

REVIEW OF CONSISTENCY  
IN IMPLEMENTING POLICY  
ACROSS ACQUISITION CENTERS  
REPORT NUMBER A070118/Q/A/P09007

September 30, 2009



U.S. GENERAL SERVICES ADMINISTRATION  
Office of the Inspector General

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Date: September 30, 2009

Reply to  
Attn of: Audit Manager, Acquisition Programs Audit Office (JA-A)

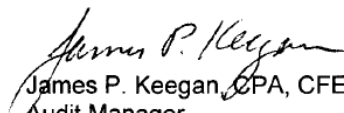
Subject: Review of Consistency in Implementing Policy  
Across Acquisition Centers  
Report Number A070118/Q/A/P09007

To: James A. Williams  
Commissioner, Federal Acquisition Service (Q)

This report presents the results of our review of Consistency in Implementing Policy Across Acquisition Centers. Our review found opportunities for the Centers to improve the consistency of implementing procurement policy and related guidance when making determinations of fair and reasonable pricing and when conducting negotiations. We identified controls designed to ensure the implementation of procurement policy and guidance; however, we found instances when these controls were not applied. We noted that the Centers are using a variety of procurement and operational business practices, some of which appear transferable and could be considered best practices.

Written comments provided by your office have been included in their entirety in Appendix E of this report.

I would also like to express my appreciation to your staff for their assistance during this review. If you have any questions regarding this report, please contact me on (703) 603-0189.

  
James P. Keegan, CPA, CFE  
Audit Manager  
Acquisition Programs Audit Office

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**EXECUTIVE SUMMARY**

**Purpose**

The objectives of this review were to determine if policy and related guidance for the Multiple Award Schedule (MAS) Program are being implemented effectively by the Acquisition Centers (Centers), and to identify best practices in use by the Centers. We narrowed the focus of these objectives to the area of pricing, including rate escalation and price adjustment.

**Background**

The MAS Program is one of the General Services Administration's (GSA) largest procurement programs with over 17,000 contracts and roughly \$36 billion in annual sales in Fiscal Year (FY) 2007, the primary period of the contracts we reviewed. Since its inception, the MAS Program has experienced significant growth, with much of its recent growth and revenue in the area of services. The Office of Acquisition Management within the Federal Acquisition Service (FAS) is responsible for issuing the national operating and negotiating procedures and policy guidance for all of the Centers. GSA's Office of Chief Acquisition Officer (OCAO) also issues national procurement guidance. Additionally, there is schedule, Center, and portfolio specific guidance available for acquisition personnel. Subsequent to our fieldwork, FAS announced the creation of the MAS Program Office with responsibilities that include developing and implementing MAS acquisition policy and guidance. Further, the OCAO is currently leading a rewrite of the General Services Acquisition Manual as the MAS program continues to evolve.

**Results in Brief**

Our review found opportunities for the Centers to improve the consistency of implementing procurement policy and related guidance when making determinations of fair and reasonable pricing and when conducting negotiations. We identified controls at both the national and Center level designed to ensure the implementation of procurement policy and guidance; however, we found instances when these controls were not applied. We noted that the Centers are using a variety of procurement and operational business practices. Some of these practices appear transferable and could be considered best practices.

## **Recommendations**

We recommend that the Commissioner of the Federal Acquisition Service:

1. Develop and implement policy and training for acquisition personnel including:
  - a. MFC pricing determination that employs methodologies commensurate with the value and risk of the acquisition.
  - b. Use of cost analysis, including a clear definition of cost or pricing data in relation to information requested on the Commercial Sales Practices form and for Office of Inspector General pre-award audits.
  - c. Proper use of GSAM 552.216-70 as the Economic Price Adjustment clause when Commercial Price Lists contain more than base year rates.
  - d. Schedule specific guidance to assist in determining wage rate escalation, including when escalation is appropriate, specific index selection, time periods for consideration, and application timeframe.
  - e. Consideration of volume discounts during negotiation when offerors' practices include these discounts for their commercial customers, so as to maximize the government's purchasing power.
2. Assess the viability of developing or establishing resources at the national level to support COs in all the Centers by providing cost/price analyses and support, particularly in the area of professional services.
3. Fully implement FSS Acquisition Letter FX-03-1, updated through Supplement No. 3, dated February 18, 2005, ensuring these responsibilities are all clearly defined within the FAS organization. Additionally, consider performing an assessment as to whether control functions of the legacy Federal Supply Service (FSS) and Federal Technology Service (FTS) organizations have been adequately transitioned to the new FAS organization to enhance organizational performance and accountability.
4. Develop and implement controls to ensure the accuracy of contract information published on GSA Advantage such as approved Special Item Numbers (SINs), authorized pricing, etc. Determine if potential overcharges discussed in finding occurred and if so, institute actions to recover funds.

## **Management Comments**

Management partially agreed with the findings and recommendations. Management Comments are included in their entirety as Appendix E to this report.

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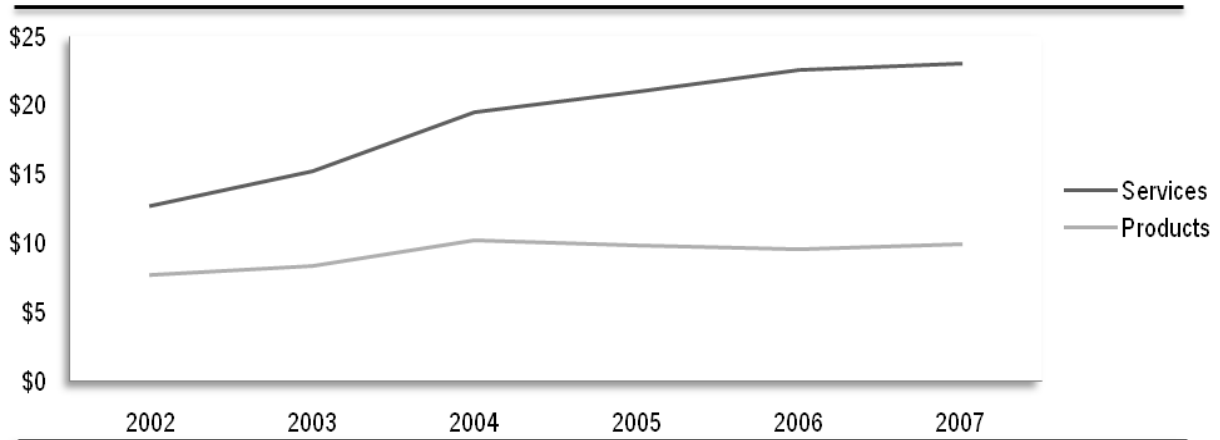
**INTRODUCTION**

**Background**

The Multiple Award Schedule (MAS) Program is one of the General Services Administration's (GSA) largest procurement programs with over 17,000 contracts and roughly \$36 billion in annual sales in Fiscal Year (FY) 2007. Under the MAS Program, GSA's Federal Acquisition Service (FAS) establishes long-term government-wide contracts with contractors to provide Federal agencies - as well as other authorized users<sup>1</sup> - access to over 11 million commercial supplies and services. This access provides users with a simplified procurement process to issue task and delivery orders against the MAS contracts for direct delivery of commercial supplies and services with the assurance that prices are fair and reasonable.

Since its inception, the MAS Program has experienced significant growth. In FY 1992 schedule sales were \$4.2 billion<sup>2</sup>. By FY 2007, this amount had grown to \$35.9 billion. As shown in Figure 1, much of the recent growth has occurred in the professional services arena, with \$23 billion of FY 2007 revenue generated by acquisition of professional services from MAS contracts. Considering the volume of schedule sales, even minor changes in pricing can have a large impact.

Figure 1: Sales by Products and Services (in billions of dollars)



GSA's MAS Program is operated by nine Acquisition Centers (Centers) that award and administer contracts under 38 schedules. FAS organized these Centers under the portfolios as shown in Table 1 below.

<sup>1</sup> State and local governments may also utilize several of the MAS program contracts.

<sup>2</sup> GAO/GGD-93-123, *Multiple Award Schedule Contracting, Changes Needed in Negotiation Objectives and Data Requirements*.

**Table 1: Acquisition Centers by Portfolio<sup>3</sup>**

<b>OFFICE OF GENERAL SUPPLIES AND SERVICES (QS)</b>	<b>OFFICE OF INTEGRATED TECHNOLOGY SERVICES (QT)</b>	<b>OFFICE OF TRAVEL, MOTOR VEHICLE AND CARD SERVICES (QM)</b>
Administrative Services & Office Supplies (2QSAA)	Center for IT Schedule Program (QTADC)	Office of Travel and Transportation Services (QMC)
Center for Services Acquisition (QSAB)		
Integrated Workplace Acquisition Center (3QSA)		
Center for Facilities Maintenance and Hardware (6QSA)		GSA Automotive (QMAA)
Greater Southwest Acquisition Center (7QSA)		
Management Services Center (AQSA)		

The FAS Office of Acquisition Management is responsible for issuing the national operating and negotiating procedures and policy guidance for all of the Centers. GSA’s Office of Chief Acquisition Officer (OCAO) also issues national procurement guidance. Additionally, there is schedule, Center, and portfolio specific guidance available for acquisition personnel.

The MAS Program is comprised of schedules that only allow fixed prices, which can involve a higher degree of risk over the contract. To mitigate this risk, the MAS Economic Price Adjustment (EPA) clause and the Price Reduction (PR) clause serve to protect the government’s and contractors’ interests over the period of the MAS contracts. The EPA clause allows contractors to increase prices under controlled circumstances. The PR clause preserves favorable pricing relationships by allowing the government to claim a price reduction when a similar reduction occurs to the basis of award customer<sup>4</sup>. Most-favored customer (MFC) pricing ensures that MAS contract pricing harnesses the Federal government’s collective buying power for pricing purposes<sup>5</sup>.

As the MAS Program has grown, the Office of Inspector General (OIG) Assessment of GSA’s Major Management Challenges section of the Agency’s Annual Performance and Accountability Reports has regularly emphasized the importance

<sup>3</sup> See Appendix A for a breakdown of schedules by center with associated FY 2007 sales.

<sup>4</sup> Before the award of a contract, the contracting officer and the offerer agree upon the customer (or category of customers) that will form the “basis of award” for the contract, as well as the government’s price or discount relationship to them. This relationship must be maintained throughout the contract period.

<sup>5</sup> For MAS, General Services Acquisition Regulation 538.270 requires targeting those customers that receive the offeror’s best pricing; this policy is often referred to as the MFC policy. Market research has shown that large commercial firms also use MFC pricing strategies.



of sustaining MAS Program fundamentals. These fundamentals - which include pricing objectives, the mandate to seek the offeror's best price (MFC pricing), and conducting meaningful price analysis when awarding or extending contracts - are key to satisfying statutory requirements for MAS Program operation<sup>6</sup>.

### **Objectives, Scope and Methodology**

Our objectives were to answer the following questions:

1. Are policy and related guidance being implemented by the Acquisition Centers?
2. Are there controls to ensure implementation and adherence to policy and related guidance?
3. Are there best practices in use by the Acquisition Centers? If so, is their use transferable?

