Department of Veterans Affairs
Office of Inspector General

Final Report
Special Review of Federal Supply Schedule Medical Equipment and Supply Contracts Awarded to Resellers

Awarding FSS contracts to resellers who do not sell products commercially is duplicative, inefficient, and expensive.

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Office of Contract Review
VA Office of Inspector General
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Executive Summary

The Office of Inspector General (OIG), Office of Contract Review, reviewed four Federal Supply Schedule (FSS), Multiple–Award Schedule (MAS) contracts awarded to resellers under the Medical Equipment and Supplies (65IIA) schedule. Contracting Officers at VA's National Acquisition Center (NAC) awarded contracts to Reseller A, Reseller B, Reseller C, and Reseller D. These four contracts have an estimated 5–year value of $161 million. The purpose of the contracts is to provide VA and other Government agencies with commercial healthcare items, specifically medical/surgical (med/surg) items. The four resellers represent various companies who manufacture the items. These manufacturers primarily sell direct to their commercial customers, but then use resellers to contract with and sell to the Government. Although the term "reseller" gives the impression of an entity who purchases and stocks the product from a manufacturer for resale, this is not always the case. Many of these entities do not purchase the product from a manufacturer for resale. The manufacturers are large businesses who are using resellers to shield themselves (the manufacturers) from FSS pricing provisions that ensure fair and reasonable prices for Government customers. As a result of this non–commercial practice, FSS customers pay inflated prices and lose the pricing protections the FSS contract was designed to provide.

In accordance with General Services Administration (GSA) policy covering MAS contracts, Contracting Officers are responsible for establishing negotiation objectives based on the offeror's best price (most favored customer); determining fair and reasonable pricing on initially awarded products and on modifications to add products or to increase the price of existing products; and selecting a tracking customer, which typically is the basis of award customer, for price reductions throughout the life of the 5–year contract and up to 10 years with extensions. The commercial sales practices (CSP) section of the vendor's offer provides the foundation and justification for the Contracting Officer's decisions and actions for negotiating, awarding, and administering the contract. When the vendor is a reseller without significant sales to the general public, the FSS solicitation requires the reseller to provide CSP data from the manufacturer of the products being offered the Government. This requirement helps the Government to obtain fair and reasonable pricing at the time of award, but does not protect the Government during the term of the contract.

Our review objectives were to determine if contracts with resellers were in the best interests of the Government, including how: (i) Contracting Officers determined price reasonableness at initial contract award and for products added on contract modifications; (ii) Contracting Officers administered the Price Reductions and Economic Price Adjustment (EPA) clauses; and (iii) these resellers added value in

light of VA's implementation of a mandatory med/surg prime vendor program. In addition to this review, we completed two pre–award reviews of Reseller A's proposals, a pre–award review of Reseller D's proposal, and issued final reports on a post–award review of Reseller B's contract and Reseller A's contract.

The four FSS contracts awarded to resellers that we reviewed had an estimated 5–year contract value of $161 million. We found the following conditions:

- NAC Contracting Officers had no basis for determining that initially awarded prices to resellers were fair and reasonable because the resellers had little or no commercial sales because their customers consisted primarily of Government customers.

- Products added via modifications to the four reseller contracts required the reseller to submit CSP data from manufacturers to support price reasonableness determinations. NAC Contracting Officers approved modifications without obtaining the manufacturer's CSP data for 28 of the 30 modifications that added 12,728 products to the 4 reseller contracts. The 28 modifications represented the addition of 11,576 products. For 63 percent of the 11,576 products, the contract file either did not mention the reasonableness of offered pricing or there was no support for price reasonableness. For the remaining 37 percent of the added products, the files contained some documentation that may have assisted the Contracting Officer in making a fair and reasonable price determination (such as "similar item comparisons" or review of submitted invoices), but in all cases, we concluded the documentation was inadequate. For example, one of Reseller C's modifications added 3,700 products for which the Contracting Officer approved the offered prices without any further review. We randomly selected 30 of the 3,700 products and found that the prices increased (from the previous manufacturer's FSS contract) by more than 32 percent in 5 months.

- None of the four reseller contracts had adequate Price Reductions Clause tracking customers in place to reduce FSS prices when tracking customer(s)' prices decrease due to competitive market forces. Because these resellers had little or no commercial sales, there was no competitive market to generate price reductions. As a result, the Government did not receive price reductions granted to commercial customers buying the same products directly from manufacturers. For example, on Reseller C's contract, the tracking customer agreed to between the NAC Contracting Officer and Reseller C was "all commercial sales." This was meaningless because Reseller C clearly stated in its offer that it had no commercial sales—only Federal Government sales.

- The NAC modified the EPA clause in the FSS contract solicitation without authorization or approval from GSA. The modification further eroded the Government's ability to maintain fair and reasonable prices (if achieved). The modified clause significantly deviated from the GSA–prescribed Alternate I (September 1999) EPA clause by eliminating the Government's 1–year price protection and allowing more frequent price increases (than the GSA–prescribed limitation of 3 EPA requests in each succeeding 12–month period) that were no longer capped at 10 percent in any 12–month period. The NAC allowed 3 of the 4 resellers to increase prices on over 8,400 products without the support required by the EPA clause, such as CSP information to show how the manufacturer's commercial pricing practices related to the reissued or modified catalog/pricelist. For example, the Contracting Officer granted price increases to Reseller B on 3,883 items based on their contention that their costs have increased due to the decline of the dollar in the European market. This approval was not only unsupported, it was totally inconsistent with FSS policy since FSS pricing should be based on commercial item pricing, not cost.

- The award of FSS contracts to resellers who do not sell products commercially directly conflicts with VA's move in April 2005 to an expanded med/surg prime vendor system to meet the distribution needs of VA facilities and other participating Government facilities nationwide. Unlike the NAC's FSS contracts with pharmaceutical manufacturers for product pricing and separate contracts for fees relative to prime vendor distribution, med/surg manufacturers are transferring products from their own FSS contracts to resellers, which results in the FSS customer paying two distribution fees to obtain the product. When these resellers are involved, in order for the Government ordering activity to procure the product at least three external parties participate in the transaction—the manufacturer, the reseller, and the prime vendor. All three parties realize profit from the transaction and the Government customer incurs unnecessary costs—without added benefit—that commercial customers do not incur.

We recommend that the Executive Director, NAC (Executive Director) takes action to define and clarify FSS policies as related to contracts with resellers. We further recommend that the Executive Director establishes policies requiring Contracting Officers to adhere to existing GSA policies regarding the negotiation, award, and administration of FSS contracts and the modification of contract clauses.

In a separate report, dated May 3, 2006, involving a post–award review of Reseller B's FSS contract, we recommended that Reseller B be required to submit a new

offer supported by the manufacturers' CSP data as required by GSA policy. We also recommended that if Reseller B failed to submit a new offer with adequate support, in a timely manner, then their FSS contract should be cancelled. After numerous contract extensions and repeated requests for Reseller B to provide manufacturers' CSP data, on April 26, 2007, the Contracting Officer informed Reseller B that their contract extension proposal would not be considered further, and their contract would expire on April 30, 2007. The Contracting Officer concluded that Reseller B was unable to demonstrate that they had significant commercial sales and were, therefore, required by the solicitation to provide manufacturers' commercial sales data.

In September 2006, we issued a final post–award review of Reseller A's FSS contract. The primary finding related to a refund due VA because Reseller A agreed to rebate any price differences between higher prices established in the Letter Contract (which preceded the current FSS contract) compared to prices on the current FSS contract. This rebate had no relationship to FSS price protection clauses.

On March 27, 2006, we began a pre–award review of a proposed 5–year extension of Reseller C's contract. We requested that Reseller C provide us with manufacturers' sales data in support of its offer. On March 29, Reseller C notified the NAC that it was canceling its contract. Our review of the contract file supported a recommendation to cancel the contract.

On June 27, 2006, we received an allegation that an FSS manufacturer had transferred a number of products from their FSS contract to Reseller F, a distributor/marketer. According to the allegation, FSS product prices increased "drastically" overnight. We substantiated the allegation and found a similar situation involving another FSS manufacturer.

The Executive Director concurred in all recommendations and provided acceptable implementation plans. We consider the recommendations to be closed.

(original signed by:)
JOHN B. AMES
Director, Office of Contract Review

Introduction

Purpose

The Office of Inspector General (OIG), Office of Contract Review, conducted a review of certain Federal Supply Schedule (FSS) contracts (under the Medical Equipment and Supplies [65IIA] schedule) that VA's National Acquisition Center (NAC) awarded to resellers. Our observations and experiences over the past 7 years in doing pre–award reviews of FSS proposals and post–award reviews of FSS contracts involving resellers on the 65IIA schedule identified numerous issues, which formed the objectives of this review. These objectives were to determine: (i) how NAC Contracting Officers establish price reasonableness at initial award and on modifications involving FSS contracts awarded to resellers with no substantial commercial sales; (ii) how the NAC administers the FSS Price Reductions Clause and the Economic Price Adjustment Clause (EPA) for resellers; and (iii) the purpose and benefits of contracting with resellers, and whether these contracts were in the best interests of the Government.

Background

In May 2001, the OIG issued a report to the VA Secretary titled Evaluation of the Department of Veterans Affairs Purchasing Practices, Report Number 01–01855–75. The report identified four "Considerations" for improving VA purchasing practices. The first consideration was for VA management to make FSS and other national contracts mandatory sources for VA facilities' purchases of med/surg supplies and equipment and generic pharmaceuticals. A second consideration was for VA to implement a policy limiting contracts with distributors to distribution services only. An exception to the policy would be instances where the distributor could show that it was responsible for negotiating and establishing prices for the majority of items it distributes to each manufacturer's commercial customers. The remaining two considerations focused on essentially eliminating local purchases by VA facilities. The intent of the consideration to limit contracts with distributors to distribution services only was to model the success VA has had with its contracts with pharmaceutical manufacturers for product pricing and separate contracts with pharmaceutical prime vendors for distribution services. Another important aspect was to adopt contractors' commercial practices to the extent practicable as recognized by General Services Administration's (GSA) Final Rule (August 1997) revising the FSS program to implement the Federal Acquisition Streamlining Act, Pub. L. 103–355, and the Clinger–Cohen Act, Pub. L. 104–196. We also were concerned that the failure to take action would result in VA paying higher prices for items than prices paid by similarly situated commercial customers.

After the report was issued, VA's Secretary appointed the VA Procurement Reform Task Force (PRTF) in June 2001 to examine VA's acquisition processes and develop recommendations for improvement. In May 2002, the PRTF report was issued and the first of several major recommendations was to mandate VA's use of FSS and other national contracts. Under the major recommendation mandating VA's use of FSS was a sub–recommendation that VA limit contracts to distribution services only when establishing contracts with distributors for FSS Groups 65 and 66. The action step to implement the recommendation regarding distribution services stated the following.

> Establish policy to limit negotiation of distribution contracts to the distribution fee unless the distributor clearly establishes that they are responsible for negotiating product prices for a manufacturer's commercial customers. Prior to implementation, review by General Counsel will be needed.

The recommendation and action steps were never implemented. Since March 2000, through pre–award reviews conducted at the request of NAC Contracting Officers, we have become aware of numerous contracts (under the 65IIA schedule) awarded to non–manufacturers to sell manufacturers' products to Government customers. These non–manufacturers use a variety of terms to describe themselves such as reseller, dealer, distributor, or wholesaler. In this report, we characterize these non–manufacturers as "resellers to the Government" based on their contractual arrangement with the manufacturer, the functions they perform, and the fact that they have little or no commercial sales. Even the use of the term "reseller" is often a misnomer, because many of these entities do not purchase the product from a manufacturer to resell, and, as such, do not stock or distribute the product.

Some resellers with FSS contracts represent an unusual contractual agreement between the manufacturer and the reseller. The primary purpose of the agreement is to have the reseller sell to the Government, which is not representative of the manufacturers' commercial sales practices. Manufacturers who use resellers to sell primarily to the Government are placing resellers between themselves and the Government, which allows the manufacturer to charge the Government inflated prices and avoid FSS contract requirements that are designed to protect the interests of the Government from the time of award through the entire contract period. Because these resellers have little or no commercial sales, FSS pricing tools that protect the Government are largely rendered ineffective. These pricing tools include most favored customer (MFC) pricing objective at the time of initial contract award and on modifications to add items; price reductions based on tracking agreed upon commercial customers' prices throughout the multi–year contract; a reasonable basis for price increases; and audits of contract pricing, both pre–award and post–award.

Effective April 20, 2005, VA adopted a mandatory use, med/surg prime vendor system. The intent of the prime vendor program is to provide participating Government facilities with an electronic ordering system to accept and process orders, deliver products, and accurately bill for and accept payment for items delivered. However, the expected benefits of the prime vendor will not be realized because the NAC is continuing to award FSS contracts to resellers, which is costly, inefficient, and wasteful because it duplicates the functions VA pays a prime vendor to perform.

Scope and Methodology

We obtained a listing compiled by GSA of all contractors who have FSS contracts on the 65IIA schedule. We reviewed the 65IIA contractor list to identify those contractors who are not manufacturers. The list contained a total of 465 contractors. We identified 27 of the 465 contractors as resellers after researching websites containing information describing the vendor's business. Since the last update to this list was 2002, we would expect the number of contracts with resellers to be higher than the 27 we identified. For this report, we limited our scope to a review of four resellers herein referred to as: Reseller A[1], Reseller B, Reseller C, and Reseller D. We selected these resellers because, with the exception of Reseller C, we either had completed or had in–process separate reports on these resellers at the time we initiated this review. Our review included the following:

- Reviewing any audit reports issued by the OIG, including both pre–award and post–award reviews.
- Reviewing the proposals including the Commercial Sales Practices (CSP) format, negotiation correspondence, and any other supporting documentation the reseller provided to the Contracting Officer during negotiations.
- Reviewing the Contracting Officer's price analysis and price negotiation memorandum (PNM).
- Identifying the agreed upon tracking customer for price reductions.
- Reviewing modifications to the original award.
- Reviewing the GSA Form 72s (Contractor Report of Sales).
- Reviewing certain transactional sales data.

In regard to Reseller C, we reviewed the contract file and discussed our conclusions with the Contracting Officer. Because of deficiencies in the

[1] In the second pre–award review of Reseller A, we concluded that Reseller A does not buy and resell the manufacturers' products. Rather, Reseller A acts as an agent to promote sales of the manufacturers' products. The manufacturer markets and drop ships products to FSS customers. Reseller A processes the purchase order, invoice, and payment. However, VA Contracting Officers cannot question whether the vendor is a "reseller" because GSA has not defined the term.

negotiation, award, and administration of Reseller C's contract, we planned to issue a report recommending that the Contracting Officer cancel the contract. However, on March 29, 2006, Reseller C notified the Contracting Officer that it was canceling its contract.

We also reviewed an allegation that Resellers F's FSS contract was modified to add numerous products from Manufacturer G's FSS contract. Several products added to Reseller F's contract remained on Manufacturer G's contract, while other products were deleted by Manufacturer G. Reseller F is a distributor/marketer. According to the allegation, FSS product prices increased "drastically" overnight.

Results and Conclusions

A. **Overview of the FSS Program**

1. Importance of Commercial Sales.

FSS multiple–award schedule (MAS) contracts involve awards to multiple vendors who provide "like or similar" commercial off–the–shelf products to Government customers. Any offeror vying for an FSS contract is not competing for award against another offeror, but rather is competing against its own commercial business practices. For this reason, GSA regulations provide that in contract negotiations the Government will seek to obtain the offeror's best price (MFC). Regarding the MFC negotiation objective, GSA, in its Final Rule (62 FR 44518) effective August 21, 1997, states the following.

