

Federal Advisory Committee Act
Panel on Multiple Award Schedules
July 21, 2008

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Chairman Branch, Ms. Brooks, distinguished Advisory Panel Members; I appreciate the opportunity to speak with you today. I am Chairman of Cotton & Company LLP. Cotton & Company is a CPA firm headquartered in Alexandria, Virginia. The firm was founded in July 1981 and since its formation has concentrated its practice on providing auditing and consulting services on behalf of Federal agencies. We are classified as a large business and currently employ 110 professionals. About 80 percent of our business is directly related to Federal organizations, programs, activities, and functions.

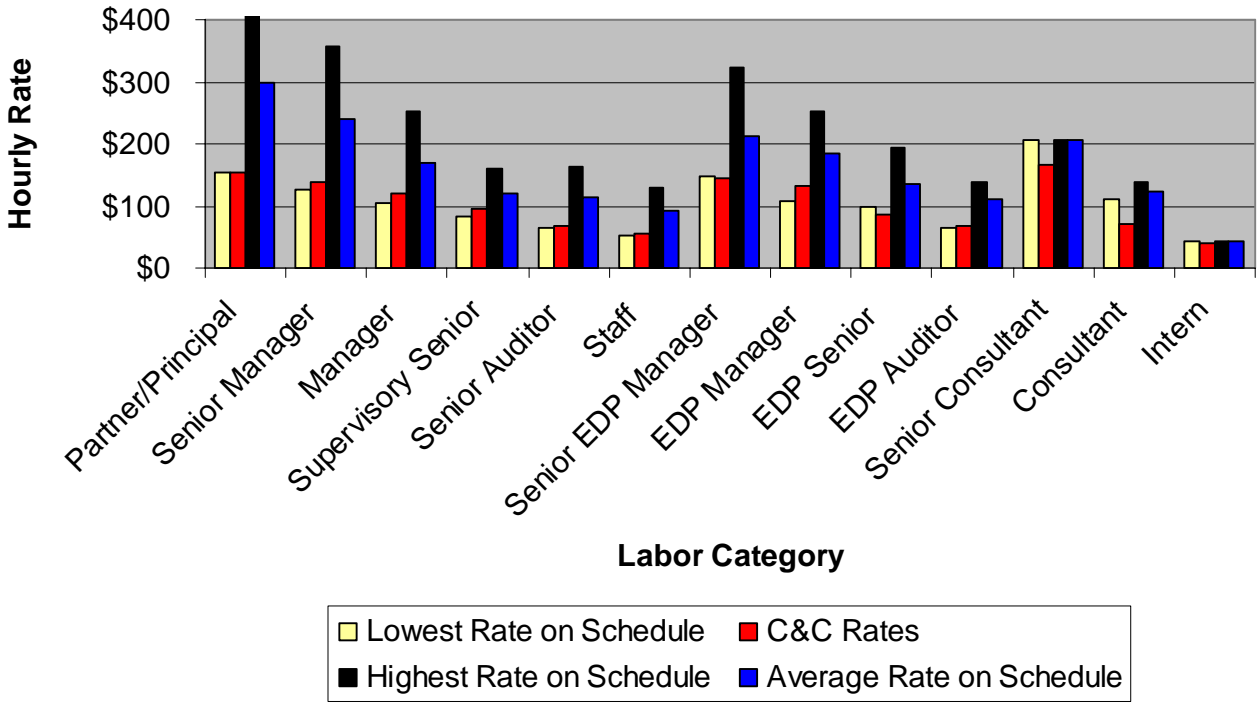
Cotton & Company LLP was one of the first firms awarded a GSA Schedule contract under what is now known as the Financial and Business Solutions—FABS—schedule. We were a GSA Schedule contractor for 11 years and 1 day, from July 14, 1998 through July 14, 2008. During that time, we were awarded 256 contracts under the FABS Schedule and performed \$52 million of work for 39 *different* Federal agencies. Many engagements were repeat engagements for the same agencies. Our Federal agency clients under FABS included the Congressional Budget Office, Government Accountability Office, Department of Education, GSA itself, Department of Homeland Security, Department of Energy, Department of Health and Human Services, National Science Foundation, Small Business Administration, Securities and Exchange Commission, and Department of Veterans Affairs, to name just a few.

We provided many hours of high-quality professional services at very reasonable prices under FABS. The table on the next page compares Cotton & Company's GSA rates, as of July 14, 2008, by labor category, to the other large-business FABS contractors in the Washington, DC, area. Our rates were below the average in all labor categories and were, on average, \$54.86 *lower* than the average rates of these competing firms. Our rates were very near the lowest rates for all labor categories, and were, in fact, the lowest rates for 5 of our 13 labor categories.