To accomplish our objectives, we performed the following steps:

- Reviewed relevant reports from the Government Accountability Office (GAO), GSA's Office of Inspector General (OIG), GSA's Office of Chief Acquisition Officer (OCAO), and The Acquisition Advisory Panel to the Office of Federal Procurement Policy (OFPP).
- Identified and reviewed relevant national policy and guidance including the Federal Acquisition Regulation (FAR), General Services Administration Acquisition Manual (GSAM), Procurement Information Bulletins (PIB), Procurement Information Notices (PIN), and Acquisition Letters.
- Reviewed automated systems used both nationally and Center specifically related to pricing and policy monitoring.
- Conducted site visits to the following Acquisition Centers:
  - Administrative Services and Office Supplies (2QSAA)
  - Center for IT Schedule Program (QTACC)
  - Integrated Workplace Acquisition Center (3QSA)
  - Center for Facilities Maintenance and Hardware (6QSA)
  - Greater Southwest Acquisition Center (7QSA)
  - Management Services Center (AQSA)
- Identified and reviewed relevant Center specific policy, guidance, controls, and business practices.
- Interviewed and held discussions with cognizant FAS and OCAO personnel regarding policy, guidance, and controls.
- Selected and reviewed a risk-based, judgmental sample of 29 contracting actions, 24 of which contained price analyses that occurred from October 2006 through June 2007. These contracting actions included both services

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<sup>6</sup> The Competition in Contracting Act of 1984 (CICA) requires that MAS contracts and orders result in the lowest overall cost alternative to the government.

and products. Among the factors considered when assessing risk included contract and schedule sales volume, recently transferred schedules, and rapid growth.

- Performed limited follow up testing of a sample of contracting actions involving services in January 2009.

Our review was primarily concerned with consistency in implementing national procurement policy and guidance across the Centers. After consulting with the Center Directors, we narrowed our scope to the area of pricing, including, but not limited to, rate escalation and economic price adjustment. To focus our assessment on policy implementation within the newly formed FAS organization, we scoped our sample to include only contract awards and contract extensions negotiated after the new FAS organization was operational.

We conducted our review from February 2007 through April 2008, with limited follow up testing in January of 2009, in accordance with generally accepted government auditing standards.

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**RESULTS OF REVIEW**

**Brief**

Our review found opportunities for the Centers to improve the consistency of implementing procurement policy<sup>7</sup> and related guidance when making determinations of fair and reasonable pricing and when conducting negotiations. Additionally, while the contract file documentation that we reviewed consistently indicated that MFC pricing was targeted for negotiations per regulation, adequate support for this assertion was not always available. Differing policy interpretations, increased demands on acquisition personnel, and the need for improved communication and oversight contributed to instances when the government did not have assurance of price reasonableness<sup>8</sup>.

We identified controls at both the national and Center level designed to ensure the implementation of procurement policy and guidance. However, we found some instances when these controls were not applied. A lack of clearly defined responsibilities within the new FAS organization appears to have effectively neutralized national oversight control and may also have impacted sharing best practices between the Centers. While Center controls were in place and used, we found cases where they did not accomplish their intended purpose, resulting in potential harm to the government.

We also noted the Centers have some business processes that could be considered best practices. We have included these best practices in the final section of this report for consideration.

**Procurement Policy and Related Guidance – Pricing**

The FAR mandates that contracting officers (COs)<sup>9</sup> determine price reasonableness when acquiring commercial items. As a key step in this determination, the General Services Administration Acquisition Regulations (GSAR), embedded in the GSAM, require the targeting of MFC pricing for negotiations. Prenegotiation Memoranda in

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<sup>7</sup> While the acquisition personnel we interviewed accepted the FAR, GSAM, and Acquisition Letters (ALs) as regulation that have the force of law and require compliance, they commonly referred to these regulations as policy, a practice we will follow in this report. We noted that these same personnel offered differing interpretations of the necessity to apply guidance provided by Procurement Information Bulletins (PIBs) and Procurement Information Notices (PINs). The most restrictive of these interpretations was that the use of PIBs and PINS was always mandatory; the least restrictive was that their use was completely at the option of the contracting officer.

<sup>8</sup> This report will use the terms fair and reasonable and price reasonableness interchangeably.

<sup>9</sup> For the purposes of this report, we refer to all acquisition personnel as contracting officers (COs).

contract files reviewed consistently indicated that MFC pricing was targeted for negotiations as mandated; however, adequate support for MFC prices was not always available, and we found contracts with the MFC not properly identified.

Another determination requirement is analysis of the offeror's proposal, with listed methods in the FAR including price analysis and cost analysis. The acquisition personnel we interviewed generally indicated their preference for price analysis. Some acquisition personnel informed us that they are not allowed to use cost analysis when considering offers under the MAS Program, an interpretation we do not agree with. While we understand the emphasis on price considerations when dealing with commercial items, we hold that the FAR considers price analysis and cost analysis as tools that are not mutually exclusive, but complimentary and to be used as the individual award necessitates.

To facilitate price analysis and negotiations, one Center has implemented the use of a pricing tool. Acquisition personnel have used this pricing tool to make the FAR required determinations of price reasonableness. Although the personnel who relied on this tool may have believed that it provided an adequate basis to make a rapid determination of price reasonableness, we identified flaws in this tool that demonstrate it is not valid.

We noted wage rate escalation embedded in commercial price lists for professional services but did not find negotiation objectives or reasonableness determinations for these increases documented in the contract file. Price reasonableness determinations are required for forward prices as well as for initial contract pricing awarded. Further, embedded rate escalation in commercial price lists is inconsistent with the structure of current EPA clauses and results in loss of forward price protection for the government. Additionally, overall escalation practices are inconsistent in how rate increases are determined.

Support for MFC Pricing is Inconsistent. Offerors submitting proposals under the MAS Program are required to identify their MFC on their Commercial Sales Practices (CSP) form and provide related MFC price/rate information. In the majority of contract files we reviewed, documentation indicated that COs attempted to confirm rate information submitted by offerors when making their MFC determinations. However, we noted that some COs did not seek additional information beyond the offeror's assertion of their MFC rates on the CSP. Limited and/or inconsistent policy may have contributed to this circumstance. Numerous OIG pre-award audit reports have found discrepancies in MFC information provided by contractors, indicating that the government would benefit from a higher level of MFC pricing assurance prior to initial contract award.

The Competition in Contracting Act of 1984 requires that MAS contracts and orders result in the lowest overall cost alternative to the government. A critical step toward obtaining this result is the targeting of MFC pricing. The mandate to pursue MFC

pricing ensures that MAS contract pricing harnesses the Federal government's collective buying power for pricing purposes. In report GAO/GGD-93-123, *"Multiple Award Schedule Contracting Changes Needed in Negotiation Objectives and Data Requirements"*, the U.S. Government Accountability Office (GAO) specifically recommended this methodology to the GSA Administrator stating, "amend MAS policies to clearly state that GSA's price analysis to establish the government's negotiation objective should start with the best discount given to any of an offeror's customers." GSA adopted this recommendation into GSAR; mandating that "The government will seek to obtain the offeror's best price (the best price given to the most favored customer)".

We noted four methods used by the COs in an attempt to substantiate MFC pricing. The most common method is for the COs to obtain relevant invoices from the offeror. Offerors can provide invoices with little difficulty in what is essentially an honor system since validity and accuracy do not have to be certified. For offeror invoices to be of value when determining MFC pricing, they must be genuine, timely, and in a format that is comparable to CSP information.

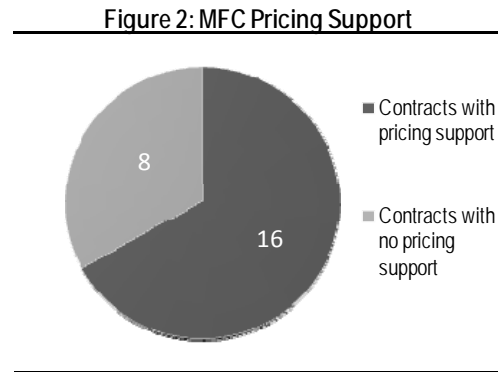
In lieu of invoices, another method used was for the CO to obtain payroll or labor cost information directly from the offeror. This may be the most reliable information available if the offeror does not have significant commercial sales. However, providing this information increases the burden on the offeror and may require devoting additional government resources for analysis. Additionally, while the CO may request this information, the FAR specifies that the CO may not ask the offeror to certify it except under a very limited set of circumstances. The value of having the CO utilize this information may only be cost beneficial for contracts of a higher estimated value or risk and/or that do not have commercial sales available to substantiate their rates.

Another method noted is for the CO to contact the MFC directly and independently confirm the rates submitted by the offeror. Confirming the offeror's assertion of MFC pricing in this manner is analogous to the process used by public accounting firms to confirm accounts receivable and bank balances of public companies undergoing financial audits. This form of evidence is potentially very reliable because the confirming information is received directly from an independent, third party. Depending on the format of the CSP, this methodology results in no additional burden to the offeror. This may be a viable technique because the offeror's customers currently provide similar information, such as that used by the Dun & Bradstreet Open ratings.

Finally, we noted that COs did not obtain invoices from the contractor when audits had been performed on the contract base period. Audits are among the most reliable methods for confirming contractor assertions, and Defense Contract Audit Agency (DCAA) price information and GSA OIG audits are sometimes available to aid in determination of fair and reasonable prices. Procurement Information Bulletin (PIB) 05-2, *"Audit Assistance Multiple Award Schedule (MAS) Contracts"*, instructs

COs to seek audits for contracts with higher acquisition values<sup>10</sup> or under special circumstances. However, audits require additional information from the contractor and audit work; both of which may impact lead time required to make an award.

Of the 24 contract files we reviewed containing price analyses, each asserted that MFC pricing was targeted for negotiations. However, as depicted in Figure 2, support for this assertion varied widely and in several cases adequate support was not available. For 8 contracts we did not find invoices in the contract files to substantiate MFC pricing and, in 6 of the 16<sup>11</sup> contracts that contained support, invoices were either not provided in a form that was comparable to the CSP or the information was not timely or credible. Some of the discrepancies we found included:



- Invoices contained consolidated (rolled up) line items that were not comparable to the rates of individual labor categories offered.
- Invoices offered information to support one Special Item Number (SIN) of the offeror's proposal, such as hourly rates for professional services, but did not include information to support other SINs, such as training courses.
- Invoices offered support for March 2007 negotiations that were dated as far back as 2002.
- Invoices that had printed line items obscured (whited out) and overwritten by hand. The audit team deemed these invoices unreliable.
- The Federal government was listed as the MFC when the actual MFC was a prime contractor and the offeror was a subcontractor to the prime.

Additionally, some determinations of price reasonableness required by the FAR were based solely on the offeror's assertion that government pricing bettered MFC pricing without substantiation of these rates or further comparison to the market place. Limited national policy exists related to confirmation of MFC and other pricing/rate information and, in large measure, leaves any verification of CSP information to the discretion of the CO. In its discussion of cost and price negotiation policies and procedures, FAR 15.402 helps establish a ceiling on information requests stating that COs should not obtain more information than is necessary. PIB 04-2, "Achieving Fair and Reasonable Prices in MAS Negotiations", helps establish a floor, stating that COs are empowered to ask offerors questions and seek additional supporting information when verifying MFC. This PIB also reminds the CO that audit assistance is available to verify any assertions about the offeror's commercial pricing

<sup>10</sup> Applicable when the estimated dollar value for the 5-year option period is greater than \$25 million and when processing modifications to add SINs with an estimated value exceeding \$2.5 million.

<sup>11</sup> GSA Office of Inspector General audit reports were available as support for three of the contracts we evaluated.

or marketing practices. These are broad parameters with considerable latitude for techniques to confirm and potentially enhance pricing.

