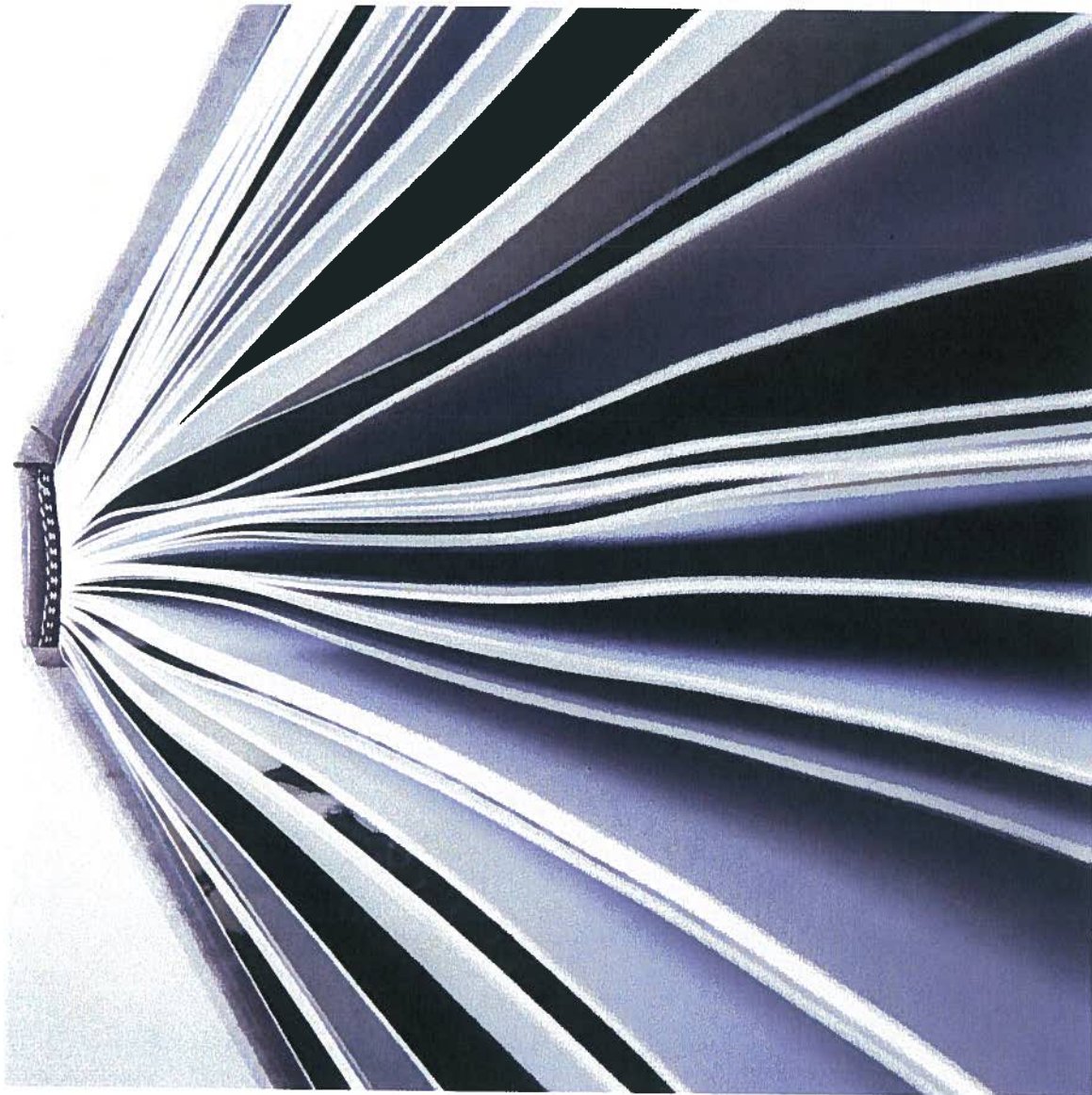


Multiple Award Schedule Advisory Panel Final Report



February 2010

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Executive Summary

On March 26, 2008, the Administrator, General Services Administration (GSA) chartered the Multiple Award Schedule (MAS) Advisory Panel to provide the agency with independent advice and recommendations. The Panel was asked to review the MAS Policy Statement and implementing regulations, solicitations and contract provisions and internal GSA processes regarding the structure, use and pricing, of the GSA Multiple Award Schedules Program. Specifically, the MAS Panel was charged with reviewing the most favored customer provisions and price reduction policies and provisions in the context of current commercial pricing practices.¹

The Panel consisted of representatives from GSA, several executive branch departments and agencies, and representatives from the private sector. Between May 5, 2008, and June 26, 2009, the panel met 16 times. During its meetings, the Panel heard testimony from 30 MAS stakeholders that addressed a range of issues related to MAS pricing. Using this testimony, existing GSA acquisition regulations, and the statutes governing the MAS program, the Panel developed a framework to analyze the state of the Program and to develop recommendations to the Administrator. The Panel's framework consisted of the following questions:

- Where does competition take place?
- If competition takes place primarily at the task/delivery order level, does a "fair and reasonable price" determination at the MAS contract level really matter?
- If the Panel consensus is that competition is at the task order level, are the methods that GSA uses to determine fair and reasonable prices and maintain the price/discount relationship with the basis of award customer(s) adequate?
- If the current policy is not adequate, what are the recommendations to improve the policy/guidance?
- If a "fair and reasonable price" determination at the MAS contract level is not beneficial, and the "fair and reasonable price" determination is to be determined only at the task/delivery order level, then what is the GSA role?

In summary, the panel found:

- At the Schedule contract level, it is more difficult to determine fair and reasonable prices for services than for products.
- Meaningful competition occurs at the order level.

¹ U.S. General Services Administration Multiple Award Schedule Advisory Panel Charter, dated March 26, 2008

- While the goal of GSA may be to obtain the best price a contractor gives to its most favored customer for any particular Schedule item, its policy allows for for the award of Schedule contracts that are not priced as favorably as the contractor's most favored customer.
- That GSA does not systematically collect ordering data for its own use or for use by ordering activities to leverage the Government's buying power
- The value of the Price Reduction Clause as an appropriate tool for the MAS program is questionable
- The best ways to determine a "fair and reasonable price" are to enhance competition at the schedule contract and order levels and to ensure that the process of contract and order formation is transparent to both GSA and all authorized ordering activities, while protecting the contractor proprietary data, which if released could cause economic harm.

As a result of these findings, the Panel formulated 20 recommendations to increase competition and transparency in the MAS schedule program. This set of recommendations to the Administrator is meant to fundamentally re-architect the way GSA and the ordering agencies work together to ensure reasonable prices.

To summarize, we recommend that: first, the Administrator clarify, for GSA contracting officials, the policy and methodology for obtaining a "fair and reasonable price" for Schedule contracts; second, GSA disclose to authorized Schedule ordering activities how the "fair and reasonable price" was determined so that the ordering contracting officer can exercise independent judgment with respect to how aggressively to seek a price reduction under the Schedule; third, GSA develop a data collection system that would allow GSA to use the data gathered from individual agency orders in order to leverage its negotiation of Schedule prices; fourth, instruct GSA contracting officers to use both vertical pricing (based on the basis of award customer) and horizontal pricing (based on a market price comparison) in determining price reasonableness.