Cotton & Company's latest Open Ratings score was 95. Our win-loss record under FABS reflects our value (high quality and low price). In 2007, we bid on 17 GSA Schedule contracts and won 13, a 76-percent win rate. In 2008, we won 8 of 9 contracts proposed, an 89-percent win rate.

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Cotton & Company Rates Compared to Large Firms on SIN 520-07 as of July 2008



Labor Category	Lowest Rate on Schedule	C&C Rates	Highest Rate on Schedule	Average Rate on Schedule	Average Schedule Rate Minus C&C Rate	Percent Below Average Rate
Partner/Principal	\$152.61	\$153.16	\$459.63	\$298.25	\$145.09	48.65%
Senior Manager	\$126.41	\$139.15	\$357.92	\$240.86	\$101.71	42.23%
Manager	\$104.16	\$118.93	\$253.79	\$170.16	\$51.23	30.11%
Supervisory Senior	\$84.28	\$95.18	\$161.21	\$120.34	\$25.16	20.91%
Senior Auditor	\$65.78	\$68.85	\$162.69	\$114.73	\$45.88	39.99%
Staff	\$53.58	\$53.90	\$130.15	\$91.61	\$37.71	41.16%
Senior EDP Manager	\$147.22	\$145.22	\$322.59	\$213.79	\$68.57	32.07%
EDP Manager	\$108.68	\$133.36	\$253.54	\$185.22	\$51.86	28.00%
EDP Senior	\$97.11	\$86.25	\$195.27	\$134.50	\$48.25	35.87%
EDP Auditor	\$65.90	\$66.56	\$137.03	\$110.97	\$44.41	40.02%
Senior Consultant	\$205.54	\$166.43	\$205.54	\$205.54	\$39.11	19.03%
Consultant	\$109.72	\$71.18	\$137.03	\$122.31	\$51.13	41.80%
Intern	\$42.13	\$39.00	\$42.13	\$42.13	\$3.13	7.43%
					\$54.86	32.87%

* Information derived from www.gsaibrary.gsa.gov

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Based on Cotton & Company's 11 years of experience as a GSA Schedule contractor, I have six recommendations for this panel to consider. These recommendations relate primarily to services. Some may be applicable to products, but Cotton & Company does not sell products, just professional services.

RECOMMENDATION 1: Clarify FAR Part 8.4 regarding price reasonableness.

FAR 8.404(d) states:

GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable.

While this may (or may not) be technically true, it misleads buying agencies into believing that any contract awarded under the schedule results in a fair and reasonable price for services purchased. When services are being purchased, there are three key variables: hourly rates, level of effort, and quality. Although FAR 8.405-2 explains the need for further evaluation when purchasing services, the fact that a buying agency only needs to solicit quotes from 3 contractors creates significant vulnerabilities to abuse. As Mr. Essig stated at your May 22 meeting, there are two reasons that buying agencies use the schedules:

One, because they're a heck of a lot faster, and I can't wait eight months to get my contract in place. Two, -- and I actually heard this one -- I can get the source I want.
[Tr. 280]

This panel should ponder the implications of that second reason. No one knows the extent to which schedule purchases are being gamed (or worse). But the fact is that it happens. Companies market their services directly to agency personnel and it is easy to find two other contractors with higher rates from which to solicit "competing" quotations. Widespread use of the GSA schedules may be improperly costing the government tons of money due to the manipulation of competition to steer contracts to favored vendors.

FAR 8.4 should be revised to make clear that GSA schedule rates for services are just one of three key variables in best-value procurements and that buying agencies have the sole responsibility of assuring that they enter into best value contracts based on competitive consideration of rates, levels of effort, and quality.

RECOMMENDATION 2: Make buying agencies the sole focal point for competition, increase the competition required, and optimize the levels of competition required.

Everyone on this panel appears to agree that competition is the best means of assuring best prices, at any point in time, for any requirement. Yet, the FAR only requires three quotations to be solicited when using the GSA schedules. The government's better buying offices recognize this fallacy and already require greater competition. All government buying offices should be *required* to optimize competition when using the GSA Schedules. The mechanisms for facilitating optimum competition—e-Buy and *GSA Advantage*—exist. The FAR and these competition vehicles should be modified and their use made mandatory when buying GSA Schedule services. When purchasing services via a GSA schedule, e-Buy should generate—*randomly*—a number of contractors from whom proposals are sought. The number of randomly-generated potential contractors can be tiered based on the size of the procurement. For example, 10 contractor names can be generated for procurements of up to \$500,000; 15 for procurements of up to \$1,000,000; 20 for procurements of up to \$1,500,000; and so forth. Buying offices should be allowed to add *more* randomly-generated contractor names if they wish; but should be allowed to add *specific* contractor names to the randomly-generated lists only with managerial approval and based on adequate justifications. Remaining schedule contractors should also have access to pending procurements (as e-Buy currently allows) and be allowed to propose for the work, without prejudice. Determining the *optimum* levels of competition for procurements of varying sizes can be done later (perhaps an excellent research topic for academia), but increased competition can and should be made mandatory now.