In interviews with COs, some indicated frustration with the lack of clarity of national policy and guidance. Some commented that national policy and guidance is not consistently numbered or centrally located, which led to instances where COs were actually using outdated policy and guidance. Additionally, some COs were unclear about which policies and guidance were mandatory and which were advisory. This leads to a number of approaches that may confuse offerors and/or not adequately protect the government. Further, Centers have policies that range from always requiring invoices for price/rate determinations, to requiring invoices for services only, to having no stated policy. We noted that in some cases COs confirmed all offered rates and in other cases, the CO used a sample to validate the rates.

Numerous OIG pre-award audit reports have found discrepancies in the reporting of MFC information by contractors, indicating that the government would benefit from a higher level of MFC pricing assurance. If obtaining MFC pricing is the sole or primary step when determining fair and reasonable prices for contracts that can run for as long as 20 years, there is clearly the potential for an adverse impact if MFC pricing is not accurately determined.

Exclusion of Relevant Cost Analyses. The FAR prescribes policies and procedures unique to the acquisition of commercial items and mandates that COs establish price reasonableness as a part of this process. The FAR lists both price analysis and cost analysis as methods for making this reasonableness determination. The acquisition personnel whom we interviewed generally indicated that they prefer price analysis to cost analysis, although some said they use cost analysis in certain cases. By contrast, other acquisition personnel informed us that they are not allowed to use cost analysis when considering offers under the MAS Program. Inconsistent interpretations of the FAR and the exclusion of relevant, reliable data may lead to acceptance of pricing that is not fair and reasonable.

FAR 12.209 mandates that COs establish price reasonableness in accordance with FAR 13.106-3, 14.408-2, or Subpart 15.4, as applicable. FAR 15.402 provides a hierarchy of preference for determining the type of information the CO should use to assess what is fair and reasonable. This first preference tier within this hierarchy under FAR 15.402(a)(1) is for prices determined by competition and is not relevant to the initial award of a contract awarded under the MAS Program. The second preference tier under FAR 15.402(a)(2) includes the use of information either related to prices or to cost information that does not meet the definition of cost or pricing data at FAR 2.101. FAR 2.101 clearly defines “cost or pricing data” as data requiring certification in accordance with FAR 15.406-2. The cost and price data offerors submit on their CSP does not require certification and falls within this second preference tier, as does cost build-up information that the OIG frequently utilizes during its pre-award audits.

The MAS Program deals with commercial items, and FAR 15.404-1(b) mandates that price analysis be performed for commercial items; however, it does not mandate that cost analysis *not* be used. Rather, the FAR 15.404-1(a)(1) states “the analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.” Additionally, FAR 15.404-1(a)(4) states that “Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.”

When offerors submit proposals for a contract under the MAS Program, they are required to identify their MFC on the CSP and provide information regarding pricing and commercial practices. Because this pricing information does not require certification, it does not meet the definition of “cost or pricing data” according to FAR 2.101. Some offerors also submit cost data with their CSP if the terms and conditions under which they transact business with their major customers are based on cost, or if they do not have significant - or any - commercial sales of items (including services) offered under the MAS Program. This cost information does not require certification; therefore, it also does not meet the definition of cost or pricing data according to FAR 2.101.

COs generally preferred price analysis as opposed to cost analysis, stating that it is more consistent with the commercial practices emphasized by the MAS Program, and in several cases saying it is easier than cost analysis. The most common price analysis technique we noted was comparison between the offeror’s stated MFC pricing and pricing available from other contractors on GSA Advantage<sup>12</sup>.

Some acquisition personnel stated that they use cost analysis if they do not believe that the pricing data provides enough information to make a reasonableness determination. They may also use cost analysis if the offeror does not have significant commercial sales for the offered item(s). We also noted one instance when the CO’s rationale for negotiating a wage escalation rate that exceeded the documented national index was based on the offeror’s argument that their costs were higher due to their geographic location.

Conversely, some COs informed us that they are instructed not to use cost analysis when considering offers under the MAS Program. Further, some acquisition personnel sent letters to OIG audit staff directing them to limit the scope of their audits by not requesting cost data from contractors during pre-award audits for contract extensions, even when the contractor did not have commercial sales and cost build-up was the basis of the original award. This direction is provided in

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<sup>12</sup> The GSA Advantage online shopping and ordering system includes supplies and services under all of the GSA Schedules. Electronic ordering through GSA Advantage allows a customer to send an order directly to the Schedule contractor.



contradiction to FAR 15.404-2(c)(3) which states, “The auditor is responsible for the scope and depth of the audit.”

A Flawed Tool was used to Determine Fair and Reasonable Pricing. To facilitate price analyses when assessing wage rates for offered labor categories, one Center developed and implemented a pricing tool. We found this pricing tool was used to establish negotiation objectives and make the FAR-required determinations that prices are fair and reasonable. While the initiative to capture the information is admirable, inconsistent data, inaccurate computations, and misapplication of this tool by acquisition personnel render it invalid as an indicator of pricing. Further, the tool is not adequate to set negotiation objectives or make pricing determinations as required by the FAR. When reliance was placed on this pricing tool - particularly to the exclusion of other, more reliable evidence - the government did not have assurance that prices were fair and reasonable.

While drafting this report, subsequent to the completion of our audit fieldwork, we held discussions with Center management concerning this finding. During these discussions Center management asserted that they had implemented refinements in both the use of the pricing tool and in the tools design since our original site visit. Limited follow up testing assessed and largely confirmed these assertions; the results of the follow up testing are summarized at the end of this section.

The pricing tool is one component of a larger database that this Center constructed using Microsoft Access. In addition to price analysis, personnel use the database to perform a variety of tracking and reporting functions.

The Center designed the pricing tool component of this database to select recently awarded wage rates for labor categories with titles similar to that of the offered labor category. These wage rates are then used as source data to compute a composite “weighted price”. Users can filter the source data by inputting criteria into three fields: Labor Category, Business Size, and Schedule Name. Other user inputs provide data and ranges for calculations performed by the pricing tool (see Image 1 – Pricing Tool Summary Screen below).

**Image 1 – Pricing Tool Summary Screen**

**Price Summary for: #Name? Prepared By: [ ]**  
**Offer #: #Name? Criteria data based on contracts awarded during 6/15/2005 through 6/15/2007**

Rate	Education	Experience
Maximum Rate: \$72.00	Maximum Educ: 4	Maximum Exp: 14
+1 Standard Deviation: \$50.61	+1 Standard Deviation: 2.1	+1 Standard Deviation: 5.9
Average: \$40.15	Average Educ: 1.3	Average Exp: 3.2
-1 Standard Deviation: \$29.70	-1 Standard Deviation: .4	-1 Standard Deviation: .4
Minimum Rate: \$21.72	Minimum Educ: 0	Minimum Exp: 0
Standard Deviation: \$10.46	Standard Deviation: .9	Standard Deviation: 2.8
Number of Returns: 71	Number of Returns: 67	Number of Returns: 65
STD of Price: -0.29	STD of Education: -0.29	STD of Experience: 0.30

**Offered Labor Category**

Labor Category: administrative assistant  
 Minimum Education: 1  
 Minimum Experience: 4  
 Business Size: [ ]  
 Schedule Name: MOBIS  
 Offered Price: \$37.13  
 Weighted Price: \$40.20  
 Difference between Offered and Weighted Prices: 7.64%

**Education Range**

5 Ph.D.  
 4 Master's  
 3 Bachelor's  
 2 Associates  
 1 Highschool  
 0 None/blank

Contract #	Business Size	Company Name	Labor Category	EDU	EXP	Year 1/base
G3			Administrative Assistant	1	03	\$38.40
G3			Administrative Assistant	1	0	\$35.42
G3			Administrative Assistant	1	0	\$37.19
G3			Administrative Assistant	1	04	\$36.00
G3			Administrative Assistant I	1	01	\$38.13
G3			Administrative Assistant III	1	03	\$36.82
G3			Senior Administrative Assistant	1	06	\$37.12
G3			Administrative Assistant III	0	05	\$37.24

We found that COs used the weighted price as the starting point to develop price ranges. These price ranges - which were not developed consistently among the contracts - were then used to establish negotiation objectives and make determinations of whether the offeror's rate was fair and reasonable by price comparison. FAR 15.404-1(b)(2)(ii) does indicate that comparison of previously proposed prices and previous government and commercial contract prices with current proposed prices for the same or similar items is an acceptable methodology, but only if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

Among our concerns with the validity of the pricing tool's rate comparison were the tool's reliance on labor category titles as the primary filter, a lack of consideration of several critical pricing factors, and the source data and actual computations that result in the weighted wage rate. Further, in the absence of a formal written policy, acquisition personnel had used the tool differently from the planned usage expressed by Center management.

Although the usage of "Labor Category Title" as the main filter criterion is a logical starting point for analysis, there is no standard naming convention for labor categories among MAS contractors; therefore, identification and analysis by like or similar labor category titles is not sufficient. Qualitative analysis of critical labor category factors such as the complexity of the underlying position, level of responsibility, and other basic requirements such as mandated professional

licensing, certification, etc., is essential to ensure that a valid comparison is conducted. In addition, the pricing tool does not include consideration of geographic location and related pricing differences. Without additional analysis, the pricing tool does not offer assurance of a valid price comparison.

In addition to concerns regarding the pricing tool's basic design characteristics, GSA's OIG staff statistician concluded that the calculation used by the pricing tool to compute "weighted price" mixes summary statistical data from different data fields and is not a valid methodology. Further, we determined that a significant number of the records in this tool did not contain required data.

During our original site visit, the Center's management informed us that the pricing tool is a secondary tool, but in over half the contracts we sampled at this center during this visit, we found its use was primary and/or played a prominent role in the price analyses. Additionally, the pricing tool had been cited in correspondence from this Center to OIG audit staff that directed the OIG not to request cost build-up data from contractors during pre-award audits. This occurred even when cost build-up was the original basis of award (see quoted excerpt from letter below):

[This center] utilizes a database containing awarded labor categories and prices for all. . . contracts awarded within the past two years (several hundred contracts have been awarded in the past two years, so there is much information to perform a price analysis for same or similar labor categories with same or similar education and experience requirements). This information is used to perform a price analysis in accordance with FAR 15.404-1(b)(2)(ii). Because GSA is awarding commercial contracts, a price analysis is required rather than a cost analysis; FAR 15.403-1(c)(iii)(3) specifically excludes commercial items from the requirement for cost or pricing data. I have adequate information available to determine prices fair and reasonable through price analysis; therefore, you are required to not perform any analysis of the contractor's actual costs (cost-build-up), even if a cost-buildup was submitted by the contractor and reviewed by GSA prior to the initial contract award and used to determine prices fair and reasonable. GSA will determine existing prices to be fair and reasonable based on a price analysis and other information provided by the contractor (specifically, the CSP, invoices, or other information relative to the contractor's pricing practices).

However, during this audit, the Center personnel worked with OIG contract audit staff to resolve this issue. The Center's intent now is to provide guidance as to when cost analysis may be appropriate, such as when an offeror does not have commercial sales but seeks to establish an MAS contract.

Additionally, while drafting our report we held follow-up discussions with Center management concerning the use and design of this pricing tool. During these discussions Center management stated that refinements were made to both the design and application of pricing tool since our original site visit. Management agreed that reliance on this pricing tool without additional analysis is insufficient to make determinations of fair and reasonable pricing. They stated that while we may have found the pricing tool being used in a manner contrary to their instruction

during our original visit, significant progress had been made since then to assure that this tool is used as a secondary indicator in conjunction with other analyses.