I. Introduction

The Multiple Award Schedules (MAS) program, commonly referred to as the General Service Administration (GSA) Schedules program, represented eight percent of the federal government's total procurement spending in Fiscal Year 2008. Due to changes in the nature and responsibilities of federal agencies as well as statutory and regulatory requirements for government operations, procurement spending more than doubled in the last decade and the use of the MAS program increased dramatically.

The GSA MAS program website explains the program by stating: "All customers, even those in remote locations, can order the latest technology and quality supplies and services, conveniently, and at most favored customer prices. GSA MAS also offers the potential benefits of shorter procurement lead-times, lower administrative costs, and reduced inventories." GSA's internal core objective for the program is "to use commercial terms and conditions and the leverage of the Government's volume buying to achieve the best possible prices and terms for both customers and taxpayers."² Since GSA's inception, the MAS program has built policies and procedures that comprise elements that reflect the evolution of the marketplace.

II. MAS Background

MAS Program Overview

Section 201 of the Federal Property and Administrative Services Act of 1949, as amended (the Property Act) authorizes the Administrator of General Services (Administrator) to procure and supply personal property and non-personal services for executive agencies, other Federal agencies, mixed-ownership Government corporations as identified in the Government Corporation Control Act, the District of Columbia, and qualified nonprofit agencies for the blind or other severely handicapped for use in making or providing an approved commodity or service to the Government. Within GSA, the Federal Acquisition Service (FAS) is responsible for the Multiple Award Schedules (MAS) Program. The FAS organization has three business portfolios responsible for managing Schedule programs: General Supplies and Services (GSS), Integrated Technology Services (ITS), and Travel, Motor Vehicle, and Card Services (TMVCS). Within the three portfolios are nine acquisition centers that procure products and services under a total of 38 schedules. These acquisition centers are responsible for managing standing solicitations, evaluating offers and awarding contracts for each assigned schedule. GSA delegated the authority to the Department of Veteran Affairs (VA) to award and administer contracts for medical supply and

² FSS Procurement Information Bulletin 04-2.

service schedules under the MAS Program. The VA National Acquisition Center (NAC) manages nine schedules.

The MAS program is designed to mirror commercial buying practices. These MAS contracts are awarded for a base period of five years with up to three option periods of five years each. This possible 20 year period of performance provides benefits to both government agencies and contractors.

Through the MAS indefinite delivery, indefinite quantity (ID/IQ) contracts, ordering activities may choose from millions of state-of-the-art, high-quality commercial supplies and services at discounted pricing on a direct delivery basis. All ordering activities, whether large or small, or in remote locations, have access to the same services, convenience, and prices. By following the ordering procedures in the Federal Acquisition Regulation (FAR) Subpart 8.4, ordering activities can make a best value determination that results in the lowest overall cost to the government. In addition to the guidance in FAR Subpart 8.4, GSA publishes basic schedule ordering guidelines for ordering activities. The GSA guidelines provide useful information for placing orders against the GSA Schedules. These guidelines include:

- Publicizing Contract Actions
- Ordering Procedures
- Maximum Order
- Small Business Participation
- eTools
- GSA Advantage!®
- eBuy
- Contractor Team Arrangements (CTAs)
- Blanket Purchase Agreements (BPAs)
- Open Market Items
- Geographic Coverage
- Government-wide Commercial Purchase Card

According to the Federal Procurement Data System (FPDS), the top 10 schedule ordering activities for FY 2008 were:

- The Department of the Air Force
- The Department of the Army
- The Department of Homeland Security
- The General Services Administration
- The Department of the Navy
- The Department of Health and Human Services

- The Department of Veterans Affairs
- The Office of the Secretary Of Defense
- The Department of Justice
- The Department of the Treasury

Schedule sales for FY2008, including those by the Department of Veteran Affairs, totaled approximately \$45.7 billion. FY 2008 sales data by schedule is included as Appendix 2. The MAS program operating costs are funded through the payment of an Industrial Funding Fee (IFF), which is included in the contract prices. Contractors are required to report schedule sales on a quarterly basis and remit IFF payments to FAS based on quarterly contract sales totals.

The MAS Process

There are three parties to a MAS Schedule contract: the GSA contracting officer; the contractor; and the authorized ordering activity. Their respective roles and responsibilities are summarized below:

- GSA contracting officer:
 - Evaluate proposals from commercial contractors
 - Rely on market research, commercial sales practices, and audits
 - Negotiate discounts and contract-specific terms and conditions
 - Determine fair and reasonable prices
 - Award and administer resulting ID/IQ contracts

- Contractor:
 - Attend GSA training such as “Pathway to Success” on the MAS program
 - Submit proposals that comply with the solicitation provisions
 - Disclose to the schedule contracting officer its commercial sales practices as required by the contract
 - Adhere to the terms and conditions of its MAS contract
 - Keep its offerings current

- Authorized ordering activity:
 - Rely upon and comply with the terms and conditions of the MAS contract
 - Solicit quotes for specific commercially available requirements
 - Seek additional discounts, if appropriate
 - Negotiate requirement-specific terms and conditions that are within the scope of an MAS contract
 - Make best value award based on quotations received

- Monitor Delivery Order/Task Order performance
- Provide performance data

Consistent with the Administrator's authority codified in 40 U.S.C. § 501 and the Competition in Contracting Act, MAS solicitations are publicized in FedBizOpps and awards are deemed to be competitive. The program is open to all responsible sources. To become a MAS contractor, a firm must submit an offer in response to the applicable MAS solicitation. Contracts are awarded to responsible companies offering commercial items for goods and services, at fair and reasonable prices, that fall within the broad scope of the MAS solicitation.

MAS contracts are awarded at "fair and reasonable" prices. Under the MAS program, the offeror is required to disclose its commercial sales practices per the instructions and format found in the General Services Administration Acquisition Manual (GSAM) Section 515.408. The offeror discloses pricing and discounting practices provided to its customers. The contracting officer reviews the disclosures and other supporting documentation to determine a reasonable basis of award customer or class of customer which is used as a basis to negotiate GSA's discount and establish the schedule contract pricing. The basis of award customer may be different for each Special Item Number (SIN.)

While GSA's objective is to negotiate the best price the offeror gives to any customer, (Most Favored Customer) there are instances in which this objective cannot be achieved at the schedule contract level. GSAM 538.270(a), "Evaluation of Multiple Award Schedule (MAS) Offers", states:

The Government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.

All MAS solicitations contain the Price Reduction Clause. Per the prescription in GSAM 538.273(b)(2), the required Price Reduction Clause is 552.238.75 (May 2004) (Alternative I – May 2003). The text of the Clause is in Appendix 3.

III. The MAS Panel

To ensure that the MAS program remains responsive and relevant to the government and industry in the 21st century, the GSA Administrator convened a joint government-industry panel under the Federal Advisory Committee Act to review the relevancy and responsiveness of the Price Reduction Clause to the MAS program. The

relevancy and responsiveness of the Price Reduction Clause to the MAS program. The Charter for the Panel is included in Appendix 4. The Panel met sixteen times and received presentations from numerous individuals and organizations. A list of presentations and their Uniform Resources Locators are contained in Appendix 5. These presentations can be accessed on the World Wide Web.

At the inception of the MAS program, the focus was on products. Today, the preponderance of the dollars spent under the MAS program is for services or solutions. The Panel recognized early in its proceedings, that based on the current environment, it would be best to look separately at how GSA's MAS policies and procedures affected the purchase of products (also called supplies), services, and solutions (the unique configuration of commercial products and services to meet a specific need).

