentage Rate Changes

Future changes in the IFF percentage rate will have a negative impact on MAS customers if the percentage rate is increased, and on MAS contractors regardless of whether the IFF percentage is increased or decreased. As such, GSA should ensure that any upward increase in the IFF percentage is fully justified. MAS contractors will have to make changes to existing price lists and incur reprinting costs, as well as implement changes to their accounting systems each time GSA changes the IFF percentage rate. The proposed rule only addresses the January 1, 2004 IFF rate reduction. To ensure that MAS contractors are adequately compensated each time the IFF percentage rate changes, we recommend that future changes be handled as follows:

IFF Percentage Rate Decreases. GSA would set the effective date of the change which would be the first day of a calendar quarter. Any order dated prior to the effective date would remain in effect at the price stated in the order. All orders issued on, or after the effective date, with the exception of lease options due to be exercised after the effective date which continue at the original price, would be at the new price (with decreased IFF). Contractors would make IFF payments at the new rate for each scheduled payment due after the effective date, regardless of the IFF amount contained in the unit price.

G507-9

For example, as addressed in the proposed rule, contractors receive consideration for all orders issued prior to December 31, 2003 and invoiced after September 30, 2003. MAS customers will have two choices as a result of this implementation if there is concern about an economic windfall to the contractor in the quarter prior to the effective date. The first choice is to delay issuing new orders until after the effective date. MAS contractors wishing to receive orders prior to the effective rate change could issue voluntary price reductions in the quarter prior to the effective date. The second choice concerns orders issued prior to the effective date with a period of performance scheduled to occur after the effective date. MAS customers and contractors can work together to modify those orders where it makes economic sense for both parties. Customers probably will not want to incur the incremental cost to modify a $1,000 order to save $2.50, however, the decision to modify an order would be up to the customer and the contractor. Through this approach, MAS customers would not necessarily be required to incur the expense of modifying existing orders.

IFF Percentage Increases. GSA would set the effective date of the change, which would be limited to the first day of fourth quarter of the government's fiscal year. Many government customers issue annual task orders at the end of the fiscal year to fund the new year. Having the effective date of the IFF increase on this date will ensure the least economic impact for implementation. Any order dated prior to the effective date will remain in effect at the price on the order. All orders on or after the effective date would be at the new price (with increased IFF). This includes lease options due to be exercised after the effective date. The alternative would be for GSA to have multiple IFF percentage rates for leasing transactions. Payment of IFF at the new rate would be delayed two quarters for each 25 basis point IFF increase in which the contractor is required to pay at the new rate (which results in a three month grace period per 25 basis point increase).

For example, if on July 1, 2005, GSA increases the IFF rate to 1%, a 25 basis point increase, FSS contractors would pay .75% in July 2005 (this is for sales recognized prior to the effective date of the fee increase) and October 2005. Effective in January 2006, contractors would pay the increased IFF of 1%. All orders received and invoiced between July 1, 2005 and September 30, 2005 would allow contractors to recover their costs for reprinting price lists and making accounting system changes because they would charge the increased rate, but pay the previous rate. Contractors with longer task orders issued prior to the effective date can work with their customers to modify the orders to the new rate if it makes economic sense for both parties.

II. The Rule Should Provide a Minimum of Nine Months Prior Notice of Any Change in the IFF Percentage Rate

The proposed rule states that GSA shall provide reasonable notice prior to the effective date of any change to the IFF percentage rate. In this first change to the IFF percentage rate, GSA is providing over nine and a half months notice prior to increasing the rate. Many contractors prioritize and budget for accounting system changes on an annual basis. Providing a minimum of nine months notice will allow contractors sufficient

5501-9

time to prioritize system changes as well as ensure price lists are reprinted on a timely and economical basis. This will also ensure that each change will be effective for almost two years after the previous change to help minimize MAS customer and contractor expense. We believe that annual changes to the percentage rate will pose an undue economic hardship on both MAS customers and contractors.

III. The Proposed Rule Should Clarify that Orders that Do Not Reference the Contractor's GSA Schedule Contract Are Not GSA Sales

Proposed GSAR 552.238-74 (Industrial Funding Fee and Sales Reporting) provides that "Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Government Wide Acquisition Contract (GWAC), or a separately awarded FAR Part 12, FAR Part 13 or FAR Part 15 procurement." We have two concerns with this proposed clause.