> GSA and its contracting officers have a fiduciary responsibility to the taxpayers and to customer agencies to take full advantage of the Government's leverage in the market in order to obtain the best price (most favored customer) based on an evaluation of discounts, terms, conditions and concessions offered to commercial customers for similar purchases.

Throughout the Final Rule is the expectation that Government customers would purchase commercial items as much like commercial customers as possible. Thus the cornerstone of any FSS offer relies on the vendor selling products to commercial customers in sufficient volume to allow the Contracting Officer to have a reasonable basis to evaluate offered pricing at initial award and on modifications that add products to the contract. Additionally, when an offeror has significant commercial sales that reflect negotiated or competed prices, FSS pricing provisions ensure that FSS prices remain fair and reasonable throughout the term of the contract and that overcharges due to undisclosed better prices to commercial customers can be recovered through post–award audits. Post–award audits can be conducted proactively by VA, in response to voluntary disclosures, or to complaints.

2. Price Disclosures and Pricing Provisions in FSS Contract Solicitations.

There are specific FSS MAS disclosure requirements and pricing provisions to provide Contracting Officers with the tools needed to ensure that Government customers receive fair and reasonable prices at contract award and throughout the life of the 5–year contract, which may be extended up to 10 years. These include:

a. Commercial Sales Practices (515.408). Every offeror must complete a CSP format, which requires disclosure of commercial and Government sales, discounts and concessions offered to MFCs and Government customers, along with the

current published commercial catalogs and/or price list(s) from which discounts are offered. The CSP forms the foundation and justification for the Contracting Officer's decisions and actions to ensure that initially awarded prices, including those for items added through contract modifications are fair and reasonable. An updated CSP also must be submitted in support of a request for a price increase. The CSP contains the following requirement for dealers/resellers who do not have significant sales to the general public.

CSP–1 COMMERCIAL SALES PRACTICES FORMAT

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed $500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

(a) Manufacturer's Name _____

(b) Manufacturer's Part Number _____

(c) Dealer's/Reseller's Part Number _____

(d) Product Description _____

(e) Manufacturer's List Price _____

(f) Dealer's/Reseller's percentage discount from List Price or net prices _____

GSA's purpose in requiring the above information from dealers/resellers is to enable the Contracting Officer to make a determination based on the manufacturer's sales records that offered prices are fair and reasonable. Because these contracts are awarded non–competitively, the commercial sales data from the manufacturer provides the Contracting Officer with the benchmark prices, terms, and conditions needed to compare to the prices and terms the vendor offers the Government.

b. Price Reductions (552.238–75). Every FSS MAS solicitation contains a Price Reductions Clause, which is designed to ensure that initially awarded prices remain fair and reasonable throughout the life of the contract. The Price Reductions Clause states:

> (a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained through out the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

The significant impact of the Price Reductions Clause is that the commercial customer(s), whose prices the Contracting Officer relies on as the basis of awarding the FSS contract prices, becomes the tracking customer(s) for price reductions during the term of the FSS contract. If the Contractor reduces the tracking customer(s)' price, the Government receives the benefit of the reduction. The Price Reductions Clause recognizes the competitive nature of the market and protects the Government's pricing throughout the life of the contract.

(1) Price Reductions Clause as it Applies to Resellers.

As noted above, under terms of the Price Reductions Clause, the tracking customer for price reductions is supposed to be the commercial customer(s) whose prices were the basis of award. When the vendor is a reseller with little or no commercial sales, GSA policy requires the reseller to provide manufacturers' commercial discounting policies and sales practices in accordance with CSP instructions. GSA specifically states in the CSP–1, paragraph (5), cited above: "You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer." Thus GSA is acknowledging that contracts with resellers without significant commercial sales require sales records from the

manufacturer prior to award and when there is a request to modify the contract to add products or to increase prices on existing products.

However, GSA regulations do not provide for third party tracking customers, which would occur if the NAC awards a contract to a reseller and identifies the manufacturer's commercial customer(s) as the basis of award and tracking customer and requires the manufacturer to notify the NAC and the reseller of lower prices to the tracking customer during the term of the FSS contract. Thus in awarding FSS contracts to resellers without significant commercial sales there is a disconnect in using the manufacturer's commercial customer(s) as a basis of award customer(s) and being able to track those same customer(s) for price reductions purposes. In practical situations, if the reseller's commercial sales base does not support a basis of award customer, then there are no commercial sales of any significance to track and the Government loses its price protection for the term of the contract.

The four resellers discussed in this report either had insignificant or no commercial sales. Their predominate market was Federal Government customers and for their few commercial sales—primarily to State and Local Governments—their price was based on the FSS price and not on the commercial market.

We examined the commercial tracking customer selection for each of the four reseller's contracts we reviewed. We concluded that there was no valid tracking customer for any of the four resellers, because the tracking customers did not meet the requirements of the Price Reductions Clause. Accordingly, there is no opportunity for the Government to receive any price reductions on its 5–year contracts, which can be extended for up to 10 years. We consider this to be a significant issue adversely affecting the administration of prices on an FSS contract. In the past 10 years, post–award reviews of FSS pricing have identified and recovered $200 million in contract overcharges. Approximately $80 million of the $200 million in recoveries has been attributed to contractors' violations of the Price Reductions Clause. All of these FSS contractors were manufacturers with significant commercial market sales. For contracts with resellers who have no commercial customers and no valid tracking customer, VA receives no price reductions during the contract period, and there is no basis for post–award recoveries attributable to violations of the Price Reductions Clause.

(2) What Needs to be done to Protect the Government's Interest.

In the summer of 2002, we worked with contracting personnel and with the Office of General Counsel (OGC) to develop a variation of the FSS Price Reductions Clause that would apply to resellers. At that time, our experience with a reseller showed that the standard Price Reductions Clause contained in all FSS solicitations would not protect the Government's interests since the reseller's customer base consisted almost exclusively of Federal Government customers. In addition, the agreement between the reseller and the manufacturer prohibited the reseller from selling to the manufacturer's non–government commercial customers. Prices for the reseller's few non–Federal Government customers—mostly State and Local Governments—were based on the FSS price and not on the commercial market. Thus price reductions resulting from competitive marketplace conditions (which is the intent of the FSS Price Reductions Clause) were non–existent.

In December 2002, a NAC Technical and Legal Review of solicitation RFP–797–652C–02–0001 addressed to the Assistant Director (049A1F1) contained the following comment and recommendation in paragraph 2. q.

> Notice to Dealers/Resellers—Members of the Office of General Counsel and Acquisition Assistance Team have reviewed the new cover page notice regarding dealers/resellers whose customer base consist almost exclusively of Federal government customers. In conjunction with our review of this notice, we discussed implementation of the Price Reduction clause when award prices are based on the manufacturer's CSP data as disclosed in accordance with CSP–1 paragraph (5). We concluded that a deviation to the Price Reduction clause is needed to address this situation, and have been working with [Assistant FSS Director for Medical Equipment and Supplies] and members of his team regarding this issue. The proposed deviation to the Price Reduction clause will provide further support for the Notice to Dealers/Resellers. Since the clause is not yet approved, we are not recommending inclusion of it at this time, but we are making you aware of it since it is likely that this solicitation (and all VANAC's schedules) will need to be amended once it is approved. However, we do recommend inclusion of the notice in the cover page section of the solicitation. We have incorporated our revisions to the Notice to Dealers/Resellers, and a copy is attached to this review.

The recommendation to include the Notice to Dealers/Resellers (Notice) in the cover page of the solicitation was implemented for three FSS schedules—Wheelchairs, Dental, and X–ray. However, despite its intent as shown in the title, it was never adopted for resellers with med/surg FSS contracts. This is confusing

and disturbing since the situation with a reseller was the reason the provision was developed in the first place.

Until recently, we were unaware the Notice had been developed and recommended for use. When we asked NAC personnel why they did not adopt legal and technical's recommendation for resellers with med–surg contracts, they responded that they considered it a deviation to the standard Price Reductions Clause and they did not feel that GSA at that time would accommodate the request. We found no indication that the clause was ever pursued with GSA.

We recommend that the NAC and OGC determine if the proposed Price Reductions Clause for Dealers/Resellers, whose customer base consists primarily of Federal Government customers, constitutes a "deviation" requiring GSA approval. We are not convinced that GSA regulations require GSA approval for class deviations such as this. GSA regulations, Section 501.404, "Class Deviations" provide:

> (b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the HCA[2] in the agency receiving the delegation may approve class deviations from the GSAR unless the agency head receiving the delegation designates another official.

Because VA's HCA has authority to approve a class deviation, we recommend the following clause for inclusion in all FSS schedules managed by the NAC that involve Dealers/Resellers:

> **CP–VA–001 Notice to Dealers/Resellers**
>
> All dealers and/or resellers who wish to submit an offer under this solicitation must comply with the requirements of the Commercial Sales Practice Format, CSP–1, in particular Paragraph (5) located on Page ___ and the Price Reductions Clause, 552.238–75, located on Pages ____ within the solicitation. A dealer/reseller, whose customer base is made up almost entirely of Federal government customers versus non–federal customers, must be able to provide the manufacturer(s)' discounting structure and commercial sales information as part of the offer. If a manufacturer's CSP data is required because the dealer/reseller's customer base consists almost exclusively of Federal government customers, the dealer/reseller or other commercial customer of the dealer/reseller whose prices were not the basis for award, cannot be the tracking customer for the purpose of the Price Reductions Clause because this would not be

[2] HCA refers to Head of Contracting Activity.

> consistent with the provisions of the clause. **In these cases, the dealer/reseller must demonstrate to the Contracting Officer that they have established an agreement with the manufacturer(s) whereby the manufacturer(s) agrees to provide the dealer/reseller with sales data on a monthly basis for the customer or category of customers who were the basis for award. This data will be used by the dealer/reseller for determining compliance with the Price Reductions Clause.** Compliance with these requirements is necessary to ensure that offered prices continue to be fair and reasonable. If a dealer/reseller is unable to comply with the specified requirements cited above, the offer will be rejected.

With the exception of the two bolded sentences, this is the same clause that members of OGC and Acquisition Assistance Team concluded (in December 2002) was needed to address situations such as a reseller. The section in bold print was added because it is a necessary requirement for administering the Price Reductions Clause.

c. Economic Price Adjustment (552.216–70). All FSS MAS solicitations contain an Economic Price Adjustment (EPA) clause. The purpose of the clause is to allow price adjustments (increases and decreases) to FSS prices. Price decreases are handled in accordance with the Price Reductions Clause. Contractors' requests for price increases are governed by the EPA Clause 552.216–70.

In the four reseller contracts, the EPA clause cited as 552.216–70 ECONOMIC PRICE ADJUSTMENT–FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999) ALTERNATE I (SEP 1999) (LOCAL DEVIATION), deviated from the Alternative I (September 1999) clause 552.216–70 contained in the GSA Acquisition Regulation. The NAC's local deviation to the GSA clause significantly enhanced each contractor's ability to apply for and be granted EPA requests, particularly for price increases, because it removed the following key provisions designed to provide price protection to the Government.

- The provision that provided the Government built–in price protection for the first 12 months of the contract.

- The limitation of three EPA requests in each succeeding 12–month contract period.

- The cap on the amount each item could increase in a 12–month period, previously established by the NAC at 10 percent.

The local deviation significantly benefits FSS contractors to the detriment of the Government. With the local deviation, contractors can obtain price increases in

the first 12 months of the contract, can obtain more than 3 price increases in each succeeding 12–month period, and can have price increase percentages above 10 percent per year per item.

The NAC was unable to provide us with written support or justification for the local deviation, evidence that the deviation was coordinated with GSA, or evidence of a legal or technical review. Whereas the NAC took no action to modify the Price Reductions Clause to protect the Government's interest, they took action to modify the EPA Clause and essentially remove all limitations on the frequency and percentage rate of price increases. In this regard, the NAC's actions were highly inconsistent and questionable.

Although the local deviation did not change the documentation required of the contractors to obtain EPA increases, our review also found that the NAC did not obtain the documentation. Both the GSA EPA clause and the NAC's amended EPA clause require the contractor to provide the following documentation in support of EPA requests:

- A copy of the commercial catalog/price–list showing the price increases and the effective date for commercial customers.
- Commercial Sales Practice format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price–list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.
- Documentation supporting the reasonableness of the price increase.

The four resellers we reviewed had little to no commercial sales, which meant that requests for price increases would need to be supported by pricing data and commercial pricing practices from the manufacturer(s). We found that Contracting Officers usually did not require this information and instead accepted whatever the reseller submitted and granted the price increase. The only exceptions were Reseller A and Reseller D. The Contracting Officer for Reseller A did not always approve EPA requests, and the Contracting Officer for Reseller D did not approve an EPA request covering four products.

B. VA's Implementation of a Mandatory Med/Surg Prime Vendor System

The award of FSS contracts to resellers who do not sell products commercially directly conflicts with VA's move on April 20, 2005, to an expanded med/surg prime vendor system, making the use of prime vendor mandatory for all VA facilities. Unlike the NAC's FSS contracts with pharmaceutical manufacturers for product pricing and separate contracts for prime vendor distribution, the NAC's med/surg contracting activity has awarded FSS contracts to resellers and has witnessed manufacturers transferring products from their own FSS contracts to contracts awarded to resellers. While this practice benefits resellers and manufacturers, it duplicates what VA is paying a prime vendor to do and, as previously discussed, it: (i) undermines fundamental pricing objectives of the FSS program; and (ii) does not represent the manufacturer's commercial sales practice.

When the NAC awards an FSS contract to a reseller who does not sell to commercial customers instead of contracting directly with the manufacturer who does sell to commercial customers, the NAC essentially is dealing with a middleman who represents an extra layer of cost between the manufacturer and the FSS customer. The added cost is the percentage the reseller gets from the sale for processing the transaction. The manufacturer's commercial customers do not incur these fees because they deal directly with the manufacturer and not through a reseller. Contracts with these resellers are duplicative of VA's med/surg prime vendor program that provides participating Government facilities with an electronic ordering system to accept and process orders, deliver products, and accurately bill for and accept payment for items delivered. Adding the resellers' percentage to the prime vendor distribution fees results in FSS customers paying two fees, whereas commercial customers, who purchase through a prime vendor, pay only one fee.

For the contracts with resellers that we reviewed, we found that the resellers provided no additional benefits to FSS customers to justify the increased prices. The following paragraphs illustrate how these contracts do not protect the interests of the Government and do not make good contracting sense. These contracts are duplicative, inefficient, and expensive. The 5–year value of these contracts is estimated at $161 million.

C. Four Examples of Contracts with Resellers

1. Reseller A.

At the request of the Contracting Officer, we conducted separate pre–award reviews of Reseller A's two proposals. As a result of our first pre–award review (September 2002) and after lengthy negotiations spanning 3 years, the NAC Contracting Officer did not award a contract to Reseller A. In his final decision,

the Contracting Officer stated that Reseller A's final offer "…lacks adequate post–award price protection as required by the FSS Price Reduction Clause because the FPR[3] insists on establishing tracking customers whose prices would not be the basis for award."

On October 10, 2003, we issued the second pre–award review of Reseller A's new FSS proposal. We again recommended no award of an FSS contract to Reseller A to sell the primary manufacturer's (Manufacturer A) products unless MFC pricing could be obtained and pricing protection under the contract's Price Reductions Clause could be provided. In the second review, we noted that: "The conclusions of the pre–award review of the new CSP data are substantially the same as our first pre–award review which resulted in the Contracting Officer not awarding a contract to Reseller A."