In order to review and make recommendations to the Administrator, the Panel systematically reviewed the objectives of the program and the stated pricing policies and procedures from the perspectives of the GSA personnel responsible for the program, the authorized ordering activities, and the Schedule contractor community. The Panel determined at the start of its deliberations that the primary focus would be on the ability of authorized ordering activities to award orders that represent best value. The Panel also reviewed MAS policies and procedure in the context of program transparency, competition, relevancy, and currency.

IV. Findings

While many stakeholders agreed that the MAS program provided a government-wide source of marketplace information, the Panel also heard consistently throughout its proceedings that the MAS program needs to reflect the current and future needs of its customers and its contractors. The Panel heard that the original tenets of the program, including its pricing methodology, should be changed to reflect these customer needs. The Panel focused on the role of competition in achieving the best value for the ordering activity and the usefulness of the existing processes for achieving MAS program objectives at the contract level. To guide its deliberations, the Panel posed the following questions:

- Where does competition take place?
- If competition takes place primarily at the task/delivery order level, does a "fair and reasonable price" determination at the MAS contract level really matter?

- If the Panel consensus is that competition is at the task order level, are the methods that GSA uses to determine fair and reasonable prices and maintain the price/discount relationship with the basis of award customer(s) adequate?
- If the current policy is not adequate, what are the recommendations to improve the policy/guidance?
- If a fair and reasonable price determination at the MAS contract level is not beneficial, and the “fair and reasonable price” determination is to be determined only at the task/delivery order level, then what is the GSA role?

At the Schedule contract level, it is more difficult to determine fair and reasonable prices for services than for products. In Schedule contracts, services are priced in terms of labor categories. It may be difficult to establish a fair and reasonable price at the contract level because statements of work are written at the order level. The key elements in pricing services at the order level are quantity of hours, skill level, and skill mix of staff performing the work.

The majority of Panel members recognized that meaningful competition occurs at the order level. While the law provides that competition requirements have been met at the schedule contract level, there are no specific quantities or performance outcomes for the schedule item(s) and there is no “head to head competition”³. GSA does not disclose the basis of award to the ordering activity, but the Panel found that the ordering activity would benefit from this information

The Panel found that GSA does not systematically collect ordering data for its own use or for use by ordering activities to leverage the Government’s buying power. GSA is capable of gathering purchasing data for orders placed through its GSA Advantage tool, but it does not make maximum use of it. Moreover, many ordering activities do not use GSA Advantage because of its limited utility in the procurement of services or solutions. Therefore, the amount of data available for analysis is limited. If the data were available, the Schedules program would be more competitive, transparent and effective for all parties.

The Panel found that, while the goal of GSA may be to obtain the best price a contractor gives to its most favored customer for any particular schedule item, the Schedule policy allows for the award of Schedule contracts that are not priced as favorably as the offeror’s most favored customer .

The Government will seek to obtain the offeror’s best price (the best price given to the most favored customer).

³ Comments to the GSA Multiple Award Schedule Advisory Panel, American Bar Association, October 17, 2008

However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved.⁴

GSA relies on its Commercial Sales Practices form (CSP-1) to obtain the information necessary to determine, if not the best price, fair and reasonable pricing which is required to establish the basis to award a schedule contract.

Establish negotiation objectives based on a review of relevant data and determine price reasonableness⁵ and

* * *

may award a contract containing pricing which is less favorable than the best price the offeror extends to any commercial customer for similar purchases if you make a determination that both of the following conditions exist: (1) The prices offered to the Government are fair and reasonable, even though comparable discounts were not negotiated. (2) Award is otherwise in the best interest of the Government.⁶

If the prospective contractor is unable to provide commercial pricing information, it may provide other documentation to establish a basis of award. As the Panel heard from the contractor community, others in the field, and from GSA personnel, there is a wide disparity in the way the pricing requirements are interpreted and in the pricing information that is required. The Panel also heard that with the inconsistent application of policy, the presentation of unclear requirements and the unknown liability of the Price Reduction Clause, vendors will do what is necessary to obtain a fair and reasonable price determination without triggering the Price Reduction Clause. The schedule contract price may not reflect the lowest price for which the items or services have been sold by the contractor. It may be the best price that the government can obtain under similar terms and conditions. Factors that may influence price include: order volumes, country of origin, number of delivery locations, or other socio-economic factors.

Notwithstanding the statements made to the Panel by the GSA IG and Counsel to the VA IG, the key question in contract formation addressed by the Panel was whether the data presented to the GSA Contracting Officer is adequate and accurate at the

⁴ GSAM 538.270 (a) Evaluation of multiple award schedule (MAS) offers

⁵ GSAM 538.270 (b)

⁶ GSAM 538.270 (d)

time of contract award. Neither the FAR nor the GSAM require a contracting officer to obtain an audit on every proposal or quote; rather the contracting officer may evaluate the offer or the quote and determine what additional information or assistance is necessary to determine price reasonableness. Implementation of the Panel's recommendations would provide the contracting officer access to additional relevant information to make a price reasonableness determination. The Panel made additional recommendations to enhance competition and transparency, which are the best ways to determine a fair and reasonable price.

Concerning the Price Reduction Clause itself, the Panel heard from those at GSA who are responsible for negotiating the schedule contracts. These contracting officers had mixed views on the value of the Clause.⁷ Moreover, the Panel heard that few circumstances trigger the use of the Price Reduction Clause because sales to ordering activities are exceptions to the Clause's triggering provisions. Representatives of schedule contractors repeatedly cited inconsistency within GSA on how the basis of award/most favored customer determinations are made and how the Price Reduction Clause is applied. The Panel also heard that schedule contractors are anxious about the potential liabilities from the inconsistent and unclear application of the pricing reviews and basis of award determinations.

The Panel heard from both GSA schedule program employees and the GSA OIG that neither organization has enough personnel to provide the necessary rigor and timely action needed to properly and meaningfully achieve any value from the use of the Price Reduction Clause. In the Panel's opinion, this testimony raised the question of whether the Price Reduction Clause is an appropriate tool for the MAS program.

The Panel inquired as to the availability of individual contract terms and conditions, the basis of award for schedule contracts, pricing history at the order level, quantities ordered at what prices, and other relevant information that would assist its work. The panel received useful information from GSA and other sources concerning the schedule program; however, some of the information the Panel requested was either not being collected or was not readily available. This led to the Panel's recommendations to the Administrator for expanded data collection.

The Panel heard concerns about the capability of establishing fair and reasonable prices for any item over a five to 20 year period. The Panel also noted, as did the Acquisition Advisory Panel⁸, the proliferation of MAS schedule items that have

⁷ Multiple Award Schedule Advisory Panel Meeting of May 22, 2008, Transcript at 57, 88 and 103-105

⁸ Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress, January 2007

accumulated over time and which exacerbates the effect of not having the time and resources to manage the pricing at the schedule contract level. GSA does not appear to have a routine process to determine what products or services should remain, be added to, or deleted from, the MAS program.

