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FAS Cannot Provide Assurance That MAS Contract Pricing Results in Orders Achieving the Lowest Overall Cost Alternative

Report Number A200975/Q/3/P22002
September 30, 2022

Executive Summary

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Why We Performed This Audit

We performed this audit of the Federal Acquisition Service's (FAS) Multiple Award Schedule (MAS) program due to concerns about how its contracting personnel are performing price analyses for MAS contract awards and option extensions. Our objective was to determine whether FAS's contracting personnel are negotiating and awarding MAS contracts and option extensions in accordance with the intent of the MAS program, federal regulations, and FAS policy.

What We Found

According to the Competition in Contracting Act of 1984 (CICA), the procedures established under the MAS program are competitive as long as MAS orders and contracts result in the lowest overall cost alternative to meet the government's needs. However, after examining 20 recent MAS contract and option awards, we found that price analyses performed by FAS contracting personnel cannot provide customer agencies with assurance that orders placed against MAS contracts will result in the lowest overall cost alternative.

Our audit analyzed the pricing methodologies FAS used on MAS contracts that participate in the Transactional Data Reporting (TDR) pilot, as well as contracts that required Commercial Sales Practices (CSP) disclosures, and found that the price analyses under both methodologies were deficient. When performing price analyses on TDR pilot contracts, FAS contracting personnel do not have access to TDR data that can be used for pricing decisions and as a result, they mainly compared proposed pricing to other MAS and government contracts. However, this approach does not provide customer agencies with assurance that FAS achieved pricing that reflects the offerors' best pricing and will result in the lowest overall cost alternative to meet the government's needs. In addition, when we met with FAS contracting personnel, 7 of the 11 we interviewed expressed concerns to us about the TDR pilot's value to the MAS program and concluded that, in their opinion, the TDR pilot should be canceled.

Meanwhile, when performing price analyses for contracts subject to the CSP requirement, FAS contracting personnel frequently accepted commercial pricing information from offerors that was unsupported, outdated, or that identified no comparable commercial sales. As a result, FAS cannot provide customer agencies with assurance that MAS contract pricing will result in the lowest overall cost alternative to meet the government's needs.

What We Recommend

We recommend that the FAS Commissioner:

1. Cancel the TDR pilot in accordance with FAS Policy and Procedures 2016-11, *Transactional Data Reporting – Federal Supply Schedule Program Implementation, Paragraph 8(G), Pilot Cancellation*. We recognize that FAS rejected recommendations made in *GSA’s Transactional Data Reporting Pilot Is Not Used to Affect Pricing Decisions*, Report Number A140143/Q/6/P21002, including that FAS develop and implement an exit strategy for the TDR pilot and transition participating contractors out of the TDR pilot. However, we continue to conclude that the TDR pilot should be canceled. After 6 years, the TDR pilot still has not resulted in a viable pricing methodology that ensures compliance with CICA’s requirement for orders to result in the lowest overall cost alternative to meet the government’s needs.
2. Inform customer agencies that they should perform separate and independent price determinations because relying on MAS contract pricing and following the ordering procedures in Federal Acquisition Regulation (FAR) 8.405, *Ordering procedures for Federal Supply Schedules*, may not ensure compliance with the CICA requirement that orders and contracts result in the lowest overall cost alternative. This should continue until the requirements and controls outlined in *Recommendation 3* are set in place to ensure compliance with CICA.
3. Establish requirements and controls to ensure that FAS contracting personnel adequately analyze CSP information: (1) to negotiate pricing consistent with CICA, FAR, and General Services Administration Acquisition Regulation 538.270-1, *Evaluation of offers without access to transactional data*; and (2) to clearly identify and support the determination of most favored customer pricing.
 - a. FAS should ensure that offerors provide its contracting personnel with detailed information about the sales volumes, terms and conditions of pricing agreements, and any additional transactional discounts or pricing terms offered to individual commercial customers that receive the best pricing for the products and services proposed for the MAS contract.
 - b. FAS should establish protocols that require offerors to submit other than certified cost or pricing data to support proposed pricing when offerors do not have comparable sales to customers outside of its MAS contract.
 - c. FAS should cancel FAS Policy and Procedures 2017-02, *Updated Procedures for Exercising the Option to Extend the Term of a Federal Supply Schedule Contract*, and develop and implement policy and procedures directing FAS’s contracting personnel to perform price analyses of CSP disclosures provided by the offeror for MAS contract option extensions.

4. Explore new pricing methodologies that can ensure that FAS's contracting personnel are able to leverage aggregate government buying power to negotiate and award MAS contracts that result in orders that reflect the lowest overall cost alternative to meet the needs of the government.

The FAS Commissioner disagreed with the conclusions in this report and three of the four recommendations. The FAS Commissioner's response included: (1) FAS's perceived success of the TDR pilot; (2) a narrative regarding the established procedures that ensure compliance with CICA; (3) pricing analyses FAS believes support the premise that MAS contracts meet their intended purpose; and (4) FAS's position that it does not need any additional information to analyze CSP disclosures.

Based on our review of the FAS Commissioner's response, our conclusions remain the same. Price analyses performed by FAS contracting personnel to evaluate pricing on MAS contracts under both the TDR pilot, as well as contracts that require CSP disclosures, are deficient. As a result, these approaches do not provide customer agencies with assurance that orders placed against MAS contracts will result in the lowest overall cost alternative. Accordingly, we urge the FAS Commissioner to: (1) reconsider our recommendations and (2) develop corrective actions addressing our finding.

GSA's written comments are included in their entirety in **Appendix B**.

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Introduction

We performed an audit of the Federal Acquisition Service's (FAS) Multiple Award Schedule (MAS) program to assess its practices for negotiating and awarding MAS contracts and option extensions.

Purpose

We performed this audit of FAS's MAS program due to concerns about how its contracting personnel are performing price analyses for MAS contract awards and option extensions.

Objective

Our objective was to determine whether FAS's contracting personnel are negotiating and awarding MAS contracts and option extensions in accordance with the intent of the MAS program, federal regulations, and FAS policy.

See **Appendix A** – Scope and Methodology for additional details.

Background

GSA's MAS contracts are long-term, government-wide contracts with commercial contractors that provide federal, state, and local government buyers access to more than 11 million commercial supplies (products) and services at volume discount pricing. Awarded contracts include pre-negotiated prices, delivery terms, warranties, and other terms and conditions intended to streamline the acquisition process. MAS contracts are indefinite-delivery, indefinite-quantity and are typically awarded with a 5-year base period and three 5-year option extensions, totaling 20 years.

The MAS program is authorized by two statutes: Title III of the Federal Property and Administrative Services Act of 1949; and Title 40, U.S.C. 501, *Services for Executive Agencies*. MAS program acquisitions are governed by the following documents:

- Federal Acquisition Regulation (FAR), which provides regulatory guidance;
- General Services Administration Acquisition Regulation (GSAR), which contains Agency acquisition policies and practices, contract clauses, solicitation provisions, and forms that control the relationship between GSA and contractors; and
- General Services Administration Acquisition Manual (GSAM), which contains the GSAR and non-regulatory agency acquisition guidance.

According to GSA's *Multiple Award Schedule Desk Reference*, the intent of the MAS program is to leverage the government's buying power to provide customer agencies with competitive, market-based pricing. The Competition in Contracting Act of 1984 (41 U.S.C. 152) (CICA) states

that procedures established under the MAS program are competitive as long as MAS orders and contracts result in the lowest overall cost alternative to meet the government's needs. In order to ensure MAS contracts met the competitive and lowest overall cost alternative requirements of CICA, GSA established in the GSAR that the government will seek to obtain the offeror's best price, or in other words, the best price given to the most favored customer (MFC).

GSA's negotiated pricing on MAS contracts is especially important because FAR 8.404(d), *Use of Federal Supply Schedules*, asserts that customer agencies can rely on GSA's price reasonableness determination to ensure orders result in the lowest overall cost alternative. Before awarding MAS contracts, GSA contracting officers must make a determination that the prices are fair and reasonable. Because GSA makes this determination for the contracts, FAR 8.404(d) allows customer agencies to rely on GSA's price reasonableness determination and releases customer agencies from their responsibility for making a separate determination of fair and reasonable pricing.