The new Contracting Officer, Assistant FSS Director for Medical Equipment and Supplies (Assistant FSS Director), awarded the 5–year contract to Reseller A (effective award date of December 2003) without discussion or implementation of the pre–award report's recommendations. The new Contracting Officer awarded the contract without obtaining MFC prices—or even close to MFC—and the contract provides no price protection under the contract's Price Reductions Clause.

a. Price Reasonableness at Initial Award. Our two pre–award reviews of Reseller A's proposals found Reseller A had insufficient commercial sales to allow the Contracting Officer to determine the reasonableness of offered prices. On the first pre–award, Reseller A estimated annual Government sales of $8.3 million, while historical commercial sales were only $181 thousand; on the second pre–award review, Reseller A, in their CSP, disclosed annual commercial sales of $609,850, and FSS sales of $22.1 million. Our review validated that FSS annual sales would exceed $20 million; whereas, annual commercial sales were $846,000.

In preparing to conduct the first pre–award, we noted that the Contracting Officer had not requested the manufacturer's data (in this case, Manufacturer A) as required by GSA. We informed the Contracting Officer that the solicitation's CSP instructions required resellers with little or no commercial sales to submit a CSP based on the manufacturer's sales data. In such instances, the manufacturer's CSP data, which includes commercial sales and prices, become the basis for determining price reasonableness. The Contracting Officer requested Reseller A to provide a CSP based on Manufacturer A's commercial sales practices. Manufacturer A initially refused to provide the data to VA. After a nearly 2–year delay, Manufacturer A agreed to provide commercial sales data in support of Reseller A's proposal.

[3] Final Proposal Revision.

After receipt of Manufacturer A's completed CSP, we obtained electronic sales transaction data from Manufacturer A. We used the data to complete Reseller A's pre–award review. On September 5, 2002, we issued the report to the NAC. Based on Manufacturer A's pricing to its commercial customers, we concluded that the offered pricing was not fair and reasonable because the offered prices were among Manufacturer A's highest commercial prices and in some cases higher than any of Manufacturer A's pricing to its commercial customers. We also found that because Reseller A did not have a substantial commercial customer base, adequate price protection under the FSS contract's Price Reductions Clause could not be obtained. The report recommended that unless fair and reasonable pricing and adequate price protection could be obtained, that no award be made to Reseller A. On February 14, 2003, the Contracting Officer notified Reseller A that there would be no award. The Contracting Officer concluded that Reseller A's final offer lacked adequate post–award price protection as required by the FSS Price Reductions Clause because the FPR insists on establishing tracking customers whose pricing would not be the basis for award. The conclusions in our pre–award report and the plain language of the Price Reductions Clause fully supported the Contracting Officer's decision. Additionally, we concluded that the offered prices were not fair and reasonable and Reseller A's offer to sell Manufacturer A's products did not represent Manufacturer A's commercial sales practice. Under relevant case law, this finding alone would have been a valid basis not to award those items.

On February 25, 2003, Reseller A protested the Contracting Officer's no–award decision. Although the decision to non–award was legally sound and based on legal advice from OGC, after the protest was filed, OGC advised the NAC to withdraw the decision and re–open negotiations. On March 24, 2003, the Contracting Officer recused himself from the matter involving Reseller A. At this point, the Assistant FSS Director assumed the role of the Contracting Officer, and re–opened negotiations with Reseller A. Since the data initially submitted by Reseller A and Manufacturer A was outdated, the Assistant FSS Director requested another pre–award review of Reseller A's offer, which included a new CSP, on May 16, 2003. We issued the second pre–award review report on Reseller A on October 10, 2003.

The conclusions and recommendations in the second pre–award review mirrored those of the first. Although Reseller A had reduced offered pricing on our sampled items by an average of 2.6 percent, our review found that offered pricing was still among Manufacturer A's highest pricing, and we made pricing recommendations for 86 of 145 sampled items. For example, offered pricing for 15 (of 126) off–the–shelf sampled items was higher than any price paid by Manufacturer A's commercial customers; offered pricing on an additional 33 items was higher than over 90 percent of Manufacturer A's commercial transactions for those units. The report reaffirmed that Reseller A did not have an

adequate commercial customer base to provide pricing protection under the FSS Price Reductions Clause for the term of the contract. Accordingly, the report recommended no award unless fair and reasonable pricing and adequate price protection could be obtained.

The Assistant FSS Director did not implement any of the recommendations and instead awarded Reseller A a contract. In his "MEMO FOR THE RECORD" he cited his "Justification for Award," and stated: "The revelations in the second OIG pre–award review essentially presented little if any new findings to dissuade me from my original intent of award in May 2003." Instead of discussing our recommendations with us, he relied on a recommendation made by Reseller A and Manufacturer A to base awarded pricing on Manufacturer A's commercial customer, GPO X. GPO X is a Group Purchasing Organization (GPO) who has a contract with Manufacturer A, not Reseller A. Our report strongly advised against using GPO X's contract pricing as the basis for award because the contract specifically allowed Manufacturer A to sell to GPO X's members at prices below contracted pricing due to the competitive market, which meant the contract prices did not reflect actual prices. Sales data showed that over 59 percent of GPO X's dollar purchases were below its contract price list. The Assistant FSS Director did not establish fair and reasonable pricing based on Manufacturer A's commercial sales practices of selling to GPO X's members at prices lower than the contract price. He failed to obtain pricing comparable to commercial customers who are similarly situated to the Government, which defeats the negotiation strategy GSA has established for FSS contracts.

Over a period of 7 years and lessons learned from two pre–award reviews of Reseller A's proposals, three things became fundamentally clear. First, without data from the manufacturer, the Contracting Officer does not have any basis to determine fair and reasonable prices as required by Part 538 of the GSA Acquisition Regulation. Second, the FSS prices for Manufacturer A's products increased by 11.1 percent, which represented Reseller A's fee (90 percent of the FSS price represented Reseller A's price from Manufacturer A) for processing purchase orders, invoices, and payments. (On a $101 million FSS contract [5–year estimated sales], Reseller A's fee is $10.1 million.) Manufacturer A's commercial customers buy direct from Manufacturer A and do not incur these fees. Third, Manufacturer A opted to sell its products to the Government via Reseller A for its own benefit, which increases its profit by insulating them from FSS contract requirements.

In 1996, Manufacturer A was the subject of a complaint filed pursuant to the qui tam provisions of the False Claims Act. Although our review identified overcharges, we concluded that Manufacturer A's actions did not rise to the level of fraud and the Government declined to intervene. After the case was dismissed, VA reached an administrative settlement with Manufacturer A. Shortly thereafter, Manufacturer A canceled its FSS contract and started selling to the Government

through Reseller A. Because Reseller A, not Manufacturer A, is the contractor, Manufacturer A is not required to offer price reductions. Also, Manufacturer A can realize additional profits because it can increase its prices to Reseller A at any time and thus avoid the safeguards inherent in FSS contracts.

b. Price Reasonableness for Products Added on Contract Modifications. Since the effective award date of December 1, 2003, Reseller A's FSS contract was modified 23 times, through December 16, 2005. Twelve of these modifications added a total of 3,034 newly offered items to the contract. When additional items are added to FSS contracts, the GSA Acquisition Regulation requires the submission of CSP data, or if the information is the same as the initial award, a statement to that effect may be submitted instead (FSS Clause 552.243–72 Modifications [Multiple Award Schedule] [July 2000]). However, 10 of the 12 modification requests to add Manufacturer A's products did not include either the submission of CSP forms or a statement that the CSP data was the same as the initial award. Like original contract negotiations, the addition of products to FSS contracts requires the Contracting Officer[4] to determine whether offered pricing is MFC pricing, and if it is not, if the offered pricing is still fair and reasonable.

The first eight modification requests adding products to the contract contained the following statement: "I certify that these items are commercially available and **the proposed FSS price is lower than or equal to our most favored customer"** (emphasis added). The bolded portion of the statement essentially is a CSP disclosure because it specifically addresses question (3)[5] on the CSP. While the disclosure portion of this statement (bolded above) is meaningful and important for an FSS contractor with significant sales to the general public, it is totally meaningless in this case because Reseller A lacked significant sales to the general public.[6] In situations where the FSS offeror does not have significant sales to the general public, the CSP clearly provides (at initial award and on contract modifications) that the manufacturer's pricing will be the measure of the reasonableness of offered pricing, not the offeror's (in this case, Reseller A) pricing. The Contracting Officer processed the first 8 modifications adding 1,271 products without requesting the manufacturer's CSP data, and instead relied on Reseller A's statement certifying that the proposed prices were lower than or equal to Reseller A's most favored customer. For the same reason the CSP required the

[4] Although the Assistant FSS Director assumed responsibility for awarding Reseller A an FSS contract, he assigned administration of the contract to another Contracting Officer.

[5] Question (3) on the CSP states: "(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES___ NO___."

[6] OIG pre–award reports, dated September 5, 2002 and October 10, 2003, showed that Reseller A did not have sufficient sales to the general public to determine price reasonableness or to provide adequate price protection under the Price Reductions Clause.

manufacturer's (in this case, Manufacturer A's) commercial sales data prior to award to determine that Reseller A's offered prices were fair and reasonable, the CSP required the same for modifications adding products. The Contracting Officer should have requested manufacturer's CSP data as required by the GSA Acquisition Regulation.

We reviewed the 12 modifications adding Manufacturer A's products to Reseller A's contract to determine what information the Contracting Officer used to determine that offered prices were fair and reasonable. Table 1 on the next page summarizes our conclusions.

Table 1
Reseller A's 12 Modifications Adding Products and Pricing Evaluations of Offered Products

Mod. Number	No. of Items Added	Fair and Reasonable (F&R) Price Determination
2	5	Modification documentation indicates that F&R was determined by a similar item comparison. Contracting Officer unable to locate documentation showing comparison.
3	386	Modification documentation indicates that F&R was determined by a similar item comparison.
4	17	No F&R determination.
5	315	Modification documentation indicates that F&R was determined by a similar item comparison. Contracting Officer unable to locate documentation showing comparison.
6	319	No F&R determination.
8	49	No F&R determination per se, but offered pricing based on the manufacturer's basis of award customer.
10	41	No F&R determination.
11	139	No F&R determination.
12	1,065	Incomplete manufacturer CSP provided; F&R determination not documented.
13	198	No F&R determination per se, but offered pricing was lower than the manufacturer's basis of award customer
18	413	No F&R determination per se, but offered pricing was lower than the manufacturer's basis of award customer.
19	87	Incomplete manufacturer CSP provided; F&R determination not documented but implied due to discounts equal to highest stated CSP discount.

Modifications 12 and 19, the only modifications that included manufacturer CSPs, added 1,065 of Manufacturer A's Spine products and 87 of Manufacturer A's Communication products, respectively.

However, both CSPs were inaccurate and incomplete. They stated:

> First, the customers listed in column 1 are Manufacturer A's[7] GPO customers. Column 1 does not include Manufacturer A's non–GPO customers regardless of volume. Manufacturer A's GPO customers represent a substantial percentage of Manufacturer A's total Spine[8] business.

The CSP instructions require disclosure of all domestic customers receiving lower pricing than being offered to the Government, not just GPOs. Our October 10, 2003 pre–award review report pointed out that: (i) Manufacturer A's CSP submitted with the proposal was inaccurate and incomplete for the same reason; and (ii) many of Manufacturer A's non–GPO customers, including customers significantly smaller than the FSS, received better pricing than offered to the FSS. Instead of the Contracting Officer rejecting what clearly were inaccurate and incomplete CSPs and requiring re–submissions, she processed the modification requests.

The contract files for Modifications 12 and 19 did not contain PNMs that documented the Contracting Officer's analysis of the CSP or determination that offered prices were fair and reasonable. For Modification 19, Reseller A originally offered an 18 percent discount; the items were added to the contract with a 22 percent discount, the highest discount stated on the CSP. The Contracting Officer apparently used the disclosed CSP data in negotiations, even though the CSP was inaccurate and incomplete.

For Modification 12, effective July 6, 2005, the Contracting Officer apparently did not utilize the disclosed CSP information to negotiate pricing. Instead, the Assistant FSS Director, who participated in the negotiations, negotiated a higher discount (5 percent off list Tier 1) than the initially offered discount (3 percent off list Tier 1) in return for VA allowing an EPA adjustment 4 months after the products were added to the contract, thus, giving up Manufacturer A Spine's offered 1–year price protection (which meant no price increases for a year). Reseller A initially offered the following discounts for the Spine products:

- Tier 1: 3 percent for sales (of the Manufacturer A's Spine products) less than $1 million.
- Tier 2: 5 percent for sales over $1 million and less than $3 million.
- Tier 3: 7 percent for sales over $3 million and less that $5 million.
- Tier 4: 9 percent for sales over $5 million.

[7] In this and subsequent quotes, where a specific manufacturer and/or reseller is identified, we changed the name to a non–specific identity.

[8] The quoted statement is from Modification 12. The quote for Modification 19 differed only by changing "Spine" to "Communication".

The awarded discounts, based on giving up the offered 1–year price protection, were 5, 7, 9, and 11 percent for Tiers 1, 2, 3, and 4 respectively. The dollar amounts in Tiers 2 through 4 were aggregate amounts, meaning that the higher discounts would apply for the remaining contract period once the aggregate amount had been purchased. Based on VA purchases of Manufacturer A's Spine products from July 6, 2005 through March 1, 2006 of $343,205, we estimated that the Tier 2 discount of 7 percent would become effective in July 2007[9] through the end of the contract on November 30, 2008.

We believe the Contracting Officer had the opportunity to obtain the negotiated 5 percent Tier 1 discount, or higher, without giving up the 1–year price protection. Manufacturer A Spine's CSP disclosed the highest discounts to Manufacturer A's GPO customers (GPO Y) as 17 percent for committed customers and between 0 and 10 percent for non–committed hospitals, like VA. Since the CSP also disclosed that GPO Y purchases about $18 million annually from Manufacturer A, a lower volume than VA, the Contracting Officer should have attempted to negotiate an increased Tier 1 discount to be more in line with GPO Y's highest non–committed discount of 10 percent. There is no evidence in the contract file indicating any attempt to negotiate higher Tier 1 discounts based on the CSP information.

Exactly 4 months after awarding Modification 12, VA granted Reseller A a price increase on 888 of the Manufacturer A's Spine products averaging about 6 percent, effective November 7, 2005. Exchanging an EPA increase for higher discounts results in higher contract costs for VA for the first 2 years after Modification 12's effective date of July 6, 2005. Only after the Tier 2 discount of 7 percent becomes effective (estimated July 2007), will VA begin to realize a cost savings as a result of the Assistant FSS Director's negotiation, and only if the Contracting Officer does not allow another price increase. Conversely, had a higher Tier 1 discount been negotiated based on the CSP information and without giving up the 1–year price protection, immediate savings would have accrued to VA and to OGAs.

The 10 modifications that the Contracting Officer approved without Manufacturer A's CSP information represented the addition of 1,882 products. Our review of these modifications found that only one, Modification 3, contained documentation of a review to support the reasonableness of offered pricing. Offered pricing was determined fair and reasonable based on a "similar item comparison" whereby the

[9] $343,205/8 months = $42,900 per month. $1 million/$42,900 = 23.3 months to reach $1 million in sales, rounded to 2 years. Since Modification 12 was effective on July 6, 2005, the 7 percent Tier 2 discount should be effective in July 2007. As of October 10, 2007, the contract had not been modified to change the discounts to Tier 2.