Limited follow up testing evaluated these assertions. Our follow up testing consisted of an analysis of contract files and the most recent version of the pricing tool. While we did find one file that relied on the pricing tool for its determination of price reasonableness, we noted improvement in documentation of other forms of pricing analyses and support in the majority of the contract files that we reviewed. A number of changes had also been made to the pricing tool's design to address our concerns. We were also provided with a draft written policy concerning usage of this tool that clearly states the tool's use is to be secondary and supported by other analysis. We agree with the policy's statement on the need for other forms of price analysis; however, we remain concerned about the design of the pricing tool.

Commercial Price Lists Improperly Contain Embedded Wage Rate Escalations. We found some contracts utilizing Commercial Price Lists (CPLs) that included embedded wage rate escalations when using EPA Clause GSAM 552.216-70. Wage rate escalation embedded in a CPL is inconsistent with provisions for price increases in the applicable EPA clause. While we found no policy or guidance that specifically addressed this situation, this practice effectively removes one element of price protection afforded the government.

Under the MAS Program, contractors offer professional services billed at hourly rates for each labor category offered. In some cases these professional service rates are also offered using other bases, such as daily rates. The CO evaluates offered rates for initial award and, if accepted, they become the rates for the first year of the MAS contract. The EPA clause in the MAS contract provides the mechanism by which the contractor can obtain rate increases from the base year to the subsequent years of the contract<sup>13</sup>. The EPA clause ensures that the government receives goods and services at fair and reasonable prices while allowing contractors to adjust prices over the potential 20 year contract period.

The CO can apply one of two different EPA clauses depending on the commercial sales practices of the offeror. The CO employs GSAM 552.216-70 as the EPA clause (Appendix B) if the offeror utilizes a CPL in its ordinary business practices. If the offeror does not maintain a CPL but relies on another methodology - such as charging standard rates to their commercial clients - then the CO will use EPA clause I-FSS-969 (Appendix C). Each of these clauses has requirements that afford both the contractor and the government protection tailored to the commercial practices of the offeror. The clauses protect contractors by permitting them to raise rates over the life of a contract, and the government is protected by having various controls over this rate increase process.

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<sup>13</sup> MAS contracts have a five year base period and three option periods of five years each.

When the contractor's commercial practices include the use of a CPL, GSAM 552.216-70 requires the contractor to submit a new CPL to obtain a rate increase. In addition, the contractor must submit a justification for the increased rates reflected in this CPL. COs commonly require copies of invoices from the contractor's commercial customers to confirm that the new CPL is being used in ordinary commercial practice before modifying the MAS contract to permit the rate increase. In addition, GSAM 552.216-70 contains other restrictions that relate to the frequency and amount of permitted rate increase requests in a given timeframe<sup>14</sup>.

We reviewed seven contracts that were awarded to contractors who utilize a CPL and applied the EPA Clause GSAM 552.216-70. Three of these CPLs contained rates with embedded escalation for each year of the contract. Embedded rate escalation in the CPL changes the premise under which GSAM 552.216-70 was designed to provide price protection and diminishes this clause's ability to protect the government from unreasonable rate increases.

CPLs with embedded escalations create the potential for contractors to benefit from annual price increases incorporated in the CPL without previously submitting justification and/or substantiating that these rates are being charged to their commercial customers as required. Thus, the government loses an important preventive price protection control. Contractors would also retain the option of submitting a new price list within the confines of this EPA clause if they are not satisfied with the embedded increases already contained in their CPL.

Inconsistent Escalation Practices. We noted inconsistencies in the negotiation of future rate increases when offerors did not use a CPL but relied on another mechanism, such as billing their clients' standard professional rates. Inconsistent approaches to escalation may confuse offerors and make the budget process more difficult for client agencies. Limited policy and guidance are available to help clarify these situations.

When the contractor uses standard professional rates as opposed to a CPL, EPA clause I-FSS-969 is included in the contract. In these cases, the contractor and the government address future rate increases as a part of the negotiation process leading to initial contract award. Rate increases are negotiated as a fixed annual percentage increase or can be negotiated using an agreed-upon index.

The COs awarded escalation for inconsistent timeframes. Some COs informed us that they prefer contractors initiate requests for rate increases on an annual basis. These COs indicated that an annual review of proposed contractor rate increases gives them greater control over rates, citing that as an advantage to the government.

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<sup>14</sup>Typically these provisions preclude the submission of the initial request until the contract has been in force for 30 days, restrict the frequency of requests to 3 over each 5 year contract period, and cap the overall increase at a specified percentage.

If the types of task orders submitted against a particular schedule are typically for one year or less, and there is significant economic volatility, negotiating increases annually may make good business sense. One disadvantage to this methodology is that greater workload is placed on the CO compared to awarding multiple years of annual increases during the initial contract award. Another disadvantage is the effect this may have on customer agencies planning a task order that spans more than one year against an MAS contract. Not knowing future rate increases for all years of a prospective task order can hamper an agency's budgeting and planning process.

Conversely, awarding multiple years of rate increases involves risk that negotiated rates may not accurately reflect the rates charged in the commercial market place in the future. There are techniques being used to mitigate this future uncertainty. In some cases where COs negotiated multiple years of rate increases, we noted the use of independent benchmarks such as the Bureau of Labor Standards (BLS) Employment Cost Index (ECI)<sup>15</sup> as a basis for negotiation. Additionally, some COs informed us that while they may initially award annual rate increases for the entire 20 year length of the contract, they revisit the negotiated rate of increase at each five year option period. While we understand that varying periods of rate escalation may be appropriate based on the needs of contractors and authorized MAS users that are specific to a particular schedule, we found no guidance in this area.

The BLS has established general guidelines when using an ECI as the market indicator on government contracts. These guidelines emphasize the importance of specifying the costs to be escalated, choosing an index that is reflective of the occupations evaluated, identifying the year of the base labor costs, and establishing the frequency of adjustment<sup>16</sup>. However, we noted inconsistencies in the COs' selection and use of the BLS ECI tables. COs did not consistently document their rationale for index time period selection, which ranged from one to five years.

In one contract, we noted percentage differences between the quarterly, yearly, and five year index for Series CIU201540000000A Total Compensation, Private Industry, Professional, scientific, and technical services, Not Seasonally Adjusted. As indicated in Table 4, indices fluctuate more in the short term than in the long term. The CO negotiating this contract used a one year index (2006) from this table to substantiate a 4% increase over the five year base of this contract. However, use of the five year average of 2.9% in lieu of 4% may have resulted in savings of over \$588,000 on this contract over its five year base period valued at \$25 million.

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<sup>15</sup> The BLS publishes a number of Economic Cost Indices on a quarterly basis that measure the changes in the cost of labor among several different labor occupations and industries. Many government agencies utilize these indices to establish compensation costs and measure changes in them.

<sup>16</sup> How to use the Employment Cost Index for Escalation, <http://www.bls.gov/ncs/ect/escalator.htm>, viewed May, 2008

**Table 4: Series CIU201540000000A, Total Compensation, Private Industry, Professional, scientific, and technical services, Not Seasonally Adjusted**

<b>Year</b>	<b>Qtr 1</b>	<b>Qtr 2</b>	<b>Qtr 3</b>	<b>Qtr 4</b>	<b>Annual Average</b>
<b>2002</b>	2.40%	2.40%	1.40%	1.00%	<b>1.80%</b>
<b>2003</b>	2.10%	2.10%	3.20%	3.90%	<b>2.83%</b>
<b>2004</b>	4.20%	4.50%	4.40%	4.20%	<b>4.33%</b>
<b>2005</b>	3.70%	2.60%	1.30%	1.20%	<b>2.20%</b>
<b>2006</b>	1.80%	3.10%	4.10%	4.40%	<b>3.35%</b>
<b>Five Year Average</b>					<b>2.90%</b>

Similarly, in cases when the COs from the same Center utilized the BLS ECI, we noted variations in the selection of index tables used when negotiating future rate increases. Additionally, there were instances when the CO did not note the specific table used in the contract file documentation. We also noted one instance when the CO created a custom table for ECI analysis for a single contract award. One Center attempted to promote consistency when using the BLS ECI by including a spreadsheet on its shared drive for COs to use, but another CO indicated that they preferred their own methodology. These types of inconsistent applications can create confusion for contractors and COs alike.

### **Internal Controls**

We identified controls at both the national and Center level designed to provide reasonable assurance<sup>17</sup> of the implementation of procurement policy and guidance. However, we found opportunities for improvement. A lack of clearly defined responsibilities negatively impacted the use of Prenegotiation Clearance Panels as a national oversight control. We also noted isolated instances of inaccurate contractor postings on GSA Advantage, one of which could have resulted in overcharges to the government of more than \$590,000.

Internal controls are the processes and procedures used by GSA to ensure the agency accomplishes its goals and objectives. Internal controls (i.e. management controls) aid GSA in managing the risk associated with GSA programs and operations and achieving its desired results through the effective stewardship of the public's resources. Among the objectives of internal control are the effectiveness and efficiency of operations and compliance with laws and regulations. Internal controls are the first line of defense in safeguarding assets and preventing and detecting waste, fraud, abuse, and mismanagement.

<sup>17</sup> Reasonable assurance refers to the concept that internal controls provide reasonable, not absolute, assurance that the agency's activities are being accomplished in accordance with its control objectives. The concept of reasonable assurance recognizes that the cost of internal controls should not exceed their benefit; controls should be reasonable when weighed against cost, benefit, and risks.

Prenegotiation Clearance Panel (PNCP) benefits not fully realized. We found that the current Office of Acquisition Management (QV) is not receiving or monitoring results of the PNCP reviews. Federal Supply Service (FSS) Acquisition Letter FX-03-1, updated through Supplement No. 3, dated February 18, 2005, established an Acquisition Quality Measurement and Improvement Program, which included requirements for the use of PNCPs and for the reporting and monitoring of their results. However, responsibilities for the PNCP reporting process were not clearly defined during the transition to the new FAS organization. Without centralized control, much of the designed benefit of this program is lost.

The Acquisition Quality Measurement and Improvement Program implemented GAO's recommendations for the use of PNCPs and for the reporting and monitoring of their results<sup>18</sup>. The stated objectives of the PNCPs are to measure compliance with all negotiation requirements with an emphasis on pricing. These measurements can then be used to provide a baseline against which activities can track improvements in the quality of contract negotiations and awards. The purpose of the PNCP is to help identify areas where more effective on-the-job training and formal training of contract negotiators is needed, and to provide for greater adoption of innovative price negotiation strategies and other best practices.

Each acquisition activity is required to report to the Assistant Commissioner of its business line and to Acquisition Management (identified in FX-03-1 as FXA) on the PNCPs performed during the prior three month period. The Assistant Commissioners are instructed by the Acquisition Letter that they may use the report to measure activity compliance with the Acquisition Letter and to recommend changes to Acquisition Management. Acquisition Management is directed to use the report to discover best practices and pricing trends which may be incorporated into future training or Procurement Information Bulletins (PIBs).

The reporting requirement is designed to aid in the discovery of best practices and pricing trends and is consistent with testimony given to Congress by GSA's Chief Acquisition Officer in 2005, in which she stated ". . . we have made the pre-negotiation panels GAO recommended in their February 2005 report mandatory and have already revised our program operating procedures to require reports on pre-negotiation clearance panels. The reports of these panels will then be used to assess progress in the effectiveness of negotiations and will be an opportunity to share best practices."