RECOMMENDATION 3: Eliminate the MFC clause and the price reduction clause.

A careful reading of both the MFC and price reduction provisions makes clear that they were written with products, not professional services, in mind. Products sold commercially seldom differ from products sold to the government; thus some form of MFC clause may make sense for product sales. Attempts to apply these provisions to

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professional services are based on the flawed premise that *commercial* professional services and *governmental* professional services are “comparable.” (These clauses appear to stem from the “Policy Statement on Multiple Award Schedule,” an outdated, pre-FASA/FARA policy. The fact that the Policy references the FPRs that ceased to exist 24 years ago is a good indication of its obsolescence.) While providing services to the government may require the same *skill sets* as providing services in the commercial sector, providing services to the government usually requires significantly different knowledge and experience bases. For example, auditing standards and accounting principles are different in the commercial and governmental sectors. GSA’s interest in establishing initial prices in schedule services contracts should be to assure that the labor rates (prices) are, in general, realistic and reasonable. Period. The determination that prices are realistic and reasonable should be based on prices in the marketplace rather than on any particular contractor’s historical prices. Buying agencies should have the sole responsibility for deciding on the best value for a specific requirement. The MFC clause should be replaced with a clause that simply states (a) that the labor rates in the contract have *not* been determined to be fair and reasonable for any specific requirement, (b) that the labor rates are the maximum rates that can be used to price delivery or task orders under the Schedule, (c) that buying agencies may and should seek further labor rate reductions as part of the competitive purchasing process, and (d) that buying agencies remain solely responsible for making best value decisions for specific requirements.

If buying agencies make optimum use of competition (as recommended in recommendation 2, above), there is no need for a price reduction clause. The government can and should rely on market forces to assure that it receives the best price for any particular requirement, at any point in time.

RECOMMENDATION 4: GSA should establish standard labor categories under each services schedule so that buying agencies can make meaningful price comparisons.

The current schedules have prices for specific labor categories in which the highest price on the schedule is more than 400% higher than the lowest price for the “same” labor

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category. *On average*, for the labor categories on Cotton & Company's former FABS contract, the highest prices were 238 percent higher than the lowest prices. This is because contractors are allowed to make their own labor category definitions.¹ This renders the stated prices for labor categories meaningless for any efforts to compare prices and value. GSA, working with buying agencies, should define the labor categories that schedule contractors must use and specify the education, certification, and experience requirements for those labor categories. Doing this will reduce the range of prices for a given labor category and enable buying agencies to make best-value decisions based on a level playing field.

RECOMMENDATION 5: GSA's role in the government procurement process should be defined as being (and restricted to) that of providing the marketplace where willing buyers and willing sellers come together.

The fundamental fact is that GSA Schedule contracting officials do not actually *buy* anything. GSA procurement officials often do not even understand the services being procured under the Schedules.² Yet, they are serving as the "price police" for buying these services. GSA's role should be akin to that of a manager/operator of a shopping mall. Once vendors are granted the right to space at the mall, GSA's role should be to facilitate access to the vendors, provide information about the vendors, and make it easier for buyers to reach informed purchasing decisions. GSA should focus its energies on making information about sellers easier for buying agencies to access and compare. For example, GSA currently receives customer satisfaction information compiled by Dun & Bradstreet via the "Open Ratings" system. GSA does not make this past performance information available to buying agencies. Would it not be of great value to buying

¹ Indeed, GSA has encouraged "creative" use of labor categories. In response to a recent request for a labor category price increase, a GSA contracting officer told us that we should just do what other firms do and simply establish a "new" labor category. This likely explains why many GSA Schedule contractors have dozens of labor categories and, in some cases, more than a hundred labor categories.

² When applying for approval under a particular SIN, offerors must demonstrate that they have performed the particular service by providing a synopsis of a recently-performed engagement. Cotton & Company applied for the "Asset Management Services" SIN. The synopsis we provided described a recent engagement we had completed for the U.S. State Department to design, develop, and implement a system for managing more than \$300 million of State Department personal property residing in locations around the world. Our GSA contracting officer rejected our application because the engagement did not "fall within the scope of asset management" services. After we explained to her what personal property was, she accepted our application for that SIN.