Contracting Officer compared offered pricing to similar items on other FSS contracts. The PNMs for Modifications 2 and 5 indicated that similar item pricing comparisons were conducted, but the Contracting Officer could not locate any supporting documentation. The Contracting Officer showed us an item comparison for Modification 3, which was comprised of a handwritten spreadsheet. When we asked for a copy of it, the Contracting Officer waited until she had it typed before providing us with the typed copy, along with the handwritten copy. In comparing the handwritten to the typed spreadsheet, we determined that the typed spreadsheet compared pricing for 72 items, whereas the handwritten spreadsheet only made comparisons for 31 items. The Contracting Officer insisted that all 72 items on the typed spreadsheet were reviewed and indicated that some pages of the handwritten spreadsheet may have been lost.

Using the typed spreadsheet of 72 items to evaluate the Contracting Officer's similar item comparison, we had problems making comparisons when the items being compared are not identical items. We found the following problems:

- No support to show that the items compared were similar enough to be valid comparisons.

- No support to show that the estimated sales of the items compared represented a significant portion of total estimated sales of all products to be added, which would impact pricing.

- No support to show that the prices on the FSS contracts that were used to make the similar item comparison were fair and reasonable.

- No explanation as to why items were awarded at prices significantly higher than the prices for comparable items on other contracts.

We also found that some items were awarded even though the similar item comparison showed the items were priced higher (some significantly higher) than comparable items. The overall results of the Modification 3 similar item comparison for 72 items showed that 12 of the 72 items reviewed were priced higher by Reseller A than comparable items on other FSS contracts. The 12 items priced higher than the comparable items averaged 11 percent higher. Of the 12 items, the 4 items shown in Table 2 on the next page were offered to the FSS at prices that were 15 percent or greater than the comparable price. We found nothing in the file to justify the award at these higher prices.

Table 2
Reseller A's Modification 3
Items Priced 15 percent or more
than Comparable FSS Contract Prices

Item No./ Description	Comparable FSS Contract	Comp. Price	Reseller A's Offer	Percent Increase
2761	Manufacturer B	$1,495.20	$1,722.00	15.18
2760	Manufacturer B	1,495.20	1,722.00	15.18
Carts w/o Transformer	Manufacturer B	2,237.50	3,608.00	61.25
5698	Manufacturer B	559.20	656.00	17.30

Although the items in the Table were priced at least 15 percent and up to 61 percent higher than comparable items on Manufacturer B's FSS contract, the Contracting Officer still determined the pricing to be fair and reasonable. As such, she awarded all 386 items (Modification 3) on Reseller A's modification request without attempting to negotiate lower pricing on any items.

The Contracting Officer's contract file for Modifications 2, 4, 5, 6, 10, and 11, representing 836 newly offered items, did not contain documentation to support any determination of price reasonableness. Modifications 8, 13, and 18, representing 660 newly offered products, did not document price reasonableness, but did document that the basis for the offered pricing was GPO X, the manufacturer's commercial customer and the initial basis of award customer. Even if the Contracting Officer presumed that the pricing was fair and reasonable, she should have documented her conclusions.

c. Price Protection on Reseller A's Multi–Year Contract. In the two pre–award reports we concluded that the offers failed to provide adequate price protection under FSS contract requirements—specifically the Price Reductions Clause—because there is no privity of contract between VA and Manufacturer A. Manufacturer A's arrangement with Reseller A to broker a contract with VA insulated Manufacturer A from offering its commercial customers as tracking customers under the FSS contract's Price Reductions Clause. In the second pre–award report, we noted that Manufacturer A's written distribution agreement with Reseller A appointed Reseller A as an exclusive distributor to market and promote sales of Manufacturer A's products to health care facilities owned or operated by the Federal Government. The agreement prohibited Reseller A from marketing or promoting Manufacturer A's products to any customer other than authorized customers. These authorized customers primarily were limited to health facilities owned or operated by State, County, and City Governments.

Our review of Reseller A's sales transactions confirmed the provisions of the agreement as to the customers Reseller A is allowed to sell to. Less than 5 percent of Reseller A's total annual sales were to non–Federal Government customers, primarily State and Local Government customers. Reseller A's largest State contract is with the State of New York. This contract is a "piggy–back" contract onto the FSS contract, which means the State contract mirrors the same terms, conditions, and prices as stipulated in the FSS contract.

We analyzed sales for the 10–month period from October 2002 through July 2003. We found that there were only $845,857 in non–Federal Government sales to track, consisting of $746,981 in sales to State and Local Governments and $98,876 in sales to other non–Government customers (after adjustments that removed $56,000 in sales that would not be tracked under an FSS contract). Our pre–award review stated:

> The total base of Reseller A's non–Federal sales of $845,857 represents only 4.3 percent of Reseller A's total 10–month sales of $19.5 million. Also during the 10–month period, Reseller A had sales to only 8 non–Federal Government customers (as adjusted), and 17 State and Local government customers, for a total of only 25 customers. Additionally, these customers only purchased a maximum of 384 of the 7,860 (4.9 percent) products originally offered and added through modifications. Consequently, over 95 percent of Manufacturer A's product would have no price protection at all by using Reseller A's commercial customers as tracking customers. With respect to the top–selling 145 sampled items, Reseller A's non–Federal customers and State and Local Government customers only purchased 23 of the items.

Reseller A's small volume of sales and number of items sold to its tracking customers (all commercial customers) reduces to a low probability any chance of a price reduction on Manufacturer A's products due to the tracking customer relationship. This translates to the Government having no price reduction protection for the life of the contract.

Reseller A's proposed tracking customers were: Reseller A's current and future commercial customers, and Reseller A's acquisition prices for the Manufacturer A products. Reseller A, in the offer that was the subject of the second pre–award review, disclosed (in the CSP) non–Federal Government sales of $609,850, and total FSS sales of $22.1 million. Because Reseller A had no significant commercial customers to track and Reseller A's acquisition prices for Manufacturer A's products would likely remain flat or increase, FSS customers would have little or no expectation of receiving price reductions. At the same time, Reseller A could request price increases merely by showing that Manufacturer A had increased prices to Reseller A. This is extremely significant

because under its agreement with Manufacturer A, Reseller A retains 10 percent of the FSS price. If Manufacturer A passes on price increases to Reseller A, both Manufacturer A and Reseller A benefit with the FSS customer having to absorb a price increase. In other words, there is no incentive for Reseller A to negotiate lower prices for the Government.

Coinciding with Reseller A's protest to the GAO of the Contracting Officer's decision to no–award a contract to Reseller A (refer to discussion in C.1.a.), the Assistant FSS Director sought guidance from GSA regarding how to implement the Price Reductions Clause for situations such as Reseller A's. On February 28, 2003, GSA's Assistant Commissioner responded with the following:

> For price reduction purposes where the reseller is the offeror, it is the pricing relationship that the offeror has with the manufacturer that must be maintained throughout the contract period.

Like OIG, the Assistant FSS Director had concerns using the pricing relationship between the offeror and manufacturer as the tracking mechanism. On March 4, 2003, he responded to GSA's Assistant Commissioner's February 28 response by stating:

> However, in the specific Reseller A's situation under protest, we do not understand how this PRC[10] approach can be applied to an indefinite price/discount provision so as to provide any price protection. Even if definitive pricing at time of award is thought to be fair and reasonable, what protection is obtained if that pricing is then used for tracking purposes?

On March 12, 2003, GSA's Assistant Commissioner reiterated his position to the Assistant FSS Director saying that the offeror's pricing relationship with the manufacturer must be the tracking mechanism. However, the Assistant Commissioner did not provide the Assistant FSS Director with a regulatory citation or state any precedent supporting his position, which contradicts the plain language of the Price Reductions Clause.

The Assistant FSS Director (the Contracting Officer's supervisor) withdrew the non–award, and subsequently awarded Reseller A a letter contract while we conducted a second pre–award review of Reseller A's and Manufacturer A's new CSP data. In the second pre–award review, we stated: "The conclusions of the pre–award review of the new CSP data are substantially the same as our first pre–award review which resulted in the Contracting Officer not awarding a contract to Reseller A." We also concluded that Reseller A has not reported any price reductions on their (then) current letter contract (May 13, 2003 through August 18,

[10] Price Reductions Clause.

2003), although we identified situations where the Price Reductions Clause should have been triggered. When we notified a Reseller A official of the instances that should have triggered the Price Reductions Clause (due to Manufacturer A reducing the price that Reseller A paid), the official indicated "…that questions of contract interpretation…" would be discussed "… with the Contracting Officer at an appropriate time."

When the Assistant FSS Director, acting as the Contracting Officer, became aware that we had concluded that the Price Reductions Clause was likely triggered on Reseller A's 120–day letter contract, he took the following actions.

- He determined that the Price Reductions Clause was not triggered on the letter contract.

- He later modified the language of the Price Reductions Clause on Reseller A's successor contract to make the language consistent with his position that there was no price reduction on the letter contract.

His actions further weakened the Price Reductions Clause to the benefit of Reseller A and Manufacturer A and to the detriment of the Government. Our concerns on this matter are further discussed in the following paragraphs.

As previously mentioned, Reseller A's 120–day letter contract, effective on May 13, 2003, contained a Price Reductions Clause that specified two tracking mechanisms: Reseller A's commercial customers and Reseller A's acquisition price for the Manufacturer A products. The operative wording for Reseller A's acquisition price, extracted from the Price Reductions Clause, stated:

> 1. "**Additionally, for Manufacturer A's products, the discount relationship between Reseller A and Manufacturer A will affect future FSS prices;**" **and,**
>
> 2. "**Price increases or decreases to Reseller A from Manufacturer A will result in an equivalent change to the negotiated interim price.**" **[emphasis added]**

Despite the Assistant FSS Director's written concerns to GSA that using the offeror's pricing relationship with the manufacturer for tracking prices would not provide any pricing protection when he awarded the contract, he inexplicably amended the Price Reductions Clause to further weaken the clause on Reseller A's current contract.

The Price Reductions Clause, as amended, on Reseller A's FSS contract states, in part:

> Additionally, for Manufacturer A's products, the discount relationship between Reseller A and Manufacturer A will affect future FSS prices. Permanent price increases or decreases (change to manufacturer's list price) to Reseller A, from Manufacturer A will result in an equivalent change to the negotiated contract price. Reseller A may offer temporary price reductions or "spot" price reductions to FSS customers without triggering the Price Reductions clause, and such reductions shall not result in any change to the negotiated contract price.

Inclusion of the parenthetical phrase "change to manufacturer's list price" weakens the Price Reductions Clause because the trigger for price reductions is to track list price changes instead of the discount relationship between Reseller A and Manufacturer A. Reseller A's pricing from Manufacturer A is not related to Manufacturer A's list prices—Reseller A's pricing from Manufacturer A is a percentage discount from the FSS price, not Manufacturer A's list price. The use of list prices as a tracking mechanism also is inconsistent with guidance provided to the Assistant FSS Director by GSA in letters dated February 28 and March 12, 2003, cited above. Therefore, the Assistant FSS Director exceeded his authority by amending the Price Reductions Clause to make list price changes a tracking mechanism. Reseller A's current Price Reductions Clause also specifically excludes "spot basis" discounts from triggering price reductions.[11] This change further weakens the Price Reductions Clause because now only manufacturer's list price changes trigger price reductions, and such list price decreases are rare. The change almost guarantees there will be no contract–wide price reductions due to competitive forces. The list price tracking mechanism provides for little FSS price protection. List prices rarely go down, and when they do, they normally affect low selling or obsolete items.

List price changes have not resulted in significant Price Reductions on Reseller A's current FSS contract, which was effective on December 1, 2003.

- Modification 12, effective July 6, 2005, reported "list price decreases" retroactive through January 1, 2005 on six items. The monetary impact was approximately $2,500.

- Modification 17, effective September 21, 2005, reduced prices on 15 products retroactively to January 1, 2005 (4 items), October 1, 2004 (4

[11] Spot discounts do reduce the price Reseller A pays Manufacturer A for the product for the particular transaction, but the manufacturer's list price is not affected.

items), and November 30, 2003 (7 items). The monetary impact was approximately $6,700.

- Modification 23, effective December 13, 2005, reduced pricing on 99 items based on list price changes retroactively to January 1, 2005. We determined the monetary impact to be approximately $600.

The total monetary impact of $9,800 for the instances cited above represents a minute portion of the estimated $40 million in sales through December 2005 on Reseller A's current contract. As a result, VA and OGA customers purchasing off the FSS are not realizing the discounts Manufacturer A offers commercial customers who purchase directly from Manufacturer A.

d. Price Reasonableness for Price Increases under the Economic Price Adjustment Clause. Reseller A's contract contains 3 modifications (15, 20, and 22) that have increased the prices of 1,000 items. The Contracting Officer approved all three EPA increases without Reseller A submitting the required CSP information or the manufacturer's new list pricing on which the price increases were predicated. However, the Contracting Officer did not approve all requests for EPA price increases. For example, Modification 21 requested EPA price increases on 83 items. The Contracting Officer denied the request because Reseller A did not include all of the information required on the Request for Modification form. In the following paragraphs, we discuss the three modifications that increased FSS pricing on 1,000 items.

On Modification 15, effective August 17, 2005, the Contracting Officer granted the requested price increases for 29 of 60 items. The approved price increases were all under 10 percent while most of the disapprovals represented increases higher than 10 percent. Reseller A did not submit a CSP from the manufacturer, or a certification that the data had not changed since the initial negotiation, or the commercial catalog showing the price increases and the effective date for commercial customers, as required. Reseller A annotated on the request documentation what the old and new Manufacturer A list prices were, and that the current GPO X's price (Manufacturer A's customer which was the basis of award customer for Reseller A's FSS contract) was higher than proposed FSS pricing.

The Contracting Officer apparently requested further justification. In response, Reseller A provided Department of Labor statistics showing that industrial commodity prices have increased 2.12 percent between March and July 2005, and a letter from Manufacturer A, dated August 16, 2005, stating their materiel costs have risen in the last 3 years. On August 18, 2005, the Contracting Officer approved Modification 15 (a day after the August 17 effective date).

The Contracting Officer's approval of Modification 15 after receiving the Department of Labor statistics was inappropriate because those statistics are

meaningless in the FSS program. The GSA FSS contract clause allows EPA price increases only after contractors show that their commercial customer pricing also has increased, as evidenced by the requirement for CSP data and list pricing. Although manufacturer's costs normally precipitate price increases, the FSS EPA clause does not consider them to be a factor on which to base approval for price increases. In our opinion, the Contracting Officer's focus in approving the price increases should have been to verify that the manufacturer's commercial customer pricing increased. As such, the manufacturer's CSP data and list pricing should have been obtained, as required by GSA policy.

For Modification 20, effective October 19, 2005, the Contracting Officer approved EPA price increases on 888 of the 1,065 Manufacturer A Spine products added to the contract via Modification 12, effective July 6, 2005. The price increases ranged from 0.1 to 31.2 percent, with 883 of the items increasing by less than 10 percent.

The price increase was based on purported increases in Manufacturer A's Spine list prices as of September 1, 2005. Although the cover letter submitted by Reseller A with the modification request stated that the new list prices were included in Reseller A's submission, the contract file did not contain the September 1, 2005 list prices; only the September 1, 2004 list prices were in the file. The Contracting Officer approved the EPA without the required CSP data or certification that the data had not changed since completion of the initial negotiation. In support of the EPA request, Reseller A certified that their commercial customers' prices increased and that Reseller A's costs from Manufacturer A, Spine, increased, both by the same percentage as the FSS price increases. The contract file contained an unsigned "Dear Valued Customer" form letter from Manufacturer A Spine that announced a price increase. Reseller A's correspondence stated that this letter "verifies that the same percentage increase being requested on FSS contract are being applied to Manufacturer A's GPO contracts." The unsigned form letter was inadequate support for granting price increases.