Our assumption was that in the FAS organization, QV had assumed all of the responsibilities of FXA. To evaluate whether the Centers are properly reporting PNCP results, we requested PNCP summary reports from QV. After receiving our request, QV indicated that they were not receiving the quarterly summary reports and were therefore unable to provide copies to us.

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<sup>18</sup> GAO-05-229, *Opportunities to Improve Pricing of GSA Multiple Award Schedules Contracts*



We did evaluate quarterly PNCP reports that two Centers provided to us to determine if the report contained the information required to accomplish the objectives established in the Acquisition Letter. While the reports contained some information required by the Acquisition Letter, they did not have any of the qualitative information requested, such as the effectiveness of the panels, recommendations for improvement to the PNCP procedures, or requests for modification of the activity's PNCP threshold.

Contractor Posted an Unapproved CPL to GSA Advantage. During our review we found one instance when a contractor posted a CPL to GSA Advantage that the CO did not approve. This CPL contained not only the rates awarded for this contract extension (listed as 2005 rates), but also unauthorized embedded price increases for years 2006 and 2007. The CO informed us that there was a mistake in the posting of the CPL with the escalated rates to GSA Advantage, and the CO directed the contractor to correct this. Since this extension was awarded in February of 2007 and the correct price list was not posted until June 2008, it is possible that the contractor may have charged unauthorized rates, which were approximately 7.7% higher than approved for a period exceeding a year. Contractor sales for completed quarters on record during this period were approximately \$7.79 million which would equate to overcharges exceeding \$590,000.

In this instance, the CO awarded the contract extension using a CPL as the basis of award even though an OIG pre-award audit had determined that the contractor lacked commercial sales. This audit recommended that the CO use cost build-up information to determine whether prices were fair and reasonable in the absence of significant commercial sales. The CO's rationale was that it was more advantageous to the government to lock-in the current (2005) pricing than it was to switch the basis of award from the CPL. EPA clause GSAM 552.216-70 would secure this pricing because the contractor could not raise rates until it could substantiate commercial sales from a new CPL. However, when the contractor posted its CPL to GSA Advantage it included unauthorized escalated rates for 2006 and 2007. This could have resulted in overcharges as previously indicated.

We are aware of another case where a contractor posted unauthorized information to GSA Advantage. GAO recently reported that a contractor posted services to GSA Advantage that were out of scope for the contract and recommended that GSA implement controls to prevent contractors from improperly advertising their services<sup>19</sup>. Inaccurate information on GSA Advantage may have an adverse impact on authorized users of the MAS Program who count on this system to provide reliable information when making acquisition decisions.

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<sup>19</sup> GAO-08-360, *Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists*

## **Procurement and Operational Business Practices**

During this review, we identified a variety of practices within the Centers developed to improve efficiency and effectiveness. In this section we will communicate these processes as some may be potential best practices for consideration across the MAS Program. Specifically, we noted the use of volume discounts as a negotiation objective, various pricing resources to verify fair and reasonable pricing, different methods used to enhance policy communication, and procurement tools and controls used to improve efficiency.

Volume Discounts Improve the Government's Purchasing Power. Some of the contracts we reviewed contained volume discounts for orders below the maximum order threshold. FAS does not currently mandate that contracting personnel negotiate volume discounts. However, contracting personnel we spoke to indicated that it is in the best interest of both parties to pursue volume discounts because the government benefits from the cost savings and contractors benefit from longer term contracts that result in higher volume purchases.

Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the ordering activity shall seek a price reduction<sup>20</sup>. We noted some contracts leveraged the government's purchasing power by establishing volume discounts for orders below the maximum order threshold, while others did not. While we encourage the pursuit of volume discounts, inconsistent negotiation approaches may lead to confusion for contractors and ordering agencies.

Examples of volume discounting we saw included:

- 2% for individual orders of \$500,000 or more on a contract with a maximum order threshold of \$1 million.
- The contracting official obtained the same volume discount that the offeror was already extending to other commercial customers.
- 1% discount on orders over \$350,000.
- Offeror proposed an additional 1% discount on orders over \$500,000.
- 1% discount on orders over \$100,000 and 2% discount on orders over \$200,000.
- 5% discount on orders over \$50,000, 6% discount on orders over \$500,000.

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<sup>20</sup> FAR § 8.404(d), *Orders exceeding the maximum order threshold*

Volume discounts below the maximum order threshold leverage the government's purchasing power. This benefit is two-fold if volume discounts are negotiated as part of the initial award; (1) ordering agencies receive additional discounts without further negotiation, and (2) contractors benefit from the government's incentive to pursue higher volume purchases. While we encourage the pursuit of volume discounts for initial contract award, consistent approaches are needed to lessen confusion among contractors and ordering agencies.

Alternative Pricing Resources. We noted Centers using the following pricing resources and methodologies:

- Publicly published information such as the [www.salary.com](http://www.salary.com) website, trade publications, newspapers and periodicals for articles on the industry and any recent changes that may affect their evaluation.
- Payroll information from the contractor to verify salary increases before granting wage rate escalations and to ensure the contractor is following the terms and conditions of the contract.
- Comparing offered rates to rates already awarded by the Center for the same labor categories.
- Bureau of Labor Statistics Employment Cost Index information.

These resources appear transferable between Centers and schedules and could add benefit to pricing determinations.

Communication Techniques Enhance Policy Dissemination. Several Centers have implemented communication techniques to deliver policy and promote consistency of practices within acquisition. Although each Center operates differently and has varying lines of business, some of the practices used may be transferable between Centers.

- Center personnel can, and do for the most part, receive automatically generated FAS clause manual email updates. Each time there is an update in the FAS clause manual, the service notifies registered users via email, informing them of the new change.
- Conversely, management in one Center interprets all new policy and uniformly disseminates it to Center personnel. This allows contracting personnel to focus on their work and receive the changes that pertain to the work they do on a daily basis. Additionally, information communicated from one central location promotes consistency and relieves confusion that can occur by individual interpretation of policy.

- Some Centers use a shared drive to house training material, templates, and other helpful information. Personally developed work is also available, assisting other Center personnel with similar industry offering situations.
- Branch Chiefs in one Center hold meetings once a week to discuss policy dissemination of new information. If there is anything urgent that comes up, they call a staff meeting to inform everyone in a timely fashion.
- Monthly “brown bag” sessions where contracting personnel can talk directly to the Center director on contract policy and any other questions or concerns they may want to address. Contracting personnel mentioned that these informal “brown bag” sessions provide a forum where their voice can be heard.
- Some Centers host Industry Day events where contractors can meet with the contracting personnel handling their contract and also attend information sessions on doing business with the government.

Some Centers provide additional opportunities for contracting personnel to participate in processes that better familiarize them with the policies and practices of contracting for the government. These experiences may help them apply techniques to their own daily tasks.

- One of these opportunities exists in the Procurement Management Review (PMR) process. Generally, the PMR team consists of individuals who travel to the Centers and review the contracting practices of each Center. Occasionally, contracting personnel from a Center are selected to join the team as a reviewer. Through this experience, contracting personnel have the opportunity to witness other contracting practices and potentially apply those techniques to their own work or work at their Center.
- Another opportunity exists to gain knowledge from experience by observing a PNCP. Each Center is required to use PNCPs for high value or unique pricing situations. Some Centers permit/schedule COs to sit in on panel discussions to gain experience.

The practices above are used by the Centers to communicate and promote consistency in their daily operations. Some of the practices may be transferable, while others are more Center-specific, depending on the business operations of the Center. The Centers should carefully consider some of the above practices for adoption into their work.

Tools and Controls that Promote Efficiency. Several Centers have developed innovative processes and tools to improve efficiency during the procurement process:

- *Operations Branch* - When FAS issues new policy and guidance to the Centers, these operations branches interpret and disseminate it to Center personnel. Additionally, each Operations Branch arranges training on new policy (up to 40 hours per year); implementing the use of a shared drive to house training materials and other procurement support. Operations Branches provide effective communications lines and may relieve much of the administrative burden of interpreting policy placed on Center personnel.
- *Procurement Technicians* - Procurement Technicians help gather, file, and copy information needed for each contract. Procurement Technicians function as "gatekeepers" and filter out the offers that are not complete or have obvious errors. Center management views the technicians as vital to their operations. This practice may allow contracting personnel to avoid unnecessary administrative duties and spend more time effectively negotiating contracts.
- *ImageNow* – ImageNow, a management tool for storing contract files electronically, allows users to capture, organize, and manage data, eliminating the inefficiencies of filing and retrieving documents manually. ImageNow also helps balance workloads, allows for easy oversight access, remote access, and includes a search function for comparing industry similar contracts. To assist in the use of this product, this Center also uses dual monitors for viewing of electronic contract files. ImageNow, coupled with the addition of dual monitors, may enhance the ability to manage contracts more efficiently while promoting modern technologies.
- *Management Level Controls* - Many Centers have incorporated different management level controls to ensure oversight of policy. In one Center, we noticed that contracts that negotiate pricing not equal to or better than MFC pricing require Branch Chief approval. This control requires contracting personnel to validate why MFC pricing was not attainable in these instances. Another control we became aware of was management's review of subcontracting plans before contracting personnel send them to the Small Business Administration (SBA).
- *Minimum Sales Threshold* - FAS policy requires GSA schedule contractors to maintain a minimum of \$25,000 in sales for the first two years of operation and every year thereafter or risk contract cancellation. Some Centers maintain an up-to-date spreadsheet of low/no sales contracts that identify contractors who do not maintain this minimum level of sales. With contract workload becoming increasingly difficult to manage, we feel it is important to be aware of the contracts that are not meeting this requirement. Therefore, the Centers need more direction from FAS in this area to enforce this policy.

- *Checklists* - Procurement Technicians use checklists to ensure that new offers contain the necessary information to begin negotiations. This allows the COs to spend more time on contracting and less time on administrative tasks. Various versions of this type of checklist existed across several schedules. We also identified the use of a checklist for contract options/extensions. This checklist contains items in chronological order and Center personnel use it to identify tasks as they come due. The use of this checklist aids contracting personnel during the procurement process and may prevent them from overlooking a key element of the contract. Another Center developed a post-award contract review checklist. Center personnel use this checklist during contract file reviews on every contract negotiated in the Center to ensure completeness of the file. The checklist also acts as an evaluation of the performance of contracting personnel during negotiation of the award. Additionally, the checklist is distributed back to the contracting official, providing feedback on their performance.

In summary, continuing to develop more efficient and effective ways of administering the MAS Program is essential to its success. Each Center has developed innovative ways of improving the processes and programs they oversee. With proper guidance, a number of the methods, processes, and tools that we indentified, could improve the MAS Program by integrating them among the Centers as best practices. We suggest FAS review these potential best practices, determine if they are viable among the Centers, and move to implement them.

## **Conclusion**

Our review found opportunities for the Centers to improve the consistency of implementing procurement policy and related guidance when making the FAR required determinations of fair and reasonable pricing and when conducting negotiations. The contract file documentation that we reviewed consistently indicated that MFC pricing was targeted for negotiations per the GSAR; however, we noted inconsistent Center policy regarding MFC determinations and required support for pricing, as well as contracts with the MFC not properly identified. Also, some acquisition personnel stated that they are not allowed to use cost analysis when considering offers under the MAS Program, an interpretation we do not agree with. Given the very broad definition of commercial items in the FAR - and that some companies may not have any commercial sales with which to establish pricing for the MAS Program - directing staff not to use one analysis methodology may exclude information needed to determine that prices are fair and reasonable. There are a variety of viable techniques in use by the Centers, each offering a different level of

assurance and corresponding challenges. However, clear policy and robust processes are needed to satisfy the GSAR, FAR, and to reduce risk to the government.