First, many vendors have state contracts that reference the vendor's GSA Schedule pricing as the basis for the price offered to the state. Now that states are authorized to purchase off of the Group 70 Schedule, it is reasonable to expect that some, if not many, states will continue to insist on receiving the vendor's GSA price, even when the state declines to use the cooperative purchasing provision of the GSA Schedule. We are concerned that although these state contracts are not part of the MAS program, and the sales clearly are not made under the GSA Schedule, GSA auditors may treat them as GSA Schedule sales and claim that the vendor owes IFF for those sales. Thus, in addition to any applicable state agency fees, the vendor could be assessed IFF that is not reflected in its price and which would unfairly erode the vendor's margin.

Second, the proposed rule will make it incumbent upon the vendor to prove that the sale was conducted pursuant to a separate contracting authority or FAR Part 12, 13, or 15 on orders for contract items that do not reference the vendor's GSA Schedule. The practical effect of this is to shift to the vendor the burden to demonstrate that an order is not made pursuant to the GSA Schedule. This is inconsistent with applicable regulations, including Federal Acquisition Regulation ("FAR") 8.4, which requires the ordering activity to identify the contract vehicle against which the order is placed. Moreover, under the GSA Schedule, all users are non-mandatory and, thus, there is no basis for GSA to claim IFF related to undesignated orders for products that may be equally available on other contract vehicles. This provision would provide an inappropriate "windfall" of IFF to GSA and is inconsistent with GSA's stated goal of aligning the IFF to the actual administrative cost of the program.

While the proposed rule may work for orders that reference a contract and designate the contract authority under which the order is placed (i.e. FAR Part 12, 13 or 15), in many cases the order does not designate the authority and vendors may not have the access to information indicating the authority for a procurement. We are concerned that the determination of whether an item is a reportable sale could be based on records outside the vendor's control or access.

G507-9

In order to foreclose any potential confusion in the future, we ask that GSA explicitly state that reportable sales under the contract are those resulting from sales of contract items to authorized users that specifically reference the GSA Schedule number on the order.

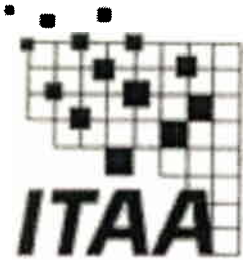
Thank you for the opportunity to submit our comments regarding this proposed rule.

Sincerely,

David M. Nadler

DMN/cma

2002-G507-10



April 17, 2003

Ms. Laurie Duarte
General Services Administration
Regulatory Secretariat (MVA)
1800 F Street, NW; Room 4035
Washington, DC 20405

Dear Ms. Duarte:

Re. GSAR Case 2002-G507; Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee.

The Information Technology Association of America ("ITAA") submits these comments in response to the General Services Administration's ("GSA's") March 18, 2003 proposed rule and request for comments regarding the consolidation of GSA's industrial funding fee ("IFF") and sales reporting clauses, and its proposed reduction in the industrial funding fee amount. As discussed in detail below, although the ITAA agrees that the IFF should be pegged to an amount that best approximates the cost of administering the multiple award schedules ("MAS") program, we have serious concerns regarding the manner in which GSA proposes to implement the current-proposed and future IFF revisions. Also, we strongly disagree with the new language in proposed clause 552.238-74 (Industrial Funding Fee and Sales Reporting), which appears intended to treat all contractor sales as MAS sales for sales reporting and IFF purposes, unless the contractor could prove that the ordering agency properly used a different contracting authority.

The ITAA supports the concept that government agencies that use the MAS program should be charged no more for their use than is necessary to finance the program. Here, GSA is seeking to accomplish that aim by reducing the IFF from 1% to .75%. GSA also proposes to permit MAS contractors to retain the .25% difference between the current and the proposed IFF amount for one calendar quarter to compensate contractors for the administrative costs they will incur to implement the proposed change.

Although it is appropriate that MAS contractors be compensated for their incurred costs resulting from the IFF change, GSA's proposed approach to the compensation issue falls far short of what is considered adequate. For a vast majority of MAS contractors, the change in IFF amount will result in MAS contractors incurring administrative expenses well beyond the relief provided by the .25% "spread." The cost of modifying existing accounting systems and procedures, training personnel on the new fee amount and the nuances of transitioning to that amount, and revising and printing new price lists and GSA Advantage! information, is expected to outweigh the minimal relief provided by the .25% spread.