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agencies to be able to see, at a glance, how one Schedule contractor's prices (based on common labor category definitions) *and quality* compare with other contractors' prices and quality?

RECOMMENDATION 6: If GSA decides to retain the MFC or price reduction clauses, GSA should take steps to assure that these clauses are interpreted consistently.

This panel heard testimony in May indicating that GSA regions are interpreting the identical language in these clauses differently. The problem is worse than simply inconsistency across GSA regions. We have seen contracting officials within the *same* GSA procuring office interpret these clauses differently. Our GSA Schedule contracting officer changed 17 times over our 11-year experience. On multiple occasions, subsequent contracting officers forced different interpretations on us and repudiated decisions made by their predecessors. These clauses are confusing and convoluted, especially when trying to impose them on contracts for services rather than contracts for products. As noted previously, I recommend that the MFC clause and the price reduction clause be eliminated; but, if either clause is retained, this panel should recommend that GSA's intended meaning for these clauses be made totally clear and that the clauses are interpreted with consistency, across GSA regions, within procuring offices, and over time.

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This concludes my prepared remarks. I will be happy to respond to any questions you have. Thank you again for this opportunity.

DAVID L. COTTON, CPA, CFE, CGFM
COTTON & COMPANY LLP CHAIRMAN

Dave Cotton is chairman of Cotton & Company LLP, Certified Public Accountants. Cotton & Company is headquartered in Alexandria, Virginia. The firm has a practice concentration in assisting Federal and State agencies, inspectors general, and government grantees and contractors with a variety of government program-related assurance and advisory services. Cotton & Company has performed grant and contract, indirect cost rate, financial statement, financial related, and performance audits for more than two dozen Federal inspectors general as well as numerous other Federal and State agencies and programs.

Cotton & Company's Federal agency audit clients have included the U.S. Government Accountability Office, the U.S. House of Representatives, the U.S. Small Business Administration, the U.S. Bureau of Prisons, and the U.S. Marshals Service. Cotton & Company also assists numerous Federal agencies in preparing financial statements and improving financial management and accounting systems.

Mr. Cotton received his BS in mechanical engineering (1971) and an MBA in management science and labor relations (1972) from Lehigh University in Bethlehem, PA. He also pursued graduate studies in accounting and auditing at the University of Chicago, Graduate School of Business (1977 to 1978).

Mr. Cotton is presently serving on the Advisory Council on Government Auditing Standards. He is a member of the Advisory Council of the Academy for Government Accountability. He is also a member of the advisory board of the Institute for Truth in Accounting. He is serving on the Institute of Internal Auditors (IIA) Anti-Fraud Programs and Controls Task Force and co-authored *Managing the Business Risk of Fraud; A Practical Guide*. He is a former member of the American Institute of CPAs (AICPA) "Group of 100," served on the AICPA Anti-Fraud Task Force, and co-authored *Management Override: The Achilles Heel of Fraud Prevention*. He is the past-chairman of the AICPA Federal Accounting and Auditing Subcommittee and has served on the AICPA Governmental Accounting and Auditing Committee and the Government Technical Standards Subcommittee of the AICPA Professional Ethics Executive Committee.

Mr. Cotton served on the board of the Virginia Society of Certified Public Accountants (VSCPA), and on the VSCPA Litigation Services Committee, Professional Ethics Committee, Quality Review Committee, and Governmental Accounting and Auditing Committee. He is member of the Greater Washington Society of CPAs (GWSCPA) and is serving on the GWSCPA Professional Ethics Committee. He is a member of the Association of Government Accountants (AGA) and is past-advisory board chairman and past-president of the AGA Northern Virginia Chapter. He is also a member of the Institute of Internal Auditors and the Association of Certified Fraud Examiners.

Mr. Cotton has testified as an expert in governmental accounting and auditing issues and fraud issues before the United States Court of Federal Claims and other administrative and judicial bodies.

Mr. Cotton served as a technical reviewer for the 1999 through 2003 editions of the AICPA Audit and Accounting Guide *Audits of Federal Government Contractors*.

Mr. Cotton is the author of the AICPA continuing education courses *Fraud in Governmental and Not-for-Profit Audits—the Auditor's Responsibilities Under SAS 82* and *Joint and Indirect Cost Allocations: How to Prepare and Audit Them*. He has lectured frequently on auditors' fraud detection responsibilities under **SAS 99**, *Consideration of Fraud in a Financial Statement Audit*. He also has been an adjunct instructor at the Inspectors General Auditor Training Institute (*Auditing the Federal Contracting Process* and *Contract and Procurement Fraud*) and currently teaches at the George Mason University Small Business Development Center (*Fundamentals of Accounting for Government Contracts*).