In addition, FAR 8.404(d) states that, "By placing an order against a schedule contract using the procedures in [FAR] 8.405, the ordering activity has concluded that the order represents the best value (as defined in FAR 2.101) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs." Therefore, when customer agencies place orders against MAS contracts and follow the ordering procedures in FAR 8.405, they are relying on GSA's price reasonableness determinations to ensure their order results in the lowest overall cost alternative for the government.

In order to meet the pricing objectives outlined under GSAR 538.270-1, *Evaluation of offers without access to transactional data*, FAS requires offerors to provide commercial pricing information to serve as a basis for contracting officers to negotiate and make pricing determinations. Specifically, offerors provide Commercial Sales Practices (CSP) disclosures to help the contracting officer identify an offeror's MFC pricing. Contracting officers are responsible for determining if the offeror's CSP disclosures are an adequate basis to identify and target MFC pricing in negotiations. FAS has established policy and guidance that outlines the contracting officer's responsibilities, such as Procurement Information Notice (PIN) 2012-04, *Verification of MFC Pricing*, which states the following:

The Competition in Contracting Act of 1984 requires that FSS [Federal Supply Schedule] 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 FSS contracts harness the Government's collective buying power and result in the best possible prices for customers and taxpayers. When you negotiate a Schedule contract, you represent an extensive customer base. Therefore, the offers you accept (to include the pricing you negotiate), should reflect the significant value the FSS Program provides to its vendors.

FAS also has policy and guidance in place to outline other information its contracting personnel can use to evaluate pricing when an offeror is unable to provide sufficient CSP information to make a pricing determination. One example is PIN 2012-05, *Use of Cost Analysis When Evaluating Federal Supply Schedule Offers*, which states the following:

When offerors submit proposals for a contract under the FSS Program, they are required to identify their Most Favored Customer (MFC) on the Commercial Sales Practices (CSP) disclosure and provide information regarding pricing and commercial practices. Some offerors also submit data other than certified cost or pricing 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 FSS Program.

The guidance referenced above from PINs 2012-04 and 2012-05 was consolidated and replaced by FAS Policy and Procedure (PAP) 2021-05, *Evaluation of FSS Program Pricing*, which was signed on September 27, 2021. There were no substantive changes between the guidance in the PINs to the guidance in the new FAS PAP as both the past and current policies state that other than certified cost or pricing data can supplement a CSP that does not contain significant commercial sales.

In addition, to assist its contracting personnel in evaluating pricing proposals, FAS developed automated pricing tools that compare proposed products and services to pricing already offered on active MAS contracts. There are two main pricing tools used by FAS's contracting personnel: the Contract-Awarded Labor Category (CALC) tool, which is used to evaluate services; and the Price Point Plus Portal tool (4P tool), which is used to evaluate products. The 4P tool also provides limited pricing information from other government contracts, such as NASA's Solution for Enterprise-Wide Procurement, the Defense Logistics Agency's FedMall, and any GSA or publicly available government-wide acquisition contracts. The 4P tool also has limited insight into commercial pricing through publicly available sources, such as www.amazon.com and www.bestbuy.com.

Prior to June 23, 2016, all MAS offerors were required to submit CSP disclosures and identify their MFCs, while contracting officers were required to seek to obtain MFC pricing in negotiations.

Transactional Data Reporting Rule

On June 23, 2016, GSA published a final rule in the Federal Register establishing Transactional Data Reporting (TDR) for purchases made using select GSA contracting vehicles, including those in the MAS program.¹ According to GSA's commentary accompanying its final TDR rule, "The

¹ The Federal Register is published every business day by the National Archives and Records Administration and includes federal agency regulations, executive orders, and proposed rules and notices of interest to the public.

purpose of the Transactional Data Reporting rule is to transform price disclosure and related policies for GSA's Federal Supply Schedule ... in order to improve the value taxpayers receive when purchases are made using these vehicles." More specifically, GSA's commentary published in the Federal Register stated:

Transactional Data Reporting is an attempt to embrace modern technology while moving away from outmoded practices. When first introduced in the 1980s, the CSP and PRC [Price Reductions Clause] helped GSA and its customer agencies maintain advantageous pricing from original equipment manufacturers that held the vast majority of FSS contracts. However, changes in what the Government buys and shifts in the federal marketplace have eroded the effectiveness of these tools over time. Additionally, vendors repeatedly single out these pricing tools as among the most complicated and burdensome requirements in federal contracting.

In August 2016, FAS launched a 3-year TDR pilot intended to allow GSA to test and evaluate the pilot's effectiveness and collect stakeholder feedback. Since then, FAS has extended and expanded the pilot. FAS currently plans to expand the TDR rule to all MAS contracts by November 1, 2022, effectively exiting the "pilot" phase. Under the TDR pilot, contractors are required to report transactional data on a monthly basis for sales made under their MAS contracts. Twelve data elements (e.g., price paid per unit, unit measure, and manufacturer name) must be included in the monthly reporting. Pursuant to the final TDR rule, GSA amended the GSAR to provide contracting officers with different requirements and evaluation methods to determine fair and reasonable pricing for offers with and without access to transactional data. The two revised GSAR clauses are as follows:

- GSAR 538.270-1, *Evaluation of offers without access to transactional data*, maintains the traditional method of evaluating pricing. Under this method, the offeror is required to submit CSP information that outlines the terms and conditions offered to its other commercial and government customers, including price and discount information. Contracting officers are required to use this information to seek to obtain the offeror's best price (referred to as the MFC price).
- GSAR 538.270-2, *Evaluation of offers with access to transactional data*, does not require offerors to provide CSP information. Instead, this GSAR clause establishes information that contracting officers shall use to establish negotiation objectives. The clause prioritizes the use of information that is readily available, including prices paid information (such as TDR data), contract-level pricing information from other MAS contracts and government-wide contract vehicles for same or similar items (such as GSA *Advantage!* or FAS pricing tools), and commercial data sources.

The transactional data reported monthly by MAS contractors was meant to be used by FAS's contracting personnel for price negotiations and as a basis to determine whether the prices offered are fair and reasonable for MAS contract awards and option extensions. The

transactional data provided by MAS contractors under the TDR rule does not include prices-paid data for commercial customers.

Prior OIG Comments and Reports Related to TDR and FAS Pricing Tools

We have issued formal comments and multiple reports that have all highlighted significant pricing concerns regarding the TDR pilot and the use of FAS pricing tools.

With regard to the TDR pilot, we formally commented on the proposed rule to GSA on May 4, 2015, and January 8, 2016. In particular, we questioned if prices resulting from price analyses based primarily upon government sales alone would satisfy the CICA requirement. Specifically, we stated the following:

The Competition in Contracting Act requires that the government obtain the lowest cost alternative to meet the government's needs. Under GSA's final rule, it will no longer be possible to ensure that the government receives the lowest cost as GSA contracting officers will not be able to obtain or analyze all pertinent commercial sales information. Without this assurance, GSA will be unable to fulfill its obligation to obtain pricing based on full and open competition in accordance with the Competition in Contracting Act.²

On June 24, 2021, we issued Report Number A140143/Q/6/P21002, *GSA's Transactional Data Reporting Pilot Is Not Used to Affect Pricing Decisions* (TDR audit report). The report found that the TDR data is inaccurate, unreliable, and FAS contracting personnel are not using the data to negotiate or make pricing determinations. Instead, the report found that FAS contracting personnel largely relied on pricing tools to analyze contract pricing, which does not leverage the collective buying power of the government and does not ensure that prices reflect the lowest overall cost alternative to meet the government's needs. Further, it found that most contracting personnel did not have access to TDR data, and many of those with access lacked a basic understanding of the data and did not know how to use it.

The TDR audit report recommended that FAS take immediate action to mitigate the risks of the TDR pilot by restricting additional offerors from opting into the TDR pilot and to restrict access to and use of TDR data. It also recommended that FAS develop an exit strategy from the TDR pilot and transition participating contractors out of the TDR pilot. FAS disagreed with these recommendations and, as previously stated, is currently working toward expanding the TDR rule to all MAS contracts by November 1, 2022.

On July 18, 2022, we issued Alert Memorandum Number A210081-2, *FAS is Planning to Expand the Transactional Data Reporting Rule Despite Ongoing Data Quality and Access Issues*. The purpose of this memo was to inform the FAS Commissioner that the plan to expand the TDR

² GSA Office of Inspector General's comments on Transactional Data Reporting: GSAR Case 2013-G504, January 8, 2016.

rule to the entire MAS program could place government agencies at risk of overpaying for products and services on MAS contracts because of ongoing TDR data quality and access issues.

