

Summary Minutes of the U.S. General Service Administration
Multiple Award Schedules Advisory Panel
Public Meeting, August 18, 2008

Committee Members: See Attachment A

Committee Members Present: Elliott Branch, Judith Nelson, Alan Chotvkin, David Drabkin, Thedlus Thompson, Larry Allen, Debra Sonderman, Glenn Perry, Thomas Essig, Jacqueline Jones, Thomas Sharpe, Jr., and Lesa Scott.

Date and Time: August 18, 2008, 9:00am to 3:30pm

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

GSA Staff: Pat Brooks, Designated Federal Official

Presenters: Maureen Regan, Counselor to the Inspector General
Department of Veterans Affairs
Herman Caldwell
Michael Del-Colle, Chairman IT Committee
Coalition for Government Procurement
James Connal
Coalition for Government Procurement
Floyd Groce and Jim Clausen, Co-chairs
DoD Enterprise Software Initiative Working
Group

Meeting summary:

The meeting focused on issues and recommendations related to fair and reasonable price determinations for MAS contracts for services. The Panel also discussed guidelines for future meetings and the framework for the final report.

Ms. Regan discussed various aspects and pricing for the Veterans Affairs (VA) schedules program:

- VA currently manages nine healthcare services and supplies schedules. Two additional schedules are being added. Annual sales are approximately \$7.5B, with VA and the Department of Defense as the largest customers.
- The VA IG has a Memorandum of Understanding (MOU) to conduct pre and post award reviews of FSS healthcare proposals. Since 1993 pre-award reviews identified \$2.1B in potential cost savings and post award reviews recovered \$81.1M.
- Most favored customer (MFC) is used to determine price reasonableness for all but covered drugs. The statutorily mandated federal ceiling price (FCP) is used to determine price reasonableness for covered drugs.
- MFC/best price is an objective but is not a legal entitlement.
- An offeror's commercial sales practices information should disclose, for example,
 - dollar value of sales per special item number
 - whether discounts & concessions offered to the government are equal to or better than those offered to any customer acquiring the same items.
 - deviations to written policies or standard commercial sales practices.
- Pre-award reviews are useful for:
 - determining the accuracy of the disclosures
 - making recommendations to the contracting officer for price reasonableness determinations
- Pre-awards surveys over the past 5 years revealed that 50% of the CSP data was found not current, accurate, or complete.
- Price reasonableness is important at the time of award and is just as important during the 5 year contract performance period
- Factors that the contracting officer should consider when not offered most favored customer are: what are the quantities being purchased; commitments to purchase
- The notion that competition at the ordering level ensures fair and reasonable prices is a myth.
- Suggested solutions to some of the pricing concerns: (1) maintain and amend the price reduction clause. The price reduction clause is necessary to ensure price reasonableness throughout the term of the contract; (2) remove the clause, limit duration of the schedules contract period and require competition at the purchasing level; (3) allow awarding agency the flexibility to amend clauses to ensure price reasonableness; (4) terminate the schedules program and require full and open competition for all purchases; (5) for the services area have separate schedules with terms and conditions specific to services and exclude services when fair and reasonable price is not consistent with commercial practices; and (6) for services define procedures to determine price reasonableness when vendors do not have commercial sales.

In response to questions, Ms. Regan stated

- That her office only conducts pre and post award contract audits, not process audits which are conducted to assure that contracting officers are following the rules. She generally believes that contracting officers follow FAR Part 8.4.procedures. Furthermore, competition in her opinion is an RFP not picking up the phone and checking with 3 vendors.
- The term reseller has never been defined; therefore, it is difficult to determine price reasonableness for this area. There are resellers who actually buy and resell products and firms with no commercial sales of their own but utilize the commercial sales of the manufacturer who are third party brokers. The broker is not used in the commercial environment as it is in the government.
- Contract dollar threshold determines whether a pre award audit is done.
- Like GSA, VA is not able to track what is being bought on its schedules. The VA relies on the vendors to provide such information.
- Schedules should be flexible based upon the commodity or service

Ms. Regan's presentation is at Attachment B.