The work of the Panel led us to conclude that the Administrator has an opportunity to address a larger question than the one posed in our charter: What is the role of GSA in the Government's efforts to practice strategic sourcing? While the MAS program offers authorized ordering activities a wide variety of contract vehicles that facilitate purchasing from the private sector, the Program does not implement strategic sourcing as the term is used in Government today. Strategic sourcing is "the collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring commodities and services more effectively and efficiently."⁹ Strategic sourcing rationalizes and leverages an organization's spending and services to drive price and process savings and increased socio-economic participation. While the current MAS program provides a significant benefit to authorized ordering activities, it does not support strategic sourcing at the government-wide level. The Government, as a whole, does leverage the large volume of buying under multiple-award schedules.

Additionally, some Panel members expressed concerns that the IFF, as currently implemented, may not properly align the incentives for efficiency and effectiveness among the three parties to a multiple-award schedule contract. While the Panel briefly discussed strategies to address this issue, it was the Panel's consensus that strategic sourcing was beyond the scope specified in its charter. However, the Panel believes that the adoption of its recommendations would lay the groundwork for the Administrator to explore this important issue. The Panel believes that this would be a fruitful area of consideration for another review.

V. Recommendations

The Panel considered separately recommendations for services, products and solutions because it recognized that there were unique attributes in each type of offering in the MAS program. In developing the report, the Panel found that its recommendations grouped into five areas: Price Reduction Clause and task/delivery order competition; price reasonableness; disclosure; contract type; and program evaluation and review. Each of the approved recommendations is set forth below

⁹ OMB "Memorandum for Chief Acquisition Officers, Financial Officers, Chief Information Officers," dated May 20, 2005.

along with a discussion of the Panel's rationale for approving the recommendation. The motions that were not approved or not voted on are also included to provide a complete record.

A. Price Reduction Clause and Task/Delivery Order Competition

Recommendation 1. The GSA Administrator eliminate the Price Reduction Clause from MAS program *services* contracts and adopt an 803- like approach to compete orders for all agencies when using Schedules contracts.

Price Reduction Clause – The Panel received conflicting information about the utility of the Price Reduction Clause for MAS contracts generally and for services in particular. Proponents of the Price Reduction Clause stated that the Clause was the only practical way to protect the government from pricing errors by contractors either at the time of initial contract award or during contract administration.

Testimony from Inspector General representatives stated that the Clause had resulted in their ability to review contractor performance and to identify sums that should be returned to the government as a result of: 1) mispricing at the time of initial contract award; or 2) failure to reduce pricing to the government during contract performance when the contractor had reduced its prices to the basis of award customers.

Opponents of the Price Reduction Clause pointed out that the Clause only applied to Time and Material (T&M) contracts, the least favored contract type, and that the real way to guarantee that the government obtained a competitive price was to ensure that there was meaningful competition at the task order level and that resulting orders were fixed price. They also pointed out that the value of the Price Reduction Clause in the services market was diminished because of the nature of the marketplace, particularly given that most services are tailored by the contractor to meet the government's actual requirement on an order by order basis.

Section 803 Competition Requirements – Section 803 of the National Defense Authorization Act of 2002 required the Department of Defense (DoD) for all task and delivery orders above \$100,000, to: (1) solicit all contractors offering such services under the MAS contract; (2) receive offers/quotes from at least three qualified contractors; or (3) prepare a justification that explains why maximum practicable competition was obtained if (1) or (2) were not complied with. This requirement applies to DoD's use of the MAS Program, but does not apply to the civilian agencies' use of the MAS program. Information provided the Panel established that DoD's experience in complying with this requirement resulted in receiving an average of five quotes per action and that GSA's E-Buy tool allowed them to achieve compliance

without any significant additional time or effort. The majority of the Panel felt, that in order to achieve competition at the order level for services which would test pricing in the marketplace, the Administrator should require compliance with the competition requirements of Section 803 for all federal users of the MAS program and eliminate the Price Reduction Clause for services. The Panel is aware that Section 863 of the National Defense Authorization Act (NDAA) Fiscal Year (FY) 2009 extends the 803 provisions to civilian agencies.¹⁰

Recommendation 2. The GSA Administrator remove the Price Reduction Clause from the MAS program *supply* contracts for products in phases as the GSA Administrator implements recommendations for competition and price transparency at the Schedule contract level and the order level.

The Panel received conflicting information about the utility of the Price Reduction Clause for MAS contracts generally and for products in particular. Proponents of the Clause stated that the price reduction clause was the only practical way to protect the government from pricing errors by contractors either at the time of initial contract award or during contract administration. Testimony from Inspector General representatives stated that the Clause had resulted in their ability to review contractor performance and to identify sums that should be returned to the government as a result of 1) mispricing at the time of initial contract award, or 2) failure to reduce pricing to the government during contract performance when the contractor had reduced its prices to the basis of award customers. Opponents of the Clause pointed out that the most effective way to guarantee that the government obtained a competitive price was to ensure that there was competition at the task order level. Members of the Panel also expressed their personal experience that competition for purposes of price should occur at the order level and that providing the ordering contracting officer with additional pricing information would be more effective in getting competitive prices when the order is placed. Recovering sums after order award did not represent best value for the government nor did it make the government whole.

The Panel proposed phasing the implementation of this recommendation in order to provide time for MAS program officials to establish a process to gather and evaluate data both within a company and across the marketplace. The Panel envisioned that the phasing would occur as contract options are exercised or recompeted over the next five years.

¹⁰ During the course of the Panel's deliberations, the competition requirements of Section 863 of the National Defense Authorization Act of 2009 were made applicable to all agencies for all orders above the simplified acquisition level. This action further bolsters the proposition that competition to achieve the best value under the MAS program occurs at the order level.

Recommendation 3. The GSA Administrator implements the requirements of Section 803 *for products* as mandatory for use of the MAS program for all users government-wide at the order level.

Section 803 of the National Defense Authorization Act of 2002 requires the Department of Defense (DoD) for all task and delivery orders above \$100,000 to: (1) solicit all contractors offering such services under the MAS contract; (2) receive offers/quotes from at least three qualified contractors; or (3) prepare a justification that explains why maximum practicable competition was obtained if (1) or (2) were not complied with. This requirement applies to DoD's use of the MAS Program, but does not apply to the civilian agencies' use of the MAS program. Information provided the Panel established that DoD's experience in complying with this requirement resulted in receiving an average of five quotes per action and that GSA's E-Buy tool allows them to achieve compliance without any significant additional time or effort. The majority of the Panel felt that in order to achieve competition at the order level for products, which would test pricing in the marketplace, that requiring compliance with the competition requirements of Section 803 for all federal users of the MAS program should be combined with the elimination of the Price Reduction Clause for *products*. The Panel is aware that Section 863 of the National Defense Authorization Act (NDAA) Fiscal Year (FY) 2009 extends the 803 provisions to civilian agencies.¹¹ The Panel did not consider the application of this rule to non-Federal ordering activities.

Recommendation 4. The GSA Administrator not apply the Price Reduction Clause to the acquisition of solutions.

The majority of the Panel believes that since solutions are not priced at the schedule contract level, the Price Reduction Clause cannot and should not apply to MAS contracts for solutions. Solutions are the combined purchase of products and services to meet a need, usually with a result that is not presently available in the commercial marketplace. By their nature, they cannot be priced at the MAS contract level. Because the Panel recommended deletion of the Clause for products and deletion for services, it follows that the Price Reduction Clause would not apply to solutions.