Modification 22 increased pricing on 83 SIN A–77 products (patient bed accessories) ranging from .05 percent to 70.2 percent and averaging 12.8 percent. The contract file did not contain the required documentation to support the increase. Although the spreadsheet submitted in support of the FSS price increases showed they were the same percentage increases as the list price increases between October 1, 2002 (the basis of award price list), and the October 1, 2005 list prices, the contract file did not contain the October 1, 2005 manufacturer's list prices, as required. Instead, the contract file contained Manufacturer A's list prices, dated March 24, 2005, which did not show all of the products affected by the price increases. Reseller A did not submit the required CSP from the manufacturer or a certification that the data had not changed since completion of the initial negotiations.

The contract file included a "Request for Modification" form prepared and provided by the NAC containing instructions for the contractor regarding the information to provide when applying for EPA price increases.

The Request for Modification form requires the following information for EPA price increases:

- Information to support the reasonableness of the price change for each item, to include: (i) current and proposed FSS pricing with percentage changes; (ii) previous and current tracking customer pricing with percentage changes; and (iii) previous and current list prices with percentage changes.

- Dated copies of previous and current commercial price lists.

- A certification that no adverse change has occurred in the ratio between the awarded FSS price and the tracking customer price since the award of the item.

The NAC's Request for Modification form does not include all of the information required to be submitted by the contract's EPA clause. Specifically, the Request for Modification form does not discuss submission of CSP data related to the new commercial price lists or certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission, or documentation supporting the reasonableness of the price increases. To ensure compliance with the clause, the NAC's Request for Modification form needs to be modified to be consistent with the terms of the contract's EPA clause.

2. Reseller B.

We conducted a post–award review of Reseller B's FSS contract. We concluded that the Contracting Officer had no basis for determining that offered prices were fair and reasonable and that the contract offered no price protection under the Price Reductions Clause. In our report issued February 2, 2006, Draft Report Post–Award Review of Federal Supply Schedule Contract Awarded to Reseller B, we recommended that the NAC Contracting Officer cancel Reseller B's contract.

From August through December of 2005, prior to issuing our draft post–award report, we sent numerous e–mails to the Contracting Officer,[12] including detailed documentation and analysis for his review, and asked for any additional information relevant to his determination of fair and reasonable prices. The Contracting Officer provided us no additional information to show that Reseller B's contract prices are fair and reasonable. In his responses to our e–mails, he

[12] We sent this correspondence to a former Contracting Officer in the med/surg contracting activity, but copied his supervisor, the Assistant FSS Director.

focused on supporting the pre–award estimate of contract sales and his decision not to request a pre–award review from our office. He was concerned about our findings, open to renegotiating the Reseller B contract, and suggested requesting and receiving manufacturers' CSP data. However, he did not want to cancel the contract.

On April 10, 2006, the Acting Executive Director, NAC, responded to our recommendation to cancel Reseller B's contract and start over. He informed us that the Contracting Officer would require Reseller B to submit a new FSS offer and provide the manufacturers' CSP for all items offered. The Acting Executive Director further stated that if Reseller B fails to submit a new offer by the due date of May 1, the current contract will then be canceled.

We accepted the NAC's response and, on May 3, 2006, we issued the final report. However, the Assistant FSS Director, serving as the Contracting Officer, extended the May 1 deadline twice to May 30 and then to June 23. On June 28, we learned that Reseller B submitted a CSP based on their own sales and the Assistant FSS Director did not require manufacturers' CSP data. The Assistant FSS Director told us that Reseller B said they now have sufficient commercial sales and therefore the manufacturers' CSPs are not required. He made no inquiries concerning the nature and sufficiency of Reseller B's non–Federal customers that could be used for establishing price reasonableness. Our post–award review found that the majority of Reseller B's non–Federal sales were to State and Local Governments whose prices were based on the FSS prices plus 10 percent and therefore cannot be used to determine fair and reasonable prices.[13] The Assistant FSS Director had no support to show that there has been a change in Reseller B's commercial sales. The CSP that Reseller B submitted on June 28, 2006, and the Assistant FSS Director accepted, is very similar to the CSP originally submitted in 2001. Since Reseller B can make the FSS price anything it wants it to be and sell to State/Local customers at FSS price plus 10 percent, the Assistant FSS Director had no basis for determining that prices are fair and reasonable at initial award and during the term of the contract.

On August 8, 2006, after OA&L officials intervened, a new Contracting Officer was assigned to evaluate the sufficiency of Reseller B's offer. At this point, Reseller B was requested to provide manufacturers' CSP by September 15, 2006. Reseller B failed to provide the manufacturers' CSP data, instead contending that they had significant commercial sales, which would preclude the need for the

[13] The CSP that Reseller B originally submitted in 2001, the CSP submitted on June 28, 2006, and the results of our post–award review of Reseller B's contract show that Reseller B's prices to State and Local Governments cannot be used as a basis for negotiation, product additions, price increases, or as the tracking customer for price reductions since those prices are established as a function of the FSS price. As an example, if Reseller B determines that the FSS price is $100, then the best price to State/Local customers is $110 (FSS price + 10 percent).

Government in establishing fair and reasonable prices to evaluate manufacturers' sales to their commercial customers.

On April 26, 2007, the Contracting Officer—after numerous contract extensions and requests for Reseller B to provide manufacturers' CSP data—informed Reseller B that their contract extension proposal would not be considered further. The contract would expire on April 30, 2007. The Contracting Officer concluded that Reseller B's proposal did not clearly demonstrate that they had significant commercial sales.

a. The Contracting Officer did not Request a Pre–Award Review. Prior to contract award on May 21, 2002, the Contracting Officer did not request a pre–award review of Reseller B's proposal from our office and did not request manufacturers' CSP data from Reseller B. During the period from Reseller B's original proposal on May 24, 2001 to the Reseller B contract award date, the NAC Contracting Officer for Reseller B (also the original Contracting Officer for Reseller A) was actively involved with the Reseller A proposal, the issue of Reseller A's insignificant commercial sales, and the requirement that Reseller A submit manufacturer's CSP data.[14] Reseller B, like Reseller A, is a broker, and the Contracting Officer should have seen the similarities between the two entities, applied that knowledge to Reseller B's proposal, and questioned Reseller B's disclosures.

The Contracting Officer told us he did not request the manufacturers' sales data from Reseller B because the disclosure on Reseller B's CSP of $14.1 million in commercial sales (which our post–award review revealed was a gross misrepresentation) indicated that they did have substantial commercial sales. However, in addition to his active involvement in the Reseller A's proposal and the issues associated with resellers, there were several other factors that should have led the Contracting Officer to question the CSP disclosure, to realize that manufacturers' CSP data was required to determine if Reseller B's prices were fair

[14] This Contracting Officer was involved with the Reseller A issues from the date of the original Reseller A proposal. After our preliminary review of that proposal in April 2000, we advised the Contracting Officer to request that Reseller A provide manufacturer's sales data, which he did. After many months of discussions and the manufacturer's delays in providing additional information, the manufacturer eventually supplied the CSP data in December 2001, and we began our review of Reseller A's proposal. (The Contracting Officer also was negotiating with Reseller B during this time period.) After additional delays, untimely responses, and multiple discussions with Reseller A and the NAC Contracting Officer, we issued our first pre–award review report on Reseller A on September 5, 2002, recommending no award unless fair and reasonable prices could be attained and Price Reductions Clause price protection could be achieved.

and reasonable, and to request a pre–award review.[15]

b. Price Reasonableness at Initial Award. Our post–award review confirmed that Reseller B had insufficient commercial sales to determine if offered prices were fair and reasonable. In their CSP, Reseller B grossly misrepresented that they had over $14 million in commercial sales. On page 69 of the CSP, Reseller B disclosed "… dollar value of sales to the general public at or based on an established catalog or market price during the previous 12–month period or the offeror's last fiscal year: **$14,149,478.00** … Beginning **Jan 1, 2000** Ending **December 31, 2000**." Our review of Reseller B's sales for the 1–year prior to contract award (May 1, 2001 to April 30, 2002) shows actual non–Federal Government sales were $1.4 million consisting of State and Local Government sales of $1.2 million and all other commercial sales of $0.2 million. All Federal Government sales were $15.6 million for the same period. We found no evidence in the contract file to support that Reseller B ever disclosed, or that the Contracting Officer ever requested, the identity of the commercial customers who Reseller B claimed had purchased products totaling $14.1 million.

We determined (and Reseller B confirmed) that most of the $14.1 million in reported commercial sales were to Federal Government customers, not to commercial customers. The Reseller B representative provided us his worksheet for Fiscal Year (FY) 2000 that he used to prepare the CSP. The worksheet shows a sales distribution similar to what our review of Reseller B's sales shows for the 1–year period just prior to contract award on May 1, 2002. Reseller B's worksheet shows FY 2000 total sales of about $15.5 million comprised of $14.6 million in Federal Government sales and $0.9 million for all other sales. To arrive at the $14.1 million in sales to the general public that Reseller B reported in the CSP, the representative explained that he subtracted the FSS sales of approximately $1.4 million from the total sales of $15.5 million. This method leaves $14.1 million in sales consisting of $13.2 million in Federal Government sales and $0.9 million in all other sales. Obviously, the $13.2 million in non–FSS Federal Government sales should not have been reported in the $14.1 million in sales to the general public.

[15] Using sales data provided to us by Reseller B during our review, we determined that actual FSS sales were $5.7 million in the 1–year period just prior to contract award with the data showing that FSS sales increased each quarter. A pre–award review would have confirmed that Reseller B did not have a significant commercial market, that the CSP contained serious errors, and that GSA policy required the manufacturers' CSP to determine fair and reasonable prices.

In an e–mail dated July 10, 2005, we asked the Contracting Officer if he:

- Recalled questioning Reseller B's representatives concerning the $14 million in sales to the general public.
- Received any information about the customers included in the "general public" that purchased this dollar value in Reseller B's products.
- Relied on this disclosure for determining sufficient commercial sales for awarding an FSS contract.

On September 23, 2005, the Contracting Officer replied:

> From the very outset through negotiations, the $14 million figure was definitely presumed to be entirely for commercial sales given that it was provided in direct response to the "general public" sales paragraph of the CSP. As such, I made no inquiry to (a certain individual) or any other representative from Reseller B concerning the $14 million disclosure in this regard as it was completely relied upon as being sufficient for commercial sales.

In an e–mail to the Contracting Officer during negotiations, Reseller B said it had $792,891 in sales to State and Local Government customers and $0 in sales to GPOs. The Contracting Officer and Reseller B focused their discussions on the small number of sales to State and Local Government customers, but never discussed the $14 million or the customers represented in that number, even after Reseller B reported to him that they had no sales to GPOs.

Without sufficient commercial sales, the Contracting Officer lacked any means to ensure that the awarded prices were fair and reasonable. For the same reason, we lacked any means to test for fair and reasonable prices during our review. If a contractor is a dealer/reseller without significant sales to the general public, the CSP requires the dealer/reseller to provide manufacturers' CSP sales data for manufacturers expected to exceed $500,000 in sales. This can provide the Contracting Officer with a basis for determining if the offered prices are fair and reasonable, because it shows what the manufacturers' customers are paying for the items. Reseller B did not provide this data and the Contracting Officer did not request it.

Reseller B's offer and the Contracting Officer's PNM both show that the basis for the fair and reasonable prices as well as the tracking customer prices were the prices to State and Local Governments. The Contracting Officer's Negotiation Objectives spreadsheet compared Reseller B's offered FSS discounts to the discounts received by State and Local Government customers.

During our review, we obtained Reseller B's Contract and Pricing policies that include a section for "Items Expected or Intended for FSS or DAPA Offering." The policy states that the State and Local Government price "should represent a price no better than the best federal customer price +10% as calculated by dividing the anticipated FSS price by .90."

Reseller B's policy statement confirms that Reseller B first establishes the FSS price and then bases the State and Local Government price on the FSS price. For this reason, State and Local Government prices are not commercial prices and cannot be the basis for determining fair and reasonable FSS prices. Even if State and Local Government customers' prices did represent real commercial sales (as the Contracting Officer assumed during negotiations), Reseller B's sales to these customers and Reseller B's small number of other customers were insignificant compared to FSS sales.

As such, we identified the sales transactions for the 1–year period prior to award for State and Local Government customers and all other non–Federal Government customers for the top 23 items.[16] We found that only 5 of the 23 items had any sales to these customers in the 1–year period prior to award and those 5 items had a total sales volume of $3,740. This analysis demonstrates that Reseller B had insufficient commercial sales for the Contracting Officer to determine price reasonableness prior to award even if he included the sales to the State and Local Government customers, which should not have been included. Accordingly, there is no relationship between the prices FSS customers pay compared to the prices paid by all commercial customers who buy direct from the manufacturer.

During our site visit to Reseller B, we asked Reseller B representatives how VA can be assured that FSS prices are fair and reasonable since Reseller B has so few commercial sales. The gist of their answer was "we are a reputable company, we survey the market place, we wouldn't do anything to damage our business with the VA, and trust us—they are good prices." This assertion clearly is not sufficient support for a negotiated procurement under FSS policies. Also, because Reseller B is paid a percentage of the price they pay to manufacturers, there is no incentive to negotiate lower prices with the manufacturers.

In summary, with insufficient commercial sales by Reseller B and no CSP data from Reseller B's manufacturers, the Contracting Officer had no basis for determining if offered prices were fair and reasonable on a 5–year contract with an estimated value of $42.5 million.

c. Price Reasonableness for Products Added on Contract Modifications. Since the award date of Reseller B's contract on May 1, 2002 through March 1, 2005, 7

[16] We selected the top 23 items by ranking the items based on FSS sales from May 1, 2002 through March 31, 2004. These items represent 25 percent of the total FSS sales for the identified contract period.

contract modifications have added 3,643 new products. The Contracting Officer did not request or receive a CSP on five of seven modifications and did not conduct an analysis which, if performed, would have shown a lack of sufficient commercial sales to determine fair and reasonable contract prices for any of the seven modifications.

As an example, Modification 16, dated December 1, 2004, added 2,712 items to Reseller B's contract, and Modification 17, dated March 1, 2005, added 572 items. The added items were from five manufacturers who sell direct to their commercial customers. Reseller B did not provide a CSP nor did the Contracting Officer request it. The PNM for both modifications stated the offered discount ranges were compared to the tracking customer discount ranges and included a statement that the discount range "is considered fair and reasonable and in the best interest of the Government." The contract file provided no basis to support this determination. Given the facts that the Contracting Officer knew, or should have known, there was no support for his conclusion that he considered offered prices "fair and reasonable and in the best interest of the Government."

In contrast to his approval of Modifications 16 and 17, the same Contracting Officer told us about a request from Reseller B to add 5,000 items manufactured by Manufacturer C. He denied the request. Reseller B originally submitted this request on April 2, 2003. Although a completed CSP was not included with the request, Reseller B did provide sales information stating that they had approximately $36,000 in commercial sales of Manufacturer C's products and estimated annual Government sales of $971,000. The Contracting Officer determined that Manufacturer C recently had canceled their FSS contract because they wanted to sell their items to the Government through Reseller B's FSS contract. The Contracting Officer denied Reseller B's request to add Manufacturer C products on the basis that Reseller B lacked commercial sales of those products.