Moreover, the proposed rule provides no indication that GSA has considered the substantial cost impact of modifications to existing orders that will be made necessary by the proposed change. In this regard, the proposed rule indicates that contractors may retain

Information Technology Association of America
1401 Wilson Boulevard, Suite 1100, Arlington, Virginia 22209-2318 ▌ Phone: (703) 522-5055 Fax: (703) 525-2279

G507-10

the .25% spread for only the October 1, 2003 to December 31, 2003 sales period. This limitation strongly suggests that GSA thereafter will require contractors to revise the IFF amount from 1% to the new .75% even for on-going work under orders placed before January 1, 2004. This will have a very significant cost impact. Contractors and ordering agencies will be required to process numerous modifications to existing orders, which will number in the hundreds or even thousands for a single contractor or agency. Despite the severity of this cost impact, it does not appear to have been a consideration in the proposed rule's development.

To mitigate this administrative burden and the associated costs, we recommend that MAS contractors be permitted to continue charging the 1% IFF for orders placed prior to January 1, 2004, unless the ordering agency and the contractor mutually agree to revise the amount to .75%. Permitting the contractor to retain the .25% spread past the January 1, 2004 cut-off date would further simplify the process and mitigate the expenses incurred by the MAS contractors. Although this is not a perfect solution because it still would impose on contractors the burden of having to track two classes of IFF sales (*i.e.*, 1% and .75%), it nevertheless would be less onerous than requiring contractors and ordering agencies to process numerous contract modifications and absorb significant uncompensated administrative costs due to the change.

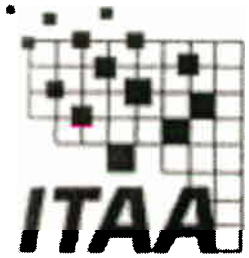
Regarding future revisions to the IFF, the ITAA urges GSA to find some other method of addressing surpluses and deficits resulting from its administration of the MAS program. We understand the pressures on GSA to tie the IFF amount to the costs of operating the MAS program, but the current proposed approach of working the changes through the contractors imposes a significant burden on contractors and, in our view, is not the most efficient mechanism. If, however, circumstances dictate no other way, we urge that GSA show restraint regarding the frequency of IFF revisions and that it clarify the reference to "reasonable notice" in paragraph (b)(2) of proposed clause 552.238-74 to make it clear that such advance "reasonable notice" will be no less than nine months.

Lastly, we strongly disagree with the language included in paragraph (a)(2) of proposed clause 552.238-74. Paragraph (a)(2) provides:

> Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC), or a separately awarded FAR Part 12, FAR Part 13, or FAR Part 15 procurement.

One possible interpretation of this language would be that each sale—including any open market order or micro purchase in which the ordering agency cites to no contracting authority—would be considered a MAS sale, unless the contractor could prove that the ordering agency did in fact properly use a separate contracting authority.

Such an interpretation, however, would unfairly shift to contractors the burden of proving which contracting authority the purchasing agency intended to use when making a purchase. Common sense would dictate that if a purchasing agency does not reference the contractor's



2002-G507-10

MAS contract, and it is not otherwise evident that the agency intended to place the order under the MAS contract, then the MAS contract should not apply and the sale should not be reportable for MAS purposes. Under the MAS program, most schedules are non-mandatory for Federal agency users—thus, there is no basis for GSA to claim IFF related to undesignated orders for products that may be equally available on other contract vehicles. A contractor should pay an IFF to GSA for only those sales in which there is a common understanding between the contractor and the purchasing agency that the purchase is indeed being made under the contractor's MAS contract. It would be grossly unfair for GSA to assume that all Government sales are MAS sales whenever a purchasing agency omitted any reference to a contracting authority on its order. 1/ Consequently, we request that the proposed language be deleted.

In concluding, the ITAA appreciates this initial attempt by the GSA to craft a rule that addresses the concerns expressed by some government officials regarding the amount of the IFF, but we do ask, consistent with our comments above, that GSA's final rule be crafted in a way that is less burdensome to implement.

Thank you for this opportunity to comment on the proposed rule. The ITAA's members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content, systems integration, telecommunications, and enterprise solution fields. We provide global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. The ITAA consists of over 500 corporate members throughout the U.S., and a global network of 47 countries' IT associations. The ITAA plays a leading role in issues of IT industry concern including information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, workforce and education, immigration, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. With respect to government IT procurement, our members have a particularly keen interest in the MAS program. Please visit www.ITAA.org for more information on the ITAA's activities.