¹¹ During the course of the Panel's deliberations, the competition requirements of Section 863 of the National Defense Authorization Act of 2009 were made applicable to all agencies for all orders above the simplified acquisition level. This action further bolsters the proposition that competition to achieve the best value under the MAS program occurs at the order level.

Recommendation 5. That the GSA Administrator ensure procurements for solutions are subject to the same competitive forces at the order level similar to the Panel's recommendations for products and services.

A majority of the Panel believes that issues associated with price competition and the requirements to adapt the competition requirements of Section 803 apply equally to the ordering of solutions since solutions are tailored to specific requirements and the competitive pressures occur at the order level.

Recommendation 6. The GSA Administrator update the MAS program guidance to make explicit that prices for solutions must be determined to be fair and reasonable at the order level.

The majority of the Panel believes, as discussed in Recommendation 4 above, that the very nature of solutions makes it impossible for a MAS program contracting officer to determine the fairness and reasonableness of solutions pricing offered by the contractor at the time of award of the MAS contract. Since the solutions offered by the contractor will be tailored to each customer's requirement, pricing the solution will be of no value at the time of MAS contract award. The value offered by having a MAS program contract is that all of the terms and conditions are negotiated at time of contract award. Further, past performance history and the contractor's capability to perform are determined at time of the MAS contract award, thus saving time and reducing costs to the ordering contracting officer. The value in using MAS contracts for solutions for simple requirements is that the underlying terms and conditions are adequate. If the requirement is not simple, then the ordering contracting officer has the ability to supplement these basic terms and conditions for agency unique needs.

B. Price Reasonableness

Recommendation 7. The GSA Administrator issue clear and consistent guidance to implement the price objective for GSA schedules for services; the price objective is to obtain fair and reasonable prices at the time of contract formation by pursuing the lowest overall cost alternative to the government, consistent with the statute.

Upon reviewing the GSAM policy on price objectives, the Panel found that the guidance provided to contracting officers was unclear on what the pricing objective should be. A majority of the Panel believes that GSA should have a clear policy statement on this matter. The Panel notes that there are no regulatory definitions for the terms "Basis of Award" and "Most Favored Customer," yet these terms figure significantly in any discussion of price reasonableness under the MAS program.

Recommendation 8. The GSA Administrator issue clear and consistent guidance to implement the price objective for GSA Schedules for products, including information related to thresholds of purchasing experience; the price objective is to obtain fair and reasonable prices at the time of contract formation at the Schedule contract level. The price has to be reasonable not only to the basis of award customer but to the commercial marketplace as well.

The Panel heard testimony to the effect that typically at time of contract award, the MAS contracting officer only considered the basis of award customer price and did not evaluate the basis of award customer price against market prices for the same or similar products. There is lack of consistency across the MAS program in the implementation of the program guidance. This allows for significant price differences on MAS contracts between contractors selling products since the only comparison is to the prices the contractor charges its customers and not to prices charged by the contractor's competitors for the products. Ordering contracting officers can be confused when seeing these price differentials since they are also told that the MAS contract price is presumptively fair and reasonable. The failure to conduct a market price comparison when awarding a MAS contract does not result in the best value for the government. A majority of the Panel believes that GSA should ensure that both vertical pricing based on the basis of award customer and horizontal pricing based on a market price comparison should be determined by the MAS contracting officer.

Recommendation 9. The GSA Administrator, with the consent and active participation of the ordering activities, establish a process that will enable ordering activities to collect and report on their purchasing experiences, including quantity and quality considerations as well as price.

The Panel heard from a number of witnesses that GSA and ordering activities have a great deal of performance and pricing information in their files that if made available to contracting officers during the source selection process under FAR Subpart 8.4 would assist the ordering contracting officers in determining whether the performance and prices being offered by the contractors was fair and reasonable and represented the best value to the government. While this information is collected by the government on a daily basis, it is not available to the ordering activities during the source selection process because it is principally in paper form and exists only in the various ordering activities. A majority of the Panel believed that by gathering this information centrally and making it available to all ordering activities, the competitive processes would further drive both improved performance by the contractor, more competitive pricing, and result in overall best value to the taxpayer. The Panel did not consider the application of this rule to non-Federal ordering activities.

Recommendation 10. The GSA Administrator develop a solution that captures pricing at the order level and makes it available to the contracting officers at both the schedule and order level to conduct market research, determine fair and reasonable pricing at the contract level, and competition at the order level.

The majority of the Panel believes that in order to promote continuous price competition in the MAS program, both the MAS contracting officer and the ordering contracting officer should have available to them information already in the government's possession concerning pricing across the government for similar products and about the pricing of the specific product by the contractor being considered for award. While price is not the only matter crucial to a best value determination, it is always a component of determining best value. For commercial items sold under the MAS program, price may be a significant component of a best value determination. In order to inform the pricing element of best value, access to information already in the government's possession should be provided to contracting officers so that price competition can be promoted on MAS program orders.¹²

Recommendation 11. The GSA Administrator use whatever data is available to regularly review and refresh prices on schedule contracts to reflect relevant market prices, consistent with each market segment.

Testimony presented to the Panel and the experience of Panel members demonstrated that pricing on the MAS Program schedules is not refreshed with sufficient frequency to make the pricing useful in informing contracting officers of market prices for the items being offered. The MAS program contracting officer is in the best position to keep these prices current and to share that information with the ordering contracting officer. In some markets, or offerings, pricing is fairly stable, while in others prices are more dynamic. Pricing can vary greatly in comparisons across the vendor market—the horizontal market, and within one company for different customers or geographic areas—the vertical market.

C. Disclosure

Recommendation 12. The GSA Administrator disclose the basis upon which the contracting officer determines that the MAS program contract prices for services are fair and reasonable. [Applicable to services]

¹² "Best value" means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

The Panel heard testimony on how GSA contracting officers awarded MAS contracts for services. A majority of the Panel believed that if GSA made available within the government, the basis upon which the award determination was made, the ordering activity contracting officer would be better able to evaluate quotes on orders under the MAS program. The procedures/process must ensure that GSA does not disclose proprietary pricing information outside of the government, and it addresses who has access to the information.

Recommendation 13. The GSA Administrator disclose the basis upon which the contracting officer determines that the MAS program contract prices for products are fair and reasonable. The procedures/process must ensure that GSA does not disclose proprietary pricing information and it addresses who has access to the information. [Applicable to goods]

To achieve competitive pricing at the order level, a majority of the Panel believes that it is essential to provide the ordering contracting officer sufficient information concerning the basis for the MAS contracting officer's determination that the MAS contract prices are fair and reasonable. Initially this information will be crucial to informing a price evaluation at the order level. Over time the data concerning pricing at the order level will replace the need for the data considered by the MAS contracting officer. The Panel envisions that data would be provided in the aggregate and not specific to one company.

Recommendation 14. The GSA Administrator improve the manner in which MAS contract terms and conditions are made available to ordering activities in order to ensure that orders are placed in a manner that is consistent with the schedule contract.

The Panel was made aware of the ongoing effort to rewrite the General Services Administration Acquisition Manual, which includes publishing the MAS contract terms and conditions in the GSAM. However, the Panel was also aware that MAS contracting officers occasionally modify the standard terms and conditions of specific contracts. These modifications are not available for review by ordering activity contracting officers and thus they are not aware of specific changes to the standard terms and conditions of the contract they are placing the order against. This lack of knowledge may impact the expectations of both parties and lead to unnecessary disputes. Thus a majority of the Panel believes that GSA should make the specific terms and conditions of each MAS contract available for review by the ordering activity contracting officers. To be useful, the terms and conditions should be published as soon as the MAS contract is awarded and available for ordering.