With regard to FAS's pricing tools, on December 23, 2019, we issued Report Number A180068/Q/3/P20002, *FAS's Use of Pricing Tools Results in Insufficient Price Determinations*. The report found that FAS contracting officers used flawed methodologies and practices when performing analyses with the pricing tools. It also found that when the pricing tools are the sole or primary basis for evaluating pricing, FAS contracting officers are not leveraging the collective buying power of the government or providing assurance that prices reflect the lowest overall cost alternative to meet the government's needs. FAS agreed with the report findings and agreed that its pricing tools are to be used only as part of a larger negotiation strategy that seeks the lowest overall cost alternative to meet the needs of the federal government, as required by CICA.

In addition, on July 27, 2022, we issued Report Number A201045/Q/3/P22001, *FAS's Use of the 4P Tool on Contract and Option Awards Often Results in Noncompliant Price Determinations*. The report found that FAS contracting personnel used flawed methodologies and practices when performing analyses with the 4P tool. In doing so, FAS contracting personnel: (1) improperly relied on the 4P tool to establish price reasonableness without conducting additional price analysis; (2) awarded proposed pricing based on a 4P tool comparison to the current pricing on the same contract (self-hits); (3) awarded proposed pricing based on a 4P tool comparison to other government pricing, despite the 4P tool identifying better commercial pricing; and (4) awarded pricing that either exceeded the market thresholds established by the 4P tool or for which the tool found no market research comparisons, without any further justification or analysis. The report also found that FAS contracting personnel rely on the 4P tool despite its reliance on inaccurate pricing data that could skew price analysis results.

Results

Finding – FAS’s price analyses cannot provide customer agencies with assurance that orders placed against MAS contracts will result in the lowest overall cost alternative.

According to CICA, the procedures established under the MAS program are competitive as long as MAS orders and contracts result in the lowest overall cost alternative to meet the government’s needs. However, after examining 20 recent MAS contract and option awards, we found that price analyses performed by FAS contracting personnel cannot provide customer agencies with assurance that orders placed against MAS contracts will result in the lowest overall cost alternative.

Our audit analyzed the pricing methodologies FAS used on MAS contracts that participate in the TDR pilot, as well as contracts that required CSP disclosures, and found that the price analyses under both methodologies were deficient. When performing price analyses on TDR pilot contracts, FAS contracting personnel do not have access to TDR data that can be used for pricing decisions and as a result, they mainly compared proposed pricing to other MAS and government contracts. However, this approach does not provide customer agencies with assurance that FAS achieved pricing that reflects the offerors’ best pricing and will result in the lowest overall cost alternative to meet the government’s needs. In addition, when we met with FAS contracting personnel, 7 of the 11 we interviewed expressed concerns to us about the TDR pilot’s value to the MAS program and concluded that, in their opinion, the TDR pilot should be canceled.

Meanwhile, when performing price analyses for contracts subject to the CSP requirement, FAS contracting personnel frequently accepted commercial pricing information from offerors that was unsupported, outdated, or that identified no comparable commercial sales. As a result, FAS cannot provide customer agencies with assurance that MAS contract pricing will result in the lowest overall cost alternative to meet the government’s needs.

FAS Price Analyses of TDR Pilot Contracts Do Not Provide Assurance That Pricing Results in the Lowest Overall Cost Alternative

Contracts under the TDR pilot are subject to requirements outlined in GSAR 538.270-2, which establishes the information that contracting personnel should use in negotiating contract pricing. It includes prices-paid information (such as TDR data), contract-level pricing information from other MAS contracts and government-wide contract vehicles for same or similar items (such as GSA *Advantage!* or FAS pricing tools), and commercial data sources.

In addition, FAS PAP 2016-11, *Transactional Data Reporting—Federal Supply Schedule Program Implementation*, provides specific guidance on how FAS’s contracting personnel should evaluate pricing for MAS contracts subject to the TDR pilot:³

For TDR Pilot offers, COs [contracting officers] shall evaluate pricing in accordance with GSAM 538.270-2 *Evaluation of offers with access to transactional data*, which is summarized below. This means Schedule price evaluation will now be based primarily on utilizing horizontal price comparison techniques (**relative competitiveness of the vendor’s price to other vendors’ prices**) rather than the prior vertical price analysis (comparing a vendor’s prices to their most favored customer prices). [emphasis added]

This guidance directs FAS’s contracting personnel to rely on horizontal price comparison techniques (mainly comparisons to other contractors’ government pricing) to evaluate and negotiate pricing on MAS contracts, which FAS refers to as “relative competitiveness.” However, FAS PAP 2016-11 represents a major departure from the intent of the MAS program and CICA. CICA requires MAS contracts and orders to result in the lowest overall cost alternative to meet the government’s needs. To comply with this requirement under the MAS program, FAS created policy and guidance to target a contractor’s MFC pricing. While the TDR pilot removed the requirement for contracting personnel to evaluate a contractor’s MFC pricing, FAS never established how customer agencies could rely on FAS’s price analyses to comply with CICA’s lowest overall cost alternative requirement if MAS contract pricing did not represent contractors’ MFC pricing.

According to FAS contracting personnel, since TDR data is not available, they use pricing tools (such as CALC and 4P tool) to perform the required price analyses. However, in our recent audit reports, we identified concerns with reliance on FAS pricing tools to perform price analysis.⁴ Specifically, the reports found that when pricing tools are the sole or primary basis for evaluating pricing, FAS contracting officers are not leveraging the collective buying power of the government or providing assurance that orders placed against MAS contracts result in the lowest overall cost alternative to meet the government’s needs.

Subsequent to our December 2019 report on FAS’s pricing tools, FAS issued new policy and guidance requiring FAS contracting personnel to use templates to award contracts and modifications. The templates instruct contracting personnel that they should not rely solely on the pricing tools. Instead, the pricing tools should only be used as part of a larger negotiation strategy that seeks pricing that would result in orders achieving the lowest overall cost alternative to meet the needs of the federal government, as required by CICA. According to the templates mandated for use by FAS under FAS PAP 2020-02:

³ FAS PAP 2016-11 was issued on August 10, 2016, and revised on July 10, 2020.

⁴ *FAS’s Use of Pricing Tools Results in Insufficient Price Determinations* (Report Number A180068/Q/3/P20002) and *FAS’s Use of the 4P Tool on Contract and Option Awards Often Results in Noncompliant Price Determinations* (Report Number A201045/Q/3/P22001).

COs are reminded that pricing tools utilized to establish negotiation objectives or determine pricing fair and reasonable should be used as part of a larger evaluation process which seeks to obtain fair and reasonable pricing.... When CSP is not available (monthly reporting), horizontal pricing tools should be utilized in conjunction with all other available data to establish negotiation objectives which seek to achieve the best price/discount. Results from horizontal pricing tools should not be the only information relied upon to establish negotiation objectives or determine pricing fair and reasonable.

We sampled eight contracts under the TDR pilot with an estimated total value of \$2.5 billion and found that TDR data was not analyzed for any of the sampled contracts. Accordingly, FAS contracting personnel followed the guidance as outlined in FAS PAP 2016-11 and relied on the pricing tools to evaluate the relative competitiveness of the proposed pricing. This practice is not limited to our sample—our other reports have identified this same issue.

Specifically, our June 2021 TDR audit report also found that FAS contracting personnel did not use TDR data to evaluate pricing on MAS contracts under the TDR pilot because the TDR data was not available. Just like the eight TDR pilot contracts we sampled for this audit, the TDR data was not analyzed for any of the contracts included in the prior audit, resulting in FAS contracting personnel following the guidance in FAS PAP 2016-11 and relying on the pricing tools to evaluate the relative competitiveness of the proposed pricing. This approach does not result in pricing that reflects the offerors' best pricing and orders that result in the lowest overall cost alternative to meet the government's needs.

When FAS contracting personnel use pricing tools to perform price analyses, we found they accept high pricing after performing assessments of relative competitiveness. For example, our audit sample included a TDR contract for which a contracting officer researched the labor category title "Jr. Analyst/Specialist III" using the CALC pricing tool. In this example, the contracting officer awarded a proposed hourly rate of \$108.32 despite a CALC tool report generated by the contracting officer that found this rate was \$26.32, or 32 percent, greater than the average hourly rate based on price comparisons to 384 other MAS contracts. The contracting officer accepted this price, as well as all proposed pricing, by assessing all proposed labor rates collectively, rather than assessing the proposed labor rates individually. In particular, the contracting officer found the prices to be fair and reasonable because all proposed labor rates, assessed collectively, were 2.46 percent lower than the average in the CALC pricing tool.