We look forward to a continued dialogue with the GSA regarding matters pertaining to the MAS program.

Respectfully submitted,

Harris N. Miller, President
Information Technology Association of America

ITAA

1/ The commentary accompanying the proposed clause attempts to downplay the clause's significance by characterizing it as a mere consolidation and clarification of existing provisions. That, however, does not appear to be the case—the language clearly is new and it is substantive in nature. Given the extremely aggressive positions taken sometimes by GSA auditors during IFF reviews, we view the language as a potential (and unfair) attempt to provide government auditors an additional sword to wield in extracting IFF amounts from contractors on sales (often dating back years) in which the purchasing agency failed to make it clear that it was utilizing non-MAS contracting authority.

2002 G507-11

PROFESSIONAL SERVICES COUNCIL

April 17, 2003

General Services Administration
Regulatory Secretariat (MVA)
Room 4035
1800 F Street, N.W.
Washington, D.C. 20405
Attn: Ms. Laurie Duarte

Re: GSAR Case 2002-G507
Federal Supply Schedule Regulatory Changes

Via e-mail: gsarcase.2002-g507@gsa.gov

Dear Ms. Duarte:

The Professional Services Council (PSC) is pleased to submit these comments on GSA's proposed rule published in the Federal Register on March 18, 2003 (68 F.R. 13212) that would amend the GSAR to consolidate the industrial funding fee and sales reporting clauses and reduce the industrial funding fee. PSC is the leading national trade association representing the professional and technical services industry doing business with the Federal Government. PSC's approximately 140 member companies perform billions in contracts annually with the Federal Government, including under the GSA schedules, from information technology to high-end consulting, engineering, scientific and environmental services. We are strong supporters of the appropriate use of the GSA Schedule and appreciate the opportunity to work with GSA officials in developing appropriate regulatory and administrative guidance on the Schedules.

Summary of Comments

PSC supports the industrial funding fee reduction, but recommends that GSA clarify and expand the procedures to be used in future fee adjustments. In addition, PSC supports the clause consolidation, but is concerned that a burden is imposed on contractors to "prove the negative" -- that sales were not made under the GSA schedule and thus not be subject to the industrial funding fee. Furthermore, we view any change to the industrial funding fee as a material element of the Schedule contract that should only be modified through bilateral amendments.

GSAR-11

Specific Comments

I. Reporting of Federal Supply Schedule Sales

A. Consolidation of Clauses

Under current rules, the GSAR has separate clauses for reporting Schedules sales and for submitting the Industrial Funding Fee (IFF). One clause, 552.238-74, is the "Contractor's Report of Sales." The second clause, 552.238-76, is the Industrial Funding Fee. GSA proposes to consolidate these clauses into a new -74 clause titled "Industrial Funding Fee and Sales Reporting." We generally support the consolidation of the separate clauses into a new single clause. However, it appears that GSA has made significant policy changes through the consolidation from the current clauses that concern us. In addition, current provisions may have been inadvertently dropped while other changes made through the consolidation create new ambiguities that should be corrected before the integrated clause is finalized.

B. Defining Reportable Sales

1. We have several concerns with subparagraph (a) (2) of the new clause that provides:

> Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority...or a separately awarded FAR Part 12, FAR Part 13 or FAR Part 15 procurement.

2. We support GSA's recognition that not all sales are automatically "Schedules sales" that are subject to the IFF. However, the new wording of the proposed clause is a significant change in that it places the burden on the contractor to prove that a sale was made outside of the Schedules rather than on the Government to indicate that they are ordering under the Schedule contract. The GSA ordering procedures explicitly -- and properly -- require government ordering activities to indicate that the purchase is being made under the appropriate Schedule; this rule seems to shift the burden to the contractor to "prove the negative." In effect, we view, and we oppose, the proposed change as requiring industry to treat sales from authorized users as reportable sales unless an alternative "contracting authority" or separately awarded procurement can be demonstrated. We recommend that the reportable sales portion of the revised clause at (a)(2) be amended to read:

> "Reportable sales are those resulting from sales of contract items ordered under this contract, in accordance with any applicable ordering clause(s), as recorded by the contractor. Sales conducted under authority other than this contract are not subject to this clause."