D. Contract Type

Recommendation 15. The GSA Administrator explore the addition of cost type SINs to the schedule program for services on a voluntary basis for those contractors with the capacity to manage cost type contracts.

While the Panel recommends below that MAS contracts for solutions be awarded on a firm-fixed-price basis using a performance based statement of work, the Panel acknowledged that future agency needs and/or market conditions may make a cost-reimbursement contract an appropriate vehicle. The Panel considered the following issues associated with creating a cost-reimbursement vehicle for services within the MAS program, which raised concerns about the ability to implement this recommendation:

- Cost-reimbursement implies some development¹³ rather than commercial products and services which are the basic premise for the schedules program;
- Whether the government, particularly civilian agencies, has adequate audit resources to assess industry cost accounting systems;
- The adequacy of government resources and ability (expertise and skills) of government program managers and contracting officers to effectively structure and administer cost-reimbursement contracts;
- Implications for small businesses even though the proposed solution SIN would be voluntary. These firms may not have the financial resources to set up Federal government approved cost accounting systems, and thus would be excluded from competition at the order level; and,
- The appropriateness of cost-reimbursement contracts, which are not currently allowed under the MAS program.

Recommendation 16. The GSA Administrator require orders for solutions under the schedules program to be firm-fixed-price and performance based.

A majority of the Panel believes that the guidance for offering solutions under the MAS program must require that solution orders be fixed-price and must be performance based. Solutions, as a commercial item, are an integration of both products and services resulting in an outcome defined by the customer. Solutions are unique both to the buyer's requirement and to the company that designs it. Acquiring a solution shifts the risk of both its design and performance from the buyer to the seller. Payment for the solution should be based upon a fixed price. This process

¹³ In this context, development means the integration of existing products and services rather than creating something new.

allows for contractors to offer dissimilar solutions that achieve the same outcome. The Panel does not believe that time and materials orders are appropriate when buying solutions.

A majority of the Panel observed that the MAS program was contemplated to be used for the purchase of goods and for the purchase of services. Agency needs have evolved such that the structure of the schedule contracts does not readily support the acquisition of solutions.

E. Program Evaluation and Review

Recommendation 17. The GSA Administrator undertake a periodic evaluation, in consultation with the ordering agencies and industry partners, of current MAS program schedules to determine their relevance in the marketplace and applicability for meeting agencies needs.

The Panel heard testimony and members expressed their own personal experiences about occasionally finding schedules that are no longer relevant to government requirements or offer services that should not be available through the MAS program. A majority of the Panel believes that GSA should review the current schedules program and periodically thereafter review the MAS program to ensure that it only offers commercial items that government customers require and are appropriate for sale through the MAS program. In conducting this review a majority of the Panel believes that GSA should consult and coordinate with both industry and with its agency customers. The Panel was aware that GSA operates multiple customer councils, but believes that a greater effort should be made to coordinate with the Senior Procurement Executives of customer agencies to understand their strategic acquisition needs. The Panel's intent was that this recommendation should apply to all MAS contracts and not just services.

Recommendation 18. The GSA Administrator review the length of the MAS schedule contracts.

For most of its contracts, the MAS program provides a five-year base period and three five-year options, resulting in contracts that can last for a total of 20 years. We are aware that GSA regularly updates schedules contracts. In today's marketplace it is improbable that a contract can remain current and viable for a total of 20 years. The marketplace does not remain stable over 20 years. Clearly product lines change frequently, and pricing terms and conditions change frequently. The stability and

maturity of the marketplace should dictate the length of contracts in those marketplaces rather than a one-size fits all solution.

Recommendation 19. The GSA Administrator perform a comprehensive review of GSA policies and guidance that facilitate the acquisition of solutions under the MAS program.

The current pricing structure and organization of the MAS program is not designed to facilitate the acquisition of solutions. A majority of the Panel observed that the MAS program was originally contemplated to be used for the purchase of goods. Agency needs have evolved such that the structure of the schedule contracts does not readily support the acquisition of solutions. A variety of techniques are used by ordering contracting officers to obtain solutions which create additional issues involving who the contract is with, pricing of the solutions components, and a host of other issues associated with contract formation, teaming, other direct costs (ODCs), etc. The Panel does not suggest that solutions should not be purchased under the MAS program, but does believe that GSA must define what the implications are for purchasing solutions and provide guidance setting up and managing such a program.

Recommendation 20. The GSA Administrator periodically evaluate MAS program Special Item Number (SIN) descriptions to determine if the descriptions are consistent with the customer needs and current market offerings, and that the labor categories within SINs are also consistent with the scope of the SIN description.

The Panel also heard testimony that the MAS SINs are not updated frequently enough to address changes in the market and that the failure to update SINs as the market changes causes ordering activity contracting officers and contractors to develop workarounds that do not reflect the original basis for award or market pricing for the services actually being purchased. Further there was evidence that some of the labor categories within the SINs did not align with the SIN, thus creating further confusion on the proper use of the schedule and resulting in questions about whether competitive pricing was obtained. A majority of the Panel believed that GSA must review both the SINs more frequently, and the services offered under the SINs, to ensure both the SINs and the labor categories reflect current market practices and government requirements. The Panel's intent was that this recommendation should apply to all MAS contracts and not just services.

A majority of the Panel also believed that this recommendation should not lead to the standardization of labor categories

VI. Recommendations Not Adopted By the Panel

The following motions were disapproved by majority vote:

- GSA undertakes a study to determine the services sold in the market place that are similar to commodities can be standardized and set up as commoditized services.
- GSA explores alternatives to the Price Reduction Clause that achieve the same results or similar objectives of the current Clause.

The following motion was not seconded:

- GSA pursues a legislative proposal to remove price from MAS program services contracts.

The following motion was tabled by majority vote:

- The GSA Administrator develop specific guidance for the establishment of the negotiation objectives for GSA MAS contracts for services. This guidance should be separate and distinct from the negotiation objective guidance provided for GSA MAS contracts for products.
- The motions developed for products and services apply to solutions as appropriate.

The following motion was withdrawn:

- For MAS program contracts for products, “all commercial customers” (the tracking customer) is no longer allowed as the basis of award customer unless the vendor does not offer discounts to any of its commercial customers.

The following recommendations were considered by the Panel. The consensus of the Panel is that they address the role in GSA in Government-wide strategic sourcing and therefore are outside of the scope of the Panel’s charter. The Panel provides them here to form the possible basis of a further review of the strategic sourcing question, as noted the Findings.

- Recommended improvements, immediate term (within 90 days)
 - GSA develop and deploy mandatory quarterly prices paid reporting for basic commodities as a schedule contract deliverable and make this information available to ordering activities, ideally through e ordering tool in a timely manner.
 - Target six basic commodities (e.g., overnight express domestic delivery services) for ordering volume tiered pricing at the MAS contract level

(not BPA level) and do not allow BPAs.