On another contract, a contracting officer evaluated the labor category title "Quality Assurance Specialist" using the CALC pricing tool. In this example, the contracting officer awarded a proposed hourly rate of \$78.07 despite a CALC pricing tool report generated by the contracting officer finding that this rate was \$26.07, or 50 percent, greater than the average hourly rate based on price comparisons to four other MAS contracts. Again, the contracting officer accepted this price, as well as all proposed pricing, by assessing all proposed labor rates collectively, rather than assessing the proposed labor rates individually. In particular, the

contracting officer found the prices to be fair and reasonable because all proposed labor rates, assessed collectively, were 7.46 percent lower than the average in the CALC pricing tool.

As demonstrated by the examples above, negotiating pricing based solely on pricing tools does not provide any assurance that contracts awarded under the TDR pilot result in the offerors' best pricing and that orders placed by customer agencies against MAS contracts result in the lowest overall cost alternative.

As of March 16, 2021, 19 percent of all MAS contracts were operating under the TDR pilot; these contracts accounted for 34 percent (\$24 billion of \$71 billion) of total reported MAS program sales during the period October 1, 2018, through December 31, 2020.⁵ Despite concerns expressed in our prior audit reports, including that FAS's contracting personnel currently cannot use TDR data (prices-paid information) to evaluate MAS contract pricing, FAS intends to expand the TDR pilot, and has expanded it through its consolidation initiative. Specifically, if a contractor holds multiple MAS contracts and is now consolidating them to one contract, as long as one of the contracts is eligible for the TDR pilot, all products and services offered under all of the contracts become eligible for the TDR pilot when they are consolidated. This allows the TDR pilot to expand to products and services that were never intended to be included.

Although FAS intends to expand the TDR rule to all MAS contracts by November 1, 2022, not everyone within FAS is in favor of the expansion. Specifically, when we interviewed FAS's contracting personnel, 7 of 11 expressed concerns to us about the TDR pilot's value to the MAS program and concluded that, in their opinion, the TDR pilot should be canceled.

Furthermore, on July 18, 2022, we issued Alert Memorandum A210081-2, *FAS is Planning to Expand the Transactional Data Reporting Rule Despite Ongoing Data Quality and Access Issues*. This memo was issued to inform the FAS Commissioner of ongoing TDR data quality and access issues that remain unresolved and could place government agencies at risk of overpaying for products and services on MAS contracts.

Since the TDR pilot fails to ensure that pricing on MAS contracts results in the lowest overall cost alternative to meet the needs of the government, FAS should halt expansion of TDR and cancel the TDR pilot by following the cancellation procedures outlined in paragraph 8(G) of FAS PAP 2016-11.

FAS Performs Price Analyses of CSP Contracts Using Commercial Pricing Information That Was Unsupported, Outdated, or That Identified No Comparable Commercial Sales

GSAR 538.270-1 requires offerors to submit a CSP and outlines information FAS's contracting personnel should consider when evaluating MAS contract pricing and establishing negotiation

⁵ These figures are based on the universe of all active MAS contracts provided by FAS on March 16, 2021. We relied on the data provided by FAS to identify which contracts were subject to TDR.

objectives. Specifically, it directs them to establish negotiation objectives and determine price reasonableness by comparing the terms and conditions of the MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers. It further states that when making those comparisons, FAS contracting personnel should consider the aggregate volume of anticipated government purchases and commercial customer pricing, taking into account any combination of discounts and concessions.

Yet, based on our audit sample of 12 MAS contracts that required CSPs, we found that FAS contracting personnel did not adequately identify and seek out MFC pricing during their price analyses. For these 12 contracts, FAS estimated a total value of \$1.8 billion at the time of award. While FAS contracting personnel asserted that they targeted the MFC in negotiations, we found that they did not obtain pricing information needed to evaluate and negotiate pricing beyond the contractor's assertion that GSA receives its MFC pricing on the CSP. Instead of requiring additional commercial pricing information, FAS contracting personnel relied on pricing tools for comparisons to other MAS or government contracts to evaluate and negotiate MAS pricing.

Specifically, we found that FAS contracting personnel frequently accepted commercial pricing information with the following three deficiencies, without necessary follow-up or further evaluation:

- **Unsupported CSP information.** On 6 of the 12 contracts we sampled, FAS contracting personnel did not obtain sufficient information to support the offerors' CSP disclosures. Therefore, the evaluation and negotiation of the pricing for these contracts did not adhere to the methodology outlined in GSAR 538.270-1.

In most cases, offerors provided a sample of invoices to support their CSP. FAS contracting personnel accepted this documentation without ensuring that the invoices clearly demonstrated comparability to the CSP disclosures. FAS contracting personnel did not require additional information that would provide detail of historical sales or pricing practices. As a result, the primary basis to evaluate and negotiate pricing was a comparison to other MAS or government contracts, primarily from using one of FAS's pricing tools (CALC or 4P tool).

For example, on one of the sampled contracts, the CSP stated that its MFCs receive a discount of 10 percent. However, the invoice support provided by the offeror indicated discounts up to 29 percent from the commercial price list. In addition, the invoices did not clearly define the labor categories in a way that FAS contracting personnel could ensure comparability. Our review of the negotiation memorandum and contract file found that FAS contracting personnel did not request additional documents to clarify the invoice support. Instead, they accepted the CSP and used the FAS pricing tools to establish negotiation objectives and make pricing determinations. As a result, FAS contracting personnel awarded rates that could be at least 19 percent higher than those offered to commercial customers.

- **Outdated CSP information.** On 2 of the 12 contracts we sampled, we found that FAS contracting personnel did not obtain updated CSP information to evaluate option pricing because the offeror asserted that no changes occurred since its last contract period. FAS contracting personnel did not request any additional information, such as current invoices or agreements, to verify the offeror’s pricing practices remained the same. Instead, the pricing evaluation and negotiation on these options relied on comparisons to other MAS or government contracts, primarily from using one of FAS’s pricing tools (CALC or 4P tool).

While these practices are encouraged by a current FAS policy, they are inconsistent with past FAS guidance and the GSAR, and do not provide assurance that current pricing results in the lowest overall cost alternative. FAS PAP 2017-02, *Updated Procedures for Exercising the Option to Extend the Term of a Federal Supply Schedule (FSS) Contract*, states that as long as the contractor asserts that there have been no changes to the contractor’s CSP, FAS’s contracting personnel are not required to obtain and evaluate a CSP disclosure.⁶

However, this guidance is inconsistent and contradictory to the guidance in FAS Procurement Information Bulletin 04-8, [REDACTED]

[REDACTED]

Even if an offeror states that its sales practices have not changed, FAS should minimally obtain support for the offeror’s assertion. For example, FAS extended one of our sampled contracts in October 2020, based on an assertion that there were no changes from the offeror’s Calendar Year 2012 CSP. The offeror was not required to provide any support that its pricing practices remained the same. Therefore, the contracting officer relied on a CSP for Calendar Year 2012 and FAS’s pricing tools to evaluate and negotiate pricing for the option extension in October 2020. It is very likely that the contractor’s sales practices have changed over the 8-year period since the last CSP disclosure. This practice results in additional pricing risk and missed opportunities to negotiate better pricing.

- **CSP information identified no comparable commercial sales.** On 4 of the 12 contracts we sampled, the offerors’ CSP disclosed that there were no comparable commercial

⁶ FAS PAP 2017-02 was issued November 2, 2016, and was most recently revised on March 25, 2021.

⁷ This text cited a quotation from internal FAS guidance that is labeled “FOR OFFICIAL USE ONLY” and “Do Not Release Beyond FSS”; therefore it has been redacted from this report.

sales and FAS contracting personnel did not request any further information. Instead, they used one of FAS’s pricing tools (CALC or 4P tool) to evaluate pricing mainly based on comparisons to other MAS or government contracts. They did so despite FAS guidance, such as PIN 2012-05, that suggests its contracting personnel obtain other than certified cost or pricing information from offerors to evaluate proposed pricing in these situations. The following is the CSP disclosure for one of the four contracts.