3. Further, as currently drafted, the list of "separately awarded procurements" that would be excluded from reportable sales is too narrow. FAR Part 14 (relating to sealed bidding) should be added to the listing. In addition, there are other contracting authorities outside the FAR that are able to use the Schedules (such as the Training Act, 5 USC 4109) and other federal agency authorized users of the Schedules that are outside the FAR (such as the FAA, the Transportation

G501-11

Security Administration and cooperative purchases by State and local governments from Schedule 70). None of these sales are addressed under the exclusions of revised clause, but each are examples of current exempt sales that would be swept in under the revised coverage because of the "default" position that all orders placed by authorized users are "reportable sales" under the Schedule unless a specific exemption can be cited. At a minimum, we recommend that the lead-in language to the list of separately awarded procurements include the phrase "including but not limited to."

II. Changes to the Industrial Funding Fee

A. Unilateral Right to Change Fee

We agree that GSA may unilaterally revise the IFF, but we do not concede that GSA has the unilateral right to require contractors to modify their contracts to reflect any IFF that GSA may choose to establish. While the IFF is to compensate GSA for the costs of operating the FSS program and recoup its operating costs from ordering activities, GSA has chosen to recoup its fee through an up-charge imposed on contractor sales. GSA has properly proposed to implement the current proposed revision through a bilateral contract modification to be executed electronically. Since the IFF is an essential element of contract pricing, all future changes to the IFF must also be made through bilateral changes to contracts.

B. Designated Official to Revise IFF

1. As the supplementary information notes, the Industrial Funding Fee is not included in the GSAR, but was set once, in 1995, by a GSA Acquisition Letter. GSA proposes to change the GSAR to provide that, effective January 1, 2004, GSA will have the unilateral right to change the IFF rate. The undesignated lead-in sentence to revised Clause –74 (b) requires the contractor to "remit the IFF at the rate set by FSS." See our comments above on the unilateral right to impose the fee change in contracts.

2. Whether that function of revising the IFF is now properly, or in the future should be, vested in the Commissioner of FSS is an internal matter for GSA to resolve. However, the designated authority language here is different from the designated authority language in subparagraph (b)(2) and different from the designated authority language in the summary information accompanying the rule that indicates that the GSA Administrator has the authority to change the IFF, and will consult with OMB prior to any further fee changes. To avoid any potential for ambiguity or inconsistency in determining who has the authority to set the rate, we recommend deleting the phrase "set by FSS" and inserting "set by GSA" in all places.

C. Once A Year Revision of IFF

Revised Clause –74(b)(2) provides, in part, that the FSS Commissioner or the delegated representative has the "unilateral right to change the percentage at any time, but not more than once a year." We strongly support the minimum once a year revision of the fee. In addition, as noted above, whether the FSS Commissioner is the right GSA official to set the fee is an internal matter for GSA, but to avoid any potential for ambiguity or inconsistency in determining who has authority to set the rate, and to insure consistency with the authority described in the undesignated first sentence of subparagraph (b), we recommend deleting the phrase " The

Commissioner of GSA's Federal Supply Schedule, or the Commissioner's designated representative" and inserting "GSA" in all places.

D. Notice Prior to Change
The revised Clause –74(b)(2) also provides that "FSS will provide reasonable notice prior to the effective date of the change." We strongly recommend that the text of the clause include a minimum period of notice, such as "not less than 180 days," before the effective date of the change. As FSS found through its consultations last year with PSC and other industry associations, GSA schedule holders need a significant period of time to adjust contract documents, pricing sheets, accounting systems, websites and related sales aids to reflect any new fee. The one-quarter percent reduction being made in this rule is the only rate change that has ever been made; to its credit, GSA discussed the mechanics of the rate change with industry and is providing more than nine months advance notice of the fee change from the publication of the proposed rule. In our view, it is imperative that sufficient notice be provided to schedule holders, federal agencies and other authorized users to facilitate changes, planning and budgeting.

E. Publication on Website
The revised Clause –74(b)(2) also provides that FSS will post notice of the current IFF fee on a GSA agency website. We support that means of notification, provided it is not the exclusive means of notification. For example, GSA is able to communicate electronically with virtually all of its Schedule holders, with its largest agency users, with associations representing Schedules-holders, the media and others. All of these mechanisms should be used to publish the new date and rate. In addition, the website should maintain all prior rates and the dates those rates are applicable and any new rate and the date that new rate will be applicable. The site should also show the date on which the proposed future rate change was first posted to the website.