To facilitate price analysis and negotiations, one Center used a pricing tool. While the initiative shown by this Center in its attempt to develop analyses tools is admirable, reliance on this tool - and the pre-emptive exclusion of relevant, reliable data such as that from pre-award audits - may lead to acceptance of pricing that is not fair and reasonable to the government. We are supportive of the development of processes and/or resources to provide pricing support for COs, provided they are properly developed, validated, and employ appropriate usage controls. These resources could take the form of skilled practitioners, automated systems, or use of external support related to professional service salaries and pricing.

We noted wage rate escalation embedded in commercial price lists for professional services but did not find negotiation objectives or reasonableness determinations for these increases documented in the contract file. Wage rate escalation embedded in a CPL is inconsistent with provisions for price increases in the applicable EPA clause and effectively removes one element of price protection afforded the government. Additionally, price reasonableness determinations are required for forward prices as well as for initial contract pricing awarded. We also noted inconsistent approaches to escalation negotiation procedures for contracts that rely on standard rates in lieu of CPLs. These inconsistencies can confuse offerors and make the budget process more difficult for client agencies. Limited policy and guidance are available to help clarify these situations.

We identified controls at both the national and Center level designed to ensure the implementation of procurement policy and guidance. However, we found some instances when these controls were not applied. A lack of clearly defined responsibilities within the new FAS organization appears to have effectively neutralized a national oversight control and may have impacted the sharing of potential best practices between the Centers. While Center controls were in place and used, we found cases where they did not accomplish their intended purpose, resulting in potential harm to the government.

The Centers are using a variety of procurement and operational business practices. Some of these practices appear transferable and could be considered best practices. Policy enhancement and communication, as well as training may aid in extending these practices.

## **Recommendations**

We recommend that the Commissioner of the Federal Acquisition Service:

1. Develop and implement policy and training for acquisition personnel including:
  - a. MFC pricing determination that employs methodologies commensurate with the value and risk of the acquisition.
  - b. Use of cost analysis, including a clear definition of cost or pricing data in relation to information requested on the Commercial Sales Practices form and for Office of Inspector General pre-award audits.
  - c. Proper use of GSAM 552.216-70 as the Economic Price Adjustment clause when Commercial Price Lists contain more than base year rates.
  - d. Schedule specific guidance to assist in determining wage rate escalation, including when escalation is appropriate, specific index selection, time periods for consideration, and application timeframe.
  - e. Consideration of volume discounts during negotiation when offerors' practices include these discounts for their commercial customers, so as to maximize the government's purchasing power.
2. Assess the viability of developing or establishing resources at the national level to support COs in all the Centers by providing cost/price analyses and support, particularly in the area of professional services.
3. Fully implement FSS Acquisition Letter FX-03-1, updated through Supplement No. 3, dated February 18, 2005, ensuring these responsibilities are all clearly defined within the FAS organization. Additionally, consider performing an assessment as to whether control functions of the legacy Federal Supply Service (FSS) and Federal Technology Service (FTS) organizations have been adequately transitioned to the new FAS organization to enhance organizational performance and accountability.
4. Develop and implement controls to ensure the accuracy of contract information published on GSA Advantage such as approved Special Item Numbers (SINs), authorized pricing, etc. Determine if potential overcharges discussed in finding occurred and if so, institute actions to recover funds.



## **Management Comments**

### **Recommendation No. 1:**

***Develop and implement policy and training for acquisition personnel including:***

***a) MFC pricing determination that employs methodologies commensurate with the value and risk of the acquisition.***

#### **Management Comment:**

Partially agree. FAS agrees that further policy guidance and training on conducting price analysis and implementing negotiation strategies and techniques are needed. However, the CO is ultimately responsible for making a fair and reasonable pricing determination. Furthermore, 15.402 Pricing policy (a) directs COs to not obtain more information than is necessary to make a fair and reasonable pricing determination, which often varies depending on the circumstances; therefore, requests for additional information is often within the COs discretion. Moreover, training for the MAS acquisition workforce should include, not only the award of MAS base contracts, but the award of task orders and Blanket Purchase Agreements under the contracts. The MAS Program Office (MAS PO) will begin developing training content in fiscal year 2010.

#### **OIG Response:**

We agree the FAR states that COs should not obtain more information than is necessary and that COs have considerable discretion when making their determination of fair and reasonable pricing. However, PIB 04-2, "Achieving Fair and Reasonable Prices in MAS Negotiations" provides further guidance to COs stating they are empowered to seek additional supporting information when verifying MFC and reminding COs that audit assistance is available to verify any assertions about the vendor's commercial pricing or marketing practices. This guidance provides considerable latitude for techniques to confirm vendor assertions of MFC pricing and to potentially enhance pricing for contracts that can run for as long as 20 years.

***b) Use of cost analysis and clearly define cost or pricing data in relation to information requested on the Commercial Sales Practices (CSP) form and for Office of Inspector General pre-award audits.***

#### **Management Comment:**

Partially agree. FAS agrees that clear policy guidance and training on the use of cost analysis in support the COs price analysis and determination of fair and reasonable pricing are needed. However, 15.402 Pricing policy (a) directs COs to not obtain more information than is necessary to make a fair and reasonable pricing determination, which often varies depending on the circumstances; therefore, requests for additional information is often within the COs discretion.

OIG Response:

Our primary concern in this area stemmed from acquisition personnel providing conflicting opinions as to whether they are allowed to use cost analysis when considering offers under the MAS Program. The overriding consideration when selecting techniques for performing proposal analyses should be the business practices of the contractor and the validity and reliability of the data germane to the particular acquisition. Given the broad definition of commercial items in the FAR, and that some companies may not have any commercial sales with which to establish pricing for the MAS Program, relying exclusively on one analysis methodology may not be sufficient to ensure that prices are fair and reasonable.

***c) Proper use of GSAM clause GSAM 552.216-70 as the Economic Price Adjustment (EPA) clause when they include Commercial Price Lists (CPLs) contain more than base year rates.***

Management Comment:

FAS agrees. The MAS PO will issue guidance on this topic.

OIG Response:

No response.

***d) Schedule specific guidance to assist in determining wage rate escalation including when a wage rate escalation is appropriate, specific index selection, time periods for consideration, and application timeframe.***

Management Comment:

FAS agrees. As stated in the General Comments, at times it is appropriate to have a varying set of tools and indices, but FAS agrees that the tools and indices should be examined for merit and consistency.

OIG Response:

No response.

***e) Consideration of volume discounts during negotiation when offerors' practices include these discounts for their commercial customers, so as to maximize the government's purchasing power.***

Management Comment:

FAS agrees. The MAS PO is beginning to develop content for training to the Acquisition Workforce and the consideration of volume discounts as recommended can be included in that training for fiscal year 2010.

OIG Response:

No response.

**Recommendation No. 2:**

***Assess the viability of developing or establishing resources at the national level to support COs in all the Centers by providing cost/price analyses and support, particularly in the area of professional services.***

**Management Comment:**

Partially agree. The Business Portfolios are beginning to incorporate cost and pricing specialists into the staffs. The MAS PO will work to foster consistency in the cost and pricing strategies through quarterly meetings with the Acquisition Operations Directors and policy guidance.

**OIG Response:**

We will need to see Management's action plan before we can provide an assessment, but we are supportive of the development of processes and/or vehicles to provide pricing support for COs, provided they are properly developed, validated, and employ appropriate controls to ensure proper usage. The oversight of these by a centralized authority, such as the MAS Program Office, is an appropriate step.

**Recommendation No. 3:**

***Fully implement FSS Acquisition Letter FX-03-1, updated through Supplement No. 3, dated February 18, 2005, ensuring these responsibilities are all clearly defined within the FAS organization. Additionally, consider performing an assessment as to whether control functions of the legacy Federal Supply Service (FSS) and Federal Technology Service (FTS) organizations have been adequately transitioned to the new FAS organization to enhance organizational performance and accountability.***

**Management Comment:**

FAS agrees. FAS has already begin drafting policy to address implementation of the FSS Acquisition Letter FX-03-01 within the context of the FAS organization.

**OIG Response:**

No response.

**Recommendation No. 4:**

***Develop and implement controls to ensure the accuracy of contract information published on GSA Advantage such as approved Special Item***

***Numbers (SINs), authorized pricing, etc. Determine if potential overcharges discussed in finding occurred and if so, institute actions to recover funds.***

Management Comment:

Partially agree. The FAS CIO is heading up the Enterprise Acquisition Solutions long-term project. As part of the project, a set of standardized formatted pricelists are in development and will be implemented for MAS for both offers and contract modifications. These formatted pricelists will guard against erroneous and misleading uploads to GSA Advantage!

With respect to determining if potential overcharges occurred, and taking action to recover any such overcharges, FAS will certainly pursue an appropriate course of action if provided the specific contract number. FAS would also emphasize that this finding occurred on one of over 17,000 MAS contracts.

OIG Response:

We will need to see Management's plan concerning the Enterprise Acquisition Solutions project before we can provide an assessment and response.

We have provided the contract number to FAS.

**Internal Controls**

We performed a limited assessment of controls and provided recommendations to strengthen and improve the current practices as discussed in the Results of Review and Recommendations sections.

## **Appendices**

**REVIEW OF CONSISTENCY IN IMPLEMENTING  
POLICY ACROSS ACQUISITION CENTERS  
REPORT NUMBER A070118/Q/A/P09007**

**Appendix A – Schedules by Center with Fiscal Year 2007 Sales**

<b>OFFICE SUPPLIES AND ADMINISTRATIVE SERVICES: New York, NY (R2)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
67- Photographic Equipment – Cameras, Photographic Printers and Related Supplies and Services	\$47,084,509
69- Training Aids and Devices; Instructor-Led Training; Course Development; Test Administration	\$227,231,843
75- Office Products/Supplies and Services and New Products/Technology	\$592,562,560
76- Publication Media	\$117,878,985
738 X- Human Resources and EEO Services	\$177,424,885
81 I B- Shipping, Packaging & Packing Supplies- Bags, Sacks, Cartons, Crates, Packaging & Packing Bulk Material	\$95,026,106
<b>Office Supplies and Administrative Services Total FY07 Sales</b>	<b>\$1,257,208,888</b>
<b>CENTER FOR FACILITIES MAINTENANCE &amp; HARDWARE: Kansas City, MO (R6)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
03FAC- Facilities Maintenance and Management	\$151,601,674
51 V- Hardware SuperStore	\$627,490,404
<b>Center for Facilities Maintenance &amp; Hardware Total FY07 Sales</b>	<b>\$779,092,078</b>
<b>GREATER SOUTHWEST ACQUISITION CENTER: Ft. Worth, TX (R7)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
056- Buildings and Building Materials/Industrial Services and Supplies	\$453,469,002
073- Food Service, Hospitality, Cleaning Equipment and Supplies, Chemicals, and Services	\$202,926,727
084- Total Solutions for Law Enforcement, Security, Facility Mgmt Sys, Fire, Rescue, Special Purpose Clothing, Marine Craft and Emery/Disaster Response	\$2,235,166,476
541- Advertising & Integrated Marketing Solutions (AIMS)	\$520,347,488
736- Temporary Administrative and Professional Staffing Services (TAPS)	\$118,479,280
66- Scientific Equipment and ServiceS	\$712,149,485
<b>Greater Southwest Acquisition Center Total FY07 Sales</b>	<b>\$4,242,538,458</b>
<b>MANAGEMENT SERVICES CENTER: Auburn, WA (R10)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
871- Professional Engineering Services (PES)	\$2,723,097,843
874- Mission Oriented Business Integrated Services (MOBIS)	\$3,605,865,732
899- Environmental Services	\$340,940,371
00CORP- Consolidated Schedule	\$870,008,988
738 II- Language Services	\$145,200,871
874 V- Logistics Worldwide (LOGWORLD)	\$647,055,674
<b>Management Services Center Total FY07 Sales</b>	<b>\$8,332,169,479</b>
<b>CENTER FOR SERVICES ACQUISITION: Washington, DC (R11)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
520- Financial and Business Solutions (FABS)	\$971,962,386
<b>Center for Services Acquisition Total FY07 Sales</b>	<b>\$971,962,386</b>
<b>INFORMATION TECHNOLOGY CENTER: Washington, DC (R11)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
70- General Purpose Commercial Information Technology Equipment, Software, and Services	\$16,416,289,465
<b>Information Technology Center Total FY07 Sales</b>	<b>\$16,416,289,465</b>