Figure 1 – Example of CSP Information Indicating No Comparable Commercial Sales Discount as the Basis of CSP

Customer	Discount	Quantity or Volume	FOB Term	Concessions	Offer/ Contract
N/A	GSA receives the best pricing per originally awarded Base Contract	Per Hour	N/A	N/A	All

As seen above, the offeror did not provide any CSP information of any value to FAS contracting personnel. Therefore, other than certified cost or pricing data should have been required to evaluate the proposed pricing in accordance with FAS policy.

FAS contracting personnel told us that additional commercial pricing information is seldom requested because their workload and time-related constraints do not allow for a back-and-forth with offerors. Instead of obtaining additional information to support the CSP information, FAS contracting personnel developed negotiation objectives and pricing determinations based on pricing comparisons to other MAS and government contracts, mainly using FAS’s pricing tools. However, as discussed in relation to the contracts under TDR, reliance on comparisons to prices on other government contracts does not ensure pricing reflects MFC pricing. As a result, when customer agencies place orders against MAS contracts, they cannot rely on the pricing to ensure that they obtain the lowest overall cost alternative to meet the government’s needs.

Despite the deficiencies we found, CSP information and pricing evaluations based on MFC pricing can fulfill the intent of the MAS program. If used correctly, FAS contracting personnel can leverage the buying power of the government in negotiations and provide assurance that MAS pricing results in the lowest overall cost alternative. Therefore, FAS should focus efforts on improving the CSP and its use.

Customer Agencies Rely on FAS Price Reasonableness Determinations

The FAR allows customer agencies to rely on the price reasonableness determinations made by FAS contracting personnel so that they do not need to perform their own. According to FAR 8.404(d), since GSA has determined that the prices for supplies and hourly rates for services on MAS contracts are fair and reasonable, customer agencies are not required to make a separate determination of fair and reasonable pricing.

Simultaneously, FAR 8.404(d) states that customer agencies, by placing an order against an MAS contract, have concluded that their purchases result in the lowest overall cost alternative. In order for customer agencies to reach that conclusion, FAS has an obligation to ensure its price analyses and negotiations for MAS contracts will result in the offerors' best pricing. However, the price analyses and negotiation memorandums that we reviewed during this audit do not provide that level of assurance. Given the price analyses we reviewed, agencies should perform separate price determinations before placing orders on MAS contracts until proper procedures are set in place to ensure compliance with CICA.

Conclusion

According to CICA, the procedures established under the MAS program are competitive as long as MAS orders and contracts result in the lowest overall cost alternative to meet the government's needs. However, after examining 20 recent MAS contract and option awards, we found that price analyses performed by FAS contracting personnel cannot provide customer agencies with assurance that orders placed against MAS contracts will result in the lowest overall cost alternative.

Our audit analyzed the pricing methodologies FAS used on MAS contracts that participate in the TDR pilot, as well as contracts that required CSP disclosures, and found that the price analyses under both methodologies were deficient. When performing price analyses on TDR pilot contracts, FAS contracting personnel do not have access to TDR data that can be used for pricing decisions and as a result, they mainly compared proposed pricing to other MAS and government contracts. However, this approach does not provide customer agencies with assurance that FAS achieved pricing that reflects the offerors' best pricing and will result in the lowest overall cost alternative to meet the government's needs. In addition, when we met with FAS contracting personnel, 7 of the 11 we interviewed expressed concerns to us about the TDR pilot's value to the MAS program and concluded that, in their opinion, the TDR pilot should be canceled.

Meanwhile, when performing price analyses for contracts subject to the CSP requirement, FAS contracting personnel frequently accepted commercial pricing information from offerors that was unsupported, outdated, or that identified no comparable commercial sales. As a result, FAS cannot provide customer agencies with assurance that MAS contract pricing will result in the lowest overall cost alternative to meet the government's needs.

Recommendations

We recommend that the FAS Commissioner:

1. Cancel the TDR pilot in accordance with FAS Policy and Procedures 2016-11, *Transactional Data Reporting – Federal Supply Schedule Program Implementation, Paragraph 8(G), Pilot Cancellation*. We recognize that FAS rejected recommendations made in *GSA's Transactional Data Reporting Pilot Is Not Used to Affect Pricing Decisions*, Report Number A140143/Q/6/P21002, including that FAS develop and implement an exit strategy for the TDR pilot and transition participating contractors out of the TDR pilot. However, we continue to conclude that the TDR pilot should be canceled. After 6 years, the TDR pilot still has not resulted in a viable pricing methodology that ensures compliance with CICA's requirement for orders to result in the lowest overall cost alternative to meet the government's needs.

2. Inform customer agencies that they should perform separate and independent price determinations because relying on MAS contract pricing and following the ordering procedures in FAR 8.405, *Ordering procedures for Federal Supply Schedules*, may not ensure compliance with the CICA requirement that orders and contracts result in the lowest overall cost alternative. This should continue until the requirements and controls outlined in *Recommendation 3* are set in place to ensure compliance with CICA.
3. Establish requirements and controls to ensure that FAS contracting personnel adequately analyze CSP information: (1) to negotiate pricing consistent with CICA, FAR, and GSAR 538.270-1, *Evaluation of offers without access to transactional data*; and (2) to clearly identify and support the determination of most favored customer pricing.
 - a. FAS should ensure that offerors provide its contracting personnel with detailed information about the sales volumes, terms and conditions of pricing agreements, and any additional transactional discounts or pricing terms offered to individual commercial customers that receive the best pricing for the products and services proposed for the MAS contract.
 - b. FAS should establish protocols that require offerors to submit other than certified cost or pricing data to support proposed pricing when offerors do not have comparable sales to customers outside of its MAS contract.
 - c. FAS should cancel FAS Policy and Procedures 2017-02, *Updated Procedures for Exercising the Option to Extend the Term of a Federal Supply Schedule Contract*, and develop and implement policy and procedures directing FAS's contracting personnel to perform price analyses of CSP disclosures provided by the offeror for MAS contract option extensions.
4. Explore new pricing methodologies that can ensure that FAS's contracting personnel are able to leverage aggregate government buying power to negotiate and award MAS contracts that result in orders that reflect the lowest overall cost alternative to meet the needs of the government.

GSA Comments

The FAS Commissioner disagreed with the conclusions in this report and three of the four recommendations, and stated that "FAS believes that the MAS Program follows competitive procedures necessary to establish fair and reasonable contract pricing, and orders placed against MAS contracts using the procedures at FAR 8.405 are best value and result in the lowest overall cost alternative to meet the Government's needs." GSA's written comments are included in their entirety in **Appendix B**.

OIG Response

Based on our review of the FAS Commissioner's response, our conclusions remain the same. Price methodologies performed by FAS contracting personnel to evaluate pricing on MAS contracts under both the TDR pilot, as well as contracts that require CSP disclosures, are deficient. As a result, these approaches do not provide customer agencies with assurance that orders placed against MAS contracts will result in the lowest overall cost alternative. Accordingly, we urge the FAS Commissioner to: (1) reconsider our recommendations and (2) develop corrective actions addressing our finding.

In GSA's comments, the FAS Commissioner disagreed with the conclusions in this report as well as three of the four recommendations. The FAS Commissioner's response included: (1) FAS's perceived success of the TDR pilot; (2) a narrative regarding the established procedures that ensure compliance with CICA; (3) pricing analyses FAS believes support the premise that MAS contracts meet their intended purpose; and (4) FAS's position that it does not need any additional information to analyze CSP disclosures. We examine those comments below:

Perceived TDR pilot success. The FAS Commissioner cites an internal FAS analysis of nine performance metrics over 3 years, from which GSA concluded that TDR creates a more effective, less burdensome alternative to legacy pricing disclosure requirements. However, this analysis and conclusions are misleading because they do not take into account the key fact that in the 6 years since the TDR pilot began, FAS contracting personnel have not used TDR data to analyze proposed pricing. FAS contracting personnel freely admit this fact, which we reported in this and every other audit report we have issued regarding TDR pilot contracts. TDR cannot be considered an effective alternative to the CSP and the Price Reductions Clause when it: (1) does not identify the pricing contractors offer their most favored commercial customers; (2) does not provide assurance that the government receives the contractors' MFC pricing over the life of the contract; and (3) is never used in pricing negotiations.