Mr. Caldwell presented a taxpayer's view of fair and reasonable price. Mr. Caldwell suggested reasons as to why there is a disconnect when the GSA contracting officer indicates she/he has determined prices to be fair and reasonable, yet many customers indicate they are able to achieve discounts off schedule prices. Reasons for the discrepancies included workload and emphasis on cycle time for awards.

Mr. Caldwell's presentation is at Attachment C.

Mr. Michael Del-Colle, Chairman IT Committee, Coalition for Government Procurement and Mr. James Connal, Coalition for Government Procurement made back to back presentations as representatives for the Coalition. Mr. Del-Colle addressed services contracts and Mr. Connal addressed product contracts.

SERVICES-

Mr. Del-Colle compared the GSA schedules program and its users to a car with different drivers. He stated the schedules should not be judged based upon the ability of its users just as a one would not judge a car based upon the ability of its driver.

From his perspective, both GSA and its client agencies need to better understand what fair and reasonable price means. At its inception, the guidance on most favored customer presumed that there was a set of terms and conditions that were comparable to the commercial market place. However, the guidance also recognized that fair and reasonable may be different based upon the circumstances.

Other comments were that in today's rapid fire environment it is inconceivable that commercial contractors have a detailed complex price inventory control system that can monitor a price of a single product or service on any given day at the level of detail

presumed by the most favored customer provision; therefore, they may not know who their most favored customer is at any given point; that the schedules provide variety, flexibility, and responsiveness to a variety of simple and complex needs; and that contracting officers depend on the IG to do price analysis in the guise of audits.

PRODUCTS-

Mr. James Connal's presentation addressed pricing products for its MAS program schedule. Mr. Connal's presentation included the following points:

- There are many variables to fair and reasonable prices. Examples are volume and components. The key is competition.
- Fair and reasonable does not mean the lowest price all the time. Every vendor uses different schemes to determine prices and prices are negotiated with the government contracting officer.
- Most favored customer needs to consider "similar size and scope". Also the government does not make a commitment such as commercial customers do
- Because of the pace of the IT industry, timing also makes a difference. What was a good deal today may not be a good deal six months from now. For example a firm may offer a better price in September if his fiscal year end coincides with the government's fiscal year end.
- Government needs to act like the commercial market and utilize competition

In response to questions, Mr. Connal and Mr. Del-Colle:

- Suggested changing competition. Bring competition to the actual point of sale versus when the contract was awarded years ago. Require more stringent competition at the task order level. For example the DoD requirement for orders over 100K are posted on eBuy.
- Stated the schedules should treat fair and reasonable price for services different from products. There are differences in the pricing schemes, differences in competition, and while prices go down for products services costs increase.
- Stated there are instances where government terms and conditions impact price. The Trade Agreements Act, the cost of money because of the government invoice payment time period, and the disaster recovery provisions that require level 3 details are examples.
- Membership of the Coalition is 330 companies; 70% of these firms have schedule contracts.

Mr. Del-Colle's presentation is at Attachment D.

Mr. Connal's presentation is at Attachment E.

Mr. Floyd Groce is one of the Co-chairs of the DoD Enterprise Software Initiative (ESI) Working Group. ESI establishes strategic sourcing relations with leading IT vendors to provide enterprise software agreements for DoD, Coast Guard, and the intelligence communities. Mr. Groce stated that ESI is a major customer of the Schedule 70. Most agreements are BPAs used to acquire software, software maintenance, or selected services. ESI has negotiated improved pricing from the schedule pricing. The contracts are with resellers as well as the software publishers. The agreements are on the ESI website.

In response to questions, Mr. Groce stated that ESI continues to use the MAS program schedule for a number of reasons: (1) because the schedule provides a foundation to establish a very focused agreements; (2) the underlying contract terms and conditions allows them to focus on those unique things such as transferability; and (3) the schedules save time because underlying contracts already exist. ESI meets with GSA representatives to understand the requirements of the GSA contract so the ESI does not add ambiguity to the underlying contract if they need to negotiate unique provisions.