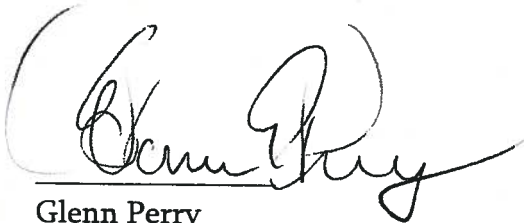
- Recommended improvements, near term, in place for FY10:
 - GSA Develop sourcing strategies for basic commodities that leverage government-wide volumes through compression of source of supply and ordering volume tiered pricing at the MAS contract level.
 - Develop, deploy and make available to the Chief Acquisition Officer Council quarterly external benchmarking of MAS prices paid to best practice (source of supply and/or index).
 - Review GSA IFF to align fee to GSA achieving best practice (e.g., 0.5% paid on revenue and remaining 0.25% available as award fee to GSA as determined by the Chief Acquisition Officer Council, Strategic Sourcing Working Group based on GSA achievement of best practice.
 - Update policy to support that these MAS contracts can then be ordered against without further support for source or pricing.




Elliott Branch
Department of the Navy



Debra Sonderman
Department of Interior



Glenn Perry
Special Government Employee



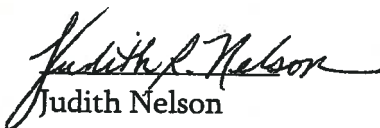
Thomas A. Sharpe, Jr.
Department of the Treasury



Lesa P. Scott
Department of the Navy



Larry Allen
The Coalition for
Government Procurement



Judith Nelson
U.S. General Services Administration



Thedlus Thompson
U.S. General Services
Administration



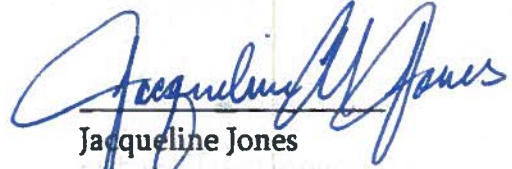
Alan Chvotkin
Professional Services Council



David Drabkin
U.S. General Services
Administration



Jan Fry
U.S. Department of Veteran Affairs



Jacqueline Jones
U.S. General Services
Administration



Donald Erickson
Security Industry Association

APPENDIX 1: Panel Membership

Department of the Navy:

Elliott Branch, Executive Director, Acquisition and Logistics Management (**Chairman**)
Office of the Assistant Secretary of the Navy (Research, Development and
Acquisition)
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Department of the Interior

Ms. Debra Sonderman, Director, Office of Acquisition and Property Management and
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Department of Homeland Security

Mr. Thomas Essig, Chief Procurement Officer⁺⁺⁺
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U.S. Department of Education

Mr. Glenn Perry, Senior Acquisition Executive⁺⁺⁺
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Department of the Treasury

Mr. Thomas A. Sharpe, Jr., Senior Procurement Executive
1500 Pennsylvania Avenue, N.W.
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U.S. General Services Administration

Ms. Lesa P. Scott
Contracting Officer
Naval Facilities Engineering Command

⁺⁺⁺ Retired

^{###} Retired

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Federal Acquisition Service
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U.S. General Services Administration
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Security Industry Association
Mr. Donald Erickson

Director of Government Relations
635 Slaters Lane, Suite 110
Alexandria, Va 22314

U.S. Department of Veteran Affairs
Mr. Jan Frye, Deputy Assistant Secretary for Acquisition and Logistics
810 Vermont Avenue, Room 715,
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Defense Contract Audit Agency
Ms. April Stephenson^{§§§§}
Director, Defense Contract Audit Agency
8725 John J. Kingman Road
Suite 2135
Fort Belvoir, Va. 22060-6219

§§§§ Resigned

Appendix 2: MAS Sales Data for FY 2008

TITLE	DESCRIPTION	
	FEDERAL SUPPLY SCHEDULES	TOTAL FY 2008
62 I I	Professional Services	\$526,660,294
621 II	Reference Labs	\$23,897,420
65 I B	Pharmaceuticals	\$6,712,157,630
65 II A	Medical Equipment & Supplies	\$1,236,330,037
65 II C	Dental Supplies	\$103,139,019
65 II F	Patient Mobility Devices	\$61,480,764
65 VII	In-vitro Diag. Reagents	\$159,182,375
65 V A	X-Ray Equip. & Supplies	\$9,316,394
CORP	Consolidated Schedule	\$925,188,238
JWOD	JWOD	\$21,633,923
23 V	Vehicular Multiple Award Schedule (VMAS)	\$150,194,665
26 I	Pneumatic Tires: New for Passenger Vehicles; New and Retread for Light Trucks, Medium Trucks, and Buses	\$12,602,139
36	The Office, Imaging and Document Solutions - Office Equipment Products and Services, and Document Management Products and Services	\$852,882,055
03FAC	Facilities Maintenance and Management	\$203,174,986
48	Transportation, Delivery and Relocation Solutions (TDRS)	\$684,126,076
51 V	Hardware Superstore	\$631,321,663
56	Buildings and Buildings Materials/Industrial Services and Supplies	\$520,209,585
58 I	Professional Audio/Video, Telemetry/Tracking, Recording/Reproducing, and Signal Data Solutions	\$173,353,709
66	Scientific Equipment and Services	\$793,033,091
67	Photographic Equipment - Cameras, Photographic Printers and Related Supplies and Services	\$39,571,677
69	Training Aids and Devices, Instructor-Led Training, Course Development, Test Administration	\$289,859,917
70	General Purpose Commercial Information Technology Equipment,	\$15,860,498,190

	Software, and Services	
71 I	Office Furniture	\$944,990,737
71 II	Household and Quarters Furniture	\$100,930,803
71 II H	Packaged Furniture	\$105,322,224
71 II K	Comprehensive Furniture Management Services	\$47,336,361
71 III	Special Use Furniture - Library, Hospital, Mailroom, Preschool and Classroom, Cafeteria, and Industrial	\$132,730,564
71 III E	Miscellaneous Furniture - Security Filing Cabinets, Safes, Vault Doors, Map and Plan Files and Accessories, COMSEC Containers, and Special Access Control Containers	\$27,587,027
72 I A	Floor Coverings - Carpets, Rugs, Carpet Tiles and Carpet Cushions, Vinyl and Rubber Tiles and Rolls, Mats and Matting (with and without logos)	\$45,863,223
72 II	Furnishings - Window Treatments, Wall Art, Artificial Plants, Lamps	\$24,515,490
73	Food Service, Hospitality, Cleaning Equipment and Supplies, Chemicals, and Services	\$240,652,401
75	Office Products/Supplies and Services and New Products/Technology (Includes Restroom Products)	\$649,045,548
76	Publication Media	\$125,502,436
78	Sports, Promotional, Outdoor, Recreational, Trophies, and Signs (SPORTS)	\$364,188,033
81 I B	Shipping, Packaging and Packing Supplies - Bags, Sacks, Cartons, Crates, Packaging and Packing Bulk Material	\$125,427,929
84	Total Solutions for Law Enforcement, Security, Facility Management Systems, Fire, Rescue, Special Purpose Clothing, Marine Craft and Emergency/Disaster Response	\$2,554,868,528
520	Financial and Business Solutions (FABS)	\$1,068,497,743
541	Advertising & Integrated Marketing Solutions (AIMS)	\$518,843,965

599	Travel Services Solutions	\$215,677,220
736	Temporary Administrative and Professional Staffing Services (TAPS)	\$121,572,127
738 II	Language Services	\$109,561,514
738 X	Human Resources and EEO Services	\$177,615,126
751	Leasing of Automobiles and Light Trucks	\$5,952,941
871	Professional Engineering Services (PES)	\$2,766,067,166
874	Mission Oriented Business Integrated Services (MOBIS)	\$3,979,725,423
874 V	Logistics Worldwide (LOGWORLD)	\$733,341,580
899	Engineering Services	\$377,683,055

Appendix 3: Price Reduction Clause¹⁸

552.238-75 Price Reductions.