The FAS Commissioner also stated that TDR data benefits the government by allowing it to analyze consumption patterns, reduce price variation, implement dynamic pricing models, conduct horizontal pricing analyses, and track procurement data and trends necessary to comply with emerging policy. However, this is also misleading because most of the TDR data reported is unusable for price analyses. In our July 2022 alert memorandum, we reported that FAS found 64 percent, or \$1.6 billion, of reported TDR product sales in Fiscal Year 2022 were unusable because the part numbers and product information did not match the contractors' price lists. These figures have only grown since our alert memo as currently 66 percent, or \$2.7 billion, in reported TDR product sales in Fiscal Year 2022 are unusable. These figures do not even take into account that TDR data for professional services is almost completely unusable and consequently, FAS never included services sales under TDR in the GSA evaluations that the FAS Commissioner is using to support the success of the TDR pilot.

FAS's responsibility for CICA compliance. In response to our report, the FAS Commissioner stated that following established FAR and GSAR procedures allows FAS to provide assurance

that the MAS program fully complies with CICA requirements. We agree that these procedures, if followed, would result in contracts and orders that reflect the lowest overall cost alternative; however, as evidenced in the report, FAS cannot demonstrate that it is completing one of the key procedures for which it is responsible. In particular, in order to be compliant with CICA, FAS contracting personnel must leverage the government's buying power and seek contractors' best prices. As this report clearly concludes, FAS cannot provide assurance that it has leveraged the government's buying power, sought contractors' best prices, and that MAS contracts and orders result in the lowest overall cost alternative.

Furthermore, the FAS Commissioner's response does not sufficiently address FAS's responsibility to ensure compliance with CICA. This is concerning because customer agencies rely on the price reasonableness determinations made by FAS contracting personnel so that they do not need to perform their own. Prior to the TDR pilot, the MAS program required a CSP on all contracts in order to leverage the government's collective buying power. The CSP was established as the mechanism by which FAS could seek the offeror's best price. Customer agencies do not have the access or ability to obtain CSP information to leverage the government's buying power and must rely on FAS to perform this function at the contract level. In other words, the pricing established on MAS contracts should not rely on the fact that customer agencies may negotiate better pricing at the order level.

Supporting pricing analyses. The FAS Commissioner cited several analyses that he believes support that the MAS program offers more favorable pricing than the commercial market and other comparable government acquisition vehicles. However, these analyses do not fully support FAS's assertions about the pricing on its MAS contracts and do not address the fundamental issue that price analyses performed by FAS contracting personnel cannot provide assurance that pricing on MAS contracts and orders result in the lowest overall cost alternative to meet the government's needs.

The pricing analyses cited in the FAS Commissioner's response do not fully support FAS's assertions about the pricing on its MAS contract due to flaws in the comparisons:

- The first comparison cited by FAS is flawed. It compared transactional data reported under the TDR pilot to the median list price of other contract vehicles or commercial marketplaces, not necessarily the lowest price found or a price that was actually paid. As a result, the comparisons used in this study do not show that MAS contracts are meeting their intended purpose.
- The second comparison cited by FAS does not support whether MAS contract pricing is more favorable than other government acquisition vehicles and the commercial market because it only compares TDR MAS contract pricing to non-TDR/CSP MAS contract pricing. In addition, as discussed in this report, price analyses using both TDR and CSP used the same flawed analysis techniques and were deficient. Therefore, any conclusions based on this analysis would be irrelevant.

- Finally, the 2017 *Amazon Business and GSA Advantage: A Comparative Analysis* study conducted by students at the Naval Postgraduate School does not support FAS’s assertions about pricing. The study analyzed 60 items on Amazon Business and *GSA Advantage!* to assess the benefits and limitations of each platform for government purchase card holders. While the study found that, in some cases, *GSA Advantage!* pricing was better than Amazon Business, the study did not recommend using *GSA Advantage!* due to minimum order requirements and instead found that Amazon Business was a viable option for purchases below the micro-purchase threshold, currently at \$10,000.⁸

Further, the MAS program was established to leverage the buying power of the entire federal government and seek to obtain the best price the contractor offers to its other customers. Comparing transaction level TDR pilot data to list and ceiling prices of other government contract vehicles that do not have the same intent as MAS is misleading. Likewise, comparing transaction level TDR pilot data to commercial pricing that is available to individuals or businesses, without any consideration of their purchasing power, does not support that FAS contracting personnel are leveraging the government’s buying power and seeking the best price at the contract level.

Information necessary for CSP analysis. The FAS Commissioner states that FAS already has appropriate requirements and controls to adequately analyze CSP information and comply with applicable regulations. In particular, the FAS Commissioner stated that, “Contracting Officers should not request more information than is necessary to establish a fair and reasonable price.” However, because we found that FAS contracting personnel frequently accepted commercial pricing based on unsupported, outdated, and non-comparable commercial pricing information, it is clear that existing requirements and controls to ensure that FAS contracting personnel analyze CSP information and comply with applicable regulations are not adequate.

In sum, the pricing methodologies used by FAS contracting personnel to evaluate pricing on MAS contracts do not provide customer agencies with assurance that orders placed against MAS contracts result in the lowest overall cost to meet their needs. Therefore, we reaffirm our finding and recommendations presented in this report.

Audit Team

This audit was managed out of the Mid-Atlantic Region Audit Office and conducted by the individuals listed below:

Thomas Tripple	Regional Inspector General for Auditing
Susana Bandeira	Audit Manager
Justin Long	Auditor-In-Charge

⁸ Canter, Holland D. and Tabitha J. Gomez, “Amazon Business and GSA Advantage: A Comparative Analysis,” (MBA professional report, Naval Postgraduate School, 2017), <https://calhoun.nps.edu/handle/10945/56880>.

Appendix A – Objective, Scope, and Methodology

Objective

We performed this audit of FAS's MAS program due to concerns about how FAS's contracting personnel are performing price analyses for MAS contract awards and option extensions. Our objective was to determine whether FAS's contracting personnel are negotiating and awarding MAS contracts and option extensions in accordance with the intent of the MAS program, federal regulations, and FAS policy.

Scope and Methodology

To accomplish our objective, we:

- Reviewed the FAR, GSAM, and FAS policies and guidance related to MAS pricing and negotiations;
- Reviewed the GSAR case and final rule for TDR and related support and comments;
- Reviewed and analyzed documentation from FAS's Electronic Content Management System for the contracts included in our audit samples;
- Interviewed 11 FAS contracting personnel associated with our fieldwork sample of contracts to gain an understanding of how they evaluated and negotiated MAS contract pricing;
- Reviewed audit data and reports for 32 preaward audits issued by the GSA Office of Inspector General during Fiscal Year 2020 (October 1, 2019, through September 30, 2020); and
- Interviewed FAS officials about FAS policies pertinent to our audit objective.

Sampling

During the fieldwork phase of our audit, we selected judgmental samples of contract awards and option awards to address our audit objective, as outlined below.

We selected a judgmental sample of 10 out of a population of 401 MAS contracts awarded during the period July 1, 2020, through October 31, 2020, to determine whether FAS negotiated and awarded the contracts in accordance with the intent of the MAS program, federal regulations, and FAS policy. Our judgmental sample included contracts with estimated contract values between \$8 million and \$261 million, both TDR and non-TDR contracts, and contracts awarded across multiple FAS regional offices and by different FAS contracting personnel.

Likewise, we selected a judgmental sample of 10 out of a population of 528 MAS contract option extensions awarded during the period July 1, 2020, through October 31, 2020, to determine whether FAS negotiated and awarded the contracts in accordance with the intent of the MAS program, federal regulations, and FAS policy. Our judgmental sample included

contracts with Fiscal Year 2020 sales between \$98,000 and \$185 million, both TDR and non-TDR contracts, and contracts awarded across multiple FAS regional offices and by different FAS contracting personnel.

Out of the 20 total contracts outlined above, 8 contracts were subject to the TDR pilot and 12 were not and required a CSP.

Our judgmental samples did not include sample sizes that would allow for projection to the population; however, they allowed us to sufficiently address our audit objectives.

Internal Controls

We assessed internal controls significant within the context of our audit objective against GAO-14-704G, *Standards for Internal Control in the Federal Government*. The methodology above describes the scope of our assessment and the report findings include any internal control deficiencies we identified. Our assessment is not intended to provide assurance on GSA's internal control structure as a whole. GSA management is responsible for establishing and maintaining internal controls.