<b>NATIONAL FURNITURE CENTER: Washington, DC (R11)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
36- The Office, Imaging and Document Solutions- Office Equipment Products and Services, and Document Management Products and Services	\$911,243,071
78- Sports, Promotional, Outdoor, Recreational, Trophies, and Signs (SPORTS)	\$307,444,261
58 I- Professional Audio/Video, Telecommunications, and security Solutions	\$183,382,678
71 I- Office Furniture	\$891,358,237
71 II- Household and Quarters Furniture	\$96,162,034
71 II H- Packaged Furniture	\$91,107,974
71 II K- Comprehensive Furniture Management Services	\$35,213,866
71 III- Special Use Furniture- Library, Hospital, Mailroom, Preschool and classroom, Cafeteria, and Industrial	\$121,043,502
71 III E- Miscellaneous Furniture- Security Filing Cabinets, Safes, Vault Doors, map and Plan Files and Accessories, COMSEC Containers, and Special Access Control Containers	\$27,689,533
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)	\$47,880,463
72 II- Furnishings- Window Treatments, Wall Art, Artificial Plants, Lamps	\$20,099,909
<b>National Furniture Center Total FY07 Sales</b>	<b>\$2,732,625,528</b>
<b>GSA AUTOMOTIVE: Washington, DC (R11)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
751- Leasing of Automobiles and Light Trucks	\$7,668,410
23 V- Vehicular Multiple Award Schedule (VMAS)	\$131,573,478
26 I- Pneumatic Tires: New for Passenger Vehicles; New and Retread for Light Trucks, Medium Trucks, and Buses	\$13,115,504
<b>GSA Automotive Total FY07 Sales</b>	<b>\$152,357,392</b>
<b>OFFICE OF TRAVEL AND TRANSPORTATION SERVICES: Washington, DC (R11)</b>	
<b>Schedule</b>	<b>FY07 Sales</b>
48- Transportation, Delivery and Relocation Solutions (TDRS)	\$648,047,047
599- Travel Services Solutions	\$272,669,168
<b>Office of Travel and Transportation Services Total FY07 Sales</b>	<b>\$920,716,215</b>
<b>Total FY07 Sales</b>	<b>\$35,804,959,889</b>

REVIEW OF CONSISTENCY IN IMPLEMENTING  
POLICY ACROSS ACQUISITION CENTERS  
REPORT NUMBER A070118/Q/A/P09007

Appendix B – EPA Clause GSAM 552.216-70

**552.216-70 Economic Price Adjustment—FSS Multiple Award Schedule Contracts.**

As prescribed in [516.203-4\(a\)](#), insert the following clause:

**ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

- a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.
- b) Contractors may request price increases under the following conditions:
  - 1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.
  - 2) Only three increases will be considered during the contract period.
  - 3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.
  - 4) At least 30 days elapse between requested increases.
- c) The aggregate of the increases in any contract unit price under this clause shall not exceed \* percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.
- d) The following material shall be submitted with the request for a price increase:
  - 1) A copy of the commercial catalog/pricelist showing the price increase and the effective date for commercial customers.
  - 2) 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.
  - 3) Documentation supporting the reasonableness of the price increase.



- e) The Government reserves the right to exercise one of the following options:  
(Amendment 2004-02) 552-13

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**552.216-71**

- (1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;
  - (2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,
  - (3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.
- (f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist has been mailed to the addressees previously furnished by the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of clause)

REVIEW OF CONSISTENCY IN IMPLEMENTING  
POLICY ACROSS ACQUISITION CENTERS  
REPORT NUMBER A070118/Q/A/P09007

Appendix C – EPA Clause I-FSS-969

**I-FSS-969 ECONOMIC PRICE ADJUSTMENT-FSS MULTIPLE AWARD  
SCHEDULE (JAN 2002)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

- a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.
- b) There are two types of economic price adjustments (EPAs) possible under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. Price adjustments may be effective on or after the first 12 months of the contract period on the following basis:
  - 1) Adjustments based on escalation rates negotiated prior to contract award. Normally, when escalation rates are negotiated, they result in a fixed price for the term of the contract. No separate contract modification will be provided when increases are based on negotiated escalation rates. Price increases will be effective on the 12-month anniversary date of the contract effective date, subject to paragraph (f), below.
  - 2) Adjustments based on an agreed-upon market indicator prior to award. The market indicator, as used in this clause, means the originally released public index, public survey or other public, based market indicator. The market indicator shall be the originally released index, survey or market indicator, not seasonally adjusted, published by the [to be negotiated], and made available at [to be identified]. Any price adjustment shall be based on the percentage change in the designated (i.e. indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e), below. If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g), below. The adjusted prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.
- c) Notwithstanding the two economic price adjustments discussed above, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions

in paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

- d) Conditions of Price change requests under paragraphs b(2) and c above.:
- 1) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of subparagraph (b)).
  - 2) Increases are requested before the last 60 days of the contract period, including options. (3) At least 30 days elapse between requested increases. (4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed \_\_\_\_\_ percent (\_\_\_%) of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.
- e) The following material shall be submitted with request for a price increase under paragraphs b(2) and c above:
- 1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.
  - 2) Commercial Sales Practice format, per contract clause 52.215-21 Alternate IV, demonstrating the relationship of the Contractor's commercial pricing practice to the adjusted pricing proposed or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.
  - 3) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.
- f) The Government reserves the right to exercise one of the following options:
- 1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;
  - 2) Negotiate more favorable prices when the total increase requested is not supported; or,
  - 3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.
- g) Effective Date of Increases: No price increase shall be effective until the Government receives the electronic file updates pursuant to GSAR 552.243-72, Modifications (Multiple Award Schedule).

- h) All MAS contracts remain subject to contract clauses GSAR 552.238-75, "Price Reductions"; and 552.215-72, "Price Adjustment -- Failure to Provide Accurate Information." In the event the application of an economic price adjustment results in a price less favorable to the Government than the price relationship established during negotiation between the MAS price and the price to the designated customer, the Government will maintain the price relationship to the designated customer.

REVIEW OF CONSISTENCY IN IMPLEMENTING  
POLICY ACROSS ACQUISITION CENTERS  
REPORT NUMBER A070118/Q/A/P09007

Appendix D – Price Reduction Clause GSAM 552.238-75

**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)

REVIEW OF CONSISTENCY IN IMPLEMENTING  
POLICY ACROSS ACQUISITION CENTERS  
REPORT NUMBER A070118/Q/A/P09007

Appendix E – Management Comments



GSA Federal Acquisition Service

SEP 29 2009

MEMORANDUM FOR KENNETH L. CROMPTON  
DEPUTY ASSISTANT INSPECTOR GENERAL  
FOR ACQUISITION AUDITS (JA-A)

FROM:

*James A. Williams*  
JAMES A. WILLIAMS  
COMMISSIONER  
FEDERAL ACQUISITION SERVICE (Q)

SUBJECT:

GSA Draft Report, "Consistency in Implementing Policy  
Across Acquisition Centers" (A070118)

We have reviewed the subject draft report and appreciate the opportunity to comment. We partially agree with the findings and have detailed our level of concurrence with the recommendations in the attachment. As applicable, time-phased action plans are being developed to implement the report recommendations.

Please call me at (703) 605-5400 if you have any questions. Your staff may contact Wayne Williams at (703) 605-2177 or [Wayne.Williams@gsa.gov](mailto:Wayne.Williams@gsa.gov).

Attachment

cc: James Keegan (JA-A)

U.S. General Services Administration  
2200 Crystal Drive  
Arlington, VA 20406-0003  
[www.gsa.gov](http://www.gsa.gov)

**Federal Acquisition Service Comments on the OIG Draft Report: “Review of Consistency in Implementing Policy Across Acquisition Centers”  
(A070118)**

General Comments:

The scope and resultant recommendations of this audit strayed from a review of policy implementation on a programmatic level to largely cost and pricing data verification requirements and Acquisition Center specific pricing methodologies. As with two other Multiple Award Schedule (MAS) program audits completed by the Office of the Inspector General this year, “Review of Program Performance Measurement for Procurement” and “Review of Multiple Award Schedule Program Contract Workload Management”, the results did not provide input and recommendations for the intended scopes and thereby fell short of providing the Federal Acquisition Service (FAS) with valuable input for potential improvements.

The methodology does not address what types of contracts were reviewed, (i.e. professional services, products), the dollar value of the contracts that were reviewed, nor how the contracts for review were chosen. Without this information it is difficult to put a context or to assess the validity of the findings and recommendations

The Background section states that, “The MAS Program is comprised of schedules that only allow fixed prices, which can involve a higher degree of risk over the contract.” In fact orders placed through schedules may be done as firm fixed price, time and material, or labor hour, as determined by the ordering activity.

The Background section also states, “The PR [Price Reduction] clause preserves favorable pricing relationships by allowing the government to claim a price reduction when a similar reduction occurs to the basis of award customer.” To clarify, the PR clause maintaining the pricing relationship is triggered at the contract level. The Federal Acquisition Regulation (FAR), specifically FAR Subpart 8.405, directs the ordering activity to make a best value determination in placing an order. The ordering activity may seek a price reduction at the order level and per FAR Subpart 8.405, must seek a price reduction above the maximum order threshold. The ordering contracting officer’s (CO) best value determination based on the specifics of the statement of work and/or requirements as well as the ability to seek discounts are the Government’s best leverage for overall cost savings.

The negotiation strategies for MAS contracts are set forth in GSAM 538.270 which 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.” The clause directs the



CO to compare the terms and conditions of sale as well as other key factors which may influence a determination of fair and reasonable pricing.

Given that a MAS contract is not a requirements contract, the CO makes a determination of fair and reasonable pricing based on commercial practices, market research and the terms and conditions of the contract. The ordering activities are best able to leverage the Government's buying power with a determination of best value for a specific scope and need. They can further leverage aggregate volume demand and further competition by establishing multiple Blanket Purchasing Agreements. GSA provides other solutions based off of the MAS Program that further leverage the Government's aggregate buying power at the order level such as Federal Strategic Sourcing Initiative, SmartBuy, and the Global Supply program.

The audit spends an undue length of time discussing a pricing tool utilized by one Acquisition Center. It is noted in the audit report that based on meetings with the auditors the Center made improvements to the tool.