We asked the Contracting Officer to explain his inconsistent treatment of the modifications. We asked why he approved Modifications 16 and 17 adding 3,284 products without even requesting Reseller B's commercial sales of these items after he denied Reseller B's earlier request to add Manufacturer C's products based on insufficient commercial sales.

The Contracting Officer informed us that he did not get a new CSP or ask about Reseller B's commercial sales for items added on five of seven modifications because he considered these "similar items" to items already on Reseller B's FSS contract. He defined "similar items" in this context, as items classified in a Special Item Number (SIN) already represented by other items on Reseller B's existing FSS contract and from a manufacturer whose products Reseller B already was selling to the Government on their FSS contract. The Contracting Officer said there is a NAC policy that allows him to deem the prices for these items as

competitive and therefore, also deem them fair and reasonable if the items are "similar items" to those already on the existing FSS contract (i.e., from a manufacturer already represented and the items are contained in a SIN already on the contract). He said if this is the situation, then he does not have to get a new CSP. The Contracting Officer told us the difference with the Reseller B request to add Manufacturer C items was that Reseller B was offering new SINs (not already on Reseller B's contract) and Manufacturer C was a new manufacturer to be represented by Reseller B.

In an e–mail to the Contracting Officer on August 10, 2005, we asked him to provide the NAC policy on this issue. The Contracting Officer responded to our request in his e–mail to us on September 23, 2005, and said that he knew of no written policy. He further explained his understanding of when CSP data is required, as follows:.

> When a contractor is proposing additions and the information in CSP paragraphs 3–5 is the same as the initial award, this section can be waived. This is believed to be in accordance with Clause 552.243–72, Modifications (Multiple Award Schedule) (JUL 2000) (Alternate I–SEP 1999) which states in paragraph (b)(1) (ii), "Discount information for the new item(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead." However, the contractor must submit paragraphs (1) and (2) of the CSP. Generally, this has been the basis for not requesting new CSP information if the items are similar to those previously awarded even for those with little to no sales history.

As stated in his response, the Contracting Officer acknowledges that Paragraphs (1) (sales to the general public) and (2) (estimated sales to the Government under the contract) of the CSP must always be submitted. For Modifications 16 and 17 to the Reseller B contract, Reseller B did not submit dollar value for sales to the general public required in Paragraph 1 of the CSP, or estimated Government sales required by Paragraph 2, and the Contracting Officer did not request it. If he had obtained that information, he would have learned that Reseller B had no commercial sales of the items that Reseller B was requesting to add to the contract. As far as requiring or not requiring the CSP data requested in paragraphs 3–5, the Contracting Officer's rationale may be valid for the addition of a small number of items if the original disclosures were accurate and based on reasonable commercial sales, and there were significant sales to the general public for the new items. We now know that the initial award was faulty since there were so few commercial sales for any of the originally offered and awarded items and no assurance of fair and reasonable prices. There was no basis for fair and reasonable prices for the items added in Modifications 16 and 17.

Our review shows that Reseller B had insufficient commercial sales for the Contracting Officer to make a determination of fair and reasonable prices for all seven modifications that added products to Reseller B's contract. The Contracting Officer did not request or receive CSP data from the manufacturers of the items added via modifications, which is required by the CSP when the contractor is a dealer/reseller with little or no commercial sales.

d. Price Protection on Reseller B's Multi–Year Contract. The awarded tracking customers for Reseller B's FSS contract—State and Local Government customers—provide no price protection under the Price Reductions Clause. According to Reseller B's policy, State and Local Government customers' prices are set as a function of the FSS prices (as demonstrated earlier in the report, the policy states that the State and Local Customer price can be no better than the FSS price divided by .90). Therefore, a State and Local Government price can never trigger a price reduction for the FSS price. As a result, Government customers have no price protection during the 5–year contract period, which can be extended up to 10 years.

Also using State and Local Government customers as a tracking customer provides no price protection since there are so few sales to them. We analyzed State and Local Government transactions for the top 23 sample items from May 1, 2002 through March 31, 2004. Reseller B had no sales to State and Local Governments for 15 of the 23 items. On the remaining 8 items, Reseller B had only $30,000 in total sales in 253 transactions to State and Local Government customers and transactions were at prices greater than the FSS item price. In fact, most of the transaction prices for these 8 items were at a price computed using the FSS price for that item divided by .90. For example, on Item 999003795, with an FSS price of $68.85, all 30 transactions during the period to State and Local customers were at a price of $76.50 ($68.85 / .90), which is consistent with Reseller B's written policy stipulating that the State and Local Government price is set as a function of the FSS price (State and Local price = FSS price / .90).

Reseller B has no alternative customers that could be considered as valid tracking customers for price reductions. Our review of sales data for the 23 months from the contract award date of May 1, 2002 through March 31, 2004, showed that Reseller B essentially had no sales to general public or non–government commercial customers. Excluding FSS sales, other non–FSS Federal Government sales, State and Local Government sales, sales where Reseller B acts only as a distributor (VA Prime Vendor sales and Broward County distribution only contract sales) and sales to wholesalers from total sales of $67 million leaves only $43,000 in other sales to potentially track for price reductions.

In summary, Reseller B has no customers who could be considered valid tracking customers for the purpose of the Price Reductions Clauses. Therefore

Government customers receive no price protection under the Price Reductions Clause under the existing FSS contract with Reseller B.

e. Price Reasonableness for Price Increases under the Economic Price Adjustment Clause. The Contracting Officer granted price increases to Reseller B on 3,883 items under the EPA clause (Modification 12, effective May 1, 2004). These increases averaged over 5 percent and were not adequately supported by Reseller B. Reseller B justified the increases based on a decline of the US dollar in the European market indicating a significant cost increase. This justification is inconsistent with FSS policy since FSS prices are based on commercial item pricing not cost.

There was no basis for granting price increases. If Reseller B had submitted accurate CSP data based on Reseller B's sales, the Contracting Officer would have known that Reseller B had little or no commercial sales and that manufacturers' CSP data was needed to even begin to review and determine if the requested price increases were fair and reasonable. The manufacturers were not identified for the items included in the requested price increases, the manufacturers' list prices were not provided, and manufacturers' CSP data was not submitted. The facts that (1) Reseller B was increasing the prices to State and Local Governments[17] and (2) the US dollar had declined in the European market were inadequate reasons to support price increases. Reseller B should not have been granted price increases on these 3,883 items.

3. Reseller C.

On June 20, 2001, a NAC Contracting Officer awarded an FSS Contract to Reseller C, a small medical distribution company. The initial award was for a certain line of products from Manufacturer D. In their CSP, Reseller C disclosed that they had no commercial sales. Reseller C did not provide the manufacturers' CSP data and the Contracting Officer did not request it. Absent commercial sales and a CSP from the manufacturer represented by Reseller C, the Contracting Officer had no basis to determine fair and reasonable prices at award and on modifications to add products; no tracking customer for price reductions; and no basis for evaluating and approving price increases.

a. Price Reasonableness at Initial Award. In their CSP, Reseller C disclosed $0 in commercial sales and a total of $6.2 million in Federal Government sales. Manufacturer D's products represented about $758,000 in annual FSS sales. The Contracting Officer's price analysis simply used Department of Defense's (DoD) Distribution and Pricing Agreement (DAPA) price as the basis of award. Reseller

[17] Reseller B's prices to State and Local Governments cannot be used as a basis for negotiation, product additions, price increases, or as the tracking customer for price reductions since those prices are set as a function of the FSS prices.

C disclosed that it deals only with the Federal Government. They state in their proposal: "Our company has been in business since 1993; our only sales focus has been to the Federal Government exclusively." Even with the knowledge that there were no commercial sales to use to determine price reasonableness, the Contracting Officer did not request CSP data from the manufacturer to determine price reasonableness based on the manufacturer's commercial sales practices, as required by GSA policy. The contract file contained no evidence that the Contracting Officer questioned the DAPA prices or otherwise determined if DoD performed any analysis to support fair and reasonable prices.

b. Price Reasonableness for Products Added on Contract Modifications. Reseller C's FSS contract was modified 11 times through December 23, 2005, with 8 of the modifications adding 6,013 products to the contract. The number of modifications and the products added are highly significant considering that the initial award was only for products estimated to generate $758,000 in sales of Manufacturer D's products. Table 3 summarizes the eight modifications that added products and determinations that offered prices were fair and reasonable.

Table 3
Reseller C's Eight Modifications Adding Products and Pricing Evaluations of Offered Products

Mod. Number	No. of Items Added	Fair and Reasonable (F&R) Price Determination
1	1	No F&R determination for the addition of a $190,000 Laser.
3	153	No F&R determination.
4	1,689	No F&R determination; Manufacturer D's items. Only Manufacturer D's price list was provided.
7	48	No F&R determination; only provided Manufacturer D's price list.
8	33	No F&R determination; only provided Manufacturer D's price list.
9	1	No F&R determination; submitted manufacturer's price list. No CSP or other data submitted.
10	388	No F&R determination; submitted updated Manufacturer D's price list.
11	3,700	Manufacturer E's items. Reseller C submitted some commercial invoices to the NAC. No CSP or other data submitted.

None of the modifications was supported by CSP data, as required. For 7 of the 8 modifications (all but Modification 11), representing 2,313 product additions, the contract file did not document any determination that offered pricing was fair and reasonable.

Modification 11 of the contract, dated February 3, 2005, is particularly noteworthy because it added about 3,700 SIN A–09 products to the contract, all from a prior FSS contractor, Manufacturer E. Manufacturer E had removed these items from their FSS contract, and 5 months later transferred them to Reseller C's contract at significantly inflated prices. In a letter dated August 2, 2004, Manufacturer E stated: "This letter is to cancel our medical items off our existing FSS Contract, as of 8–31–2004. Our goal is to better our ability to provide world class service to the U.S. Federal Government's Medical Treat (sic) Facilities worldwide. Our intention is to partner with Reseller C who will supply Manufacturer E Medical products through the use of their existing FSS contract."

The modification request indicated that Reseller C did not expect sales of the SIN A–09 items to exceed $500,000 annually so that CSP data (from the manufacturer) was not required. However, NAC records showed Manufacturer E's sales of those items on their FSS contract, before cancellation, were $2.7 million a year. At the direction of the Assistant FSS Director, Reseller C provided the Contracting

Officer with commercial invoices for about 100 of the 3,700 items added to the contract. Since Reseller C did not have any commercial sales, the commercial invoices were provided by Manufacturer E, the predecessor FSS contractor and manufacturer of the items.

We reviewed a random selection of 30 of the 3,700 products added to determine pricing differences. The results are shown in Table 4.

Table 4
Random Selection of 30 Manufacturer E Items
Added to Reseller C's Contract

Item	Manufacturer E's FSS Price	Reseller C's FSS Price	Percentage Increase (Decrease)
100.00	$ 10.92	$ 27.00	147.25%
102.01	26.37	40.50	53.58
102.021	74.25	103.50	39.39
2168.50	1,955.30	2,943.00	50.41
2232.611	6,901.54	8,565.60	24.11
2280.004	8,425.75	11,296.00	34.07
31113.101	1,843.03	2,368.00	28.48
367.1	421.00	595.20	41.38
4450.57	3,457.96	4,116.00	19.03
4840.501	13,148.38	15,656.00	19.07
5135.001	9,216.73	11,532.00	25.12
5365.511	4,306.50	5,346.50	24.15
5541.852	66,529.49	45,777.20	(31.19)
5542.001	16,666.16	28,836.50	73.02
7224.001	4,832.19	5,681.60	17.58
7265.001	10,395.00	12,319.20	18.51
7305.006	5,717.25	6,528.00	14.18
7330.72	9,819.37	12,224.00	24.49
7331.001	10,023.75	12,817.60	27.87
8033.90	63.27	93.60	47.94
8106.033	43.07	64.80	50.45
8108.131	122.51	181.80	48.40
8170	6,086.27	6,422.50	5.52
8188.11	67.05	79.20	18.12
8211.011	440.49	453.60	2.98
8655.074	408.38	537.60	31.64
8656.411	3,099.14	4,065.60	31.18
8658.02	4,675.46	6,136.00	31.24
8704.401	5215.7	6,835.20	31.05
8719.401	5,059.77	6,634.40	31.12

Table 4 shows that 29 of the 30 product prices increased and 1 product price decreased. These substantial price increases (averaging 32.7 percent, including the one price decrease, and 33.7 percent for the 29 items with price increases) occurred in a 5–month time period as a result of the NAC contracting with a middleman, in this case, Reseller C, who sells exclusively to the Federal Government. Despite the steep price increases, the Contracting Officer awarded all of the items.

We discussed the fair and reasonable pricing determination with the NAC Contracting Officer, who told us that a Reseller C official had informed her that Manufacturer E had increased their catalog prices in May 2004, prior to having canceled their FSS contract, and had not passed on those increased prices to the Government. She further indicated that her review involved: (i) comparing the old Manufacturer E's FSS pricing to the proposed FSS pricing by Reseller C; and (ii) reviewing Manufacturer E's commercial list price changes.

The Contracting Officer's price reasonableness determination was seriously flawed because she had no visibility over the discounts Manufacturer E's best customers received, which would have become evident had Manufacturer E provided a CSP, as required. She informed us that Reseller C selected and provided the Manufacturer E invoices for the NAC's review. This is problematic because invoices "selected" by the vendor showing commercial pricing do not necessarily have any relationship to Manufacturer E's MFC pricing. Manufacturer E and Reseller C may have provided the Contracting Officer with Manufacturer E's highest priced invoices including invoices for low–volume customers unlike VA. Additionally, reviewing 100 invoices provides dubious coverage for 3,700 items added, and the invoices may not have covered high–volume FSS contract items.

The Contracting Officer reviewed Manufacturer E's catalog pricing increase but did not document the percentage increase amounts. Also, catalog pricing increases often do not correlate to increases in MFC prices. Had the products stayed on Manufacturer E's FSS contract, instead of being removed and added to the Reseller C's contract 5 months later, it is highly unlikely that Manufacturer E would have been able to get EPA price increases of more than 30 percent during that time. The Contracting Officer should have required Reseller C to further justify such steep pricing increases before the award was made. Reseller C clearly had disclosed that they had zero commercial sales, which under GSA policy would have required the Contracting Officer to obtain CSP data from the manufacturer.

For the 8 modifications adding 6,013 products, we concluded that there was no basis for determining price reasonableness on any of the 6,013 products.

c. Price Protection on Reseller C's Multi–Year Contract. The agreed upon tracking customer for Reseller C's FSS contract was "all commercial sales." This

was meaningless for price reductions because Reseller C clearly stated in their offer that they had no commercial sales—only Federal Government sales. There was no possibility of price reductions as a result of the application of the Price Reductions Clause; thus, no price protection for the duration of the 5–year contract.

The application of the EPA clause, 552.216–70, becomes an issue when there is no tracking customer. During Reseller C's 5–year contract period, the NAC Contracting Officer approved several EPA price increases without any support showing increases to the tracking customer, because in the case of Reseller C, the tracking customer is non–existent.

d. Price Reasonableness for Price Increases under the Economic Price Adjustment Clause. On Reseller C's contract, the Contracting Officer allowed EPA price increases on 3,531 items without adequate justification. Modification 5 (effective August 6, 2002) granted price increases on 97 items, Modification 6 (effective April 1, 2003) on 3,414 items, and Modification 7 (effective June 1, 2003) on 20 items.

In support of the Modification 5 requested price increase, Reseller C provided the Contracting Officer with the contractor's (Manufacturer D) 2002 Price List. The Contracting Officer requested that Reseller C provide: (i) written justification for the proposed price increases; and (ii) prices that Reseller C pays (to Manufacturer D) for the products.