He further stated that he estimates that as a result of the low prices that ESI has negotiated under these BPA, the government will realize over \$3B in cost avoidance which includes reduced license costs and reduced maintenance and support costs.

Buying through these BPAs is decentralized but ESI get reports from its customers as to what is being bought and prices, etc; therefore, ESI has transparency and shares that information with its customers.

With regard to a question on how ESI views the schedule price and its value, Mr. Groce stated that ESI looks at the foundation for the GSA schedule price and then try to establish the appropriate pricing for each agreement. Their objective is to get multiple pricing strategies that will improve pricing downstream regardless of the individual transaction quantity.

Mr. Groce's presentation is at [Attachment F](#).

After Mr. Groce's presentation, the Panel then addressed several administrative matters. The Panel established guidelines for future meetings and the framework for drafting the final recommendations.

A.) For developing recommendations, the Panel decided that it will use the following questions as the context for discussion for each area (services, total/integrated solutions, and products) from the GSA, ordering agency, and vendor perspectives:

1. Where does competition take place?
2. If competition primarily takes place at the task order level, does a fair and reasonable price at the contract level really matter?

3. If the consensus is that the competition is at the task order level, are the methods that GSA uses to determine fair and reasonable price and maintain the pricing relationship with the basis of award customer(s) adequate?

4. If the current policy for question #3 is not adequate, can the panel help to improve the policy that GSA use to establish and fair and reasonable pricing and to maintain the pricing relation with basis of award customer(s)?

5. If the answer to question #2 above is that fair and reasonable determination at the Schedule contract level is not beneficial and price reasonableness is to be determined only at the task order level, what is the GSA role?

B.) Three teams were stood up for the purpose of drafting and editing the final report. Volunteers for the teams were as follows:

SERVICES TEAM MEMBERS	PRODUCTS TEAM MEMBERS	FINAL REPORT EDITING TEAM MEMBERS
Jackie	Lesa	Elliott
Thomas Sharpe	Thomas Essig	Debra
Glenn	Jan	Theklus
David	Larry	Judith

Panel members not present during this discussion will be contacted by the DFO to indicate their team preferences. Team membership will be reconfirmed at the September 19, 2008 meeting.

The final report will also address and/or identify separately the roles, responsibilities, and needs for the GSA contracting office, the ordering agency contracting office, and the contractor.

C.) Dates were established for upcoming meetings:

September 19 2008, starting time 8:00am location AIA Building

September 22, 2008, starting time 8:00am location AIA Building

October 6, 2008, starting time 9:00am location Jurys Hotel, 1500 New Hampshire, N.W.

October 27, 2008, starting time 9:00am location AIA Building

D.) Rules of Engagement

- Stick to the scope as planned for each meeting.

- Stay faithful to the spirit and intent of the charter.
- Do not let the scope of the charter limit recommendations for improvements.
- Sept 19, 2008 is the last date for public comments.
- Early starting time of 8:00am for Sept 19 and Sept 22.
- Starting with next meeting, the discussion will be limited to pricing policies and provisions for the acquisition of services and solutions and recommendations in those areas. The pricing policies and provision for the acquisition of products will commence after the conclusion of the services acquisitions discussion.
- Final recommendations to the GSA Administrator will be based upon a consensus of 2/3 of panel members. Minority opinions may also be provided.
- For each meeting, consensus is 2/3 of members present.
- Identify key issues; start first with things that the Panel can agree on; quickly; move those aside to tackle the issues that are more controversial.
- Agree on the definition of terms/phrases. Will include a definitions section in the final recommendations to the GSA Administrator.

Written comments by Mr. Nicholas Economou, CPPO, are at Attachment G.

Written comments from the DoD IG are at Attachment H.

List of Attendees is at Attachment I


ELLIOTT BRANCH, CHAIRMAN
Multiple Award Schedule Advisory Panel

11/10/2008