F. Contractor Expenses Incurred in Future IFF Changes
1. To its credit, GSA recognizes that contractors will incur expenses as a direct result of this initial IFF change. As the supplemental information accompanying the rule provides, GSA is providing consideration for the bilateral contract change it is proposing – to allow vendors to include the existing one percent IFF until December 31, 2003 but to forward to FSS an IFF of 0.75 percent for reported sales in the last quarter of the fiscal year.

2. We have no basis to know whether the one-quarter percent fee retained by GSA Schedule holders for the one reporting period will be sufficient to compensate contractors for the costs they will include in making the necessary systems and contract changes. Obviously larger Schedules sales in the last quarter will generate more retained fees. PSC will inquire of our members after the fee goes into effect whether the fee retained was sufficient. However, we are particularly concerned about the potential for unrecoverable costs that will be incurred by our small business members by this instant change. We encourage GSA to consult with PSC and other industry associations to assess the costs contractors incurred in making the necessary IFF changes. This will provide GSA with facts on which to make future policy determinations. Furthermore, GSA should discuss with PSC and other industry associations how it would propose to address contractor recovery of costs on subsequent fee adjustments, particularly if a future IFF rate should be increased.

G501-11

3. We also strongly recommend that this grace period for retaining the fee be incorporated into any revised contract clause; without such contract coverage, there will be an unacceptable ambiguity between contract provisions and GSA's permitted practice that puts all Schedules participants at risk for future audit questions, contract compliance and litigation. With the bilateral contract change being made, this one-time grace period on fee remittance should be included in each Schedule-holder's contract.

III. Effective Date

The Background Information on the rule indicates that GSA intends to make the IFF reduction effective on January 1, 2004. While we believe it is implicit in the rule that this change would become effective only for new sales made after that effective date, we recommend that this coverage be explicit in the contract and in the final rule.

IV. Other Issues

1. In proposed Subparagraph (a), we recommend combining paragraphs (1) and (5). They deal with the same issue of the timing of the reporting, yet it creates confusion by having the topic addressed in separate, widely separated provisions. Furthermore, with respect to paragraph (5), we recommend adding at the end thereof the phrase "of the contract," as provided for in proposed subparagraph (b)(1) and in the existing –74(e) language which defines the expiration of the contract as the time when the final reporting of sales, and the final payment of IFF is due.

2. In proposed Subparagraphs (a)(5) and (b)(1), the implication is that the final reporting of sales and the final IFF payment are also due within thirty days of the reporting period. Under the current –74(e) clause, there is separate regulatory coverage of "close out" actions, and a period of 120 days is permitted after the final task order is performed before the final sales report and IFF payment is due. We strongly recommend that the new clause separate the quarterly reporting from the final reconciliation, and that at least 120 days be permitted after the close-out of the contract for the contractor to prepare the report of final sales and make payment of the final IFF.

3. In proposed Subparagraph (b)(2), we recommend deleting the phrase "statutorily-based." The use of this phrase leaves the confusing impression that the IFF is set by statute. The phrase is not in the current rule and is not necessary for the proposed clause.

4. In proposed Subparagraph (c) of the proposed –74 Clause, GSA retains the unilateral right to change, from time to time, the written procedural instructions regarding remitting the IFF, following notification to the contractor. We concur that GSA can unilaterally change these procedural instructions. We recommend that GSA provide at least one reporting period advance notice regarding remitting the fee and that this notification period be included in the contract clause.

5. Today, FSS maintains its own supplemental contract registration system, the Vendor Support System, for electronically reporting sales. The Federal Government is moving towards a single contractor registration system, the "Contractor Central Registration" (CCR). A FAR proposed rule to make this system applicable government-wide was published in the Federal Register on

April 3, 2003 (68 F.R. 16366). We recommend that FSS develop a transition plan to phase out its unique registration requirements under the "Vendor Support System" and develop a mechanism linked to the CCR. PSC would be pleased to assist.

Conclusion

We compliment GSA for the advance notice of the proposed IFF reduction and for recognizing the importance of compensating contractors, at least in part, for the costs incurred in making revisions to their contract pricing sheets and fee reporting systems. We are concerned with the attempt to shift to the contractor the burden of proving that a sale is not reportable under the contract. Further, we are concerned with the lack of completeness in the listing of "separately-awarded procurements" coverage of non-Schedule sales. There are also several inconsistencies in the proposed revisions and other ambiguities that must be corrected before the rule is finalized.

If you have any questions or need any additional information, please do not hesitate to let me know.

Sincerely,

Alan Chvotkin
Senior Vice President and Counsel