Reseller C responded with the following:

> Every January 1, Manufacturer D has a price increase for their products. This has been yearly since Reseller C has been a distributor for them. Our price for Manufacturer D's Products is based on a discount from the List Price List. As you notice from our 2001 FSS price list compared to our 2002 FSS price list has the same discount matrix. Being a distributor for Manufacturer D we are independent not owned by Manufacturer D. Reseller C has no control whatsoever in their yearly published price list and have no input or influence regarding their pricing policy. It is beyond our corporation's scope to question Manufacturer D as to how or why they have made changes to their price list. I hope this will satisfy your price increase justification requirement.

Reseller C's response to the Contracting Officer was non–responsive to her request. The documentation and explanation provided by Reseller C did not support the Contracting Officer's approval of the EPA price increase, because Reseller C provided no evidence that commercial customer pricing had increased or otherwise definitively justified the proposed increases. Furthermore, the

Contracting Officer did not request a CSP, and Manufacturer D did not provide one, as required by FSS clause 552.216–70. In their response, Reseller C clearly informed the Contracting Officer that they neither questioned nor had any control whatsoever over Manufacturer D's prices and pricing policy.

Likewise, for Modifications 6 and 7, the Contracting Officer asked Reseller C for information in support of the proposed price increases. Again, Reseller C provided non–responsive information. For example, Reseller C accompanied their request for price increases on 3,414 items (Modification 6) with Manufacturer D's 2003 list prices, and the Reseller C's proposal for the price increase. The Contracting Officer requested the following to justify the Modification 6 request for price increases: (i) reason for price increase; (ii) percentage change from current FSS to proposed FSS pricing; and (iii) the current tracking customer price.

Reseller C replied to the Contracting Officer's request the same way (verbatim) that they replied to the Modification 5 request. Reseller C did not indicate the reason for the price increases other than alluding to list price increases from Manufacturer D. As recognized in the EPA clause, list price increases are meaningless without documentation supporting what commercial customers actually pay for the items. There is no documentation in the contract file that the percentage price increase was reasonable, if otherwise justified. Reseller C simply ignored the request for calculation of the percentage FSS price increase. Reseller C did not respond to the Contracting Officer's inquiry concerning the tracking customer price, because as they had stated in their original offer, they had no commercial customers to track for price reductions.

4. Reseller D.

On March 26, 2001, a NAC Contracting Officer awarded an FSS contract to Reseller D. Reseller D is a reseller who sells manufacturers' products primarily to the Government under its FSS contract. One of the largest manufacturers for which Reseller D resells products is Manufacturer F. When Reseller D received its FSS contract in March 2001, Manufacturer F did not have an FSS contract. After paying $3.3 million to the Government in 1995 to settle a False Claims Act case, Manufacturer F elected not to participate in the FSS program. However, once the use of FSS became mandatory for VA, Manufacturer F submitted a proposal for an FSS contract. In the proposal, Manufacturer F identified Reseller D as a participating distributor of Manufacturer F's products. In the pre–award review of Manufacturer F's offer, dated March 11, 2003, we identified 597 Manufacturer F products common to Reseller D's FSS contract and to Manufacturer F's offer. We recommended that the Contracting Officer for Reseller D's FSS contract modify the contract to remove the 597 items if the same items were awarded to Manufacturer F. On August 28, 2003, the NAC Contracting Officer awarded Manufacturer F an FSS contract. Our review of the Contracting Officer's PNM shows that our recommendation was not implemented.

During this review, we identified 43 Manufacturer F items that are on at least 3 FSS contracts. One contract is with Manufacturer F, and the other two contracts are with resellers of Manufacturer F's products—Reseller D and Reseller E. As Table 5 shows, the resellers' prices are higher—some significantly higher than Manufacturer F's price—with three minor exceptions where Reseller D's price is lower by a few cents. These pricing disparities are even more significant considering the awarded Manufacturer F prices did not reflect Manufacturer F's MFC prices and included an embedded 7.5 percent distribution fee which VA and other FSS customers should not have to pay. In April 2005, we recommended that the Acting Director, NAC, remove the 7.5 percent distribution fee from FSS prices. Instead, the Acting Director allowed Manufacturer F to negotiate the issue. The resulting contract modification, effective April 1, 2006, reduced the 7.5 percent distribution fee to 4.5 percent for sales through VA's Prime Vendor. As a result, FSS customers purchasing through VA's Prime Vendor are paying at a minimum 4.5 percent more than Manufacturer F's commercial customers pay for the same items.

Table 5
Prices for Identical Manufacturer F Items on Three Contracts

Item	Reseller E Price	Manufacturer F Price	Reseller D Price	Item	Reseller E Price	Manufacturer F Price	Reseller D Price
305155	$ 49.00	$ 39.06	$ 47.55	309577	$ 51.00	$ 48.56	$ 49.49
305196	49.00	39.06	47.55	309578	51.00	48.56	49.49
305122	49.00	39.06	47.55	309579	51.00	48.56	49.49
305111	49.00	40.30	47.55	309580	51.00	49.99	51.20
309661	44.56	38.61	43.24	309581	51.00	48.56	49.49
305125	49.00	36.95	47.55	309582	51.00	49.99	49.49
305109	49.00	36.95	47.55	309586	40.50	39.56	39.30
305127	49.00	36.95	47.55	309624	74.80	69.21	72.58
305143	49.00	38.13	47.55	309630	60.10	49.32	58.31
305145	49.00	36.95	47.55	309631	60.10	47.91	58.31
305156	49.00	36.95	47.55	309632	60.10	47.91	58.31
305167	54.87	36.95	53.95	309633	60.10	47.91	58.31
305175	49.00	36.95	47.55	309634	60.10	47.91	58.31
305176	49.00	36.95	47.55	309635	60.10	47.91	58.31
305186	49.00	36.95	47.55	309569	51.00	49.99	51.20
305187	49.00	36.95	47.55	309640	63.55	53.34	61.66
305195	49.00	36.95	47.55	309642	63.55	51.82	61.66
301625	44.56	36.53	43.24	309643	63.55	51.82	61.66
309572	51.00	48.56	49.49	309644	63.55	51.82	61.66
309573	51.00	49.99	49.49	309645	63.55	51.82	61.66
309574	51.00	48.56	49.49	309651	56.50	45.14	54.82
309575	51.00	48.56	49.49				

a. Price Reasonableness at Initial Award. When Reseller D submitted their offer, they disclosed in the CSP $450,000 in annual commercial sales and $2.9 million in annual FSS sales. During the negotiation of the contract, the Contracting Officer

did not request the manufacturer's data to establish the reasonableness of the offered pricing, as required. It appears that the only basis for award was limited sales of less than $500,000 to a couple of counties in the state of Michigan, which is insufficient to establish price reasonableness for the FSS. Reseller D's current annual FSS sales are about $2.1 million.

b. Price Reasonableness for Products Added on Contract Modifications. Reseller D's contract was modified 8 times through January 1, 2006, with 3 modifications adding 38 products. Table 6 summarizes the three modifications and the fair and reasonable pricing determinations. None of the modification requests included the required CSP information.

Table 6
Reseller D's Three Modifications Adding Products and Pricing Evaluations of Offered Products

Mod. Number	No. of Items Added	Fair and Reasonable (F&R) Price Determination
2	9	For four SIN A–5 products, F&R documented by citing discounts offered only; for five SIN A–15 products, F&R determined by comparing to similar products already on Reseller D's contract.
3	23	No F&R determination.
5	6	F&R determined by comparing to like items already on Reseller D's contract. F&R analysis was not documented.

We concluded that 23 of 38 newly added products (23 items on Modification 3) had no documented fair and reasonable pricing determination. The 15 remaining products (Modifications 2 and 5) either had inadequate or inadequately documented fair and reasonable pricing determinations. The four SIN A–5 products added under Modification 2 only documented the discounts offered on the items, which is meaningless. Although the Contracting Officer indicated that a similar item comparison was done for the remaining 11 items (Modifications 2 and 5), there was no documentation to that effect in the contract file.

c. Price Protection on Reseller D's Multi–Year Contract. Reseller D's awarded tracking customer was Wayne and Oakland Counties in Michigan or "Physicians," depending on the item. Reseller D reported in their CSP annual commercial sales of $450,000 compared to estimated annual Federal Government sales of $2.9 million. Since there are so few commercial sales and even less sales to the identified tracking customers, a low probability exists for price reductions as a result of the application of the Price Reductions Clause. Our review of the modifications from contract award through January 1, 2006, found that Reseller D has reported no price reductions based on the Price Reductions Clause. On

modification 5, Reseller D did voluntarily reduce the price for 9 items by 50 percent because of pricing errors. The Contracting Officer also disallowed price increases for four products because the increases were deemed too substantial. No other modifications involved price increases or decreases.

d. Price Reasonableness for Price Increases under the Economic Price Adjustment Clause. Through January 1, 2006, the Contracting Officer had not approved any requests for price increases on Reseller D's contract.

D. **Other Related Matters**

On June 27, 2006, we received an allegation that Manufacturer G, a large FSS contractor, had transferred a number of products from their FSS contract to Reseller F, a distributor/marketer. According to the allegation, FSS product prices increased "drastically" overnight when the products were transferred from Manufacturer G's FSS contract to Reseller F's FSS contract. Our review substantiated the allegation. We also found a similar situation involving another FSS contractor, Manufacturer H, who had transferred products to Reseller F with significant price increases. The same conditions that we reported in the four examples of contracts with resellers apply to Reseller F.

1. Reseller F.

On May 1, 2004, a NAC Contracting Officer awarded an FSS contract to Reseller F for 3,437 line items (med/surg products). The contract performance period is May 1, 2004 through April 30, 2009. On their website, Reseller F describes their type of business as distributors and marketers of a wide variety of quality medical, surgical, and healthcare products. On the "Signatory Authority for Offerors and Contracts/Company Information" contained in the contract file, Reseller F disclosed that: (i) the average number of employees was two; (ii) floor space dedicated to manufacturing was "N/A"; and (iii) they had a 200 square foot warehouse.

a. Price Reasonableness at Initial Award. The NAC contract file contained no documentation or analysis to support a determination that offered prices on the 3,437 line items were fair and reasonable. On page 86 of the CSP, Reseller F disclosed "…dollar value of sales to the general public at or based on an established catalog or market price during the previous 12–month period or the offeror's last fiscal year: $73,900/$31,313 in Fed Contracts…Beginning Feb 03 and Ending Feb 04." (The time period actually indicates a 13–month, not a 12–month period.) There was no evidence in the contract file to show that the Contracting Officer ever questioned this disclosure. If the $73,900 meant total sales of which $31,313 were Federal Government sales, then the remainder of $42,587 would represent sales to commercial customers. The contract file

contained no analysis showing which of the 3,437 line items were the big sellers. Dividing the $42,587 in total sales by 3,437 line items results in an item price of $12.39, making it highly probable that many of the awarded line items had no sales. Not only was there no determination that offered prices were fair and reasonable, but the entire purpose for the contract was questionable, particularly considering the low sales compared to the high number of awarded items.

b. Price Reasonableness for Products Added on Contract Modifications. Since the award date of Reseller F's contract on May 1, 2004 through April 1, 2006, 8,878 new products were added via two modifications (Modifications 3 and 5).

Modification 3, dated January 26, 2005, added 117 new products. Reseller F did not provide a CSP and the Contracting Officer did not request one. Of the 117 added products, 54 were Manufacturer G's products. Manufacturer G also has an FSS contract under Schedule 65IIA—Medical Equipment and Supplies.

Of the 54 Manufacturer G products added to Reseller F's FSS contract: (i) 41 products already were on Manufacturer G's FSS contract; (ii) and 11 of the 41 products have since been deleted from Manufacturer G's FSS contract leaving 30 products that remain on Manufacturer G's FSS contract. Table 7 illustrates the price increases between Manufacturer G's and Reseller F's FSS contracts for the 41 products that were initially on both FSS contracts. The contract file contained no explanation or support for the price increases, which ranged from 62.38 to 194.42 percent. The allegation that FSS prices increased "drastically" overnight was substantiated with nearly all products at least doubling in price. Several products were 2½ times or greater in price.

Table 7
Price Increases between
Manufacturer G's and Reseller F's FSS Contracts

Item	Manufacturer G	Reseller F	Percentage Change
160524P	$42.00	$94.03	123.88%
160528P	43.80	94.03	114.68
160544P	37.85	94.03	148.43
160548P	43.75	94.03	114.93
160564P	42.00	94.03	123.88
160568P	47.59	94.03	97.58
160584P	38.06	100.49	164.03
160588P	43.89	94.03	114.24
160720P	31.78	71.31	124.39
160724P	26.06	72.32	177.51
160728P	31.39	78.04	148.61
160740P	28.36	72.32	155.01
160744P	29.27	72.32	147.08
160748P	32.22	72.32	124.46
160760P	33.05	72.32	118.82
160764P	26.06	72.32	177.51
160768P	30.99	72.32	133.37
20121	44.19	80.91	83.10
20125	28.78	67.30	133.84
20100	29.41	77.23	162.60
20325	19.00	55.94	194.42
20326	44.37	72.05	62.38
20525	32.86	70.43	114.33
20300	34.79	75.03	115.67
20302	17.02	43.54	155.82
30339	31.67	79.77	151.88
30330	11.75	32.67	178.04
30335	35.33	91.69	159.52
93901	35.00	92.93	165.51
93902	33.50	85.14	154.15
90675	14.40	39.47	174.10
20124	31.19	63.59	103.88
20327	24.32	44.34	82.32
20310	19.02	42.03	120.98
30332	67.97	186.61	174.55
30334	20.46	49.99	144.33
7061	23.50	61.98	163.75
7062	25.72	58.94	129.16
30345	64.19	147.28	129.45
36600	24.50	67.08	173.80
90730	18.25	46.60	155.35

Modification 5, dated April 1, 2006, added 8,761 products (apparently supplied by numerous manufacturers) to Reseller F's contract. The extent of the Contracting Officer's price analysis is a March 14, 2006 memorandum which states, in part: "Addition of 8,761 products. The Tracking Customer (State Agencies) receives a discount of 8% while the Government receives a discount range of 10.5%—12.5% off Reseller F's Commercial Pricelist effective 2/17/2006. For the products being added, no quantity discounts are offered to the tracking customer or the Government. The delivery time for the products is within 30 days ARO."

The Contracting Officer's attempt at price analysis is simply a recitation of Reseller F's offered discounts and without additional information—such as the identity of the State customers, the volume of purchases compared to FSS, and how State customers' prices are established—is meaningless. Reseller F can set the prices in the Commercial Pricelist (Pricelist) at any level they desire, then show a discount off the Pricelist price to FSS customers with a lesser discount to State Agencies. The State Agencies think they are getting a good deal because they receive a discount that is close to the Federal Government. However, none of these prices represents negotiated prices because Reseller F is in complete control of setting the prices. This also explains why the prices on Reseller F's contract are two to nearly three times higher than prices for the identical items on the manufacturers' FSS contract (see previous discussion regarding Manufacturer G items and discussion that follows regarding Manufacturer H items).

For the 8,761 products added on Modification 5, approximately 6,000 of the products identify Reseller F as the manufacturer, with the country of origin as Germany. We found no documentation in the contract file identifying the manufacturer of the 6,000 items, or any discussion as to how Reseller F could represent themselves as a manufacturer, when the documentation in the contract file and Reseller F's website clearly identify their type of business as dealer/distributor/marketer.