Compliance Statement

We conducted the audit between June 2020 and May 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – GSA Comments

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GSA Federal Acquisition Service

September 16, 2022

MEMORANDUM FOR: Thomas Tripple
Regional Inspector General for Auditing
GSA, Office of Inspector General

FROM: Sonny Hashmi
Commissioner
Federal Acquisition Service (Q)

DocuSigned by:
Sonny Hashmi
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SUBJECT: Response to Draft Report FAS Cannot Provide Assurance that
MAS Contract Pricing Results in Orders Achieving the Lowest
Overall Cost Alternative (A200975)

Thank you for the opportunity to comment on the referenced draft audit report, "FAS Cannot Provide Assurance that MAS Contract Pricing Results in Orders Achieving the Lowest Overall Cost Alternative" A2000975, dated August 25, 2022. The Federal Acquisition Service (FAS) provides its response to the recommendations below.

FAS believes that the Multiple Award Schedule (MAS) Program follows competitive procedures necessary to establish fair and reasonable contract pricing, and orders placed against MAS contracts using the procedures at FAR 8.405 are best value and result in the lowest overall cost alternative to meet the Government's needs. This is evidenced by analyses demonstrating that Transactional Data Reporting (TDR) provides better contract and order level pricing, and that GSA pricing is competitive with the largest commercial sellers in the world. While we acknowledge that there is more to do to continue to improve practices and policies, we see transactional data as one of the keys to achieving more modern business practices. TDR improves stewardship of taxpayer dollars by empowering customer agencies to engage in smarter buying behaviors and reduces administrative burden for easier access to the Federal Marketplace. This includes assisting the Government with implementing important public policy objectives such as:

- protecting national security through supply chain risk management,
- reducing the impact of climate change through sustainable acquisition,
- reducing regulatory and administrative burden, and
- reducing pricing in the MAS Program.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405

FAS regularly leverages TDR to assess customer exposure to identified supply chain risks in support of Governmentwide information sharing activities. Specifically, FAS used TDR to identify a list of customers who purchased equipment and services that pose a national security threat and reached out to advise customers of risk mitigations that FAS implemented on its MAS program.

Similarly to the supply chain, FAS can utilize transactional data to track and increase the sale of sustainable items and reduce the sale of non-sustainable items. For example, an agency could learn through transactional data that it is buying excess toner cartridges. This may help them identify opportunities to advance sustainability goals by shifting to a more electronic environment. This directly supports the sustainability goals of Executive Order 14057, including increasing the purchase of products that comply with statutory and regulatory green purchasing requirements, products that conform to EPA recommended standards and ecolabels, and overall progress towards the goal of achieving net zero emissions from Federal procurement. While an alternate path could be developed to achieve similar objectives, i.e., customer provision of transactional data, this alternate approach would require significant time and investment, and will not be available in the near future. Thus FAS believes that TDR allows GSA to respond at the speed of need to stakeholder demands.

There is broad support for TDR in industry, as it lowers barriers to entry to the MAS program, and reduces burden through removal of the requirement to continuously monitor the Price Reductions Clause.¹ While GSA does not make final programmatic determinations based on only one factor or stakeholder, receiving and responding to industry and vendor feedback (as well as the feedback of other stakeholders) is critical to ensure that we modernize our programs in the right way to deliver for our customers and the public.

When leveraging data to compare MAS pricing, numerous analyses support that the MAS Program offers more favorable pricing than the commercial market and other comparable Government acquisition vehicles. FAS and other entities have performed studies which find MAS order and ceiling pricing more favorable than other similar contract vehicles. This includes a large academic study by researchers at the Naval Postgraduate School, "Amazon Business and GSA Advantage: A Comparative Analysis", which found MAS contract-level pricing to be

¹ See the Coalition for Government Procurement "GSA's Transactional Data Reporting Pilot: A Thoughtful Way Forward": "...it has become apparent that TDR has had a positive impact on the MAS program. TDR reduces administrative burdens and risk on MAS contractors as compared to the outdated, anti-competitive legacy MAS pricing policies, especially the Price Reduction Clause (PRC)...Reporting data on real time, competitive transactions will assist government and industry in improving overall management operations and procurement planning. In stark contrast, the legacy pricing policies, especially the PRC, are at cross purposes with the competitive ordering procedures, focusing significant government and contractor resources on administrative oversight rather than on competition for agency requirements." <https://thecgp.org/gsas-transactional-data-reporting-pilot-a-thoughtful-way-forward.html>

competitive with the largest commercial sellers in the world.² We provide further detail on this and other analyses in our response to recommendation 002.

The Commercial Sales Practices (CSP) disclosure and the PRC were developed in the 1980s and were innovative at the time. Changes in commercial market dynamics over the intervening 40 years since the creation of PRC and CSP, including technology revolutions such as the personal computer and the internet, necessitate a change in business practice.

The CSP creates a tie to a company's specific commercial practices, but that may not be comparable to the overall commercial market for that offering. Today's consumers compare pricing against similar products and services being sold by other vendors, as individual discount rates can create a perceived discount where none exists. Just because a vendor consistently markets an item as on sale, it does not necessarily mean it is a good deal. TDR gives visibility into the overall commercial market. While FAS believes that its current pricing methodologies are sufficient to meet statutory objectives, FAS and the OIG are in agreement that FAS should continue to mature and explore the MAS pricing model. This includes looking at commercial practices and technology to find innovative ways to negotiate pricing and provide savings to our customers.

Additionally, FAS interprets the contract and order requirements from statute, the FAR, GSAR, FAS policy and the MAS solicitation differently than the report. We believe that these procedures work together to collectively ensure that orders under the MAS Program represent the best value and result in the "lowest overall cost alternative."

Please see below for FAS feedback on specific recommendations:

OIG Recommendation 001:

Cancel the TDR pilot in accordance with FAS Policy and Procedures 2016-11, Transactional Data Reporting – Federal Supply Schedule Program Implementation, Paragraph 8(G), Pilot Cancellation. We recognize that FAS rejected recommendations made in Report Number A140143/Q/6/P21002, including that FAS develop and implement an exit strategy for the TDR pilot and transition participating contractors out of the TDR pilot. However, we continue to conclude that the TDR pilot should be canceled. After 5 years, the TDR pilot still has not resulted in a viable pricing methodology that ensures compliance with CICA's requirement for orders to result in the lowest overall cost alternative to meet the government's needs.

FAS disagrees with this recommendation.

² Naval Postgraduate School, Dudley Knox Library "Amazon business and GSA Advantage: a comparative analysis." <http://hdl.handle.net/10945/58451>

FAS believes TDR makes it easier for companies to do business with the Government by eliminating the complex and burdensome tracking and disclosure requirements.

GSA conducted an evaluation of the TDR pilot through the analysis of nine metrics over three years, and concluded³ that TDR creates a more effective, less burdensome alternative to legacy pricing disclosure requirements. Specifically, TDR empowers the Federal Government to:

- Analyze consumption patterns and develop demand management strategies;
- Reduce price variation and lower costs;
- Implement dynamic pricing models;
- Conduct horizontal pricing analyses for best value determinations; and
- Track procurement data and trends requisite for compliance with emerging policy directives (e.g., domestic sourcing, cybersecurity, and climate).

Irrespective of the above, FAS will continue to work to improve the TDR program and ensure agencies, including GSA, have the information and tools necessary to make full use of its potential. FAS appreciates that the OIG has scheduled two pre award audits for fiscal year 2023 for TDR contracts, and looks forward to learning from those results. FAS values the oversight of the OIG on MAS Program initiatives including TDR.

OIG Recommendation 002:

Inform customer agencies that they should perform separate and independent price determinations because relying on MAS contract pricing and following the ordering procedures in Federal Acquisition Regulation (FAR) 8.405 may not ensure compliance with the CICA requirement that orders and contracts result in the lowest overall cost alternative. This should continue until the requirements and controls outlined in Recommendation 3 are set in place to ensure compliance with CICA.

FAS disagrees with this recommendation.

FAS maintains that MAS Program procedures meet and surpass the Competition in Contracting Act Compliance (CICA) requirement that contracts and orders result in the lowest overall cost alternative to meet the Government's needs. To fully assess CICA compliance, a review should examine all MAS Program procedures established by GSA. These procedures work together to collectively ensure that the MAS Program complies with all CICA requirements. However, this report seems to assess CICA compliance by examining only FAS' award of contract-level pricing.