As prescribed in 538.273(b)(2), insert the following clause:

PRICE REDUCTIONS (MAY 2004)

(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 throughout 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.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)

(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the Government with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to State and local government entities when the order is placed under this contract (and the State and local government entity is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Alternate 1 (May 2003). As prescribed in 538.273(b)(2) substitute the following paragraph (c)(2) for paragraph (c)(2) of the basic clause, and substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause.

(c)(2) The Contractor shall offer the price reduction to the eligible ordering activities with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d)(2) To eligible ordering activities under this contract; or

¹⁸ Alternate 1 is required for all MAS program contracts

Appendix 4: MAS Advisory Panel Charter

U.S. General Services Administration Multiple Award Schedule Advisory Panel Charter

- 1. Official Designation:** Multiple Award Schedule Advisory Panel (“the MAS Panel”).
- 2. Authority:** This charter establishes the General Services Administration (GSA) Multiple Award Schedule Advisory Panel in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., App. § 9 (c). The MAS Panel is in the public interest and supports GSA in performing its duties and responsibilities.
- 3. Objectives and Scope of Activities:** The MAS Panel will provide independent advice and recommendations to the General Services Administration (GSA). The MAS Panel will review the MAS Policy Statement and implementing regulations, solicitations and contract provisions and internal GSA processes regarding the structure, use, and pricing, of the GSA Multiple Award Schedules program. Specifically, the MAS Panel will review the most favored customer provisions and price reduction policies and provisions in the context of current commercial pricing practices. The MAS Panel’s advice and recommendations will assist GSA in assuring that such policies result in MAS prices that are the lowest overall price. The Panel will also identify other means of meeting this objective and recommend whether such alternate approaches satisfy competition requirements, protect the best interests of the Government; ensure financial and ethical integrity of Federal acquisitions; and promote the effective, efficient and fair award and administration of multiple award schedules program contracts.
- 4. Description of Duties for Which the Panel is Responsible:** The duties of the MAS Panel shall be solely advisory. In its review of the MAS Policy Statement and implementing regulations, policies and procedures, the MAS Panel shall make any recommendations to modify the MAS Policy Statement and implementing regulations, policies, and procedures that are considered necessary to strengthen the MAS Program.

5. **Federal Official to Whom the Panel Reports:** The MAS Panel reports to the Administrator, General Services Administration.
6. **Agency Responsible for Providing Necessary Support:** GSA will be responsible for financial and administrative support. Within GSA, this support will be provided by the Federal Acquisition Service and the Office of the Administrator.
7. **Estimated Annual Operating Costs and Person-years:** The MAS Panel members will serve without compensation. The total annual operating costs are estimated to be approximately \$ 150,000.00. This includes 1.5FTE.
8. **Designated Federal officer (DFO):** A full-time or permanent part-time federal employee, appointed in accordance with agency procedures, will serve as the DFO. The DFO will approve or call all of the advisory panel's and subcommittee's meetings, prepare and approve all meeting agendas, attend all panel and subcommittee meetings, and adjourn any meeting when the DFO determines adjournment to be in the public interest.
9. **Estimated Number and Frequency of Panel Meetings:** It is anticipated that the Panel will meet approximately twice a month.
10. **Duration:** The MAS Panel shall submit its initial report of findings, conclusions, and recommendations within six months from the first meeting of the panel.
11. **Termination:** This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA. The Administrator may terminate the Panel at any time prior to expiration of the charter.
12. **Membership and Designation:** The Multiple Award Schedule Advisory Panel consists of approximately 16 members, including the Chair, who are appointed by and serve at the pleasure of the Administrator of GSA. The MAS Panel will include stakeholders from differing viewpoints and perspectives, including small and large agency government customers, industry associations, and federal acquisition and auditing professionals. The MAS Panel membership will consist of a combination of Regular Government Employees (RGEs), and Representative members appointed from industry associations or coalitions who will represent commercial interests. Membership is not expected to

include Special Government Employees (SGEs) unless GSA determines that such expertise is required to supplement the existing Panel membership.

13. **Subcommittees:** GSA may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered MAS Panel and must report their recommendations and advice to the MAS Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered MAS Panel nor can they report directly to the Administrator.

14. **Recordkeeping:** Records of the MAS Panel will be handled in accordance with General Records Schedule 26, item 2. Committee records consist of, among other things, all papers, documents, and email pertinent to its establishment, membership, policy, organization, deliberations, findings, and recommendations, including its charter, member' appointment letters, agendas, determinations for closed meetings, briefing materials, minutes, transcripts, audiovisual materials, reports made or received, and all documents related to its proceedings. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

15. Approval:



SIGNATURE

3-26-08

DATE

Appendix 5: List of Testimony and Presentations

George Washington University Law School - Yukins	PDF	383k	3/2/2008
CDWG	PDF	1146k	
George Washington University Law - Literature on Most Favored Customer Clause	PDF	1125k	5/5/2008
Veterans Affairs Inspector General Report - VA IG Report	PDF	445k	10/15/2007
Buffalo Supply Response to IG Report	PDF	1137k	10/25/2007
VA OIG Report No. 05-01670-04, Final Report - Special Review of Federal Supply..	PDF	2423k	10/15/2007
GSA COFPAES FSS 06-16-2008	PowerPoint	162k	6/16/2008
May 22, 2008 - Follow-Up Questions MOBIS	Word	25k	5/22/2008
May 22, 2008 - Follow-Up Questions Schedule 84	Word	22k	5/22/2008

Comments from DeMartino IFF - FAS	Word	24k	
DeMartino IFF Grace Period - FAS	Word	25k	
DeMartino Low Sales MAS Contractors	Word	25k	
Number of New Centers Awarded FY06 AND FY07	Excel	876k	
Coalition Del-ColleConnal	Word	139k	8/18/2008
Cauldwell - GSA Advantage	PDF	104k	8/18/2008

Cauldwell 2 - MAS Sales Fiscal Yeas 1992 through 2004	PDF	145k	8/18/2008
Letters from Nicholas Economou - Fair and Reasonable Price Determination	PDF	898k	8/18/2008
JRAY 19 September 2008	Word	110k	9/16/2008
Conley Statement 19 September 2008	Word	61k	9/16/2008
Paper from Panasonic for October 2008 Meeting	Word	53k	10/7/2008
Comments by The American Bar Association Section of Public Contract Law	PDF	2049k	10/20/2008
Comments to the MAS Advisory Panel by Dore Fessler - VA	PDF	361k	10/16/2008
MAS Total Solutions - Short Paper by John H. Ray	Word	37k	11/6/2008
Federal Acquisition Services Presentation	Word	81k	
ITAA Presentation	Word	51k	
GSA Stakeholder Hearing, June 2008, BSK Remarks - 6-12-08	PDF	39k	6/13/2008
JSP Centre MAS paper final 3	PDF	45k	6/13/2008
Stakeholder Expectations	PDF	3404k	6/16/2008
The OIG and MAS	PDF	7114k	12/17/2008