Twenty–two of the 8,761 items are Manufacturer H products. Manufacturer H has an FSS contract under Schedule 65IB–Pharmaceuticals. Of the 22 products, 16 are still on Manufacturer H's FSS contract while the remaining 6 were never on the contract. Table 8 on the next page shows a price comparison between Manufacturer H's FSS price for the 16 items and Reseller F's FSS price.

Table 8
Price Increases between Manufacturer H and Reseller F's FSS Contracts

Item	Manufacturer H's FSS Price	Reseller F's FSS Price	Percentage Change
505	$76.44	$164.59	115.32%
530	23.23	50.03	115.37
400	17.92	38.59	115.35
600	39.02	84.01	115.30
554	35.85	77.17	115.26
555	78.05	168.05	115.31
556	133.48	290.79	117.85
567	24.01	51.68	115.24
033A	38.40	82.80	115.63
036A	31.70	69.34	118.74
038A	15.70	33.17	111.27
13A	14.60	32.15	120.21
10A	13.60	29.54	117.21
11A	27.30	60.29	120.84
14A	23.60	51.84	119.66
595	44.10	94.96	115.33

The contract file contained no explanation or support for the price increases, which ranged from 115 to 121 percent. In addition, Manufacturer H's products should not have been added to Reseller F's contract because it is inappropriate to include pharmaceutical products under the Schedule for medical equipment and supplies.

c. Price Protection on Reseller F's Multi–Year Contract. The agreed upon tracking customer for price reductions was State Agencies. The contract file contained no documentation to identify who these customers were, the dollar volume of their contracts, the items on contract, and how the contract prices were established. Reseller F's disclosure in the CSP of the dollar value of sales to the general public for a 13–month period was "$73,900/$31,313 in Fed Contracts…". It appears that commercial sales amounted to $42,587 ($73,900 – $31,313 = $42,587). However, the contract file contained no evidence to show that these were, in fact, commercial sales, and for the 3,437 line items offered to FSS, which items were being purchased by State Agencies. Without this knowledge, the Contracting Officer had no means to determine if the same items offered to the Government also were offered and sold to State Agencies. In addition, as

previously discussed, the Contracting Officer's price analysis was simply a recitation of Reseller F's offered discounts to FSS and to State Agencies. The contract file contained no evidence to show that FSS prices were negotiated. There also was no documentation to show how State Agencies' prices were established. These actions allow Reseller F to exercise complete control over pricing and thus ensure that there will be no price reductions on the FSS contract.

Our review of contract modifications from contract award through April 1, 2006, shows that Reseller F has reported no price reductions.

d. Price Reasonableness for Price Increases under the Economic Price Adjustment Clause. The Contracting Officer granted price increases to Reseller F on 144 products under the EPA clause (17 products on Modification 3, effective January 26, 2005, and 127 products on Modification 5, effective April 1, 2006). Sixteen products on Modification 3 were increased by 6 percent and 1 product was increased by 10 percent. The average increase for the 127 products on Modification 5 was 7.9 percent; the percentage of increases ranged from a low of 1 percent to high of 28 percent.

Reseller F's justification for the increase on the 17 products in Modification 3 was: "The price increases due to manufacturer's price increase because increase in raw material and freight price increase." GSA's EPA clause contained in FSS contracts does not recognize raw material costs increases as justification for approving price increases. Freight price increases were irrelevant because the FSS contract solicitation requires "Free on Board" destination. Reseller F did not provide any justification for the price increases on 127 products in Modification 5 nor did the Contracting Officer ask for justification of the increases.

e. Conclusion. Our review substantiated the allegation. The same conditions that we reported on in the four examples of contracts with resellers apply to Reseller F. There was no determination that prices at initial award and prices for products added via modifications were fair and reasonable. There was no justification for price increases of 2 to 2½ times (or greater) than the identical item price on Manufacturer G's and Manufacturer H's FSS contracts. Because no meaningful negotiations occurred to support the contract award, there was no opportunity for price reductions on the contract. The Contracting Officer approved price increase requests without justification and even when Reseller F's justification was irrelevant under FSS policies.

From the May 1, 2004 contract award date through June 3, 2006, Reseller F has reported to the NAC about $194,000 in contract sales. The contract comprises 12,315 items. These sales are unconfirmed by our review. The relatively low dollar sales may indicate that some FSS customers realize that the Manufacturer G product they paid $25 for yesterday costs $60 today and does not represent a fair

price. Whether this is true or not, the NAC Contracting activity in awarding FSS contracts to Reseller F and the other resellers discussed in this report is doing a disservice to the FSS customer. The customer has every right to expect that FSS prices are aggressively negotiated and represent the best possible prices available relative to the vendor's commercial sales practices.

In numerous conversations and a briefing we provided to the NAC's Director, Federal Supply Schedule Service, concerning our findings related to contracting with resellers who do not sell commercially, she consistently maintained that the NAC was providing a service to the customer by placing the items on contract regardless of price. We disagree. The FSS program and the GSA policies in support of the program provide vendors with a license to sell and customers with the assurance that Contracting Officers have negotiated the best price (most favored customer) based on an evaluation of discounts, terms, conditions, and concessions offered to commercial customers for similar purchases. Consistent with GSA's most favored customer objective, the Government's significant purchasing power should allow it to leverage the commercial marketplace to obtain best prices. Simply awarding a contract and calling it FSS, without adhering to FSS policies, is a disservice to the customer and does not protect the interests of the Government.

Recommendations

1. We recommend that the Executive Director, NAC, takes action to:

   a. Incorporate in all FSS solicitations issued by the NAC a Price Reductions Clause requiring the tracking of the manufacturer's commercial customers on contract awards made to resellers who do not have significant commercial sales of the items being offered.

   b. Establish criteria to determine what "significant sales" are and what added value do "resellers" provide.

   c. Require NAC Contracting Officers to request CSP data from the manufacturer(s) on all proposals for contracts and contract modification requests to add products or increase prices from resellers (who primarily sell to Federal Government customers) as required by the solicitation. Do not allow resellers to circumvent the $500,000 threshold (estimated contract sales are expected to exceed $500,000) by submitting multiple, smaller modification requests, or by underestimating the value of the request. If resellers seek to add numerous items to the contract and their reported added value is less than $500,000, obtain and evaluate the basis for the reseller's estimate. If the estimated values of the product additions are not readily ascertainable, monitor sales and request a post–award review when total sales surpass the $3 million threshold, or when the reseller submits more than two modification requests to add products in a consecutive 12–month period. Also, do not allow the use of similar item comparisons to items already on contract or to items on other contracts as a substitute for requiring CSP data.

   d. Revise Procedural Guideline #22, "Contract Audit Procedures" to require pre–award reviews:

      1) On all proposals from resellers, where the manufacturer's sales from any resulting contract are expected to exceed $500,000.

      2) On all requests for modifications from all FSS contract holders to add new items or to increase prices on existing items with an estimated value of $3 million or greater for the duration of the contract. A review may be appropriate for a lesser amount, particularly in instances where modification requests historically have been based on "same as initial award" or "no change from previously provided information." (Discontinue the practice of estimating sales of added items as one sale of the item for the

duration of the contract, particularly considering that the underlying FSS contract is a multi–million dollar contract.

3) Of extension of FSS contracts in the same manner as provided in Guideline #22 for new proposals.

e. Establish policy requiring NAC Contracting Officers to obtain approval from the Executive Director, NAC, before amending the standard Price Reductions Clause and the EPA Clause.

f. Establish policy requiring the use of the GSA–prescribed standard EPA clause (to include Alternate I) in all solicitations.

g. Establish policy requiring the information requested from contractors on the "Request for Modification" form to be consistent with the information required in the EPA Clause.

h. Establish the need and purpose for the FSS contract with Reseller F. If there is insufficient justification for the contract, take action to cancel the contract.

Management Comments

The Executive Director, NAC, concurred in all recommendations and provided acceptable implementation plans. We consider the recommendations to be closed. Appendix A contains the Executive Director's response.

Executive Director, NAC, Response

Department of Veterans Affairs

Memorandum

Date: September 21, 2007

From: Executive Director, National Acquisition Center (049A1)

Subj: Draft Report – Special Review of Federal Supply Schedule Medical Supply Equipment and Supplies Contract Awarded to Resellers

To: Director, Office of Contract Review (55)

1. The following outlines the recommendations from the OIG regarding their draft reseller report. Each recommendation is followed by proposed actions and timelines:

   ● OIG Recommendation: Takes action to incorporate in all FSS solicitations issued by the NAC, a Price Reductions Clause requiring the tracking of the manufacturer's commercial customers on contract awards made to resellers who do not have significant commercial sales of the items being offered.

   Proposed Action: We concur with this recommendation. The NAC will coordinate with representatives from the OIG and General Counsel to craft an FSS Price Reductions Clause that comports with the intent of the OIG recommendation. It is reiterated that page eleven of the Draft Reseller Report outlines a Price Reductions clause deviation that incorporates the intent of the recommendation. The steps required by the HCA to implement a deviated Price Reductions Clause also need to be addressed.

   Proposed Timeline: Initial meeting to discuss issue with OIG and General Counsel will be accomplished by the end of November of 2007. At this discussion, conversation about associated timeline and completion of the recommendation will be targeted.

   ● OIG Recommendation: Establish criteria to determine what "significant sales" are and what added value do "resellers" provide.

   Proposed Action: We concur with this recommendation. The NAC will coordinate with representatives of the OIG and General Counsel to develop language to define

quantitatively what "significant" commercial sales level will constitute a minimum in evaluating FSS offers. Those offerors not meeting the defined minimum will be required to submit manufacturers' CSP in order to proceed with the evaluation of their offer. A definition of minimum value added reseller services can also be outlined in conjunction with the "significant" sales issue.

Proposed Timeline: Initial meeting to discuss issue with OIG and General Counsel will be accomplished by the end of November of 2007. At this discussion, conversation about associated timeline and completion of the discussions will be targeted.

● OIG Recommendation: Establish policy requiring NAC Contracting Officers to request CSP data from the manufacturer(s) on all proposals for contracts and contract modification requests to add products or increase prices from resellers (who do not have significant commercial sales for the offered products) as required by the solicitation. Do not allow resellers to circumvent the $500,000 threshold (estimated contract sales are expected to exceed $500,000) by submitting multiple, smaller modification requests, or by underestimating the value of the request. If resellers seek to add numerous items to the contract and their reported added value is less than $500,000, obtain and evaluate the basis for the reseller's estimate. If the estimated values of the product additions are not readily ascertainable, monitor sales and request a post–award review when total sales surpass the $3 million threshold, or when the reseller submits more than two modification requests to add products in a consecutive 12–month period. Also, do not allow the use of similar item comparisons to items already on contract or to items on other contracts as a substitute for requiring CSP data.

Proposed action: We concur with OIG's recommendation and the NAC will adhere to the contract requirements to require manufacturer's CSP data from resellers who cannot show and substantiate significant commercial sales. Moreover, the NAC will more closely monitor the number of product addition and price increase requests submitted to help eliminate any practice of a contractor splitting their request to keep estimated contract value under the prescribed thresholds, and will employ the post–award audit in cases where combined sales exceed the stated review thresholds. Similar item comparisons can be used in making fair and reasonable determinations and does not come into play with the requirements for requiring manufacturer CSP data in the offeror's submission. Requirements for CSP information is prior to any pricing determination and is a separate issue from using similar item comparisons as prescribed in the FAR. In terms of making fair and reasonable price determinations (when applicable), the Contracting Officers will continue to follow FAR prescriptions. Specifically, FAR 15.404–1(b)(1) indicates that "price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit". FAR 15.404–1(b)(2) indicates that various methods may be employed to make a determination of fair and reasonable pricing, such as a "comparison of proposed prices received, a comparison of previously proposed prices and previous Government and commercial contract prices, …comparison of proposed prices with prices obtained through market research for the same or similar items, analysis of pricing information provided by the vendor".

Proposed timeline: The NAC will continue to require manufacturer CSP for all offerors estimated at $500,000 or more without significant and substantiated

commercial sales and will immediately begin to monitor vendors for modification activity to eliminate any practice of splitting requests and to request post–award audits when necessary.

● OIG Recommendation: Revise Procedural Guideline #22, "Contract Audit Procedures" to require pre–award reviews:

a) On all proposal from resellers, where the manufacturer's sales from any resulting contract are expected to exceed $500,000.
b) On all requests for modifications from all FSS contract holders to add new items or to increase prices on existing items with an estimated value of $3 million or greater for the duration of the contract.
c) Of extension of FSS contracts in the same manner as provided in Guideline #22 for new proposals.

Proposed action: We concur with the OIG recommendation to update Procedural Guideline #22.

Proposed timeline: Initial action on facilitating project team to revise Procedural Guideline #22 to include OA&L and OIG representatives will begin by September 2007 with a target completion of the end of the year 2007.

● OIG Recommendation: Establish policy requiring NAC Contract Officers to obtain approval from VA's Procurement Executive before amending the standard Price Reductions Clause and the EPA Clause.

Proposed action: We concur with the OIG recommendation and all FSS solicitation packages will be revised to incorporate current PRC and EPA clauses (and not deviated) into the programs.

Proposed timeline: The PRC and EPA clause changes will be implemented into all FSS refreshment actions for all VA managed schedules. If a schedule refreshment has already taken place, amendment to the solicitation will take place no later than the end of 2007 to amend the PRC and EPA clauses. All contracts will be updated to incorporate these clauses to coincide with the refreshment or amendment action of the solicitations. Refreshment schedule is listed below:

10/31/07 – 65IIF, 65IIC, 65IB, 621i
12/31/07 – 65VA, 65 Part VII
1/30/08 – 65IIA

● OIG Recommendation: Establish policy requiring the use of the GSA – prescribed standard EPA clause (to include Alternate I) in all solicitations.

Proposed action and timeline: See answer from previous recommendation.

● OIG Recommendation: Establish policy requiring the information requested from contractor's on the "Request for Modification" form to be consistent with the information required in the EPA Clause.

Proposed action: We concur with the OIG recommendation. The "Request for Modification" Form will be updated for each schedule program to ensure that the appropriate information requested from the Modification, Price Reduction, and Economic Price Adjustment Clauses match the clauses utilized within the various solicitations.

Proposed timeline: The Request for Modification Forms will be updated for each schedule at the time that the changes are made to the current contracts clauses and the refreshment solicitation. See above proposed timelines for specific time frames per schedule.

● OIG Recommendation: Establish the need and purpose for the FSS contract with Reseller F. If there is insufficient justification for the contract, take action to cancel the contract.

Proposed action: We concur that the Contracting Officer will further assess the validity of the contract with Reseller F. In addition to canceling Manufacturer D's products contained in the Reseller F's FSS Contract, the NAC has requested complete commitment letters from all proposed manufacturers, manufacturers' CSP disclosures, and a spreadsheet outlining all of the products that Reseller F claims to manufacture. The claim is that Reseller F considers themselves as Original Equipment Manufactures (OEM) of many line items under their contract. They have stated that the items are manufactured in Germany and are relabeled to reflect Reseller F as the U.S. manufacturer. A true OEM is considered to be a manufacturer. The continuance of this contract in conjunction with the aforementioned information requested has been established in order to be fair to the contractor to allow them the same opportunity as any other FSS contractor/offeror.

Proposed timeline: Reseller F has been granted a deadline of October 31, 2007 to provide all of the requested information. If all of the data and information is not received by that date, the contract will be cancelled.

2. If additional information is needed, please contact Carole O'Brien, Director – FSS Service, at 708–786–4957.

(original signed by:)
Craig Robinson

OIG Contact and Staff Acknowledgments

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