³ General Services Administration, "Transactional Data Reporting (TDR) pilot to become eligible for expansion."
<https://www.gsa.gov/blog/2021/04/27/transactional-data-reporting-tdr-pilot-to-become-eligible-for-expansion>

FAS' award of contract-level pricing represents only one element of the MAS Program procedures that ensure CICA compliance. At the contract level, FAS awards products or services and establishes a ceiling price. At the order level, buying agencies define how products and services are used, which allows for additional pricing considerations (e.g., experience, additional past performance, etc.) to be applied. This allows the MAS Program to provide a comprehensive offering of commercial products, services, and solutions to meet the wide variety of customer needs.

It is through the following established procedures that FAS is able to provide assurance that the MAS Program fully complies with all CICA requirements for full and open competition, to include the requirement that contracts and orders result in the lowest overall cost alternative:

- Solicitation requirements for offerors make the MAS Program open to all responsible sources;
- Awarded contract-level prices have been evaluated in accordance with GSAR subpart [538.2](#) and determined fair and reasonable in accordance with FAR subpart [15.4](#);
- FAR [8.405](#) ordering procedures require additional evaluation of prices based on the complexity and dollar value of the requirement (this includes enhanced order-level competition requirements incorporated to implement Section 863 of the FY 2009 National Defense Authorization Act); and
- FAR [8.404\(d\)](#) states that by placing an order against a schedule contract using the procedures in 8.405, the ordering activity has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc). However, ordering activities may seek additional discounts before placing an order.

There have been several analyses that support that the MAS Program offers more favorable pricing than the commercial market and other comparable Government acquisition vehicles:

- FAS has performed a comparison of recent MAS TDR transactions against commercial and other Federal marketplaces. This analysis examined over 500,000 transactions reported by TDR vendors compared against Federal and commercial catalog pricing compiled by a third-party. On average, MAS order-level pricing was 6.5% lower than the median price offered by FedMall, 13.9% lower than NASA SEWP, and 27.0% lower than the median price in the commercial marketplace.
- FAS analysis using FY20 catalog pricing found TDR contractor pricing on average to be more favorable than non-TDR/CSP-based pricing.
- MAS contract-level pricing has been found competitive with the largest commercial sellers in the world in a large academic study "Amazon Business and GSA Advantage: A Comparative Analysis" by Holland Canter and Tabitha Gomez of the Naval Postgraduate School (2017-12)⁴.

⁴ Naval Postgraduate School, Dudley Knox Library "Amazon business and GSA Advantage: a comparative analysis." <http://hdl.handle.net/10945/58451>

Recommendation 003:

Establish requirements and controls to ensure that FAS contracting personnel adequately analyze CSP information: (1) to negotiate pricing consistent with CICA, FAR, and GSA Acquisition Regulation 538.270-1, Evaluation of offers without access to transactional data; and (2) to clearly identify and support the determination of most favored customer pricing.

a. FAS should ensure that offerors provide its contracting personnel with detailed information about the sales volumes, terms and conditions of pricing agreements, and any additional transactional discounts or pricing terms offered to individual commercial customers that receive the best pricing for the products and services proposed for the MAS contract.

b. FAS should establish protocols that require offerors to submit other than certified cost or pricing data to support proposed pricing when offerors do not have comparable sales to customers outside of its MAS contract.

c. FAS should cancel FAS Policy and Procedures 2017-02, Updated Procedures for Exercising the Option to Extend the Term of a Federal Supply Schedule Contract, and develop and implement policy and procedures directing FAS's contracting personnel to perform price analyses of CSP disclosures provided by the offeror for MAS contract option extensions.

FAS disagrees with this recommendation.

FAS believes that it has already established appropriate requirements and controls to adequately analyze CSP information and comply with applicable regulations.

In response to Recommendations (a) and (b): FAS interprets that the implementation of these recommendations may bring it out of compliance with:

- the Federal Acquisition Streamlining Act (FASA, P.L. 103-355), and
- FAR and GSAR regulations.

FAS' interpretation of FASA and the implementing regulations is to only request information necessary to make a fair and reasonable pricing determination. This supports an acquisition system where unnecessary requests do not deter businesses contracting with the Government or increase their administrative costs passed on to the Government. FAS does and will continue to request additional information when necessary to make fair and reasonable pricing determinations on a case-by-case basis.

Consistent with FASA, Contracting Officers should not request more information than is necessary to establish a fair and reasonable price. This reduces burden for FAS contracting personnel and MAS contractors, and is consistent with the FAR [15.402\(a\)\(3\)](#) requirement to "Obtain the type and quantity of data necessary to establish a fair and reasonable price, but not more data than is necessary..." as well as FAR [15.403-3\(a\)\(1\)](#), the MAS solicitation, and contract clause requirements. While there may be differences of opinion between different agencies and officials in terms of the amount of information that is necessary to establish a fair and reasonable price, FAS does not believe that requiring the detailed information suggested in this recommendation would be needed in every instance. In addition, the deficiencies noted in the report may be related to disagreements over the definition and use of *data other than certified cost or pricing data*, GSAR subpart [538.2](#) pricing policy, and CICA's requirements related to "achieving the lowest overall cost alternative."

FAS acknowledges and agrees that CICA resulted in the initial creation of CSP disclosure and PRC requirements. This price evaluation methodology prioritized seeking the vendor's best/Most Favored Customer (MFC) price, and MAS Program procedures ensured contracts and orders resulted in the lowest overall cost alternative to meet the Government's needs.

However, it is equally important to view these actions within their original context. CICA was implemented within a 1980s Federal procurement system that had yet to benefit from current modern technology. At that time, the MAS Program was designated in the FAR as a mandatory source of supply. "Lowest overall cost alternative" was a term used within the context of being able to obtain a waiver from the requirement to use the mandatory MAS Program for customer procurement, i.e., a customer could buy an item elsewhere if the MAS Program did not represent the lowest overall cost alternative to meet its needs.

Today's MAS Program is a non-mandatory source of supply. Therefore, it is of great significance that FAR [8.404\(d\)](#) requires that ordering activities follow the procedures at FAR 8.405 to ensure that the order represents the best value and results in the lowest overall cost alternative.

In response to Recommendation (c): FAS acknowledges the current policy addressing the process for exercising options needs to be updated. This update is already underway. The resultant policy letter will cancel/replace PAP 2017-02, "Updated Procedures for Exercising the Option to Extend the Term of a Federal Supply Schedule Contract." However, FAS believes the current policy complies with GSAM [517.207](#) and exceeds FAR requirements for the evaluation of option prices (see FAR [17.207\(d\)\(2\)](#)).

FAS maintains current policy addressing the evaluation, negotiation, and award of pricing subject to the CSP requirement is consistent with CICA, FAR, and GSAR requirements. This includes pricing in new offers and the exercise of options.

Recommendation 004:

Explore new pricing methodologies that can ensure that its contracting personnel are able to leverage aggregate government buying power to negotiate and award MAS contracts that result in orders that reflect the lowest overall cost alternative to meet the needs of the government.

FAS largely agrees with this recommendation and is committed to ongoing process improvement in pricing methodology. However, FAS disagrees that current methodologies do not ensure contracting personnel are able to leverage Government buying power.

FAS has been at the forefront of the Federal Government in developing a pricing model that aligns current technology and data access. FAS realizes, along with most commercial companies, that data related to spend will further support how pricing should be awarded in the future. By utilizing existing data, FAS intends to improve the MAS pricing model in an agile fashion that allows for data maturity, which should result in a better understanding of pricing and market conditions.

As FAS continues to review pricing negotiations to update and modernize processes, it is important to allow all negotiation strategies, including CSP and TDR, to continue. This allows for flexibility based on the offering and data provided by the contractor and the ability for FAS to ascertain what that next iteration of MAS looks like.

FAS is implementing analytical tools such as 4P/CALC+ to bring transactional data, commercial data, and data from other Government vehicles to contracting personnel awarding and administering MAS contracts, as well as our customers ordering from these contracts. The tools and data will ensure the best value and lowest overall cost alternative is achieved for the taxpayer. FAS welcomes feedback on how it can improve any existing price evaluation techniques.

Thank you for the opportunity to review this draft report. We value the oversight of the OIG and look forward to continued partnership in improving GSA's programs and operations. If you have any questions, please contact Stephanie Shutt (stephanie.shutt@gsa.gov) from the Multiple Award Schedule Program Management Office in the Office of Enterprise Strategy Management.

Appendix C – Report Distribution

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