We recognize that controls and consistency are critical, but note that in many circumstances different tools may be necessary to suit different industries and economies, and many of these tools are within the discretion of the CO in order to arrive at a fair and reasonable pricing determination. Therefore, it is very appropriate that in some instances COs and Acquisition Centers choose a varying selection of indices and analysis tools.

### **Comments on Specific Recommendations**

#### Recommendation No. 1:

*Develop and implement policy and training for acquisition personnel including:*

*a) MFC pricing determination that employs methodologies commensurate with the value and risk of the acquisition.*

Partially agree. FAS agrees that further policy guidance and training on conducting price analysis and implementing negotiation strategies and techniques are needed. However, the CO is ultimately responsible for making a fair and reasonable pricing determination. Furthermore, 15.402 Pricing policy (a) directs COs to not obtain more information than is necessary to make a fair and reasonable pricing determination, which often varies depending on the circumstances; therefore, requests for additional information is often within the COs discretion. Moreover, training for the MAS acquisition workforce should include, not only the award of MAS base contracts, but the award of task orders and Blanket Purchase Agreements under the contracts. The MAS Program Office (MAS PO) will begin developing training content in fiscal year 2010.

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FAS agrees. The MAS PO will issue guidance on this topic.

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*Fully implement FSS Acquisition Letter FX-03-1, updated through Supplement No. 3, dated February 18, 2005, ensuring these responsibilities*

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*Develop and implement controls to ensure the accuracy of contract information published on GSA Advantage such as approved Special Item Numbers (SINs), authorized pricing, etc. Determine if potential overcharges discussed in finding occurred and if so, institute actions to recover funds.*

Partially agree. The FAS CIO is heading up the Enterprise Acquisition Solutions long-term project. As part of the project, a set of standardized formatted pricelists are in development and will be implemented for MAS for both offers and contract modifications. These formatted pricelists will guard against erroneous and misleading uploads to *GSA Advantage!*

With respect to determining if potential overcharges occurred, and taking action to recover any such overcharges, FAS will certainly pursue an appropriate course of action if provided the specific contract number. FAS would also emphasize that this finding occurred on one of over 17,000 MAS contracts.

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Appendix F – OIG Response to Management Comments

Management provided comments to the draft report under the headings, “General Comments” and “Comments on Specific Recommendations”. This appendix addresses the Management General Comments. Our responses to Management Comments on Specific Recommendations are in the body of the report following each recommendation.

Management General Comment:

The scope and resultant recommendations of this audit strayed from a review of policy implementation on a programmatic level to largely cost and pricing data verification requirements and Acquisition Center specific pricing methodologies. As with two other Multiple Award Schedule (MAS) program audits completed by the Office of the Inspector General this year, “Review of Program Performance Measurement for Procurement” and “Review of Multiple Award Schedule Program Contract Workload Management”, the results did not provide input and recommendations for the intended scopes and thereby fell short of providing the Federal Acquisition Service (FAS) with valuable input for potential improvements.

OIG Response:

Our review was concerned with consistency in implementing national procurement policy and guidance across the Acquisition Centers as stated in the Objectives, Scope, and Methodology section of this report. As policy implementation on a programmatic level encompasses a broad spectrum of issues and concerns, we consulted with FAS to obtain the priorities of the Acquisition Center Directors. After learning that the top priorities of the Center Directors included pricing and economic price adjustment, we narrowed our scope to include these areas. This scope was communicated to all Centers during our Entrance Conferences as well as to Management.

Management General Comment:

The methodology does not address what types of contracts were reviewed, (i.e.

professional services, products), the dollar value of the contracts that were reviewed, nor how the contracts for review were chosen. Without this information it is difficult to put a context or to assess the validity of the findings and recommendations

OIG Response:

We have modified the Methodology section of the report to better indicate the types of contracts reviewed. However, the narrative within the body of the report provides the needed context, and the audit recommendations are structured in such a manner as to both identify the basic operating principles involved and to allow Management adequate flexibility to address them.

For example, Recommendation No. 1 states in part: “Develop and implement policy and training for acquisition personnel including:

a) MFC pricing determination that employs methodologies commensurate with the value and risk of the acquisition.”

In the case of this recommendation, the type of contract is not of overriding concern as the GSAR requirement that the government seek to obtain the offeror’s best price (the best price given to the MFC) is not contingent on contract type, dollar value, etc. Even so, the consideration of contract value is embedded in this recommendation’s statement that methodologies employed should be commensurate with the value and risk of the acquisition.

Recommendation No. 2, “Assess the viability of developing or establishing resources at the national level to support COs in all the Centers by providing cost/price analyses and support, particularly in the area of professional services” clearly identifies professional services contracts as an area of priority. However, as in the case of Recommendation No. 1, the concept of providing cost/price analyses and support at the national level to the COs transcends whether the contract is for commodities, services, or a mixture of the two.

Recommendations No. 3, “Fully implement FSS Acquisition Letter FX-03-1” and No. 4, “Develop and Implement controls to ensure the accuracy of contract information published on GSA Advantage”, are also not contingent on contract type. In the case of Recommendation No. 3, the threshold value of the applicable contracts is included this Acquisition Letter’s instructions.

Management General Comment:

The Background section states that, “The MAS Program is comprised of schedules that only allow fixed prices, which can involve a higher degree of risk over the

contract.” In fact orders placed through schedules may done as firm fixed price, time and material, or labor hour, as determined by the ordering activity.

OIG Response:

The information Management quoted in this sentence was obtained from Procurement Information Bulletin (PIB) 00-10 entitled “Fair and Reasonable Prices and the MAS Pricing Policy” which states:

Schedules only allow fixed prices. Fixed prices place a higher degree of risk on a contractor. In addition to issues of comparisons with cost based contracts, you should also consider the impact on the economic price adjustment provisions. The longer a contractor is obligated to hold their prices, the greater the cost risk.

While we agree that orders placed through schedules may awarded as firm fixed price, time and material, or labor hour, as determined by the ordering activity, the prices negotiated for the contract (i.e. a wage rate for a labor category or a commodity unit price) are fixed and as such embody the risk discussed in this PIB. The MAS Economic Price Adjustment (EPA) clause and the Price Reduction (PR) clause serve to mitigate this risk and protect the government’s and contractors’ interests over the period of the MAS contracts.

Management General Comment:

The Background section also states, “The PR [Price Reduction] clause preserves favorable pricing relationships by allowing the government to claim a price reduction when a similar reduction occurs to the basis of award customer.” To clarify, the PR clause maintaining the pricing relationship is triggered at the contract level. The Federal Acquisition Regulation (FAR), specifically FAR Subpart 8.405, directs the ordering activity to make a best value determination in placing an order. The ordering activity may seek a price reduction at the order level and per FAR Subpart 8.405, must seek a price reduction above the maximum order threshold. The ordering contracting officer’s (CO) best value determination based on the specifics of the statement of work and/or requirements as well as the ability to seek discounts are the Government’s best leverage for overall cost savings.

OIG Response:

We agree that the Price Reduction (PR) clause is triggered at the contract level. We also agree that the FAR directs the ordering activity to make a best value determination and seek discounts when placing an order; however, Management’s best value and discount discussion included here is not relevant to the PR clause.

The PR clause states that before the award of a contract, the Contracting Officer (CO) and the Offeror will agree upon the customer or category of customers which will be the basis of award, and the Government’s price or discount relationship to

this customer or category of customers. This relationship must be maintained throughout the contract period. Simply put, if “Customer A” is identified as the basis-of-award (BOA) customer and the government negotiates a 5% discount relationship from the price the Offeror charges “Customer A”, any future price concessions the Offeror makes to “Customer A” must also be passed on to the government so that the government’s price is always 5% less than “Customer A”.

Any change in the Contractor’s commercial pricing or discount arrangement with the identified BOA customer which disturbs the negotiated relationship shall constitute a price reduction. A price reduction shall apply to purchases under the MAS contract if, after the date negotiations conclude, the Contractor revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices, grant more favorable discounts, etc. The Contractor is required to offer the price reduction to the government with the same effective date, and for the same time period, as extended to the identified BOA customer. The PR clause provides an essential element of protection for negotiated government pricing.

Management General Comment:

The negotiation strategies for MAS contracts are set forth in GSAM 538.270 which 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.” The clause directs the CO to compare the terms and conditions of sale as well as other key factors which may influence a determination of fair and reasonable pricing. Given that a MAS contract is not a requirements contract, the CO makes a determination of fair and reasonable pricing based on commercial practices, market research and the terms and conditions of the contract.

OIG Response:

We concur. However, it should be noted that MFC pricing and fair and reasonable pricing can be two very different amounts. Fair and reasonable pricing is the required threshold while MFC pricing is the desired target.

Management General Comment:

The ordering activities are best able to leverage the Government’s buying power with a determination of best value for a specific scope and need. They can further leverage aggregate volume demand and further competition by establishing multiple Blanket Purchasing Agreements. GSA provides other solutions based off of the

MAS Program that further leverage the Government's aggregate buying power at the order level such as Federal Strategic Sourcing Initiative, SmartBuy, and the Global Supply program.

OIG Response:

We agree that GSA provides a number of innovative solutions based on the MAS program and that ordering activities may be able to leverage volume demand via Blanket Purchasing Agreements (BPAs). However, the statement that ordering agencies are best able to leverage the Government's buying power with a determination of best value for a specific scope and need underscores a fundamental difference in the understanding of MAS program operating principles between the OIG and FAS.

The MAS program is designed to be a government wide program. The leverage of the government's purchasing power should be utilized during contract negotiation to obtain prices that all ordering activities can gain maximum benefit from, not only those with sizeable requirements. Best value determinations should be made at the order level by ordering activities by assessing the solutions offered by contractors without the need for additional price negotiation unless orders exceed the Maximum Order Threshold (MOT). The MOT negotiated in the MAS contract mandates the seeking of additional discounts for these large volume orders.

PIB 00-10 entitled "Fair and Reasonable Prices and the MAS Pricing Policy" which provides guidance to COs states:

The fact that agencies can ask for additional discounts should not impact your tolerance for high prices. It is erroneous to allow prices higher based on the theory that agencies will negotiate better prices on individual orders. Equally false is the argument that the vendors, unknown to us, are actually offering better prices, therefore; a higher contract price is OK . . . If MAS contract prices can be routinely undercut, then FSS is not using the total volume of Government buying to achieve better prices for our customers. Taking advantage of the total volume of Government demand is the statutory justification for FSS and the schedules program.

Management General Comment:

The audit spends an undue length of time discussing a pricing tool utilized by one Acquisition Center. It is noted in the audit report that based on meetings with the auditors the Center made improvements to the tool.

OIG Response:

While the center has made improvements to the tool, the calculation used by the pricing tool to compute "weighted price" is still not a valid methodology, a requirement for price comparison under the FAR. Therefore, this tool is not adequate



to establish negotiation objectives and make the FAR-required determinations that prices are fair and reasonable.

Management General Comment:

We recognize that controls and consistency are critical, but note that in many circumstances different tools may be necessary to suit different industries and economies, and many of these tools are within the discretion of the CO in order to arrive at a fair and reasonable pricing determination. Therefore, it is very appropriate that in some instances COs and Acquisition Centers choose a varying selection of indices and analysis tools.

OIG Response:

We agree that different tools may be necessary and that many of these tools are within the discretion of the CO. However, we believe that the audit recommendations are structured in such a manner as to allow Management adequate flexibility to address them as business operations dictate.

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